

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Lexington
Court of General Sessions
Walton J. McLeod, IV, Circuit Court Judge

APPELLATE CASE NO. 2021-000788

THE STATE,

RESPONDENT,

V.

Jerome Smith,

APPELLANT.

RECORD ON APPEAL – Volume I

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1 State of South Carolina) In the Court
2 County of Lexington) Of General Sessions
3 State of South Carolina,) Indictment Nos.: 2020-GS-32-00729,
4 Plaintiff,) 00730, 00731
5 vs.) Transcript of Record
6 Jerome Smith,)
7 Defendant.)
8 _____)

9
10 July 12th through 14th, 2021
11 Lexington, South Carolina

12 BEFORE:

13 The Honorable Walton J. McLeod, IV, Judge

14
15 APPEARANCES:

16 Jordan A. Cox, Assistant State Solicitor
17 Bradley P. Pogue, Assistant State Solicitor
18 Bruce Norton, Assistant State Solicitor
19 Attorneys for the Plaintiff/State

20 Benjamin A. Stitely, Esquire
21 Attorney for the Defendant

22 ALSO PRESENT:

23 Jerome Smith

24

25

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1 Thereupon, the following proceedings were had,

2 BAILIFF: All rise. Court is now in session. The
3 Honorable Judge Walton McLeod presiding.

4 THE COURT: Please be seated. Thank you. All
5 right. Ladies and gentlemen, now we're ready to begin
6 the process of selecting the jury for our trial this
7 week. Is the State ready to proceed?

8 MR. COX: Yes, Your Honor.

9 THE COURT: Call the first case.

10 MR. COX: Your Honor, the State calls case number
11 2020-GS-32-00729, the State versus Jerome Smith, indicted
12 for trafficking in heroin, 14 grams or more but less than
13 28 grams, case number 2020-GS-32-00730, the State versus
14 Jerome Smith, indicted for possession with intent to
15 distribute heroin, and 2020-GS-32-00731, the State versus
16 Jerome Smith, indicted for distribution of heroin.

17 MR. STITELY: Judge, just for the record's sake, I
18 believe you said in chambers, the State did file a motion
19 to consolidate and try these together. We don't have an
20 objection to that.

21 THE COURT: Very well. Mr. Solicitor, one is PWID
22 and the other is possession, correct?

23 MR. COX: Distribution.

24 THE COURT: Distribution. Excuse me. Thank you.
25 All right. Ladies and gentlemen, the indictments here

1 charge the defendant with trafficking in heroin,
2 possession with intent to distribute heroin, and
3 distribution of heroin. And I remind you that the fact
4 that the defendant was arrested, charged, and indicted in
5 this case is not evidence in this case and it cannot be
6 considered by you as guilt in this case, nor does it
7 create any presumptions or inference of guilt. This
8 document is simply the formal written instrument which
9 contains the charges made against the defendant. It is
10 the formal document by which this case is brought into
11 the court.

12 The defendant has pled not guilty to these
13 indictments and that plea puts the burden on the State to
14 prove the defendant guilty. A person charged with
15 committing a criminal offense in South Carolina is never
16 required to prove himself innocent. No matter what the
17 seriousness of the charge may be the defendant will
18 always be presumed to be innocent of the crime for which
19 the indictment was issued unless guilt has been proven by
20 evidence satisfying you of that guilt beyond a reasonable
21 doubt.

22 Now, we're gonna begin the voir dire process as we
23 call it. I'll have several questions to ask you,
24 however, prior to beginning those questions, I will allow
25 the attorneys to stand up and introduce themselves to you

1 he has with his motion. That will help us at least
2 identify who else has to be here and what else we can do
3 here today for Your Honor.

4 THE COURT: All right. You ready to proceed,
5 Mr. Stitely?

6 MR. STITELY: Yes, sir.

7 THE COURT: All right. So the defendant has a
8 motion to suppress?

9 MR. STITELY: I do, Judge. I have a couple things,
10 some of them I guess we'll have to kind of flesh out
11 while we're getting into it, and I guess I'll kind of do
12 it in preference with my motion to suppress. There's
13 also gonna be some motions in limine and just kind of I
14 think we're gonna have to figure out, I guess, just as
15 we're going through it.

16 Judge, the motion to suppress, specifically the
17 first one, I guess we'll address the search warrant. I'm
18 not sure how we're gonna get into the others yet at this
19 point because I haven't heard a lot of the testimony yet.
20 Your Honor, do you have a copy of the search warrant?

