

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

Honorable R. Kirk Griffin, Circuit Court Judge

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S.C. SUPREME COURT

ALTON WESLEY GORE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-000322

APPENDIX

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1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
 2 COUNTY OF HORRY) (10-GS-26-02316) (02317) (02325)
 3) (02326) (02327) (02328) (02329) (02330)
 4 STATE)
 5 VERSUS) TRANSCRIPT OF RECORD
 6)
 7 ALTON WESLEY GORE, JR.) March 15, 2011
 8) Conway, S. C.
 9)
 10 B E F O R E:
 11 HONORABLE STEVEN H. JOHN, Judge.
 12 A P P E A R A N C E S:
 13 MICHAEL O'SULLIVAN, ESQ.
 14 ASSISTANT SOLICITOR FOR HORRY COUNTY
 15 ATTORNEY FOR STATE
 16
 17 T. KIRK TRUSLOW, ESQ.
 18 ATTORNEY FOR DEFENDANT
 19
 20 DIXIE COX EUBANK
 21 CIRCUIT COURT REPORTER
 22 FIFTEENTH JUDICIAL CIRCUIT
 23
 24
 25

1 (THE FOLLOWING TAKES PLACE ON MARCH 15, 2011.)

2 THE COURT: All right, the first one we have is a --
3 it's a motion for evidentiary hearing pursuant to Franks
4 versus Delaware and State of South Carolina versus Alton
5 Wesley Gore.

6 MR. TRUSLOW: Yes, Your Honor.

7 THE COURT: All right, Mr. Truslow, it's your motion.
8 Be glad to hear from you, sir.

9 MR. TRUSLOW: If it please the Court, Your Honor, if I
10 can, I've given Mr. O'Sullivan a copy of this. I'm passing
11 this up, not as the authority as to the unpublished Fourth
12 Circuit Opinion, but in case Your Honor wants to review this
13 without ruling right away. It just gives a really good
14 explanation of the Franks law in the analysis.

15 THE COURT: Right.

16 MR. TRUSLOW: But I think it probably is pretty
17 straightforward. Pursuant to Franks, Judge, it's a challenge
18 to the Affidavit of the Search Warrant, and what it requires
19 me to do is make a showing that there is something -- one or
20 more things in the Affidavit -- contained in the Affidavit
21 that was either put in the Affidavit by the law enforcement
22 agency that's -- that was deliberately false, or made -- done
23 with a reckless disregard for the truth. And I've filed a
24 written motion, and in that motion what I've alleged, Your
25 Honor, is -- and I've attached to that, as an offer of proof,

1 two things, the Affidavit to the Search Warrant and the Report
2 of Investigation, and if I could turn your attention, Judge,
3 to the Affidavit to the Search Warrant, you will note that
4 there are only two allegations in the Affidavit, and the one
5 that we take issue with is the first allegation which states -
6 - in the sentence it states, "A confidential and reliable
7 informant made a buy for cocaine out of the residence while
8 being recorded and monitored by agents in the area." Now the
9 reason, Your Honor, that we are challenging this is that we
10 believe that that was placed in there either deliberately
11 false, or with at least, at the very least, a reckless
12 disregard for the truth, and I've set out in the written
13 motion why, but just briefly, according to State v. Winborne,
14 Judge, it requires that, in order for an affidavit to support
15 probable cause it must state facts so closely related to the
16 time of the issuance of the warrant to justify probable cause
17 at that time.

18 Now, the sentence I just read to you about a buy from
19 the residence occurred seven months prior to the issuance of
20 the Search Warrant. Now if you will note, it does not give a
21 date there. Winborne also says that an affidavit which fails
22 altogether to state the time of the occurrence to the facts
23 alleged is insufficient. So we would say that that is
24 insufficient in and of itself, but what this motion about,
25 Your Honor, is excising that from the Affidavit, and then at

1 another time, review of the Affidavit with the remaining
2 portions. We believe that it was recklessly -- displays a
3 reckless disregard for the truth, not only in violation of
4 Winborne to disregard advising the Magistrate that the buy
5 from the residence was several months prior. We are talking
6 about drugs, which is a tangible piece of evidence, and it
7 makes the timing very important.

8 We have also alleged, as support for our argument, that
9 the second and only other allegation in the Search Warrant,
10 Your Honor, reads, "Also within the last seventy-two hours
11 agents followed the Defendant from the residence to another
12 location, and were able to monitor and record another buy for
13 cocaine." Now the reason that's important, Judge, is that
14 standing without the allegation that we are trying to excise
15 from this Affidavit we believe that would not support probable
16 cause to search the residence.

17 We also would point out as further support of excising
18 that first part that we talked about, if you read this this is
19 also either deliberately false or a reckless disregard for the
20 truth, because the way that reads, "Also within the last
21 seventy-two hours..." following that first part. So first
22 they put in that they made a buy from the residence. In
23 violation of Winborne they didn't say when that occurred. The
24 Offer of Proof with the police report that I put forward to
25 you is that the buy from the residence happened seven months.

1 earlier than the Affidavit -- that the Search Warrant was
2 issued. Following that sentence they say, "Also within the
3 last seventy-two hours...". Now I also pointed out -- and I
4 don't mean to nitpick, but obviously there's no comma after
5 also, and it's at least a reckless disregard to run those two
6 together, because what it sounds like is, we made a buy from
7 the residence, and also within seventy-two hours we did this.
8 What that leads -- what that leads -- and why that's
9 misleading is, it leads one to believe -- an issuing
10 magistrate to believe that the buy from the residence somehow
11 occurred within that same seventy-two hours. So, for two
12 reasons, one, the fact that the buy from the residence, there
13 is no date or timing associated with that whatsoever, two, an
14 offer of proof from the Report of Investigation I gave you
15 that that was seven months prior to the issuance of the Search
16 Warrant in preparation of the Affidavit, and number three, the
17 fact that they run that together with "Also within the last
18 seventy-two hours...".

19 THE COURT: I'm confused here. Okay.

20 MR. TRUSLOW: Yes sir.

21 THE COURT: All right. And I understand what you are
22 saying about the Affidavit. You've attached to your Motion
23 the Report of Investigation, correct, the Horry County Police
24 Department Narcotics and Vice Section.

25 MR. TRUSLOW: Yes sir.

1 THE COURT: You attached as part of your motion the
2 Report of Investigation.

3 MR. TRUSLOW: Yes sir.

4 THE COURT: All right. I'm looking at the first two
5 paragraphs, okay. The first two paragraphs, "On 7/20/09 a
6 confidential and reliable informant made a purchase for less
7 than ten grams of cocaine from Alton Gore."

8 MR. TRUSLOW: Yes sir.

9 THE COURT: "The buy occurred at Bimini's Sports Bar in
10 the North Myrtle Beach area of Horry County. The CI was
11 searched before and after the buy and it was monitored and
12 recorded by agents. The evidence did field-test positive for
13 cocaine and was turned into Evidence Section at HCPD to be
14 tested. On 7/23/09 a CI made another purchase from Alton for
15 cocaine. The buy occurred at his residence, [REDACTED] Juneau
16 Circle, in the Longs Section of Horry County. The buy was for
17 more than ten grams and was again monitored and recorded by
18 agents in the area. The evidence did field-test positive for
19 cocaine, was turned into the Evidence Section of the HCPD for
20 testing. Agents did search the CI before and after the buy."
21 The Affidavit appears to be February 28th. These occurred on
22 July ---

23 MR. TRUSLOW: 2009.

24 THE COURT: '09, in July, 2009. Okay.

25 MR. TRUSLOW: And Your Honor, in the Affidavit it's

1 just that second paragraph, the 7/23/09, is what they are
2 referencing. That's the only buy to the residence.

3 THE COURT: All right.

4 MR. TRUSLOW: And then paragraph five, the 3/5/10,
5 would be the allegation in the Affidavit for buying -- a
6 purchase away from the residence, within the last seventy-two
7 hours. Those are the two things in play. Paragraph two,
8 7/23/09, and 3/05/10, those are the two allegations in the
9 Search Warrant Affidavit. And what they did, Your Honor,
10 was -- the first one, 7/23/09, they put that in the Affidavit
11 with no date, we say in violation of Winborne, and no way to
12 test the time or the duration or close proximity. They put
13 that in, and then they followed it up with the 3/05/10
14 allegation by saying, "Also within seventy-two hours..." this
15 happened. And what we are saying is that that, under Franks,
16 and the case law following Franks, that that's a reckless
17 disregard for the truth, and misleading.

18 THE COURT: All right.

19 All right, Mr. O'Sullivan, let me hear from you, sir.

20 MR. O'SULLIVAN: Yes sir, Your Honor. First I just
21 want to correct one thing that was just said. The Warrant,
22 when they refer "Also within the last seventy-two hours...",
23 they are not talking about March 5th. March 5th is the day
24 the Warrant was executed. They are talking about February
25 25th, when they observed another buy from this individual,

1 which would be within seventy-two hours of this Affidavit,
2 which would be correct. They watched him leave his house,
3 drive to a location, make a sale of drugs, and that's what
4 they are referring to within the last seventy-two hours.
5 Nowhere in this does it says that, within seventy-two hours
6 they made a buy at his residence. It, clear as day, doesn't
7 say that. In terms of whether there was a comma misplaced or
8 not, misplaced after also, you know, it's -- there are two
9 separate sentences. The first one talks about there was a buy
10 made for cocaine out of the residence. That's true. The next
11 sentence says, "Also within the last seventy-two hours agents
12 followed the Defendant from the residence to another location
13 and were able to monitor and record another buy." That's also
14 true. There is nothing in here that is false, let alone
15 deliberately false, misleading, and in reckless disregard for
16 the truth.

17 You know, it talked about, in the **Franks** case itself,
18 that there is a heavy burden for establishing that there has
19 been some deliberate false statement or intentional or
20 reckless disregard for the truth, and that's because there are
21 other safeguards in place pretrial and during the trial to
22 protect citizens. If you consider what's being said in this
23 Affidavit, again, there is nothing that -- there's nothing in
24 there that's not true. We certainly, if Your Honor sees fit,
25 would be able to provide information and an explanation as to

1 why so much time elapsed between the buy at the residence that
2 was observed, and then the later Search Warrant. It's not
3 unusual for a drug investigation to go on that long in any
4 event. This absolutely is a proper warrant. Within seventy-
5 two hours they did observe another sale of an individual,
6 Alton Gore, leaving that home and making a drug sale.

7 I am informed by the Officer that they were -- they made
8 the Magistrate aware of all of this, they had a lengthy
9 conversation about it, about that the buy happened a long time
10 -- the buy at the residence happened a long time prior to the
11 most recent buy that was triggering their coming to him for a
12 warrant. In fact, that was the basis for observing him to --
13 to -- for another buy, to have what they call a "refresh" buy",
14 that would entitle them to, under the requirements that close
15 time and proximity, they have a buy to establish enough for a
16 warrant.

17 The ---

18 THE COURT: All right. And I appreciate that.

19 In essence ---

20 MR. TRUSLOW: Your Honor, may I ---

21 THE COURT: No sir. Let me ask a question. What you
22 are wanting ultimately the Court to do is suppress the
23 evidence, correct? I mean, that's basically what your motion
24 is, is to suppress the evidence.

25 MR. TRUSLOW: Yes sir. That's what it's getting at,

1 that the allegation that he drove from his residence, sold
2 drugs, is not sufficient probable cause to sell -- or to
3 search a house, so they throw in that he sold from the house,
4 which would give them probable cause, and they fail -- they
5 admitted the fact that that was seven months prior.

6 **THE COURT:** But in a motion to -- the Motion to
7 Suppress, I not only can take the matters that are set forth
8 in the Affidavit that's presented to the Magistrate and signed
9 by the Magistrate, Judge Mayers, I can take into consideration
10 whatever testimony was given to the Magistrate at the time
11 that the Search Warrant was issued.

12 **MR. TRUSLOW:** Yes sir. Yes, the Magistrate could
13 testify and provide oral supplementation as to what he was
14 told.

15 **THE COURT:** Or the Officers can testify as to what they
16 testified and what they told to the Magistrate, okay.

17 So I'm clear about this, the second sentence is, "Also
18 within the last seventy-two hours agents followed the
19 Defendant from the residence to another location, were able to
20 monitor and record another buy for a quantity of cocaine", and
21 this may very well call for what was told to the Magistrate.
22 What I'm understanding from that is, they followed the
23 Defendant from his house to another location where he sold
24 drugs to another individual.

25 **MR. O'SULLIVAN:** Yes sir.

1 THE COURT: It would seem to me, even if there was some
2 confusion about the first sentence -- and I'll hear from the -
3 - hear from the Officer, but it seems to me that would be
4 sufficient in and of itself. Where did the Defendant get the
5 drugs from to sell to the person? If they observed him
6 leaving the house, up to the time he comes to the location,
7 and they see him sell the drugs to John Doe, where did he get
8 the drugs from? He came from his house. The drugs had to be
9 in his house, so that would be -- you are telling me that's
10 insufficient.

11 MR. TRUSLOW: Yes sir, and the reason is, because you
12 have to have probable cause that there was drugs in his house.

13 Now, there's no allegation ---

14 THE COURT: Where did the drugs come from, out of the
15 air?

16 MR. TRUSLOW: As far as I know this individual never
17 kept drugs in his house in his entire life, and kept them in
18 the trunk of his car, you know, and some people do that. Why
19 would you keep drugs ---

20 THE COURT: All right. We are going to hear from the
21 testimony of the Officers then.

22 You have the Officers?

23 MR. O'SULLIVAN: I do, Your Honor. Could I just be
24 hear very briefly on that one issue you just raised? Because
25 there is ---

1 THE COURT: I can't resolve the issue without hearing
2 the testimony of the Officer.

3 Okay. Now, I'm in the middle of a trial, the jury is
4 coming here at 9:30, okay. I didn't understand that this
5 hearing would, honestly, take this long. So, who is here?

6 MR. TRUSLOW: Well, Your Honor, can ---

7 THE COURT: No. Before I can rule on the matter I have
8 to hear the Officer testify. I can rule on it. Whatever
9 arguments you make you might as well save till after I hear
10 the Officers testify. I can't make a ruling until I hear the
11 Officers testify. Whatever you are telling me can wait until
12 I hear the Officers testify. Okay. Are we both clear about
13 that?

14 MR. TRUSLOW: Well, no ---

15 THE COURT: Thank you. Thank you.

16 All right. Now, we have to hear the Officers testify.
17 What is here?

18 MR. O'SULLIVAN: Officer Jessie Ard is here. He is the
19 Affiant on the Warrant, Your Honor.

20 THE COURT: Very good. Call him.

21 MR. O'SULLIVAN: State calls Jessie Ard to the stand.

22 JESSIE ARD, being first duly sworn,
23 testifies as follows:

24 DIRECT-EXAMINATION BY MR. O'SULLIVAN:

25 Q. Officer Ard, did you have occasion to become involved

1 in a investigation of Alton Gore?

2 A. Yes, I did.

3 Q. And in that -- could you tell us about that
4 investigation?

5 A. It was a lengthy investigation. Over the course of
6 several months we were able to make several purchases of
7 cocaine from the Defendant, some from his place of business.
8 We did make an initial buy from his house, at which time -- we
9 are assigned several cases and we technically have to juggle -
10 - for lack of a better term, we have to juggle a case load,
11 and given those circumstances, there was a length of time we
12 did go without making a buy. We had some concern with -- we
13 had one buy from the residence. We felt as if he had illegal
14 narcotics at his residence, and we wanted, for lack of a
15 better term, a refresher buy, prior to, you know, possibly
16 seeking a search warrant for the residence. Under -- at that
17 point in time, for whatever reason, the Defendant was a little
18 -- was hesitant from selling from his house at that point in
19 time. We actually set up on his house prior to a buy, were
20 able to observe his residence, at which time we had the
21 confidential informant make a phone call, and we observed the
22 Defendant leave his residence, were able to keep constance
23 surveillance on him from his residence to the buy location,
24 was a couple of miles down the road at an empty lot, where we
25 could monitor and record the buy at that point in time, at

1 which point in time we then went to seek the Search Warrant.

2 At the time that we did seek the Search Warrant the
3 Judge as made aware of the facts and circumstances of the case
4 at the service of the Warrant, or at the -- at his signing of
5 the Search Warrant.

6 Q. And now when you say he was made aware of the facts,
7 can you be specific to what facts you made him aware of?

8 A. We made him painfully aware of the fact that there was
9 a length of time from one buy from the house to our most
10 recent buy, that we observed him leaving the residence. It is
11 common practice in the affidavit of a drug and/or narcotics
12 search warrant to -- some of the affidavit stuff -- given the
13 nature of serving the warrant a copy of the warrant has to be
14 left with the person served and/or the residence.

15 For the purpose of keeping the confidential informant
16 confidential it is common practice to not put the specific
17 date, time of the buy and/or the amount in the written
18 affidavit portion of the warrant, because given the fact
19 that -- through the process of deduction you can determine who
20 the CI is.

21 The Judge was made painfully aware of the lapse in time,
22 and also the fact that we were unable to get inside the house,
23 actually make a buy from inside the house, but we were able to
24 observe the Defendant leave his residence, kept him under
25 constant surveillance the entire trip to the empty -- to the

1 lot where the buy was made, at which time, you know, the Judge
2 found probable cause to issue the Search Warrant for the
3 residence.

4 Q. So, is there any way that that Magistrate was under the
5 impression that you -- you were telling him that that buy from
6 his house was in the last seventy-two hours?

7 A. There is no way, because that was a -- that was an
8 issue for us. We wanted to make sure that that was painfully
9 aware to the Judge prior to serving the Warrant, or at --
10 correction -- prior to signing the Warrant.

11 Q. And were you able to make another observation of a drug
12 deal by the Defendant within seventy-two hours of seeking this
13 Warrant?

14 A. Yes, that was the one -- the -- the one when we
15 observed him leaving the residence prior to -- you know,
16 within seventy-two hours of seeking the warrant.

17 Q. And did you make the Magistrate aware of that?

18 A. Yes, very much so.

19 Q. Now, is there anything in your Affidavit here, before
20 this Magistrate, that is false?

21 A. No.

22 MR. O'SULLIVAN: I have nothing further, Your Honor.

23 THE COURT: Cross-examination.

24 CROSS-EXAMINATION BY MR. TRUSLOW:

25 Q. Which Judge did you meet with?

1 A. Judge Mayers, if I'm not mistaken, it was Bradley
2 Mayers.

3 Q. All right. Do you have a pretty vivid recollection of
4 this with him?

5 A. Somewhat, somewhat.

6 Q. Okay. Now, regarding the buy within the seventy-two
7 hours at the lot, okay, when -- how much time were you there
8 prior to him leaving the residence that day?

9 A. We actually got -- I'm -- this -- without my notes it
10 would be speculative, but we were there -- I know we sat there
11 for a lengthy period of time, I would say maybe an -- I don't
12 know, maybe an hour.

13 Q. Okay. And his vehicle was there?

14 A. I'd have to refer to notes.

15 Q. Well, do you know?

16 THE COURT: Do you have your notes here, Officer? Are
17 they here?

18 MR. O'SULLIVAN: Do you need the case Report?

19 A. Let me -- let me -- if I could look at the case Report.

20 THE COURT: Identify what it is that you are looking
21 at.

22 A. This is the ---

23 THE COURT: Go ahead and have a seat, and just identify
24 what it is that you are looking at first.

25 A. I am going to review the Report of Investigation, Your

1 Honor.

2 THE COURT: All right. Go ahead.

3 A. I do not know if the vehicle was there. I do know -- I
4 do not know if the vehicle was there at the time we arrived on
5 the scene. We were there an hour, maybe two hours prior to,
6 at which point in time I ---

7 Q. What did you tell Judge Mayers about the vehicle being
8 there or not, anything?

9 A. I advised Judge Mayers that we observed the vehicle
10 leave the residence after the initial contact was made by the
11 confidential informant for the purpose of the sale of
12 narcotics.

13 Q. Were you also unable to tell whether or not he left in
14 the vehicle, or he came out of the house and got in the
15 vehicle? Did you see that? Did you see him come out of the
16 residence and get in the vehicle?

17 A. Yes, we did.

18 Q. Okay. Did you tell -- you specifically tell Judge
19 Mayers that?

20 A. Yes. The Judge was made aware of the facts. He was
21 aware that we observed ---

22 Q. I'm asking you, did you tell Judge Mayers that the
23 Defendant came out of his residence and got in the vehicle?
24 Did you tell that to the Judge?

25 A. I don't remember the specific conversation, but I --

1 yes, it was to the fact that we observed him leave his
2 residence.

3 Q. All right. But you don't remember whether you told the
4 Judge that?

5 A. I do not remember if I told the Judge specifically
6 that.

7 Q. Okay. Regarding the buy, did you tell the Judge that
8 the buy from the residence was seven months prior to when you
9 were meeting with the Judge?

10 A. I do not know if I -- if my verbiage was exactly that.
11 I do know that the Judge was aware of the dates. The dates
12 and times the Judge was made aware of at that time. We left --
13 -- we left them out of the Affidavit due to the -- to keep the
14 CI confidential. So the Judge -- the Judge was aware of the
15 dates and times. We had them and they were presented to him
16 at that time.

17 Q. All right. So there's no question you intentionally
18 left out the date of the buy from the residence.

19 A. The Judge was aware of the dates. There -- it was not
20 intentionally left out, or correction, it was -- the dates and
21 times were left out on the Affidavit to protect the
22 confidentiality of the informant. The Judge was aware of the
23 facts at the time he served the Search Warrant.

24 Q. Did you see the Defendant go inside the house, or come
25 outside of the house? I mean, when you got there and the car

1 was there, was he already inside, or did you see him pull up
2 and go inside?

3 A. I observed him get in the vehicle, so we could pick the
4 specific vehicle, and followed the vehicle.

5 Q. All right. And whose vehicle was it?

6 A. I do not remember.

7 Q. Did you tell the Judge whose vehicle it was?

8 A. I do not remember if I advised the Judge which vehicle
9 it was.

10 Q. All right. Do you recall telling the Judge whether or
11 not he was carrying any kind of bag or anything with him? Do
12 you know if you told the Judge that?

13 A. I do not recall that I seen him carrying a bag. I do
14 not.

15 Q. All right. And you don't remember whether or not you
16 saw him enter the residence, only come out?

17 A. I do not remember that. I do remember that we did --
18 we did identify him get in a vehicle. I don't remember the
19 specific vehicle that it was. We did follow it.

20 Q. But just again -- I'm summing it all up here. You
21 testified you don't recall if you were specific with the Judge
22 about that, in terms of him going in the house or coming out
23 of the house and getting in the vehicle?

24 A. I do not recall. I do not recall.

25 Q. All right. That's all I have, Your Honor.

1 THE COURT: All right. Very good.

2 Anything else, Solicitor?

3 MR. O'SULLIVAN: No sir, Your Honor.

4 THE COURT: All right. Very good.

5 You may step down, sir.

6 All right. Any other testimony you want to provide,
7 Solicitor?

8 MR. O'SULLIVAN: No sir, Your Honor.

9 THE COURT: All right. Very good.

10 Any other witnesses you want to call, Mr. Truslow?

11 MR. TRUSLOW: No sir.

12 THE COURT: All right. Very good.

13 All right. Let me hear your argument, Mr. Truslow.

14 MR. TRUSLOW: Judge, now you have everything that you
15 need to make a ruling. We've got the two allegations in the
16 Affidavit. With oral supplement we know that the only buy
17 from the residence occurred seven months prior, and we are
18 talking about probable cause to search somebody's home. Seven
19 months later they say he left his residence and made a -- sold
20 drugs in a lot.

21 In terms of what the Magistrate knew about this the
22 Officer's supplementation was the only additional testimony
23 that you could get, was that he doesn't really much of what he
24 told the Magistrate -- and I'm not going to go through it,
25 what he testified to, because I know Your Honor was

1 listening -- but there were very pointed parts that I asked
2 him and he could not say whether he told the Magistrate that
3 or not, and that's the only evidence before Your Honor. We
4 would ask you to suppress it.

5 THE COURT: Mr. O'Sullivan.

6 MR. O'SULLIVAN: Yes, Your Honor.

7 Your Honor, the point I want to make is that, in South
8 Carolina there's case law from 2003 -- it's a Court of Appeals
9 case, State v. Davis, and in that case they have a situation
10 where they -- it's even less certain than this situation.
11 They have an individual who was out -- they have an informant
12 telling them this guy is going to be selling drugs, and when
13 they do make an arrest on him they don't have any evidence
14 other than the arrest that's made on him, and him telling
15 them, this is where I stay, that there would be drugs in his
16 residence, which at that point was a motel, and in this case
17 the Court recognizes that the arresting officer was a twenty
18 year veteran of the narcotics unit who knew from his
19 experience that drugs and proceeds of drug sales are often
20 kept in the motel room, and they found that to be sufficient.
21 We have much more than that. We have a prior buy from this
22 residence. We have officers observing him leaving his
23 residence to go make a drug deal. I think there is more than
24 sufficient evidence.

25 I think the Defense's arguments against what Franks

1 says, it specifically says you can't have a conclusory
2 argument. They want to make a conclusory argument that there
3 was some false or misleading information deliberately put in
4 this Warrant.

5 The Officer testified that the Judge was made aware of
6 all the dates, all the times, and was made aware of all the
7 facts surrounding this, and the detached Magistrate made the
8 decision to issue the Warrant. There is no false information
9 in this Warrant. Each sentence in here is correct. Now maybe
10 there's a comma that could have been placed better, as Defense
11 would suggest, but I don't believe there is any problem with
12 this Warrant, and certainly it doesn't meet the elements of
13 the Franks test, Your Honor.

14 MR. TRUSLOW: Judge, just briefly.

15 THE COURT: All right. Thank you.

16 MR. TRUSLOW: There is no evidence in the testimony or
17 in the Affidavit, either in terms of the buy at the lot that
18 it was his residence. I would point that out as well, or that
19 he told the Magistrate it was his residence, or his vehicle.

20 THE COURT: Thank you.

21 All right. The standard of review here is that -- to
22 decide whether the issuing Magistrate had a substantial basis
23 for concluding that probable cause existed in deciding whether
24 to issue a Search Warrant the task is to find whether the
25 Magistrate made a practical common sense decision, whether

1 under the totality of the circumstances set forth in the
2 Affidavit, including the veracity of the person supplying the
3 information and the basis of his or her knowledge there's a
4 fair probability that evidence of a crime will be found in a
5 particular place. An Affidavit must contain sufficient
6 underlying facts and information upon which the Magistrate can
7 make a determination of probable cause, where false
8 information is contained within the supporting affidavit a
9 special consideration, or special considerations must be
10 given. That's the Franks versus Delaware case. Where the
11 defendant makes a substantial preliminary showing that a false
12 statement knowingly and intelligently, or with reckless
13 disregard for the truth, was included by the affiant in the
14 warrant affidavit, and if the allegedly false statement is
15 necessary to the finding of probable cause the Fourth
16 Amendment requires that a hearing be held in the event that at
17 that hearing the allegation of perjury or reckless disregard
18 is established by the defendant by a preponderance of the
19 evidence, and with the affidavit's false material set to one
20 side the affidavit's remaining content is insufficient to
21 establish probable cause the search warrant must be voided,
22 and the fruits of the search excluded to the same extent as if
23 probable cause was lacking on the face of the affidavit.

24 First, I do not find that the Defendant has established,
25 by a preponderance of the evidence, that there were false

1 statements, either knowingly and intentionally made, or with
2 reckless disregard for the truth. I find the statements
3 contained in the Affidavit to be true. I do not find them to
4 be conflicting. I do not find them to be confusing. I
5 certainly do not find them to be false, or intentionally
6 false, or made with reckless disregard for the truth. They
7 are clear on their face, they are true on their face. The
8 Magistrate had before him, besides the information contained
9 in the Affidavit, the testimony of the Officer. All that
10 combined shows that the Magistrate had a totality of the
11 circumstances, setting forth that there was a fair probability
12 that evidence of a crime would be found on the particular
13 place to be searched. I respectfully decline to grant the
14 motion.

15 Solicitor, prepare an order to that effect, forward it
16 to me within seven days of today's date.

17 Thank you very much.

18 And if you wish, Mr. O'Sullivan, there is any number of
19 Court of Appeals and Supreme Court decisions.

20 MR. O'SULLIVAN: Yes sir.

21 THE COURT: All right. Thank you, sir.

22 -----END OF REQUESTED TRANSCRIPT OF RECORD-----
23
24
25

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) FIFTEENTH JUDICIAL CIRCUIT
 CASE NO.: 10H00916

COUNTY OF HORRY)

STATE OF SOUTH CAROLINA)

VS.)

ALTON WESLEY GORE JR,)

DEFENDANT.)

**ORDER DENYING
 DEFENDANT'S MOTION PURSUANT
 TO FRANKS v. DELAWARE**

FILED
 HORRY COUNTY
 2011 MAR 24 PM 1:35
 MELODIE R. BISHOP
 CLERK OF COURT

This matter came before the Court on March 15, 2011, upon Defense motion for an evidentiary hearing pursuant to Franks v. Delaware, 438 U.S. 154 (1978), to review the sufficiency of a search warrant affidavit. The defendant was represented by his attorney, T. Kirk Truslow. The State was represented by Michael J. O'Sullivan, Assistant Solicitor for the Fifteenth Judicial Circuit.

The Defense argued the warrant attained in this matter was procured through deliberate falsehood or reckless disregard for the truth by law enforcement in its presentation to a detached Magistrate. Defense argued that law enforcement led the Magistrate to believe that a controlled drug buy had been executed at the Defendant's residence within seventy-two hours of them seeking the search warrant.

The Franks case establishes a two prong test to determine the sufficiency of a sworn statement utilized to procure a search warrant. The defendant must first make a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the Defendant's request. Second, if after the hearing, the defense establishes by a preponderance of the evidence that the information used to procure the warrant was false, that evidence must be set aside and the affidavit's remaining content must be evaluated to determine the validity of the warrant.

After hearing from the parties and testimony from the affiant on the warrant affidavit, Cpl. James Ard, the Court makes the following findings of fact:

1. The Court reviewed the warrant affidavit utilized to procure the search warrant.
2. The affiant testified under oath and was subject to cross-examination by defense counsel.
3. Cpl. Ard testified that the Magistrate was made fully aware through sworn oral testimony of all circumstances and dates of events surrounding the procurement of this search warrant. In support of the use of oral testimony being utilized to supplement a search warrant, the Court cites State v. Jones, 342 SC 121, 536 S.E.2d

1062
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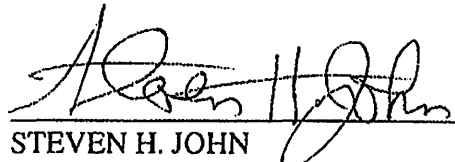
675, (2000). In that opinion, the South Carolina Supreme Court noted that although sworn oral testimony alone does not satisfy the warrant affidavit requirement, "oral testimony may also be used in this state to supplement search warrant affidavits which are facially insufficient to establish probable cause." 342 SC 121, 128, 536 S.E.2d 675, 678-79.

4. There was neither a false statement made nor a reckless disregard for the truth by law enforcement in the affidavit used to procure this search warrant.
5. Due to the lack of any false statement in the warrant affidavit, the first prong of the Franks test is not met and there is no need to evaluate the sufficiency of the affidavit with the information in question set aside.

After giving the required deference to the Magistrate's conclusions and evaluating the totality of the circumstances, the Court finds the warrant affidavit in this matter to be sufficient to establish the requisite probable cause.

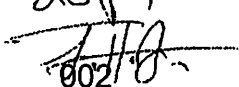
IT IS THEREFORE

ORDERED that the Defendant's motion is denied.


STEVEN H. JOHN
RESIDENT CIRCUIT JUDGE
FIFTEENTH JUDICIAL CIRCUIT

March 24, 2011

Conway, South Carolina

2012

002/0

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2010-GS-26-2326

THE STATE OF SOUTH)
CAROLINA,)

Plaintiff,)

Transcript of Record

vs.)

ALTON WESLEY GORE, JR.,)

January 3, 2012

January 5, 2012

Defendant.)

B E F O R E:

Honorable Edward B. Cottingham
Horry County Courthouse
Conway, South Carolina

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

Nancy Cote, Esquire
Brad C. Richardson, Esquire
Attorneys for State

Kirk Truslow, Esquire
Attorney for Defendant Gore

Robert Johnston, Esquire
Attorney for Defendant Deangelo

Kay H. Richardson, CVR
Circuit Court Reporter

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MOTIONS

1 (January 3, 2011.)

2 THE COURT: Bring the Defendant Gore out, please, and who
3 is the other ---

4 MR. JOHNSTON: Ms. Deangelo.

5 THE COURT: Bring them both out, please.

6 All right. Solicitor, are you ready to proceed?

7 MS. COTE: Yes, sir.

8 THE COURT: And I understand -- well, there's two issues.
9 Mr. Gore, please stand. I note that you are in prison
10 dressing. I'm advised that they have appropriate clothes for
11 you when we begin this trial. I'm advised further that you
12 have rejected that.

13 MR. GORE: Yes, sir.

14 THE COURT: Do you want to go to trial dressed as you are
15 or you want to go to trial in regular civilian clothes.

16 MR. TRUSLOW: Judge, may I -- I think it would help if
17 you let -- and I know we want to do the jury first but if I
18 could for the record make the first motion I made just a
19 motion to be relieved and that would lead right into what
20 you're doing.

21 THE COURT: Okay. That's fine.

22 MR. TRUSLOW: Judge, about December 16th, I received a
23 letter from Mr. Gore, this was a retained case. He said that
24 he was relieving me of my services, that I was fired, that he
25 was gonna do something different. At that point, I had not

State v. Gore (January 3, 2012)
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1 had contact with him. The case is about a year and half old.
2 I've prepared and I've gone through it and I'm ready but now I
3 have not talked with him since that time. The other issue is
4 that I've not been able to -- because he fired me, I tried to
5 contact his family and family members and not been able to
6 talk with them, they won't talk with me. We had an issue with
7 clothing. So, right now, our relationship is not the best
8 that it has been. It's gonna be very difficult for he and I
9 to work together. I don't believe that this particular case
10 ---

11 THE COURT: Well, I'm not gonna let him change lawyers

12 ---

13 MR. TRUSLOW: I don't think in this particular case that
14 this is an issue of him trying to delay, I really don't.

15 THE COURT: Well, let me ask you this -- I'll ask you
16 first, you said this occurred on December the 15th, he was
17 gonna make other arrangements, has he made them?

18 MR. GORE: Yes, I already had made other arrangements.

19 THE COURT: Sir?

20 MR. GORE: I have other arrangements.

21 THE COURT: What are they?

22 MR. GORE: With another lawyer.

23 THE COURT: Who?

24 MR. GORE: Robert Bellamy.

25 THE COURT: Who?

State v. Gore (January 3, 2012)
MOTIONS

7

1 MR. TRUSLOW: Scott Bellamy.

2 MR. GORE: Scott Bellamy.

3 THE COURT: Is Scott Bellamy ready to go to trial?

4 MR. GORE: No, he's getting ready. He's getting all my
5 stuff together right now.

6 THE COURT: Well, I tell you what, to accommodate you and
7 Scott, I'm gonna pick a jury today and we'll start the case
8 Thursday morning, that'll give him all day tomorrow to rest
9 on. Otherwise, I'm gonna leave Mr. Truslow in the trial of
10 this case. I cannot substitute a lawyer when a case is
11 already ready for trial. If I did that, everybody in the
12 detention center would do the same thing.

13 MR. GORE: Well, me and him is not been on the same page
14 with everything.

15 THE COURT: Well, you better get on it.

16 MR. GORE: My communication -- our communication has not
17 been all the way together. He's not been representing me how,
18 the way I feel to my fullest capabilities -- or his full
19 capabilities. Like, cause like, before when I come in the
20 courtroom, I don't need my lawyer to ask me how long have I
21 been locked up. That's one issue that I have.

22 THE COURT: How long what?

23 MR. GORE: I have an issue when I walk in the courtroom,
24 he asked me how long have I been locked up.

25 THE COURT: Well, that's an issue for his consideration,

State v. Gore (January 3, 2012)
MOTIONS

8

1 sure it is.

2 MR. GORE: But at the same time I was just trying to ask
3 for to remove for counsel.

4 THE COURT: No, sir. Here's my problem. If a case is
5 scheduled for trial and I permitted you to fire your lawyer
6 today, that would mean that I would have to continue the case
7 put another lawyer in place and every Defendant in the
8 detention center would pull the same thing. They figured if
9 you got out of trial they could too. Now, you listen to me
10 real good, you can bring Mr. Bellamy in to sit with Mr.
11 Truslow. I regard him as one of the best lawyers in the State
12 of South Carolina. I'm gonna give you all day tomorrow to
13 work with it and I'm gonna start this case at 9:30 Thursday
14 morning and I'm getting ready to pick a jury in the next ten
15 minutes. Now, do you want to -- I'm gonna bring the jury up,
16 do you want to dress in civilian clothes or stay in those
17 clothes?

18 MR. GORE: Regular clothes.

19 THE COURT: Sir?

20 MR. GORE: Regular clothes.

21 THE COURT: Okay. Are they here for him?

22 DEPUTY: Yes, sir.

23 THE COURT: Okay, now Mr. Gore, I know this lawyer and I
24 know him to be a good one. To accommodate you and him, I'm
25 gonna start the case not in the morning but Thursday morning.

State v. Gore (January 3, 2012)
MOTIONS

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1 That'll give you both time to get on the same page and if the
2 lawyer that you've talked to has been paid and retained and
3 willing to come forward and participate in the case, I will
4 permit it. You would agree to that would you not, sir?

5 MR. TRUSLOW: Yes, sir.

6 THE COURT: So, if you got him, tell him to come on. You
7 understand?

8 MR. GORE: I understand.

9 THE COURT: Okay. Go out there and dress immediately in
10 regular clothes and I'm gonna bring the jury up in just a
11 second.

12 Now, let's -- don't go yet, wait a minute. Is there --
13 Truslow, have you got any other motions regarding the
14 Defendant Gore?

15 MR. TRUSLOW: Yes, sir.

16 THE COURT: What are they?

17 MR. TRUSLOW: I had a motion in limine but I think is
18 probably taken care of because we talked in chambers about
19 that he's only being tried for trafficking. I had a motion in
20 limine that we had no evidence of his prior bad conduct
21 because it is more prejudicial than probative. He's also not
22 being tried today for any distributions. He's got
23 distributions, I think three that probably span the year prior
24 to this happening.

25 THE COURT: Has he been convicted of them?

State v. Gore (January 3, 2012)
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10

1 MR. TRUSLOW: No, sir.

2 THE COURT: Not gonna do that then. They may or may not
3 be evidence or testimony that comes in there's been drug
4 activity at that place but his specific indictments for cases
5 that have not been tried are not coming in the trial of this
6 case.

7 MS. COTE: That's correct, Your Honor. I understand that
8 and I've directed my witnesses as to that ---

9 THE COURT: That would not preclude you from testimony
10 that there was other trial -- drug activity given rise to that
11 search warrant.

12 MS. COTE: Yes, Your Honor. I was gonna ask the Court
13 for guidance as to how you wanted me to handle that. Will
14 they be allowed to state that there was prior drug activity
15 that led them to have probable cause for the search warrant?

16 THE COURT: It will; I'll permit that.

17 MS. COTE: Thank you, Your Honor.

18 MR. TRUSLOW: Judge, that kind of bleeds into the same
19 bad conduct testimony. I think we could -- they had a search
20 warrant and they went to the house. I don't think they need
21 to get into the -- because the affidavit would be hearsay, the
22 affidavit of the search warrant. So, I would just assume if
23 we start, you know, we're not -- we did object to the search
24 warrant and that's preserved and we lost that but we can say
25 they had ---

State v. Gore (January 3, 2012)

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MOTIONS

1 THE COURT: No, they entitled -- the testimony is coming
2 in that there was a search warrant. They're entitled to show
3 the basis for it. Not gonna talk to him about him, they gonna
4 -- I assume from pretrial conference, there's gonna be some
5 testimony that there was prior drug activity there giving rise
6 to it; is that correct?

7 MS. COTE: Yes, Your Honor.

8 THE COURT: Now, what other motions you got? You are not
9 to get in the fact that he has three prior distribution cases.

10 MS. COTE: Yes, Your Honor.

11 THE COURT: Now, if they bring that out, you're gonna
12 cause me to mistry this case.

13 MS. COTE: Yes, sir.

14 THE COURT: He's entitled to a fair trial and he's gonna
15 get one.

16 MS. COTE: Yes, sir.

17 MR. JOHNSTON: That goes for me too, Your Honor.

18 THE COURT: I understand.

19 MR. JOHNSTON: I mean, that was a question, actually.

20 THE COURT: Mr. Truslow, you got any other motions?

21 MR. TRUSLOW: Judge, yeah, the only other thing is I
22 would like to put on the record that we previously had a
23 motion with Judge John, a suppression motion, that has been
24 heard, I brought that as motion under Franks v. Delaware.
25 Somewhere in the course of that hearing, Judge John turned

State v. Gore (January 3, 2012)
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1 that into a suppression hearing and he upheld the search
2 warrant. I object to that and I just want that to be
3 preserved for the record. He even issued a written order on
4 that and we still object to that.

5 THE COURT: Well, the record of those proceedings are
6 incorporated as a part of these proceedings and his order is
7 made Court's Exhibit Number One and hereby included in this
8 record.

9 MR. TRUSLOW: Yes, sir.

10 COURT'S EXHIBIT NUMBER ONE

11 MARKED FOR IDENTIFICATION.

12 THE COURT: But so Judge John has ruled on that issue.
13 Now what other issue?

14 MR. TRUSLOW: That's all, Your Honor, for the Defense.

15 THE COURT: Now, Mr. Johnston, you had a motion, please?

16 MR. TRUSLOW: Should he go dress, Your Honor?

17 THE COURT: Yes, he doesn't need to be here for
18 Johnston's motion, does he?

19 MR. TRUSLOW: No, sir.

20 THE COURT: Okay. Please dress him out.

21 (REPORTER'S NOTE: Defendant Gore exits courtroom.)

22 THE COURT: Now, I'm gonna bring the jury back in about
23 ten minutes, so ---

24 MR. RICHARDSON: Your Honor, if we may approach. Mr.
25 Johnston?

State v. Gore (January 3, 2012)

13

MOTIONS

1 (REPORTER'S NOTE: A bench conference was held off the
2 record.)

3 THE COURT: All right. That's motions. You asked for a
4 severance in this matter, did you not, Mr. Johnston?

5 MR. JOHNSTON: I have not yet. I'll do it briefly, Your
6 Honor.

7 THE COURT: All right. Quick.

8 MR. JOHNSTON: Whenever you're ready, Your Honor.

9 THE COURT: Yes, I'm ready.

10 MR. JOHNSTON: Your Honor, based on the totality of
11 numerous rulings I am moving for a severance on the following
12 grounds. Various case law have ruled that if we feel that
13 there is a likelihood of an acquittal that's stronger by
14 separate trials rather than trying them together, the Court is
15 certainly allowed to consider that and we do concede that this
16 is in the discretion of the Court. It's our position that
17 there's more evidence against the codefendant than there is
18 against my client, Ms. Deangelo. We also are anticipating
19 antagonistic defenses and there is no common plan or scheme
20 that I ---

21 THE COURT: I got you. Let me hear from the solicitor as
22 to what they say their case is. And before I do, Mr. Truslow,
23 call that attorney that Mr. Gore said he talked to.

24 MR. TRUSLOW: Yes, sir.

25 THE COURT: I fully suspect that he hadn't paid him and

State v. Gore (January 3, 2012)
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14

1 hadn't retained him but if he has, offer him the opportunity
2 to come and participate in the trial. I want that on the
3 record.

4 MR. TRUSLOW: Yes, sir.

5 THE COURT: All right. What is the State's case with
6 regards to Mr. Johnston's client?

7 MR. RICHARDSON: Your Honor, it'd be the State's case
8 that on the date of the service of the search warrant, the
9 female defendant, Ms. Deangelo indicated -- she came back to
10 the house whenever the agents were there with the search
11 warrant and demanded to see the search warrant, stated she'd
12 been living for approximately one month. There were drugs
13 throughout the house, there were utensils used for cutting the
14 drugs, for measuring drugs out. This was a drug house, it was
15 a track house as they call it. Her vehicle was seen leaving
16 that morning along with the defendant's, they were going in
17 different directions.

18 THE COURT: Both defendants or one?

19 MR. RICHARDSON: Mr. Truslow's client, Mr. Gore, was seen
20 going in one car; Ms. Deangelo was in another car.

21 THE COURT: Seen leaving the premises?

22 MR. RICHARDSON: Yes, sir. Both of them were seen
23 leaving the premises.

24 THE COURT: What time of the morning?

25 MR. RICHARDSON: About 7:00, 7:30 in the morning, Your

State v. Gore (January 3, 2012)
MOTIONS

15

1 Honor.

2 THE COURT: Okay.

3 MR. RICHARDSON: Your Honor, it's just -- severance is
4 not a -- under State v Stuckey, Court of Appeals case,
5 severance should only be granted when there's serious risk if
6 going to trial would compromise a specific trial right of the
7 codefendant. I have yet to hear where a specific trial right
8 of the codefendant is being compromised by going ---

9 THE COURT: You are alleging in her assertion that she
10 was a resident of that household; is that correct?

11 MR. RICHARDSON: Yes, sir, in constructive possession
12 with the drugs in the house, Your Honor.

13 THE COURT: And then apparently she demanded to look at
14 the search warrant on the basis of some proprietary interest
15 in that?

16 MR. RICHARDSON: That's correct, Your Honor.

17 THE COURT: And where were the drugs found in the
18 premises that you say were hers and his?

19 MR. RICHARDSON: Master bedroom closet where there was
20 some female clothing, there was male clothing. There was
21 drugs found in the kitchen, some -- small amount in the
22 child's bedroom, correct?

23 MS. COTE: Yes.

24 MR. RICHARDSON: There was a child's bedroom and there
25 was a small amount cocaine found there -- or was it ---

State v. Gore (January 3, 2012)
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1 MS. COTE: Powder residue.

2 MR. RICHARDSON: --- powder residue found in that room,
3 Your Honor, so it's throughout the house.

4 THE COURT: Mr. Johnston, I respectfully deny your motion
5 for severance and think under the applicable case law given
6 the allegations and her apparent admission, and that's for the
7 jury to determine that she was a resident, that the case is
8 properly tried together. Thank you.

9 MR. JOHNSTON: Your Honor, I have one more, please.

10 THE COURT: Yes, sir.

11 MR. JOHNSTON: I want to make a motion to compel
12 discovery but I would like to elaborate briefly on the ---

13 THE COURT: Well, let's -- let me pick the jury -- tell
14 me -- I got a jury waiting down there, now what is it -- some
15 discovery that you don't have?

16 MR. JOHNSTON: Well, number one, I would like some
17 assurance that whatever Mr. Truslow has been provided by the
18 solicitor's office for this trial that I have as well. I'm
19 not convinced that I do.

20 THE COURT: Well, solicitor, can you tell him that?

21 MS. COTE: Yes, sir. I've provided the same things to
22 both codefendants. What Mr. Johnston is seeking is
23 confidential informant videos. This case is not a case
24 involving confidential informants so it's the State's position
25 that we don't have to turn that over.

State v. Gore (January 3, 2012)
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17

1 THE COURT: And Truslow doesn't have it either?

2 MS. COTE: No, sir.

3 THE COURT: They are asserting as officers of the court,
4 Mr. Johnston, that you've got everything Truslow has.

5 MR. JOHNSTON: Okay. I accept that. And the second
6 ground is that I cannot tell you with certainty that the
7 following report exists. However, I've been around long
8 enough that I would find it highly unusual if such a report
9 did not exist. In this case, there was Detective Donald,
10 Detective Ard, Detective Furr, Detective Sissell, Detective
11 Cooper, Detective Hardee ---

12 THE COURT: What are you seeking?

13 MR. JOHNSTON: All I'm saying is there is a Detective
14 Kent Donald. We have no form of summary, synopsis, report of
15 any sort and ---

16 THE COURT: Let's -- let me ask them if they had such a
17 thing.

18 MS. COTE: Your Honor, Mr. Johnston sent me a letter
19 requesting all these items and I responded to his letter and
20 told him that the State doesn't have any of this in our
21 possession. I've met with these detectives and gone through
22 their file with them. We've provided everything that we have.
23 Mr. Donald is present in the courtroom today and he's just
24 informed me that he never wrote a report.

25 THE COURT: Okay. That answers that question. What

State v. Gore (January 3, 2012)
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18

1 next? If they don't have it, they can't present it. What
2 else you got?

3 MR. JOHNSTON: May I put the grounds on the record?

4 THE COURT: Well, you're saying you don't have it.

5 MR. JOHNSTON: Well, I didn't finish what I was saying.

6 THE COURT: Well, go ahead and finish it for me, please.

7 MR. JOHNSTON: All I was saying that there is a Detective
8 Kent Donald ---

9 THE COURT: Well, let me ask -- does Kent Donald -- is
10 there a report from Detective Kent Donald?

11 MR. RICHARDSON: Your Honor ---

12 MR. JOHNSTON: I'll be fifteen seconds if you ---

13 THE COURT: All right. Go ahead.

14 MR. JOHNSTON: Detective Kent Donald was on the scene
15 when my client was arrested. He was the arresting officer,
16 he's the prosecuting officer on all the warrants, he's the
17 witness on all the indictments ----

18 THE COURT: And what is it you want ---

19 MR. JOHNSTON: --- he's in the court records, he obtained
20 the search warrant, he signed the affidavit for the search
21 warrant.

22 THE COURT: And what are you seeking?

23 MR. JOHNSTON: I just would've found it very unusual if
24 he had not done a police report.

25 THE COURT: Well, he's standing in court and says you've

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1 -- he's given you everything he's got.

2 MR. JOHNSTON: I accept that. I just wanted to put it on
3 the record, Your Honor.

4 THE COURT: Okay. It's on the record. What's next?

5 MR. JOHNSTON: That's all I have.

6 THE COURT: All right. Bring the jury up -- now, you had
7 something you want to put on -- go ahead.

8 MS. COTE: Yes, Your Honor. The State needs to amend the
9 indictment against Defendant Alton Wesley Gore, Your Honor.
10 The charge of trafficking 200 to 400 grams, 2010-GS-26-2326
11 ---

12 THE COURT: Mr. -- wait a minute. Truslow, Gore is not
13 in the courtroom, do you -- he's being dressed. Can we go
14 forward without his presence?

15 MR. TRUSLOW: Yes, sir.

16 THE COURT: Sir?

17 MR. TRUSLOW: I believe so, unless he's dressed. I'll
18 just check.

19 THE COURT: I want Gore in the courtroom.

20 MS. COTE: Yes, sir.

21 MR. TRUSLOW: He's ready, Judge.

22 THE COURT: Bring him out.

23 (REPORTER'S NOTE: Defendant Gore returns to courtroom.)

24 THE COURT: Mr. Gore, you're looking a lot better there.
25 I wanted you brought back out. There's a motion that affects

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1 your indictment and I wanted you to be present too. Let the
2 record reflect that the Defendant Gore is in court.

3 What is your amendment?

4 MS. COTE: Yes, Your Honor. It's 2010-GS-26-2326.

5 There's a scrivener's error in the body of the indictment that
6 lists the date of the offense as February 10th, 2010. This
7 incident occurred on March 5th, 2010. It's correct on the
8 codefendant's indictments. It was an error, a clerical error,
9 Your Honor. We would ask that the Court amend this. The
10 indictment is a notice document, it doesn't change the charge
11 in any way, shape or form.

12 THE COURT: All right. Was the search warrant dated the
13 date that you referred to?

14 MS. COTE: Yes, sir. Well, the search warrant was
15 executed on March 5th. It was dated February 28th.

16 THE COURT: And all other documents are apparently with
17 the same thing?

18 MS. COTE: Yes, sir, Your Honor, and we've had hearings,
19 the search warrant hearing pertaining to this date on March
20 5th was heard. We've had several hearings before the Court
21 where we've discussed the search warrant. Mr. Gore is aware
22 of what date we're talking about. He was ---

23 THE COURT: Mr. Truslow, you have any statement to make
24 on that?

25 MR. TRUSLOW: I would object to it and ask that it be

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1 sent to the Grand Jury with the proper information.

2 THE COURT: Are you prejudiced in any way by the alleged
3 scrivener's error? I mean, you had all these hearings that it
4 occurred on a certain date. Are you -- how are you prejudiced
5 by ---

6 MR. TRUSLOW: I can't say that I've been prejudiced in
7 the sense that I know from other discovery what date the
8 search warrant was. I'd have to honest about that but the
9 indictment itself should be in proper order.

10 THE COURT: Well, the cases will reflect a scrivener's
11 error, you had numerous hearings on it and this question was
12 never raised and a search warrant was issued on the date
13 indicated. I would respectfully permit that. It's a
14 scrivener's error and there's plenty of documents out there
15 showing the correct date now.

16 MS. COTE: Yes, sir, and ---

17 THE COURT: For the record, what was the correct date?

18 MS. COTE: March 5th, 2010.

19 THE COURT: And all the testimony will be related to
20 that?

21 MS. COTE: Yes, sir, Your Honor.

22 THE COURT: And the scrivener's error instead of March
23 10th said what?

24 MS. COTE: Instead of March 5th, it said February 10th,
25 2010. And for the record, his other indictments pertaining to

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1 the search warrant, several of them do have the correct March
2 5th date on it; so they are -- he is aware of the date.

3 THE COURT: He had notice of what date you were talking
4 about?

5 MS. COTE: Yes, sir. And it doesn't change the notice of
6 the charge.

7 THE COURT: I will accept your amendment.

8 MS. COTE: Thank you, Your Honor.

9 THE COURT: All right. Any other motions? Can I go
10 ahead and pick a jury now?

11 MR. JOHNSTON: I have one motion I would like a little
12 bit of clarification, if you wouldn't mind, Your Honor.

13 THE COURT: What is that?

14 MR. JOHNSTON: You were instructing the solicitor of what
15 you did not want them to ask as far as the defendant's prior
16 record. I'm assuming that that applies to ---

17 THE COURT: No, I -- wait a minute, I didn't say any
18 prior record now. We discussed his impending indictment.
19 I'll deal with the prior record issue later.

20 MR. JOHNSTON: Okay.

21 THE COURT: I never said that. Pending indictments and
22 prior record are two different issues.

23 MR. JOHNSTON: No, I'm not talking about -- no, I'm
24 talking about fifteen minutes ago you instructed the solicitor
25 don't say anything about his three prior distribution charges.

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1 THE COURT: That's correct. I was talking about the
2 indictments.

3 MR. JOHNSTON: As a courtesy, to be responsible, I'd like
4 to know what my restrictions are.

5 THE COURT: I don't know what you're getting ready to do.

6 MR. JOHNSTON: Well, if I have no restrictions, that's
7 fine, Your Honor.

8 MR. TRUSLOW: Judge, my motion in limine was as to all
9 evidence whether it come from the State or the codefendant's
10 counsel in regards to prejudicing my client by bringing up
11 charges that he hasn't been convicted of.

12 THE COURT: I'll deal with that when it comes. The only
13 thing I ruled on and I want it clear that there apparently are
14 three pending indictments for distribution.

15 MS. COTE: Yes.

16 THE COURT: They are not to be mentioned in the trial of
17 this case.

18 There some pending indictments on your client too?

19 MR. JOHNSTON: No, sir, I -- I just thought that it was
20 incumbent upon me to ask the Court what restrictions I have if
21 any.