21 THE COURT: I do not.

22 MR. STITELY: I think it would be important that we
23 get you a copy of it. Do you have like the actual
24 courtroom copy? If you don't mind, Judge, because mine
25 is double typed.

1 THE COURT: Okay. Hope, did you take back the
2 indictments?

3 THE CLERK: I sure did.

4 THE COURT: Okay. That's what you're supposed to
5 do. You did or did not?

6 THE CLERK: I did.

7 THE COURT: Good.

8 THE CLERK: I've got them right here.

9 THE COURT: Mr. Stitely, I anticipate that the
10 bailiff will arrive with the foreperson's name so we'll
11 take that when it arrives.

12 MR. STITELY: That's fine, Judge.

13 THE COURT: So I'll stop you if you're talking.

14 MR. STITELY: That's good, Judge.

15 THE COURT: Okay. Mr. Stitely.

16 MR. STITELY: Judge, I think that in this case it
17 will be kind of helpful, I guess, and you're the Judge --

18 THE COURT: You want me to just read it first?

19 MR. STITELY: No. I'll point you exactly to the
20 paragraphs we're gonna go through as we need to.

21 THE COURT: Thank you.

22 MR. STITELY: Judge, I think I can point out what my
23 issues are and then maybe we can go through some
24 testimony to kind of establish the timeline if it helps.
25 We kind of talk about it in chambers, but we can put the

1 witnesses up to hear from them. But, Judge, my
2 objections to this case are pretty well founded. The
3 search warrant law dates back to the '70s, the Federal
4 cases that pretty much describes that in order to get a
5 search warrant or a probable cause warrant you have to
6 have what's called non stale evidence. Pretty much a 72
7 hour window that's been universally accepted across the
8 history of the last 40 or 50 years as what's defined as a
9 non stale window. That case law is forever out there.

10 Judge, I think it's important that we look at the
11 affidavits and, Judge, I'm kind of maybe minimalizing on
12 putting the evidence and testimony out there, but there's
13 an event that happens at Walmart that starts the ball
14 rolling in this case. Well, technically I guess there's
15 some activity that happened two years earlier which
16 starts the ball rolling, but on the date in question of
17 October 23rd, 2019, there's an exchange at Walmart that
18 law enforcement thinks is a drug transaction which
19 ultimately leads to them getting drugs from another
20 individual, not my client, who says the drugs came from
21 my client maybe. We haven't heard his testimony yet.
22 They go to my client, do a traffic stop on him, arrest
23 him on old warrants which will be part of the motion, of
24 course, in limine to not talk about any previous warrant
25 related to this case. I'm assuming a search on the

1 roadside, there's nothing, they take him to SLED, they
2 maybe interview him, I don't know. I don't have videos
3 so I'm not sure exactly what happened. There's a claim
4 at some point that drugs are found at SLED and then you
5 get this search warrant.

6 Judge, the cases I'm gonna cite are State v. Dill
7 which is a very recent case, that's a 2018 decision, 423
8 South Carolina 534. That's one of Judge Griffith's
9 cases.

10 THE COURT: State v. what?

11 MR. STITELY: Dill like the pickle.

12 THE COURT: D-i-l-l.

13 MR. STITELY: And the other case I'm gonna rely on
14 at least for argument sake is State v. Baccus, which is
15 367 South Carolina 41. That's a 2006 case. I can also
16 make reference to another case which pretty much the
17 exact same issue came up, we actually won, I guess
18 there's no appellate issue, but that was State v. Davis,
19 a case tried here in front of Judge Griffith in this
20 courtroom.

21 Now, we need to look at the search warrant
22 affidavit, Judge, so I'll get to any issues I have about
23 possibly the drugs found at SLED, but right now the
24 heroin that amounts to trafficking weight, I guess which
25 is the biggest indictment, would be allegedly drugs

1 uncovered on return of the search of my client's house
2 that they go on the affidavit of the search warrant.

3 So, Judge, if you look at the affidavit itself and
4 pretty much both of these cases stand for the premise,
5 the first several pages are quite literally just boiler
6 plate, we are cops. We investigate drug cases. This is
7 what we do. The law is very specific --

8 THE COURT: You're referring to the typed affidavit?

9 MR. STITELY: Yes. The typed affidavit.

10 THE COURT: Okay.

11 MR. STITELY: The first like four or five pages are
12 pretty much boiler plate language that just goes in
13 saying we are law enforcement. This what we do. This is
14 how we investigate. The case law says that's not what
15 you put in a search warrant. You have to have actual
16 facts specific to a case to indicate the appropriateness
17 of a Fourth Amendment violation. So you actually have to
18 go to the meat and potatoes. Down to what looks to be
19 the sixth page, we get into some information, Judge.
20 That starts with the lines on August 19th, 2017, and it
21 goes on for a full page, two pages I suppose, talking
22 about an event that now happened two years earlier.

23 Once again, search warrant law is very, very clear.
24 We can only use information that's considered to be non
25 stale, 72 hours. That pretty much becomes indicative

1 when you turn to the page, actually at the beginning of
2 the page, then we actually open with, within the past 72
3 hours. So obviously this warrant was, you know, to an
4 extent false. So, Judge, I would argue at this point
5 everything we've seen so far in the warrant is not
6 applicable at all to this case. It's all boiler plate
7 language about general law enforcement and it's details
8 of something that happened allegedly that's never been
9 tried more than two years before the attempt to get this
10 warrant.

11 What's important when you look at this warrant,
12 Judge, and now I guess we can go through it, this is
13 pretty much the testimony that you will hear from the
14 witnesses and what we ultimately get to, so it's the next
15 like three pages that we're talking about. Over on the
16 next page, and you can read it at this point if you want,
17 they say that they follow my client to Walmart and they
18 say they see some individual get into his car and then
19 leave and then they go on to say they arrest, stop, or
20 whatever they do on the next page, Mr. Carver inside the
21 Walmart and he has maybe drugs in his pocket and I guess
22 a needle and it's heroin which is very important in this
23 case, Judge, because that's what it says, and he says
24 that he bought it from Mr. C, whoever Mr. C is, while
25 inside the white van.

1 So then, Judge, you can see they go on and they do a
2 traffic stop and serve him with old warrants. Once
3 again, Judge, we can't use two year old warrants as any
4 probable cause to initiate a search of my client's house
5 two years later which actually is a different house than
6 even the address he had at the time two years ago. We're
7 gonna have to go deeper into it. Then they indicate he
8 was transported and he says he lives in a three bedroom
9 house on the first floor in an apartment, apartment H25
10 and that's it. And then they say, well, we're gonna get
11 a search warrant of his residence. And specifically
12 they're gonna search for crack cocaine.

13 If you look at the very beginning of Attachment B,
14 they're looking for crack cocaine, and it says in the
15 last paragraph of this affidavit we are gonna go search
16 his residence for crack cocaine. There's absolutely no
17 mention of any drugs located on my client's person,
18 there's nothing talking about this alleged PWID at SLED
19 in the affidavit and, Judge, it's important because the
20 magistrate relies specifically on this affidavit in
21 determining whether probable cause exists.

22 The case I told you we were gonna look to, the State
23 v. Baccus case, talks about doing the search of a hotel
24 room and pretty much in the affidavit, it's actually a
25 murder case or an armed robbery or something along those

1 lines, and they say, well, we have reason to believe that
2 a knife would be in his hotel room. That's all they say.
3 They don't say why they believe it was in his hotel room.
4 They say, he's living in a hotel so we think a knife
5 might be in his hotel room. The Supreme Court threw out
6 the search saying you need something very specific to
7 indicate drug activity or whatever, the evidence could be
8 located where you wanted to search.

9 It's important that you look at the affidavit,
10 Judge, and I want you to read it, and whatever testimony
11 you need here. We are limited to the four corners of
12 this document when we're talking about what's presented
13 as far as probable cause. There is absolutely nothing in
14 this document, one, saying they're searching for heroin.
15 They're searching for crack cocaine is what the officer
16 wrote and that's a big difference. That's a very
17 important distinction. There's no mention of why they
18 have any probable cause to believe that inside of his
19 dwelling they would locate anything illegal. There's no
20 testimony in there. There's no indications. All this
21 happens in a Walmart parking lot. There's no indication
22 of any wrongdoing while at SLED except for they indicate
23 he said where he lives. Very specific. We are limited
24 in looking to this document, to the affidavit and what's
25 there.