22 THE COURT: I'm not going to deal with anything that she
23 may've said -- if something comes up, I'll deal with it at the
24 time. You understand?

25 MS. COTE: Yes, sir, Your Honor. It was our

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1 understanding that when we discuss the search warrant with the
2 officers, they can say that based on prior drug activity they
3 went before the magistrate ---

4 THE COURT: At that house, not by whom.

5 MS. COTE: Yes.

6 THE COURT: That's correct.

7 MR. JOHNSTON: I'm still not clear. Do I have any
8 restrictions?

9 THE COURT: What kind of restrictions are you talking
10 about, Mr. Johnston?

11 MR. TRUSLOW: He wants to be able to do what she can't do
12 and I'm saying that that's the same issue.

13 THE COURT: Why would your client want to bring in his
14 indictments for distribution?

15 MR. JOHNSTON: I just want to be -- in an abundance of
16 caution, just to be ---

17 THE COURT: I would say for her not to do that.

18 MR. JOHNSTON: For -- who's her? My client or the
19 solicitor?

20 THE COURT: Your client.

21 MR. JOHNSTON: Not to ---

22 THE COURT: Well, I don't know what her testimony may be.
23 I'll rule on that. I'm just telling the solicitor as a part
24 of the prosecution, I can't tell your client what she will not
25 do in testimony against the codefendant; I can't do that.

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1 MR. JOHNSTON: Okay. Thank you, Your Honor.

2 THE COURT: She can say what she wants to but if there's
3 question about it, Mr. Truslow can object and I'll hear it
4 outside the presence of the jury.

5 MR. JOHNSTON: Thank you.

6 THE COURT: But now, I just can't make a ruling on
7 something that I hadn't even heard.

8 All right. Is there anything further?

9 MS. COTE: Nothing further from the State, Your Honor.

10 THE COURT: All right. Mike, bring the jury up for me.

11 (REPORTER'S NOTE: Jury panel enters courtroom.)

12 THE COURT: Is all my panel here?

13 BAILIFF: They are.

14 THE COURT: Ladies and gentlemen of the potential jury
15 panel for the case we're about to try, I want to first thank
16 all of you for your participation in our criminal procedure.
17 I recognize that all of you are here at considerable
18 inconvenience to your families, to your personal lives and to
19 your business. But under our system of jurisprudence we say
20 and properly so that an individual shall not be deprived of
21 his liberty not for one day unless and until a jury of his
22 peers has found him guilty beyond a reasonable doubt. And so
23 it is that we have brought your number up here and from your
24 number we are going to select twelve jurors to serve as
25 finders of the facts in this case and we are going to select

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1 two alternates in case some juror is unable to participate.
2 The State of South Carolina who will be prosecuting the case
3 on behalf of the solicitor's office, Mr. Truslow and Mr.
4 Johnston on behalf of the two defendants desire from your
5 number twelve jurors. Twelve jurors with no enemies to
6 punish, no friends to reward, twelve jurors who can say, Judge
7 under my oath I will make my verdict based on the law and
8 evidence heard in this courtroom and from no other source.
9 Now, we are going to ask of you several questions to insure
10 that the -- each side gets those twelve jurors. And if at any
11 time anybody feels that there may be biases or prejudices that
12 you cannot give the State of South Carolina and these
13 defendants a fair and impartial trial, you stand and tell me
14 so and I'll deal with it as appropriate. But again, I want to
15 emphasis how important your duties are and how appreciative I
16 am and the State of South Carolina and County of Horry in your
17 services this day.

18 Now, because of prior commitments, this case will not
19 start until 9:30 Thursday morning, not in the morning but
20 Thursday morning. And it will be by the nature of the case,
21 we fully expect it to be completed in two days which will end
22 your service on Friday. But remember now, the twelve selected
23 and the two alternates will report to the jury room, and we'll
24 show you that, promptly at 9:30 day after tomorrow which is
25 Thursday.

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1 Call your case, solicitor.

2 MS. COTE: Thank you, Your Honor. The State of South
3 Carolina calls Alton Wesley Gore and Angel Deangelo.

4 THE COURT: Yes, ma'am.

5 MS. COTE: Yes, sir, Your Honor. Indictment numbers
6 2010-GS-26-2326, 2010-GS-26-3063 and 2010-GS-26-3066,
7 trafficking in cocaine and resisting arrest.

8 THE COURT: Alton Wesley Gore, Jr. stands indicted upon
9 this document for trafficking in cocaine; is that correct?

10 MS. COTE: Yes, sir, Your Honor.

11 THE COURT: Ms. Angel -- how you pronounce that, please,
12 Mr. Johnston?

13 MR. JOHNSTON: I believe that's Deangelo.

14 THE COURT: She stands indicted for trafficking in
15 cocaine and resisting arrest.

16 Now, at the outset let me explain to the jury panel,
17 these indictments are simply the formal way in which any
18 person is brought to trial. The allegations they contain are
19 in no sense any evidence. Evidence comes from this jury box
20 under oath and from such matters as may be permitted into the
21 trial of this case. Now, I charge you that to these three
22 indictments, Mr. Gore is one indictment, he specifically
23 pleads not guilty. Ms. Deangelo in regards to her two
24 indictments specifically pleads not guilty thereby placing the
25 burden proof upon the State of South Carolina of proving them

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1 guilty if they can to your satisfaction unanimously beyond a
2 reasonable doubt. During the process of the case, I will
3 explain to you various definitions that we use. I will charge
4 you the appropriate law and the foreman that I will be
5 selecting, I will keep him or her fully advised of their
6 duties.

7 Now, I want to make the following inquiry first. It will
8 be as to the Defendant Gore. Mr. Gore, please stand and face
9 the jury for me. Any of you related by blood or connected by
10 marriage with Mr. Alton Wesley Gore, Jr.? If so, please
11 stand.

12 (REPORTER'S NOTE: No response.)

13 THE COURT: Do any of you have any close connections with
14 Mr. Gore either neighbor, friend, coworker, church member or
15 whatever?

16 (REPORTER'S NOTE: No response.)

17 THE COURT: How many of you know Alton Wesley Gore, Jr.
18 in any capacity whatsoever? Please stand.

19 (REPORTER'S NOTE: No response.)

20 THE COURT: You may be seated.

21 Mr. Johnston, have your client stand, please.

22 This defendant is Angel -- how do you pronounce that
23 again, please?

24 MR. JOHNSTON: Your Honor, that's Deangelo.

25 THE COURT: Deangelo. Any of you related by blood or

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1 connected by marriage with Ms. Deangelo?

2 Any of you have any close personal relationships with Ms.
3 Deangelo, church member, coworker, neighbor, friend, friend of
4 the family?

5 (REPORTER'S NOTE: No response.)

6 THE COURT: How many of you know this defendant in any
7 capacity whatsoever, please stand.

8 (REPORTER'S NOTE: No response.)

9 THE COURT: You may be seated.

10 I'm going to read the allegations here with reference to
11 these indictments so that you can respond to the following
12 inquiry. It is alleged and alleged only that Alton Wesley
13 Gore, Jr. did on February -- on March the 10th in that amended
14 ---

15 MS. COTE: March 5th, Your Honor.

16 THE COURT: --- March 5th, 2010 knowingly possessed a
17 quantity of cocaine in the amount of 200 grams or more but
18 less than 400 grams and it is alleged that this possession
19 occurred at what place?

20 MS. COTE: [REDACTED] Junco Circle, Your Honor, in Longs.

21 THE COURT: In Longs, South Carolina. That's the
22 allegations. It's not likely but would any of you have read
23 or heard or discussed anything concerning an alleged
24 trafficking in cocaine at the address on March the 5th, 2010
25 in Longs, South Carolina?

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1 (REPORTER'S NOTE: No response.)

2 THE COURT: Now, I need to know if any of you have such
3 biases or prejudices that you feel that you cannot give both
4 the State of South Carolina and the defendant a fair trial.
5 You know, in life's experience, whether we want to or not we
6 develop certain biases and they influence us. So, if anybody
7 has a bias that they cannot give both a fair trial, I need to
8 know. And let me tell you, I've used this before as an
9 example, it has nothing to do with this case. Some few years
10 ago, I was preparing to try a young man for driving under the
11 influence felony, it being alleged that he killed a young
12 woman while drunk driving. In the jury process selection, I
13 asked if anybody were biased or prejudiced. A lady got up on
14 the left-hand side and said, Judge, I can't be fair to him. I
15 know nothing about the case but my daughter was killed by a
16 drunk driver a year ago and I can't be fair to him.
17 Interestingly enough, in that same panel, a gentleman got up
18 and said, Judge, I can't be fair to the solicitor's office.
19 They tried my son three times. The first two trials, it was
20 eleven to one for acquittal and they insisted that my son go
21 back for a third trial in which he was found not guilty and I
22 can't be fair to the State of South Carolina. Those are
23 examples of biases or prejudices.

24 Now, in this case, there is an allegation of trafficking
25 in cocaine which basically means possession of a larger

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1 quantity of cocaine. You can possess cocaine but if you
2 possess a sufficient amount, and that's the allegation, it
3 arises as to trafficking. But the allegations deal with
4 drugs. Now, having said that and knowing that that's the
5 nature of this case, do any of you feel that you cannot be
6 fair to the State of South Carolina and this -- and these two
7 defendants? If so, please stand.

8 THE COURT: Come forward, please, ma'am.

9 Counsel for the State and the defendants come forward.

10 May I have your juror number?

11 JUROR 214: 214.

12 THE COURT: Thank you. May I have your name, please.

13 JUROR 214: Rhonda McKenna.

14 THE COURT: Please come forward.

15 (REPORTER'S NOTE: A bench conference was held off the record
16 with Juror 214 and all counsel.)

17 THE COURT: You may leave. Madame Juror, call back
18 tonight for further instructions from some other judges, we've
19 got several courts running. Okay?

20 JUROR 214: Thank you.

21 THE COURT: All right. For the State, is there any
22 additional inquiry?

23 MR. RICHARDSON: Your Honor, you just forgot to ask if
24 they're familiar with any of the attorneys involved.

25 THE COURT: I'm getting ready to do that but other than

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1 that, are there any additional inquiries?

2 MR. RICHARDSON: No, sir, Your Honor.

3 THE COURT: Mr. Truslow, let me deal -- any on behalf of
4 Defendant Gore?

5 MR. TRUSLOW: No, sir.

6 THE COURT: Mr. Johnston?

7 MR. JOHNSTON: No, sir.

8 THE COURT: All right, now, one further question. This
9 case is prosecuted by the Solicitor's Office of the Fifteenth
10 Circuit comprising Horry and Georgetown County. Do any of you
11 work in the solicitor's office or have any immediate family
12 members employed in the Solicitor's Office of the Fifteenth
13 Circuit including Georgetown and Horry? Please stand.

14 (REPORTER'S NOTE: No response.)

15 THE COURT: Mr. Truslow represents the Defendant Gore, a
16 lawyer from this area. Any of you clients of Mr. Truslow or
17 have you been in the immediate past, please stand.

18 (REPORTER'S NOTE: No response.)

19 THE COURT: Thank you, Mr. Truslow.

20 Mr. Johnston, please stand. He represents the other
21 defendant. Any of you currently employed by Mr. Johnston or
22 have you been in the immediate past?

23 (REPORTER'S NOTE: No response.)

24 THE COURT: You may be seated.

25 I conclude there's no additional inquiry and we will now

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1 select the jury. The State shall have five strikes.

2 MR. RICHARDSON: Yes, sir.

3 THE COURT: The defendants each shall have five strikes.

4 MR. TRUSLOW: Judge, may we please inquire as to the
5 solicitor's -- their names as we did with us as attorneys
6 because they may know them ---

7 THE COURT: I will certainly do that. I would've thought
8 in my overall inquiry would've encompassed that but I'll do
9 that.

10 Mr. Richardson, any of you connected with -- have any
11 close connection with Mr. Richardson in any way?

12 (REPORTER'S NOTE: No response.)

13 THE COURT: Be seated.

14 Solicitor, identify yourself.

15 MS. COTE: My name is Nancy Cote.

16 THE COURT: Any of you have any special connections with
17 Ms. Nancy Cote?

18 (REPORTER'S NOTE: No response.)

19 THE COURT: Does that complete your inquiry, gentlemen?

20 MR. TRUSLOW: Yes, Your Honor.

21 THE COURT: Give us a jury.

22 CLERK: When I call your name, if you'll please bring any
23 belongings that you have with you up to the front of the
24 courtroom. Stand in front of the podium and turn around and
25 face the back of the courtroom.

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1 Juror Number 159, Marcia Howard.

2 What say the State?

3 MS. COTE: Please present this juror.

4 CLERK: Defense Deangelo?

5 MR. JOHNSTON: Please excuse this juror, Your Honor.

6 CLERK: You're excused from this particular case.

7 THE COURT: Now, the strikes will be five and five as to
8 each one.

9 CLERK: Juror Number 366, Diane Vinson.

10 What say the State?

11 MS. COTE: Please present this juror.

12 CLERK: Defense Deangelo?

13 MR. JOHNSTON: Your Honor, we accept this juror, please.

14 CLERK: Defense Gore?

15 MR. TRUSLOW: Please swear the juror.

16 CLERK: Please be seated in the jury box.

17 336, Eddie Stevens.

18 What say the State?

19 MS. COTE: Please present this juror.

20 CLERK: Defense Deangelo?

21 MR. JOHNSTON: Please seat this juror, Your Honor.

22 CLERK: Defense Gore?

23 MR. TRUSLOW: Please seat the juror.

24 CLERK: Please be seated in the jury box.

25 129, Brian Hadsock.

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1 What say the State?

2 MS. COTE: Please present this juror.

3 CLERK: Defense Deangelo?

4 MR. JOHNSTON: Could I get that number again, please.

5 CLERK: 129.

6 MR. TRUSLOW: Judge, as a result of my own chicken

7 scratch from these notes from downstairs, I've got that he's a

8 GM but I can't read where. May I inquire again, please?

9 THE COURT: I will permit it. What is your inquiry?

10 MR. TRUSLOW: Employment.

11 THE COURT: I would do that. Where are you employed?

12 JUROR 129: Spenceron (spelled phonetically)

13 Incorporated.

14 THE COURT: And where is your wife employed if she's

15 employed?

16 JUROR 129: I'm single.

17 THE COURT: Thank you.

18 MR. JOHNSTON: Your Honor, please present the juror.

19 CLERK: Defense Gore.

20 MR. TRUSLOW: Present the juror, please.

21 CLERK: Please be seated in the jury box.

22 133, Ernest Hammond.

23 What say the State?

24 MS. COTE: Please present this juror.

25 CLERK: Defense Deangelo?

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1 MR. JOHNSTON: We're almost there, Your Honor.

2 Please excuse this juror, Your Honor.

3 CLERK: You're excused from this particular case.

4 21, Nancy Beneroski.

5 What say the State?

6 MR. RICHARDSON: What number was that, Madame Clerk?

7 CLERK: 21.

8 MR. RICHARDSON: Thank you.

9 What say the State?

10 MS. COTE: Please present this juror.

11 CLERK: Defense Deangelo?

12 MR. JOHNSTON: Please present the juror and thank you for
13 your patience.

14 CLERK: Defense Gore?

15 MR. TRUSLOW: Please present the juror.

16 CLERK: Please be seated in the jury box.

17 173, Kelly Kight.

18 What say the State?

19 MS. COTE: Please present this juror.

20 CLERK: Defense Deangelo?

21 MR. JOHNSTON: Please present this juror.

22 CLERK: Defense Gore?

23 MR. TRUSLOW: Please present the juror.

24 CLERK: Please be seated in the jury box.

25 24, Brent Bina.

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1 MR JOHNSTON: You said 124?

2 CLERK: 24.

3 MR. JOHNSTON: Please tell me that number just prior to
4 that, please.

5 CLERK: The number prior was 173.

6 MR. JOHNSTON: Thank you.

7 CLERK: What say the State?

8 MS. COTE: Please present this juror.

9 CLERK: Defense Deangelo?

10 MR. JOHNSTON: May I ask the same question Mr. Truslow
11 did of ---

12 THE COURT: Let me do -- where are you employed, sir?

13 JUROR 24: Best Buy.

14 THE COURT: Sir?

15 JUROR 24: Best Buy.

16 THE COURT: And where is your wife employed?

17 JUROR 24: She works at the marina in Wacca Wache.

18 THE COURT: All right, sir.

19 MR. JOHNSTON: Please excuse this juror.

20 CLERK: You are excused from this particular case.

21 MR JOHNSTON: Speaking of chicken scratch, could I just
22 verify the number of strikes you have?

23 LAW CLERK: That's your third.

24 MR. JOHNSTON: Total of three.

25 LAW CLERK: Yes.

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1 CLERK: Number 70, Dennis Delegall.
2 What say the State?
3 MS. COTE: Please excuse this juror.
4 CLERK: You are excused from this particular case.
5 364, William Vaught.
6 What say the State?
7 MS. COTE: Please present this juror.
8 CLERK: Defense Deangelo?
9 MR. TRUSLOW: I need the number, I'm sorry.
10 CLERK: 364.
11 MR. TRUSLOW: Thank you. Your Honor, could we inquire
12 what Mr. Vaught did in the Army? He's retired Army, I believe.
13 JUROR 364: I was a combat engineer.
14 MR. JOHNSTON: Please present this juror, Your Honor.
15 CLERK: Defense Gore?
16 MR. TRUSLOW: Please present the juror.
17 CLERK: Please be seated in the jury box.
18 2, Karen Alexander.
19 What say the State?
20 MS. COTE: Please present this juror.
21 CLERK: Defense Deangelo?
22 MR. JOHNSTON: Please excuse the juror.
23 CLERK: You are excused from this particular case.
24 240, Annick Muffley.
25 What say the State?

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1 MS. COTE: Please present this juror.
2 CLERK: Defense Deangelo?
3 MR. JOHNSTON: Please present this juror.
4 CLERK: Defense Gore?
5 MR. TRUSLOW: Please present the juror.
6 CLERK: Please be seated in the jury box.
7 282, Amanda Restauro.
8 What say the State?
9 MS. COTE: Please present this juror.
10 CLERK: Defense Deangelo?
11 MR. JOHNSTON: Please present the juror.
12 CLERK: Defense Gore?
13 MR. TRUSLOW: Please present the juror.
14 CLERK: Please be seated in the jury box.
15 122, Mary Green.
16 What say the State?
17 MS. COTE: Please present this juror.
18 CLERK: Defense Deangelo?
19 MR. JOHNSTON: Please excuse this juror.
20 CLERK: You're excused from this particular case.
21 155, Tasheba James.
22 What say the State?
23 MS. COTE: Please present this juror.
24 CLERK: Any challenges for Defense Deangelo?
25 MR. JOHNSTON: Please present this juror.

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1 CLERK: Defense Gore.
2 MR. TRUSLOW: Please present the juror.
3 CLERK: Please be seated in the jury box.
4 11, Brittany Barkow.
5 THE COURT: Clerk.
6 CLERK: Yes, sir.
7 THE COURT: Good job.
8 CLERK: What say the State?
9 MS. COTE: Please present this juror.
10 CLERK: Any challenges? Defense Deangelo?
11 THE COURT: Mr. Truslow?
12 MR. TRUSLOW: Yes, sir. We're getting there. Please
13 present the juror.
14 CLERK: Please be seated in the jury box.
15 204, Amanda Masterpaul.
16 What say the State?
17 MS. COTE: Please present this juror.
18 CLERK: Any challenges? Defense Deangelo?
19 MR. JOHNSTON: Please present this juror.
20 CLERK: Defense Gore?
21 MR. TRUSLOW: Please present the juror.
22 CLERK: Please be seated in the jury box.
23 THE COURT: 342, Anita Strother.
24 What say the State?
25 MS. COTE: Please present this juror.

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JURY SELECTION

1 CLERK: Any challenges. Defense Deangelo?

2 THE COURT: Mr. Truslow?

3 MR. TRUSLOW: Yes, sir.

4 MR. JOHNSTON: Please present the juror.

5 CLERK: Defense Gore?

6 MR. TRUSLOW: Please present the juror.

7 CLERK: Please be seated in the jury box.

8 THE COURT: All right. That will constitute the twelve.

9 How about strikes as to the alternates, isn't it two and one
10 as to each alternate each defendant?

11 MR. RICHARDSON: Yes, sir.

12 THE COURT: They're entitled to two apiece. Okay.
13 Proceed.

14 CLERK: 355, Jerry Todd.

15 What say the State?

16 MS. COTE: Please present this juror.

17 CLERK: Defense Deangelo?

18 MR. JOHNSTON: Please excuse this juror.

19 CLERK: You're excused from this particular case.
20 109, Brittany Gore.

21 What say the State?

22 MS. COTE: Please present this juror.

23 CLERK: Defense Deangelo?

24 MR. JOHNSTON: Please present this juror.

25 CLERK: Defense Gore?

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JURY SELECTION

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1 MR. TRUSLOW: Please present the juror.

2 CLERK: Please be seated in the jury box.

3 THE COURT: That will be alternate number one.

4 CLERK: 270, Cathey Powell

5 What say the State?

6 MS. COTE: Please present this juror.

7 CLERK: Defense Deangelo?

8 MR. JOHNSTON: Please excuse this juror.

9 CLERK: You're excused from this particular case.

10 90, Nikiya Evans

11 What say the State?

12 MS. COTE: I'm sorry. Please present this juror.

13 CLERK: Any challenges, Defense Deangelo?

14 THE COURT: Mr. Johnston?

15 MR. JOHNSTON: I have no challenges, Judge.

16 THE COURT: All right, sir.

17 CLERK: Defense Gore?

18 MR. TRUSLOW: Please present the juror.

19 CLERK: Please be seated in the jury box.

20 THE COURT: Ladies and gentlemen, we'll let you go to the
21 jury room just a moment and I'll call you back very shortly
22 for further instructions. Thank you. Have them go to the
23 jury room.

24 (REPORTER'S NOTE: The jury retires to the jury room.)

25 For the State, any motions regarding the composition of

State v. Gore (January 3, 2012)
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1 the jury?

2 MS. COTE: No, Your Honor.

3 THE COURT: What says the Defendant Gore? Mr. Truslow?

4 MR. TRUSLOW: No, Your Honor.

5 THE COURT: What says the other defendant, Ms. Deangelo?

6 MR. JOHNSTON: No, sir.

7 THE COURT: The jury will stand as selected. Let me
8 bring the jury back out.

9 Bring them back out, please.

10 THE COURT: Ladies and gentlemen, for those of you who
11 were not selected are excused at this time to call in after
12 six o'clock tonight for further instructions. Make sure all of
13 you understand how to call in but I'm not sure -- this case
14 will occupy my time but there may be some other judges that
15 will be needing you. So, you are excused to call in after six
16 o'clock tonight. Thank you.

17 (REPORTER'S NOTE: Remaining jury pool exits the courtroom.)

18 THE COURT: Have Mr. Stevens take the foreman's chair for
19 me.

20 DEPUTY: What's that name, Your Honor?

21 THE COURT: Stevens.

22 (REPORTER'S NOTE: The jury returns to the courtroom.)

23 THE COURT: All right. Mr. Stevens, I have selected you
24 as foreperson of the jury. You will preside in the jury room
25 during their deliberations. You will be the jury spokesman in

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JURY SELECTION

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1 the courtroom and any communication from the jury will be
2 through you to the bailiff. Be assured now that I will keep
3 you fully advised of your duties and I will prepare for you
4 appropriate forms as are necessary.

5 Ladies and gentlemen, you twelve and two alternates if
6 needed have now been selected as fair and impartial jurors who
7 will be sworn to render a verdict based on the law and
8 evidence heard in this courtroom.

9 Now, in the days of internet, jurors are prone to get on
10 the internet and seek information that they're not entitled
11 to. Ultimately, whatever your verdict is, it's got to be
12 based on the law and evidence heard in this courtroom and from
13 no other source. And during the course of the trial, I will
14 charge you the law as is applicable to the various issues
15 remembering at all times that you are the sole and only
16 finders of the facts. You're the judges and sole judges of
17 the credibility and believability of the witnesses and I'll go
18 into that in greater detail at a later time. I tell you this
19 because of an incident that occurred in this courthouse last
20 December. A lady in spite of my admonitions not to read the
21 papers or TV or whatever, got on the internet and decided for
22 herself that she was gonna look at what the law was in other
23 states; well, that's not applicable to the laws in this state.
24 And she produced a document and fortunately she told the
25 bailiff, can I share this with the jurors and he very properly

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JURY SELECTION

1 said no. Had she gotten by him and done that, I would've had
2 to take a four-day trial and throw it out and start again at a
3 later date. And so I tell you, don't get on the internet and
4 seek additional information, I'll tell you what the law is.
5 And please, it's not likely and I don't see any press here,
6 it's not likely anything will be on the TV or the newspaper
7 but if you see it, put it aside. Do not discuss the case with
8 anyone, let no one discuss it with you. And even in the jury
9 room, Mr. Foreman, you must not discuss any issue until I have
10 given you that issue for your deliberations and let me tell
11 you why. And I can understand it. Sometimes during a break,
12 be it lunch or whatever, two or three jurors will get around
13 the car and start talking about some issue in the case and
14 since your verdict must be the unanimous verdict of all twelve
15 of you, you are depriving your fellow jurors of your thought
16 process and they're entitled to that and therefore under our
17 system we say that any discussion involving any issue in this
18 case must be done in the jury room and in the presence of all
19 twelve. You may discuss with the jury what you got for
20 Christmas or what you're aspirations are for the New Year but
21 please don't discuss this case until I have given it to you
22 for your deliberations. These admonitions will be continuing
23 admonitions.

24 Now, as I indicated earlier, because of prior commitments
25 we will be starting this case at 9:30 promptly Thursday

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JURY SELECTION

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1 morning. When you report, report please not to the courthouse
2 but to your jury room that you just departed from and we'll
3 have -- I'm gonna have some ham biscuits and hot coffee
4 waiting on you. It's supposed to be cold that day.

5 Any further admonitions for the jury?

6 MS. COTE: Nothing from the State, Your Honor.

7 THE COURT: What you say, Mr. Truslow?

8 MR. TRUSLOW: No, sir, Judge.

9 THE COURT: What you say, Mr. Johnston?

10 MR. JOHNSTON: No, Your Honor.

11 THE COURT: You are now excused to report at 9:30 day
12 after tomorrow, Thursday morning, and again let me thank all
13 of you for your patience today. I appreciate it so much. You
14 all right excused. See you at 9:30.

15 (REPORTER'S NOTE: The jury is excused for the day.)

16 THE COURT: Generally the bond falls at the time of the
17 selection of the jury. What say the State in this case? Have
18 both of them been out on bond for a significant period of
19 time?

20 MS. COTE: No, Your Honor. Well, Ms. Deangelo has been
21 out on bond since this incident back in March of 2010. This
22 Defendant, Mr. Gore, has been -- he's been incarcerated.

23 THE COURT: He's still in jail?

24 MS. COTE: Yes, sir. We would ask that both be
25 incarcerated during the pendency of this trial.

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1 THE COURT: I'm gonna do that. This is a serious case,
2 Mr. Johnston and I'm gonna revoke her bond at this time, the
3 case is called for trial.

4 MR. JOHNSTON: May I speak on her behalf?

5 THE COURT: Sir?

6 MR. JOHNSTON: May I speak on her behalf?

7 THE COURT: You may.

8 MR. JOHNSTON: She's been to everything there's ever
9 been, every roll call, initial appearance, docket, you name
10 it; she's been totally responsible.

11 THE COURT: Where does she live?

12 MR. JOHNSTON: She lives in ---

13 MS. DEANGELO: North Carolina.

14 THE COURT: Where?

15 MS. DEANGELO: I live in North Carolina.

16 THE COURT: See, that's another concern I have, Mr. ---

17 MS. DEANGELO: I'm not going anywhere.

18 MR. JOHNSTON: She has been responsible ---

19 THE COURT: Whereabouts in North Carolina do you live?

20 MS. DEANGELO: In Brunswick County.

21 THE COURT: Where?

22 MS. DEANGELO: In Brunswick County.

23 THE COURT: Close by here?

24 MS. DEANGELO: Shallotte, yes, sir.

25 MR. JOHNSTON: And she's here today, Your Honor.

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1 THE COURT: What is your family situation?

2 MS. DEANGELO: I have a six-year-old at home.

3 THE COURT: Has she been here for every roll call, every
4 appearance.

5 MR. RICHARDSON: I'm sorry, Your Honor.

6 MR. JOHNSTON: She has no record either, Your Honor.

7 MS. COTE: I'm trying to check her file just to confirm
8 that, Your Honor. It appears -- yes, she did make her -- it
9 looks like she was not rolled in very often but she made the
10 appearances that she was required to.

11 THE COURT: Mr. Johnston?

12 MR. JOHNSTON: Sir?

13 THE COURT: If you confer with the bond attorney and he
14 tells me that he's still on the bond, I'm gonna let her stay
15 out.

16 MR. JOHNSTON: You mean the bondsman?

17 THE COURT: Bondsman. But now, I've got to have
18 assurances by you as attorney of record here that you've
19 conferred with the bondsman and he agrees that he will remain
20 on the bond during the course of this trial.

21 MR. JOHNSTON: I'll be happy to give him a call.

22 THE COURT: Well, if he doesn't -- if he's not willing to
23 do it, I cannot do it.

24 MR. JOHNSTON: With the jury not being sworn in have an
25 effect on that?

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1 THE COURT: No, the case is called for trial.

2 MR. JOHNSTON: She's going to see the bondsman right now,
3 she has a form that ---

4 MS. DEANGELO: No, I have to check in with him after I
5 leave every court appearance, so I have to go see him when I
6 leave here as a matter of fact.

7 MR. JOHNSTON: She's being responsible.

8 MS. DEANGELO: This has to be signed by the solicitor and
9 I have to take this to him.

10 MR. JOHNSTON: She's being responsible.

11 THE COURT: I gathered that but I've got to be
12 responsible too.

13 MR. JOHNSTON: I'm happy to call the bondsman.

14 THE COURT: You report to me that he's agreeable to
15 remaining on the bond, if that be true.

16 MR. JOHNSTON: How would you like me to do that?

17 THE COURT: Pick up the phone and call him.

18 MR. JOHNSTON: And call you tonight?

19 THE COURT: Call the solicitor's office. I want the
20 solicitor to be -- Mr. Johnston, it's not very difficult.

21 MR. RICHARDSON: We'll allow him to call from our office,
22 Your Honor.

23 THE COURT: Sir?

24 MR. RICHARDSON: If he needs to, to accommodate, we'll
25 let him call from our office.

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1 THE COURT: I just want the solicitor to be assured that
2 she's still on a bond if I let her go.

3 MR. JOHNSTON: Sir, I'm not being difficult, I'm trying
4 to do anything you'd like.

5 THE COURT: I didn't say you were being difficult. I'm
6 just saying deal with them.

7 MR. JOHNSTON: I just heard the word. Okay.

8 THE COURT: All right. Thank you.

9 MR. RICHARDSON: Thank you, Your Honor.

10 MS. COTE: Thank you, Judge.

11 THE COURT: Thank you. All right. Go with them to his
12 office and call the bondsman and see where we stand on that.

13 MR. JOHNSTON: Okay. And then call you?

14 THE COURT: No. If they are satisfied, I'm satisfied.

15 MR. JOHNSTON: Okay.

16 THE COURT: If they are comfortable with what you've
17 done, I'm comfortable, Mr. Johnston.

18 MR. JOHNSTON: Okay.

19 (RECESS.)

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

21 (On the Record.)

22 (January 5, 2012)

23 THE COURT: On yesterday, we selected a jury -- two days
24 ago -- who remains unsworn in two cases, the State versus
25 Angel Deangelo and State versus Alton Wesley Gore, Jr. I was

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1 advised this morning that Ms. Deangelo now is going to testify
2 on behalf of the State of South Carolina. And I have advised
3 defense counsel, Mr. Truslow, who represents Mr. Gore, of that
4 fact and he has been given the thrust of her proposed
5 testimony but I want to make sure now that on behalf of the
6 defendant there's no discovery issues as to that issue. Mr.
7 Truslow?

8 MR. TRUSLOW: That's correct, Your Honor.

9 THE COURT: All right. So you understand that I will
10 make her fully available to you this morning if you desire to?

11 MR. TRUSLOW: Yes, sir.

12 THE COURT: All right. Mr. Johnston, you represent the
13 named defendant?

14 MR. JOHNSTON: Yes, sir.

15 THE COURT: Do you agree that she is now going to testify
16 on behalf of the State?

17 MR. JOHNSTON: Yes, sir.

18 THE COURT: And that's her choice?

19 MR. JOHNSTON: Yes, it is.

20 THE COURT: Her opinion?

21 MR. JOHNSTON: Yes, sir.

22 THE COURT: With your advice?

23 MR. JOHNSTON: Yes, sir.

24 THE COURT: All right. On that issue, Solicitor, is
25 there anything else we need to put on the record?

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1 MS. COTE: No, sir, Your Honor.

2 THE COURT: All right. Now, I've been further advised
3 that one of the alternate jurors has called in sick and that
4 juror is Number 90, Nikiya Evans. Based on information
5 provided to me, I find it appropriate that that juror be
6 excused and I have done so still leaving us one alternate and
7 the jury of twelve.

8 All right. Is the other attorney, is he here yet?

9 MS. COTE: No, Your Honor.

10 THE COURT: I'm gonna wait on him. I'm gonna wait on
11 him.

12 Mr. Gore, please stand. On Tuesday morning, prior to the
13 selection of the jury process, you had indicated that Scott
14 Bellamy was your attorney in this case. And assuming that he
15 was, I offered to let him come in and participate. We have
16 made further inquiry as to that issue as has your lawyer, Mr.
17 Truslow. And Mr. Truslow, what did Mr. Bellamy tell you about
18 his representation?

19 MR. TRUSLOW: Your Honor, he has not -- he was not
20 retained. They did talk and they were in talks, he was not
21 retained and he's not representing Mr. Bellamy -- I mean, Mr.
22 Gore and I spoke with him yesterday.

23 THE COURT: Can you agree that you never paid him
24 anything, Mr. Gore?

25 MR. GORE: Yeah, I never paid him.

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1 THE COURT: Sir?

2 MR. GORE: Yeah, I never paid him. I was about to but I
3 never did.

4 THE COURT: Well, how -- you can't possibly expect him to
5 be your lawyer in this case if you had never paid him?

6 MR. GORE: Well, see, I didn't never know we was going to
7 trial, that's why ---

8 THE COURT: Sir?

9 MR. GORE: I was gonna pay him this week. I never know
10 we was going to trial this week, that's why ---

11 THE COURT: Well, yes, you knew you were going to trial,
12 this trial roster was -- wait a minute, I want to get that
13 issue -- your lawyer knew you were going to trial, did you
14 not, Mr. Truslow?

15 MR. TRUSLOW: Yes, sir.

16 THE COURT: You knew before Christmas, didn't you?

17 MR. TRUSLOW: Around that time, Your Honor.

18 THE COURT: Well, sure it is and now we're here in
19 February -- you were on the trial -- Mr. Gore, let me say this
20 to you, obviously, in a case of this seriousness, I try and
21 accommodate the defendants as best I can but once a trial
22 roster is set, I cannot let a defendant come in at the last
23 moment and ask for a continuance on the basis that they've
24 hired another lawyer for the simple reason that you were on
25 the roster, all the witnesses have been subpoenaed, the Court

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1 is ready to go to trial. If I permitted that, every defendant
2 in Reuben Long Detention Center would try the same trick to
3 get a basis for a continuance. And I can never continue a
4 case for a defendant who's been duly notified for three weeks
5 that his case is coming to trial particularly when you've
6 talked -- somebody has talked to a lawyer, never retained,
7 never had any agreement, nor has he ever agreed to represent
8 you. I hope you understand that.

9 MR. GORE: Yeah, I understand.

10 THE COURT: But I say to you that you are represented by
11 a distinguished attorney here that I've known for many years
12 in this courtroom and I regard Mr. Truslow as one of the best
13 defense lawyers in the State of South Carolina, quite frankly.
14 But we are going to trial but I want you know fully why I
15 could not grant your request. Several reasons, it comes too
16 late and the next reason is you simply have not retained him.
17 You may be seated.

18 All right. Ms. Deangelo, please stand. Ms. Deangelo,
19 you were indicted upon the indictments which the record would
20 reflect to those indictments we've tendered a plea of not
21 guilty. And based on your plea and the indictments, a jury
22 unsworn at this time was selected day before yesterday or
23 Tuesday. We're now ready to begin that trial. On this
24 morning, the solicitor's office advised me that they would not
25 be prosecuting that case today and that you were going to

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1 tender evidence on behalf of the State of South Carolina; is
2 that true?

3 MS. DEANGELO: Yes, sir.

4 THE COURT: Pardon me. Talk a little louder.

5 MS. DEANGELO: Yes, sir.

6 THE COURT: Is that -- you discussed it with Mr. Johnson,
7 your attorney?

8 MS. DEANGELO: Yes, sir.

9 THE COURT: And he tells me that this is true that you
10 have agreed to do so?

11 MS. DEANGELO: Yes, sir.

12 THE COURT: I want to ask you this now, you understand
13 you're presumed innocent, you don't have to prove a thing, the
14 State's got to prove you guilty beyond a reasonable doubt and
15 that procedure is still available to you even as we speak this
16 morning. Do you understand?

17 MS. DEANGELO: Yes, sir.

18 THE COURT: However, if you conclude through your
19 attorney that it is to your interest to proffer a plea and
20 tender on behalf of the State of South Carolina, that's your
21 decision. Do you understand?

22 MS. DEANGELO: Yes, sir.

23 THE COURT: You cannot be heard to say later that Mr.
24 Johnston or somebody forced you to do it and you didn't want
25 to do it but they made you do it; do you understand?

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1 MS. DEANGELO: Yes, sir.

2 THE COURT: Are you telling me that your decision now to
3 proffer testimony on behalf of the State is freely, knowingly
4 and intelligently made and that it is your decision?

5 MS. DEANGELO: Yes, sir.

6 THE COURT: And that in doing that you are waiving your
7 rights to trial today?

8 MS. DEANGELO: Yes, sir.

9 THE COURT: You understand that?

10 MS. DEANGELO: Yes, sir.

11 THE COURT: Do you have any questions about what I'm
12 saying to you?

13 MS. DEANGELO: No, sir.

14 THE COURT: Mr. Johnston is there any other questions
15 that you desire?

16 MR. JOHNSTON: I have none.

17 THE COURT: You may be seated.

18 Mr. Bellamy, come forward.

19 MR. TRUSLOW: Your Honor, just briefly, before she
20 testifies, I would need a copy of -- if there's a written
21 proffer agreement.

22 MR. RICHARDSON: They're signing a new copy of it right
23 now, Your Honor.

24 MR. TRUSLOW: All right. Thank you.

25 THE COURT: You'll get whatever is available.

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1 MR. TRUSLOW: Yes, sir.

2 THE COURT: And the record will reflect that they have
3 discussed with you her oral testimony and I have given you the
4 opportunity to discuss with her -- her testimony, you
5 understand that?

6 MR. TRUSLOW: Yes, sir, Your Honor.

7 THE COURT: Good morning, Mr. Bellamy.

8 MR. BELLAMY: Good morning, Judge.

9 THE COURT: I wanted the record -- I wanted to have you
10 here on the record. Mr. Gore's case was scheduled for trial
11 this week prior to Christmas and Mr. Truslow who has been his
12 retained counsel for months -- how long you been retained on
13 this case, Mr. Truslow?

14 MR. TRUSLOW: Almost two years, Judge.

15 THE COURT: Almost two years and indicates he's ready for
16 trial. Mr. Gore was really asking for a continuance under the
17 basis that he had hired you. Of course, I was not gonna let
18 that be a basis for continuance but I was gonna invite you to
19 come in and participate if you cared to and if you were
20 retained or had any interest in the case. I want the record
21 to reflect whatever your position is, please.

22 MR. BELLAMY: Judge, I was contacted by Mr. Gore and --
23 actually, his family prior to Christmas about wanting to hire
24 me. At that time, they indicated they had an attorney and I
25 told them that I don't go talk to people who have lawyers.

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1 They indicated -- they sent me a handwritten letter saying
2 that they had -- did not want Mr. Truslow to represent him and
3 I did go to the jail after I got that letter indicating he
4 didn't have a lawyer because I don't like to talk to people
5 who have lawyers.

6 THE COURT: I understand you -- I understand.

7 MR. BELLAMY: So, when I got that, I spoke to him, told
8 him what it would take if he wanted to hire me, this was
9 before Christmas a couple of weeks before Christmas. They
10 never hired me. I got a call yesterday I believe from his
11 mother, maybe his sister and then at that point I spoke to Mr.
12 Richardson and he indicated they had picked a jury and were
13 getting ready to try the case. So, certainly, I'm not
14 prepared to participate. I haven't been hired, one; and two,
15 I certainly wouldn't be prepared to participate in a trial
16 because I don't have any discovery or anything on the case.
17 But that's my position is that I have not been hired; so
18 therefore, I will not be participating in the trial.

19 THE COURT: All right. I just want the record to reflect
20 that had been hired I was gonna give you ever opportunity to
21 participate. I would not have continued the case on that
22 basis.

23 MR. BELLAMY: I understand, Your Honor.

24 THE COURT: But I understand your busy schedule this
25 morning but I appreciate your coming in. I needed you on the

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1 record.

2 MR. BELLAMY: Yes, sir, Judge. Thank you.

3 THE COURT: All right. Ms. Deangelo -- have her go back

4 ---

5 MS. COTE: Your Honor, I believe the defendant is signing
6 that proffer agreement.

7 THE COURT: Pardon me?

8 MS. COTE: She and Mr. Johnston were finishing up signing
9 that proffer agreement that we need to turn over to ---

10 THE COURT: Okay. Can we start ---

11 MR. TRUSLOW: Just as long as I get it before she
12 testifies.

13 MR. JOHNSTON: May I step into the holding cell to talk
14 to her?

15 THE COURT: Sure.

16 Let's go ahead and start with the understanding that she
17 will not testify prior to him reading the proffer agreement
18 but I want the record to reflect that you have orally
19 presented that to him, counsel for the State.

20 MS. COTE: Yes, sir, Your Honor.

21 THE COURT: All right. Gentlemen, I'm prepared now to
22 bring the jury in and begin this case. Is that okay with you,
23 Mr. Truslow?

24 MR. TRUSLOW: Yes, sir.

25 THE COURT: Okay with the State. Bring the jury in.

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1 Gentlemen, Mr. Brad -- I am going to announce that you
2 are at this time proceeding against Mr. Gore only.

3 MS. COTE: Yes, sir, Your Honor.

4 (REPORTER'S NOTE: The jury returns to the courtroom.)

5 THE COURT: Good morning, ladies and gentlemen, I trust
6 the ham biscuit was satisfactory to everybody.

7 Swear the jury for me, please, Madame Clerk.

8 (REPORTER'S NOTE: Whereupon, the jury sworn by clerk.)

9 THE COURT: Anyone who desires to take notes may
10 certainly do that and those notes as you take them, if you
11 desire to take them, are for your information and your
12 information only. I've had jurors ask me, well, Judge,
13 everybody else including you were taking notes, why can't we.
14 That kind of makes sense to me so if any of you care to do so.

15 One housekeeping matter, when the jury was selected on
16 Tuesday of this week, we were proceeding -- the State was
17 proceeding upon these indictments which is not evidence
18 against two defendants, one defendant being Alton Wesley Gore,
19 Jr. and the other defendant being Ms. Deangelo. The State has
20 elected at this time to proceed only against Alton Wesley
21 Gore, Jr. There are no adverse inferences to be derived one
22 way or the other from the fact that the State has elected to
23 proceed at this time as to Mr. Gore only.

24 Recognizing that for many of you this may be the first
25 opportunity you've had to serve in a criminal court. Some of

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1 you may have served in a civil court. I tell you here at the
2 outset though, that in a criminal proceeding, the burden of
3 proof is upon the State of South Carolina to prove the
4 Defendant guilty if they can by evidence beyond a reasonable
5 doubt unanimously. As I indicated to you, this defendant
6 comes to court upon this indictment, which is merely the
7 procedure we use to bring an individual into court. The
8 allegations in this indictment is absolutely no evidence.
9 This defendant has specifically pled not guilty and in
10 pleading not guilty, he doesn't have to prove a thing. He can
11 if he cares to but he doesn't have to. It's the State's
12 burden to prove him guilty beyond a reasonable doubt. There's
13 several other things that you know -- need to know and I'll
14 explain to you in detail at the conclusion of the testimony
15 and that is this, from this moment on, there is nobody in this
16 wide world that can tell you twelve what the facts are. You
17 will determine the facts in this case from the testimony that
18 is presented and from such other matters as may be introduced
19 into the trial of this case. Also permitted to tell you that
20 you are the sole and only judges of the credibility and
21 believability of every witness who testifies. You may in your
22 judgment believe all of what a witness says or none. You may,
23 if you choose, believe a part of it and disregard the larger.
24 You may, if you choose, believe one witness against that of
25 others or the other way around. You bring your common sense

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1 to bear in judging credibility of witnesses.

2 You know in our life's experiences, when folks tell us
3 things, we size them up and all of us use different tools.
4 One of the tools we use is, Do they know what they're talking
5 about? Were they there? Do they have some interest in this
6 case? Is there some reason this witness would want me to
7 believe one way or the other? In other words, is a particular
8 witness biased or prejudiced? These are elements that you,
9 not necessarily all but some, that you would use in judging
10 credibility and believability. And I will speak to that issue
11 later in the trial.

12 Now, let me say to you how we will begin the trial of
13 this case. The State of South Carolina, as I indicated, has
14 the burden of proof and they're going to make for you a short
15 opening statement as a guideline to what they say they can
16 prove. Now, what they tell you is not evidence, evidence
17 comes from this witness stand but this guideline kind of helps
18 you follow a flow of the witness. Mr. Truslow, representing
19 the defendant will make a similar statement to you as to his
20 position, again, helping you to understand the flow of the
21 case.

22 After all the testimony is in, we'll have final summation
23 of lawyers for both sides and at that time I will give you the
24 law regarding every issue that's in this case remembering that
25 you, as the finders of the facts, take the facts as you find

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OPENING STATEMENT BY MS. COTE

1 them to be and apply it to the law of the case.

2 Mr. Foreman, I'll keep you fully advised of your duties
3 and at the appropriate time I will present to you a jury form
4 giving several selections for your considerations, that being
5 your job and yours alone.

6 Now, as presiding judge, I have certain responsibilities
7 to rule on the evidence and decide about the admissibility of
8 various evidence but, regarding facts, I am not entitled to a
9 factual opinion and I absolutely have none. And so I say to
10 you, if any word, ruling, mannerism of mine might tend to
11 indicate to any of you twelve how this judge feels about any
12 issue, please disregard that. I am not entitled to a factual
13 opinion and I have none. I rely on you twelve jurors as
14 finders of the facts. I look forward to trying this case with
15 you.

16 All right. Do you have something -- are you standing for
17 some reason, Mr. Johnston?

18 MR. JOHNSTON: No, I -- no.

19 THE COURT: Opening statement.

20 OPENING STATEMENT BY MS. COTE:

21 MS. COTE: Thank you, Your Honor. May it please the
22 Court?

23 On March 5th, 2010, police officers with the Horry County
24 Police Department with a search warrant entered the home of
25 this defendant, Alton Wesley Gore, Jr. They searched his home

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OPENING STATEMENT BY MS. COTE

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1 and what they found was a gun, ammunition, drug paraphernalia
2 and over 200 grams of powder cocaine. Today you'll hear from
3 officers who searched that house, you'll hear from the
4 representative from the evidence room at the Horry County
5 Police Department to testify to you how that evidence was
6 handled, how those drugs were handled. You'll hear from the
7 defendant's girlfriend, Angel Deangelo, and you'll hear -- and
8 you'll be able to see what was taken out of the house that
9 day. This case, ladies and gentlemen, is as simple as that.

10 That's a very brief overview of what you're gonna see and
11 hear today but I don't want you to hear it from me, I want you
12 to hear it from the witnesses that are gonna talk to you from
13 the witness stand. The witnesses that were involved in this
14 case, the witnesses who saw and heard what happened in the
15 house that day.

16 My name is Nancy Cote and sitting with me at the State's
17 table is Brad Richardson. We're attorneys representing the
18 State in this case today. We both work for the solicitor's
19 office here in Horry County. It's the solicitor's office's
20 job and duty to prosecute the crimes that occur here in Horry
21 County such as this one. The defendant is here charged with
22 trafficking in cocaine more than 200 grams.

23 Judge Cottingham will go over the law in depth with you
24 at the end of the case but I briefly wanted to touch with you
25 on trafficking because so many times when we hear the word

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OPENING STATEMENT BY MR. TRUSLOW

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1 trafficking our minds immediately go to what we see on TV and
2 see in the movies. Literally, boatloads, truckloads of drugs
3 being smuggled across country borders and that can be
4 trafficking but it doesn't have to be. So, I ask you to leave
5 any picture that y'all have from those movies and TV shows at
6 the door because in South Carolina for there to be trafficking
7 in cocaine like we have here, a person merely has to possess a
8 certain amount of drugs, here more than 200 grams and that's
9 the case before you now.

10 I'll be able to talk to you again at the close of the
11 case just like Judge Cottingham told you and while this is
12 more sort of a preview of what you're gonna see and hear
13 today, at the end of the case I'll recap and we'll be able to
14 go through everything you saw and heard. And after that,
15 you'll go back in your jury room and deliberate and I'll ask
16 you to come back with a guilty verdict against this defendant,
17 that man, Alton Wesley Gore, Jr.

18 Thank you.

19 THE COURT: Thank you, ma'am.

20 Mr. Truslow.

21 OPENING STATEMENT BY MR. TRUSLOW:

22 MR. TRUSLOW: Please the Court, Your Honor.

23 Ladies and gentlemen, I'm Kirk Truslow, it's my privilege
24 to represent Mr. Gore, Wesley Gore, today. We briefly met
25 during jury selection and thank goodness that you are here

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OPENING STATEMENT BY MR. TRUSLOW

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1 because this is the witness stand, this is where people are
2 gonna sit and testify. They're either gonna enter evidence or
3 photographs or they're gonna tell you things and that's what's
4 called evidence. There are some countries that don't have a
5 jury and it's frightful place to live, I would submit to you.
6 Where Ms. Cote could stand up and tell you drugs were found in
7 Mr. Gore's residence or Mr. Gore's residence was searched and
8 drugs were found and that would be it. But guess what? It
9 wasn't Mr. Gore's residence. Just because she says that, like
10 the judge says, doesn't make it true. She's got to prove that
11 to you beyond a reasonable doubt. In this case, every case
12 I've tried, and I've been doing this for some time, is
13 important to me, every one of them but this one in
14 particularly important to me because Wesley is not guilty.
15 This thing has got turned around two years ago and for two
16 years he's lived with this waiting for trial. And what is he
17 waiting for? He's waiting for twelve people, that's what this
18 system is. I've heard said, judges say and I've heard other
19 people say that next to going and fighting in battle, the next
20 most important civil duty that you can render is jury duty.
21 That sounds like a cliché, it's sounds like a clever saying
22 but let me just tell you and point out how powerful and true
23 that is. Nobody in this courtroom, nobody in this courthouse,
24 not the Governor of South Carolina can convict Wesley of this
25 crime except for you twelve people and that's a fantastic

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OPENING STATEMENT BY MR. TRUSLOW

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1 system. You have to hear evidence because let me tell you
2 something, do you know what it takes to be at this table and
3 to be in this chair, that (indicating), that's what gets you
4 here. The old saying where there's smoke there's fire and why
5 is he even charged with something -- if you believe everybody
6 that's charged with a criminal offense is guilty, then we
7 might as well go home because that's all it takes is a finger.
8 Many of you before, maybe not a crime, but maybe somebody has
9 said that you've done something that you didn't do before and
10 if you didn't do it, does that mean that you did do it because
11 they said that? Certainly not, certainly not. We've waited a
12 long time for this trial and this is not a simple case. This
13 is not a simple case. Somebody's life is in your hands and
14 you are the judges of what happens to him. You don't have
15 anything to do with the sentence but you would be the ones to
16 either convict him or not convict him.

17 I'm telling you that he's not guilty. He's walked in
18 here not guilty and I suppose and I expect from you when you
19 weigh the evidence from the witness stand and you weigh the
20 lack of evidence that you allow him to walk out of here.

21 When we picked this jury, we had two lawyers and two
22 defendants. That other defendant you're gonna hear from
23 because they have struck a deal, cut a deal, we hear about
24 that all the time because when it gets time to go to trial,
25 that's when it gets real, okay. I don't know if you were

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OPENING STATEMENT BY MR. TRUSLOW

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1 paying attention but that young lady was in tears just through
2 jury selection and so I assume and I think she'll testify that
3 yesterday or last night, the prosecutors went to talk to her,
4 offered her a way out, a way out of something big and she took
5 it. So, when you're measuring -- like the judge said, when
6 you're measuring what somebody says from that witness stand
7 you have to look and you have to say what does this person
8 have to gain or lose by what they're saying. That's human
9 nature, that's human nature. And I'm gonna tell you when
10 people are pushed hard enough against the wall and it comes
11 down to natural instinctive survival, they will testify to
12 what needs to be testified to. You're gonna hear her testify
13 and say things probably that she's never said in two years but
14 after our meeting last night with the prosecutors and pass out
15 of this mess, she's got something to say. You got to weigh
16 that. You got to weigh it not only if it makes sense and the
17 things I'm able to bring out with her but you got to weigh why
18 she's saying it, what motive she has for saying it. I'm gonna
19 tell you this is a very important case. We all like TV and we
20 see trials. I'm not up here to be magician, I don't get up
21 here to play tricks. I, right now, value to be honest, ask
22 honest questions. I'm not trying to trick anybody. The
23 evidence in this case will speak for itself. When you hear
24 the evidence and more importantly when you hear the lack of
25 evidence and inconsistencies of whose house that was and how

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OPENING STATEMENT BY MR. TRUSLOW

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1 he even got fingered for this, I think you're gonna have a
2 different opinion of it. And I'll tell you another thing, as
3 jurors, you're the backstop. There's nowhere else to go but
4 you and that's why I ask you to take this job very seriously.
5 You're gonna have to find him guilty beyond a reasonable
6 doubt. I submit to you that if you don't believe that he's
7 not guilty or if he's flat out innocent, if I haven't shown
8 that, that you will have reasonable doubt and you can't have
9 reasonable doubt and walk out of here after convicting him.
10 And that's all I ask from you is to do your job because we've
11 got nowhere else to go. The only thing you can do is say,
12 Judge, I did this, do with me what you will or you can go to
13 the prosecutor and say, come on, all right, I made a mistake,
14 can you give me the deal, can you help me. Or you can say I
15 did not do this, I did not do this and then that's your trial
16 and that's what we're here for now. And we are putting our
17 faith in you to try this case, honestly, listen to all the
18 evidence, look between the lines and come back with a not
19 guilty verdict. Thank you.

20 THE COURT: Thank you, Mr. Truslow.

21 You may call your first witness.

22 MS. COTE: Thank you, Your Honor. The State calls
23 Detective Kent Donald.

24 KENT DONALD, HAVING BEEN SWORN,
25 TESTIFIED AS FOLLOWS:

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KENT DONALD - DIRECT EXAMINATION BY MS. COTE

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1 CLERK: State your name and spell your last name.