1 In Dill, which is the other case we talked about,
2 that one even went a step further where they had a CI who
3 told them there's a meth lab at that guy's house. They
4 put that in the affidavit. The Supreme Court said that
5 is not enough just to have one witness saying that
6 there's, a confidential informant saying he's running a
7 meth house. You need to have more than that. At least
8 in that case someone said something was going on at the
9 house when they get the search warrant. In this one we
10 can't speculate as to what else they think they know or
11 what they might know. We can only go on what they
12 presented for their probable cause affidavit. Hate to
13 play by the rules, but those are the rules. This case
14 was dismissed at prelim for the exact same issue and then
15 was direct indicted.

16 That being said, that's my motion in a nutshell. We
17 can put the witnesses up, but as far as I'm concerned the
18 document on its four corners is clearly deficient.
19 They're looking for crack cocaine at a location that had
20 absolutely nothing to do with where he was arrested,
21 there's nothing in here stating why they had reason to
22 believe in the last 72 hours there was some drug activity
23 happening at his point of residence.

24 THE COURT: Obviously I haven't read it yet.

25 MR. STITELY: Yes. I think if you want to read it

1 --

2 THE COURT: No. No. Isn't there also, I don't know
3 if it's in here or not, but obviously the four corners of
4 the document, I understand what you're saying, but isn't
5 there also - isn't this where oral testimony is given, he
6 has access.

7 MR. STITELY: There's no magistrate on here to say
8 what testimony was given so we're limited. Of course,
9 parol evidence is the only evidence available. If they
10 had listed a magistrate maybe who was gonna come over
11 here to testify there was something different, but that's
12 not listed on their witness list nor provided.

13 THE COURT: Okay. So, just so I'm --

14 MR. STITELY: And I'm not sure which magistrate. I
15 think that's Judge Morgan.

16 THE COURT: I just wanted to discuss -- So the crux
17 of this portion of your motion to suppress deals mainly
18 with, or only the search warrant for the home?

19 MR. STITELY: That's correct. I'm simply saying
20 that the evidence discovered, Wong Sun, poisonous tree
21 from the search warrant at the residence doesn't come in
22 and that's because the search warrant itself is defective
23 and we've now had two recent cases. And that one was
24 just two years ago that says we need to have magistrates
25 stop rubber stamping search warrants and actually have

1 true probable cause put in the documents because it is a,
2 and the reason for it, it's a Fourth Amendment violation
3 to search one's place of privacy. It's an intrusion that
4 has to be overcome by the standard which has not been met
5 in this case.

6 THE COURT: I'll let the State respond. Are you
7 also moving to suppress?

8 MR. STITELY: We haven't gotten quite there yet but
9 for this motion I just want to talk about the trafficking
10 at this point.

11 THE COURT: All right.

12 MR. STITELY: I think we'll have to call Mr. Carver
13 before I have any idea as to what we can actually talk
14 about as far as the distribution and that.

15 THE COURT: All right. I'll let Mr. Cox respond.

16 MR. COX: Your Honor, I'm gonna try and take it, I
17 guess, by each issue that Mr. Stitely is raising as to
18 the four corners of the affidavit. It sounds like
19 there's a staleness issue, a false affidavit issue, and
20 then I'll start there and, you know, kind of catch me up
21 to follow along.

22 Your Honor, I'll start with the line in the
23 affidavit that states crack cocaine at the end of the
24 affidavit itself. You know, the State would contend that
25 this is simply a scrivener's error. If you go through

1 the rest of the actual probable cause portion of the
2 affidavit, the officer mentions heroin specifically
3 multiple times, and then if you flip the page where the
4 description that Mr. Stitely pointed out in the very
5 first line, it does say crack cocaine, but it also says
6 and/or any other illegal controlled substance and related
7 paraphernalia.

8 THE COURT: Where are you referring to?

9 MR. STITELY: First line of Attachment B, Judge.

10 THE COURT: Oh, all right.

11 MR. COX: And the first sentence says, and the only
12 mention in the affidavit, Your Honor, where it says or it
13 mentions distribution of crack cocaine is in the final
14 paragraph after the officers have already laid out all
15 the probable cause related to the distribution of heroin
16 in the Walmart parking lot. Your Honor, for false
17 information, in order for that information to be removed
18 from the affidavit it has to be -- I'm trying to get the
19 language right here, Your Honor -- the defense has to
20 prove that this information was deliberate, false,
21 reckless disregard for the truth, and that has to be
22 accompanied by an offer of proof. That language comes
23 from State v. Gore, it's 408 SC 237.