2 MR. DONALD: Kent Donald, D-O-N-A-L-D.

3 DIRECT EXAMINATION OF KENT DONALD BY MS. COTE:

4 Q: Good morning, Detective Donald.

5 A: Good morning.

6 Q: Where are you employed?

7 A: The Horry County Police Department.

8 Q: What's your current position there?

9 A: I'm a sergeant of the South Precinct C Squad.

10 Q: What that the same position you held back in March 5th of
11 2010?

12 A: No, ma'am.

13 Q: What was your position?

14 A: I was a senior detective in Narcotics and Vice.

15 Q: Can you please give the jury the benefit of your training
16 and expense in law enforcement?

17 A: I've got fifteen years law enforcement experience. The
18 last ten years were in narcotics and vice. I just got
19 promoted about seven months about to a sergeant position.
20 During that time in narcotics and vice I investigated various
21 crimes dealing with drugs, posed as a drug dealer, posed as a
22 person buying drugs, also managed confidential informants, did
23 search warrants.

24 Q: Were you present for the execution of a search warrant at
25 [REDACTED] Junco Circle on March 5th, 2010?

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KENT DONALD - DIRECT EXAMINATION BY MS. COTE

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- 1 A: Yes, ma'am, I was.
- 2 Q: Where is that location located in Horry County?
- 3 A: It's in the Longs section off of Highway 90.
- 4 Q: Can you discuss very generally for the jury about a
- 5 search warrant, how do you go about getting one?
- 6 A: During our investigation we just try and establish facts
- 7 of what's going on with a particular case, see if we have
- 8 enough information to present to a magistrate to get proper
- 9 cause for the judge to issue a search warrant.
- 10 Q: Did you do that in this case?
- 11 A: Yes, ma'am, we did.
- 12 Q: When you -- will you talk to us -- we'll go back to that
- 13 day on March 5th. How did your day start?
- 14 A: It started fairly early probably around six o'clock in
- 15 the morning.
- 16 Q: What was the first thing you did?
- 17 A: I met up with my partner, Detective Ard, and we went out
- 18 to the residence.
- 19 Q: What did you observe when you arrived at the residence?
- 20 A: There was no movement at all. We sat there and waited
- 21 for some sort of activity to occur at the residence.
- 22 Q: Did some activity eventually occur?
- 23 A: Yes, ma'am.
- 24 Q: And what did you see?
- 25 A: I saw two vehicles leaving the residence.

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KENT DONALD - DIRECT EXAMINATION BY MS. COTE

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1 Q: Did you see the people in the vehicles?

2 A: Yes, ma'am.

3 Q: And who were they?

4 A: One of them was Mr. Gore, the other one was Ms. Deangelo.

5 Q: And do you see Mr. Gore in the courtroom today?

6 A: Yes, ma'am. He's sitting right there (indicating).

7 Q: And did you have knowledge based on your investigation
8 that Mr. Gore lived at that residence on Junco Circle?

9 A: Yes, ma'am.

10 Q: Which directions were they going when they left the
11 residence?

12 A: When they left the residence, they were in separate
13 vehicles and both of them made a right-hand out of the
14 subdivision headed -- I guess that's gonna be north going up
15 Highway 90 towards the Little River area.

16 Q: And then what was the next thing that happened?

17 A: Mr. Gore was stopped on the traffic violation unrelated
18 to the case.

19 Q: And at that point, were you present ---

20 A: Yes, ma'am, I was.

21 Q: --- at that time?

22 A: Yes.

23 Q: And then what happened. Where did you go from there?

24 A: We stopped and spoke to Mr. Gore, told him what was
25 occurring then we went back to the residence and waited for

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KENT DONALD - DIRECT EXAMINATION BY MS. COTE

1 the arrival of the rest of the narcotics unit to execute the
2 search warrant.

3 Q: Did anybody else besides the narcotics unit arrive at the
4 home?

5 A: Yes, ma'am.

6 Q: Who was that?

7 A: That'd be Angel Deangelo.

8 Q: And what did she -- did you encounter her when she came
9 to the house?

10 A: Yes, I did.

11 Q: What did you say to her?

12 A: At first told her to leave the residence, that she was
13 interfering in a police investigation.

14 Q: And how did she respond to that direction?

15 A: She stated that she lived there and that she was not
16 going to leave.

17 Q: And did she eventually have to be detained?

18 A: Yes. I eventually arrested her for interfering in a
19 police investigation.

20 Q: At that point, did you enter the home?

21 A: After the arrival of the rest of the narcotics agents, we
22 did.

23 Q: Can you discuss the general layout of that house?

24 A: It's a two-story house. When you walk into the front
25 door, you have a living room area to your right, the kitchen

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KENT DONALD - DIRECT EXAMINATION BY MS. COTE

1 is off to your left and as you enter straight down the house
2 and you make a left the stairs go up to the second level.

3 Q: Is there an attached garage?

4 A: Yes, ma'am, there is.

5 Q: And is the house located in a subdivision, in a
6 neighborhood?

7 A: It is, yes.

8 Q: Okay. Do you know how y'all entered the house?

9 A: We took the key from Mr. Gore and entered that way.

10 Q: When you entered the house, what area of the house did
11 you search personally?

12 A: I searched the kitchen area.

13 Q: And what if anything did you find?

14 A: I located a loaded Glock 19 magazine that had twelve
15 rounds of 9 mil ammunition.

16 Q: Where was that located in the kitchen?

17 A: It was above the refrigerator to the right. It was in
18 the cabinet.

19 Q: And who took possession of that item?

20 A: That'd be Detective Ard.

21 Q: Beg the court's indulgence. I have nothing further
22 Detective Donald. Please answer any questions, Mr. Truslow
23 may have.

24 A: Yes, ma'am.

25 Q: Thank you.

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KENT DONALD - CROSS EXAMINATION BY MR. TRUSLOW

1 CROSS EXAMINATION OF KENT DONALD BY MR. TRUSLOW:

2 Q: Detective, when Angel Deangelo, did she -- you
3 acknowledge that she was the lady that was involved in the
4 jury selection, the codefendant prior to today?

5 A: Yes.

6 Q: Okay. When she showed up on the scene -- Mr. Gore didn't
7 go back to the house, did he, he was stopped?

8 A: Correct.

9 Q: Ms. Deangelo showed up on the scene and she demanded to
10 see the search warrant; is that correct?

11 A: Correct.

12 Q: And she said that she lived in that house, correct?

13 A: Yes, she did.

14 Q: And she wouldn't leave -- she wasn't leaving, that's what
15 she told you, right?

16 A: Correct.

17 Q: Now, the keys that you took to open the door, do you have
18 those keys with you today?

19 A: I do not.

20 Q: Okay. Now, isn't it true that you took the keys out of
21 the ignition and not from Mr. Gore? I mean, you arrested him
22 for DUS, right?

23 A: A road officer did, correct.

24 Q: And you took the keys and the key chain out of the
25 ignition of the car and turned the car off?

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KENT DONALD - CROSS EXAMINATION BY MR. TRUSLOW

1 A: I could have; I don't know. I took it from him.

2 Q: I want to show you and ask if you -- you've been in law
3 enforcement for a while, if you can identify that document.

4 MS. COTE: Your Honor, I would ask to see this.

5 MR. TRUSLOW: I'm sorry, Judge.

6 MS. COTE: Thank you.

7 BY MR. TRUSLOW:

8 Q: Can you identify this document?

9 A: This would be an Horry County Department Vehicle Impound
10 inventory record.

11 Q: Now, that's the vehicle that he was in. Can you tell who
12 the operator was; obviously, we know.

13 A: Alton Wesley Gore.

14 Q: Okay. And can you tell me who the owner of that vehicle
15 was?

16 A: It does not say.

17 Q: So, basically what you did was you took the keys that
18 were associated with that vehicle and then you took them to
19 the house to see if it opened the door?

20 A: No, I took the keys away from Mr. Gore.

21 Q: You just said -- sir, you just said you're not sure if
22 you took them out of the ignition or from Mr. Gore.

23 A: He had control of the vehicle.

24 Q: How many keys were on that key chain?

25 A: I have no idea

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KENT DONALD - CROSS EXAMINATION BY MR. TRUSLOW

1 Q: You can't remember if it was bulky or it was one key or
2 just a house key?

3 A: I don't know.

4 Q: You don't know that because it's been about two years,
5 right?

6 A: Probably, yes.

7 Q: Did you write that down in the notes anywhere?

8 A: No, sir.

9 Q: Okay. Who filled out the warrants in this case?

10 A: For who?

11 Q: For Mr. Gore, the arrest warrants?

12 A: That would be Detective Ard.

13 Q: Okay. And again you've been in law enforcement for quite
14 awhile, can you identify what this document appears to be?

15 A: It says Official Ten-Year Driving Record, State of South
16 Carolina.

17 Q: And whose Official Ten-Year Driving Record is that?

18 A: Alton Wesley Gore, Jr.

19 Q: Okay. Now, the search warrant in the house that we're
20 talking about is [REDACTED] Junco Circle, correct?

21 A: Yes, sir.

22 Q: Okay. Can you tell me what the address is for Alton Gore
23 on his driving record?

24 A: [REDACTED] 4 Highway 57, Little River.

25 Q: Okay. Now, if you notice and I'm sure you're familiar

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KENT DONALD - CROSS EXAMINATION BY MR. TRUSLOW

1 with these, if you go in and have to make a change of address
2 over the years it shows what it was changed from, correct?

3 A: It should.

4 Q: Okay. Can you look on there and tell the jury what his
5 last four addresses were?

6 A: ■7 Highway 57, Little River; ■4 Starbluff Road, Longs;
7 ■4 Highway 57 South, Little River; ■3 Starbluff Road,
8 Longs.

9 Q: Do you see ■ Junco Circle on his official record?

10 A: I do not.

11 Q: All you know is that for some reason he was leaving that
12 residence that morning and a female was leaving also, correct?

13 A: Yes, sir.

14 Q: In separate cars?

15 A: Yes, sir.

16 Q: You don't know whose vehicle he was driving, correct?

17 A: No, sir.

18 Q: And you don't recall whether you took the keys out of the
19 ignition or that those keys were his other than that they
20 operated that vehicle, correct?

21 A: Correct.

22 Q: You don't know if he was driving his car or Angel's car,
23 do you?

24 A: Angel's car was a vehicle -- he was driving a pickup
25 truck.

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KENT DONALD - REDIRECT EXAMINATION BY MS. COTE

1 Q: Right, but have you gotten registration at all for her
2 car?

3 A: I do not, no.

4 Q: Okay. And you don't have the registration of the owner
5 information for the car he had so it could've been her car?

6 A: It could've been.

7 Q: Other than the fact that he had -- you'd seen him at that
8 house maybe in the past handful of times and that he'd left
9 that morning, do you have any physical documentation that
10 shows the jury that he had possession and ownership of that
11 house, a lease agreement?

12 A: No, I do not.

13 Q: Title to the house?

14 A: No, sir.

15 Q: Electric bill?

16 A: No, sir.

17 Q: Cable bill?

18 A: No, sir.

19 Q: Lawn maintenance agreement, anything?

20 A: No, sir.

21 Q: That's all I've got, Your Honor.

22 THE COURT: Any redirect?

23 MS. COTE: Yes, Your Honor, briefly.

24 REDIRECT EXAMINATION OF DONALD KENT BY MS. COTE:

25 Q: That morning when you stopped Mr. Gore's vehicle, was

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KENT DONALD - REDIRECT EXAMINATION BY MS. COTE

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1 anybody else in the car with him?

2 A: No, ma'am.

3 Q: And he was the operator of the vehicle?

4 A: Yes, ma'am.

5 Q: Do you remember what the license plate was on that car?

6 Was it South Carolina license plate or a North Carolina
7 license plate?

8 A: It was South Carolina.

9 Q: Do you remember, and I can show you Mr. Gore's driving
10 record, when his license was suspended?

11 A: I don't recall offhand.

12 Q: I'm gonna show you this document that Mr. Truslow showed
13 you.

14 A: It says here suspension began December 2nd, 2008.

15 Q: And does it show when ---

16 MR. TRUSLOW: Objection as to relevance, Your Honor, of
17 suspended license.

18 THE COURT: Well ---

19 MS. COTE: He brought up the suspended license in cross.

20 MR. TRUSLOW: No, sir, I didn't; I brought up the
21 address.

22 MS. COTE: You said that he was stopped for driving under
23 suspension; I didn't bring that up.

24 THE COURT: No, sir. I'm gonna permit it.

25 MR. TRUSLOW: Okay. That's correct.

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KENT DONALD - RECROSS EXAMINATION BY MR. TRUSLOW

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1 THE COURT: I'm gonna permit it.

2 MS. COTE: Thank you.

3 BY MS. COTE:

4 Q: Does it show on that document when the last time his
5 address was updated?

6 A: It appears May 19th, 2011.

7 Q: Okay. Is there a -- what was the time before that?

8 A: The time before that was August 25th, 2006.

9 Q: So, there's a gap from 2006 to 2011 where it wasn't
10 updated?

11 A: Yes, ma'am.

12 Q: And he was suspended in 2008?

13 A: Yes, ma'am.

14 Q: Thank you. I have no further questions.

15 MR. TRUSLOW: One follow-up question, Your Honor.

16 THE COURT: Yes, sir.

17 RE CROSS EXAMINATION OF KENT DONALD BY MR. TRUSLOW:

18 Q: She asked you if there's a gap between 2006 and 2011,
19 correct?

20 A: Yes.

21 Q: In the addresses?

22 A: Yes.

23 Q: Well, you don't update your address unless you got a new
24 address, right?

25 A: Not necessarily.

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MARK COOPER - DIRECT EXAMINATION BY MS. COTE

1 Q: Right. So, I mean, if you lived in the same place for
2 five years, you're not gonna update it until you move to a new
3 address, would you?

4 A: No, not my ---

5 Q: Thank you.

6 MS. COTE: I have nothing further, Your Honor.

7 THE COURT: All right. You may come down.

8 Can this officer be excused?

9 MS. COTE: Yes, Your Honor.

10 THE COURT: You are excused and thank you.

11 MR. DONALD: Thank you, sir.

12 (REPORTER'S NOTE: Witness leaves the witness stand.)

13 THE COURT: Next witness.

14 MS. COTE: Detective Mark Cooper.

15 MARK COOPER, HAVING BEEN SWORN,

16 TESTIFIED AS FOLLOWS:

17 CLERK: State your full name and spell your last name.

18 MR. COOPER: My name is Mark Cooper, last name is C-O-O-
19 P-E-R.

20 DIRECT EXAMINATION OF MARK COOPER BY MS. COTE:

21 Q: Detective Cooper, where are you employed?

22 A: Horry County Police Department.

23 Q: And what's your current position there?

24 A: Senior Detective in Narcotics and Vice Section.

25 Q: What was your position back on March 5th, 2010?

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MARK COOPER - DIRECT EXAMINATION BY MS. COTE

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- 1 A: Same.
- 2 Q: Can you please tell the jury a little bit about your
3 background and training in law enforcement?
- 4 A: Been in law enforcement since '88, 1988; been in
5 narcotics since 1998.
- 6 Q: Do you have special training in narcotics?
- 7 A: Several schools and stuff like that but pertaining to
8 going out and buying drugs and doing search warrants and how
9 to handle evidence and stuff.
- 10 Q: Did you take part in the execution of the search warrant
11 on Junco Circle in March of 2010?
- 12 A: I did. I was asked to take photos of the master bedroom
13 area.
- 14 Q: Is that location in Horry County?
- 15 A: Yes, it is.
- 16 Q: So, you said -- what was your assignment, I'm sorry.
17 What was your assignment?
- 18 A: I searched the master bedroom and took photos of the
19 master bedroom area.
- 20 Q: When you entered the house, did you go straight to the
21 master bedroom?
- 22 A: Yes, I did, what I assumed to be the master bedroom, it
23 was upstairs.
- 24 Q: And did it appear to be the master bedroom?
- 25 A: Yes, it was, the biggest bedroom in the house.

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1 Q: Okay. And was there an attached bathroom?

2 A: Yes, there was.

3 Q: And an attached closet?

4 A: A big walk-in closet, yes, ma'am.

5 Q: What was the shelving like in that closet?

6 A: If I remember correctly it was like that white metal
7 Rubbermaid stuff or whatever it's called.

8 Q: What if anything did you find when you searched the
9 master bedroom?

10 A: I found a Glock on the bed under a pillow. It had a
11 magazine with ammo in it; I'm not exactly sure how many
12 bullets off the top of my head. And found a couple of
13 bandanas and some photos in a dresser.

14 Q: Who were those photos of?

15 A: The defendant, Mr. Gore.

16 Q: Were there other photos framed in the bedroom?

17 A: If I remember correctly, there's one of him and Ms.
18 Deangelo or however you say her name on the -- I think it was
19 a TV stand or something at the foot of the bed.

20 Q: And in addition to the master bedroom, did you search
21 that master closet as well?

22 A: Yes, ma'am, I did.

23 Q: What if anything did you find in there?

24 A: There was a shoe box with some money in it; I'm not
25 exactly sure how much. I didn't do the counting of it, I just

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1 located it and then I would call the case agent who was
2 Detective Ard at the time and he would count it and take care
3 of it from there, I just photographed it.

4 Q: Was that your practice if anything was found would you
5 call Detective Ard to come and collect it?

6 A: Yes, ma'am. Normally what we do on a search warrant is
7 there's a case agent and we have teams in narcotics and at
8 that time Detective Ard and Detective Donald were partners and
9 this was their case and their search warrant and they usually
10 will pass out duties and say I need you to take photos, I need
11 you to do prisoner security or need you to do perimeter or
12 whatever. And anything that's found, we try to turn it over
13 to the case agents because they're the ones that have the
14 working knowledge of what's going on because other than that
15 day, I have no working knowledge of the investigation. I was
16 just asked to help because of the propensity of violence maybe
17 when we're there and then once it's secured it just to help
18 search and try to find any evidence.

19 Q: Back to that closet, do you have a method for how you
20 search the closet?

21 A: Yes, ma'am. Normally, what I do and like I said, I've
22 been there for a few years now. I'll usually start at the top
23 of a closet and I'll try to work my way around the closet and
24 then pull everything down in the floor. And in doing so -- I
25 don't know how many stacks but there was several stacks of

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1 like men's blue jeans or bigger pair of blue jeans stacked on
2 the top of the closet and then as I pulling some of those down
3 to search them to see if there's anything in their pockets,
4 approximately, I think it was thirteen bags -- I think they
5 ended up weighing -- according to Detective Ard, I think they
6 weighed about an ounce a piece. There was about thirteen
7 ounces of white powder that tested positive for cocaine.

8 Q: And did that fall down from that top shelf in master
9 closet?

10 A: Yes, ma'am, it did.

11 Q: Were there only men's clothing in that closet?

12 A: I remember those specifically because like I say, it's
13 been a while but I remember those because that's where it fell
14 out of and I took a photo of it and there's men's blue jeans
15 and stuff and, I mean, maybe some khaki pants or something
16 laying on the ground when I took the photo of the drugs.

17 Q: Your Honor, may I approach the witness. Detective
18 Cooper, I'm gonna show you ---

19 THE COURT: Truslow, you've seen these pictures?

20 MR. TRUSLOW: Yes, I have, Your Honor.

21 THE COURT: All right.

22 BY MS. COTE:

23 Q: Let me make sure I get them all in order. I'm gonna show
24 you what's been marked as identification State's Exhibits One
25 through Nineteen.

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1 A: Okay.

2 Q: And I'm gonna ask you to look through those and tell me
3 if you recognize them.

4 A: All right. Yes, ma'am.

5 Q: I'm gonna ask you again whenever any of the agents in the
6 house found anything, would they call you to take a picture of
7 that item?

8 A: They're supposed to, yes, ma'am.

9 Q: And so all of these pictures were things you observed in
10 the house that day?

11 A: Yes, ma'am. I did take all those photos.

12 Q: And are those accurate reflections, accurate
13 representations of what you observed that day in the house?

14 A: Yes, ma'am.

15 MS. COTE: Your Honor, the State would seek to introduce
16 items One through Nineteen into evidence at this time.

17 THE COURT: Permitted.

18 MR. TRUSLOW: No objection.

19 STATE'S EXHIBITS ONE THROUGH NINETEEN

20 ADMITTED INTO EVIDENCE.

21 THE COURT: Mr. Foreman, ladies and gentlemen, during the
22 course of this trial, various matter such as these will be
23 introduced into trial. These will be with you in the jury
24 room during your deliberations and they of course are entitled
25 to pass them around and publish them at the time of

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1 introduction if they care to but they will be with you.

2 You may proceed.

3 MS. COTE: May we publish these to the jury at this time?

4 THE COURT: You may.

5 MS. COTE: Thank you.

6 THE COURT: Mr. Foreman, take look at them and pass them
7 around.

8 MS. COTE: Yes, sir.

9 BY MS. COTE:

10 Q: This is State's Exhibit One, can you tell the jury what
11 this is?

12 A: That's the front door of the residence.

13 Q: And this is State's Two, what was this?

14 A: If I remember correctly, that's the vehicle the female
15 was driving when the detective stopped her out front or when
16 she came back home.

17 Q: This is State's Three, what was that?

18 A: That's a bedroom at the top of the stairs. It looked --
19 appeared to be like a child's bedroom or spare bedroom of some
20 kind.

21 Q: Was that a picture of that same bed?

22 A: Yes, ma'am. That's a little clear baggie that was under
23 the mattress.

24 Q: What is this a picture of?

25 A: That's the bed in the master bedroom.

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- 1 Q: And this is the area that you searched?
- 2 A: Yes, ma'am.
- 3 Q: This is State's Six.
- 4 A: That's just another overview from standing outside the
- 5 door.
- 6 Q: This is State's Seven.
- 7 A: Yes, ma'am. That's the -- that the barrel of the Glock
- 8 that was found on the bed under the pillow.
- 9 Q: State's Eight.
- 10 A: That's the picture of the Glock once I pulled the cover
- 11 back to get a better shot of the -- or better photo of the
- 12 gun.
- 13 Q: State's Nine.
- 14 A: That's when I cleared it. I took the magazine out and
- 15 pulled the slide back to make it safe for the detectives to
- 16 transport back to the police department.
- 17 Q: This is State's Ten.
- 18 A: That's a chair that was in the far corner of the master
- 19 bedroom, had a bunch of clothes on it and all and I like to
- 20 take photos of any and everything I can before I start
- 21 searching or disturbing it and that's how that was before we
- 22 searched.
- 23 Q: And so, if you're facing the bed, was this to the left
- 24 side of the bed?
- 25 A: On the left-hand side, yes, ma'am.

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1 Q: This is State's Eleven.

2 A: That's like a TV stand or a night stand or whatever you
3 want to call it that was at the foot of the bed toward the
4 door of the master bedroom or the closet.

5 Q: And what is on that shelf?

6 A: That's a Glock box. That's the -- I'm assuming that's
7 the box that the weapon came in.

8 Q: That's State's Twelve.

9 A: That's a close-up of the weapons box.

10 Q: And is there a photograph behind that?

11 A: Yes, there is.

12 Q: This is State's Thirteen.

13 A: That's a Century safe that was in the walk-in closet.

14 Q: This is State's Fourteen.

15 A: That's an overview of the master bathroom.

16 Q: And this was the attached bathroom?

17 A: Yes, ma'am.

18 Q: This is State's Fifteen.

19 A: That's just an overview of the closet before I went in
20 there.

21 Q: That's looking in from the master bedroom.

22 A: From the master bedroom, yes, ma'am.

23 Q: What is this? This is State's Sixteen.

24 A: That's a picture of the top of the closet. I had a
25 couple of boxes and I took photos of that specifically because

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MARK COOPER - DIRECT EXAMINATION BY MS. COTE

1 in been my experience in law enforcement with prior search
2 warrants, a couple of hundred search warrants, there will be
3 -- that's a good place for people to stash money and drugs and
4 stuff and all and so I took a picture of it before I actually
5 pulled those down because I didn't want to mess anything up
6 that might be inside of it. And then did you pull it down?

7 A: Yes, I did.

8 Q: Is that a -- State's Seventeen a picture of that?

9 A: Yes, ma'am. That's the money I was talking about I found
10 in the shoe box.

11 Q: Do you know off the top of your head, how much was in
12 that shoe box?

13 A: I do not.

14 Q: This is State's Eighteen.

15 A: Yes, ma'am. That's the stack of pants I pulled down into
16 the floor and the thirteen ounces of cocaine fell out.

17 Q: State's Nineteen, is that a close-up of that bag?

18 A: That's just a close-up of that bag.

19 Q: And that was after you'd pulled it out of the closet ---

20 A: Yes, ma'am.

21 Q: --- or at least cleared a path ---

22 A: Yes, ma'am.

23 MS. COTE: Beg the Court's indulgence, Your Honor.

24 BY MS. COTE:

25 Q: After you discovered the Ziploc bag that fell at your

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MARK COOPER - CROSS EXAMINATION BY MR. TRUSLOW

1 feet with the individually wrapped bags in it, what did you
2 do?

3 A: I contacted Detective Ard. I believe he was downstairs
4 doing something. I don't know what he was doing but I called
5 him and he came up and took possession of it.

6 Q: And is that the extent of your involvement in this case?

7 A: Yes, ma'am.

8 MS. COTE: Thank you. I have no further questions for
9 this witness, Your Honor.

10 THE COURT: Truslow?

11 MR. TRUSLOW: Judge, with due respect, I'm gonna -- I
12 need to wait till those photos go around, I need to use them.

13 THE COURT: All right, sir. That's perfectly
14 understandable. Do you have any examination not requiring the
15 use of the photos?

16 MR. TRUSLOW: No, sir.

17 THE COURT: We'll wait. All right, sir.

18 CROSS EXAMINATION OF MARK COOPER BY MR. TRUSLOW:

19 Q: Detective in regards to the picture of what you described
20 as male clothing ---

21 A: Uh-huh (affirmative response).

22 Q: Did you take that into evidence?

23 A: The clothing?

24 Q: Yes, sir.

25 A: I did not. I don't know if Ard did or not?

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MARK COOPER - CROSS EXAMINATION BY MR. TRUSLOW

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- 1 Q: Okay. So you didn't?
- 2 A: No, sir. All I did was take pictures.
- 3 Q: Okay. So, you didn't take the clothes in but you don't
- 4 know if they were taking it?
- 5 A: I don't.
- 6 Q: Did you measure the clothes or see what size male
- 7 clothing they were?
- 8 A: Did not.
- 9 Q: Okay. Do you know what size or did anybody attempt to
- 10 see with size clothing Mr. Gore wore?
- 11 A: I didn't. I'd never seen him, I don't ---
- 12 Q: Okay. Let me show you a picture that's marked as State's
- 13 Number Fourteen.
- 14 A: Uh-huh (affirmative response).
- 15 Q: Do you see a curling iron in the bathroom?
- 16 A: Yes, I do.
- 17 Q: Do you think Mr. Gore uses a curling iron?
- 18 A: I have no clue about his hygiene.
- 19 Q: Well, just look at his hair. Do you think he needs a
- 20 curling iron?
- 21 A: With his current haircut, no, I wouldn't think so.
- 22 Q: His hair was shorter when you arrested him, do you
- 23 remember.
- 24 A: I didn't arrest him.
- 25 Q: Well, did you see him that day?

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MARK COOPER - CROSS EXAMINATION BY MR. TRUSLOW

1 A: Did not.

2 Q: Now, the pictures -- I think there's two pictures in here
3 where you have a picture in a picture.

4 A: A picture in a picture.

5 Q: Right here.

6 A: Okay.

7 Q: Is it your testimony that's a picture of Mr. Gore?

8 THE COURT: Identify the number for the record.

9 Q: That's State's Number Twelve.

10 THE COURT: Thank you.

11 A: No, I don't believe that's the photo I was talking about.

12 Q: Okay. So, that's a photo of three black males, correct?

13 A: Yes.

14 Q: And you're not willing to testify that that's a picture
15 of Mr. Gore?

16 A: I can't see it well enough to tell.

17 Q: Okay. I was looking for the -- did you have a picture of
18 what you characterize as a child's bedroom or no?

19 A: Yeah, it should be just a plain mattress maybe laying on
20 the floor and it is like the mattress has been raised
21 underneath, showing underneath. There it is or that's one of
22 them.

23 Q: All right. That's it. So, these two pictures were

24 characterized as a child's bedroom and what -- this is

25 Plaintiff's Number -- State's Exhibit Number Three, State's

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MARK COOPER - REDIRECT EXAMINATION BY MS. COTE

1 Exhibit Number Four, why would you characterize that as a
2 child's bedroom?

3 A: I believe I said it as a child's bedroom or a guest
4 bedroom.

5 Q: Okay. Now, were you aware that Ms. Angel Deangelo has a
6 six-year-old daughter and you have no knowledge about that?

7 A: No clue.

8 Q: That's all I have, Your Honor.

9 MR. TRUSLOW: All right. Do you have any additional
10 questions?

11 MS. COTE: Yes, Your Honor, just one question.

12 REDIRECT EXAMINATION OF MARK COOPER BY MS. COTE:

13 Q: You testified that you took custody of a picture in the
14 bedroom; is that correct?

15 A: No, I -- I think Detective Ard took custody of all of ---

16 Q: Did you find the picture ---

17 A: There was two photos of the defendant, I believe he had
18 some money in his hand or something like that, he squatted
19 down or something.

20 Q: But that wasn't the picture that you ---

21 MR. TRUSLOW: Your Honor, I've got a matter to take up
22 with you outside the presence of the jury.

23 THE COURT: All right. I'll let you to the jury room.
24 I'll be calling you back in just a minute.

25 (REPORTER'S NOTE: The jury retires to the jury room.)

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MARK COOPER - REDIRECT EXAMINATION BY MS. COTE

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1 THE COURT: Yes, sir, Mr. Truslow?

2 MR. TRUSLOW: Your Honor, may I approach, please.

3 THE COURT: Yes, sir.

4 MR. TRUSLOW: I was given this late in discovery in
5 November in this case. My understanding was that was not gonna
6 be used by the State. And those premarked photographs that
7 were gonna be used -- I would submit that that photo is
8 irrelevant. First of all, if there's any relevance to it that
9 any probative value is outweighed by the prejudice of it.
10 He's not holding drugs but it makes him look as if he's
11 holding a bunch of money. Nobody knows who took that
12 photograph ---

13 THE COURT: Why do you need this?

14 MS. COTE: Your Honor, I'll hand up the original. We've
15 premarked them as State's Exhibit Twenty-six and Twenty-seven?

16 THE COURT: Did you introduce them ---

17 MS. COTE: Not yet and I was getting ready to introduce
18 them.

19 MR. TRUSLOW: Your Honor, those are highly prejudicial
20 and not probative and not relevant.

21 MS. COTE: Your Honor, they are relevant because it goes
22 to his identity. It puts him in the house. Those pictures
23 were in the master bedroom and Mr. Truslow is trying to say
24 that this doesn't ---

25 MR. TRUSLOW: It doesn't put him in the house, it puts a

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1 picture of him in the house.

2 THE COURT: Well, that will -- may be some evidence that
3 it was his house, I'll let it in just for the sole -- that
4 these pictures were taken of him in the house.

5 MS. COTE: Yes, sir.

6 THE COURT: Not what they contain.

7 MS. COTE: Right and I won't comment on further on that.
8 I'll just ask if they were a picture of him wherever they were
9 found.

10 THE COURT: Yes, I ---

11 MR. TRUSLOW: Judge, the issue is it's not relevant
12 because Ms. Deangelo could've had a picture of him so how does
13 that put him in the house ---

14 THE COURT: Well, argue that to the jury but ordinarily
15 people who live in house may have pictures of them in the
16 house particularly if they have a girlfriend living there.
17 And I -- I'll permit it to show that these were two pictures
18 of him found in the house but for no other purpose.

19 MS. COTE: I understand, Your Honor. Thank you.

20 THE COURT: And you have been provided this in discovery.

21 MR. TRUSLOW: Yes, sir.

22 THE COURT: All right. No, they're entitled to show --
23 I'm just curious, though, why didn't you do in direct?

24 MS. COTE: I was going ---

25 MR. TRUSLOW: I would object to that as well, Your Honor.

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MARK COOPER - REDIRECT EXAMINATION BY MS. COTE

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1 MS. COTE: That's fine.

2 MR. TRUSLOW: Because now it goes beyond the scope of
3 cross ---

4 THE COURT: No, you went through very carefully picture
5 by picture but I'm curious ---

6 MR. TRUSLOW: Judge, I went through two pictures that
7 were already introduced into evidence.

8 THE COURT: I'm curious to know why you didn't introduce
9 them at the time.

10 MS. COTE: I was going to introduce them through Sergeant
11 Ard because he took custody of all the evidence. So, I was
12 putting in all of the physical evidence through him.

13 THE COURT: Well, how does -- how can Ard do -- did Ard
14 ---

15 MS. COTE: He -- Detective Cooper found it but then
16 Detective Ard came and collected all the evidence and actually
17 took it into his custody.

18 THE COURT: And Ard is the one that found these pictures?

19 MS. COTE: Cooper found the pictures but then Ard came
20 and collected it. So, he saw them in the bedroom as well.

21 THE COURT: No, I'll permit that.

22 MS. COTE: Thank you, Your Honor.

23 THE COURT: You can do it through him or Ard but it's
24 coming in one way or the other.

25 MS. COTE: Okay. Thank you, sir.

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MARK COOPER - REDIRECT EXAMINATION BY MS. COTE

1 THE COURT: All right. Bring the jury back.

2 You want this back, too? Ma'am, you want this back?

3 MS. COTE: This is Mr. Truslow's, I believe.

4 MR. TRUSLOW: Judge, I don't know if I made the record
5 clear, I wanted to put on the record that I don't see how that
6 is within the scope of redirect.

7 THE COURT: I do.

8 MR. TRUSLOW: All I did was cross examine on what she
9 talked about.

10 THE COURT: Well, I conclude that it ---

11 MR. TRUSLOW: I didn't bring up anything new.

12 THE COURT: It's permissible particularly when they can
13 introduce it later with Detective Ard, it's coming in one way
14 or the other. Would you prefer to do it through Detective
15 Ard?

16 MR. TRUSLOW: I have no preference.

17 THE COURT: All right, sir.

18 (REPORTER'S NOTE: The jury returns to the courtroom.)

19 THE COURT: All right. You may proceed.

20 MS. COTE: Thank you, Your Honor.

21 BY MS. COTE:

22 Q: Detective Cooper, I'm gonna show you what's been marked
23 as identification as State's Exhibits Number Twenty-six and
24 Twenty-seven. Do you recognize those pictures?

25 A: Yes, ma'am.

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MARK COOPER - REDIRECT EXAMINATION BY MS. COTE

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1 Q: Were those two pictures that you found in the master
2 bedroom?

3 A: They were in the dresser.

4 Q: In the dresser?

5 A: Yes, ma'am.

6 Q: And did you collect them or did you find them that day
7 and then have Sergeant collect them?

8 A: Yes. Detective Ard took possession of the photos.

9 MS. COTE: Your Honor, the State would seek to introduce
10 Twenty-six and Twenty-seven into evidence at this time.

11 MR. TRUSLOW: Judge, I'd like to see them first because
12 my copy doesn't have the back part with the ---

13 THE COURT: Sure.

14 MR. TRUSLOW: Subject to the prior objection.

15 THE COURT: Yes, I will permit them.

16 STATE'S EXHIBIT NUMBERS TWENTY-SIX AND TWENTY-SEVEN

17 ADMITTED INTO EVIDENCE.

18 MS. COTE: Your Honor, may I publish these to the jury at
19 this time?

20 THE COURT: You may. These pictures are introduced only
21 for the purpose of the testimony alleging that they were found
22 on the premises and for no other purposes.

23 BY MS. COTE:

24 Q: Detective Cooper, do you know the identity of the person
25 in that picture?

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MARK COOPER - RECROSS EXAMINATION BY MR. TRUSLOW

1 A: Mr. Gore.

2 MS. COTE: Your Honor, I have no further questions.

3 THE COURT: You may examine him, Mr. Truslow.

4 MR. TRUSLOW: I need -- I'll go ahead and go forward.

5 RECROSS EXAMINATION OF MARK COOPER BY MR. TRUSLOW:

6 Q: In regards to the pictures that are going around, not
7 everybody has seen yet, do you know when those pictures were
8 taken?

9 A: No clue.

10 Q: Do you know who took those pictures?

11 A: I do not.

12 Q: Do you know for what purpose those pictures were taken?

13 A: I have no idea.

14 Q: Were there any drugs in those pictures?

15 A: Not that I can see.

16 Q: Do you have any idea whether Angel had those pictures?

17 A: No, sir. I just know where they were located?

18 Q: Okay. And where was that?

19 A: In the master bedroom in the dresser.

20 Q: Okay. So, Angel Deangelo could've had those pictures of
21 Alton, we don't know who took them?

22 A: Right, yes, sir.

23 Q: And they're not taken within that house, are they?

24 A: No, sir.

25 Q: They were just found there?

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JESSE ARD - DIRECT EXAMINATION BY MS. COTE

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1 A: Yes, sir.

2 Q: Okay. Did you find his wallet in the house?

3 A: I did not.

4 Q: Okay. Did you find anything else other than what you
5 photographed?

6 A: Just what I photographed.

7 Q: Okay. Thank you.

8 THE COURT: Does that conclude examination of this
9 witness?

10 MS. COTE: Yes, Your Honor. May he be excused?

11 THE COURT: He may unless Mr. Truslow objects?

12 MR. TRUSLOW: No objection.

13 THE COURT: All right.

14 (REPORTER'S NOTE: Witness leave the witness stand.)

15 THE COURT: Call your next witness.

16 MS. COTE: Thank you, Your Honor. The State calls
17 Sergeant Derrick Ard.

18 JESSE ARD, HAVING BEEN SWORN,

19 TESTIFIED AS FOLLOWS:

20 CLERK: State your full name and spell your last name.

21 MR. ARD: Jesse Ard, A-R-D.

22 DIRECT EXAMINATION OF JESSE ARD BY MS. COTE:

23 Q: Where are you employed?

24 A: With the Horry County Police Department.

25 Q: What's your current rank?

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JESSE ARD - DIRECT EXAMINATION BY MS. COTE

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- 1 A: My current rank is actually Corporal.
- 2 Q: I apologize, I misstated that. How long have you worked
3 with the Horry County Police Department?
- 4 A: Fourteen years.
- 5 Q: Will you please discuss any further details about your
6 background and training in law enforcement?
- 7 A: Initially worked patrol, moved to a COT (spelled
8 phonetically) team, Street Crimes Unit, was assigned to the
9 Horry County Police Narcotics and Vice section for
10 approximately four years where conducted many narcotics
11 investigations. At which point in time, I rotated out back to
12 Central Precinct D Squad Corporal and that's where I'm at now.
- 13 Q: And were you on Narcotics and Vice back on March 5th,
14 2010?
- 15 A: Yes, ma'am, I was.
- 16 Q: And were you the lead detective on a case involving Alton
17 Wesley Gore, Jr.?
- 18 A: Yes, ma'am, I was.
- 19 Q: Did you take part in the execution of a search warrant at
20 [REDACTED] Junco Circle?
- 21 A: Yes, ma'am.
- 22 Q: And I'll have to ask you again, where is that located?
- 23 A: That is located in the Longs section of Horry County.
- 24 Q: Based on your investigation, who was living at that
25 residence?

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JESSE ARD - DIRECT EXAMINATION BY MS. COTE

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1 A: Based upon my investigation, the defendant Mr. Gore,
2 Alton Gore was living at the residence.

3 Q: Based on your investigation had you ever seen anybody
4 besides Mr. Gore or Ms. Deangelo at that residence?

5 A: I had not; I had not.

6 Q: What date did you get the search warrant for that home?

7 A: Let me look a minute. I believe ---

8 Q: Would you like to refer to your ---

9 A: I would like to refer to my ---

10 Q: Would that help to refresh your memory?

11 A: Yes, it would.

12 MS. COTE: Your Honor, may I approach the witness, this
13 is a copy of his case report.

14 THE COURT: You have not reviewed that case report before
15 coming on the stand?

16 A: Yes, Your Honor, I did.

17 THE COURT: I asked him a specific date, Your Honor.

18 A: The search warrant is issued February the 28th.

19 BY MS. COTE:

20 Q: Going back to that question I just asked you based on
21 your investigation who lived there, what's the basis of your
22 opinion?

23 A: The basis of my opinion was that ---

24 Q: Had you observed them there before?

25 A: I had. I had. My opinion was that Alton Gore was in

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JESSE ARD - DIRECT EXAMINATION BY MS. COTE

1 custody and control of the residence, that he had established
2 residency there and that was his home.

3 Q: Okay. As far as you knew, did he live anywhere else?

4 A: No, ma'am; I didn't know of him living anywhere else.

5 Q: And going back to the search warrant, you obtained it in
6 February, the end of February but you did not execute it until
7 what date?

8 A: It would've been March the 5th.

9 Q: Okay. And why was there a few day delay before you
10 actually searched the home?

11 A: That's actually an administrative issue. It's based upon
12 the manpower, considering the size of the residence, it being
13 a two-story stick-built residence, we had to make arrangements
14 to have enough detectives available to assist with the search
15 warrant.

16 Q: Was it sort of a scheduling issue?

17 A: It is a scheduling issue.

18 Q: Okay. When you got the search warrant, were you the
19 person who actually went to the magistrate and testified and
20 got the search warrant?

21 A: Yes, ma'am.

22 Q: And what was the basis for the search warrant?

23 A: Based upon a narcotics investigation, we were able to
24 obtain probable cause for the search warrant being issued.

25 Q: And what were you seeking at [REDACTED] Junco Circle?

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1 A: We were seeking anything involved in any illegal
2 narcotics activity.

3 Q: Now, I'm going to take you actually back to that date on
4 March 5th, 2010. Were you with your partner Detective Donald
5 that day?

6 A: Yes, ma'am, I was.

7 Q: And were you both together in front of the house that
8 morning?

9 A: Yes, ma'am.

10 Q: And what did you observe?

11 A: I observe both -- two vehicles leave, Ms. Deangelo being
12 in one vehicle separate from Mr. Gore -- Mr. Gore leaving.
13 They left at approximately the same time.

14 Q: Did you observe the home before they left?

15 A: Yes, ma'am, I did.

16 Q: Did you see any other activity at the home aside from
17 those two people?

18 A: No, ma'am; that was the first activity we'd seen that
19 morning.

20 Q: And after they both left in their separate vehicles, what
21 happened?

22 A: Mr. Gore was involved in a traffic stop where he was
23 arrested in an unrelated incident.

24 Q: After Mr. Gore -- Mr. Gore was detained, what happened
25 next?

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1 A: We were -- myself and Detective Donald were present at
2 the traffic stop and we were able to secure the keys to the
3 residence. We immediately went back to the residence and were
4 kind of on standby until we could get the rest of the
5 narcotics unit there to assist with the execution of the
6 warrant.

7 Q: Do you remember anything about the keys that were
8 obtained from Mr. Gore at the time?

9 A: I do not remember the specifics of the keys. I do know
10 the key that we got from him did fit the door.

11 Q: And it also was the key that was operating the vehicle
12 that he was in at the time?

13 A: Yes, ma'am.

14 Q: And was anybody else in the vehicle with him?

15 A: He was the only person in the vehicle.

16 Q: Okay. When y'all went back to the house, what happened
17 then?

18 A: Ms. Deangelo showed up. She initially spoke with
19 Detective Donald. I had walked around the house to make sure
20 we were alone and her and Detective Donald -- I guess you
21 would initially say they had a confrontation at which point in
22 time she was placed into custody.

23 Q: Okay. And at that point in time are you sort of waiting
24 for everybody else on your team to arrive?

25 A: Yes, ma'am. We were primarily on standby just securing

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1 the residence until we had enough persons.

2 Q: And Ms. Deangelo's car at the residence? Did she arrive
3 in her vehicle?

4 A: She did. She did drive her vehicle back.

5 Q: Do you remember if it was -- what the license plate was
6 on that?

7 A: I do not recall -- not from memory, I do not recall the
8 license plate.

9 Q: Okay. After Ms. Deangelo was detained and everybody else
10 arrived, did you make entry into the home?

11 A: Yes, ma'am, we did.

12 Q: Did you use that key?

13 A: We did utilize the key to get into the residence.

14 Q: Did you assign -- as the case agent, did you assign each
15 officer an area to search?

16 A: No, ma'am. Due to the fact of -- we did not know the
17 exact layout of the inside of the home proper to making entry
18 so I would not have been able to make prior assignments so to
19 speak. So, as we went in, the detectives would assume a room.
20 They would assume -- okay, I've got the living room, you know,
21 so, it was self-assigned in essence.

22 Q: Okay. And were they instructed -- what were they
23 instructed to do if they found anything?

24 A: It is our standard operating procedure if they were to
25 find something to contact, have it photographed and to have

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1 the case agent, me being the case agent in that case, come to
2 collect the evidence.

3 Q: Is that the standard practice on search warrant
4 executions?

5 A: Yes, ma'am.

6 Q: What area of the house did you search personally?

7 A: I personally searched the kitchen.

8 Q: Okay. What if anything did you find?

9 A: To the left of the sink, I found a box containing
10 multiple small plastic baggies. The baggies appeared to be
11 new and they were empty multiple baggies. I also found, I'm
12 going to say an approximate weight of an ounce of a white-
13 powder substance that field tested positive for cocaine. The
14 box also had two spoons that had residue on them, a set of
15 scales, a playing card, or a couple of playing cards that were
16 bent that had residue on them.

17 Q: Based on your experience as a narcotics officer and in law
18 enforcement, what would those items be used to as it relates
19 to narcotics?

20 A: Those items as a whole and based upon my experience, I
21 that would -- I would say that that is more than likely where
22 someone was weighing out assuming the product in the bag which
23 would have been the cocaine.

24 Q: And then would those baggies be used to package?

25 A: In my experience, those baggies are commonly used to

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1 package illegal narcotics.

2 Q: And when you're talking about baggies, are you talking
3 about like a sandwich bag?

4 A: I think the official name is a jewelry bag but it is a
5 Ziploc bag and it is very small.

6 Q: Okay. What else -- what else was collected by your
7 officers on that day on March 5th?

8 A: Multiple items.

9 Q: Would you be able to go through those items for the jury?

10 A: Yes, ma'am. And I will refer to the case file so --
11 because there's quite a bit.

12 Q: If that'll help refresh your memory.

13 A: The second page of the investigative report.

14 Q: Okay.

15 THE COURT: You have a copy of this investigative report?

16 MR. TRUSLOW: Yes, Your Honor.

17 A: We discovered the items that I discovered in the kitchen.

18 Q: Okay.

19 A: Also in that box were some small pills that did field
20 test positive for MDMA and/or Ecstasy. And a small portion of
21 green leafy substance that did test positive for marijuana
22 with a grinder was also located in that cabinet to the left of
23 the sink in the kitchen.

24 Detective Donald found a Glock magazine in the upper
25 cabinet. I believe it was to the right here, to the right of

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1 refrigerator. It was just the magazine, it had twelve rounds
2 in it.

3 Q: So, in one cabinet in the kitchen you have your drug
4 paraphernalia -- paraphernalia, excuse me, that you found and
5 then in another on the other side of the kitchen there is a
6 Glock magazine?

7 A: Yes, ma'am. The cabinet I was searching -- the sink was
8 on the left, the refrigerator would've been on the right so it
9 would've been separate walls in the kitchen.

10 Q: Okay.

11 A: Also found -- Detective Furr located in a cabinet above
12 the refrigerator a black bag containing, and I may pronounce
13 it wrong, Inositol. And in my experience it has been used as
14 a cutting agent or how you would step on your dope so to
15 speak.

16 Q: Can you describe what the means, please.

17 A: If you have cocaine and you want to increase the weight
18 of cocaine and you have a purity level to where, you know,
19 it's pure enough to where you can cut it so to speak and add
20 another substance to it to increase your weight. That's -- in
21 my experience I've seen that that has been used or that
22 product has.

23 Q: Sort of like making -- getting -- stretching what you
24 have?

25 A: Making it more.

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1 Q: Making it more. Okay. What else did you find?

2 A: Detective Sissell (spelled phonetically) also assisting
3 in the kitchen, he located a Fobus holster, which is -- I
4 mean, it's simply a holster for a pistol.

5 Q: Okay.

6 A: And to reiterate on what Detective Cooper found in the
7 master bedroom, he found a Glock 19 handgun, master bedroom on
8 the bed with a loaded magazine and also located in that master
9 bedroom closet was the baggie -- the Ziploc, a large Ziploc
10 bag containing thirteen individual baggies and they were
11 approximately an ounce of white-powder substance that did
12 field test positive for cocaine. In the master bedroom
13 dresser, also Detective Cooper located two photographs, a
14 couple of bandanas and some writings that appeared to be gang
15 related.

16 MR. TRUSLOW: Objection, Your Honor.

17 THE COURT: What's your objection?

18 MR. TRUSLOW: The objection is that's irrelevant. They
19 provided me with some writings and they're just five pages of
20 just nonsensical writing with no signature and nobody ---

21 THE COURT: You may cross examine him on it. He's given
22 his opinion.

23 MR. TRUSLOW: Well, it's irrelevant, Judge, under the
24 rules.

25 THE COURT: Well, I don't know whether it is or not.

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1 I'll let the jury hear the testimony and they can dismiss it
2 or not. I'm not certain of the relevancy of it, but you may
3 proceed.

4 MS. COTE: Thank you, Your Honor. We're not planning on
5 pursuing that any further.

6 THE COURT: Okay.

7 BY MS. COTE:

8 A: Also located in -- Detective Hardee also assisted
9 Detective Cooper in the master bedroom. Detective Hardee
10 located two video cameras that were collected. We did collect
11 two video cameras and Sergeant Hutchinson ---

12 MR. TRUSLOW: Your Honor, I would object. He's
13 testifying to other officers information what they collected.

14 THE COURT: Yes, I sustain that.

15 MS. COTE: Your Honor, he -- I believe he misspoke. The
16 other officers actually found the items that Sergeant --
17 Corporal Ard was actually the person who took custody of all
18 of these items.

19 THE COURT: Well, rephrase your question if you misspoke
20 or he did.

21 MS. COTE: Yes, sir.

22 BY MS. COTE:

23 Q: Who found -- who collected all of those items?

24 A: I apologize. They found, I collected the items in place
25 and took possession of them.

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1 THE COURT: Thank you.

2 A: I apologize, Your Honor.

3 THE COURT: That's fine.

4 Q: So what was it that Sergeant Hutchinson found that you
5 later took custody of?

6 A: Sergeant Hutchinson found a clear plastic bag in -- I
7 guess what would we refer to as the guest room or the kid's
8 room, the spare bedroom, that did have residue on it that
9 tested positive for cocaine.

10 Q: And where was it located?

11 A: It was located in the mattress in the bedroom.

12 Q: Like in between -- was it between the mattress and box
13 spring?

14 A: It was either -- I think it was under the primary
15 mattress if I remember correctly.

16 Q: Okay.

17 A: And then some -- you know, some U.S. currency, some cash
18 was located in the home.

19 Q: Do you know the amount of the cash that was located?

20 A: I do. Located in a box in the master bedroom was \$126
21 cash and that was it as far as the currency.

22 Q: I know we've sort of harped on this a lot but I want to
23 make sure it's clear. So, whenever one of our officers found
24 something, did they holler at you to come see sort of and then
25 come collect it?

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1 A: Yes, ma'am. In lack of a better term to make it simple

2 ---

3 MR. TRUSLOW: Judge, she's leading the witness.

4 MS. COTE: I'm just clarifying what's already been
5 testified to.

6 THE COURT: That question was okay.

7 MS. COTE: Thank you.

8 BY MS. COTE:

9 A: Our normal operating procedure considering the fact that
10 especially when we have a larger residence, this is a two-
11 story stick-built home, there's many rooms in the home to
12 assist with the execution of a search warrant detective would
13 pick a room in essence considering we did not know the layout
14 prior to going into the home, they conduct their search.
15 Anything they find that they think may be of evidentiary
16 value, they contact the case agent, which would be me at that
17 point in time in this case, at which point in time I would go
18 look at it and make a determination if that is something that
19 we wish to take and then I would take possession of it at that
20 point.

21 Q: When you would take possession of it, how did -- did you
22 package it?

23 A: Initially, it was packaged in a manner to -- in paper
24 evidence bags just for the purpose of transport back to our
25 office to where we can process that.

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1 Q: And then when you went back to your office, what did you
2 do?

3 A: Any item, all of the powder and/or pills, anything other
4 than marijuana that would need further testing would be put
5 into one of our Horry County BEST kits for our lab tech to
6 test; that's our procedure.

7 Q: Okay. I'm gonna show you a few more pictures. I'm gonna
8 show these to Mr. Truslow first.

9 MR. TRUSLOW: That's fine.

10 THE COURT: You've seen them?

11 MR. TRUSLOW: Yes, sir.

12 THE COURT: All right.

13 BY MS. COTE:

14 Q: These are State's Number Twenty, Twenty-one, Twenty-two
15 and Twenty-three. I'm gonna ask you to look through these and
16 tell me if you recognize them.

17 A: Yes, ma'am. I do recognize them.

18 Q: Do those appear to be accurate representations of what
19 you observed that day?

20 A: Yes, ma'am; they do.

21 Q: And are those pictures that you actually took?

22 A: I actually took these photographs.

23 Q: Where did you take those?

24 A: These are taken, these are -- this is taken on my office
25 floor. This is where I'm processing and putting items in BEST

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1 kits as opposed to evidence bags.

2 Q: Okay.

3 MS. COTE: Your Honor, the State would seek to introduce
4 Twenty through Twenty-four [sic] into evidence at this time.

5 MR. TRUSLOW: No objection.

6 THE COURT: Without objection.

7 STATE'S EXHIBIT NUMBERS TWENTY THROUGH TWENTY-THREE
8 ADMITTED INTO EVIDENCE.

9 MS. COTE: Your Honor, may I publish to the jury?

10 THE COURT: You may.

11 MS. COTE: Thank you.

12 BY MS. COTE:

13 Q: This first picture is Twenty-three and can you identify
14 that for the jury?

15 A: Those are the items from the kitchen cabinet to the left
16 of the sink.

17 Q: And that's actually what you found yourself?

18 A: Yes, ma'am.

19 Q: Okay. And this is State's Twenty-two; what is that?

20 A: Those are also the items that were found to the left of
21 the kitchen sink to include the additional thirteen baggies
22 and the larger Ziploc bag that was found in the master bedroom
23 closet.

24 Q: You just separated out those baggies from ---

25 A: I'm getting in my mind's eye what goes in the BEST kit

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1 and what doesn't.

2 Q: Okay. This is State's Twenty?

3 A: Those are the baggies that came out of the large baggie
4 thirteen.

5 Q: This is State's Twenty-one.

6 A: That would've been the single from the -- that found in
7 the kitchen with the ---

8 Q: This is what you found in the kitchen?

9 A: Yes, ma'am.

10 Q: Okay. I'm gonna show you what's been pre-marked as
11 State's Exhibit Twenty-eight and I'll show this to Mr. Truslow
12 as well. Do you recognize State's Twenty-eight, if you'll
13 open that and look inside?

14 A: Yes, ma'am. It appears to be the items that were found
15 in the kitchen cabinet to the left of the sink that I found.

16 MS. COTE: Your Honor, the State would seek to introduce
17 Twenty-eight into evidence at this time.

18 THE COURT: Without objection.

19 STATE'S EXHIBIT NUMBER TWENTY-EIGHT

20 ADMITTED INTO EVIDENCE.

21 BY MS. COTE:

22 Q: I'll show you what's been marked as State's Exhibit
23 Twenty-five, do you recognize that?

24 A: Yes, ma'am. I believe that's the baggie from the spare
25 guest bedroom that was from the mattress area.

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1 Q: And that was field -- was that field tested?