24 THE COURT: Go back. What are you referring to?
25 What part of your argument?

1 MR. COX: This is just the false information. The
2 claim that Mr. Stitely is making is that this, what we're
3 calling a scrivener's error, calling it crack cocaine at
4 the end of the affidavit after it's already been referred
5 to as heroin after the person who bought the heroin
6 identifies it as heroin in the affidavit.

7 THE COURT: Prior to arguing this hearing, did you
8 happen ascertain how many times heroin is mentioned?

9 MR. COX: No, Your Honor. I did not count it up.

10 THE COURT: Okay. All right.

11 MR. COX: I can certainly do that for Your Honor.
12 Your Honor, another case where it talks about errors in a
13 search warrant dealing with the language in the
14 affidavit, errors that were not intentional, reckless or
15 in bad faith and probable cause exists without erroneous
16 facts the warrant is valid. That case is State v. Sachs,
17 264 SC 541, and specifically it says error in language of
18 search warrant affidavit is not sufficient to invalidate
19 a search warrant so long as, one, the error was not
20 intentional or reckless, and two, factual information in
21 the affidavit is sufficient to establish PC.

22 Your Honor, the beginning of this affidavit Mr.
23 Stitely calls it, I think he called it just cop talk, or
24 boiler plate.

25 THE COURT: Boiler plate, yeah.

1 MR. COX: Your Honor, these are narcotics agents.
2 When they're performing their investigations, when
3 they're performing their PC in front of these
4 magistrates, they have to lay out how they're trained,
5 what they do and how they identify what's going on in
6 front of them, and that's exactly what Agent Shaw did
7 here. If you go to the two of 2017 information, Your
8 Honor, there were identified two CI buys from two years
9 prior, that puts it in context of what is going on in
10 this case, Your Honor, and puts it in context of why
11 these officers are in Lexington County with arrest
12 warrants for those two charges.

13 THE COURT: He had not been picked up for those?

14 MR. COX: He had not, Your Honor. These two CI buys
15 happened in 2017, they took out warrants in 2019, had
16 them signed by a magistrate and we can put up the
17 officers and you can find it here in the warrant, that is
18 the purpose that they are at his home, that's the purpose
19 that they make the traffic stop was to serve valid arrest
20 warrants. These officers began that day at 6:30 at his
21 apartment identified by his driver's license, identified
22 by his DMV record, Your Honor. They conducted
23 surveillance for almost two hours. I believe
24 surveillance maintained by the affiant Agent Shaw and
25 another agent with SLED. They maintained surveillance

1 from the moment he left his apartment, got in his vehicle
2 and went straight to Walmart.

3 THE COURT: So they were already monitoring him
4 before the exchange allegedly occurred at Walmart?

5 MR. COX: Correct, Your Honor.

6 THE COURT: When I say exchange, I mean, I think I
7 note from talking to y'all, Mr. Carver walked out of the
8 vehicle, got in the vehicle, walked back into Walmart --

9 MR. COX: Moments later the car backs up and drives
10 Carver to the front door, Carver goes inside, the van
11 goes to pull off, they have at this point, Your Honor,
12 and you will see in the affidavit that they identify
13 Mr. Smith as the driver of this van in the Walmart
14 parking lot. That's where they made their stop. They
15 make the stop because of valid arrest warrants. They go
16 in, they grab Carver and detain him, they come out, they
17 do a pat down search on him and they do find heroin in a
18 yellow Baggie, find needles, all instances of drug
19 activity, this is what they believe they saw in the van.

20 THE COURT: This was found on Carver?

21 MR. COX: This is found on Carver where they then
22 got a signed statement from Roland Carver identifying, he
23 doesn't say Jerome Smith, he says Mr. C. He identifies a
24 white van that he went into, he said he went in and
25 bought heroin from the person in the van and the officers

1 conducted or held surveillance on this van the entire
2 time. The only other person in the van was Mr. Smith.
3 So from the point that he left his apartment, went
4 straight to Walmart, they had all the PC they needed with
5 this statement from Mr. Carver that a drug deal happened,
6 the beginning of this nexus started at the apartment
7 building 100 River Bend Drive in West Columbia which
8 where the search warrant was taken out for and the search
9 was done. I apologize, Your Honor. Just one moment.

10 THE COURT: Just for the record, our foreperson will
11 be Caroline Miller, juror number 146.

12 (Whereupon, Court's Exhibit #1 marked for
13 identification.)