2 A: We did do a field test on it. It was not placed in the
3 BEST kit but it -- there was a field test that tested
4 positive.

5 Q: Why didn't you actually have that tested by a chemist?

6 A: Due to the fact that it's just residue, there's not a
7 weighable amount and we had product throughout the house.

8 Q: Okay.

9 MS. COTE: Your Honor, the State would seek to introduce
10 Twenty-five into evidence.

11 MR. TRUSLOW: Based on prior objection with the search
12 warrant issues.

13 THE COURT: Yes. It will be introduced.

14 MS. COTE: Thank you, Your Honor.

15 STATE'S EXHIBIT NUMBER TWENTY-FIVE

16 ADMITTED INTO EVIDENCE.

17 MS. COTE: Your Honor, if I may beg the court's
18 indulgence for one minute, I need to have a couple of things
19 marked.

20 THE COURT: That's fine.

21 BY MS. COTE:

22 Q: I'm going to show you what's been pre-marked as State's
23 Twenty-nine. Just one second. Do you recognize this item?

24 A: Yes, ma'am.

25 Q: And what is it?

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1 A: This would be the Glock handled firearm that was removed
2 from the bedroom.

3 Q: Okay. And it was removed from the bedroom by you?

4 A: Yes, ma'am.

5 MS. COTE: Your Honor, at this time the State would seek
6 to introduce Twenty-nine into evidence.

7 MR. TRUSLOW: Judge, based on prior objection.

8 THE COURT: Permitted and is introduced.

9 MS. COTE: Thank you, Your Honor.

10 THE COURT: Objection noted.

11 STATE'S EXHIBIT NUMBER TWENTY-NINE

12 ADMITTED INTO EVIDENCE.

13 BY MS. COTE:

14 Q: I'm gonna show you what's been marked as State's Exhibit
15 Thirty. Do you recognize this item?

16 A: Yes, ma'am, I do.

17 Q: And what is that?

18 A: That is the Glock case located also in the bedroom.

19 Q: Okay. And I'm gonna open it for you as well. Do you
20 recognize those items that are inside the case as well?

21 A: I do. That is a loaded magazine and the other plastic
22 piece is something that normally is used to assist when
23 loading a magazine.

24 Q: Okay.

25 MS. COTE: Your Honor, the State would seek to introduce

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1 Thirty into evidence at this time.

2 MR. TRUSLOW: Your Honor, objection based on -- you
3 understand I'm required to make contemporaneous objections ---

4 THE COURT: I understand. Objection noted but I will
5 permit it.

6 STATE'S EXHIBIT NUMBER THIRTY

7 ADMITTED INTO EVIDENCE.

8 BY MS. COTE:

9 Q: Now, this is State's Exhibit Thirty-one. Do you
10 recognize this?

11 A: Yes, ma'am.

12 Q: And what is it?

13 A: The additional magazine that was located separate in the
14 kitchen, if I'm not mistaken.

15 THE COURT: All of these are subject to your objection as
16 to the search warrant

17 MR. TRUSLOW: If I could make it a continuous objection
18 to everything she's putting in through the evidence to this
19 point.

20 THE COURT: You may do so, as to items recovered in the
21 search warrant, there is an objection but I have overruled it.

22 MS. COTE: Yes, sir. Thank you, Your Honor.

23 BY MS. COTE:

24 Q: Can you please state what this item is?

25 A: That's a loaded Glock 19 magazine located -- located in

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1 the kitchen.

2 Q: That was located in the kitchen and was that what was
3 found by Detective Donald?

4 A: That should be found by Detective -- yes, ma'am.

5 Q: Okay.

6 MS. COTE: Your Honor, the State would seek to introduce
7 that into evidence as well.

8 THE COURT: Subject to the objection.

9 MS. COTE: Yes, sir.

10 STATE'S EXHIBIT NUMBER THIRTY-ONE

11 ADMITTED INTO EVIDENCE.

12 BY MS. COTE:

13 Q: This is State's Exhibit Thirty-two. Do you recognize
14 that?

15 A: Yes, ma'am. Fobus holster also found in the kitchen by
16 Detective Sissell ---

17 THE COURT: Introduced subject to your objection.

18 A: --- which I collected.

19 Q: Thank you.

20 STATE'S EXHIBIT THIRTY-TWO

21 ADMITTED INTO EVIDENCE

22 BY MS. COTE:

23 Q: And this is State's Exhibit Thirty-three. Can you please
24 identify this and its contents?

25 A: Yes, ma'am. It appears to be a Pentax camera case. This

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1 was -- I collected it from the kitchen, it was located by
2 Detective Furr. It contains two bottle of -- Inositol powder.

3 Q: And is that what you testified was a cutting agent?

4 A: Yes, ma'am. Also containing was some additional playing
5 cards and baggie.

6 MS. COTE: State seeks to introduce this item into
7 evidence, Your Honor.

8 THE COURT: Subject to objection it is in.

9 MS. COTE: This is State's Thirty-three for the record.

10 THE COURT: Thank you

11 STATE'S EXHIBIT NUMBER THIRTY-THREE

12 ADMITTED INTO EVIDENCE

13 BY MS. COTE:

14 Q: And you testified that there were a couple of other
15 items, camcorders and things that like, did you collect those?

16 A: Yes, ma'am, I did.

17 Q: But did you ever get a search warrant to pull evidence
18 off of that -- off of those items?

19 A: No, ma'am. Those items were collected and placed into
20 evidence and I've not touched them since.

21 Q: Okay. You already testified to this, I believe but I
22 wanted to ask you to go into more depth. When you removed the
23 white-powdery substance from the scene, what did you do with
24 it?

25 A: I transport back to a more secure location which is

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1 primarily our office or my office. At which point in time,
2 for the purposes of testing, any substance that we want to
3 test minus marijuana or what we believe to be marijuana, we
4 would put in a BEST kit, that BEST kit is something that's
5 used to facilitate our lab tech in testing -- getting an
6 official test on the substance. So, I would take those items,
7 process them at my office and place them in the BEST kit and
8 then turn them into evidence where the lab tech would get them
9 and test them from there.

10 Q: Is BEST an acronym, that stands for something?

11 A: Yes, ma'am. I believe it is.

12 Q: And is it used by most law enforcement agencies?

13 A: It is -- it is common practice. And we are able to test
14 with Horry County -- we have our own lab so we have our own
15 kit.

16 Q: Does it go each item, each drug item a particular number
17 to identify it?

18 A: Yes, ma'am.

19 Q: Okay. From the scene where you placed those items in the
20 BEST kit, was it in your custody at all times?

21 A: Yes, ma'am, it was.

22 Q: And did you tamper with it or alter it in anyway?

23 A: No, ma'am.

24 STATE'S EXHIBIT NUMBER TWENTY-FOUR

25 MARKED FOR IDENTIFICATION

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1 Q: I'm gonna show you what's been premarked as State's
2 Exhibit Twenty-four and ask you if this was the item, this was
3 the BEST kit from that day.

4 A: Yes, ma'am, it is.

5 Q: And were those all of the evidence -- was that all of the
6 evidence that you suspected to be drugs that were found at the
7 house?

8 A: Yes, ma'am. Anything that I suspected to be an illegal
9 substance minus the green leafy substance.

10 Q: Okay. So, you included everything from the bedroom as
11 well as what you found in the kitchen?

12 A: Yes, ma'am. Considering it would be easier on the lab
13 tech for just to put it all in one kit.

14 Q: When you were searching the home that day, did you see
15 evidence of who lived there?

16 A: Yes, ma'am, I did.

17 Q: What did you see?

18 A: Photographs.

19 Q: Did you see photographs of Mr. Gore?

20 A: I did see photographs of Mr. Gore.

21 MS. COTE: Beg the Court's indulgence, Your Honor.

22 BY MS. COTE:

23 Q: I'm gonna show you what's already in evidence as State's
24 Exhibit Fifteen and ask you if you see anything that would
25 identify Mr. Gore in that picture?

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1 A: I see what I believe to be a picture of Mr. Gore on the
2 dresser.

3 Q: Is that in a frame?

4 A: Yes, ma'am.

5 Q: Okay. I want to talk to you a little bit about the
6 drugs. Based on your experience in narcotics, how much would
7 that amount of drugs be worth?

8 A: In my experience in narcotics, if you're buying say for
9 -- by an ounce, a rule of thumb would be roughly \$1,000 an
10 ounce. So, we're looking at 14,000 easy.

11 Q: When you took Mr. Gore and Ms. Deangelo into custody, did
12 they have any currency, U.S. currency on their person?

13 A: Yes, ma'am, they did.

14 Q: How much was on each one of them?

15 A: If I can refer to my notes quickly and it would be second
16 page of the investigative report, Mr. Gore had \$562 on his
17 person and Ms. Angel had \$982 on her person.

18 Q: Were there vehicles in the attached garage at the home?

19 A: Yes, ma'am. I believe there was another vehicle in the
20 attached garage.

21 Q: Did you run the license and registration of that vehicle?

22 A: I don't remember if I ran -- we did run the license and
23 registration on the vehicle.

24 Q: Who did it come back to?

25 A: If I'm not mistaken, it was Mr. Gore or they were known

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1 to us to be Mr. Gore's vehicles.

2 Q: Had you seen him driving those vehicles previously?

3 A: I had seen him driving one of the vehicles previously.

4 Q: After you put all the evidence into the BEST kit, what
5 did you do with it?

6 A: Placed it into evidence. Our evidence section, we have a
7 -- we have evidence lockers just outside our office in an
8 adjoining hallway. I take it immediately to the evidence
9 locker. I can either put it in drop slot which is a one-way
10 door or either place it in an evidence drop locker and you
11 drop the key. At that point in time, I no longer can access
12 it without going through an evidence tech.

13 Q: Did you seal the BEST kit when you put all the drugs in
14 there?

15 A: Yes, ma'am, I did per SOP. It is sealed, sealed by me
16 and placed back into the kit and dropped in evidence.

17 Q: Did you have to sign anything when you're sealing it?

18 A: You do. You have to sign a tear off tab. To seal the
19 evidence bag, you date and sign the tear off tab and it's got
20 a -- an adhesive built into it so when you pull the protective
21 piece of plastic off and seal it, it's permanently sealed at
22 that point.

23 MS. COTE: Your Honor, I have no further questions for
24 this witness.

25 THE COURT: Truslow?

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1 MR. TRUSLOW: Yes, sir.

2 CROSS EXAMINATION OF JESSE ARD BY MR. TRUSLOW:

3 Q: How many camcorders did you find?

4 A: Sir, I believe there was two. I believe there was two.

5 Q: Two?

6 A: Yes, sir.

7 Q: And you did not develop any film or play them or do
8 anything?

9 A: No, sir, I did not.

10 Q: Don't you think that would've been important in
11 determining who lived in this residence?

12 A: Based on the investigation, we didn't deem it to be
13 important at that time.

14 Q: So, you figured you knew what you knew and you weren't
15 gonna look any further, correct? That's what you just said,
16 isn't it? Isn't that what you just said?

17 A: I said that we did not go any further ---

18 Q: You didn't need that, that you had enough.

19 THE COURT: Wait a minute. Don't interrupt him now. Let
20 him finish his -- you may proceed with your answer.

21 A: I said that we did not look into the video cameras.

22 Q: Okay. Is it possible if you'd have done that it could've
23 exonerated Mr. Gore?

24 A: Anything is possible.

25 Q: Okay. But you didn't do that. Now, the photograph that

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JESSE ARD - CROSS EXAMINATION BY MR. TRUSLOW

1 you're looking at on the dresser, you believe that's Mr. Gore
2 in a photograph, correct?

3 A: It appears to be.

4 Q: Okay. Now, based upon that, you said that's the evidence
5 that he lived there, correct?

6 A: I could say that would go towards the fact ---

7 Q: Okay. So, if you went to my momma's house, you would
8 swear that I live there, right, because you'd see a bunch of
9 pictures of me?

10 A: I wouldn't swear to anything, sir.

11 Q: So, you're not swearing that he lived there, are you?

12 A: I'm not swearing that he lived there. It led me to
13 believe that he lived there.

14 Q: He's in the picture with Angel, isn't that who's in the
15 picture with him in that?

16 A: That's only partial -- I believe maybe -- I mean, I
17 believe that's probably her.

18 Q: Did -- throughout this investigation did you learn of Mr.
19 Gore's employment at Biminis restaurant for eight, ten years;
20 are you aware he's worked there for that long? Did that ever
21 come to your attention that he'd worked there?

22 A: I was aware ---

23 Q: Just that he worked there, that he had a job.

24 A: I was aware that he was employed, yes, sir.

25 Q: Okay. And in your investigation into the car that he was

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- 1 driving, did you determine who owned that vehicle?
- 2 A: In reference to the vehicle, he was ---
- 3 Q: The vehicle he was stopped in.
- 4 A: I did not, sir.
- 5 Q: Okay. And then I want to show you the address on the
- 6 warrant that you did.
- 7 A: Okay.
- 8 Q: You put down [REDACTED] Junco Circle for his address, correct?
- 9 A: Okay. Yes, sir.
- 10 Q: He didn't put that there, did he?
- 11 A: No, sir, I put that there.
- 12 Q: Okay. And you put that there based upon that photograph
- 13 and your beliefs that he lived there?
- 14 A: Yes.
- 15 Q: Not off of any particular documentation, driver's
- 16 license, any other information?
- 17 A: Based upon my investigation.
- 18 Q: All right. Now, when Angel got to the house, you guys
- 19 had not gone inside the house yet?
- 20 A: No, sir.
- 21 Q: Okay. So, is it possible you got keys from her? I mean,
- 22 it's been two years.
- 23 A: I would say not.
- 24 Q: Do you recall?
- 25 A: I did not get keys from her.

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JESSE ARD - REDIRECT EXAMINATION BY MS. COTE

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1 Q: Is it possible somebody got keys from her to get inside?

2 A: I guess we could revert on anything is possible but I
3 would say no.

4 Q: And Mr. Gore was never brought back to the residence, was
5 he?

6 A: No, sir, he was not.

7 Q: Angel was at the residence?

8 A: She was at the residence.

9 Q: And when she got there and she was already wanting to see
10 the search warrant and saying nobody was coming in, nobody had
11 gone inside yet, right?

12 A: No, sir.

13 Q: She got there and after she got there is when people went
14 inside?

15 A: That is correct.

16 Q: Okay. No further questions.

17 REDIRECT EXAMINATION OF JESSE ARD BY MS. COTE:

18 Q: Did Angel give you consent to search the house?

19 A: She did not, ma'am.

20 Q: And was Mr. Gore able to come back to the house?

21 A: He was not able at that point in time.

22 Q: And based on your investigation and your prior knowledge
23 of this Defendant, did you have any reason to believe that
24 anybody besides Alton Gore lived in that home?

25 A: I had no reason to believe based upon my investigation

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1 that no one -- that anyone else lived there.

2 Q: Did you see any evidence in the home that anybody else
3 lived there?

4 A: No, ma'am.

5 Q: Did you see any women's -- like his mother's clothing or
6 anything like that there that you recall?

7 A: No, ma'am, I did not. I don't recall.

8 RECROSS EXAMINATION OF JESSE ARD BY MR. TRUSLOW:

9 Q: Did you see the photograph that your colleague took of
10 the curling iron ---

11 MS. COTE: I wasn't finished.

12 THE COURT: Let her ---

13 MR. TRUSLOW: Oh, I thought she was sitting down.

14 MS. COTE: No, I was leaning over to confer with Mr.

15 Richardson. And we do have -- I assume after Mr. Truslow

16 finishes, we have a matter to take up outside the presence of
17 the jury.

18 THE COURT: All right. Do you want to take it up now?

19 MR. RICHARDSON: Yes, sir, Your Honor.

20 MS. COTE: If possible, Your Honor.

21 THE COURT: I'll let you go to the jury room.

22 MR. TRUSLOW: Can I finish up, Judge?

23 THE COURT: Yes, sir, if you can.

24 MR. RICHARDSON: Well, it deals with this witness and on
25 this issue, Your Honor.

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1 THE COURT: Well, it's ---

2 MR. RICHARDSON: On his redirect.

3 THE COURT: Sir?

4 MR. RICHARDSON: It's a matter we need to take up about a
5 redirect question.

6 THE COURT: So, we take it up now?

7 MR. RICHARDSON: Yes, sir.

8 MS. COTE: Yes, sir, please.

9 THE COURT: I'll let you go to the jury room, please.

10 (REPORTER'S NOTE: The jury retires to the jury room.)

11 THE COURT: All right. What's the issue?

12 MR. RICHARDSON: Your Honor, Mr. Truslow brought -- Mr.
13 Truslow brought up on cross examination about Corporal Ard's
14 knowledge of the defendant working at Biminis Oyster Bar. I
15 believe his knowledge about him working there comes from
16 whenever there was a CI purchase from Biminis Oyster Bar from
17 this defendant. He's brought it up. He's opened the door on
18 that prior purchase, how they have knowledge as to where he
19 was employed.

20 THE COURT: What point are you making to me? I'm not
21 following you.

22 MR. RICHARDSON: Your Honor, if we can get into the prior
23 sale that he did from Biminis Oyster Bar.

24 THE COURT: No, we're not gonna do that, that ---

25 MR. RICHARDSON: Mr. Truslow brought it up. It's

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1 important. He opened the door in how they knew he worked at
2 Biminis.

3 THE COURT: No, sir. He didn't open the door to prior
4 sale, now. I'm not gonna -- if you're gonna convict, you're
5 gonna convict him on the evidence.

6 MR. RICHARDSON: Yes, sir; yes, sir, but ---

7 THE COURT: That's highly prejudicial. He never brought
8 up anything about a sale.

9 MR. RICHARDSON: No, sir. Mr. Truslow asked does he have
10 knowledge that he -- that the defendant worked at Biminis
11 Oyster Bar.

12 THE COURT: So what?

13 MR. RICHARDSON: How he got the knowledge as to how he
14 worked at the Biminis Oyster Bar.

15 THE COURT: All he's got -- said yes, I had knowledge
16 that he worked there. I'm not gonna say I have knowledge he
17 worked there because he was selling drugs. I'm not gonna
18 permit that.

19 MR. RICHARDSON: Yes, sir, Your Honor.

20 THE COURT: That's clearly prejudicial.

21 MR. RICHARDSON: Your Honor, it's got -- it's where
22 there's more probative than prejudicial and ---

23 THE COURT: I'm telling you it's more prejudicial than
24 probative.

25 MR. RICHARDSON: Certainly, Your Honor, I understand your

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1 ruling.

2 THE COURT: The question was intended to ask did he work
3 there, not did he sell drugs while working there and he can
4 say, yes, I knew he was there but he don't have to say why.

5 MR. RICHARDSON: Yes, sir, Your Honor.

6 THE COURT: Now, if Mr. Truslow would ask him why, which
7 he's not gonna do, that's another issue.

8 MR. RICHARDSON: I understand your ruling, Your Honor.

9 THE COURT: Clearly.

10 All right. Bring the jury back.

11 Mr. Truslow, you want to be on the record on that issue?

12 MR. TRUSLOW: No, sir.

13 THE COURT: I didn't think so.

14 Bring the jury back, please.

15 (REPORTER'S NOTE: The jury returns to the courtroom.)

16 THE COURT: All right. You may proceed.

17 MR. TRUSLOW: Your Honor, I don't have any further
18 questions.

19 THE COURT: All right.

20 MS. COTE: Your Honor, we would ask that this witness be
21 excused.

22 MR. TRUSLOW: No objection.

23 THE COURT: The witness may be excused and thank you,
24 sir.

25 (REPORTER'S NOTE: Witness leaves the witness stand.)

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1 THE COURT: Call your next witness.

2 MR. RICHARDSON: State would call Angel Deangelo.

3 MR. TRUSLOW: Your Honor, if I'd known -- I would've
4 asked for restroom break if I knew they that they were going
5 right to her next. I thought they were doing their chain of
6 custody after these. This is gonna be a long witness.

7 MR. RICHARDSON: Your Honor, our chain people are coming
8 after lunch. We're planning going to this next.

9 THE COURT: Do you have any other witnesses that we can
10 take?

11 MR. RICHARDSON: No, sir, Your Honor. We don't have them
12 here at this point.

13 MR. TRUSLOW: I don't mind doing it, I just had to use
14 the restroom. I didn't know it was gonna be long witness.

15 THE COURT: Well, the jury has been here very patiently,
16 I'm gonna let them take their morning break at this time and
17 we'll start back in about fifteen minutes. Thank you.

18 MR. TRUSLOW: Thank you, Judge.

19 THE COURT: All right. We in recess.

20 MR. RICHARDSON: Thank you, Your Honor.

21 (REPORTER'S NOTE: The jury retires to the jury room.)

22 (RECESS)

23 *****OFF THE RECORD*****

24 (On the Record.)

25 THE COURT: State ready to proceed?

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ANGEL DEANGELO - DIRECT EXAMINATION BY MR. RICHARDSON

1 MR. RICHARDSON: Yes, sir, Your Honor.

2 THE COURT: Have you brought your victim out, I mean your
3 witness out?

4 MR. RICHARDSON: We're bringing her on out now.

5 THE COURT: Okay. Defense ready to proceed?

6 MR. TRUSLOW: Yes, sir, Your Honor.

7 THE COURT: Bring the jury in please.

8 (REPORTER'S NOTE: The jury returns to the courtroom.)

9 THE COURT: The jury is present. Call your next witness.

10 MR. RICHARDSON: Thank you, Your Honor. State would call
11 Angel Deangelo.

12 ANGEL DEANGELO, HAVING BEEN SWORN,

13 TESTIFIED AS FOLLOWS:

14 CLERK: State your full name and spell your last name.

15 MS. DEANGELO: My name is Angel Deangelo, D-E-A-N-G-E-L-
16 O.

17 DIRECT EXAMINATION OF ANGEL DEANGELO BY MR. RICHARDSON:

18 Q: Ms. Deangelo, good afternoon. For the record, you are
19 charged with trafficking cocaine in this case as well;
20 correct?

21 A: Yes, sir.

22 Q: And those charges remain pending today?

23 A: Yes, sir.

24 Q: Yesterday, you entered into a proffer agreement with the
25 State.

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ANGEL DEANGELO - DIRECT EXAMINATION BY MR. RICHARDSON

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1 A: Yes, sir.

2 THE COURT: Ma'am, you're gonna have to talk louder now.
3 They can't hear you on the back row, please, do.

4 A: Okay.

5 THE COURT: Talk into the microphone.

6 Q: I think it's about the right height. There you go. If
7 you'll lean in a little bit, you hadn't got to yell but
8 they've got to be able to hear you and she's got to be able to
9 take down what you say. Okay?

10 A: Okay.

11 Q: All right. And as I asked, yesterday, you entered into a
12 proffer agreement with the State, correct?

13 A: Yes, sir.

14 Q: Let me show you -- that was signed again this morning,
15 correct?

16 A: Yes, sir.

17 THE COURT: And counsel for the defense, you've had an
18 opinion to review that?

19 MR. TRUSLOW: Yes, Your Honor, I have.

20 THE COURT: And you've been provided a copy?

21 MR. TRUSLOW: I haven't got a copy but I'm ---

22 MR. RICHARDSON: We're gonna provide them with a copy,
23 Your Honor,

24 THE COURT: All right. But he's reviewed it?

25 MR. RICHARDSON: Yes, sir, Your Honor.

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ANGEL DEANGELO - DIRECT EXAMINATION BY MR. RICHARDSON

1 STATE'S EXHIBIT NUMBER THIRTY-FOUR

2 MARKED FOR IDENTIFICATION

3 BY MR. RICHARDSON:

4 Q: Ms. Deangelo, I'm gonna show you what's been marked for
5 identification as State's Thirty-four. Do you recognize
6 State's Number Thirty-four?

7 A: Which one?

8 Q: This -- do you recognize this exhibit?

9 A: Oh, yes, sir.

10 Q: Okay. Is this the proffer agreement you signed today?

11 A: Yes, sir.

12 Q: And in that proffer agreement, have you been made any
13 promises with regard to the disposition of your charges?

14 A: No, sir.

15 Q: But you're hoping something good will happen?

16 A: Yes, sir.

17 Q: And the State has promised that they'll take into
18 consideration any cooperation, correct?

19 A: Yes, sir.

20 Q: And you just entered into that yesterday, correct?

21 A: Yes, sir.

22 Q: Now, Ms. Deangelo, you were arrested back March 5th,
23 2010, correct?

24 A: Yes, sir.

25 Q: And where was that where you were arrested?

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ANGEL DEANGELO - DIRECT EXAMINATION BY MR. RICHARDSON

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- 1 A: [REDACTED] Junco Circle.
- 2 Q: Junco Circle?
- 3 A: Uh-huh (affirmative response).
- 4 Q: Now at that time, March 5th, 2010, was your permanent
- 5 address at Junco Circle?
- 6 A: No, sir.
- 7 Q: To your knowledge who lived at Junco Circle?
- 8 A: Wesley Alton Gore.
- 9 Q: Wesley Alton Gore, Jr.
- 10 A: Yes, sir.
- 11 Q: Now, you were found there that day, correct?
- 12 A: Yes, sir.
- 13 Q: And you say that was Mr. Gore's residence. How did you
- 14 get to -- how did you come to know the Defendant, Mr. Gore?
- 15 A: A friend of mine that I was going to school with
- 16 introduced him and I.
- 17 Q: So, a friend introduced you two?
- 18 A: Yes, sir.
- 19 Q: And if you'd speak up just a little bit more.
- 20 A: Sorry.
- 21 Q: Okay. When were y'all introduced?
- 22 A: January the 17th of 2010.
- 23 Q: January 17th, 2010. So for about forty/forty-five days
- 24 before this arrest?
- 25 A: Yes, sir.

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ANGEL DEANGELO - DIRECT EXAMINATION BY MR. RICHARDSON

1 Q: January 17th, 2010, the first time you met the Defendant
2 Gore?

3 A: Yes, sir.

4 Q: And tell us what went on that night?

5 A: Him and his cousin came to my house in North Carolina and
6 the girl that I went to school with and them two and I, we
7 went to the bowling in Wilmington.

8 Q: You went with him where?

9 A: To the bowling alley in Wilmington.

10 Q: And at the conclusion of the night, after y'all got done
11 bowling, where did y'all stay?

12 A: At his house?

13 Q: And where is that located?

14 A: [REDACTED] Junco Circle.

15 Q: And who drove you there?

16 A: He did.

17 Q: He drove you there. When you get to [REDACTED] Junco Circle
18 that night, the night of January 17th, 2010, I guess into the
19 early morning hours of January 18th, 2010. Who else was at
20 that house when you arrived?

21 A: Nobody else.

22 Q: Nobody else was at the house?

23 A: No, sir.

24 Q: How did y'all get in the house?

25 A: He let us in.

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ANGEL DEANGELO - DIRECT EXAMINATION BY MR. RICHARDSON

1 Q: He, you're talking about the Defendant let you in?

2 A: Yes.

3 Q: He opened the door with a key?

4 A: Yes.

5 Q: And you said you were living where at that time?

6 A: [REDACTED] Goldfinch Place in North Carolina.

7 MR. RICHARDSON: Your Honor, the defense has been
8 provided with this State's Number Thirty-five ---

9 THE COURT: What is that?

10 MR. RICHARDSON: We provided them with it this morning,
11 Your Honor.

12 THE COURT: What is State's Number Thirty-five for the
13 record.

14 MR. RICHARDSON: It's a lease agreement between Ms.
15 Deangelo, I believe she'll identify it as being lease
16 agreement between herself and a leaseholder or a management
17 company on a residence she had leased in -- [REDACTED] Goldfinch
18 Place, Shallotte.

19 THE COURT: I'll permit it.

20 MR. RICHARDSON: Thank you, sir.

21 BY MR. RICHARDSON:

22 Q: Ms. Deangelo, if you could look at State's Number Thirty-
23 five and see if you can identify that.

24 A: Yes, sir. This is my rent lease.

25 Q: That is the lease you signed?

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ANGEL DEANGELO - DIRECT EXAMINATION BY MR. RICHARDSON

1 A: Yes, sir.

2 Q: And where is the address? Is it an apartment or house?

3 A: It was a single-wide trailer.

4 Q: Single-wide trailer and where is it located?

5 A: In Shallotte, North Carolina.

6 Q: And when did you begin living at that address in North
7 Carolina?

8 A: I have lived there almost two years prior to this.

9 Q: What's the date on the lease?

10 A: November the 1st of 2009.

11 Q: Through what time?

12 A: November the 1st of 2010.

13 Q: So, at the time of your arrest, you still have the lease
14 on this place in North Carolina?

15 A: Uh-huh (affirmative response).

16 MR. RICHARDSON: The State would seek to introduce
17 State's Number Thirty-five into evidence, Your Honor.

18 MR. TRUSLOW: No objection.

19 THE COURT: Without objection.

20 STATE'S EXHIBIT NUMBER THIRTY-FIVE

21 ADMITTED INTO EVIDENCE

22 BY MR. RICHARDSON:

23 Q: Now, the first night you meet the defendant you go over
24 and stay at his house?

25 MR. TRUSLOW: Objection to leading, Your Honor, just on

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ANGEL DEANGELO - DIRECT EXAMINATION BY MR. RICHARDSON

1 and on.

2 THE COURT: Well, I hadn't heard the full question. Go
3 ahead.

4 MR. RICHARDSON: Yes, sir.

5 THE COURT: Just follow the rule.

6 MR. RICHARDSON: I'm just trying to get there, Your
7 Honor, for a point of reference.

8 THE COURT: I understand but you've got to get there by
9 the rules.

10 MR. RICHARDSON: Yes, sir.

11 THE COURT: All right.

12 BY MR. RICHARDSON:

13 Q: January 17th, 2010, you indicated you met the defendant
14 that night?

15 A: Yes, sir.

16 Q: And you drove to his address that night, correct?

17 A: Yes, sir.

18 Q: The house at Junco Circle?

19 A: Yes.

20 Q: Now, after that night, what was the status of your
21 relationship with the defendant?

22 A: We talked quite often.

23 Q: You talked quite often?

24 A: Uh-huh (affirmative response).

25 Q: In what way, on the phone, by email, how?

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ANGEL DEANGELO - DIRECT EXAMINATION BY MR. RICHARDSON

- 1 A: We seen each other and on the telephone.
- 2 Q: You'd see each other. At this time, where were you
- 3 working?
- 4 A: In North Carolina at the Sunshine Pancake House in
- 5 Shallotte.
- 6 Q: And what was your position at Sunshine Pancake House?
- 7 A: Hostess/waitress.
- 8 Q: Hostess/waitress -- was that your only job? Did you do
- 9 anything else?
- 10 A: I went to school full-time.
- 11 Q: And by full-time what do you mean?
- 12 A: Monday through Thursday, 8:00 in the morning till 5:30 in
- 13 the evening.
- 14 Q: So, and where is that school located?
- 15 A: Brunswick County.
- 16 Q: Brunswick County?
- 17 A: Uh-huh (affirmative response).
- 18 Q: So, 8:30 in the morning till, what did you say 5:30 or 5
- 19 o'clock?
- 20 A: 5:30.
- 21 Q: 5:30 in the evening, you'd be at school?
- 22 A: Yes, sir.
- 23 Q: Monday through Thursday?
- 24 A: Yes, sir.
- 25 Q: And other than that you said that you worked at the

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ANGEL DEANGELO - DIRECT EXAMINATION BY MR. RICHARDSON

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1 pancake house?

2 A: Uh-huh (affirmative response).

3 Q: How often would you see the defendant?

4 A: Late evenings three or four nights a week.

5 Q: So, you'd see him three or four nights a week?

6 A: Yes, sir.

7 Q: Where would you see him?

8 A: At his house.

9 Q: At his house. How would you get there?

10 A: I would drive there.

11 Q: And this begins after you first met him, I assume?

12 A: Yes, sir.

13 Q: Up till March 5th?

14 A: Yes, sir.

15 Q: Now, when you weren't -- and whenever you'd go see him,
16 how long would you stay?

17 A: Just the night.

18 Q: You'd spend the night?

19 A: Yeah, because I'd have to go to school or work the next
20 morning.

21 Q: And whenever you would go over to see him in the evening,
22 get out of school at 5:30 you said, how long a trip was it
23 from -- is it Shallotte?

24 A: Yes, sir. Well, Bolivia is where the school is at?

25 Q: Okay. How long of a trip from Bolivia -- from your

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ANGEL DEANGELO - DIRECT EXAMINATION BY MR. RICHARDSON

1 school to Junco Lane?

2 A: About an hour, hour-and-a-half.

3 Q: About an hour, hour-and-a-half, so we're taking 6:30, 7
4 o'clock at the earliest you could make it over there?

5 A: Yes, sir.

6 Q: And you met him in January. So, it's dark at this point
7 whenever you're driving?

8 A: Late evening, I guess.

9 Q: Now, when you arrived at the defendant's house, what
10 would you do?

11 A: Half the time just go in, watch TV and then go to sleep.

12 Q: And the TV, where was it located?

13 A: Downstairs or in the bedroom.

14 Q: Downstairs or in the bedroom?

15 A: (Indicates affirmatively.)

16 Q: Did you ever go in the kitchen?

17 A: No.

18 Q: Did you ever go into other rooms in the house?

19 A: No, sir.

20 Q: So, you'd come in, go in the living room and then go
21 upstairs to the bedroom?

22 A: Yes, sir.

23 Q: How about the bathroom?

24 A: In his bedroom, the bath in his bedroom.

25 Q: The bathroom that's attached to the master bedroom?

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ANGEL DEANGELO - DIRECT EXAMINATION BY MR. RICHARDSON

1 A: Yes, sir.

2 Q: And whenever you would go over to stay, I believe you
3 indicated three to four nights a week?

4 A: Yes, sir.

5 Q: How'd you have clothes?

6 A: I would bring clothes with me.

7 Q: And how would you store those clothes?

8 A: In the bag that I brought them in.

9 Q: So, you'd have them in a bag. Did you have any drawers
10 or anything there?

11 A: No, sir.

12 Q: No drawers where you kept belongings?

13 A: No, sir.

14 Q: The nights that you would stay there, three to four
15 nights a week from January 17th through March, did you ever
16 witness anybody else staying there.

17 A: No, sir.

18 Q: So, nobody else ever stayed there the same nights you
19 did?

20 A: No, sir.

21 Q: You ever see anybody come in the house while you were
22 there?

23 A: No, sir.

24 Q: How many cars did the defendant have?

25 A: Two, I believe at the time.

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ANGEL DEANGELO - DIRECT EXAMINATION BY MR. RICHARDSON

- 1 Q: And what kind of cars were they?
- 2 A: One was a BMW and one was a Acura Legend.
- 3 Q: How about a truck? Did he have a truck?
- 4 A: Uh-huh (affirmative response), he did have a truck also.
- 5 Q: So, he had a truck and he had the Acura Legend and the
- 6 BMW, correct?
- 7 A: Yes, sir.
- 8 Q: And what kind of car were you driving at the time?
- 9 A: I had a white Honda Civic.
- 10 Q: White Honda Civic. I believe -- let's see -- let me show
- 11 you what's been previously identified and entered into
- 12 evidence State's Number Two. Do you recognize State's Number
- 13 Two?
- 14 A: Yes, sir.
- 15 Q: That's your Civic?
- 16 A: Yes, used to be.
- 17 Q: Used to be, used to be. Now, do you have any children?
- 18 A: Yes, sir. I have a six-year-old.
- 19 Q: Six-year-old? So, at the time he would've been four?
- 20 A: Five.
- 21 Q: Five at the time.
- 22 A: Yes, sir.
- 23 Q: Did he live with you?
- 24 A: No, sir.
- 25 Q: Who did he live with?

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ANGEL DEANGELO - DIRECT EXAMINATION BY MR. RICHARDSON

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1 A: His dad's aunt.

2 Q: He's dad's aunt.

3 A: Uh-huh (affirmative response).

4 Q: So, you -- at that time you just didn't have custody of
5 him?

6 A: Well, it wasn't really custody or anything, he just --
7 during the week he would stay with them because he goes to
8 school in that district.

9 Q: Did there ever come a time when your son came over to
10 Junco Lane?

11 A: Not prior to March the 5th, no, sir.

12 Q: Not prior to March 5th?

13 A: No, sir.

14 Q: So, at the time that you and the defendant were arrested,
15 your son had never been at Junco Lane?

16 A: Yes, sir.

17 MR. RICHARDSON: Court's indulgence.

18 BY MR. RICHARDSON:

19 Q: Whenever you would go to see the defendant, how would you
20 gain entry to the house?

21 A: He would let me in.

22 Q: He would let you in. Did you ever have a key?

23 A: No, sir.

24 Q: I'm going to show you some pictures if I could. Let's
25 look at State's -- already entered into evidence -- State's

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ANGEL DEANGELO - DIRECT EXAMINATION BY MR. RICHARDSON

- 1 Six, Five and Seven. See if you recognize these photographs.
2 Just take a look at them real quick, please, ma'am.
3 A: Uh-huh (affirmative response).
4 Q: Do you recognize those photographs?
5 A: That's his bedroom.
6 Q: That's his bedroom?
7 A: Yes.
8 Q: And you would come stay the night with him?
9 A: Yes, sir.
10 Q: Now, when you stayed the night with the defendant at his
11 house, where would you sleep?
12 A: On that far side where the teddy bear is at.
13 Q: On the teddy bear side of the bed, correct?
14 A: Yes, sir.
15 Q: And as we look at State's Number Five, same bed?
16 A: Yes, sir.
17 Q: Once again the teddy bear, that's the side of the bed you
18 slept on, correct?
19 A: Yes, sir.
20 Q: What's this bag and everything over here?
21 A: A bag of clothes that I had there.
22 Q: That's your bag of clothes?
23 A: Yes, sir.
24 Q: And about this bed -- I see that the bed is made. How
25 common was it that the bed was made?

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- 1 A: He would make it.
- 2 Q: He was orderly, he'd make it in the mornings?
- 3 A: Yes.
- 4 Q: You wouldn't make the bed?
- 5 A: No, sir.
- 6 Q: I show you what's been previously marked as State's
- 7 Number Seven, do you recognize that?
- 8 A: I mean, I recognize the bed.
- 9 Q: You recognize the bed. What side of the bed is that?
- 10 A: It looks like the right side of the bed.
- 11 Q: The right side as you look at the bed. And whose side of
- 12 the bed is that?
- 13 A: He would sleep on the right side of the bed.
- 14 Q: That was Mr. Gore's side of the bed?
- 15 A: Uh-huh (affirmative response).
- 16 Q: The side he'd sleep on when he made the bed, that was on
- 17 his side.
- 18 A: Yes, sir.
- 19 Q: Let's look at State's Number Ten, do you recognize
- 20 State's Number Ten?
- 21 A: Yes, that's -- my clothes and his clothes on the chair.
- 22 Q: In State's Number Ten, what -- you said this was some of
- 23 your clothes?
- 24 A: That red bag, yes.
- 25 Q: That red bag is yours. Now how about that item right

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ANGEL DEANGELO - DIRECT EXAMINATION BY MR. RICHARDSON

- 1 here in the corner that's red.
- 2 A: Those are my heels.
- 3 Q: Those are your heels?
- 4 A: (Indicates affirmatively.)
- 5 Q: Was it common that you wore high heels?
- 6 A: If I went out, yes.
- 7 Q: No doubt about it, these are your shoes.
- 8 A: Those are mine.
- 9 Q: Was there a closet in that bedroom?
- 10 A: Yes, sir.
- 11 Q: Did you keep any items in the closet?
- 12 A: No, sir.
- 13 Q: Let me show you State's Number Fifteen. You see State's
- 14 Fifteen?
- 15 A: Yes, sir.
- 16 Q: Whose closet is that?
- 17 A: That's Wesley's closet.
- 18 Q: Wesley's closet and the clothing in there, whose clothing
- 19 is that?
- 20 A: His clothing.
- 21 Q: Did there come a time when you saw him wearing of that
- 22 clothing?
- 23 A: I'm pretty sure.
- 24 Q: You say you're pretty sure?
- 25 A: Yes.

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1 Q: Now, are there any women's shoes that you see in the
2 floor of that closet?

3 A: No, sir.

4 Q: Do you see any dresses in that closet?

5 A: No, sir.

6 Q: Describe if you would any type of women's clothing you
7 see in that closet.

8 A: There isn't any.

9 Q: There's no women's clothing in that closet. In this
10 photograph that we see on State's Number Fifteen, who is that?

11 A: That's Wesley.

12 Q: That's Wesley and ---

13 A: And I.

14 Q: That's Wesley and you?

15 A: Yes, sir.

16 Q: And State's Number Sixteen, the clothing in the top of
17 the closet, any of that belong to you?

18 A: No, sir.

19 Q: Do you know who that belongs to?

20 A: Wesley.

21 Q: Had you ever seen anybody in that closet other than
22 Wesley?

23 A: No, sir.

24 Q: Had you ever seen him in the closet?

25 A: To get clothes out to get dressed.

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ANGEL DEANGELO - DIRECT EXAMINATION BY MR. RICHARDSON

1 Q: So, you would see the Defendant dressing in that closet
2 or getting clothes out of the closet to get dressed?

3 A: Yes, sir.

4 Q: Let's look at State's Fourteen. Do you recognize State's
5 Fourteen?

6 A: Yes, sir.

7 Q: And what do you recognize State's Fourteen as being?

8 A: The master bedroom bathroom.

9 Q: That's the master bedroom bathroom. Could you tell us
10 what in there belongs to you, if anything?

11 A: My flat iron.

12 Q: It's a flat iron and I'm guessing one or two guys might
13 not know what that is. What's a flat iron?

14 A: To straighten my hair with.

15 Q: It straightens your hair, okay. Anything else?

16 A: No, sir.

17 Q: Do you see anything else that would normally be
18 associated with female beauty supplies in that room?

19 A: Just the items for my hair.

20 Q: Now, State's Number Twelve, I'm gonna point you to it.
21 It's already been introduced. There's a photograph right
22 here. Have you seen that photograph before?

23 A: Yes, sir.

24 Q: Can you identify anyone in that photograph?

25 A: That's Wesley and his sister's boyfriend.

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ANGEL DEANGELO - DIRECT EXAMINATION BY MR. RICHARDSON

1 Q: Okay. So, the person -- what is Wesley wearing in that
2 photograph?

3 A: Black.

4 Q: So, he's the one in black in that photograph?

5 A: Yes, sir.

6 Q: And you're familiar with Wesley, so you would know?

7 A: Yes, sir.

8 Q: And you'd seen that photograph before?

9 A: Yes, sir.

10 Q: Finally, as far as photographs, State's Number Three,
11 could you tell us what State's Number Three is?

12 A: That's his daughter's bedroom.

13 Q: His daughter's bedroom and in what bed would his daughter
14 sleep?

15 A: The small one, whichever one she fell asleep in.

16 Q: Whichever one -- okay. How old was the daughter?

17 A: Three.

18 Q: She was three and it's a toddler's bed, correct?

19 A: Yes, sir.

20 Q: Now, would you ever see anybody else sleep in that
21 bedroom?

22 A: No, sir.

23 Q: Speak in a little bit closer to the microphone. Just
24 slide in just a little bit.

25 Let's go to the morning of March 5th, 2010, okay?

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ANGEL DEANGELO - DIRECT EXAMINATION BY MR. RICHARDSON

1 A: Uh-huh (affirmative response).

2 Q: Or actually, let's go to the night before. What time did
3 you get over there on March 4th, 2010?

4 A: I don't remember.

5 Q: You indicated previously you normally arrived or you
6 normally left school, would that've been the case?

7 A: Oh, yes, sir.

8 Q: Okay. So, we know it had to be after 5:30.

9 A: Yeah, because March the 5th was a Friday.

10 Q: March the 5th was a Friday. And what were you scheduled
11 to do March 5th?

12 A: Go to work that morning.

13 Q: Go to work that morning. And where were you going to
14 work?

15 A: In North Carolina at the pancake house.

16 Q: Whenever you got over there on Thursday evening, you said
17 this was a Friday morning when you got arrested?

18 A: Yes, sir.

19 Q: When you got over there on Thursday evening, what did you
20 do?

21 A: I don't really remember.

22 Q: Don't recall specifically?

23 A: No, sir.

24 Q: How about Friday morning? Do you recall what you did
25 that morning?

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1 A: Yes, sir.

2 Q: And what was that?

3 A: We got up early that morning because I had to be to work
4 by 9 o'clock.

5 Q: Speak up just a little bit.

6 A: I had to be to work by 9 o'clock. So, we had gotten up
7 that morning, I had gotten ready, we left out, I believe I
8 left out before he did. I was on my way to work. It got to
9 Highway 90 and 57 when I received a phone call from Wesley
10 saying that he's been pulled over, for me turn around and come
11 back. As I turned around and came back, he would -- they had
12 -- the police had him pulled over at the IGA right there on
13 Highway 90. I got out my car to find out what was going on.
14 He asked me to call his mom, shouted her telephone number to
15 me and asked me to go back to the house and find out what was
16 going on. I then called his mother, went back to the house
17 and as I pulled up, the officers were there. I got out of the
18 car, Mr. Kent Donald, I think was the officer's name, met me
19 at the end of the driveway, told me that I needed to leave. I
20 told him that I was on the phone with the owner of the house,
21 that she wanted to know what was going on. And he then asked
22 me again to leave. He asked me numerous times to leave and I
23 did. So, then he handcuffed me and put me in the back of the
24 car.

25 Q: Did you tell him anything about your residency at the

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ANGEL DEANGELO - DIRECT EXAMINATION BY MR. RICHARDSON

1 house?

2 A: He asked me did I live there and in order to see the
3 search warrant, I told him that I did.

4 Q: Now, why did you feel that you needed to tell him you
5 lived there?

6 A: Just so he would show me search warrant.

7 Q: Okay. And why did you go back to the house that morning?

8 A: Wesley asked me to go back and see what was going on.

9 Q: So, Mr. Gore knew that he was in custody at the time and
10 he wanted you to go back.

11 A: Yes, sir.

12 Q: Did you go in the house on the search warrant?

13 A: No, sir.

14 Q: Now, you just told the jury that you were on the phone
15 with the home's owner, the mother -- is that Mr. Gore's
16 mother?

17 A: Yes, sir.

18 Q: Now, she owns the home. Did she live there?

19 A: No, sir.

20 Q: And how do you know this?

21 A: There was nothing in that house that ---

22 Q: Did you ever see ---

23 A: No, sir.

24 Q: --- the defendant's mother over there?

25 A: No, sir.

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ANGEL DEANGELO - DIRECT EXAMINATION BY MR. RICHARDSON

1 Q: So, she was kind of like the landlord?

2 A: I guess you could say that, yeah.

3 Q: And you would stay over there the majority of the week,
4 four -- three to four nights a week?

5 A: Yes, sir.

6 Q: Once again, at any point, whenever you were staying over
7 there, tell us anybody else you saw over at the house?

8 A: The only person that I recall coming over there was his
9 daughter's mom's brother.

10 Q: So, nobody else spent the night over there?

11 A: No, sir.

12 Q: And you indicated you went to school during the day?

13 A: Yes, sir.

14 Q: So, what business went on during the day, you wouldn't
15 have known?

16 A: No, sir.

17 Q: After you got arrested, how long were you in J. Reuben?

18 A: Five days.

19 Q: Five days. Now, when you got served with these warrants,
20 what was your reaction?

21 A: Shocked.

22 Q: You were shocked?

23 A: Yes.

24 Q: Why?

25 A: I had no idea about any of that. I mean, when I was put

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ANGEL DEANGELO - DIRECT EXAMINATION BY MR. RICHARDSON

1 in handcuffs, I was told I was being arrested for interfering
2 in an investigation which is, I guess, is considered resisting
3 arrest. When I was served with drug charges, drug trafficking
4 on top of that, I was in shock, I mean, you know...

5 Q: Because it wasn't your house?

6 A: No, sir. Definitely wasn't my drugs.

7 Q: Well, did you ever talk to the defendant about it, about
8 these charges?

9 A: After he got out, yes, we talked about it.

10 Q: What did you talk about?

11 A: Just told me that he didn't know what was going on and --
12 but I didn't have anything to worry about.

13 Q: So, he told you you didn't have anything to worry about?

14 A: Yes, sir.

15 Q: Did there come a time when you moved back in that house?

16 A: No, sir.

17 Q: So, you never moved into the Junco Lane house?

18 A: No, sir. I stayed there off and on more than three or
19 four nights a week.

20 Q: So, you maintained your residence in North Carolina but
21 you'd still stay at Junco?

22 A: Yes, sir.

23 Q: And for how long? What period of time would you stay off
24 and on at Junco.

25 A: A couple of weeks at a time.

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ANGEL DEANGELO - DIRECT EXAMINATION BY MR. RICHARDSON

1 Q: And I'm sorry, I may not be clear. We're talking about
2 after you got out?

3 A: After.

4 Q: Until -- what date did you cease staying at Junco Lane?
5 About what time -- what year?

6 A: Last January.

7 Q: Of 2011?

8 A: Yes, sir.

9 Q: So, you were -- you continued to go over to Junco Lane
10 through 2011?

11 A: Yes, sir.

12 Q: And whenever you would go over at that point, who was
13 living in that house?

14 A: Just Wesley.

15 Q: Just Wesley?

16 A: Yes, sir.

17 Q: So, just the defendant?

18 A: Yes, sir.

19 Q: Anybody else staying over whenever you'd be over there?

20 A: No, sir.

21 Q: When you'd spend the night, did anybody else lay their
22 head down there?

23 A: No, sir.

24 Q: How long did you and the defendant date?

25 A: It was an off-and-on relationship. I can't really say, I

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ANGEL DEANGELO - DIRECT EXAMINATION BY MR. RICHARDSON

1 mean...

2 Q: For what period of time did the off-and-on relationship
3 go on?

4 A: A year.

5 Q: A year, so through 2011?

6 A: Yes, sir.

7 Q: Now, at any point during y'all's relationship, on again,
8 off again, Rachel and Ross, did -- did you ever know him to
9 live at any other addresses?

10 A: No, sir.

11 Q: So, you never knew him to live at Starbluff or anywhere
12 else, just at Junco?

13 A: Just at Junco.

14 Q: And to your knowledge, who had control of Junco Lane?

15 A: That residence?

16 Q: Yes.

17 A: He did.

18 Q: And whose cars were in the garage at Junco Lane?

19 A: His vehicles.

20 Q: Whose clothes were in the closet in that master bedroom?

21 A: His clothes.

22 Q: Whose side of the bed was that handgun found on?

23 A: His side of the bed.

24 Q: All right. Coming up towards the end, Ms. Deangelo. Let
25 me show you what's been previously introduced as State's

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ANGEL DEANGELO - CROSS EXAMINATION BY MR. TRUSLOW

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1 Twenty-six and Twenty-seven, have you ever seen these
2 photographs before?

3 A: Yes, sir.

4 Q: Whose photographs are those?

5 A: Wesley's.

6 Q: So, these are not your photographs?

7 A: No, sir.

8 Q: These aren't boyfriend photographs of yours?

9 A: No, sir.

10 Q: Did you have any drawers in that master bedroom?

11 A: No, sir.

12 Q: The drawers in that master bedroom, who did they belong
13 to?

14 A: Wesley.

15 Q: The kitchen, who did that belong to?

16 A: Wesley.

17 Q: Everything in that closet, who did that belong to?

18 A: Wesley.

19 Q: Thank you.

20 THE COURT: Does that conclude your examination at this
21 time?

22 MR. RICHARDSON: Yes, sir, Your Honor.

23 THE COURT: You may examine, Mr. Truslow.

24 MR. TRUSLOW: May it please the Court.

25 CROSS EXAMINATION OF ANGEL DEANGELO BY MR. TRUSLOW:

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ANGEL DEANGELO - CROSS EXAMINATION BY MR. TRUSLOW

1 Q: Ms. Deangelo, everything you're testifying today and all
2 this that you're saying, this is according to you, right?

3 A: Yes, sir.

4 Q: Coming from you?

5 A: Yes, sir.

6 Q: You realize you're the only one that's testified as to
7 anything to do with Wesley living in that house?

8 A: Yes, sir.

9 Q: Okay. Now, when we picked the jury, you were sitting
10 over here, do you recall that?

11 A: Yes, sir.

12 Q: Okay. And you've had about two years to tell these folks
13 in law enforcement or anybody what you're telling this jury
14 today; do you realize that?

15 A: Yes, sir.

16 Q: So, you don't tell that until the day that they are gonna
17 try you for these drugs, correct?

18 A: Yes, sir.

19 Q: Okay. So, what changed between you picking the jury with
20 us and you sitting up there telling these stories that you're
21 telling today; what changed?

22 A: I'm not telling stories; I'm telling the truth.

23 Q: According to you. What changed?

24 A: Well, I spoke with my lawyer numerous times and this just
25 came about.

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ANGEL DEANGELO - CROSS EXAMINATION BY MR. TRUSLOW

1 Q: Well, no, they offered you the opportunity of doing this
2 a long time ago, haven't they?

3 A: I haven't spoke with them until yesterday.

4 Q: To your lawyer -- you never knew that you offered to tell
5 the truth a long time ago or to tell on Wesley or to testify
6 for them because they needed help?

7 A: No, sir.

8 Q: When is the first time you learned that they wanted you
9 to testify and you've had this opportunity to get out of
10 trouble?

11 A: Yesterday.

12 Q: Okay. And speaking of getting out of trouble, did they
13 also tell you you're facing twenty-five years in prison?

14 A: They didn't tell me I'd get out of trouble ---

15 Q: Did you know that?

16 A: --- if I testified.

17 Q: They didn't tell you you could get out of trouble?

18 A: No, sir.

19 Q: Okay. Well, we're gonna get to that. First of all, did
20 you understand what kind of trouble you are in?

21 A: Yes, sir.

22 Q: What is that?

23 A: I'm facing twenty-five years.

24 Q: And that's not just twenty-five years if you get it,
25 that's mandatory twenty-five.

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ANGEL DEANGELO - CROSS EXAMINATION BY MR. TRUSLOW

1 A: Yes, sir.

2 Q: Right. That means that's the only thing the judge can
3 do, right?

4 A: Yes, sir.

5 Q: You can't get twenty-four.

6 MR. RICHARDSON: Your Honor, I object. He's going into
7 sentencing at this point and I ---

8 MR. TRUSLOW: This goes to credibility.

9 THE COURT: No, he's entitled ---

10 MR. RICHARDSON: He's entitled to say a lengthy sentence,
11 I believe by the case law, Your Honor, he's not entitled to go
12 into ---

13 THE COURT: No, sir. I'm not going any further and he's
14 entitled to ascertain from her what she was potentially facing
15 and our case law -- we're not going into details ---

16 MR. TRUSLOW: I'm not. I just have one last ---

17 THE COURT: I understand but you're entitled to go that
18 far.

19 BY MR. TRUSLOW:

20 Q: You can't get twenty-four, you have to get twenty-five by
21 law, right, for trafficking this weight; do you understand
22 that?

23 A: Yes, sir.

24 Q: No parole, right?

25 MR. RICHARDSON: Your Honor, he's still going beyond

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ANGEL DEANGELO - CROSS EXAMINATION BY MR. TRUSLOW

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1 that.

2 THE COURT: No, sir, he's through with that.

3 BY MR. TRUSLOW:

4 Q: Now, you're saying that they didn't offer to do anything
5 for you, right?

6 A: No, sir.

7 Q: Where are you currently housed?

8 A: In North Carolina.

9 Q: No, I mean, currently. In jail?

10 A: Yes, sir.

11 Q: You're in jail, right?

12 A: (Indicates affirmatively.)

13 Q: So, after our jury selection, they carted you off to
14 jail, correct?

15 A: Yes, sir.

16 Q: Did these prosecutors come see you in jail?

17 A: Yes, sir.

18 Q: Which ones? Both of them?

19 A: Yes, sir.

20 Q: Was your lawyer there?

21 A: Yes, sir.

22 Q: So, your lawyer and the two prosecutors drive out to the
23 jail -- and do you recall being kind of in tears during jury
24 selection?

25 A: Yes.

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ANGEL DEANGELO - CROSS EXAMINATION BY MR. TRUSLOW

1 Q: You were worried, right?

2 A: Uh-huh (affirmative response).

3 Q: You're sitting in jail -- it's kind of cold over there,
4 too, isn't it?

5 A: Yes.

6 Q: You don't want to sit there twenty-five; you want to get
7 out, don't you?

8 A: Yes, sir.

9 Q: These two prosecutors drive to the jail and they tell you
10 what? You testify for us and we're not gonna do anything for
11 you? Is that what they happened?

12 A: That's what they told me.

13 Q: Did you sign this?

14 A: I signed that this morning.

15 Q: Okay, Exhibit Number Thirty-four. Did you read it?

16 A: Yes, sir.

17 Q: Okay. Can you read Paragraph Number Four of your
18 agreement for the jury, please?

19 A: The State shall consider the extent and degree of
20 cooperation of Angel Deangelo in the election of charges and
21 at the sentencing of Angel Deangelo and shall advise the Court
22 of Angel Deangelo's extent and degree of cooperation in
23 connection with the matter.

24 Q: Okay. So, do you not think they are offering to do
25 something for you?

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ANGEL DEANGELO - CROSS EXAMINATION BY MR. TRUSLOW

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1 A: No.

2 Q: Well, I mean, what you just read says that they can give
3 you another different charge other than this one, the bad one,
4 right, if they elect to do so, right?

5 A: Yes.

6 Q: They can tell the judge what they think your sentence
7 should be, right?

8 A: Yes.

9 Q: You don't think that's doing something for you?

10 A: They can't make me any promises, though.

11 Q: Well, did they tell you to say that?

12 A: No, sir.

13 Q: Did they tell you to say if I asked you that you weren't
14 promised anything?

15 A: No, sir.

16 Q: Okay. This promises you something, though. I mean, you
17 can't -- you read paragraph four, you get that, right?

18 A: Yes.

19 Q: Are we on the same page there ---

20 A: Yes.

21 Q: --- of what they can do for you if you testify?

22 A: Yes.

23 Q: Okay. Now, do you think if you testified that this was
24 your dope that they would change the charges or get you a
25 lesser sentence?

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ANGEL DEANGELO - CROSS EXAMINATION BY MR. TRUSLOW

1 A: No, sir.

2 Q: Okay. So, it's very specific what they want you to say,
3 right? I mean, if you weren't gonna throw Wesley under the
4 bus, they wouldn't be interested in having you stand up here
5 and testify.

6 A: Probably not.

7 Q: Probably not. Probably I would, right, if you'd be
8 honest about it, right?

9 A: Yes.

10 Q: Now, you brought in a lease agreement the last minute
11 that you had back during that time and I don't doubt that you
12 had a residence in North Carolina as well but you definitely
13 spent a lot of time at [REDACTED] Junco Circle, didn't you?

14 A: Yes, sir.

15 Q: Before and after this matter happened, right?

16 A: Yes, sir.

17 Q: All right. And you have a child that's how old?

18 A: Six.

19 Q: Okay. And you need to be there for him, don't you?

20 A: Yes, sir.

21 Q: And you don't think you would bend the truth or lie to
22 get out of this trouble for your child?

23 A: No, sir.

24 Q: No?

25 A: The truth is the truth.

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1 Q: Truth is the truth? Well, let's talk ---

2 A: And I'm under oath on the Bible.

3 Q: Okay, let's talk about the truth. You -- the father of
4 your child has custody?

5 A: No, sir.

6 Q: Okay. The father of your child live in North Carolina?

7 A: Yes, sir.

8 Q: Did you call my office and ask me to represent him on
9 drug charges?

10 A: I asked if you were ---

11 Q: You said the truth is the truth.

12 A: It is.

13 MR. RICHARDSON: Your Honor, relevance ---

14 THE COURT: Yes, I'm gonna sustain ---

15 MR. TRUSLOW: Your Honor, this goes to her drug
16 involvement. She's involved with drugs in other ---

17 MR. RICHARDSON: Your Honor, that doesn't go to ---

18 THE COURT: Wait a minute.

19 MR. TRUSLOW: --- and I'm saying that these are her
20 drugs.

21 THE COURT: Wait a minute. I'm gonna have to let -- step
22 outside, I'll call you back in just a second.

23 (REPORTER'S NOTE: The jury retires to the jury room.)

24 THE COURT: Mr. Truslow, I'm gonna hear what you say but
25 you understand if you open the door to her drug involvement,

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1 then you may be opening the door to who she had drug
2 involvement with.

3 MR. TRUSLOW: Judge, I'm simply asking her about the drug
4 involvement of her ex-husband.

5 THE COURT: And what relevancy does that have to this
6 case?

7 MR. TRUSLOW: The relevance is that she's involved with
8 somebody other than my client with drugs and guns. He was
9 arrested by the Feds for drugs and guns. She called me for
10 representation.

11 THE COURT: If you start getting into her involvement
12 with drugs now, they're entitled to say who else she's
13 involved with and it may or may not involve Defendant Gore.

14 MR. TRUSLOW: You're saying she may testify she dealt
15 drugs with Mr. Gore and she already said she didn't.

16 THE COURT: I don't know. I don't know that. I'm just
17 saying to you if you start with her about drug involvement or
18 her husband's drug involvement, you may be opening the door to
19 who else it possibly -- I don't know that it does but you're
20 getting ready to open the door.

21 MR. TRUSLOW: I want to make sure it doesn't open the
22 door to his prior stuff. It would open the door if she wants
23 to change her testimony now and say she was dealing drugs with
24 him too is what you're saying.

25 THE COURT: I don't understand -- I don't mind you asking

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ANGEL DEANGELO - CROSS EXAMINATION BY MR. TRUSLOW

1 her did she call you about her husband's drug involvement and
2 stopping that.

3 MR. TRUSLOW: All right. I will. I'll stop there.

4 THE COURT: But if you're getting ready to go into some
5 other drug involvement, you -- I'm telling you, you are
6 opening the door.

7 MR. TRUSLOW: I'm not going any further than that then.

8 THE COURT: You understand that?

9 MR. RICHARDSON: Yes, sir, Your Honor. I would just
10 object to the relevance on this. It has nothing to do with
11 impeachment purposes.

12 THE COURT: I understand we're gonna stop it at this
13 point because it does not have anything to do with it.

14 MR. RICHARDSON: I just ask that he not go any further
15 than what he had already.

16 THE COURT: Well, he said he wasn't so ---

17 MR. TRUSLOW: I'm not going any further than that.

18 MR. RICHARDSON: So, it's asked and answered and won't be
19 brought up again?

20 MR. TRUSLOW: No, I didn't get -- you interrupted me, I
21 didn't get to ask the question.

22 MR. RICHARDSON: Well, Your Honor, that'd be my objection
23 ---

24 MR. TRUSLOW: All I want to ask that one question that
25 goes to credibility. That's it. I'm not going into her

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1 involvement with it.

2 THE COURT: How does the fact that she called you about
3 representing her husband go into her credibility.

4 MR. TRUSLOW: Because, Judge, it's a big drug case and

5 ---

6 A: It's not my husband

7 MR. TRUSLOW: --- she is involved with drugs.

8 THE COURT: Again, if you get there now, I'm telling you
9 you've opening the door.

10 MR. TRUSLOW: I'm just -- you said I could ask that one
11 question and leave it alone.

12 THE COURT: Let's do this, I'm gonna sustain his
13 objection to that so that there won't be any problem. The
14 fact that she called you about representing her husband is not
15 relevant in this case and if ---

16 MR. TRUSLOW: Simply the fact that that's probably where
17 those drugs came from, Judge.

18 THE COURT: Well, if you do that now, you're opening the
19 door for her further information on drugs.

20 MR. TRUSLOW: She already testified she didn't have any
21 information with him.

22 THE COURT: I'm telling you this, I'm not telling you not
23 to go into it, I'm telling you if you do, you are opening a
24 door that you may not want to do.

25 MR. TRUSLOW: Which would be drug involvement between her

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1 and him.

2 THE COURT: Which would be drug involvement with anybody.

3 MR. TRUSLOW: All right.

4 THE COURT: Do you understand what I'm saying?

5 MR. TRUSLOW: No, sir, I don't but I understand your
6 ruling.

7 THE COURT: You need to understand it. I'm not gonna let
8 you talk about her drug involvement with one individual and
9 not them go into what other drugs she had.

10 MR. TRUSLOW: Well, I understand that, I mean, they could
11 go into whatever other drugs she had.

12 MR. RICHARDSON: Your Honor, he's talking about charges
13 that are pending against her ex-husband, then fine we should
14 be able to talk about the other charges pending ---

15 THE COURT: Why, sure, it's ---

16 MR. TRUSLOW: All right. I understand.

17 THE COURT: I don't want -- I don't want you to open that
18 door unless you want to.

19 MR. RICHARDSON: I would just like a clean trial, Your
20 Honor, and it has no relevance.

21 THE COURT: I sustain your objection.

22 MR. RICHARDSON: Thank you, Your Honor.

23 MR. TRUSLOW: Neither did those photographs of him
24 holding money that ---

25 THE COURT: Now, let it be one more clear to me, I'm

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ANGEL DEANGELO - CROSS EXAMINATION BY MR. TRUSLOW

1 telling you that the fact that she may have called you about
2 hiring you for -- to represent her husband, I sustain the
3 objection. It has no relevancy in this case. However, if you
4 wish to cross examine her about her drug involvement with
5 different individuals, I'm telling you you are opening the
6 door to the totality, if any, if her drug involvement
7 including, if any, this defendant, and that's all I'm saying.
8 Do you understand that?

9 MR. TRUSLOW: I understand that but that would -- that
10 would then mean not his prior drug involvement with other
11 people but with her.

12 THE COURT: No, sir. If you start going into her drug
13 involvement with anybody, they're entitled to expand it if
14 there's evidence of drug involvement with this defendant. You
15 can't have it just your way and limit it to that portion that
16 you want to bring in. I'm not telling you not to do it; I'm
17 just telling you if you do you're opening the door.

18 MR. TRUSLOW: All right, sir.

19 THE COURT: All right. At this point, I sustain the
20 objection.

21 MR. RICHARDSON: Thank you, Your Honor.

22 THE COURT: If he desires to go into her drug involvement
23 with anybody, I'm not precluding him from doing that, I'm just
24 saying to him he may be opening a door.

25 MR. TRUSLOW: But Your Honor, you sustained his objection

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1 as to me -- was asked and answered. You sustained his
2 objection as to me asking it again.

3 THE COURT: That's correct.

4 MR. TRUSLOW: Okay.

5 THE COURT: I'm gonna let it stay like it is.

6 MR. TRUSLOW: That stands and then we're starting from
7 scratch.

8 THE COURT: I'm gonna let it stay -- it's in there, I'm
9 gonna let it stay like it -- I'm just not gonna let you pursue
10 it but I'm not telling you not to ask further drug --
11 questions about her drug involvement, I'm just saying you're
12 opening the door where the solicitor can ask of the totality
13 of it. Do you understand?

14 MR. TRUSLOW: Yes, sir.

15 THE COURT: All right. I'm not telling you not to do it;
16 that's your call.

17 Bring the jury in.

18 THE COURT: I'm not gonna give a curative instruction
19 unless ---

20 MR. RICHARDSON: I would not ask for one, Your Honor.

21 THE COURT: Sir?

22 MR. RICHARDSON: I would not ask for one.

23 THE COURT: All right. That's fine.

24 (REPORTER'S NOTE: The jury returns to the courtroom.)

25 THE COURT: Mr. Foreman, ladies and gentlemen, from time

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ANGEL DEANGELO - CROSS EXAMINATION BY MR. TRUSLOW

1 to time, matters may be coming into court that are not
2 necessarily appropriate as evidence and sometimes we have to
3 call the jury out to go into it to make sure whether it's
4 admissible or not or whether it's relevant or not but be
5 assured that this court and the attorneys for the State and
6 defendant at no time want to deprive you of those facts to
7 which are you entitled. Nobody is trying to hide anything.

8 All right. You may resume your examination.

9 BY MR. TRUSLOW:

10 Q: Regardless of the fact that you had a lease in North
11 Carolina, you were living also at Junco Circle, if living is
12 eating and sleeping, if you're saying you spent three or four
13 nights there a week, right?

14 A: I stayed three or four nights a week.

15 Q: Okay. Whether in -- there's times when Wesley would
16 visit you there; is that what was going on?

17 A: Visit me where?

18 Q: At Junco Circle?

19 A: No, I would visit him.

20 Q: I mean, you were spending more time at Junco Circle,
21 weren't you, then you were in North Carolina?

22 A: No, sir.

23 Q: Four nights a week is more time ---

24 A: Not when ---

25 Q: --- than seven because you've got seven days in a week.

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1 A: It was three or four nights.

2 Q: Okay, well three or four, you're spending at least equal
3 time at Junco Circle, correct, going back and forth from North
4 Carolina to Longs, North Carolina to Longs, correct?

5 A: Yes, sir.

6 Q: Now, they said you didn't have any drawers in that house
7 to put your clothes, you kept all your clothes in a bag,
8 right?

9 A: Yes, sir.

10 Q: That's where all this cocaine was found, it was in a bag,
11 wasn't it?

12 A: Not in my red bag.

13 Q: Was it found in a bag?

14 A: I have no idea.

15 Q: Huh?

16 A: If it was, I have no idea.

17 Q: Who was at the door demanding to see the search warrant;
18 who made it back to the house? You, right?

19 A: Yes.

20 Q: And you told them that you wanted to see the search
21 warrant, right?

22 A: Yes, sir.

23 Q: You told them you lived there and you demanded to see the
24 search warrant, correct?

25 A: Yes, sir.

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ANGEL DEANGELO - CROSS EXAMINATION BY MR. TRUSLOW

1 Q: Now, when you say that Wesley or his mother or somebody
2 called you, is there anybody else that could substantiate or
3 back that up?

4 A: I called his mother like he asked me to.

5 Q: Okay, right. He called you. Now you said he was in
6 custody, he pulled out of there and got stopped, correct?

7 A: Yes, sir.

8 Q: He was in police custody. Did you -- do you know if any
9 of the police testified that they handed him the cell phone
10 and ---

11 MR. RICHARDSON: Your Honor ---

12 Q: --- let you call him?

13 THE COURT: Wait a minute.

14 MR. RICHARDSON: He's asking about other people's
15 testimony.

16 THE COURT: She was not in here when the testimony was
17 ---

18 Q: All right. Do you think it's logical ---

19 THE COURT: Well, she couldn't possibly answer that
20 question, she wasn't in here.

21 MR. TRUSLOW: Yes, sir.

22 BY MR. TRUSLOW:

23 Q: Do you think it's logical that if he's in custody, he can
24 make cell phone calls to you?

25 A: No, he didn't make a cell phone call. When I pulled back

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ANGEL DEANGELO - REDIRECT EXAMINATION BY MR. RICHARDSON

1 up to the store, they were taking him out of one car and
2 putting him into the other. He shouted me his mother's
3 telephone number and asked me to call her.

4 Q: Where were the police officers when he shouted this to
5 you?

6 A: Right there.

7 Q: They were right there?

8 A: Yes, sir.

9 Q: Okay. So, they would've heard that, right?

10 A: Yes, sir.

11 Q: Thank you. I have no further questions.

12 THE COURT: Can she come down?

13 MR. RICHARDSON: I've just got a couple of brief ones,
14 Your Honor, very brief.

15 REDIRECT EXAMINATION OF ANGEL DEANGELO BY MR. RICHARDSON:

16 Q: Did you ever stay at Junco Lane without Wesley Gore?

17 A: No, sir.

18 Q: And Mr. Truslow asked you about it's been two years since
19 you were arrested and this is the first we're hearing. What
20 was it that Wesley told you when you asked him -- when you
21 talked to him about your arrest?

22 A: He said that I didn't have anything to worry about.

23 Q: So, he told you, you ain't got nothing to worry about;
24 don't worry about anything?

25 A: Yes, sir.

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ANGEL DEANGELO - RECROSS EXAMINATION BY MR. TRUSLOW

1 Q: Thank you.

2 THE COURT: Come down.

3 MR. TRUSLOW: I've got one question, Your Honor.

4 THE COURT: Yes, sir.

5 RECROSS EXAMINATION OF ANGEL DEANGELO BY MR. TRUSLOW:

6 Q: You've had a lawyer for almost two years, haven't you?

7 A: Yes, sir.

8 Q: Okay. So, you had your own lawyer for almost two years?

9 A: Yes, sir.

10 Q: All right. Thank you.

11 THE COURT: You may come down.

12 MR. RICHARDSON: Thank you, Your Honor.

13 (REPORTER'S NOTE: Witness leaves the witness stand.)

14 THE COURT: All right. It's 1 o'clock, it's time to a
15 lunch. Your other witness will be here at 2:00; is that
16 right, solicitor?

17 MS. COTE: Sir? I'm sorry, Your Honor; would you repeat
18 the question?

19 THE COURT: Your other witness will be here?

20 MS. COTE: We do -- we are calling Ms. Lewis from the
21 Clerk of Court's office briefly.

22 THE COURT: Is she here? If it's brief, we can do that.

23 MS. COTE: Yes, sir.

24 THE COURT: Is she here?

25 MS. COTE: Yes, sir.

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HEATHER LEWIS - DIRECT EXAMINATION BY MS. COTE

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1 THE COURT: All right.

2 MS. COTE: The State calls Heather Lewis.

3 HEATHER LEWIS, HAVING BEEN SWORN,

4 TESTIFIED AS FOLLOWS:

5 THE COURT: All right. Thank you.

6 Is this something we can stipulate to?

7 MR. TRUSLOW: No, sir.

8 MS. COTE: No, Your Honor.

9 DIRECT EXAMINATION OF HEATHER LEWIS BY MS. COTE:

10 Q: Ms. Lewis, where are you employed?

11 A: I work for the Horry County Clerk of Court's office.

12 Q: And what's your job there?

13 A: I handle court proceedings, criminal court proceedings, I
14 enter criminal dispositions of cases and I assist the public
15 with any criminal matters that they may have questions about.

16 Q: As part of your duties, are you a custodian of records?

17 A: I am.

18 STATE'S EXHIBIT NUMBER THIRTY-SIX

19 MARKED FOR IDENTIFICATION

20 Q: I'm going to show you what's been marked as
21 identification for -- as State's Number Thirty-six. Do you
22 recognize that?

23 A: Yes, ma'am. It looks like a bond form on Alton Wesley
24 Gore, Jr.

25 Q: And would that have been a document that would be kept in

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HEATHER LEWIS - DIRECT EXAMINATION BY MS. COTE

1 the Clerk of Court's office in your custody and control?

2 A: Yes, ma'am.

3 Q: Does it appear to have been altered in any way?

4 A: No, ma'am.

5 Q: Can you please read for the jury what he lists as his
6 address on that bond form?

7 MR. TRUSLOW: Objection, Your Honor, there's no evidence
8 he listed that. He didn't fill that paperwork out. That's
9 his bond paperwork from the -- at the jail.

10 THE COURT: I will permit her to testify as to what the
11 document said, not gonna permit you to testify as to if he
12 wrote it or not.

13 MS. COTE: Okay.

14 THE COURT: You'll have to call somebody as to that
15 issue.

16 MS. COTE: Okay. Thank you.

17 THE COURT: The only thing I'm permitting here to see --
18 that's a document, a business record and she's entitled to
19 have it.

20 MS. COTE: Yes, sir.

21 THE COURT: But she can say what the contents of it but
22 not -- she can't testify that he did it.

23 MS. COTE: Correct.

24 THE COURT: He didn't -- it's not his record.

25 BY MS. COTE:

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HEATHER LEWIS - CROSS EXAMINATION BY MR. TRUSLOW

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1 Q: What's the name -- what's the address on that document?

2 A: It looks like [REDACTED] Juno Circle, Longs, South Carolina
3 29568.

4 Q: Is there a signature next to that?

5 A: Yes, ma'am.

6 Q: And what's the signature?

7 A: It looks like Alton Gore, Jr.

8 Q: Is that written in script?

9 A: Yes, ma'am.

10 Q: And what's the name on the document again?

11 A: Alton Wesley Gore, Jr.

12 Q: And what's the date of that document?

13 A: He dated it March 6th of 2010.

14 MS. COTE: Thank you, Your Honor. Nothing further from
15 this witness.

16 CROSS EXAMINATION OF HEATHER LEWIS BY MR. TRUSLOW:

17 Q: Now, you've been in the courtroom today, haven't you?

18 A: Yes.

19 Q: Did you hear the officers say that they filled in [REDACTED]
20 Junco Circle on all his paperwork? Did you recall that
21 testimony?

22 A: I don't recall.

23 Q: Are you familiar with the procedure at the jail in
24 filling out bond paperwork at J. Reuben Long?

25 A: No, sir.

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HEATHER LEWIS - CROSS EXAMINATION BY MR. TRUSLOW

1 Q: Okay. I have nothing further.

2 THE COURT: Thank you.

3 MS. COTE: I have nothing further from this witness, Your
4 Honor.

5 THE COURT: Is this document to be introduced into
6 evidence?

7 MR. TRUSLOW: No, sir.

8 MS. COTE: No, sir, Your Honor.

9 THE COURT: All right. Thank you. You may come down.
10 (REPORTER'S NOTE: Witness leaves the witness stand.)

11 THE COURT: Let's break for lunch. Please be back at
12 2:30. Remember my admonitions, don't discuss the case with
13 anybody, let no one discuss it with you. You must not even
14 discuss it among yourselves until I've given you the case for
15 your deliberation. Be back promptly at 2:30.

16 (REPORTER'S NOTE: The jury is excused for lunch break.)

17 (RECESS)

18 *****OFF THE RECORD*****

19 (On the Record.)

20 THE COURT: Good afternoon, please be seated.

21 MR. TRUSLOW: Your Honor, can we approach briefly.

22 THE COURT: Sure.

23 MR. TRUSLOW: You had asked about charges.

24 THE COURT: Uh-huh (affirmative response).

25 MR. TRUSLOW: And it's not specific jury charges but I

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HEATHER LEWIS - CROSS EXAMINATION BY MR. TRUSLOW

1 was gonna be seeking a charge for possession based upon this
2 -- this amount that was found separate from the big amount.
3 They could find him guilty of that. They were in two
4 different places.

5 MS. COTE: That wasn't even tested, Your Honor.

6 THE COURT: No, sir. I'm not gonna do that. Well, that
7 was found, that just adds to what else was found, it's not a
8 ---

9 MR. TRUSLOW: It was found in two separate bedrooms.

10 MR. RICHARDSON: It hasn't been tested. There's no
11 evidence as to weight on it.

12 THE COURT: I'm not gonna do that. Everybody knows
13 what's was -- can't do that. There's no evidence or testimony
14 in the record about that, there's no weight.

15 MR. TRUSLOW: The other thing is that I just got word
16 that the State was to call a brand new witness that's not on
17 the witness list and I had no knowledge of that whatsoever.

18 THE COURT: Who's the witness?

19 MR. TRUSLOW: They want to call a home detention person
20 and get into his monitoring on his bond monitoring about his
21 address. We've already been through his bond form and
22 everything else.

23 MR. RICHARDSON: Your Honor, the defendant was found, I
24 believe in August of 2011 still living at Junco. Mr. Truslow
25 asked questions about the defendant listing his address as of

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HEATHER LEWIS - CROSS EXAMINATION BY MR. TRUSLOW

1 May 2011 being some other address, so it just ---

2 THE COURT: I don't see that's prejudicial. The issue

3 ---

4 MR. RICHARDSON: And I'm not gonna ask him about what he
5 was being monitored for or was he monitoring pursuant to ---

6 THE COURT: Oh, no, you can't do that. How you gonna get
7 it in without telling the jury why he happened to have that
8 knowledge?

9 MR. RICHARDSON: The jury already knows that he's been on
10 bond, I would just ask if he was being monitored ---

11 MR. TRUSLOW: But that's prejudicial that he was on the
12 ankle bracelet.

13 MR. RICHARDSON: No, we're not even gonna ask about the
14 ankle bracelet. I'm gonna say were you monitoring him
15 pursuant to his bond; yes; at what address were you monitoring
16 him.

17 THE COURT: I will permit that.

18 MR. RICHARDSON: And did he sign off on that.

19 MR. TRUSLOW: As far as relevancy, that was after the
20 drug bust.

21 THE COURT: I know but that may be ---

22 MR. TRUSLOW: So, it doesn't show that he was living
23 there at the time.

24 THE COURT: Well, that may be -- well, it may or may not
25 be, that would be the jury to consider whether he was -- where

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HEATHER LEWIS - CROSS EXAMINATION BY MR. TRUSLOW

1 he was living right after it happened. They may infer from
2 that he was living there before; so, I'll let that in.

3 MS. COTE: And you brought up the driver's license form
4 in 2011 so that he had put a different address in 2011.

5 MR. TRUSLOW: Well, I mean, that's ---

6 MR. RICHARDSON: But his current ---

7 MR. TRUSLOW: If I had any witnesses, I'd let you know.

8 THE COURT: Irrelevant.

9 MR. RICHARDSON: Didn't realize that was gonna come up
10 until today.

11 THE COURT: Be careful now in your examination of that
12 witness because the issue that he was on bond is there's a
13 record.

14 MR. RICHARDSON: Yes, sir. I'm gonna talk with him very
15 briefly.

16 THE COURT: And I would conclude that where he was living
17 after the arrest may be information for the jury that he lived
18 there before.

19 MR. RICHARDSON: Your Honor, I just talked with Deputy
20 Johnson about thirty minutes ago, so I'd just ask for about
21 three minutes to speak with him just to make sure that he's
22 aware of where he's limited. It shouldn't delay the trial
23 any.

24 THE COURT: That's fine.

25 MR. RICHARDSON: Thank you, Your Honor.

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SHARON LILLY - DIRECT EXAMINATION BY MS. COTE

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1 (REPORTER'S NOTE: The jury returns to the courtroom.)

2 THE COURT: Good afternoon, Mr. Foreman, members of the
3 jury.

4 The jury is present, you may proceed.

5 MS. COTE: Thank you, Your Honor. The State calls Sharon
6 Lilly to the stand.

7 SHARON LILLY, HAVING BEEN SWORN,
8 TESTIFIED AS FOLLOWS:

9 CLERK: Please state your full name and spell your last
10 name.

11 MS. LILLY: Sharon Lilly, L-I-L-L-Y.

12 DIRECT EXAMINATION OF SHARON LILLY BY MS. COTE:

13 Q: Ms. Lilly, where are you employed?

14 A: Horry County Police Department as an evidence technician.

15 Q: How long have you been employed with Horry County as an
16 evidence technician?

17 A: About three years.

18 Q: Okay. So, were you employed there in March of 2010?

19 A: Yes, I was.

20 Q: Can you please discuss for the jury generally when an
21 officer brings in a BEST kit and drops it in the drug drop
22 box, what is the procedure from there?

23 A: I retrieve the drug kit and then I enter the information
24 into the computer and I hold it for court.

25 Q: I'm gonna show you what's been marked for identification

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SHARON LILLY - DIRECT EXAMINATION BY MS. COTE

1 as State's Exhibit Number Twenty-four. Do you recognize that
2 item?

3 A: Yes, I do.

4 Q: How do you recognize that item? Are there identifying
5 features on it?

6 A: It has the drug kit number on it and it has Officer Ard's
7 name on it and the date that he dropped it.

8 Q: What date did he drop it?

9 A: I believe on the chain it's March the 10th. It's not
10 visible on what I'm looking at here.

11 Q: I have your chain of custody.

12 A: Uh-huh (affirmative response).

13 Q: If I showed it to you, would that help refresh your
14 memory?

15 A: Yes, uh-huh (affirmative response).

16 MS. COTE: Your Honor, is that allowable?

17 THE COURT: You may.

18 MS. COTE: Thank you.

19 A: It was dropped on March the 5th, 2010.

20 BY MS. COTE:

21 Q: And when did you come into contact with that bag?

22 A: March the 5th, 2010.

23 Q: Okay. And what was the next step, where did it go next?

24 A: I have a -- we have a drug vault that we have locked up.

25 We put -- I put the drug kit in that drug vault until April

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SHARON LILLY - DIRECT EXAMINATION BY MS. COTE

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1 14th, 2010.

2 Q: Who all has access to that drug vault?

3 A: Me and my supervisors and another coworker.

4 Q: And on that date in April, I believe, what happened at
5 that point?

6 A: On April 14th, we received notice in the courts that it
7 needed to be tested and it was then pulled and given to Lisa
8 Floyd, the chemist, to be tested for court.

9 Q: And when you pick that bag up for the first time out of
10 the drug drop box, do you examine it and make sure that it's
11 intact?

12 A: I do.

13 Q: And do -- did that bag appear to be intact ---

14 A: It was.

15 Q: And it had not been tampered with in any way?

16 A: No, it hasn't.

17 Q: And when you gave it to Ms. Floyd to test it, was it
18 still intact?

19 A: It was still intact.

20 Q: And did it appear to have been tampered with in any way?

21 A: No, it didn't.

22 Q: Did you alter it or tamper with it at all while it was in
23 your possession?

24 A: Not at all. If I had, she would've given it back to me;
25 she would've rejected it.

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LISA FLOYD - DIRECT EXAMINATION BY MR. RICHARDSON

1 Q: Thank you. I have no further questions.

2 MR. TRUSLOW: Nothing, Your Honor.

3 THE COURT: You may come down and are then excused. Thank
4 you, Ms. Lilly.

5 MS. LILLY: Thank you.

6 (REPORTER'S NOTE: Witness leaves the witness stand.)

7 MR. RICHARDSON: Proceed, Your Honor?

8 THE COURT: Please.

9 MR. RICHARDSON: State would call the chemist, Lisa
10 Floyd.

11 LISA FLOYD, HAVING BEEN SWORN,

12 TESTIFIED AS FOLLOWS:

13 CLERK: Please state your full name and spell your last,
14 please.

15 MS. FLOYD: Lisa Floyd, F-L-O-Y-D.

16 DIRECT EXAMINATION OF LISA FLOYD BY MR. RICHARDSON:

17 Q: Ms. Floyd, how are you doing this afternoon?

18 A: Good, thank you.

19 Q: Could you please tell us a little bit about where you're
20 employed, in what capacity and how long?

21 A: Yes. I work for the Horry County Police Department and I
22 run the Regional Drug Analysis Laboratory for the Fifteenth
23 Judicial Circuit. I'm a forensic drug analyst and I've been
24 running the lab since September of 2002.

25 Q: What's the purpose of that, the Horry County Regional

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LISA FLOYD - DIRECT EXAMINATION BY MR. RICHARDSON

1 Drug Laboratory?

2 A: We test drugs for pretty much any agency in the Fifteenth
3 Judicial Circuit that requests drugs to be tested.

4 Q: And so you're the chemist there that actually does the
5 analysis?

6 A: That's correct.

7 Q: Now, with regard to forensic drug analysis -- is that
8 what it's called?

9 A: Yes.

10 Q: With regard to forensic drug analysis, what type of
11 training do you have with regard to that, educational
12 background?

13 A: I have a Bachelor of Science degree in biochemistry from
14 Clemson University and approximately twenty-four hours toward
15 a Master's degree in biochem also from Clemson. My training
16 is a fourteen-week drug training program for forensic drug
17 analysis and I undertook that at the Spartanburg County
18 Sherriff's office with a former SLED ---

19 THE COURT: Can we stipulate her as an expert in this
20 field?

21 MR. TRUSLOW: Yes, sir, Your Honor.

22 THE COURT: I conclude that based on her training,
23 education and experience, she is an expert in the area of
24 chemical analysis.

25 MR. RICHARDSON: Thank you, Your Honor. That'll shorten

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LISA FLOYD - DIRECT EXAMINATION BY MR. RICHARDSON

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1 it up; I appreciate it.

2 THE COURT: Okay.

3 BY MR. RICHARDSON:

4 Q: And you've been doing that how long?

5 A: Since September of 2002.

6 Q: And always at the Horry County Regional Drug Laboratory?

7 A: Yes.

8 Q: And so you were so employed back in, I believe it was

9 April of 2010?

10 A: Yes, I was.

11 Q: Now, in the course of your work as a forensic drug
12 analysis, narcotics analysis, educate us a little bit, what
13 does that entail?

14 A: I receive drugs packaged in what's called a BEST kit
15 which is simply a tamper-evident envelope and the associated
16 paperwork with that. That's so that I can make sure that
17 there's been no tampering done to the evidence before I
18 receive it for testing. When I receive it, I inspect it to
19 make sure it has not been tampered with and make markings
20 accordingly. If it has been tampered with in any way it would
21 be immediately returned to evidence and not tested. At that
22 point, I would either analyze it or store it for analysis.
23 And when it's ready to be analyzed, I would simply open the
24 package where it indicates to be opened. I would do what's
25 called a presumptive test which in most cases is simply a

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LISA FLOYD - DIRECT EXAMINATION BY MR. RICHARDSON

1 color test similar to the field test kits that you see
2 officers use and then if it's pills, then I would use
3 different reference materials to make sure that I can identify
4 a manufacturer and have a picture to compare it to. And then
5 what's called a confirmatory analysis is done at that point
6 which is typically done by gas chromatography with a mass
7 selective detector. It's short GC-MS. It's a very standard
8 forensic drug analysis tool that's been used for decades.

9 Q: You use any kind of scales or anything?

10 A: Yes, I do. I use certified scales to get a weight and
11 then at that point everything is repackaged and held back in
12 evidence for ---

13 Q: By certified scales, what do you mean?

14 A: They're certified annually by an outside company.

15 Q: Calibrated?

16 A: Uh-huh (affirmative response), yes.

17 Q: And you've been doing this for a while. This is your
18 job. In the course of your work with Horry County Regional
19 Drug Laboratory, from what agencies do you receive drug
20 requests?

21 A: For the most part now it's just agencies within Horry
22 County.

23 Q: And Horry County Police Department is that one of the
24 agencies?

25 A: Yes, it is.

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LISA FLOYD - DIRECT EXAMINATION BY MR. RICHARDSON

1 Q: In the course of your work, let me show you what's been
2 previously marked and identified as State's Number Twenty-
3 four. If you'll take a look at that, please, Ms. Floyd, do
4 you recognize State's Number Twenty-Four?

5 A: Yes, I do.

6 Q: And how do you recognize State's Number Twenty-four?

7 A: By my lab number which is L100187.

8 Q: State's Number Twenty-four, did it ever come into your
9 possession?

10 A: Yes, it did.

11 Q: When was that?

12 A: I need to look at it.

13 Q: Would it help if you look in your notes to refresh your
14 recollection?

15 A: That would be great.

16 MR. RICHARDSON: Your Honor, I'd ask permission to let
17 her ---

18 THE COURT: She's entitled to that. Go ahead.

19 BY MR. RICHARDSON:

20 Q: Please, Ms. Floyd, thank you.

21 A: I received the BEST kit from Sharon Lilly on April 14th
22 of 2010.

23 Q: So, you received this from Ms. Lilly April -- I think you
24 said 14th; is that correct?

25 A: 14th, yes.

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LISA FLOYD - DIRECT EXAMINATION BY MR. RICHARDSON

1 Q: 2010?

2 A: That's correct.

3 Q: Now, when this came to you -- just help us understand,
4 Ms. Lilly hands this BEST kit off to you. I guess the BEST
5 kit is -- this whole plastic bag, is that the BEST kit?

6 A: No, it's not.

7 Q: It's just this blue item here, blue-ringed item?

8 A: Yes. The inner bag that's folded in half.

9 Q: Okay. So, this is the BEST kit. So, whenever Ms. Lilly
10 hands you this BEST kit, April 14th, 2010, what happens?

11 A: I inspected it, as I told you earlier, to make sure that
12 none of the tamper-evident markings showed any evidence of
13 tampering and they did not so at that point I put my initials,
14 the letter OK to make sure that there was no evidence of
15 tampering and the date that I opened it along with the
16 agency's case number and my lab number.

17 Q: And you received that and checked it to make sure it was
18 intact, the BEST kit was intact?

19 A: Yes.

20 Q: Not tampered with?

21 A: Correct.

22 Q: And once again, I think you stated that if it would've
23 been tampered with, you would've sent it back?

24 A: That's right.

25 Q: Rejected it. You take it from Ms. Lilly on the 14th and

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LISA FLOYD - DIRECT EXAMINATION BY MR. RICHARDSON

1 inspect it. What happens next?

2 A: At that point it's analyzed again according to ---

3 Q: Did you analyze it that day?

4 A: No. My notes indicate I analyzed it on April 20th.

5 Q: Now, from April 14th to April 20th, what did you do with
6 it?

7 A: It was stored in the laboratory.

8 Q: Still sealed?

9 A: Yes.

10 Q: So, it was stored in the laboratory how?

11 A: When I received the BEST kits, they're actually in this
12 outer envelope. It contains the paperwork as well as the BEST
13 kit itself.

14 Q: But I'm saying what kind of storage space was it in?

15 A: Oh, it -- there's a special storage space I keep in the
16 laboratory for drug cases that are untested. The lab itself
17 is built to the same specifications as the evidence room for
18 property and evidence, which is a eighteen-inch steel
19 reinforced concrete facility that only I and the chief have
20 access to.

21 Q: So, just you two people have access to that room?

22 A: That's correct.

23 Q: So, April 14th, you have it stored in the lab. April
24 20th, I think you said, you went to analyze it?

25 A: Yes.

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LISA FLOYD - DIRECT EXAMINATION BY MR. RICHARDSON

1 Q: Now, take us through April 20th, what do you do first?

2 A: I would empty the contents of this envelope that you see
3 folded in half and analyze each item individually and then
4 repackage it in which you see these red topped Ziploc bags and
5 then weights are noted, the analyses are made notes of and
6 everything is repackaged back into this clear outer envelope
7 that you see and then my initials, the date that it's sealed
8 and the lab number are all heat sealed into the inside of this
9 bag.

10 Q: So, you retrieved the BEST kit that day and do you
11 examine it again, the BEST kit?

12 A: I'm sorry?

13 Q: Do you examine the BEST kit when you take it back out of
14 your storage space?

15 A: Yes.

16 Q: Okay. And you opened it at that point?

17 A: That's correct, yes.

18 Q: With regard -- and how can you be sure this is the BEST
19 kit you received from Sharon Lilly?

20 A: There's actually three tracking numbers on it. I
21 referred the lab number earlier, the L100187. There's also a
22 preprinted control number that is on each of these envelopes
23 that I don't assign it, it just came preprinted. And that one
24 is H011046. And then I also write the agency's case number
25 again on there.

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LISA FLOYD - DIRECT EXAMINATION BY MR. RICHARDSON

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1 Q: So ---

2 A: And all three of those match my notes.

3 Q: This is all for control purposes, correct?

4 A: Correct, yes.

5 Q: It's all documented?

6 A: Yes, it is.

7 Q: Now, you get State's Twenty-four in, you open the BEST
8 kit and you start analysis. What's the first step you did in
9 analyzing -- let's just go over the white-powder substance,
10 okay? What's the first step you did an analyzing the white-
11 powder substance?

12 A: I believe if I may again refer to my notes.

13 Q: Sure.

14 A: All of the white rock substance that was in the BEST kit
15 was all packaged individually in sandwich baggies so each
16 individual sandwich baggie was separated from each other and
17 any of the over evidence was separated into different items
18 and inspected and then analyzed according to the procedure
19 that I told you earlier.

20 Q: How many baggies were there of white powder or white ---

21 A: There were fourteen items with white-rock substance in
22 sandwich baggies.

23 Q: So, fourteen bags of white powder that were in the BEST
24 kit. As you go through the analysis, you told us before you
25 do a -- what's the first test you do?

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LISA FLOYD - DIRECT EXAMINATION BY MR. RICHARDSON

1 A: A presumptive test.

2 Q: And you did that with each baggie?

3 A: Yes, I did.

4 Q: And what did you find out by doing the presumptive test?

5 A: All of the presumptive tests indicated the presence of
6 cocaine.

7 Q: So, in -- it indicated the presence of cocaine, what did
8 that tell you you needed to do?

9 A: Well, at that point I would do a standard confirmatory
10 analysis which is simply a base in methylene chloride
11 extraction and then run it on the instrument, the GC-MS that I
12 referred to earlier.

13 Q: And you did that on each baggie?

14 A: Yes, each of the fourteen bags.

15 Q: Now, in your analysis, which you got the first test and
16 then you're -- the confirmatory test, what if anything -- what
17 were your results?

18 A: In every case of those fourteen items, cocaine was found.

19 Q: You separate -- you actually numbered the bags, correct,
20 into items?

21 A: Yes.

22 Q: Let's go over -- and all those items are in this bag,
23 correct?

24 A: Yes, they are and they're numbered when they were
25 repackaged.

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LISA FLOYD - DIRECT EXAMINATION BY MR. RICHARDSON

1 Q: Now, and items -- you did a report?

2 A: Yes, I did.

3 Q: And you're in possession of your report at this time?

4 A: Yes.

5 Q: Now, in reviewing your report, you've got fourteen
6 baggies of white rock-like substance, let's just go through
7 items one through fourteen. Item 1, what substance was it?

8 A: Item 1 was found to be cocaine in the amount of 27.74
9 grams, which is 428.02 grains.

10 Q: So, that's 27.74 grams in Baggie 1. How about Baggie 2,
11 Item 2?

12 A: Item 2 was found to be cocaine in the amount of 27.90
13 grams.

14 Q: And when you're talking about the grams, this is when
15 you're going back and weighing them?

16 A: Yes. This is the scale weight in grams.

17 Q: And does that include the baggie it's in or just the
18 powder itself?

19 A: No, it's simply the substance itself without any type of
20 packaging.

21 Q: So, this is the naked substance itself?

22 A: Yes.

23 Q: Let's go to Item 3.

24 A: Item 3 was found to be cocaine in the amount of 28.02
25 grams.

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LISA FLOYD - DIRECT EXAMINATION BY MR. RICHARDSON

- 1 Q: Item 4?
- 2 A: Item 4 was cocaine in the amount of 27.77 grams.
- 3 Q: Item 5.
- 4 A: Cocaine found in the amount of 27.76 grams.
- 5 Q: Item Number 6.
- 6 A: Item 6 was found to be cocaine in the amount of 27.74
- 7 grams.
- 8 Q: How about Item 7?
- 9 A: Item 7 was found to be cocaine in the amount of 27.72
- 10 grams.
- 11 Q: And I know this is getting long; we're about halfway
- 12 there now. Item Number 8?
- 13 A: Item 8 was found to be cocaine in the amount of 27.76
- 14 grams.
- 15 Q: Item Number 9.
- 16 A: Item 9 was found to be cocaine as well, 27.92 grams was
- 17 the weight.
- 18 Q: Item 10?
- 19 A: Item 10, cocaine was found, 27.79 grams was the weight.
- 20 Q: Item Number 11.
- 21 A: Item 11, cocaine was found in the amount of 14.25 grams.
- 22 Q: So, about half of what you'd found in the other bags?
- 23 A: Approximately.
- 24 Q: Item Number 12.
- 25 A: Item 12 was found to be cocaine in the amount of 27.68

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LISA FLOYD - DIRECT EXAMINATION BY MR. RICHARDSON

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1 grams.

2 Q: How about Item 13?

3 A: Item 13 was cocaine found in the amount of 27.87 grams.

4 Q: And finally, Item Number 14.

5 A: Item 14 was found to be cocaine in the amount of 27.96
6 grams.

7 Q: Okay. So, in all fourteen baggies you found cocaine?

8 A: Yes.

9 Q: And you weighed the cocaine out in these?

10 A: Yes, sir.

11 Q: Now, taking all those numbers, Items 1 through 14, have
12 you had the opportunity to add them together to figure out
13 what the total weight was of the white powder?

14 A: Yes, I have.

15 Q: And how much cocaine was in those fourteen baggies total?

16 A: The total weight for Items 1 through 14 was 375.88 grams.

17 Q: 375.88 grams. And that's what we find in here today?

18 A: Yes, it is.

19 Q: So, in your expert testimony, how much cocaine is in
20 State's Number Twenty-four?

21 A: There's a total of 375.88 grams.

22 Q: Now, after you got done with your analysis, what did you
23 do?

24 A: At that point, everything was repackaged in the Ziploc
25 bag you see inside and then everything was sealed together in

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LISA FLOYD - DIRECT EXAMINATION BY MR. RICHARDSON

1 that clear outer envelope.

2 Q: And did you do anything to initial it or anything?

3 A: Yes, my name or my initials, excuse me, the date and the
4 lab number were all sealed, heat-sealed into the top.

5 Q: And State's Number Twenty-four, is it in the same
6 condition today as it was when it left your -- left your lab?

7 A: Aside from a marking on the outside of it, yes, it
8 appears to be the same.

9 Q: Does the bag appear to be tampered with in any way?

10 A: No, it does not.

11 MR. RICHARDSON: Your Honor, at this time, the State
12 would seek to introduce Number Twenty-four into evidence.

13 MR. TRUSLOW: Just subject to the prior objection.

14 THE COURT: Permitted subject to.

15 MR. RICHARDSON: State's Twenty-four into evidence.

16 MR. TRUSLOW: Subject to the prior objection.

17 THE COURT: Admitted subject to.

18 MR. RICHARDSON: State's Twenty-four into evidence.

19 STATE'S EXHIBIT NUMBER TWENTY-FOUR

20 ADMITTED INTO EVIDENCE

21 BY MR. RICHARDSON:

22 Q: Ms. Floyd, in your expert opinion, State's Twenty-four is
23 more than 200 grams but less than 400 grams, correct?

24 A: Yes, that's correct.

25 MR. RICHARDSON: Your Honor, I have no further questions

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LISA FLOYD - DIRECT EXAMINATION BY MR. RICHARDSON

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1 of this witness.

2 THE COURT: You may examine.

3 MR. TRUSLOW: Nothing, Your Honor.

4 THE COURT: You may come down and are excused. We thank
5 you.

6 (REPORTER'S NOTE: Witness leaves the witness stand.)

7 MR. RICHARDSON: Court's indulgence for just a moment.

8 THE COURT: All right, sir.

9 MR. RICHARDSON: And I would ask that -- I believe you
10 already excused her, I ---

11 THE COURT: Yes, sir.

12 MR. RICHARDSON: Thank you, Ms. Floyd.

13 THE COURT: You are to be excused and we thank you.

14 MR. RICHARDSON: The State would call ---

15 THE COURT: Wait one minute. Inasmuch as you have not
16 been previously listed, would you care to talk to him first?

17 MR. TRUSLOW: No, sir. I'll talk to him on cross.

18 THE COURT: Okay. That satisfies -- let the record
19 reflect I'll give you an opportunity to ---

20 MR. TRUSLOW: Yes, sir.

21 THE COURT: All right. Thank you. Call your witness.

22 MR. RICHARDSON: Yes, sir.

23 State would call Deputy Tom Johnson, Horry County
24 Sherriff's Department.

25 THOMAS JOHNSON, HAVING BEEN SWORN,

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THOMAS JOHNSON - DIRECT EXAMINATION BY MR. RICHARDSON

1 TESTIFIED AS FOLLOWS:

2 CLERK: Please state your full name and spell your last
3 name.

4 MR. JOHNSON: Okay. Thomas, J-O-H-N-S-O-N, Johnson.

5 DIRECT EXAMINATION OF THOMAS JOHNSON BY MR. RICHARDSON:

6 Q: Deputy Johnson, could you please tell this jury where
7 you're employed?

8 A: Horry County Sherriff's Office, Home Detention Section.

9 Q: And as part of your duties as a home detention officer,
10 do you monitor some people on bond?

11 A: Yes, I do.

12 Q: In the course of your duties, have you had the
13 opportunity to monitor the defendant while he's on bond?

14 A: Yes, I have.

15 Q: Now, when you're monitoring someone on bond, how do you
16 ascertain where they're located?

17 A: From the client.

18 Q: So, the person on bond would tell you where they're
19 living, correct?

20 A: Yes.

21 Q: Now, in the course of your duties, you say that you have
22 monitored the defendant, when did you begin the monitoring?

23 A: Initially, March 11th of 2010.

24 Q: And were you still monitoring him on into 2011?

25 A: Yes.

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THOMAS JOHNSON - CROSS EXAMINATION BY MR. TRUSLOW

1 Q: And during the course of your monitoring the defendant,
2 what did the defendant list as his address?

3 A: [REDACTED] Junco Circle in Conway, South Carolina.

4 Q: Okay. And it's Conway or is it the north end?

5 A: Conway, off Highway 90.

6 Q: Off Highway 90, okay. Is that the Longs section or it's
7 Conway?

8 A: I'm not sure what section. It's right at 22 and Highway
9 90; I've been out to the house.

10 Q: But it's off 90, it's Junco?

11 A: Yes, sir. I've been out there before.

12 Q: Okay. And you observed the defendant out at the address?

13 A: Yes.

14 MR. RICHARDSON: Your Honor, I have no further questions
15 of this witness.

16 THE COURT: Thank you.

17 CROSS EXAMINATION OF THOMAS JOHNSON BY MR. TRUSLOW:

18 Q: Did you bring any paperwork with you today?

19 A: On such short notice, I didn't have a whole lot of time
20 to prepare but I did bring some paperwork with me, yes.

21 Q: Now, this computer form here, would these be forms off of
22 your computer?

23 A: That's the -- that's actually a internet program that we
24 use with the tracking device.

25 Q: And so this is information that you maintain but that you

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MOTIONS

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1 enter or somebody working with you enters?

2 A: Yes.

3 Q: Is that how it get's entered? Were you present when he
4 was served with his arrest warrants and the addresses were put
5 on his arrest warrants by the arresting officer?

6 A: I don't recall.

7 Q: Okay. Were you present when his bond paperwork was
8 filled out by the magistrate judge and any addresses were put
9 on that initial bond paperwork?

10 A: I don't recall.

11 MR. TRUSLOW: Thank you, Your Honor, nothing further.

12 THE COURT: All right, sir.

13 MR. RICHARDSON: I'd just ask this witness be excused,
14 Your Honor, to return to his duties.

15 THE COURT: He may do so.

16 MR. RICHARDSON: Thank you, Your Honor.

17 MS. COTE: Your Honor, at this time, the State of South
18 Carolina rests its case.

19 THE COURT: All right. The State has now concluded its
20 testimony and evidence. I'll gonna send you to the jury room
21 for few minutes. I'll be calling you back out very shortly.
22 Thank you.

23 (REPORTER'S NOTE: The jury retires to the jury room.)

24 THE COURT: Any motions on behalf of the State?

25 MS. COTE: No, Your Honor.

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1 THE COURT: Any on behalf of the Defense?

2 MR. TRUSLOW: Motion for a directed verdict, Your Honor,
3 based upon the lack of evidence to convict the defendant based
4 upon a lack of evidence of him living or having custody and
5 control over the drugs as well as knowledge of the drugs being
6 in the home, which knowledge being an element at that time.

7 THE COURT: Care to respond?

8 MS. COTE: Yes, Your Honor. In the light most favorable
9 to the State, there's ample evidence to go to the jury. It's
10 a question for the jury at this point. There's been evidence
11 and testimony that law enforcement knew him to live in that
12 home. His girlfriend has testified that he lived in the home.
13 And just now, Your Honor, the home detention officer stated
14 that this defendant gave [REDACTED] Junco Drive as his address. The
15 drugs were found in his closet where his clothes were located.
16 That's plenty evidence, Your Honor, to pass directed verdict
17 and go to the jury.

18 THE COURT: In my view, it's a question for the jury but
19 there's ample evidence, if believed, that this defendant lived
20 at those premises prior to March the 5th and subsequently.
21 And of course, there is a permissible inference that I will
22 charge that the jury can accept or reject that property found
23 on the premises has knowledge of it or possession of it and
24 I'll charge the appropriate law on that. But given the
25 totality of the evidence I conclude that your motion for a

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ALTON WESLEY GORE, JR. - EXAMINATION BY THE COURT

1 directed verdict is and should be respectfully denied.

2 Now, let me make inquiry of the defendant with reference
3 to his desire to testify or to present evidence. Mr. Gore,

4 ---

5 CLERK: Do you want to swear him in, Judge?

6 THE COURT: Yes.

7 ALTON WESLEY GORE, JR., HAVING BEEN

8 SWORN, TESTIFIED AS FOLLOWS:

9 THE COURT: This, of course will be only as to that
10 issue, you understand?

11 MR. GORE: Yes.

12 THE COURT: Mr. Gore, we're at the stage of the case
13 where you have the right to present any witness against you if
14 you care to. Do you understand that?

15 MR. GORE: Yes, sir.

16 THE COURT: Or present any witnesses in your behalf. You
17 also have the absolute right to testify in your own behalf.
18 Do you understand?

19 MR. GORE: Yes, sir.

20 THE COURT: Under our laws you are presumed innocent and
21 you don't have to prove a thing. The State's got to prove you
22 guilty if they can by evidence beyond a reasonable doubt and
23 thus, you have the absolute right not to testify. Do you
24 understand that?

25 MR. GORE: Yes, sir.

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ALTON WESLEY GORE, JR. - EXAMINATION BY THE COURT

1 THE COURT: If you elected not to testify, I would charge
2 the jury that the fact that you did not testify could not,
3 must not be hold as any inference of guilty against you. I
4 would charge the jury further that the fact that you did not
5 testify cannot even enter into their deliberations in the jury
6 room. They will be instructed that there is absolutely no
7 adverse inference because you did not testify if that be your
8 decision. Do you understand that?

9 MR. GORE: Yes, sir.

10 THE COURT: Now, the question as to whether you desire to
11 testify or not obviously is one that you would discuss with
12 your distinguished counsel. However, I tell you that the
13 final decision as to whether you testify or not rests with
14 you. Do you understand that?

15 MR. GORE: Yes, sir.

16 THE COURT: You cannot later to be heard to say, well, I
17 wanted to do one thing or another but my lawyer wouldn't let
18 me. You understand that?

19 MR. GORE: Yes, sir.

20 THE COURT: Let it be abundantly clear you have the
21 absolute right to testify, you have the absolute right not to
22 testify, the decision ultimately rests with you. Do you
23 understand that?

24 MR. GORE: Yes, sir.

25 THE COURT: Do you have any questions about what I say to

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1 you on this issue?

2 MR. GORE: No, sir.

3 THE COURT: Mr. Truslow, is there any other inquiry you
4 would have me make as to this issue?

5 MR. TRUSLOW: No, Your Honor.

6 THE COURT: What is your decision? Do you desire to
7 testify or not?

8 MR. GORE: Not testify.

9 THE COURT: Do you desire to have any witnesses on your
10 behalf called?

11 MR. GORE: No, sir.

12 THE COURT: Do you desire to put up any testimony?

13 MR. GORE: No, sir.

14 THE COURT: I certainly accept.

15 Mr. Truslow, is there anything further on that issue?

16 MR. TRUSLOW: No, sir, other than the fact I just wanted
17 to clarify that I would opt to close last given the fact that
18 we've presented no evidence.