14 THE COURT: Okay. Continue.

15 MR. COX: Your Honor, in addition to not only
16 maintaining surveillance on Mr. Smith from the time he
17 left his home until the time he got to Walmart and this
18 transaction happened until the time he was stopped, in
19 Mr. Carver's statement, the person that they found the
20 drugs on, he identifies Mr. - or he identifies the person
21 in the white van as someone he had contacted and asked to
22 meet him at this Walmart. So this time period that Mr.
23 Carver is talking about, this is where officers see
24 Mr. Smith, he leaves his apartment, he goes straight to
25 Walmart which would indicate --

1 THE COURT: So I understand what the State is
2 telling me, I want to make sure I understand what the
3 timeline of events are, but you would allege that Mr.
4 Carver contacted the defendant while he was at his
5 residence and then he was already under surveillance at
6 his residence and they watched him drive to Walmart and
7 then they saw the exchange?

8 MR. COX: So I don't want this to be painted as if
9 Mr. Carver is known as a CI. This is not that kind of
10 situation.

11 THE COURT: I don't mean to infer that. I'm just
12 trying to make sure that I understood. Law enforcement
13 is essentially watching the defendant when he, they were
14 already watching him when he arrived at Walmart. Is that
15 what you're telling me?

16 MR. COX: They were following a black male who left
17 the apartment building, got in a van registered to
18 Mr. Smith. So they have these valid arrest warrants on
19 him and trying to identify Mr. Smith. They can't do it
20 when he gets into the van, goes straight to Walmart,
21 Agent Shaw is in the parking lot, identifies him as the
22 driver, that's when Mr. Carver gets into the van, Your
23 Honor.

24 THE COURT: Okay.

25 MR. COX: But surveillance was maintained from the

1 point that he left his apartment and went to Walmart, no
2 stops in between. It's a direct drive, Your Honor, so...

3 THE COURT: Okay.

4 MR. COX Basically, Your Honor, based off of the
5 information just within the past 72 hours starting at
6 that point there's ample PC that Agent Shaw put in this
7 affidavit, presented it to the magistrate for them to
8 rely on for the search warrant. Is it Dill?

9 MR. STITELY: Dill, Baccus. Baccus talks about
10 State v. Smith which is a 1990 case.

11 THE COURT: All right.

12 MR. COX: Your Honor, if I may.

13 THE COURT: Sure.

14 MR. COX: One of the cases that Mr. Stitely is
15 relying on is this Dill case. He did give us a copy of
16 it. We were able to review it briefly, Your Honor. Your
17 Honor, it is in that holding of that case itself is a
18 self described narrow holding which our state Supreme
19 Court invalidated the search warrant based on the fact
20 that the affidavit contained mere conclusory statements
21 of criminal activity occurring within a residence without
22 further supporting factual information. The statement in
23 that case did not identify anyone or any particular place
24 as having - as a particular drug transaction or a
25 particular activity going on. It was more of a --

1 Your Honor, the Dill case involved a CI where that
2 CI gave information for a residence but did not identify
3 any actual controlled substance or drugs or drug activity
4 going on in the house. It simply identified different
5 products that can be used in the manufacturing of meth.
6 So that is very distinguishable from what we have in this
7 case.

8 THE COURT: And I don't have Dill right in front of
9 me. I was confused with other cases on one issue. I
10 also think some of those cases have issues where there's
11 no corroboration.

12 MR. STITELY: In Dill actually they did say they had
13 oral corroboration and the Supreme Court said it's still
14 not enough. You need to put those specifics in there. I
15 have a copy if you would like it, Judge.

16 MR. COX: Do you have a copy?

17 MR. STITELY: I just gave him my only copy.

18 MR. COX: Do you have notes on that one?

19 MR. STITELY: No. That's just my copy. I can print
20 another one.

21 THE COURT: If you've a West version --

22 MR. STITELY: Yeah. Give him the West version.

23 THE COURT: Yeah. Give me one.

24 MR. STITELY: I use Google Scholar for everything.

25 THE COURT: All right. Thank you. All right. I

1 can read the affidavit, of course, but do you have a
2 witness that you want to put up to respond to Mr.
3 Stitely's argument?

4 MR. COX: Your Honor, we strongly believe that the
5 affidavit in and of itself is strong evidence. If we
6 were to put up Agent Shaw who is the affiant on the
7 stand, she would tell you that she did not provide any
8 additional oral testimony and we believe she would also
9 testify that she did not deviate from what's in the
10 affidavit.