19 THE COURT: There's no question about it, you've got that
20 right.

21 MR. TRUSLOW: Thank you.

22 THE COURT: All right. To save time, I'm gonna let you
23 make any motions now. No need in me bringing the jury out and
24 then you say he does not testify and desire to come back in
25 when -- can we hear any further motions such as the end of all

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1 the testimony?

2 MR. TRUSLOW: Well, Your Honor, at -- I would renew the
3 motion for a directed verdict at this time.

4 THE COURT: All right, sir.

5 MR. TRUSLOW: Seeing as how we've rested and we're not
6 putting on a case.

7 THE COURT: All right, sir. In accordance with my
8 previously ruling, of course, I deny that motion.

9 MR. TRUSLOW: Yes, sir, Your Honor.

10 THE COURT: I conclude that there's evidence for the jury
11 to determine and -- they've got to do several things. First,
12 they've got to determine that it was his residence and then
13 they've got to determine whether or not he had sufficient
14 control, actual or constructive. And then they've got to
15 determine if the amount covered was between 200 and less than
16 400.

17 MR. TRUSLOW: Yes, sir.

18 THE COURT: Do you have any requests to charge for the
19 State?

20 MS. COTE: No, Your Honor. We discussed the traffick --
21 the standard charges on reasonable doubt, of course, and then
22 the trafficking charge, constructive and actual possession.

23 THE COURT: How about you, Mr. Truslow?

24 MR. TRUSLOW: Well, for the record, I -- we talked about
25 it the -- up there but I would for the record request a charge

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1 of possession on this case. There was a trace amount of white
2 powder located in a separate bedroom and there's questions
3 about whose bedroom was whose and I would think ---

4 THE COURT: Well, he's not being tried for that nor has
5 been indicted for that. He's been indicted as a document will
6 disclose ---

7 MR. TRUSLOW: I understand but possession is a lesser
8 included offense. They could find that just that little
9 baggie is his that was tucked under the mattress.

10 THE COURT: Then they would have to find him not guilty
11 because I'm going to charge the jury that they must find he
12 possessed 200 or more or less than 400. And if they found
13 some amount less than that, they can find him not guilty but
14 they're gonna be charged -- they must under this indictment
15 find that he possessed actual or constructive 200 or more
16 grams of cocaine. So, I respectfully deny your motion with
17 reference to simple possession.

18 MR. TRUSLOW: That's all we have.

19 THE COURT: All right. Thank you.

20 All right. Let's take a short break. We're in recess.

21 MS. COTE: Thank you, Your Honor.

22 MR. RICHARDSON: Thank you, Your Honor.

23 *****OFF THE RECORD*****

24 (On the Record.)

25 THE COURT: All right. I'm gonna let the record reflect

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1 by consent of counsel, I am going to charge the jury prior to
2 summation with the understanding I'll be back with some
3 concluding remarks after summation and this is with consent of
4 counsel for the State and defendant.

5 Bring the jury in please.

6 THE COURT: Mr. Truslow, please say the Defense rests in
7 the presence of the jury.

8 MR. TRUSLOW: Yes, sir.

9 THE COURT: And the record will reflect that you've
10 agreed -- the record will reflect that you've made the motion
11 for directed verdict.

12 MR. TRUSLOW: All right, sir.

13 THE COURT: I'm just doing it this way to save from
14 sending the jury back.

15 (REPORTER'S NOTE: The jury returns to the courtroom.)

16 THE COURT: All right. The record will reflect that
17 prior to the break, the State had rested its case and we
18 thereafter moved to the Defense.

19 MR. TRUSLOW: Your Honor, the Defense rests.

20 CHARGE BY THE COURT

21 THE COURT: Mr. Foreman, ladies and gentlemen, we have
22 now concluded all of the testimony in the trial of this case.
23 You've just heard the fact that the defendant rests its case
24 not desiring to put up any testimony nor desiring to testify
25 which is his absolute right. Now, I charge you and instruct

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1 you and emphasis to you the fact that this defendant did not
2 testify is not a factor to be considered by you in any way in
3 your deliberations and in your consideration of the question
4 of guilt or innocence of this defendant. The fact that he did
5 not testify must not be considered by you in any manner
6 whatsoever. A defendant has the absolute constitutional right
7 to remain silent the same as you do and the same as I do and
8 the assertion of that right to remain silent must not be
9 considered by you in your deliberations. Respectfully, I
10 repeat, under your oath, you are to draw no conclusions
11 whatsoever from the fact that this defendant in this case did
12 not testify.

13 I charge you further, Mr. Foreman, the fact that this
14 defendant did not testify must not even be considered by you
15 in your deliberations in the jury room. The burden of proof
16 is upon the State of South Carolina to prove him guilty beyond
17 a reasonable doubt if they can. The defendant doesn't have to
18 prove a thing; the State's got to prove him guilty. And so I
19 charge you now, you must not even let that fact enter into
20 your deliberations in the jury room. It's his constitutional
21 right, it's an absolute right, it's an important right,
22 reserves and protects your interest and mine. Now, the
23 defendant has pled not guilty to this indictment and that plea
24 puts the burden on the State of South Carolina of proving the
25 defendant guilty. A person charged with committing a criminal

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1 offense in South Carolina is never ever required to prove
2 himself innocent.

3 I charge you that it is an important rule of law that a
4 defendant in a criminal case, no matter how serious may be the
5 charge is always presumed innocent of the crime for which the
6 indictment was issued unless guilt has been established by
7 evidence satisfying you of that guilt unanimously beyond a
8 reasonable doubt.

9 This presumption of innocence does not end when you begin
10 your deliberations but it accompanies the defendant throughout
11 the trial and until you have reached a verdict of guilty based
12 on the evidence satisfactory to you of the guilt beyond a
13 reasonable doubt.

14 The presumption of innocence has been said to be like a
15 robe of righteousness placed about the shoulders of every
16 defendant and particularly this defendant which remains with
17 this defendant until it has been stripped from the defendant
18 by evidence satisfying you of the defendant's guilt beyond a
19 reasonable doubt.

20 Mr. Foreman, ladies and gentlemen, the presumption of
21 innocence is not merely legal theory, it is not just a legal
22 phrase. It is a substantial right to which every defendant is
23 entitled unless you the jury are satisfied by evidence of the
24 defendant's guilt beyond a reasonable doubt.

25 What is reasonable doubt? The State as I've indicated

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1 has the burden of proving the defendant guilty beyond a
2 reasonable doubt. Some of you may have served in civil cases
3 where you were told that the burden of proof was beyond --
4 more than fifty percent, that it is only necessary to prove
5 the fact that it is more likely than not such as by the
6 greater weight of the preponderance of evidence. I charge you
7 though that in criminal cases the State's proof must be more
8 powerful than that. It must be, as I've stated, beyond a
9 reasonable doubt. Ladies and gentlemen, proof beyond a
10 reasonable doubt is evidence that leaves you firmly convinced
11 of the defendant's guilt. There are very few things in this
12 wide world that we know with absolute certainty and in
13 criminal cases, the law does not require proof that overcomes
14 every possible doubt. If, based on your consideration of the
15 evidence, you are firmly convinced that the defendant is
16 guilty of the crime charged, you must find the defendant
17 guilty. If on the other hand you think there is a real
18 possibility that the defendant is not guilty, you must give
19 the defendant the benefit of that doubt and find him not
20 guilty.

21 Now, I remind you that during this trial you and I have
22 certain duties to perform. I touched on this briefly at the
23 beginning of the case. As the trial judge, it is my
24 responsibility to preside over the trial of this case and I
25 also have the duty to rule on the admissibility of the

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1 evidence offered during the trial. You must consider only the
2 competent evidence which is before you and which I have
3 admitted in this trial. If there was any testimony stricken,
4 you must of course disregard that. You are to consider only
5 the testimony which has been presented of this witness stand
6 and such evidence that has been introduced in the trial of
7 this case. You, of course, have the additional duty to
8 preside in this case, Mr. Foreman, during the deliberations.

9 I charge you again as presiding judge, I am not entitled
10 to a factual opinion and I have absolutely have none.
11 Charging you further that if any rule, judgment, mannerism of
12 mine might in any way cause you to suggest what I feel about
13 any factual situation between these parties, please disregard
14 that. I am not entitled to a factual opinion and I have none.
15 Now, I am the sole and only judge of the law and as jurors it
16 is your responsibility to accept the law in this case as I
17 give it to you even though you or I might disagree with what
18 the law is. It is your duty to accept the law as I now charge
19 you remembering you take the facts as you find them to be,
20 applying the facts to the law of the case as I now give it to
21 you.

22 I have told you, too, and emphasis again that you twelve
23 are the sole and only finders of the facts in this case and
24 are the sole judges of the credibility, meaning the
25 believability of every witness who testifies in the trial of

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1 this case. You bring your common sense to bear in judging
2 credibility of believability. You've had your experiences in
3 life in dealing with this issue and there are various tools
4 that we use. I have some, you have some but to you I am
5 emphasizing that it's up to you to judge the credibility and
6 believability. Saying again, you may believe one witness
7 against that of many or the other way around. You may believe
8 a portion of a witness' testimony and disregard the larger.
9 Again, the credibility, believability is for you and you and
10 alone.

11 During the trial of this case, I qualified one witness as
12 an expert in chemical analysis. Under our laws, we are
13 permitted to qualify a person by training, education and
14 experience as an expert and they may give their opinions as an
15 expert in that field. You may or -- you may, if you choose,
16 reject or accept an expert's opinion but she was qualified as
17 an expert.

18 Now, ladies and gentlemen, there are two types of
19 evidence which are generally presented during a trial, direct
20 evidence and circumstantial evidence. Direct evidence is the
21 testimony of a person who claims to have actual knowledge of a
22 fact such as an eyewitness. It is evidence which immediately
23 establishes the main fact to be proven.

24 Circumstantial evidence is proof of a chain of facts in
25 circumstances indicating the existence of a fact. It is

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1 evidence which immediately establishes collateral facts from
2 which the main fact may be inferred. Circumstantial evidence
3 is based on inferences and not on personal knowledge of
4 observation. Now, I charge you that the law makes absolutely
5 no distinction between the weight or value to be given to
6 either direct or circumstantial evidence nor is a greater
7 degree of certainty required of circumstantial evidence than
8 of direct evidence. You should weigh all of the evidence in
9 the case. After weighing all the evidence, if you are not
10 convinced of the guilt of the defendant beyond a reasonable
11 doubt, you must then find him not guilty.

12 Now, as you're well aware, upon this indictment, which
13 I've explained to you is in no sense any evidence, the
14 defendant is charged with trafficking in cocaine in the amount
15 of more than 200 grams and less than 400. And to this
16 indictment and to this charge, this defendant specifically
17 pleads not guilty. Now, this indictment will be with you in
18 the jury room and it contains these various allegations but
19 they are allegations only and they're not any evidence in this
20 case. Any allegations must be proved beyond a reasonable
21 doubt but these assertions in this indictment is not to be
22 considered by you as evidence.

23 As I've indicated now, this defendant is charged with
24 trafficking in cocaine in the amount of 200 grams or more but
25 less than 400 grams and you understand the State must prove if

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1 they can guilt beyond a reasonable doubt that the defendant
2 was knowingly in actual or constructive possession of cocaine
3 or any mixture thereof containing cocaine in the amount of 200
4 grams or more but less than 400 grams.

5 There are certain elements of this offense which the
6 State must prove beyond a reasonable doubt before the
7 defendant can be convicted and found guilty. Each of these
8 elements must be found by you, the jury, beyond a reasonable
9 doubt and should you fail to find beyond a reasonable doubt
10 that all of these elements exist, your verdict must be not
11 guilty.

12 The first element that the defendant is that the
13 defendant did knowingly possess a quantity of cocaine at the
14 time and place and in the manner alleged in this indictment.
15 To prove possession, the State must prove beyond a reasonable
16 doubt that the defendant had both the power and the intent to
17 control the disposition or use of the cocaine. Possession may
18 be either actual or constructive. Actual possession means
19 that the cocaine was in the physical, actual physical custody
20 of the defendant. Constructive possession means that the
21 defendant had the dominion and control of the right to
22 exercise dominion and control over the -- either the cocaine
23 itself or the property on which the cocaine was found.

24 Now, I charge you that mere presence at the scene where
25 the drugs were found is not enough to prove possession. It

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1 must also be shown that the defendant knew he had the cocaine
2 in his possession. Actual knowledge of the presence of the
3 cocaine by this defendant is essential. A defendant's
4 knowledge and possession may be inferred if the cocaine was
5 found on the premises or property under the defendant's
6 control. You the jury are free to accept or reject the
7 permissive inference of knowledge and possession depending
8 upon your view of the evidence. You must first, of course,
9 find that it was the defendant's property. I charge you also
10 that two or more persons may have joint possession of a drug.

11 Now, the second element that you must find beyond a
12 reasonable doubt that such substance was cocaine, which I
13 charge you is a controlled substance.

14 And thirdly, the third element, you must find beyond a
15 reasonable doubt is that the quantity of cocaine was 200 grams
16 or more or less than 400 grams.

17 Now, Mr. Foreman, you will have the indictment in front
18 of you and on the back you will see under the word verdict.
19 Based on your unanimous decision your verdict will either be
20 not guilty or guilty and whatever your verdict is it must be
21 the unanimous verdict of all twelve. It cannot be the verdict
22 of the majority and obviously it would not be one of the
23 minority. Your verdict must be a unanimous verdict and when
24 the jury has agreed on a unanimous verdict of not guilty or
25 guilty, you will so signify to the bailiff and we'll bring you

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1 out in the courtroom to accept that verdict.

2 I have one question that I am required to propound to the
3 attorneys and I'm gonna ask you be excused just a second and
4 I'll be calling you right back.

5 (REPORTER'S NOTE: The jury retires to the jury room.)

6 THE COURT: For the State, any exceptions or additions to
7 the charge?

8 MR. RICHARDSON: Your Honor, in regards to the charge,
9 it's a matter of housekeeping and I know Mr. Truslow spoke
10 with Ms. Deangelo about possible sentence, I just want to make
11 sure that Mr. Truslow wasn't going to be talking about this
12 defendant is facing twenty-five years or anything.

13 THE COURT: Oh, no, he knows ---

14 MR. TRUSLOW: That's in evidence.

15 THE COURT: No, sir. It's in evidence that she would be
16 but ---

17 MR. TRUSLOW: She testified to it, though, that ---

18 MR. RICHARDSON: That's she's facing, not him.

19 THE COURT: You can talk about what she said. The case
20 is very clear, you are permitted to ask ---

21 MR. TRUSLOW: Oh, I'm not gonna say what he's facing, no,
22 sir.

23 THE COURT: All right. That's fine. You know better
24 than that.

25 MR. RICHARDSON: There is a charge with regard to

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1 sentences not before the jury but that's fine, Your Honor.

2 THE COURT: I'm not gonna do that.

3 Any exceptions or additions on behalf of the defendant?

4 MR. TRUSLOW: No, sir, Your Honor.

5 THE COURT: All right. Bring the jury back.

6 He can surely say what she was facing and the case law
7 states that clearly. That was not the law when I first went
8 on the bench twenty-seven years ago.

9 I may in concluding remarks do that charge.

10 MR. RICHARDSON: Yes, sir, Your Honor.

11 THE COURT: Do you want me to say why you're entitled to
12 the last charge or just leave it alone, Mr. Truslow?

13 MR. TRUSLOW: No, sir, that's fine, Your Honor.

14 THE COURT: Do not?

15 MR. TRUSLOW: Yeah, I'm okay.

16 THE COURT: Okay.

17 (REPORTER'S NOTE: The jury returns to the courtroom.)

18 THE COURT: Mr. Foreman, ladies and gentlemen,
19 procedurally, the State will have the first final summation
20 followed by the Defendant's summation. You may proceed.

21 CLOSING STATEMENT BY MS. COTE:

22 MS. COTE: Thank you, Your Honor. May it please the
23 Court?

24 On March 5th, 2010, when officers from the Horry County
25 Police Department entered this defendant's home, the evidence

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1 showed us today that they found that he was running a business
2 from that home. The problem was, he wasn't selling Avon from
3 that home, he wasn't selling Tupperware. Those agents came
4 upon his inventory. This, ladies and gentlemen, was his
5 inventory and all over his house were various tools of the
6 trade. Now, when we first started out earlier this morning, I
7 told you that this case was simple. In fact, it's as simple
8 as one, two, three. One, we have over 200 grams of powder
9 cocaine. Well, over the 200 pounds [sic] of powder cocaine
10 that we have to prove to you. We have that the defendant
11 lived in the home where that cocaine was located and we have
12 the he know -- he knew at the time that it was there.

13 And when I tell you that this case is simple, I'm not
14 trying to minimize it. I don't want to sound like I'm being
15 flippant about it and that I don't understand this importance
16 of this case because it is important. It's important to the
17 State and it's important to the Defense. I'm just trying to
18 show to y'all how straightforward it is. I don't want y'all
19 to get wrapped up in any of these twists and turns that the
20 Defense may be trying to throw to you. It's simple. It's a
21 straightforward case.

22 Now, we've heard from a lot of witnesses today; it's been
23 a long day and I want to go back briefly through each one of
24 the witnesses that you heard from today just very briefly. I
25 don't want to retry the case but I want you to look at each

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1 witness as a piece of a puzzle. You may have thought, hmm, I
2 wonder -- you know, why are they telling me this but there's a
3 reason. Each person was a piece of a puzzle that adds up to
4 our big picture that we're proving to you now.

5 First, we heard from Kent Donald. He was the partner of
6 the lead investigator on this case, Corporal Ard. He talked
7 to you about how they get search warrants which is
8 interesting. They don't just give out search warrants willy-
9 nilly. Officers have to go to a magistrate, testify before
10 them, give them information that gives them probable cause to
11 get that warrant to search the home. He talked to you about
12 how a traffic stop was initiated on the defendant's vehicle
13 and how he was detained at that time. He took the defendant's
14 keys that were located in that car that he was driving. He
15 was the only person in that car and used those keys when they
16 entered the house rather than banging down the door or
17 something like that. They entered in a little bit more civil
18 manner.

19 We talked about how the defendant's license was suspended
20 and how his address hadn't been updated, I believe it was from
21 2006 to 2011 but during that time his license was suspended.
22 So, ladies and gentlemen, use your common sense. Are people
23 gonna update their address when they don't have a driver's
24 license, I don't think so.

25 And then Kent Donald, Officer Donald, was the one that

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1 actually talked to Angel that day when she came back to the
2 house at the defendant's request and he actually had to put
3 her under arrest because she wouldn't leave because she kept
4 -- he kept asking her to leave and she just wouldn't do it.
5 And then Officer Donald help search the house and he found the
6 Glock in the kitchen or a Glock magazine, excuse me, in the
7 kitchen. And then he heard from Officer Cooper who actually
8 was the photographer that day. Thanks to him we have a pretty
9 good picture of where things were located. It's almost as
10 good as being there with them on that day. We have a good
11 picture of the house and where things were found. And you'll
12 have all those pictures back there with you in evidence.

13 And Officer Cooper is actually the person who searched
14 the master bedroom of this house. And he told you there were
15 pictures in there. He actually found these pictures that he
16 identified as being the defendant Alton Gore in a drawer in
17 that master bedroom along with some bandanas and he searched
18 this closet where you can see men's clothing hanging up, no
19 female shoes, only men's clothing similar to the clothing that
20 you see him wearing in this picture and he took these pictures
21 of the bedroom neatly-made bed, neatly-made bed with a Glock
22 tucked in there. Glock tucked in there to protect what he
23 found in that closet. When he started searching that closet,
24 the top shelf, he said there were men's pants stacked up there
25 and he was being real diligent and he was shaking those pants

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1 out and what fell down, a big ole bag of cocaine. And he
2 heard from Corporal Ard who was the lead agent on this case
3 and he talked to you about this particular search warrant,
4 Investigator -- I'm sorry. I'm giving y'all all kinds of
5 titles but -- Detective Donald gave Corporal Ard -- or
6 Detective Donald gave us a general overview of search
7 warrants. Corporal Ard gave us a little more information on
8 this particular search warrant. It was issued based on prior
9 narcotics investigations and they were looking for narcotics
10 information at this particular house at [REDACTED] Junco Drive --
11 Junco Circle, excuse me. And this was the residence that he
12 knew the defendant to live in. He had done previous
13 investigation, he had seen the defendant at that home before.
14 He had seen him leaving that morning. He felt no need to
15 search the title of that house. He told you he had no reason
16 to doubt that that defendant lived in that house. He told you
17 that there were pictures of the defendant through that house
18 as well as male's clothing. And both he and Detective Donald
19 told you the two people that he left -- saw leaving that
20 morning, were Angel Deangelo and this defendant Alton Wesley
21 Gore, Jr. There was no other activity at that house, no other
22 people seen leaving, nobody else was there, just the two of
23 them.

24 And Corporal Ard went through a whole bunch of evidence
25 with us, explained to us what these items are. He told us

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1 what these playing cards, bent playing cards -- you know,
2 taken separately might not mean much but when you find it with
3 a box of little plastic baggies and a scale, that all adds up
4 to packaging drugs to sell.

5 They showed us the Glock magazine that was found in the
6 kitchen separate from this Glock that was found tucked in the
7 master bedroom that was loaded as well. And this holster
8 whose gun was missing -- but it's not for that Glock, that's a
9 Fobus holster, so it's a totally different type of gun. Then
10 he talked to us about the cutting agents which was
11 interesting, Inositol powder, also with baggies and playing
12 cards as well. And y'all will have all this back there to
13 look at as well but this was used to get more out of a little,
14 I guess, to stretch the amount of cocaine that could be sold.
15 And he talked to you too about the money that was found in the
16 box in the closet there was \$136, I believe in cash. And also
17 when the defendant was arrested he had \$562 on his person at
18 that time. And he told us too that that amount of drugs,
19 that's not a small amount. He told us that its approximate
20 street value would be about \$14,000. That's not just chump
21 change.

22 Next we heard from Angel Deangelo. She told you she
23 talked to me and Mr. Richardson yesterday and she signed a
24 proffer letter and she told you and she actually read from it
25 a little bit and it said that she wasn't being promised

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1 anything and she told you that she hoped something good will
2 come out of it but she told you the truth is the truth. And
3 the judge charged you, you can take witness credibility into
4 consideration when y'all are deliberating but her testimony
5 was forthright. She answered everybody's questions. She
6 seemed nervous. She seemed scared but that's to be
7 understood. What else did we learn from her? So, she met the
8 defendant in January of that year, just a couple of months
9 before this incident happened. They met in North Carolina.
10 He came to see her sort of a blind date set up and it worked
11 because they went home together that night. He drove her to
12 his house at [REDACTED] Junco Drive. So nobody else was there. In
13 fact, she told us that she never saw anybody else there except
14 for her -- I believe she said his son's mother's boyfriend and
15 that's the only other person she ever saw at his house.

16 And she -- that blind date continued to work because she
17 would come down, two, three, four nights a week to see him,
18 drive all the way down from her home in Shallotte. She said
19 she would drive about an hour. She would go to class all day,
20 be tired, then go see him so that she would usually -- you
21 know, it was late evening when she got there, probably dark,
22 it was in March. So, she, you know, they would chill out,
23 watch TV and go to bed, nothing exciting. She had no need to
24 go in the kitchen. She said she wasn't keeping her clothes in
25 the closet, so she didn't have any need to go in there. And

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1 you see in those pictures where her clothes were kept and you
2 see actually where her bag was at the time which corroborates
3 her testimony. These -- this is her bag. You see -- I think
4 there's some ear muffs actually, so it must've been chilly
5 about that time and some high heels. This was her bag to the
6 left side of the room and she's told us that she slept on that
7 side of the bed and his side of the bed was where our Glock
8 was found close to where he could protect the \$14,000 worth of
9 drugs sitting in his closet.

10 She told you that he was the one that called her. He
11 promptly called her that day as he's getting pulled over and
12 sends her back to the house, find out what's going on.

13 He would've gone back himself but I don't know why his --
14 a big deal is being made of the fact that she went back. He
15 couldn't go back, he was in custody, so he sent her. She
16 listened to him, she went back to the house. She felt that if
17 she told him she lived there, they'd show her the search
18 warrant and nothing would happen. She was just doing as she
19 was told.

20 Then you heard from Heather Lewis, Clerk of Court for
21 Horry County and she showed us a document or read to us from a
22 document that's kept in the custody and control of the Horry
23 County Clerk of Court's office but it has to do with the
24 defendant's bond information. And she told us that the
25 address listed on that bond form was [REDACTED] Junco Circle. And

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1 she told us that there was a signature next to it in script
2 with his name on it. And that was kept -- and that's a court
3 document with his address on it. And then we heard from
4 Sharon Lilly from the Horry County evidence room and I just
5 had to show to y'all that those evidence hadn't been -- those
6 drugs hadn't been tampered with and that's just a step that I
7 have to take and she told you weren't messed with while she
8 had them.

9 And then we heard from Lisa Floyd, the chemist with Horry
10 County and she talked to us about those drugs themselves, the
11 actual composition of those drugs. She told us all fourteen
12 of these bags each wrapped individually were powder cocaine,
13 each weighing about 27 grams a piece and adding up the 375+
14 grams.

15 Last witness was Tom Johnson who told you that this
16 defendant gave him the address of [REDACTED] Junco Circle when he was
17 monitored on his bond. He didn't make that up, he didn't get
18 that from another form. This defendant told him that address
19 and he actually went to that house and saw him there, his
20 house.

21 MR. TRUSLOW: Your Honor, I'd object to that. That's
22 facts not in evidence. He did not testify he went to his
23 house.

24 MS. COTE: Yes, he did.

25 THE COURT: I will let the jury make the determination as

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1 to whether he did or did not.

2 MS. COTE: This defendant lived at [REDACTED] Junco Circle on
3 March 5th, 2010. The facts show that, ladies and gentlemen.
4 You'll see in all those pictures there's male clothing all
5 throughout the house. The only other evidence that we've
6 heard of who could've lived there was that his mother owned
7 the house. We don't see any female clothing there. She was
8 just his landlady. Don't see anything evidence that she lived
9 there. Angel said she was never there. So, we have him
10 there, him there when Ard goes by the house, him there when
11 Tom Johnson goes by the house, him giving that address to Tom
12 Johnson. There are cars that are known to be driven by him in
13 the garage. He's seen leaving from the house early around
14 7:00-7:30 that morning. He had certainly spent the night
15 there the night before.

16 When you look at these pictures, ladies and gentlemen,
17 they speak for themselves. There's male clothing everywhere.
18 No women's shoes in that closet. It was his house, his
19 closet, his clothes on that shelf in that closet. He knew
20 those drugs were in that house. This is a lot of drugs,
21 ladies and gentlemen, it's \$14,000 more or less of drugs.
22 These aren't drugs that somebody is gonna leave laying around
23 and not knowing where they are. He knew they were there. He
24 had a gun nearby to protect himself and protect those drugs.
25 He had a magazine downstairs and he had another holster which

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1 is evidence of another gun to protect those drugs. You
2 couldn't throw a stone in this house and not find evidence of
3 drug activity. You couldn't go in the kitchen and fix
4 yourself a cup of coffee and open a cabinet to get the coffee
5 out and not find baggies, playing cards and a scale. You
6 couldn't open a cabinet to get some dinner without finding
7 Inositol, that cutting agent. You couldn't put your child to
8 bed without finding a plastic wrapper with a white-powdery
9 substance on it. There was evidence of drug activity all over
10 this house. He knew those drugs were there.

11 You can use your common sense, ladies and gentlemen,
12 that's not something that you had to check at the door when
13 you came in and proceeded as these -- I'm sorry; I can't talk.
14 It's not something you had to check at the door when you were
15 seated as jurors. You're allowed to use your common sense,
16 one of the greatest tools you have as jurors. Think about
17 this. Think about what makes sense to you.

18 Now, the judge made the point and the judge told you that
19 the State has the burden of proof in this case and that's not
20 unusual. We have the burden of proof in every single criminal
21 case. We have to prove each element of this crime beyond a
22 reasonable doubt and that's a burden that we welcome.
23 Reasonable doubt is not proof beyond any or all doubt. It's
24 not one-hundred percent. Very few things we know with a
25 hundred percent certainty but it's proof that leaves you

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1 firmly convinced of the defendant's guilt and I submit that
2 we've done that in this case.

3 The defendant is charged as you are aware with
4 trafficking in cocaine more than 200 grams. Now, let's go
5 ahead and check one of those elements off the list. We know
6 that it was cocaine, Lisa Floyd told us that. And we know
7 that it was more than 200 grams, she also told us that, well
8 over 300 grams so that element has been met.

9 We have to prove that it was in the defendant's
10 possession. His house, his house, ladies and gentlemen, it's
11 where he lived, it's where he laid his head at night. We have
12 to prove that it was in his custody and control. I don't have
13 to prove it was on his person. Somebody's gonna have to be
14 wearing awfully big pants to fit these on him. It just has to
15 in the property that he had dominion over and he had dominion
16 over that house.

17 After you hear from Mr. Truslow, you'll go back in that
18 jury room and deliberate and I want you to remember again,
19 one, two, three, and I really am not trying to downplay the
20 importance of this case but the facts are simple. It's not
21 any more complicated than cocaine, more than 200 grams, the
22 defendant's house and that he knew they were there. And I ask
23 that when you consider the evidence and look through all the
24 evidence and talk about the testimony and the witnesses that
25 you heard from, that you come back with a guilty verdict

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1 against this defendant, Alton Wesley Gore.

2 Thank you.

3 THE COURT: Mr. Truslow?

4 CLOSING STATEMENT BY MR. TRUSLOW:

5 MR. TRUSLOW: May it please the court, Your Honor.

6 I'm not exactly sure of where to start. The prosecutor
7 just basically tried the case again. No matter how many times
8 she tells you he lived there, we know he lived there, that
9 doesn't mean you know he lived there just because she says
10 that. And you know what they do, what they do is they tell
11 you their theory of the case over and over and over and try to
12 drill it into you and they do that when they don't have the
13 evidence to prove it. Now, the judge was very clear about
14 what reasonable doubt is and it's -- you got to be firmly
15 convinced to convict of anything. And I told you when we
16 first started out how powerful and important your job is but
17 what's more powerful and important is that standard because
18 there are people around the country right now, doing the exact
19 same thing that we are. And this system is either strong for
20 Mr. Gore, my friend Wesley, the person in Kansas who is
21 standing trial or anyone of us if we ever get accused of a
22 crime and we sit at that table. So, if firmly convinced is
23 just a play thing or a play word, then it means nothing. But
24 remember this, it means nothing for all of us. We'd better
25 keep this system strong in case one of us wind up in the

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1 chair. And I told you what that took before was pointing a
2 finger and that's what they did, they pointed the finger at
3 him. The first officer that testified said that he didn't
4 have to do any other work, no more investigation, because he
5 was convinced, he was satisfied that Mr. Gore lived there.
6 And I'm not -- I never said he'd never been there, okay.
7 We're talking about living there, we're talking about that
8 being his dope. We're talking about evidence that that's his
9 drugs. That's what I'm looking for. He said he didn't have to
10 do -- now, a case this important and you know how important it
11 is, wouldn't you do some more work? He says he was convinced,
12 he saw him leave that place in the morning and drive off.
13 They followed him because they had a search warrant and they
14 stopped him for driving under suspension, went and searched
15 the house. That's all he needs. So, if I'm leaving my
16 girlfriend's house, I guess I live there if it happens to be I
17 spend the night one night. I married, so that's not gonna
18 happen but you understand my point. There's no doubt that
19 someone was up to no good in that house and somebody had
20 stuff.

21 I was allowed to ask Angel one question but he -- it's
22 improper for me to then go into it with her but she did answer
23 that she called me about her ex and representing him in
24 federal drug and gun charges. Now, this was within the last
25 month. Why would she do that? Why would still be involved

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1 with a man in North Carolina where she's got her lease, why
2 would she be trying to find him a lawyer if Wesley is her boy,
3 if that's her boyfriend why is she doing that? Why is she
4 coming from North Carolina to this house, North Carolina to
5 this house, North Carolina to this house and trying to find a
6 guy in North Carolina, who is her baby's daddy, a lawyer. I
7 tell you why; because she's running dope. And the dope runner
8 just walked out the courtroom, cut a deal because she's pretty
9 and he's a black drug dealer. And I'm not trying to bring
10 race into this but it does make a difference; in this world,
11 it does make a difference if you're a pretty girl. Pretty
12 girl, did you see all those tattoos all up and down her arm?
13 She's not a student. Did they give you any evidence
14 whatsoever she went to school? They said he had 500-and-some
15 dollars but the officer told you he worked at Biminis for
16 eight years. Okay? She had 900-and-something dollars they
17 said and she tells you she's a student and a pancake waitress.
18 Does that make sense to you? Does that add up? Does that
19 leave you firmly convinced that Wesley is responsible for
20 those drugs? Let's look at the most damaging pictures here
21 because, you know what, people live differently. People think
22 this stuff is funny. These pictures were found in that house.
23 I want you to look at the date of these pictures when you go
24 back there. February 12th, 2008, this is more than two years
25 before this happened. This dates back to the addresses that I

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1 was showing you on the driving record. Everybody is telling
2 you that he lived there and the reason they're telling you
3 that is because if he lived there, then obviously he's
4 responsible for anything ever found in that house. They
5 figured that out in five minutes. They did -- they got the
6 search warrant, the found the dope, the saw him drive away
7 from there, he must live there, we got him, we arrested him,
8 we take him to jail, we fill out his arrest warrant, we put
9 down [REDACTED] Junco. They didn't take it off his driver's license.
10 The officer told you he figured that's where he lived. What
11 does that then do, that translates into all this testimony
12 about the bond and the bond paperwork. You're gonna -- you
13 know, it doesn't matter what's typed on there, you're bonding
14 out and you're trying to get out of jail, you're gonna sign
15 whatever they tell you to sign when you're going through the
16 bond system and when you're putting papers in front of you in
17 a bond hearing with thirty other people at the jail.

18 Is anybody here willing to convict Wesley on the
19 testimony of Angel after what I just told you. Because . . .
20 really, the state had gotten nowhere with the police officers.
21 I had asked them, I said, you thought he lived there because
22 you saw him drive off. Did you go check any utility bills?
23 Okay. Did you check any cable bills? Did you go talk to
24 anybody that might own that house, find out who was living
25 there? I said, Did you talk to the neighbors? Did you ask

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1 the neighbor who lives in that house? No. Can't even ask the
2 neighbor, How often do you see Wesley there; does he live
3 there? Couldn't do that, couldn't take the time to do that.
4 Did you check the mailbox and see if there was a piece of mail
5 with his name and address on it, anything? We're not gonna do
6 that. So, we get through the four officers, one, two, three,
7 four and we're doing pretty good. And guess what, they knew
8 yesterday that wasn't gonna cut the mustard, they knew it,
9 they knew it. And what do they do, they went out to the jail
10 last night to talk to somebody looking at twenty-five years in
11 prison, no parole, mandatory. If she was the judge's
12 daughter, he couldn't give her twenty-four years, it's twenty-
13 five. She's got a five or six-year-old child. She's out
14 running around trying to get this other drug dealer a lawyer.
15 You don't think she's gonna cut a deal? She said the truth is
16 the truth. Truth is the truth. I don't think it takes
17 villain to lie and pin something on somebody else and take it
18 off of you if you're looking at twenty-five years no parole
19 and you've got a child. I don't. I think that's pretty much
20 human nature. All right. I'm not so sanctified to stand here
21 in front of you and tell you that I wouldn't be tempted to do
22 that but that's what happened. That's what's happened because
23 she's had two years to tell us all this stuff. Two years to
24 say that's a picture of me and Wesley. She's the one that was
25 there three or four nights a week. You got to look at the

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1 evidence, the evidence. Do you have any evidence that he was
2 there even as much as she was? Do you have any evidence
3 whatsoever -- and that's what this case is about, it's the
4 only thing you can consider -- is there any evidence that he
5 was there one day a week when he went by to see her, went by
6 to have sex with her? I don't know. But she admitted she was
7 there three or four times a week. Driving from North Carolina,
8 who does that? Who leases an apartment in North Carolina and
9 spends three or four nights a week down here. She says she --
10 now she says she didn't live there but that's living there.
11 She lived there more than she lived in North Carolina, that's
12 the point I was trying to make when she hits four days in a
13 week, I mean, that's more than -- out of seven, that's most of
14 the week. If you're living in North Carolina, you're sure
15 living there too. We got evidence of that. Do you have
16 evidence that he was living there outside of her? Cars in the
17 garage, the car he drove, where did that come from? That came
18 from her. We do know from the officers that she was the one
19 that went back there, ran up, demanding to see the search
20 warrant because she said they couldn't search, she lived
21 there. Who is the person at the door fighting to keep them
22 out; the one that's spent all this time there and never seen
23 any drugs. The prosecutor said she never had any need to go
24 in the kitchen. You gonna be there three or four nights a
25 week and you're not gonna go in the kitchen? Drugs all over

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1 the house and you never seen a thing? The one thing she
2 didn't testify to is drugs. She testified that a pair of
3 baggie pants, that must be Wesley's pants. Cops didn't even
4 take the clothes, didn't even take the clothes. Why couldn't
5 you at least come in here and ask somebody to testify what
6 size they were. Why didn't they get the shoe size, the shoes
7 in the closet. You look at those pictures and you see that
8 big bag of cocaine ain't in a bag. I don't care who says they
9 fell out of the closet out of male clothes, that sure changed
10 real quick. Fell out of male clothes. There's a picture in
11 there, you look and see if that stuff is not on the floor and
12 if it's not in a bag. Look close at that. And I'm not gonna
13 go through everybody's testimony. I'm not -- maybe I just did
14 but I'm not gonna go through any more of it. But you look at
15 those pictures. I'm not gonna go through each one of them and
16 hold them up because you get to take them back with you.

17 Excuse me one second.

18 When I summarize the testimony of the witnesses, the
19 police officers, I put all on one page. It was pretty close,
20 so I'm not gonna go through that piece by piece. But you know
21 what, he didn't live there based on seeing him drive off one
22 morning. The person who admitted they lived there ran back
23 there and tried to fight the cops off from the door. I know
24 what I missed -- there's another thing I want to point out to
25 you. She said she had to -- she had to change her story. She

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1 said the only reason she went back there and told them that
2 was because of -- let's get Wesley again, Wesley told her to
3 go back there and do it. And I said, Well, how in the world
4 if Wesley's in custody because he just got stopped for driving
5 under suspension, how does he tell you that? Well, she went
6 there, he shouted it to me and shouted my -- shouted his mom's
7 number, so he called her too. Did -- before she said that did
8 one of those police officers and she said the police officers
9 were -- I said, Where were the police officers? They were all
10 right there. They were all right there. And I said, Well,
11 would they've heard it? Yeah, they would've heard it. Did
12 one of those police officers testify, and they would have
13 because it's important, that Wesley yelled to her to go the
14 house and see what's going on? Yelled to her to call my mom
15 and get to the house, any of that kind of stuff? No. The
16 police officers didn't say that because they didn't hear that
17 because that didn't happen because after two years, she came
18 up with that. And I'm gonna tell you, twenty-five years will
19 make you say a lot of things that you ordinarily might not
20 say. And I'm gonna tell you when it becomes real is when you
21 sit at that table and you pick a jury. You saw her there, she
22 was with us. She was with us. She was scared to death
23 because she knew because she knew what her involvement was and
24 she knew what my position was. And what does she do? She cut
25 a deal. Not a -- and it wasn't that difficult either because

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1 you know why, this case is so weak they went to her. She
2 told you, they drove out to the jail and it ain't a short
3 drive from here to the J. Rueben Long, last night. Poor
4 pitiful girl got locked up after we selected the jury because
5 that's what happens when you pick a jury, she's out there at
6 the jail. And she's probably thinking, I can't do another
7 twenty-four years, eleven months and twenty-nine days, I can't
8 do it. I got a kid. I ain't gonna do it. So, she comes in
9 here today. I summarize hers on one sheet of paper and what
10 I'm gonna ask you to do is disregard that, disregard that and
11 look at the evidence without her. Because if you're gonna be
12 firmly convinced, you're gonna convict a man with all that on
13 her credibility and reasons to lie and change her stories --
14 and reason to lie, twenty five years is a big one -- then
15 that's just not fair. What I ask you to do is take Angel's
16 testimony and just call that unreliable and take it out of the
17 picture because that's what I did with it. And that leaves
18 you with the rest of the evidence.

19 Now, if I missed anything, I'm sorry, but I know and I've
20 noticed that you all have been paying fine attention so I'm
21 not gonna go on and on and talk. I will tell you every time I
22 sit down after a closing argument, I remember something that I
23 wished I would've pointed out or wished that I would've said
24 and there's nothing else I can say after I sit down. That's
25 why this was hard for me. I start going back and coming back

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1 but I know you've paid attention. If I said anything that you
2 remembered differently or the evidence shows differently that
3 somebody said, then you go with what you heard. I know you've
4 been paying attention and you have twelve of you that have
5 been listening.

6 I also ask you to keep this system strong. This is a
7 serious case and a man's future is at stake and you have to be
8 firmly convinced and I don't know how you can be firmly
9 convinced that those drugs are his based on this case. That's
10 all I'm asking you and I'm asking you to be strong and
11 everybody take turns talking and just stand by your
12 convictions, please. Thank you.

13 THE COURT: Thank you, Mr. Truslow and thank you, Ms.
14 Cote, counsel for the State.

15 Ladies and gentlemen, you've now heard all of the
16 testimony in the case. You've heard summation from excellent
17 counsel for the State and for the Defense. I have given you
18 the appropriate instructions in the law and your understanding
19 that as finders of the facts, you take the facts as you find
20 them to be, apply it to the law of this case. Understanding
21 too that whatever your verdict is not guilty or guilty must be
22 the unanimous verdict of all twelve.

23 I'm gonna let you go the jury room. Do not begin your
24 deliberations until I send this indictment in along with other
25 matters in evidence. Once this indictment comes in, the

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1 foreman will instruct you to begin your deliberations.

2 Now, Madame Alternate, our rules unfortunately do not
3 permit the alternate to participate in the deliberations
4 unless and until somebody becomes unavailable or sick. So I'm
5 gonna have to ask them to put you in a separate place from the
6 jury. Anytime there's any questions or any additional
7 charges, I want her brought back out.

8 Now, Mr. Foreman, ladies and gentlemen, from time to time
9 jurors have certain pertinent questions and I understand that.
10 There is pencil and paper provided and if you or any member of
11 your jury have a question, please write it down and let the
12 Bailiff know and if I can answer it, I will. Remember now, I
13 cannot answer a question of fact. I'll be glad to answer a
14 question of law or to recharge you on any issue.

15 You may now go to your jury room.

16 And escort the alternate to another place.

17 (REPORTER'S NOTE: The jury retires to the jury room.)

18 Gentlemen, come forward and let's agree as to what's
19 going into evidence.

20 MR. RICHARDSON: Yes, sir.

21 THE COURT: Mr. Truslow.

22 MR. TRUSLOW: Yes.

23 THE COURT: All right. Are we agreed as to what evidence
24 is coming in. What say the Solicitor?

25 MR. RICHARDSON: Yes, sir.

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1 THE COURT: You've examined the evidence going in, are
2 you satisfied?

3 All right. For the State, are we agreed as to what's
4 going into evidence?

5 MR. RICHARDSON: Yes, sir, Your Honor.

6 MS. COTE: Yes, sir, Your Honor.

7 THE COURT: How about defendant?

8 MR. TRUSLOW: Yes, Your Honor.

9 THE COURT: Send it in and tell them to begin
10 deliberations and send in the indictment.

11 Thank you.

12 We are in recess.

13 MS. COTE: Thank you, Your Honor.

14 MR. RICHARDSON: We would just ask, I mean, typically --
15 Judge, typically, I know the judge doesn't want to send the
16 ammunition and the firearm back at the same time.

17 THE COURT: No.

18 MR. RICHARDSON: So, if you would just send a note back
19 to them saying either one they want to view, we'll hold one
20 away from them.

21 THE COURT: Just prepare a note -- we're gonna do it
22 here. The law clerk is writing a little note for me.

23 All right, Mr. Truslow, I'm sending a note in that they
24 have the gun or ammunition at any time but not both.

25 MR. TRUSLOW: Yes, sir.

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1 THE COURT: Hand that to the foreman personally.

2 COURT'S EXHIBIT NUMBER TWO

3 MARKED FOR IDENTIFICATION

4 (REPORTER'S NOTE: Deliberations begin at 4:30 p.m.)

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

6 (On the Record.)

7 THE COURT: I understand that the jury has a unanimous
8 verdict. I, of course, are not aware of what it is.

9 Recognizing that whatever it is, it will impact not only on
10 the defendant but perhaps his family. I want it clear now, I
11 will not permit any comment or any outbursts of any kind.
12 Should that occur, the culprit will be dealt with in a serious
13 manner by contempt of court.

14 You understand that, Solicitor?

15 MR. RICHARDSON: Yes, Your Honor.

16 THE COURT: And Mr. Truslow?

17 MR. TRUSLOW: Yes, sir,

18 THE COURT: Bring the jury in, please.

19 (REPORTER'S NOTE: 5:34 p.m. The jury returns to the
20 courtroom.)

21 VERDICT OF THE JURY:

22 THE COURT: All the jurors present. Mr. Foreman, has
23 this jury reached a unanimous verdict?

24 FOREMAN: Yes, sir, Your Honor, they have.

25 THE COURT: If this be the unanimous verdict of all

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1 twelve, please signify by raising your right hand.

2 The jury has so signified.

3 Madame Clerk, accept the indictment and the verdict and
4 bring it to me.

5 Publish the verdict.

6 CLERK: Indictment number 2010-GS-26-2326, State of South
7 Carolina, County of Horry versus Alton Wesley Gore, Jr. on the
8 charge of trafficking cocaine 200 to 400 grams, we the jury by
9 unanimous consent find the defendant guilty. Signed by
10 foreperson Eddie Stevens, dated January the 5th, 2012.

11 Ladies and gentlemen of the jury, if this is your verdict
12 so signify by raising your right hands.

13 (REPORTER'S NOTE: Jury unanimously indicates by raising
14 hands.)

15 THE COURT: Mr. Foreman, this court expresses to you its
16 appreciation for your duties in this case. You know, none of
17 you asked to be here this week giving up your daily pursuits
18 and certainly none of you asked to be on this trial but having
19 done so you've done your duty in accordance with your oath.
20 As Mr. Truslow indicated, I noticed yesterday and all day --
21 day before yesterday and today, too, that all of you were very
22 attentive to the trial throughout the case and that's just a
23 sign of good jury.

24 Now, there may or may not be some, something in the press
25 or in the newspaper with regard to your verdict. You may, if

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1 you choose now, discuss that verdict with anyone that you want
2 to. You all seem -- also may say, I'm not going to discuss
3 it, that's your choice but if you care to, you may do so.

4 Now, I'm going to ask the solicitor to read the prior
5 record of this defendant. And the reason I do that in the
6 press tomorrow, if it's in the paper, you gonna see that he
7 has a significant prior record for drug dealings, that he's
8 presently indicted for three or four distributions and you're
9 gonna ask yourself, why in the world weren't we told that.
10 Well, the reason you weren't told that is that if he was
11 convicted at all, it ought to be on this case, not his prior
12 record or not some pending charges and thus we don't let that
13 become available except as a circumstance of sentence.

14 For the record, though, the jury is entitled now to know
15 his prior record.

16 MS. COTE: Yes, sir, Your Honor.

17 MR. RICHARDSON: Allow me to pass up the sentencing
18 sheet, Your Honor.

19 MS. COTE: The defendant has a 2002 public disorderly
20 conduct charge; 2005 reckless driving; 2007 possession with
21 intent to distribute cocaine for which he received a two-year
22 sentence; failure to stop for a blue light; and unlawful
23 carrying of a pistol charge. Additionally, Your Honor, he has
24 three pending trafficking cocaine 10 to 28 grams from the
25 Horry County Police Department. He has a more recent

State v. Gore (January 5, 2012)

255

MOTIONS

1 trafficking in cocaine charge that's also pending from the
2 Fifteenth Circuit Drug Enforcement Unit that were the result
3 of sales.

4 THE COURT: And those trials for trafficking are on
5 another date and another occasion?

6 MS. COTE: Yes, sir.

7 THE COURT: All right. I just wanted the jury to know
8 that that well may come up and you'll wonder why we didn't
9 tell you about it. But if you convict an individual, convict
10 him on the evidence in this case and not what he may've done
11 in the past. I hope you understand that.

12 Let me say this to you, I deeply appreciate your services
13 in this case and as jurors of Horry County this week, I don't
14 know whether the judge told you or not when he qualified you
15 but I concluded many years ago that other than times of war, a
16 person of this magnificent country will never be called upon
17 to perform a higher duty than that of jurors particularly in a
18 criminal case. This permits you to have participated actually
19 in the judicial system of our state and nation. And you will
20 remember this as you go forward and I'll remember that you
21 were jurors in my courtroom. You are now excused -- thank you
22 -- for the night and for the week. Thank you.

23 Was there anything else required of the jury?

24 MR. TRUSLOW: No, sir.

25 THE COURT: I didn't think so.

State v. Gore (January 5, 2012)
SENTENCE OF THE COURT

256

1 (REPORTER'S NOTE: The jury is excused and leaves the
2 courtroom.)

3 THE COURT: All right, sir. Any motions at this time on
4 behalf of the State?

5 MS. COTE: None from the State, Your Honor.

6 THE COURT: Mr. Truslow, on behalf of the Defense?

7 MR. TRUSLOW: Your Honor, we'd renew our motion for
8 directed verdict and in the alternative, we would move for a
9 new trial.

10 THE COURT: I would respectfully deny both of those
11 motions.

12 The questions were for the jury. There was ample
13 evidence if believed and obviously they believed it that he
14 was guilty. The evidence in the case showed that there were
15 evidences of drugs all over that house, kitchen, bedroom,
16 wherever. The evidence is frankly overwhelming and the jury
17 has rendered their verdict.

18 Have the defendant come forward for sentencing.

19 MR. TRUSLOW: You want us here, Your Honor?

20 THE COURT: Have him come forward.

21 Anything further from the state on behalf -- prior to
22 sentencing?

23 MS. COTE: No, Your Honor. We've placed his prior
24 convictions on the record and there's nothing further from the
25 State.

State v. Gore (January 5, 2012)
CERTIFICATE OF COURT REPORTER

257

1 SENTENCE OF THE COURT:

2 THE COURT: Mr. Gore, you received an excellent defense
3 from one of the state's best attorneys but we lawyers, as I
4 was a lawyer for thirty-two years, can only deal with the
5 facts that are presented to us at the time and in my opinion
6 it would've been difficult for this jury to have found you not
7 guilty based on the circumstances and evidence found in the
8 dwelling and apparently, they found it was your dwelling and
9 the evidence surely suggests that it was.

10 Mr. Truslow, is there anything else you would care to
11 tell me at this time?

12 MR. TRUSLOW: Not given the fact that what the sentence
13 has to be at this point other than to ask you to suspend that
14 sentence. I know that's not lawful at the time but I would
15 urge you to do that if there's any way to do that but I don't
16 know that you can.

17 THE COURT: Cannot do it and I -- my law clerk and I just
18 reviewed the will of the legislature prior to coming in here.

19 MR. TRUSLOW: Yes, sir.

20 THE COURT: And that document, that statute provides that
21 one who is guilty of this quantity and he was so found more
22 than 200 less than 4' must be sentenced to a period of twenty-
23 five years and \$100,000, no part of which may be suspended.
24 That is the language of the statute. I'm sure you're familiar
25 with it.

State v. Gore (January 5, 2012)
CERTIFICATE OF COURT REPORTER

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1 MR. TRUSLOW: Yes, sir.

2 THE COURT: And that will be the sentence and judgment of
3 the Court that you be confined in the state penitentiary for a
4 period of twenty-five years and fined \$100,000.

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(Adjourned.)

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ORIGINAL

State v. Gore (January 5, 2012)
CERTIFICATE OF COURT REPORTER

259

C E R T I F I C A T E

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 trial held in the case of The State versus Alton Wesley Gore, Jr., held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on January 3, 2012 and January 5, 2012.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Kay H. Richardson, CVR

Official Reporter

March 28, 2012.

FORM 5 20 16 CP26 1592

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Horry)Alton Wesley Gore Jr. 322597)

Full name and prison number (if any) of Applicant)

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF)

2016 NOV 29 PM 3:32

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Institution, 990 W. Sackey Hwy Bishopville, SC 29010
2. Name and location of Court which imposed sentence Horry County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) Angel De Angelo
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Trafficking Cocaine: 10-GS-26-02316
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Trafficking Cocaine: Jan. 5, 2012 and sentenced to
~~(b)~~ 25 years and fined 100,000.
 (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. S.C. Supreme Court
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Conviction and sentence affirmed
- ii. Petition for writ of certiorari was dismissed as
~~iii.~~ imprudently granted
- (c) the date of each such result:
- i. April 2, 2014
- ii. Dec. 9, 2015
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Placing a time limit on the trial was unconstitutional

(b) Unprofessional Frank's hearing violated due process

(c) Disqualifying jury before the trial started prosecutory misconduct with co-defendant

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) If counsel wouldn't put limits on trial, results would've been different

(b) If counsel wouldn't've gotten mag. state supreme & to Frank's hearing, different results

(c) Counsel should've disqualified jury after co-defendant picked with them testified against.

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? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. NO

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

Yes

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. Franks vs Delaware hearing
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. SC Court of Appeals
- ii. SC Supreme Court
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Because concept for the Frank's hearing #11
 (b) or objects must be made at trial and if they are
 (c) not objected to then you can't raise them until the PCR stage

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? yes
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

yes

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. T. Kirk Truflow
PO Box 238 N. Myrtle Beach SC 29597
 ii. Nicole K. Mace
1341 44th Ave N suite 205 Myrtle Beach SC 29577
 iii. _____

(b) the proceedings at which each such attorney represented you:

i. General Sessions jury trial
 ii. SC court of appeals
 iii. SC Supreme Court

20 16 CP26 7592

19. State clearly the relief you seek in filing this application:

Applicant seeks relief from his convictions
and sentence

20. Are you now under sentence from any other court that you have not challenged?

Applicant is not under sentence from any
other court

STATE OF SOUTH CAROLINA)

County of Horry)

VERIFICATION

I, Atton Wesley Gore Jr, 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.

Atton Wesley Gore Jr.

SWORN to and subscribed before me this 14th
 day of November, 2016.

Alisa B. Veen (L.S.)
 Notary Public

My Commission Expires: July 24, 2024

2016 CP26 7592

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Alton Wesley Gore Jr, 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.

Alton Wesley Gore Jr
Applicant

SWORN or affirmed to and subscribed before me this
14th day of November, 2016.

Alesia H. Verren
Notary Public

My Commission Expires: July 24, 2024

2016 NOV 29 PM 3:33

584-SE-2D-401 SC 1994

Hoh Gore

Issues for relief

1. Counsel failed to call the informant to the stand, the star witness, putting a lime law on the trial that violated my constitutional right to my 6th Amendment confrontation clause. He is who the case is built around.
2. In the Frank's hearing, counsel failed to call the magistrate to the stand and ask him what he was told when Det. And gave oral testimony about the drug transactions, the times and dates of the buys. Judge Mayers should have been subpoenaed to be at the hearing. See Frank's - where the judge had to testify at the hearing, to see what he was told.
3. My co-defendant should've testified because she wasn't the informant, had nothing to do with the case the state allegedly had on me. She picked the jury with me and then testified against me after picking the jury.

Chain of custody broken

4. The state never showed some of the evidence they had on me, audio, video or me to consider a reasonable idea. I'm entitled to defend myself under the law of SC to my fullest capability, and I can't do that without all evidence, especially if it's the foundation of the case.
5. Counsel should've objected to Det. Donald when he said he took the keys out of the car's ignition to open the door to the house. Broken chain of custody. He had no consent to take those keys.
6. The continuance of my case.
7. I was never indicted or the state never had all my indictments on this case. If I didn't get indicted on the drug transaction then how can I get indicted on the house and what they found. The fruits of the search would be tainted.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
Alton Wesley Gore Jr.,	)	Case No.: 2016-CP-26-07592
S.C.D.C. No. 322597,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the application for post-conviction relief filed by Alton Wesley Gore Jr. (Applicant) on November 29, 2016, Respondent would show this Court:

I.

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the June 2010 term of the Horry County Grand Jury for trafficking in cocaine, between 200 and 400 grams (2010-GS-26-02326).¹ Timothy Kirk Truslow, Esq. represented Applicant on the charge. Michael O'Sullivan, of the Fifteenth Circuit Solicitor's Office, prosecuted the case pre-trial. Nancy Cote and Brad C. Richardson, of the Fifteenth Circuit Solicitor's Office, prosecuted the case at trial.

Applicant appeared before the Honorable Steven H. John on March 15, 2011, for a pre-trial Franks v. Delaware² hearing regarding the propriety of the search warrant permitting the search of his residence. Judge John found the search warrant affidavit proper and denied Applicant's motion to suppress the fruits of the search. On January 3 and 5, 2011, Applicant

¹ Applicant also faced seven other charges and indictments for various less severe drug crimes, all of which were dismissed without indictment or *nolle prosequi* after Applicant was convicted and sentenced on this indictment.

² 438 U.S. 154 (1978).

proceeded to trial before the Honorable Edward B. Cottingham and a jury. The primary factual point of contention at trial was whether or not the house in which the drugs were found was, in fact, Applicant's residence. After just over an hour of deliberation, the jury found Applicant guilty as indicted on January 5, 2012. Judge Cottingham sentenced Applicant to imprisonment for a term of 25 years and a fine of \$100,000.00—the statutory minimum.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Nicole Nicolette Mace, Esq. and Amy K. Raffaldt, Esq. The South Carolina Court of Appeals considered three issues:

1. "[Whether t]he trial judge properly denied Appellant's motion to suppress where the search warrant affidavit was not submitted with intent to deceive or with reckless disregard for the truth and where the affidavit provided probable cause for issuance of the search warrant. Further, even if the search warrant had been defective, the good-faith exception applied to preclude suppression of the fruits of the search."
2. "[Whether t]he trial judge properly allowed into evidence two photographs of Appellant which were relevant to proving he was a resident of the house, served to corroborate testimony, and which were not unfairly prejudicial. In any event, even assuming the judge erred, admission of the photographs was harmless in the context of the entire case."
3. "[Whether t]he trial judge properly denied Appellant's request for a lesser-included charge of simple possession where there was no evidence suggesting the Appellant was guilty of only the lesser-included offense."

Final Brief of Respondent at 1. The parties proceeded to oral arguments before the Court of Appeals on December 10, 2013. By opinion decided April 2, 2014, the South Carolina Court of Appeals affirmed Applicant's convictions. State v. Gore, 408 S.C. 237, 758 S.E.2d 717 (Ct. App. 2014). Applicant's petition for rehearing was denied by order filed June 19, 2014. Applicant petitioned the Supreme Court of South Carolina for a writ of certiorari, which was initially granted in part (as to Questions I and II) and denied in part (as to Question III) by order dated January 16, 2015. The parties proceeded to oral arguments before the Supreme Court on

October 21, 2015. By opinion decided December 2, 2015, the Supreme Court dismissed certiorari as improvidently granted. State v. Gore, 414 S.C. 577, 780 S.E.2d 261 (2015). The Remittitur was issued on December 2, 2015.

II.

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. "Placing a limine law on the trial was unconstitutional"
 - a. "If counsel wouldn't put limits on trial, results would've been different"
2. "Unprofessional Franks hearing violated due process"
 - a. "If counsel would've gotten magistrate subpoenaed to Franks hearing, different results"
3. "Disqualifying jury before the trial started [Prosecutorial] Misconduct with co-defendant"
 - a. "Counsel should've disqualified jury after co-defendant picked with then testified against."

Though Applicant references "due process" and "prosecutorial misconduct", based upon their substance, Respondent interprets each of the above grounds as allegations of ineffective assistance of counsel and responds to them accordingly.

Attached to and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of relevant information.

III.

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the

proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that “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.

Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant must specify any claims he 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 §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC; Mangal v. State, Op. No. 27726 (S.C.Sup.Ct. refiled October 4, 2017) (Shearouse Adv.Sh. No. 38 at 12). 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, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

V.

Respondent denies each allegation not expressly admitted, qualified, or explained.

VI.

WHEREFORE, Respondent respectfully requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.
Assistant Attorney General

By:

ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

_____, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	
	)	
	)	2016-CP-26-7592
ALTON WESLEY GORE, JR., #322597,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James K. Falk, Esquire
Falk Law Firm, LLC
PO Box 1058
Charleston, SC 29402

DATED this 6th day of October, 2017.



 Mallory Morris, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FOR THE FIFTEENTH JUDICIAL CIRCUIT
)

Alton Wesley Gore Jr.,) Case No.: 2016-CP-26-07592
S.C.D.C. No. 322597,)
)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

AMENDED RETURN

FILED
Horry County
2018 JAN 12 PM 2:39
CLERK OF COURT
HORRY COUNTY, SC

In response to the application for post-conviction relief filed by Alton Wesley Gore Jr. (Applicant) on November 29, 2016, Respondent would amend its return filed October 16, 2017, to reflect the following:¹

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² Applicant also faced seven other charges and indictments for various less severe drug crimes, all of which were dismissed without indictment or *nolle prosequi* after Applicant was convicted and sentenced on this indictment.

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III.

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "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.

Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant must specify any claims he 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 §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC; Mangal v. State, Op. No. 27726 (S.C.Sup.Ct. refiled October 4, 2017) (Shearouse Adv.Sh. No. 38 at 12). 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, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

V.

Respondent denies each allegation not expressly admitted, qualified, or explained.

VI.

WHEREFORE, Respondent respectfully requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

Respectfully submitted,

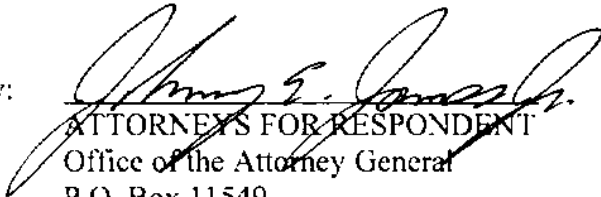
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By:


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10 Jan, 2018

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

ALTON W. GORE, JR., #322597)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2016-CP-26-7592

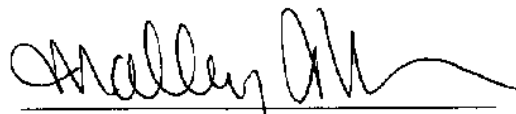
AFFIDAVIT OF SERVICE BY MAIL

FILED
HORRY COUNTY
CLERK OF COURT
HORRY COUNTY, SC
JAN 12 PM 2:40

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Amended Return** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James K. Falk, Esquire
Falk Law Firm, LLC
PO Box 1058
Charleston, SC 29402

DATED this 10th day of January, 2018.



Mallory Morris, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA **TRANSCRIPT OF RECORD**
2 COUNTY OF HORRY **ORIGINAL**
3 PCR HEARING VIA WEBEX
4 CASE NO.: 2016-CP-26-07592

5 **B E F O R E:** The Honorable R. Kirk Griffin
6 December 10, 2020

7
8 ALTON WESLEY GORE,
9 Appellant,
10 vs.

11 STATE OF SOUTH CAROLINA,
12 Respondent.

13 -----
14 APPEARANCES:

15 James K. Falk, Esq.
16 Attorney for the Appellant.

17
18 Lindsey McCallister, Esq.
19 Attorney for the Respondent.

20
21 Natalie Dahl, RPR
22 Court Reporter

23
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25

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Bradley Richardson, Esq.

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P-R-O-C-E-E-D-I-N-G-S

THE COURT: This is 2016-CP-26-7592, Alton Wesley Gore, Junior, versus State.

Ms. McCallister, if you will give us the procedural history and set the scene for what we're going to do.

MS. MCCALLISTER: Yes, Your Honor. Mr. Gore was indicted at the June 2010 term of the Horry County Grand Jury for trafficking cocaine between 200 and 400 grams. He was represented on that charge by Kirk Truslow. Brad Richardson and Nancy Cote prosecuted the case. At trial on March 15, 2011, he appeared before Steven John for a Delaware hearing regarding the propriety of the search warrant; he found it was proper and denied the motion. He then proceeded to trial on January 3rd and 5th, 2012 before the Honorable Cottingham with a jury, and the jury found him guilty as indicted on January 5, 2012. Judge Cottingham sentenced him to a term of 25 years in prison and a fine of \$100,000. He filed a timely notice of appeal, and it was perfected by Nicole Mace and Amy Raffaltdt. There were three issues. One was the issue whether the judge properly denied the motion to suppress the search warrant; whether there were two photographs that were admitted into evidence, whether

1 those were properly admitted; and whether the trial
2 judge properly denied Appellant's request for a
3 lesser-included charge of simple possession.

4 Oral arguments were held at the Court of Appeals
5 on December 10, 2013, and by an opinion decided
6 April 2, 2014, the Court of Appeals affirmed the
7 convictions. The petition for a rehearing was denied
8 by an order filed June 19, 2014. He petitioned the
9 Supreme Court for a writ of certiorari, which was
10 granted in part as to the first two questions, and
11 denied in part as to question one. The parties
12 proceeded to oral agreements before the Supreme Court
13 on October 21, 2015. By opinion decided December 2,
14 2015, the Supreme Court dismissed certiorari as
15 improvidently granted, and the remittitur was issued
16 on the same day.

17 Your Honor, Mr. Gore is present here today via
18 Webex conference, along with his attorney in this
19 matter, Mr. James Falk. Mr. Falk filed amendments to
20 the original application; that should be in the last
21 two pages of your judge's packet. There are eight
22 issues that he has filed, and I believe that is the
23 scope of the hearing, Your Honor, that we're going
24 forward on those eight issues. I'll let Mr. Falk
25 speak to that if he has anything to add.

1 MR. FALK: Yes, Your Honor. Of course, I always
2 want my client, if he wants to, add anything at the
3 end, but I've spoken to him by telephone or in person,
4 and these are the issues that I believe are most
5 meritorious to go forward on.

6 THE COURT: So the eight issues which were raised
7 in the amendment to the PCR application is matters
8 that we'll proceed here on this morning?

9 MR. FALK: Yes, Your Honor. And you have that, I
10 guess; it was filed October 18th.

11 THE COURT: I've reviewed it. All right. Mr.
12 Falk, before we get started, I'm going to un-mute
13 Mr. Gore and go over the consent to video conferencing
14 questions with him, and then we'll get started with
15 the evidentiary hearing.

16 Mr. Gore, can you hear me?

17 MR. GORE: Yes, I can.

18 THE COURT: Mr. Gore, we are proposing to conduct
19 your PCR hearing today via video conference due to the
20 pandemic. Our intent is to protect you and everyone
21 else involved in this case to the best of our
22 abilities. Do you specifically consent to having your
23 PCR held via video conferencing and waiving your right
24 to appear before the Court in person?

25 MR. GORE: Yes.

1 THE COURT: And, Mr. Gore, do you also consent to
2 have all parties who may participate in this case,
3 whether it be the Attorney General, your lawyer, and
4 the witnesses in this case also appear before the
5 Court via video conference and waive their right to
6 have them appear in person?

7 MR. GORE: Yes.

8 THE COURT: Thank you, Mr. Gore.

9 Mr. Falk, if there is nothing else procedurally,
10 let's go ahead and call your first witness.

11 MR. FALK: I'll call Alton Gore.

12 THE COURT: Mr. Gore, raise your right hand for
13 me.

14 (ALTON WESLEY GORE, having been duly sworn,
15 testified as follows:)

16 THE COURT: Answer any questions Mr. Falk has for
17 you.

18 DIRECT-EXAMINATION

19 BY MR. FALK:

20 Q Do you have a copy of the amended PCR in front of
21 you?

22 A Yes.

23 Q Let's work from that.

24 A Okay.

25 Q First issue that we raised was trial counsel

1 strategy with regard to the search warrant, which
2 ultimately lead to your arrest. In here, you allege
3 that you think the trial counsel was ineffective by
4 seeking a Frank's hearing; whereas, it would have been
5 better off had he just tried to suppress the search
6 warrant based on the insufficiency of the probable
7 cause set forth in the affidavit; is that accurate?

8 A Yes.

9 Q Okay. I just -- I had this organized until I had
10 problems signing in. Let me make sure that the Court
11 is aware of where the search warrant affidavit is.

12 MR. FALK: Your Honor, do you have the appendix;
13 it was filed as part of the appellant pleadings?

14 THE COURT: I believe I do, Mr. Falk.

15 MR. FALK: Okay. I have a document in my hand
16 that is a part of the appellant pleadings, and it says
17 Appendix I of II, and I'm turning to Page 20, and that
18 is the one that has a copy of the search warrant.
19 I'll just paraphrase. The reasons for the Appellant's
20 -- the search warrant alleges -- I'll read it
21 verbatim, and this is the basis for probable cause: A
22 confidential and reliable informant made a buy for
23 cocaine out of the residence while being recorded and
24 monitored by agents in the area. Also, within the
25 last 72 hours, agents followed the residents to

1 another location and was able to monitor and record
2 another buy for a quantity of cocaine, and as the
3 Affiant believes, there is more illegal narcotics in
4 the residence.

5 As you know, you were there when there was a
6 Frank's hearing regarding what you were contending --
7 or at least what trial counsel was contending were
8 inaccurate statements in the affidavit; is that
9 correct, Mr. Gore?

10 A Say that again.

11 Q At the Frank's hearing, you were contending that
12 there were inaccurate -- I'm not sure what -- the
13 standard is reckless, inaccurate terms or information
14 provided to the magistrate in the warrant; is that
15 correct?

16 A Yeah. Definitely. There was some --

17 Q Mr. Gore, I'm trying to make a good record here
18 so I have an order I want to put in. Don't, sort of,
19 keep going on unless I ask you for more, okay?

20 A All right.

21 Q So what I'm saying is you were contending that
22 there were reckless statements; but in the Frank's
23 hearing, Mr. Truslow was saying there was reckless
24 statements in the search warrant affidavit, and that
25 they were -- they juxtaposed the reference to a

1 confidential informant made a buy at your house, and
2 also within the last 72 hours you were seen making
3 another sell from the location. I think Mr. Truslow's
4 argument was that that was designed to make the
5 magistrate believe that there was a confidential
6 informant that made the buy within the last 72 hours;
7 is that somewhat accurate?

8 A Yes.

9 Q But you really felt there were other problems
10 with the affidavit; is that correct?

11 A Yes.

12 Q And because when you and I talked, and the way I
13 wrote this, your PCR application, you think it would
14 have been a better trial strategy to attack the
15 insufficiency of the probable cause as laid out in the
16 four corners of the affidavit; is that correct?

17 A Yes.

18 Q Okay. So it's your contention that -- and you
19 would file cases like Kinlock 410, South Carolina 612,
20 or Wright, which is 416, South Carolina 353 where it
21 talks about probable cause must be established within
22 the four corners of the affidavit; is that correct?

23 A Yes.

24 Q And so now I want to hear what exactly you
25 thought was wrong with the affidavit?

1 A Well, when I looked -- when I looked at it
2 myself, it showed that it said one buy happened and the
3 dates was July maybe, I think the 9th or something like
4 that; and another date -- and that was the first it
5 happened at the house. We never received any evidence
6 or anything, any evidence on the buys, any reliability
7 or creditability of the confidential informant, never
8 received the names or legality or anything from that.
9 When they said the other buy happened and -- other buy
10 happened February 25th, those buys were seven months
11 apart from each other.

12 Now, the third buy they had to execute that
13 warrant within three to ten days, maybe 30, and if
14 they don't execute it, it means they -- to me, I think
15 -- I think they tried to attach that to it, which they
16 said they had buys as well, but those were the only
17 two in the book. So when they made the buy on the
18 25th, that happened somewhere else, but they try to
19 use it as a nexus -- the nexus for the search
20 warrant -- for the search warrant to say that was the
21 nexus for the house, but the whole time the nexus has
22 to be continued drug activity, apply the nexus law in
23 this case.

24 Q So it is your contention that had he just gone to
25 the circuit court judge and said "insufficient to

1 establish probable cause," that would have been a
2 better argument for you; is that correct?

3 A Yes, it would have been.

4 Q Okay. Now, let me move on to this other one,
5 number two. I know we spoke in the beginning, you are
6 concerned about the motion in limine filed by
7 Mr. Truslow; is that correct?

8 A Yes.

9 MR. FALK: Your Honor, if I could have a moment?

10 THE COURT: Yes, sir.

11 MR. FALK: I don't want to keep mispronouncing
12 your name; how is it pronounced? If you can un-mute.

13 MR. TRUSLOW: You have it right, Truslow.

14 MR. FALK: Okay. Thank you.

15 MR. TRUSLOW: Yeah, no problem.

16 Q (MR. FALK) Mr. Truslow filed a motion in limine
17 where he wanted to preclude all mention of your prior
18 drug arrests; is that correct?

19 A Yes.

20 Q And you are of the opinion that the way it played
21 out in this case, it actually worked to your detriment;
22 is that correct?

23 A Yes.

24 Q Can you explain what your concerns are here?

25 A Okay. When -- when he said he wanted to limit my

1 motion -- to limit my prior drug acts in this case,
2 probable cause to get the warrant, because you have to
3 -- I have to be able to challenge the evidence so I
4 have to know if I want to plead guilty or not guilty to
5 see if I committed the crime. If I can't actually do
6 that, I'm not allowed my due process.

7 Q Because, really, your concern is that you think
8 the whole arrest was -- the ultimate arrest was from
9 buys from a confidential informant?

10 A Yes.

11 Q But you did not go to trial on buys from the
12 confidential informant; is that correct?

13 A Yes.

14 Q And you believe that those -- you believe the
15 confidential informant was either providing inaccurate
16 evidence, or there never was one; is that basically
17 your argument here?

18 A Well, from my understanding, when I kept asking
19 Mr. Truslow to find out -- actually find out if this
20 ever occurred, can he get audio and video so I can see
21 it and make a determination if I actually did that, I
22 would have pled guilty. I would have never went to
23 trial if I could have --

24 Q Were there plea offers in this case?

25 A Yeah, there was plea offers.

1 Q What were they?

2 A First one was 25, next one is 20, and I think the
3 last before trial was 15. But like I told him -- can I
4 finish talking?

5 Q Yeah. Yeah, please.

6 A Like I told him, in order for me to see,
7 honestly, if I want to take this plea, I need some type
8 of evidence that puts me in the place saying I did
9 this. Because you have me saying that I've done this,
10 and I've never known who this person was, this
11 informant was. I never knew if I was there. I never
12 was even picked out of a line-up. I could put wrong --
13 be wrong identification. I'm pretty sure you're
14 familiar with that. I could have got picked out with a
15 line-up saying this was me, maybe fingerprints were
16 taken off of the bags of the buys. But there wasn't
17 nothing that could have happened. But it was
18 ineffective on Mr. Truslow's part; that was never
19 allowed in for me to do.

20 Q So, really, if you look at Items 2 and 3 on the
21 amended application, those really kind of go together;
22 is that correct?

23 A Yes. Yeah.

24 Q Because the reason why you are concerned about
25 the motion in limine is that that stopped you from

1 being able to attack the validity of the confidential
2 informant; is that correct?

3 A Yes.

4 Q And you requested the opportunity -- I mean, you
5 made it clear to Mr. Truslow that you wanted to know
6 who this confidential informant was; is that correct?

7 A Yes. I told him numerous times. I went to his
8 office numerous times. We didn't set a date, and I
9 didn't understand -- I didn't understand that that is
10 possible that I can be accused of evidence, something,
11 and I can't see what -- commonsense, basically, look at
12 the evidence against me so I can see who it is.
13 Regardless of this witness, it is a material witness.
14 Material witness. If I have to stand trial, I have to
15 know something about it so I can make a proper
16 determination. If I can't make a proper determination
17 if I've done this or not -- I mean, that is one saying
18 I'm playing baseball and I hit the ball and I go
19 straight to second base. First base is the
20 confidential informant. I can't go straight to the
21 warrant and then I go to trial and there is no material
22 witness who basically places me there, but there is
23 nothing to do with investigative work or nothing to do
24 with your investigative work. You can't use -- you
25 can't go invade anyone's privacy, much less at their

1 house without, basically, showing proper cause that you
2 had before -- before you had gotten the warrant. If
3 there is anything else -- anything else is wrong and I
4 was prejudiced to the fullest.

5 Q You believe -- I think we're clear there.

6 Now, the next -- go ahead.

7 A About that issue, it is kind of -- just kind of
8 hard. Matter of fact, can we jump back to it, because
9 I know we were going past it?

10 Q Well, I'm going to hopefully ask the judge, and
11 hopefully he'll give you latitude to address anything
12 at the end of this.

13 A Okay. All right.

14 Q The next couple of issues sort of revolve around
15 how this trial started. When you started off, the
16 trial had a codefendant, and we ended up with a trial
17 with no codefendant; is that correct?

18 A Yes.

19 Q Okay. So Angel DeAngelo was your codefendant in
20 this case; is that correct?

21 A Yes.

22 Q And what is your understanding of how her
23 activities related to you getting arrested?

24 A Can you say that again?

25 Q How did her conduct relate to you getting

1 arrested in the first place? Was she one of the people
2 in one of these buys?

3 A No, not of my knowledge that I know of. But it's
4 kind of like they used her -- they used her in the
5 trial to make it seem like she was the informant. She
6 was nowhere part of the investigation or nothing. She
7 just came, so when I got arrested -- I got pulled over
8 when I left that morning up from that house, so when I
9 left, I was -- I was -- I was getting past the store
10 and I pulled over at IGA. All right. All right. I
11 got pulled over -- I got pulled over at the IGA. When
12 I got pulled over, the police pulled me over until
13 other detectives came up. When they came out, they
14 jumped out of the car. The one detective, Donald, and
15 Detective -- I believe the same Detective Donald, he
16 got replaced from the Horry County Police Department,
17 right?

18 MS. McCALLISTER: Your Honor, I'll object to
19 that.

20 THE COURT: Sustained.

21 Mr. Gore, you can only testify about what you
22 know. Now is not the time to question. That officer
23 has been fired subsequent to your trial, so the
24 objection is sustained.

25 MR. GORE: Okay. I was telling a story about

1 everything that happened, but I understand.

2 THE COURT: Just stick to what happened on the
3 day that you are arrested.

4 A Okay. So when I got -- he had got -- when I got
5 pulled over and they arrested me, he put me in the
6 handcuffs. He got me out of the car. He asked me --
7 he was like, Where are you going? And I said I was
8 going to work, because I had a business. And he was
9 like -- he asked me, Where you going? And I told him,
10 On my way to work. So he told me, You don't work; you
11 sell drugs. He pulled me out of the car and asked me
12 for the keys to the house, and I told him I don't have
13 any keys. He said he doesn't have a fucking warrant --

14 MS. McCALLISTER: Objection, testifying about
15 what the officer said.

16 MR. FALK: I'm not sure -- Your Honor, it's still
17 his understanding why he got arrested.

18 THE COURT: I think it is clear that he was -- in
19 reading the transcript, he was arrested on a traffic
20 violation for driving under suspension after he left
21 the house that morning, and then they executed the
22 search warrant subsequent to the arrest for driving
23 under suspension. So I'm having a hard time following
24 the relevance of what was -- what was stated to him,
25 because we're not here to -- he's not challenging the

1 arrest for driving under suspension. So guide him
2 more towards the issues which are before the Court
3 today.

4 I'll sustain the objection.

5 MR. FALK: I believe his point was that they were
6 looking for his car, they were looking for a reason to
7 arrest him because of a prior investigation that was
8 going on related back to the confidential informant.

9 THE COURT: Okay.

10 Q (MR. FALK) Was Angel DeAngelo arrested the same
11 day?

12 A She was arrested, but this is the whole reason
13 why I was saying this, right. Because they -- when the
14 other police stopped me, they wanted to pull me out
15 of -- the police did not -- he didn't say nothing to
16 me. He just stood. There was a gun, that is the only
17 reason I was saying that. But then they put me in the
18 police car. So they didn't lock me up. The detective
19 put me in the police car, but they went back to the
20 house. She was -- she told me that he is the one that
21 arrested her. So, I mean, after that, I don't know how
22 she -- she said that she claimed that the house was
23 hers, so when she claimed the house was hers -- now,
24 with me, they hadn't gotten any statements from me.
25 Nothing.

1 Q Let me sort of get us back closer. Anyway, they
2 dismissed the case against her, or what happened next?

3 A Well, when she testified -- when she testified
4 against me at trial saying that the house was mine, and
5 I guess they said that is -- that's the way they got
6 the warrant, which is, again, not how they got the
7 warrant. They stated two confidential buys, one was
8 away from the house and the other one was --

9 Q My point is when she testified against you, she
10 was not your codefendant; she was already out of the
11 trial?

12 A No. She testified against me. She was the
13 codefendant -- she wasn't my codefendant, no. She
14 wasn't my codefendant. Because when she picked the
15 jury, but then she turned back around --

16 Q And so that's what I'm getting to. So day one of
17 the trial, when you are picking a jury, she's your
18 codefendant. And then day two of the trial, she's now
19 the State's witness; is that accurate?

20 A Yeah. That's what -- the first day -- well, I
21 guess when they started the trial, we started picking a
22 jury; that is when the trial started.

23 Q Yeah.

24 A Well, when they did that, she tried to -- I was
25 told to go get dressed, and when she tried to settle

1 the trial with Mr. Johnson -- hold on a minute.

2 Q If it's in the record, that's fine. We know the
3 record shows they tried to make a severance and the
4 court denied it.

5 A Yeah, he denied it because she stated she wanted
6 to see the warrant and the house was hers, which --
7 which can -- it was crazy. When I read it, it said she
8 said she stated approximately a month, which don't make
9 sense. Someone stays there for a month? This is my
10 house? But, yeah. But she wasn't my codefendant. She
11 wasn't my codefendant when we went to trial.

12 Q Right. Okay. Because the point that is raised
13 in your amended PCR application, it says that you were
14 prejudiced because you felt that once she had flipped,
15 you think your trial counsel should have requested a
16 continuance so he could have been better prepared to
17 cross-examine her when she's now testifying against
18 you; is that accurate?

19 A Yes.

20 Q Okay. And you think he had insufficient time to
21 prepare for that cross-examination; is that correct?

22 A Yes.

23 Q And then you kind of alluded to this before, but
24 in Paragraph 5, she was there and they were actually --
25 her lawyer, Mr. Johnson, was actually taking preemptory

1 strikes in this case with the jurors --

2 MR. FALK: And I think, Your Honor, I can look
3 back for the page numbers in the record, but
4 Ms. DeAngelo's lawyer struck Jurors 159, 133, 24, 2,
5 and 122, exercising preemptory strikes. I'm sorry.

6 Q (BY MR. FALK) So you actually had no role in -- I
7 mean, the State didn't strike that juror, but your
8 codefendant struck the juror; is that correct?

9 A Yes.

10 Q By now, almost on the first day of trial, if
11 she's no longer your codefendant, and now you have a
12 jury panel that you did not -- she played a significant
13 role in the composition of your jury; is that accurate?

14 A Yes.

15 Q Because there were five jurors that she struck
16 that Mr. Truslow did not strike?

17 A Yes.

18 Q Okay. So would you have wanted either a request
19 for a mistrial at this point, or your lawyer to ask the
20 jury panel to be restruck -- I mean re-impaneled,
21 strike that jury and get a new jury, whatever the right
22 term would be?

23 A Yeah. I rather they get a whole other jury.

24 Q And reflect what you would have picked; is that
25 correct?

1 A Yes.

2 Q Then you say counsel provided ineffectiveness in
3 failing to raise objections, and we can go through that
4 in a little bit.

5 A Okay.

6 Q Now, you had some concerns with some of the
7 direct testimony from Officer Kent Donald and Mark
8 Cooper?

9 A Yes.

10 Q There was no objection regarding their experience
11 as undercover agents; is that correct?

12 A Say that again.

13 Q So you had concerns with the jury hearing that
14 they had experience working with undercover agents; is
15 that correct?

16 A Yes.

17 Q And I think you're referring to testimony on Page
18 70 of the transcript, Lines 7 through 23. You are
19 looking in the transcript right, not the appendix?

20 A I'm looking at the transcript. I have it worded
21 a certain way.

22 Q Let me read you this testimony, which I think
23 we're referring to. Officer Kent Donald was asked:
24 Can you please give the jury the benefit of your
25 training and experience in law enforcement? Starting

1 at Line 17 Officer Donald said: I've got 15 years of
2 law enforcement experience, last ten years were in
3 narcotics and vice, promoted about seven months ago to
4 sergeant, and during that time he investigated various
5 crimes dealing with drugs, posed as a drug dealer,
6 managed confidential informants, and did search
7 warrants; is that kind of what you are talking about?

8 A Yes, that's exactly what I'm talking about.

9 Q All right. So it's not as exclusive, I don't
10 think, with Officer Cooper, but I'll direct your
11 attention to Page 83, Lines 7 through 9 where Officer
12 Cooper -- You had special training in narcotics? And
13 his response was: Several schools and stuff like that,
14 but pertaining to going out and buying drugs and doing
15 drug search warrants and how to handle evidence and
16 stuff -- is that sort of -- it is not as exclusive as
17 the testimony from Officer Donald, but is that what you
18 are talking about for Officer Cooper?

19 A Yes.

20 Q Okay. Now, what is your concern? How do you
21 think that that prejudices your trial, that testimony?

22 A It seems like with the gap -- with the gap in the
23 chain of -- chain of -- the chain of possession missing
24 out of trial, you don't have anything -- they don't
25 have virtually anything in the trial that states or

1 shows anything pertaining to how they got the search
2 warrant, but we're at trial for the search warrant.
3 Now we're there for the search warrant, and you got --
4 you're not showing anything about how you got this, but
5 then you are getting on the stand and stating that you
6 work with confidential informants, you pose as a drug
7 dealer. And officer -- and officer -- Detective
8 Cooper, he also stated that informant -- working with
9 informants as well. So, yeah, he also stated working
10 with informants as well. So I feel like when you
11 have....

12 (A brief pause in the proceedings.)

13 A So when you have -- when you have them stating
14 that he had -- when you have them stating that they
15 have -- they worked with confidential informants at a
16 trial, that basically the case came from an informant,
17 but you didn't have anything pertaining to it, but you
18 are talking about drugs. The jury may be looking at
19 that and saying -- and saying, well, obviously it's
20 something missing out of this trial.

21 MS. McCALLISTER: Your Honor, I'm going to object
22 to the speculation about what the jury may or may not
23 have thought.

24 THE COURT: I think he can -- he can speculate as
25 to why he thinks there was something missing in the

1 State's case and why he thinks that should have been
2 objected to, so I'll overrule the objection.

3 Go ahead, Mr. Gore.

4 Q (MR. FALK) So, Mr. Gore, is it fair to say that
5 you think that because they are talking about being
6 undercover officers and having training, that they
7 conducted an undercover buy on you?

8 A Yes.

9 Q And you feel that that would have been, again,
10 reference to an undercover buy with the jury, assuming
11 there is an undercover buy and no testimony about it,
12 but that was sort of a back door way to get something
13 in about an undercover buy?

14 A Yeah, that is what I assume. If you look at --
15 if you look at Detective Jessie Art (phonetic), and
16 look at his testimony, when he gave his experience, he
17 never said anything about no -- anything dealing with
18 working with any informants or nothing. He was on this
19 case. And I'm pretty sure he's part of the narcotics
20 task force, that he was in that. He knew that means he
21 works with plenty of them as well, but I'm pretty sure
22 that was part of their instruction, not to mention
23 anything about that. He stuck to it. But those other
24 two put that in there.

25 Q Okay. And then we get to the last point, and

1 this was kind of the main issue you were trying to
2 raise in your initial application as far as
3 prosecutorial misconduct. You believe that there was
4 already a deal in place with Ms. DeAngelo before she
5 testified against you; is that accurate?

6 A Yes.

7 Q Why do you think that?

8 A Because -- because she -- when I filed -- all
9 right. It was 45 minutes to an hour before I found out
10 she was testifying against me at trial, and this was
11 the day of trial. So I wasn't really -- we weren't
12 really aware of anything, but I should have been told
13 -- it should have been this right here: I should have
14 been aware of this, because it was two occasions that I
15 know -- I know that it may have been objected to what
16 was told to me, but there were two occasions that she
17 told me that they had told her --

18 MS. McCALLISTER: Yes, Your Honor, I'm going to
19 object to him saying what she -- you know, him saying
20 what she said, the codefendant.

21 MR. FALK: Fair enough.

22 Q (MR. FALK) Why do you think she got a deal?
23 First of all, was a deal ever disclosed to you in
24 exchange for her testimony?

25 A As far as -- as far as -- what you mean,

1 paperwork wise?

2 Q Did anyone tell you, Yeah, we're giving her a
3 deal? If she testifies against you, we're going to
4 drop all of the charges; was anything like that ever
5 told to you?

6 A I mean, the only person that was told -- that
7 told me, that was her. But, I mean, like I said, I
8 can't talk about that because there is going to be an
9 objection behind it, but as far as like from what I see
10 after the fact, she had to have a deal. Because two
11 weeks later, she gets time -- she gets all the drug
12 charges dropped for resisting arrest. Time suspended,
13 time served. That was after the trial. The mandatory
14 minimum is seven years; maximum is 25 to 30. She
15 didn't even get the mandatory minimum of seven years,
16 but all that was done. Just like State versus Denning,
17 it was stated, oh, she just wanted -- they just want to
18 tell her cooperation to the judge once they take her up
19 for sentencing or go to a trial. But when you get
20 anywhere from -- when you go from 25 years, you get 25
21 years to one year suspended to time served; that is a
22 whole different -- totally different story that was
23 exposed afterwards, but this had to be something
24 pre-ordained.

25 Q Because under Indictment No. 2010-GS-26-3064, she

1 was indicted on one count of possession of controlled
2 substance, Schedule 1 to 5, first offense; and then
3 indictment ending 3065, she had another count of that,
4 same charge. In indictment ending in 3066, she had --
5 she was indicted for trafficking in cocaine, 200 grams
6 or more, but less than 400 grams. Those were her
7 indictments going into the trial; is that accurate?

8 A Yes.

9 Q And they all were -- court records show that on
10 the 31st of January 2012, which is about maybe --
11 it's a month after your trial, all three drug charges
12 were null prossed, they were dismissed; is your
13 understanding?

14 A Yeah, that is my understanding.

15 Q And that she only got the indictment that ends in
16 1063. She was charged with resisting arrest, and her
17 sentence was -- and on the same day -- no, I guess the
18 day before the other charges were dismissed, on the
19 30th of January, she got one year suspended to time
20 served. But that's why you think there was a deal in
21 place; is that correct?

22 A Yes.

23 Q There was a deal in place that would have been
24 something you needed to know before your trial counsel
25 cross-examined her; is that correct?

1 A Yes.

2 Q That certainly -- because you could have
3 impeached her testimony for buys, right?

4 A Yes.

5 Q But, obviously, she's motivated to throw you
6 under the bus if she's going to escape all of these
7 charges; is that correct?

8 A Yes.

9 Q All right. I sort of walked you through and had
10 you sort of explain the basis for your amended PCR and
11 your case. Is there anything else that you can think
12 of that we haven't addressed?

13 A Let me think. All right. Can I get another time
14 to say anything about anything, or can I add on to
15 anything?

16 Q I think this will be a good time if you can say
17 it now.

18 A As far as putting everything together?

19 Q Well, why don't you do the best you can now, and
20 then if you think you need more time, we'll ask for
21 that.

22 A Okay. As far as -- okay. As far as like when --
23 with the deal with the first one, I looked at that as
24 the motion in limine. Mr. Truslow was ineffective
25 because you are a material witness, how you got

1 probable cause, and this is the only way that the --
2 the only way the warrant could ever be -- ever --
3 warrant would ever come into play, they would ever know
4 who this person is without this person. So with this
5 person in place, we needed to know everything about
6 him. I needed to know was he a confidential informant?
7 Was he reliable? Active confidential informant?
8 Mr. Truslow could have filed for any kind of a hearing
9 with the judge, the prosecution, and the detectives for
10 him to go in there, and either he could send questions
11 or questioned him with this person. Did this person
12 really -- was this really a person, or not? Or did
13 this ever occur? I never got to challenge the evidence
14 that came from the confidential buys. I never got a
15 chance to challenge the audio and video that they had
16 on the face of the warrants.

17 Now, they could have picked me -- he could have
18 also filed a motion for me to go inside. They can
19 have in-camera hearing, an eyewitness identification
20 for me to be picked out of a line-up. Now all of this
21 stuff could have been done. It could have prevented
22 me from going to trial because I -- I -- Mr. --
23 Mr. Griffin, if I would have had the opportunity to be
24 able -- if I would have had the opportunity to be able
25 to challenge this evidence, I never would have wasted

1 your all's time. I never would have went to trial. I
2 would never have done that.

3 When it was pertaining to the search warrant and
4 all of that stuff, I say it fails as well, because you
5 have to challenge the affidavit that got you the
6 search warrant that basically -- basically shows you
7 everything. So I can have a good understanding
8 saying, look, maybe they have given you these pleas,
9 they have given you these offers. But the only thing
10 it really was is during this time it was more -- it
11 was just more -- it was more of a sentence of me not
12 having the understanding of did I do this. Did I
13 commit this or not? Because regardless of anybody --
14 anybody can say things against you. I can say
15 something against someone, and they say something
16 against me. They don't get the same objection because
17 you don't know because they can't talk to that person.
18 If that person is the reason why that warrant was
19 secure, then that person has to speak for that
20 warrant. If you -- if those buys were dismissed, that
21 means the warrant should follow right behind it. It
22 really don't even make a difference from there,
23 because you cannot say -- I cannot say that I have
24 done something that I haven't had an opportunity to
25 examine or say if I'm guilty or not guilty; that is a

1 major violation.

2 Q So your concern is what we talked about before,
3 the confidential buys ultimately led to your arrest,
4 and you had no opportunity to really challenge the
5 accuracy of any information given by any alleged
6 confidential informant; is that fair?

7 A Yes. I didn't get a chance to challenge any of
8 the purchases or the deal. Even the deal with the
9 confidential informant, I didn't get a chance to see
10 that, and that is my due process for me to be able to
11 challenge that as well. Ms. DeAngelo's deal, whatever
12 she had, I needed to challenge that as well.

13 Q Because it's your opinion that had you known -- I
14 think what you had said in there is had you -- had you
15 been convinced that everything said about the
16 confidential informant was accurate, then you would
17 have been more likely to take a plea; is that what you
18 are saying?

19 A I would have been. I would not have taken it to
20 trial, no.

21 MR. FALK: No further questions at this time.

22 A Can I say one more thing?

23 MR. FALK: I don't know.

24 Your Honor?

25 THE COURT: As long as it is not replowing the

1 same ground. If it is something you wanted to add,
2 but with the caution that we don't need to keep
3 hearing the same arguments. If it is something new,
4 I'll be happy to hear from you.

5 A Okay. There is another thing pertaining to --
6 dealing with the Frank's hearing. I feel that
7 Mr. Truslow was ineffective for not challenging the
8 sworn testimony or testimony of -- of -- of detective
9 -- Detective Jessie Art, because they used -- they used
10 that testimony that was at that hearing to uphold -- to
11 uphold the warrant. That is why it wasn't -- why it
12 wasn't a fundamental foundational practice for them to
13 have me -- have him testify in-camera or have it
14 recorded or affidavits supplied to what he told the
15 judge; so I feel like he was ineffective for that.
16 Because if you use the testimony that my lawyer had,
17 that Mr. Truslow had went into actually, to basically
18 use that suppression hearing, you use that to kind of
19 secure the warrant, why he had to use him. And then
20 the bad part about it, it was a year later. It is
21 supposed to be done in a certain amount of time. It is
22 not supposed to be done a year later.

23 THE COURT: Thank you, Mr. Gore. And that issue
24 was raised as one of your grounds for PCR, so that
25 issue will be before the Court.

1 Mr. Gore, answer any questions that Ms.
2 McCallister has for you.

3 MR. GORE: Okay.

4 MS. McCALLISTER: I don't think I have any
5 questions for Mr. Gore right now. I would reserve the
6 right to call him in my case in chief if I think I
7 need to, but I think I'm good for now.

8 THE COURT: Mr. Gore, you understand she's
9 stating that she doesn't have any questions for you at
10 this point in time, but depending how the case that
11 she presents goes forward, she's reserving the right
12 to recall you as a witness; you understand that?

13 MR. GORE: I understand.

14 THE COURT: Thank you. We're going to put you on
15 mute, Mr. Gore, since we have feedback and noise from
16 the facility, but you are able to hear everything that
17 goes on, and certainly your lawyer will hear and be
18 able to object to anything that he thinks is
19 objectionable; but we are going to have you on mute so
20 it will make it easier on everybody to hear and make
21 it easier on the court reporter to take down the
22 transcript of this hearing.

23 With that being said, Mr. Falk, do you have any
24 more witnesses?

25 MR. FALK: I do, but if we could instruct

1 Mr. Gore, since he is not at my shoulder at the table,
2 if he wants to speak or speak to me, instruct him to
3 wave his hand and we can put him on.

4 THE COURT: Mr. Gore, if you feel the need to
5 interject something or want your lawyer specifically
6 to do something, we can see you wave your hand, get
7 our attention, and take you off mute. But the record
8 is cleaner if we only have one -- the people that are
9 actually speaking live and their microphones active.
10 So if you need to let us know anything, wave your hand
11 and we'll make sure that you are heard, okay. Thank
12 you.

13 Mr. Falk.

14 MR. FALK: All right. At this time, we call
15 Scott (sic) Truslow to the stand.

16 THE COURT: Kirk Truslow.

17 (T. KIRK TRUSLOW, having been duly sworn,
18 testified as follows:)

19 DIRECT EXAMINATION

20 BY MR. FALK:

21 Q You heard some concerns that Mr. Gore had about
22 your pretrial strategy. Could you explain what your
23 thought was for the Frank's proceeding, with the
24 Frank's hearing, as opposed to just trying to challenge
25 the four corners of the indictment?

1 MR. TRUSLOW: Yes. I filed the Frank's motion,
2 that is what it was in writing, that is what I meant
3 to file. I got to court, and while we argued it, it
4 was turned into more of a suppression hearing. I
5 think in the record I pointed out to the judge what I
6 was doing; but, nonetheless, it continued in the way
7 of a suppression hearing. My understanding of it -- I
8 looked back at the transcript -- is that the judge
9 treated it as a suppression hearing and ruled in that
10 fashion on that issue. My intent at the time was to
11 have him remove certain items from the affidavit and
12 then evaluate for probable cause, but that is what
13 happened.

14 Q (MR. FALK) Because the officer testified at that
15 Frank's hearing, really?

16 A Yeah. They provided -- the officers provided
17 some oral supplementation to the affidavit of the
18 search warrant. I do remember my client raising an
19 issue of whether we could get the magistrate judge to
20 confer that or not by testimony. Number one, I thought
21 it was a Frank's hearing. Number two, the record
22 speaks for itself. I might have raised that issue, but
23 the judge felt, and actually he did rule, that the
24 officers would testify to what they told the judge. So
25 they provided supplementation in addition to the

1 affidavit on the stand, and that's what carried it past
2 probable cause when they did that.

3 Q Do you think if you would have objected to them
4 filling in the blanks, it would have helped your
5 Frank's hearing?

6 A Yeah. I mean, if there is anything -- I mean, I
7 think the case law is clear on them supplementing by
8 sworn testimony, but if they cannot do that, it would
9 have been better for sure. I didn't think the search
10 warrant was valid on its face without the
11 supplementation.

12 Q Did you consider just challenging the search
13 warrant sort of based on the four corners without --

14 A Not then. That motion was done, I think, maybe
15 months before the trial. But before the trial, they
16 ruled on that issue, on the probable cause issue there.

17 Q All right. Then, Mr. Gore had concerns about the
18 motion in limine that you filed about prior bad acts?

19 A Yep.

20 Q Can you walk us through your thought process
21 behind that?

22 A Yeah, I went -- I mean, I made a motion in limine
23 so -- to prohibit any evidence about his other bad acts
24 and stuff, arrests and drug activity, which was granted
25 by Judge Cottingham. I went back and looked at that

1 issue in the transcript, and my understanding of what
2 Mr. Gore is saying -- where it came up is when I was
3 cross-examining the codefendant; she became State's
4 witness. She called me subsequently, down the road to
5 the incident in this case, and asked me about
6 representing her ex-husband; something along those
7 lines. He had been arrested for drug conspiracy. My
8 thinking with her partially was to, you know, point out
9 that she lived there and this other guy she's close
10 with was a federal drug conspiracy defendant at the
11 time. Because Mr. Gore had maintained that he didn't
12 have custody and control of that home, and the drugs
13 found there were not his. So I can't go deep into
14 that, the judge said, because he warned me that if I
15 did that, I would be opening the door to what I made
16 the motion in limine about. So I was stopped at
17 testifying -- I mean having testimony that she asked me
18 to call and ask me subsequently to represent her
19 ex-husband, who was charged in federal court, but I
20 couldn't go any further than that.

21 Q Had you been able to go further down that road,
22 what would you have expected to have occurred?

23 MS. McCALLISTER: Object to that. That is asking
24 him to speculate what the codefendant would have
25 testified to.

1 THE COURT: I think he can testify as to his
2 intention if that line of questioning were allowed by
3 Judge Cottingham. He can testify as to what his plan
4 would have been, but not necessarily speculate as to
5 what Ms. DeAngelo would have said, so I'll overrule
6 your objection.

7 MR. TRUSLOW: The plan would have been -- if I
8 could have gone further -- is to flesh that out more
9 with the jury leaving someone who was involved in drug
10 activity and had close relation with the codefendant
11 and to explain the drugs in the home coming from
12 someone else other than Mr. Gore.

13 Q (MR. FALK) Okay.

14 A So it may have helped to flesh it out more and
15 make it more commendable to the jury.

16 Q And did you make any effort to try to get the
17 identity of the confidential informant disclosed?

18 A I think -- well, I know that they wouldn't tell
19 me, and the reason they took that was they were
20 proceeding only on the trafficking charge, not the
21 distribution charges. Now, having said that, I looked
22 at the record last night. I did not file a motion, so
23 there was no motion that was filed to reveal the
24 confidential informant; however, the bottom line was
25 that that's the position the State took, but it wasn't

1 argued.

2 Q All right. Now, were you prepared for
3 Ms. DeAngelo to be one of the State's witnesses?

4 A Yes. Yes, in a way. I mean, I suspected that
5 was going to happen. I was less so when we were
6 picking a jury, but based what they were doing on their
7 jury selection prior, it was pretty obvious what would
8 happen there. So I was no more prepared than knowing
9 her case and his case, you know. I don't know what
10 else I would have done to prepare for that, her
11 testimony.

12 Q Would it have benefited you to seek a continuance
13 to get more time?

14 A Well, I mean, I think the record shows that I did
15 ask for a continuance. The background of that is that
16 Mr. Gore and I were at an impasse and actually weren't
17 speaking at the time. Now, in the past we had done
18 some work, but at the time, he wasn't talking to me.
19 He was upset and talking about getting another
20 attorney. His family wasn't talking to me. So at the
21 court date I made a motion for a continuance because he
22 wanted to hire Scott Bellamy in Conway. The judge --
23 the judge moved that the case at least -- wouldn't
24 start the trial until that Thursday. He told Mr. Gore
25 to have Mr. Bellamy ready for trial; if he's not, then

1 I'm on the case. He couldn't change lawyers unless he
2 would have one that would show up and do it. So it
3 wasn't a continuance to a different term, but I don't
4 remember what day we started. It was a day or two or
5 more.

6 Q But at the time you made that motion for the
7 continuance because of the communication between you
8 and Mr. Gore, at that time Ms. DeAngelo was not a
9 State's witness; is that right?

10 A That's right. For jury selection, right.

11 Q So once the jurors got picked and it eventually
12 became clear that Ms. DeAngelo will be a State's
13 witness, did you consider asking the Court to strike a
14 new jury panel because of the -- counsel's influence on
15 the one you were trying the case before?

16 A Yeah. Well, yeah, it did cross my mind. I did
17 have some thinking there, and I just felt like -- that,
18 you know, having the codefendant to pick the jury as a
19 defendant sitting at the defendant's table, I -- at the
20 time I didn't think it would hurt. I thought maybe it
21 would even help. Because if she goes in facing 25
22 years in front of him -- and she was panicking and all
23 during. The State is pointing the finger at her, and
24 right after, she's a witness.

25 One thing I didn't think of was -- until actually

1 this morning -- was if she was -- they picked a jury
2 honestly that would be favorable to her, meaning that
3 they would want the jury to like her or help her and
4 believe her. So in that respect, you know, maybe I
5 should have had a different jury, you know. The point
6 is I didn't talk to him before. I didn't seek to do
7 that.

8 Q Did you have any concerns with this testimony
9 from Officer Donald and Officer Cooper about their
10 undercover officers?

11 A No, I didn't. I just don't see that -- there may
12 be issues here, but I don't see that as one. I mean,
13 that is pretty routine for an officer to give their
14 experience on the job and what they do for a living. I
15 can see the implication Mr. Gore is making, but I just
16 didn't see anything objective with them giving a
17 description of their job duties.

18 Q But you understand the inference that could be
19 drawn from that?

20 A Yeah. I mean, yeah. I guess the implication can
21 be that -- I think Mr. Gore is saying that the
22 detectives themselves may have bought from him, I guess
23 is what he is saying, I guess. I guess it is possible.

24 Q Were you made aware of any kind of deal that was
25 made between Ms. DeAngelo and the State before she

1 testified?

2 A No. Nothing more than she had to sign documents,
3 cooperation documentation, agreement, which is not
4 really routine in our court here. It basically sets
5 forth -- her reward is vague, so, you know, I didn't
6 know anything specific. I suspect there certainly was,
7 but the agreement read that they would take
8 consideration of her testimony in deciding what
9 charges -- if they change the charges or asking the
10 judge to go easy on her, that type of thing. She was
11 facing 25 years mandatory. And, you know, if she was
12 told it wouldn't be that statute, she wouldn't have
13 pled. I asked to see it, and I didn't get anything
14 there.

15 Q You kind of broke up. What was that last --

16 A I said I didn't get any information from anybody
17 what the specific deal was. I suspected that there was
18 one.

19 Q I mean, she did come out of this relatively
20 unscathed; wouldn't you agree?

21 A Yeah. Yeah. Yeah. I mean, you can't get better
22 than what she got. And, again, facing a mandatory
23 minimum of 25 years with no discretion by the judge.
24 If she didn't have a deal, at least that she wouldn't
25 be pleading to that statute, she would not have pled or

1 cooperated, you know.

2 Q And so you just saw the cooperation memo, which
3 didn't really have any specifics in it; is that
4 correct?

5 A Yes.

6 Q But you would not be surprised if there was some
7 more concrete --

8 A That's fair.

9 MR. FALK: Your Honor, no further questions.

10 THE COURT: Thank you, Mr. Falk.

11 Ms. McCallister.

12 MS. McCALLISTER: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MS. McCALLISTER:

15 Q Mr. Truslow, let's kind of just go back a little
16 bit to the beginning on this case, and we've talked
17 about the search warrant and the facts in the search
18 warrant, but can you give a background how this case
19 got started against Mr. Gore?

20 A Well, he had other charges. The allegations were
21 that they had audio and video evidence of a
22 confidential informant purchasing narcotics from them.
23 If I'm not mistaken, one was at the home at least, and
24 one was at least away from the home. That, and maybe
25 whatever else was in the affidavit is what they placed

1 together in the search warrant, at which time they went
2 in and found drugs, went to trial on the drugs from the
3 search warrant.

4 Q Okay. And so there were other charges that
5 ultimately were not tried that were dismissed or
6 whatever. It was only the drugs that were found in the
7 house that were tried in this action?

8 A Yes.

9 Q Okay. And your -- your overall defense strategy,
10 I think you sort of touched on this, was to show that
11 it was not Mr. Gore's house; he didn't have control of
12 the house and those were not his drugs that were found,
13 correct?

14 A That's right.

15 Q And there was -- I mean the transcript, you know,
16 will show, but you had some evidence that maybe he had
17 listed other addresses, places, and the State had
18 evidence, including the codefendant, but also like bond
19 paperwork and things that showed that was his address?

20 A Yes. There was evidence of him being associated
21 with the home, but there was also evidence of him not
22 being associated with it. I think maybe even his
23 driver's license, but there was evidence that he did
24 not live there.

25 Q So that was kind of the point of contention at

1 trial, who had control over the home and whose house
2 that was, and if those could have been his drugs in
3 that home?

4 A Yeah. Yes.

5 Q Okay. So let's go back through these in order.
6 On the Frank's hearing you made this motion, a Frank's
7 motion. Your allegation was, essentially, that was
8 false or deliberately misleading statements in that
9 affidavit for the search warrant?

10 A Misleading or recklessly put in, yes.

11 Q And your main contention with that is the way it
12 was drafted when you put the two sentences together, it
13 makes it seem like they are closer in time than they
14 actually were?

15 A Yes. I thought it was specifically worded to be
16 misleading in favor of the State.

17 Q Okay. And so I guess -- the issue in Frank's is
18 that if you can prove that there is a false or
19 misleading statement, you take that statement out of
20 consideration and look at the rest of the search
21 warrant to see if the search warrant is still valid, if
22 there is still probable cause, correct? Is that your
23 understanding?

24 A Yes. Yes.

25 Q And this hearing -- I think I've heard you say

1 this hearing got a little jumbled. You meant it to be
2 a Frank's hearing to determine if the statements were
3 false, and it sort of ended up as though the judge -- I
4 think he ruled on both issues; he said, I don't find
5 that statement to be false and misleading, and I find
6 probable cause and I won't suppress the search warrant,
7 correct?

8 A Yes; that's what he did.

9 Q And that issue, that Frank's issue, is one of the
10 issues that was taken up on appeal that was found to be
11 preserved, and there was a ruling on the merits,
12 correct?

13 A There was a ruling on the merits of the search
14 warrant, right.

15 Q Of the search warrant. A ruling that was not in
16 favor of Mr. Gore. They upheld the search warrant, so
17 it was valid?

18 A And the continuing objection I made -- you know,
19 I made it a continuing objection, and a lot of times in
20 the transcript you'll see he would say "subject to the
21 defense's objection." So it was ongoing, but I didn't
22 object every single time, right.

23 Q Okay. What are you talking about is when they
24 are entering evidence that you considered the fruits of
25 the search warrant, you made this Frank's motion,

1 renewed your motion at trial, and then just said that
2 is a standing objection before something was entered
3 into evidence?

4 A Yes.

5 Q Let's talk about this -- well, let me go back to
6 that. So the issue in the Frank's hearing was that it
7 got a little jumbled, but Officer Art came and
8 testified that he supplemented to the magistrate and
9 clarified that issue about whether it was close in time
10 or not, correct?

11 A Yep. Yes.

12 Q And so he sort of testified to the additional
13 probable cause that was the basis of the search
14 warrant, and that's where the judge gets to deny, you
15 know, a suppression -- sort of a traditional
16 suppression motion?

17 A Yes. But I will say that given these two
18 officers, I do wish we would have got the magistrate
19 over there. I think that would have been important.

20 Q Do you anticipate that there was potentially any
21 issues with getting the magistrate over there? I mean,
22 is that --

23 A Um, you know, I don't know the answer on that
24 except to say it's been done, and I believe we could
25 have gotten it done; however, Judge Cottingham also

1 said that he got what -- I said in the record that he
2 doesn't need to hear that the judge heard it; however,
3 if they didn't tell the magistrate or if he didn't
4 recollect, that would be different. Getting him over
5 there -- I think he is subject to a subpoena just as
6 well as anybody.

7 Q And he could potentially move to quash that
8 subpoena?

9 A Yes, that's correct.

10 Q So that is all speculative, and we don't know if
11 he could have gotten the magistrate?

12 A Yes, ma'am.

13 MR. FALK: Your Honor, I apologize for
14 interrupting. Can I have a five-minute break because
15 I have a PCR starting at 11:30. I thought it was
16 clear that we would get a continuance, but I got an
17 e-mail --

18 THE COURT: Yeah; that is fine. I understand the
19 position you are in, Mr. Falk. And I hate to break up
20 cross-examination, but I think this is for a valid
21 reason. So we are going to take a break until Mr.
22 Falk is able to rejoin us. So everyone sit tight.

23 And, Mr. Falk, let us know when you are ready to
24 proceed and we'll start back at that point in time.

25 MR. FALK: I apologize.

1 THE COURT: We're in recess.

2 (A recess was taken.)

3 THE COURT: If you are ready to continue your
4 cross-examination of Mr. Truslow.

5 MS. McCALLISTER: Thank you.

6 Q (MS. McCALLISTER) Let's go to the motion in
7 limine. You testified that you filed that motion in
8 order to exclude previous distribution charges that
9 Mr. Gore had; I'm assuming because he wasn't tried on
10 those charges, just on the trafficking?

11 A Correct. Yes.

12 Q And then the issue of his previous drug activity
13 comes up sort of in a separate issue when you are
14 cross-examining the codefendant, Angel, and you try or
15 you wanted to get into the issue of her ex-husband --
16 or I guess she reached out on behalf of her ex-husband
17 to you to represent him on some drug charges?

18 A Yes.

19 Q And your thinking there was that you could use
20 that to show that someone else who had access to that
21 house had close association with other people who were
22 involved in sort of the drug trade?

23 A Yes. Another person who was a repeated drug
24 dealer and charged with charges, yes, and had a
25 relationship with her.

1 Q And you guys kind of have, I guess -- the jury
2 goes out and you talk about this for a little while,
3 and the judge tells you basically not that you can't
4 get into that, but if you do, you are probably opening
5 the door for the State to go into her potential drug
6 activity with Mr. Gore?

7 A Yes, that's correct.

8 Q And so you decide to sort of let it go and not
9 push it any further?

10 A Yes.

11 Q But your point was that the ex-husband was
12 involved in the drug trade and had drug charges had
13 already come out to the jury?

14 A Yes. That was there, uh-huh. The only benefit
15 would have been to make it more memorable testimony, to
16 flesh it out and make it a bigger thing, but it was out
17 in the evidence, that relationship.

18 Q So you were able to get that out and also still
19 keep Mr. Gore's drug charges out as well?

20 A Yes.

21 Q And then we talked about this confidential
22 informant, that he was not tried on the buys with the
23 confidential informant. I think you testified that you
24 didn't even really make a motion to get the disclosure
25 of the informant because it wasn't relevant for the

1 charge, really, that he was being tried on; it was
2 relevant for the basis of the search warrant, but it
3 wasn't --

4 A Yes.

5 Q Was going to be the State's position, I guess?

6 A That's fair, yes.

7 Q And is that -- is that -- in your experience,
8 that is a normal position to take in that there's
9 support in the case law for the fact that they don't
10 disclose the confidential informant unless it is a case
11 going to trial on that charge?

12 A I would say that it would not hurt to make the
13 motion, because why not get everything. But he wasn't
14 being charged on that charge so, you know, I didn't
15 file a motion to get it.

16 Q Do you recall that at the beginning of trial,
17 before the codefendant changed her mind and became a
18 State's witness, that her attorney asked for the
19 disclosure of the confidential informant?

20 A I do not remember.

21 Q Okay.

22 A Yeah.

23 Q But if that is in the transcript, that's in the
24 transcript?

25 A Oh, yes. Absolutely. Yep.

1 MS. McCALLISTER: Your Honor, I believe that is
2 on Page 16 of the trial transcript where the
3 codefendant's attorney brings up that issue.

4 Q (MS. McCALLISTER) And you have explained that
5 you -- you were familiar with this codefendant, I
6 guess. How long had you been on this case before
7 trial? A year?

8 A Maybe multiple, but at least a year, yeah.

9 Q And so that whole time she was a codefendant and
10 -- I guess you were familiar with her and familiar with
11 what her involvement was and what her story was?

12 A Yeah, that's fair. I don't know what else I
13 would have done to prepare for her more.

14 Q And so you and Mr. Gore had an opportunity to
15 talk about her and the fact that there is a potential
16 for her to become State's witness, and she could decide
17 to plead, all of that kind of stuff?

18 A I think it is pretty safe to say that I raised
19 that as an issue, and it may have happened particularly
20 that morning.

21 Q Okay. And so from what I've heard you explain,
22 the trial took place kind of -- there was a break in
23 between you starting the trial, you picked a jury, and
24 I guess there was a continuance for a day or two that
25 was related to the issue of trying to get Scott Bellamy

1 there, but there was a break between jury selection and
2 when the first witnesses started to be called; is that
3 correct?

4 A Yes.

5 Q And so over that break, that is when the
6 codefendant decided that she was not going to do this
7 and she was going to become a State's witness?

8 A Yes. I think she did that right after jury
9 selection.

10 Q Okay. But on this issue about picking a jury, I
11 think you testified that your thinking at the time was
12 even though they've helped us pick the jury, I think
13 you said that you thought maybe it was a positive thing
14 that it potentially could help you because she -- the
15 jury was able to see her visibly distressed, and I
16 think you said freaking out at the defense table, and
17 then she's -- then they see that she's flipped and
18 testifying against him, so they clearly -- that sort of
19 clearly illustrated her motivation; is that your
20 thinking?

21 A Yes; that was the thinking at the time.

22 Q And I guess in terms of the jury selection at the
23 point that you guys are picking the jury together, you
24 are on the same team, correct?

25 A That's correct.

1 Q And at the time --

2 A As far as I know, that's correct, yeah.

3 Q And at that time you testified you didn't see --
4 you didn't see any benefit or any reason to make a
5 motion to restrike the jury?

6 A At that time, yes. No. In hindsight, it may
7 have been different, but that was my thinking at the
8 time, that it would not hurt and maybe help.

9 Q I think you --

10 MS. McCALLISTER: I'm sorry, Your Honor, I'm
11 checking my notes making sure I covered everything.

12 A I think that issue with the fact it was on
13 appeal, it was preserved on appeal, and Judge
14 Cottingham noted, kind of, a standing or continuing
15 objection.

16 Q (MS. McCALLISTER) You were given a written
17 proffer agreement?

18 A That's correct.

19 Q And you had suspicion that there was maybe more
20 to it, but you were able to use the proffer agreement
21 and get into the fact that he was facing the mandatory
22 minimum of 25 years if she didn't flip?

23 Well, going back to the issue of the confidential
24 informant, did you talk to Mr. Gore and explain to him
25 that you likely weren't able to get that information;

1 is that something he brought up to you that you guys
2 had talks about?

3 A Yeah. Mr. Gore -- I specifically know that he --
4 I remembered he wanted to know who the confidential
5 informant was, and we talked about it. I did a written
6 motion for the search warrant, I just neglected to do
7 that one, but I did tell him that they don't do it
8 until close to the trial, ten days maybe, and that
9 maybe their position is that it is not relevant because
10 they are not trying him on that issue, but he wanted to
11 know the identity and believed that it would help flesh
12 things out. I did make a motion for it. I mean, he
13 wanted to know if there was a confidential informant
14 and, you know, you can take it that far; but that is
15 the issue, they would not have given it up just with a
16 motion. They would have fought that.

17 Q Okay. And you explained that to him?

18 A Yes.

19 Q And the likelihood of succeeding --

20 THE COURT: If you could go back to your last
21 question, Ms. McCallister.

22 Q (MS. MCCALLISTER) You talked about the
23 likelihood of success or not if you would have made
24 the motion and getting that exposed?

25 A I believe, yes. I told him that they would not

1 willingly give it to us.

2 MS. McCALLISTER: I think that is all I have for
3 Mr. Truslow.

4 THE COURT: Mr. Falk, Mr. Gore raised his hand
5 and indicated that he has something that he would like
6 to add.

7 MR. FALK: Let me hear if he wants to speak with
8 me in private, or.

9 MR. GORE: Can I speak to him in private? But I
10 want to address something I just heard him say.

11 MR. FALK: Mr. Gore, can you get whoever is in
12 that room to give me the telephone number, and I will
13 call the number; because I know there is a phone right
14 behind you.

15 UNIDENTIFIED SPEAKER: 896-██████, and I'll
16 transfer you to him.

17 MR. FALK: 843.

18 UNIDENTIFIED SPEAKER: 803.

19 MR. FALK: Thank you. I can mute.

20 THE COURT: I'll ask everyone to mute.

21 Mr. Falk, let us know when you are finished.

22 (A brief recess was taken.)

23 MR. FALK: We're ready. He just wanted to ask me
24 a question in response to Mr. Truslow's testimony.

25 THE COURT: Ms. McCallister, are you with us?

1 MS. McCALLISTER: Yes, sir.

2 THE COURT: All right. So you didn't have any
3 further questions for Mr. Truslow?

4 MS. McCALLISTER: I don't.

5 THE COURT: Mr. Falk, redirect?

6 MR. FALK: Briefly. I wasn't sure on some
7 testimony he gave.

8 REDIRECT-EXAMINATION

9 BY MR. FALK:

10 Q Mr. Truslow, were you told about the confidential
11 buys, or did they actually show you that?

12 A I could tell you I remember there is audio and
13 video involved. I cannot remember -- I mean, I can
14 check, but I don't remember if they gave me the
15 discovery in that case; I don't. They may not have
16 provided discovery in that case. Okay. I say audio
17 and video because that is part of common parlance in
18 those cases, referring to audio and video.

19 Q Right. Right.

20 A But I don't have any recollection right now of
21 having it or seeing it.

22 Q Okay. All right. Thank you.

23 MR. FALK: No further questions.

24 THE COURT: Anything else?

25 MS. McCALLISTER: No, Your Honor.

1 THE COURT: Mr. Falk, you don't have any other
2 witnesses, Mr. Falk?

3 MR. FALK: No, Your Honor.

4 THE COURT: We're going to recall Mr. Gore.
5 Mr. Gore, just remember that you are still under oath.

6 MR. GORE: Okay.

7 DIRECT-EXAMINATION

8 BY MR. FALK:

9 Q Mr. Gore, can you hear me?

10 A Yeah.

11 Q Mr. Truslow testified that he told you that he
12 was not going to be able to get the confidential
13 informant video. He said that there would be
14 objections to it; is it your recollection that he ever
15 told you that that would be a problem, getting that?

16 A You never told me -- he never told me it would be
17 a problem. He told me he put in for audio and video,
18 but they never sent the DVD back. He said he sent them
19 to get them to burn it, but it never came back to him
20 for me to look at.

21 Q You broke up. It seems that he never told you
22 that there would be an issue with getting that; is that
23 correct?

24 A Yes.

25 Q That's your recollection of your conversation

1 with him; is that correct?

2 A Yes.

3 MR. FALK: No further question.

4 THE COURT: Any cross-examination, Ms.

5 McCallister?

6 MS. McCALLISTER: No, Your Honor.

7 THE COURT: Thank you very much. Mr. Falk, is
8 that the Applicant's case?

9 MR. FALK: That is our case.

10 THE COURT: All right. Ms. McCallister.

11 MS. McCALLISTER: Thank you, Your Honor. I'm
12 trying to write notes and do this.

13 THE COURT: I totally understand.

14 MS. McCALLISTER: We call Bradley Richardson.

15 (BRADLEY RICHARDSON, having been duly sworn,
16 testified as follows:)

17 DIRECT-EXAMINATION

18 BY MS. McCALLISTER:

19 Q You recall your involvement in the prosecution of
20 Mr. Gore on these charges?

21 A I do.

22 Q And you've heard the testimony here today about
23 some of the issues. Let's start with the issue of the
24 codefendant and the potential or a deal she had with
25 you guys. Can you explain how the codefendant came to

1 be a State's witness?

2 A Yeah. As I recall, there were numerous charges
3 against Mr. Gore at the time. I believe this is
4 actually assigned to one of my attorneys. It was
5 assigned to one of my senior attorneys. We did the
6 jury selection, and at some point, I cannot remember if
7 it was said the codefendant, she wants to testify, or
8 if she reached out to us, but eventually -- eventually,
9 after the jury was selected, there was a decision to be
10 made on whether or not she wanted to cooperate.
11 Ms. Cote, myself, and her attorney met with her I
12 believe at the J. Reuben Detention Center. She elected
13 to sign a proffer agreement, which I believe was in the
14 record. I believe it was provided to Mr. Truslow and
15 he reviewed it. The proffer agreement, since at least
16 2007, in various cases it basically just stated the one
17 entering the proffer agreement would not be deceptive,
18 and any cooperation could be taken into consideration
19 in disposition of charges.

20 Q Okay. Was there any agreement with her other
21 than what was contained in that proffer agreement?

22 A No. No. I specifically tell my people, I can't
23 make any promises. You know, typically coming from
24 defense counsel, when you want to help yourself, the
25 natural answer is yes, but there was no specific

1 promises made, no agreements made. The decision of her
2 charges were made after the trial, after we had the
3 opportunity to weigh whether or not the statement she
4 gave us during her proffer interview was consistent
5 with her testimony and whatnot.

6 Q Okay. You've heard a little bit about this
7 confidential informant. Can you explain what the
8 State's practice would be if a defendant asks for a
9 disclosure of a confidential informant in a case that
10 is not a case being tried on?

11 A We call it State v. John Doe. John Doe had
12 several drug charges, including confidential purchases.
13 Our practice, the administrative order is in place at
14 the time. If we placed one of those drug sales on the
15 docket for trial, we would produce our trial docket at
16 least ten days out; at that time, we would release the
17 videos. It was done in an effort to protect those
18 witnesses. They had the video, as well as the
19 identification of the person.

20 In search warrant cases, I believe it is case law
21 that that information does not have to be released.
22 If we would have chosen to go forward on one of the
23 drug sales for Mr. Gore, I believe we would have -- I
24 know we would have turned over the video, any video or
25 audio we had recorded, along with any agreements that

1 had been entered. In this particular case, we went
2 with a search warrant. It is a common practice
3 throughout the state, as far as I know, if you have a
4 search warrant, you go on that one. I believe the
5 main contention on this is whether or not Mr. Gore had
6 a relationship to the house. But, you know, I believe
7 it has been well said on whether or not any of that
8 information with regard to the identification of the
9 confidential informant was turned over. So, no, we
10 probably would not have turned it over since there was
11 a search warrant case. The search warrant is based on
12 what is told to the magistrate, and that motion was
13 heard.

14 Q And so your understanding is even when the search
15 warrant is based on a CI buy, that that's not something
16 that you turn over in those cases?

17 A Right.

18 Q So the reason why you didn't turn that over then,
19 in this case, is because of your understanding of what
20 the case law is and what your duties are with respect
21 to that evidence about the CIs' identity?

22 A That would be correct.

23 Q And if Mr. Gore -- or if your office decided to
24 prosecute Mr. Gore on those buys, then that would have
25 been turned over?

1 A That would be correct.

2 Q Okay. But, ultimately, your office chose not to
3 prosecute him on those offenses?

4 A That would be correct. And may I add, and I
5 don't know if it was done in this case, but the
6 practice would be to take stills of the buy videos, if
7 you can identify the defendant who is being charged in
8 those still videos, to turn those photographs over, but
9 not to turn the actual audio/video over; so they can
10 have some kind of basis. Again, I don't know if that
11 was done in this case. We were just going forward on
12 the search warrant. It wasn't my particular case, it
13 was one of my attorneys, so I didn't pay it much
14 attention to the rest of it. This is one -- I don't
15 know how many drug cases I prosecuted in my years.

16 Q So, to be clear, even turning over the stills
17 would not typically happen in this case, because it was
18 just a search warrant case?

19 A Yeah. We may have turned over the stills during
20 the course of the discovery on those cases, but it
21 wasn't anything that was mandated on cases that I
22 particularly had personally. This was not my personal
23 case, so. But the confidential informant has nothing
24 to do with the search warrant case.

25 Q You had the officers present to testify as much

1 as the judge would allow you to for the basis of the
2 probable cause of the search warrant?

3 A Yes. Whoever was handling that motion. I don't
4 recall the search warrant motion, but we would have had
5 the officers available to testify. I think we had most
6 of the officers there.

7 Q But you had the officers available at trial as
8 well?

9 A Yes, we did.

10 Q Okay. And -- okay.

11 MS. McCALLISTER: I think that is all I have for
12 Mr. Richardson.

13 THE COURT: Mr. Falk, whenever you are ready.

14 CROSS-EXAMINATION

15 BY MR. FALK:

16 Q Mr. Richardson, you would acknowledge you
17 couldn't have gotten the search warrant without the
18 confidential informant information; is that correct?

19 A I didn't get the search warrant.

20 Q Would you agree that -- do you believe the police
21 could have gotten a search warrant in this case without
22 the information from the confidential informant?

23 A Without having the affidavit of search warrant in
24 front of me -- I know you read it in, but I don't know
25 that. That would be up to the magistrate. But, again,

1 it is settled law, you don't have to turn over the name
2 of the confidential informant.

3 Q Were you aware of -- my client testified that
4 there was some plea offers made in this case; one was
5 the plea offer to get the 25, and then another offer
6 for 20, and then an offer for 15 on the eve of trial;
7 are you aware of any plea offers made by your office?

8 A I'm not. I know Ms. Cote, who was the assistant
9 prosecutor on this case, she took over for I think
10 Mr. Mike Sullivan, who may have had that case prior to
11 that. I don't know about the plea offers. I haven't
12 reviewed the file at all since the trial.

13 Q And your office didn't -- would the solicitor
14 assigned to this case have the authority to make those
15 offers without reviewing them with you?

16 MS. MCCALLISTER: Your Honor, I'm sorry, I was
17 trying to see where this is going, but there is no
18 allegations about, you know, failure to have plea
19 offer or anything in this case, so I'm not sure what
20 this is relevant to, so I'm objecting to relevance.

21 THE COURT: Well, Mr. Richardson stated he didn't
22 have knowledge of any plea offers made in this case,
23 so I'll sustain your objection.

24 Q (MR. FALK) And you have no independent
25 recollection whether or not stills from the

1 confidential buys were provided; is that correct?

2 A I have no independent knowledge of that.

3 MR. FALK: I have no further questions.

4 THE COURT: Any redirect?

5 MS. McCALLISTER: No, Your Honor.

6 THE COURT: All right. Thank you,

7 Mr. Richardson.

8 Ms. McCallister, anything else from the State?

9 MS. McCALLISTER: No, Your Honor.

10 MR. RICHARDSON: Your Honor, may I be excused?

11 THE COURT: Yes, sir, because I'm about to excuse
12 everybody. Folks, I'm going to take this under
13 advisement, reread the packet that was provided in
14 this matter, and I'll have a decision on this case
15 hopefully before Christmas, but certainly before New
16 Year's. So in the next few weeks you'll be
17 notified -- the attorneys -- of my decision. I'll
18 request that the prevailing party draft an appropriate
19 order.

20 MS. McCALLISTER: One thing, Your Honor. Does
21 your packet that we sent you, does that have the
22 transcript?

23 THE COURT: I don't believe it did. I remember
24 reading from the order -- Frank's transcript. The
25 order with Judge John after hearing -- conducting the

1 Frank's hearing made a record in the trial, but as I
2 sit here right now, I can't say for certain whether I
3 have the transcript for the Franks hearing. So if you
4 have that, please provide that.

5 MS. McCALLISTER: Yes, I do.

6 Mr. Falk, do you have it, or do you need me to
7 provide it as well?

8 MR. FALK: It is in the appendix filed as part of
9 the appeal, and the Frank's hearing and the affidavit
10 and everything is in Appendix 1 of 2 that was filed as
11 part of the appeal, so I have that.

12 THE COURT: Send it to me out of an abundance of
13 caution so I have everything to consider before I make
14 a decision.

15 MS. McCALLISTER: Yes, sir.

16 THE COURT: I appreciate everybody participating
17 via Webex. I know these hearings are certainly
18 different and cause different challenges with
19 technology, but I appreciate everyone being able to
20 participate in this matter.

21 If there is nothing else, we are adjourned.

22 (Whereupon, the proceedings concluded.)
23
24
25

CERTIFICATE OF REPORTER

ALTON WESLEY GORE v. STATE OF SOUTH CAROLINA

State of South Carolina)

County of Horry)

 ORIGINAL

I, Natalie Dahl, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate Transcript of Record of the proceedings and the evidence introduced in the hearing of the above-captioned case, relative to appeal, in the Court of Common Pleas Sessions for Horry County, South Carolina, on the 10th day of December, 2020.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

April 30, 2021


____ NATALIE DAHL _____

Natalie Dahl, RPR

Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Alton Wesley Gore, #322597,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

C.A. No. 2016-CP-26-7592

ORDER OF DISMISSAL

FILED
HORRY COUNTY
2021 FEB 25 P 2:22
RENEE N. ELYS
CLERK OF COURT
HORRY COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Alton Wesley Gore (Applicant) on November 29, 2016, and amended through counsel on October 16, 2019. Respondent made its Return on October 6, 2017, and Amended Return on January 10, 2018.¹ An evidentiary hearing into the matter convened December 10, 2020, via Cisco WebEx Meetings in accordance with the Chief Justice's administrative memorandum, *Court Operations*, dated September 14, 2020.² James K. Falk, Esquire, represented Applicant. Assistant Deputy Attorney General Lindsey A. McCallister represented Respondent.

At the hearing, Applicant testified on his own behalf. Respondent called Applicant's trial counsel, Timothy Kirk Truslow, and Bradley Richardson, one of the solicitors who prosecuted the case. This Court also had before it a copy of the Horry County Clerk of Court's records regarding

¹ The State amended the Return to correct an error in the procedural history.

² See S.C. Sup. Ct. Memorandum dated September 14, 2020 ("Judges . . . have discretion to determine whether it is appropriate to conduct a hearing using remote communication technology. *Consent of the parties or counsel is not required.* Please use WebEx, the conferencing platform supported by the Judicial Branch." (emphasis added)). Nonetheless, this Court questioned Applicant at the beginning of the hearing, and Applicant indicated his consent to the use of the WebEx platform.

RK6

the subject convictions, records from the South Carolina Department of Corrections, the application and amendments, Respondent's Return and Amended Return, transcripts of the pre-trial hearing and trial, and Applicant's appellate records. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies relief.

PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the June 2010 term of the Horry County Grand Jury for trafficking in cocaine, between 200 and 400 grams (2010-GS-26-02326).³ Timothy Kirk Truslow (Counsel) represented Applicant on the charge. Michael O'Sullivan, of the Fifteenth Circuit Solicitor's Office, prosecuted the case pre-trial. Nancy Cote and Bradley Richardson, of the Fifteenth Circuit Solicitor's Office, prosecuted the case at trial.

Applicant appeared before the Honorable Steven H. John on March 15, 2011, for a pre-trial Franks⁴ hearing regarding the propriety of the search warrant permitting the search of his residence. Judge John found the search warrant affidavit proper and denied Applicant's motion to suppress the fruits of the search. On January 3 and 5, 2012, Applicant proceeded to trial before the Honorable Edward B. Cottingham and a jury. The primary factual point of contention at trial was whether or not the house in which the drugs were found was, in fact, Applicant's residence. After just over an hour of deliberation, the jury found Applicant guilty as indicted on January 5,

³ Applicant also faced seven other charges and indictments for various less severe drug crimes, all of which were dismissed without indictment or *nolle prosequi* after Applicant was convicted and sentenced on this indictment.

⁴ Franks v. Delaware, 438 U.S. 154 (1978).

2012. Judge Cottingham sentenced Applicant to imprisonment for a term of 25 years and a fine of \$100,000.00—the statutory minimum.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Nicole Nicolette Mace and Amy K. Raffaltdt. The South Carolina Court of Appeals considered three issues:

1. “[Whether t]he trial judge properly denied Appellant’s motion to suppress where the search warrant affidavit was not submitted with intent to deceive or with reckless disregard for the truth and where the affidavit provided probable cause for issuance of the search warrant. Further, even if the search warrant had been defective, the good-faith exception applied to preclude suppression of the fruits of the search.”
2. “[Whether t]he trial judge properly allowed into evidence two photographs of Appellant which were relevant to proving he was a resident of the house, served to corroborate testimony, and which were not unfairly prejudicial. In any event, even assuming the judge erred, admission of the photographs was harmless in the context of the entire case.”
3. “[Whether t]he trial judge properly denied Appellant’s request for a lesser-included charge of simple possession where there was no evidence suggesting the Appellant was guilty of only the lesser-included offense.”

The parties proceeded to oral arguments before the Court of Appeals on December 10, 2013. By opinion decided April 2, 2014, the South Carolina Court of Appeals affirmed Applicant’s convictions. State v. Gore, 408 S.C. 237, 758 S.E.2d 717 (Ct. App. 2014). Applicant’s petition for rehearing was denied by order filed June 19, 2014. Applicant petitioned the Supreme Court of South Carolina for a writ of certiorari, which was initially granted in part (as to Questions I and II) and denied in part (as to Question III) by order dated January 16, 2015. The parties proceeded to oral arguments before the Supreme Court on October 21, 2015. By opinion decided December 2, 2015, the Supreme Court dismissed certiorari as improvidently granted. State v. Gore, 414 S.C. 577, 780 S.E.2d 261 (2015). The remittitur issued on December 2, 2015.

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SUMMARY OF TESTIMONY ADDUCED AT TRIAL

On March 5, 2010, narcotics officers with the Horry County Police Department executed a search warrant at Applicant's residence at [REDACTED] Junco Circle in Longs. The probable cause portion of the search warrant affidavit states as follows:

A confidential and reliable informant made a buy for cocaine out of the residence while being recorded and monitored by agents in the area. Also within the last seventy two hours agents followed the defendant from the residence to another location and were able to monitor and record another buy for a quantity of cocaine. It is the affiant's belief that there are more illegal narcotics in the residence.

The affidavit was based on two controlled drug buys conducted by a confidential informant in July 2009 and February 2010. During the second buy, officers followed Applicant from the residence to another location where the transaction of cocaine occurred. The officers observed Applicant leave the house, get into his vehicle, and drive directly to a nearby location to conduct the sale. A few days later, officers conducted a traffic stop, detained Petitioner, and executed the search warrant at the residence. Officers found 397 grams of cocaine in the home.

Applicant's defense at trial centered around ownership of the residence and the items, including the drugs, found inside it. It was undisputed at trial that Applicant's mother owned the house, although she did not live there at the time. It was also undisputed that Applicant's co-defendant and former girlfriend, Angel Deangelo, had a lease agreement for a separate residence in North Carolina. Deangelo testified that around the time of Applicant's arrest, she was going to school and working in North Carolina during the day and driving down to spend three or four nights per week with Applicant at his house.

Prior to executing the search warrant, police obtained a key to the house from Applicant. Applicant's vehicles were parked at the house. Police officers testified that based on their

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observations during their narcotics investigation, Applicant lived at the residence. A clerk's office employee testified that the address listed on Applicant's bond document (which was signed by Applicant) was the address where the cocaine was found. A home-detention officer testified he monitored Applicant on bond from March 2010 through 2011; Applicant's address was the same address where the cocaine was found; and he visited Applicant at that address while monitoring him. Men's clothing was found in the master bedroom, and the most of the cocaine was found hidden in a stack of men's pants in that bedroom. Additionally, officers found multiple pictures of Applicant in the bedroom, wearing pants and clothing similar to the clothing found in the closet.

ALLEGATIONS

In his original application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Placing a limine law on the trial was unconstitutional"
 - a. "If counsel wouldn't put limits on trial, results would've been different"
2. "Unprofessional Franks hearing violated due process"
 - a. "If counsel would've gotten magistrate subpoenaed to Franks hearing, different results"
3. "Disqualifying jury before the trial started [Prosecutorial] Misconduct with co-defendant"
4. "Counsel should've disqualified jury after co-defendant picked with then testified against."

In his amended application, Applicant further alleges:

1. Trial counsel provided ineffective assistance of counsel by seeking to challenge the lawfulness of the search warrant by requesting a hearing under Franks v. Delaware, 438 U.S. 154 (1978). Applicant is informed and believe that had trial counsel sought to suppress the search warrant based upon the insufficiency of probable cause alleged within the four corners of the warrant affidavit it is likely that the trial court would have suppressed all evidence seized under the search warrant.
2. By seeking a motion in limine to preclude all mention of defendant's prior drug arrests, trial counsel provided ineffective assistance of counsel. As a result of the Court's ruling on the motion, trial counsel was precluded trial (sic) from attempting to introduce testimony questioning the reliability of the confidential informant.

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3. Trial counsel provided ineffective assistance of counsel by failing to seek and (sic) order requiring the State to disclose the identity of the confidential informant.
4. Applicant was prejudiced by trial counsel's failure to seek a continuance of the trial once Applicant's co-defendant agreed to testify as a state witness. Trial counsel and applicant had insufficient time to prepare to cross-examine the co-defendant.
5. Applicant was prejudiced by trial counsel's failure to strike the jury panel after co-defendant agreed to testify against Applicant. Co-defendant participated in the selection of the jury, and after the jury was sworn, but before the opening statements, the co-defendant met with the Solicitor and agreed to testify against Applicant. Applicant was prejudiced by his co-defendant's participation because Counsel for co-defendant exercised its (sic) five peremptory strikes against jurors 159, 133, 24, 2, and 122. Additionally Counsel for co-defendant exercised peremptory strikes against jurors 355 and 270 as potential alternates. Trial counsel prejudiced Applicant's 6th Amendment rights and Due Process rights by allowing him to be tried before a jury that was selected in part by a State's witness.
6. Trial counsel provided ineffective assistance of counsel by failing to raise contemporaneous objections to the introduction of testimony and evidence obtained under the search warrant.
7. Trial counsel failed to object to testimony by Officer Kent Donald and Officer Mark Cooper that they each had experience in conducting undercover drug buys. Applicant is informed and believes that the jurors inferred that one or both officers conducted the undercover buys leading to Applicant's arrest.
8. The Solicitor engaged in prosecutorial misconduct by failing to fully disclose the deal that was provided to the co-defendant in exchange for her testimony.

At the evidentiary hearing, Applicant proceeded on the allegations in his amended application, which encompasses and expands upon the allegations in his original application. To the extent the allegations in Applicant's original application can be construed as separate grounds for relief, this Court finds Applicant waived and abandoned those grounds, and they are dismissed with prejudice.

SUMMARY OF TESTIMONY AT EVIDENTIARY HEARING

Franks hearing and objections to evidence obtained under the search warrant

Applicant testified he is alleging he received ineffective assistance of counsel because Counsel sought a Franks hearing instead of seeking suppression of the drugs found in the home based upon the face of the search warrant affidavit. Applicant testified he believes the affidavit

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contained inaccurate information based upon the juxtaposition of the first two sentences: "A confidential and reliable informant made a buy for cocaine out of the residence while being recorded and monitored by agents in the area. Also within the last seventy-two hours agents followed the defendants from the residence to another location and were able to monitor and record another buy for a quantity of cocaine." Applicant testified he also felt there were other problems with the affidavit, and it would have been better to attack the sufficiency of the probable cause contained within the four corners of the document. Applicant explained the first drug buy, which allegedly took place at the residence, occurred in July, and the second buy occurred in February - seven months apart from each other. Applicant further testified the defense did not receive any evidence on the buys regarding the identity or credibility of the confidential informant. Applicant testified he felt officers used an "investigative tactic" to join the two buys and connect drug activity to the house. Applicant stated he felt it would have been better for Counsel to argue the first two sentences were insufficient to establish probable cause. Applicant also testified he believes Counsel was ineffective for not challenging the testifying officer, Ard's, testimony about what he told the magistrate to supplement the warrant because Ard should have testified on camera or made a recording of what he told the judge.

Applicant further testified he believed Counsel should have challenged the search warrant so Applicant had a better understanding of whether or not he committed these crimes while the State was making him plea offers. Applicant explained anybody could have made allegations against him, and he felt if the charges from the drug buys were dismissed, the charges stemming from the warrant should be dismissed also. Applicant testified he could not say he had done something if he has not had an opportunity to examine the evidence. Applicant further stated if he



had been convinced the confidential informant's testimony was accurate, he would have been more likely to agree to a plea bargain.

Counsel testified he filed the Franks motion, and although they argued that issue, the hearing also turned into a more traditional suppression hearing. Counsel testified the judge treated the hearing as a suppression hearing and ruled on that issue as well. Counsel explained his intent in arguing it as a Franks issue was to try to remove certain statements from the affidavit and then evaluate probable cause without those statements. However, the judge upheld the search warrant and found probable cause because the officer, Ard, provided oral supplementation. Counsel explained the judge ruled the officer could testify as to what he told the magistrate, so he provided supplemental information in addition to the affidavit when he testified at the hearing. Counsel testified the case law is clear officers are allowed to supplement the affidavit by sworn testimony, but if they had not done that, it would have been better for Applicant, as in Counsel's opinion, the warrant was not valid without supplementation. Counsel testified at the time he filed the motion, months before trial, he did not consider challenging probable cause based only on the four corners of the affidavit, but the judge ruled on that issue anyway.

Counsel also testified he made a standing objection to the introduction of various pieces of evidence, including evidence obtained pursuant to the search warrant. Counsel noted these issues were preserved and raised on appeal.

Motion in limine and identity of confidential informant

Applicant next testified he believes Counsel was deficient in his handling of the motion in limine, which Counsel made to preclude mention of Applicant's prior drug arrests, because Applicant believes the motion actually worked to his detriment. Applicant explained Counsel said

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he wanted to limit testimony about Applicant's prior drug activities, but Applicant felt that testimony was relevant because it would have provided a basis for the defense to obtain evidence about the confidential informant. Applicant explained he believes Counsel's decision to make the motion prejudiced him because it resulted in the exclusion of a "material witness" and testimony about how the officers got probable cause for the search of the house. Applicant acknowledged he was not tried on the charges arising from the controlled buys themselves, but he stated he repeatedly asked Counsel to find out if any audio or video of the controlled buys actually existed so they could review it. Applicant testified he believes Counsel was ineffective because Counsel did not do that, and he believes the motion in limine prevented the defense from being able to attack the validity of the confidential informant.

Applicant testified if he knew whether any video or audio existed, he would not have gone to trial. Applicant testified he told Counsel multiple times he wanted to know the identity of the confidential informant, and he needed to see that evidence in order to evaluate the strength of the case against him and decide whether or not he had done what the State accused him of. Applicant further testified the State made several plea offers, and in order to decide if he wanted to accept those offers, he needed to see the evidence to confirm he had done this. Applicant testified he needed to know "everything" about the confidential informant, and Counsel should have asked for an in-camera hearing to determine if the informant actually existed and a buy really occurred, but instead, Applicant never got the chance to challenge the evidence. Applicant further testified Counsel also could have filed a motion to have the informant, as an eyewitness, pick Applicant out of a lineup, which Applicant stated could have prevented him from going to trial because he would not have gone to trial if he had the opportunity to challenge the evidence.

A handwritten signature in black ink, appearing to be 'RKG' with a stylized flourish.

Counsel testified he filed the motion in limine because he wanted to prohibit the State from presenting evidence about Applicant's prior bad acts, specifically prior drug activity, and the motion was granted. Counsel testified an issue then came up during his cross-examination of the co-defendant, DeAngelo, when he asked her about a phone call she had made to Counsel's office inquiring about retaining Counsel to represent her ex-husband who had been arrested on federal drug conspiracy charges. Counsel testified his strategy on cross-examination was to point out she lived in the house, and she was closely connected to another man who was a federal drug defendant at that time. Counsel testified the questioning was part of his overall defense strategy that Applicant did not have control of the home and the drugs were not his. However, Counsel explained, the trial judge warned him that if went too far into the co-defendant's drug history, he could open the door to testimony about Applicant's history that had already been excluded by the motion in limine. Counsel testified he got the information about the co-defendant's ex-husband in, but then he stopped his questioning on that subject. Counsel testified if the judge had not warned him against continuing that line of questioning, he may have been able to flesh the argument out more to make the connection more obvious.

As to the identity of the confidential informant, Counsel testified he did not file a motion to reveal the informant's identity or otherwise seek that information from the State because he knew the solicitors would not give it to him. Counsel stated Applicant was tried only on the trafficking charge, not the drug buys involving in the informant. Counsel testified he recalled being told there was audio and video evidence, but he did not believe he ever received discovery on the distribution charges and did not recall ever seeing the video.

A handwritten signature in black ink, appearing to be 'RKG'.

Jury Picked by Co-defendant and Failure to Move for Continuance

Applicant testified his trial began as a joint trial with his co-defendant, Deangelo. Applicant testified Deangelo was not the informant or one of the people involved in the buys. He stated she became involved after his arrest, when officers brought him back to the house, and she claimed the house was hers. Applicant testified she was then also arrested. Applicant further testified Deangelo later became a witness against him at trial and claimed the house belonged to Applicant, not her.

Applicant explained Deangelo began the trial as a co-defendant and helped pick the jury and made a motion to sever the trial, but then the next day she changed her mind and decided to testify against Applicant. Applicant testified Deangelo's attorney struck jurors 159, 133, 24, 2, and 122 using peremptory strikes. Applicant testified he wanted Counsel to request a mistrial and draw a new jury that Deangelo was not involved in picking. Further, Applicant testified he believed Counsel should have asked for a continuance after they were informed Deangelo would testify for the State because Applicant did not believe Counsel had enough time to prepare for her cross-examination.

Counsel testified he suspected Deangelo would ultimately decide to testify against Applicant and did not think there was anything further he could have done to prepare for her testimony. Counsel testified he debated moving to strike the jury once Deangelo agreed to testify for the State, but at the time he felt that having a co-defendant help pick the jury did not hurt Applicant, and, potentially, it might even help. He testified, in hindsight, he thought perhaps Deangelo picked people she felt would be favorable to her or believe her, but at the time, he did not feel it necessary to make a motion. However, Counsel also testified he believed it could help



Applicant to have the jury see Deangelo change sides, and it allowed him to call her credibility into question.

Failure to Object to Testimony of Officers Regarding Undercover Experience

Applicant further testified he believes Counsel was ineffective in his handling of testimony by Officers Donald and Cooper. Applicant explained Counsel did not object to either officer's testimony regarding their experience as undercover agents. According to Applicant, there was no evidence presented at trial as to how investigators obtained the search warrant for the residence, but Donald and Cooper testified about their prior work with confidential informants and posing undercover as drug dealers, which might have lead the jury to think the officers conducted the buys with Applicant. Applicant testified he believed this testimony was a "back door" way to get evidence of the undercover buys in front of the jury.

Counsel testified he did not have any concerns about the testimony from Donald and Cooper regarding their previous undercover experience. Counsel explained although he could see Applicant's point, if the jury stretched the testimony, but such testimony is routine, and he did not see any basis to object to them giving a description of their job duties.

Prosecutorial Misconduct

Finally, Applicant testified he believes there was already a deal in place between the State and Deangelo before she testified against him at trial. Applicant testified she must have had a deal in place because, afterwards, she was sentenced to time-served, the drug charges against her were dropped, and she pleaded guilty only to resisting arrest. Applicant further testified the State told him only that they agreed to inform the judge about her cooperation, but given the ultimate outcome, it "had to be preordained." Applicant testified his understanding is Deangelo was

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indicted on two counts of possession and one count of trafficking cocaine, which records show were dismissed on January 31, 2012. Instead, Applicant testified, Deangelo was convicted for resisting arrest and sentenced to one year suspended to time served. Applicant further testified he needed to know if Deangelo had received a deal because Counsel could have impeached her for bias, as she would have had motivation to blame Applicant.

Counsel testified the only information he was given about the agreement between Deangelo and the State was that she had signed a cooperation document, which he received. Counsel testified it was unusual to have a written agreement, and it set forth her reward, but it was vague, saying the State would take her testimony into consideration. Counsel explained Deangelo was facing a mandatory minimum sentence of twenty-five years, so he did not think she would have agreed to plead guilty unless she expected not to be sentenced under that statute; however, he did not have any information or confirmation a specific deal had been made.

The prosecuting solicitor, Bradley Richardson, testified he could not recall who initiated Deangelo's cooperation, but after jury selection, she decided she wanted to cooperate with the State. Richardson explained she elected to sign a proffer agreement, which he provided to Counsel. Richardson testified the agreement stated she would not be deceptive and the State would take any cooperation she provided into consideration in disposing of her charges. Richardson testified she had no agreement other than what was contained in the proffer agreement. Richardson further testified the decision on how to dispose of her charges was made after the trial and took into account whether her conduct at trial was consistent with the agreement.



FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses, evaluated their credibility, and weighed the testimony and evidence accordingly in its discussion below. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the appellate records, and Applicant's original and amended applications, as well as the pre-trial and trial transcripts. This Court finds the combined record from the criminal case and the testimony and evidence presented the evidentiary hearing establishes Applicant received effective assistance of counsel, and this application should be denied. Set forth below are the relevant findings of fact and conclusion of law as required by section 17-27-80 of the South Carolina Code of Laws.

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland, 466 U.S. at 688 (1984)). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

This Court finds Applicant has failed to prove his trial counsel's performance was deficient in any way, nor was Applicant prejudiced by his performance. Counsel met with Applicant and reviewed with him the evidence and discovery in the case, as well as Applicant's version of the facts and possible defenses. This Court finds Applicant ultimately chose to proceed to trial and contest the State's versions of events. This Court finds trial counsel appropriately challenged the search warrant and, ultimately, ably prepared and presented a defense centered around whether the home and/or the drugs at issue actually belonged to Applicant. Therefore, for the reasons stated below, the Court denies relief and dismisses the allegations with prejudice.

1. Franks hearing and objections to evidence obtained pursuant to search warrant

Applicant alleges Counsel was constitutionally ineffective “by seeking to challenge the lawfulness of the search warrant by requesting a hearing under Franks v. Delaware, 438 U.S. 154 (1978). . . .” rather than “based upon the insufficiency of probable cause alleged within the four corners of the warrant affidavit.” This Court disagrees and finds Counsel appropriately argued for suppression of the search warrant pursuant to Franks, and, in any event, the judge ultimately ruled on both issues.

Franks v. Delaware gives defendants in some circumstances the right to challenge a search warrant after it has been issued and executed. Franks sets forth a two-step process. First, a defendant must make a *prima facie* showing the warrant, either intentionally or with reckless disregard for the truth, includes false or misleading information, in which case, an evidentiary hearing is required. 438 U.S. at 155-56. Then, if the judge determines by a preponderance of the evidence that any statement within the warrant is false or misleading, that statement is to be excised, and the court determines if sufficient probable cause for the warrant still exists. Id. at 156. If not, the warrant should be voided and the fruits of the search suppressed as if probable cause was lacking on the face of the affidavit. Id.

Here, Counsel testified his intent in framing this as a Franks issue was to try to remove the first two statements from the affidavit and then evaluate probable cause without those statements, because, in his opinion, it was clear probable cause did not exist without them. However, at the hearing, the investigating officer, Ard, testified he supplemented the information in affidavit when he presented it to the magistrate and made clear the buys occurred seven months apart. Ard further testified he not put the date and time of the buys in the affidavit he because did not want to risk disclosing the identity of confidential informant. The judge ultimately ruled the two statements at

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issue in the affidavit were not false or misleading – essentially a denial of the Franks motion – and also that the affidavit contained sufficient probable cause on its face – a denial of the suppression argument.

This Court finds trial counsel articulated a valid strategic reason for requesting the Franks hearing, and therefore, Counsel was not deficient. 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). Courts must be wary of second guessing counsel's trial tactics, and where counsel articulates a valid reason for employing a particular strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E. 2d 529 (1992). Moreover, because the pre-trial judge ultimately ruled on both the Franks issue and the issue of suppression based on the face of the affidavit, Applicant has failed to meet his burden of proving prejudice.

Applicant also alleges Counsel was deficient for allegedly failing to raise contemporaneous objections to the introduction of testimony and evidence obtained under the search warrant. However, Counsel testified, and the record confirms, Counsel made what the trial judge considered to be a standing objection to the evidence seized pursuant to the search warrant. The search warrant issue was preserved, raised on appeal, and affirmed, and thus, this Court finds Counsel was not deficient, nor was Applicant prejudiced in any way. Accordingly, this Court denies relief and finds this allegation should be dismissed with prejudice.

2. Motion in limine and identity of confidential informant

Applicant also alleges his counsel was constitutionally ineffective "by seeking a motion in limine to preclude all mention of defendant's prior drug arrests..." because "[a]s a result of the Court's ruling on the motion, trial counsel was precluded... from attempting to introduce testimony



questioning the reliability of the confidential informant.” This Court disagrees and finds Counsel was in no way deficient, nor was Applicant prejudiced, by Counsel’s decision to make a motion in limine and not to seek the identity of the informant.

Decisions primarily involving trial strategy and tactics may be made by trial counsel. Sexton v. French, 163 F.3d 874, 885 (4th Cir.1998). Examples of such decisions include what evidence should be introduced, whether to object to the admission of evidence, and which motions to file. Abney v. State, 408 S.C. 41, 48, 757 S.E.2d 544, 547 (Ct. App. 2014). 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).

This Court finds Counsel articulated a valid strategic reason for making the motion in limine in that he was seeking to keep damaging testimony about Applicant’s prior drug history out of evidence. Moreover, the trial court ruled in Applicant’s favor on the motion, and although the ruling ultimately hindered Counsel’s ability to cross-examine the co-defendant to the full extent Counsel may have wished, Counsel was still able to get the testimony he wanted – that the co-defendant’s ex-husband, with whom she still had some sort of relationship, was involved in drug activity – before the jury.

Additionally, this Court finds the allegation Counsel was constitutionally ineffective for failing to seek the identity of the confidential informant is without merit. The informant was not a witness in this trial, as Applicant was not tried on the distribution charges arising directly from the drug buys. See State v. Humphries, 354 S.C. 87, 579 S.E.2d 613, 614-15 (“[T]he State is generally privileged from revealing the name of a confidential informant. . .”).



Because the Court finds neither deficiency in Counsel's performance nor any prejudice to Applicant, relief is denied, and these allegations are denied and dismissed with prejudice.

3. Co-defendant's participation in jury selection and failure to move for continuance

Applicant next alleges Counsel was constitutionally ineffective for failing to move to strike the jury panel or request a continuance after Applicant's co-defendant agreed to testify for the State against Applicant. This Court disagrees and denies relief as to this issue.

This Court finds Counsel was not deficient for failing to object to the co-defendant's participation in jury selection, nor was Applicant prejudiced by the lack of objection, as no constitutional violation occurred, and therefore, Counsel had no basis to object. United States v. Whitehead, 238 F.3d 949, 951 (8th Cir. 2001) ("[W]here there are codefendants at the time a jury is selected, unless there was reversible error in trying those defendants jointly, there is no error in allowing a total of ten peremptory challenges, even if one codefendant subsequently drops out of the case... because remaining defendants are no worse off than they would have been if all defendants had remained. . . .") (internal citations omitted); United States v. Phillips, 874 F.2d 123, 130 (3d Cir. 1989) (rejecting the argument that the defendant's rights were violated when the co-defendant "participated in the shaping of the jury" since at the time the co-defendant "had every right to participate in juror selection"); United States v. Amer, 924 F.2d 906, 907-08 (11th Cir. 1987) ("A defendant is not entitled to a jury composed only of members of his own choosing, if at the time of selection he properly has a codefendant, regardless of whether the codefendant ends up being jointly tried."); People v. Maass, 981 P.2d 177, 182 (Colo. Ct. App. 1998) ("If the jury was fairly selected in accordance with the applicable law, and if no facts are presented that show the jury as finally selected was other than representative and impartial to the remaining defendant, the trial may proceed to its conclusion.").



Additionally, this Court finds Counsel was not deficient nor was Applicant prejudiced by Counsel's failure to move for a continuance. In order to show that counsel was ineffective for failing to move for a continuance, applicant must show what benefits would accrue from additional preparation. Skeen v. State, 325 S.C. 210, 217, 481 S.E.2d 129, 133 (1997). Applicant has the burden of proving that additional time for preparation would have yielded some benefit to the applicant. Id. However, Applicant did not present any witnesses or testimony he claims Counsel's failure to move for a continuance prevented him from presenting at trial. See id. (finding applicant was not entitled to relief where no evidence was presented at the PCR hearing to show how additional preparation would have had any possible effect on the result at trial); Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (finding trial counsel not ineffective for failing to timely request discovery because the contents of the documents were not presented at the PCR hearing); Moorehead, 329 S.C. at 334, 496 S.E.2d at 417 (holding trial counsel's failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial).

Moreover, this Court finds Counsel articulated a valid strategic reason for continuing with the trial after Deangelo changed her plea, in that he felt that it would benefit Applicant for the jury to see her change sides, and it would allow him to emphasize bias and question Deangelo's credibility. Counsel also testified he anticipated Deangelo would ultimately decide to testify against Applicant, and he did not feel there was anything further he could do to prepare for her testimony. The Court finds this testimony to be credible.



Accordingly, because the Court finds neither deficiency in Counsel's performance nor any prejudice to Applicant, relief is denied, and these allegations are denied and dismissed with prejudice.

4. Failure to object to testimony of officers regarding undercover experience

Applicant alleges Counsel was constitutionally ineffective for failing to object to testimony by Officer Kent Donald and Officer Mark Cooper that they each had experience in conducting undercover drug buys because the jurors might have inferred that one or both officers conducted the undercover buys leading to Applicant's arrest. This Court disagrees and denies relief as to this issue.

Applicant's testimony about the effect of such testimony is purely speculative and insufficient to meet his burden of proving prejudice. See, e.g., Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) (mere speculation insufficient to support finding of ineffective assistance of counsel). Moreover, this Court finds Counsel was not deficient in choosing not to object to the testimony, as a law enforcement officer's background is generally relevant testimony. See Rule 402, SCRE ("All relevant evidence is admissible...").

5. Prosecutorial misconduct

Applicant alleges the prosecutors engaged in prosecutorial misconduct by failing to fully disclosure the details of the plea bargain between the State and Applicant's co-defendant after she agreed to testify against him. This Court disagrees and denies relief as to this issue.

It is Applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794 (1989). In this case, however, Applicant has provided nothing more than speculation about the existence of a plea bargain between his co-defendant and the State, other than as

RUG

disclosed in the proffer agreement turned over to the defense at trial prior to the co-defendant's testimony. See, e.g., Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) (mere speculation insufficient to support finding of ineffective assistance of counsel). Richardson testified there was no agreement other than what was provided to Counsel in the proffer document, and the Court finds this testimony credible. The Court therefore finds this allegation is without merit and should be dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations which would require this Court to grant relief. Counsel was not deficient in any manner, nor was Applicant prejudiced by his representation. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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 (providing the appropriate procedure to perfect an appeal). Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Further, 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 the appropriate procedures for appealing a judgment in a PCR action.

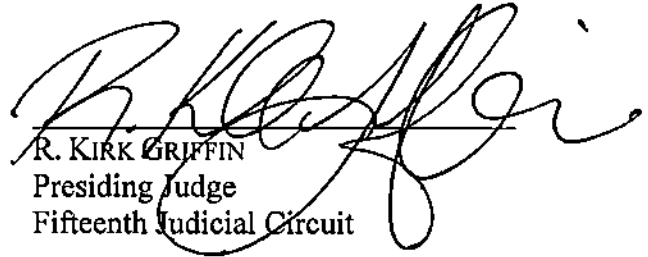


IT IS THEREFORE ORDERED:

1. the Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall be remanded to the custody of the Respondent.

AND IT IS SO ORDERED.

February 23, 2021


 R. KIRK GRIFFIN
 Presiding Judge
 Fifteenth Judicial Circuit

R/KG

WITNESSES

Jesse Ard Horry County Police Department

401

ARREST WARRANT NUMBER

M505248

CDR: 0288 44-53-0370(e)(2)(d)

DOA: 3/5/2010

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: JUN 24 2010

VERDICT

Guilty

Foreperson of Petit Jury

Date: 1-5-12

DOCKET NO. 2010-GS-26- 2326

The State of South Carolina

County of Horry

Michael J. O'Sullivan
10H00916

COURT OF GENERAL SESSIONS

JUNE, 2010 TERM

THE STATE

vs.

Alton Wesley Gore Jr B/M
Junco Circle
Longs, SC 29568-7706

DOB:
SSN:

ATTORNEY: Truslow, T. Kirk

Indictment for

TRAFFICKING COCAINE
200 – 400 GRAMS

J. Gregory Hembree, Solicitor

 **ORIGINAL**

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on May 27, 2010, the Grand Jurors of Horry County present upon their oath:

TRAFFICKING COCAINE, 200 – 400 GRAMS

CDR: 0288 44-53-370(e)(2)(d)

EW
 March 5, ~~February 19~~ 2010, That **Alton Wesley Gore Jr** did, in Horry County, State of South Carolina, on or about ~~February 19~~, 2010, knowingly, sell, deliver, purchase or bring in to this State, or aid, abet, attempt or conspire to sell, deliver, purchase or bring into this State, or was in actual or constructive possession, or attempted to become in actual or constructive possession of a quantity of Cocaine in an amount of 200 grams or more, but less than 400 grams, the same being a controlled substance, a within the meaning of Section 44-53-370, et. seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized by law, and being in violation of Section 44-53-370(e)(2)(d), S. C. Code of Laws, 1976, as amended, for the crime of trafficking.

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


 J. GREGORY HEMBREE
 FIFTEENTH CIRCUIT SOLICITOR

COUNTY OF Horry
 STATE VS.
Alton Wesley Gore Jr

AKA:

Race: BLACK Sex: M Age: 29

DOB: [REDACTED] SS#: [REDACTED]

Address: STARBLUFF ROAD

City, State, Zip: LONGS, SC 29568

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Drugs / Trafficking in cocaine, 200 g or more, but less than 400 g

INDICTMENT/CASE#: 2010GS2602326

A/W#: M505248

Date of Offense: 2/10/2010

S.C. Code §: 44-53-0370(e)(2)(d)

CDR Code #: 0288

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 44-53-0370(e)(2)(d) of the S.C. Code of Laws, bearing CDR Code # 0288

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense. ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation. ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Nancy G. Cote
 Cote, Nancy G.

SCB76347

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ \$100,000; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended

probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$100,000.00
 \$107,500.00
 \$100.00
 \$
 \$
 \$
 \$
 \$500
 \$25
 \$150
 \$50
 \$40/ea
 \$5
 \$5.00
 \$6,311.90
 \$213,961.90

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ 25.00 beginning 01/05/2037

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel.
 § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2041
JANUARY 5, 2012