11 THE COURT: Okay. Mr. Stitely --

12 MR. STITELY: Do you want to take like 10 minutes
13 and read everything and then we can come back and talk?

14 THE COURT: Yeah. I have to. But before we do
15 that, let's just sort of ballpark where we're going here.
16 So we've got the search warrant issue. That's number 1.
17 What's next after that?

18 MR. STITELY: I guess kind of we have an interesting
19 quandary and that just has to do with one of the cases.
20 There's still two that they can make even without that
21 potentially. The search warrant only has to do with the
22 trafficking. It has nothing to do with distribution of
23 PWID so I guess I may have a general suppression motion
24 on the PWID as to how miraculously drugs appear at SLED
25 when they weren't there at roadside because there's no

1 cameras or anything so I don't know how that's gonna play
2 out.

3 As far as the distribution, I think that they can go
4 forward with any specific motion. They can just call
5 their guy and he testifies to what happened. We are
6 gonna possibly have a problem also with the PWID
7 depending on how we go and how that goes. So they're
8 saying they're arresting him on other warrants so we just
9 need to make sure that there's some kind of in camera
10 discussion as to what the PC was of them arresting him
11 and taking him to SLED was. If the answer is we arrested
12 him on -- and it's a dangerous thing to say -- we had to
13 take him for something unrelated because that's just an
14 interesting quandary because we may have a question on
15 the actual reason he ends up in custody.

16 THE COURT: I don't mind reading the affidavit.
17 Take a break. Y'all talk about where -- We're gonna need
18 some testimony it appears, particularly from SLED. And I
19 don't know if that will happen today or the first thing
20 tomorrow morning, but I would like to get us on a clear
21 path of addressing these properly and fully before
22 tomorrow, maybe not before tomorrow. Y'all talk. I'll
23 read the affidavit.

24 MR. STITELY: Do you want that other case I cited
25 too, Judge?

1 THE COURT: Give me whatever you got.

2 MR. STITELY: (Proffering.) It's in Google form
3 that I know you love.

4 THE COURT: That's all right. All right. We will
5 be in short recess. Anything else?

6 MR. COX: No, Your Honor.

7 (Short break.)

8 THE COURT: Okay. I have read everything. Now, do
9 we need to go into more having read that? Because I feel
10 like you also said part of the issue is your issue with
11 the search warrant was for what happened at SLED?

12 MR. STITELY: That's not in the search warrant is my
13 point.

14 THE COURT: Oh, okay.

15 MR. STITELY: I'm good with the document if there's
16 no oral add on. Judge, my problem with that is quite
17 simple. There is nothing they're talking about what drug
18 activity was happening at his house to warrant getting a
19 search warrant for his home.

20 THE COURT: Okay. Well --

21 MR. STITELY: And I think those cases are dead on
22 and the cases go a lot further with people even saying
23 there's stuff happening in a location and they say that's
24 not enough.

25 THE COURT: Okay. All right.

1 MR. COX: He's referring to these cases. It's nice
2 to have them.

3 THE COURT: Yes. Admittedly my goal is not to
4 Shepardize the cases. I'm really concentrating on the
5 affidavit and in reading the affidavit obviously the
6 first few pages are just laying out the background
7 experience of the officer. And I don't want to put words
8 into your mouths as far as what you said during your
9 respective arguments, but the reference to the two
10 incidents with the CI's back in 2017 gives a context that
11 the defendant is someone who has been under, I'll use the
12 word surveillance, and I mean that generally, as far as
13 previous or drug activities with CI's.

14 Now, in my reading the affidavit lays out that in
15 the past 72 hours the defendant was still, again general
16 words, surveillance, under surveillance, okay? And he
17 was noticed, observed going to the Walmart and they
18 observed the activity in front of the Walmart. Mr.
19 Carver and Mr. - the defendant getting into the mini van,
20 driving from one end of Walmart to the other, getting out
21 of the mini van, Mr. - and then in investigative
22 detention and subsequent arrest of Mr. Carver inside the
23 Walmart. And I'm not getting into even the written
24 statements. I'm just reading the affidavit. It states
25 that Mr. Carver purchased the heroin from the defendant

1 and he had done so inside the mini van. According to the
2 affidavit Mr. Smith arrived at the Walmart and had been
3 observed leaving his apartment, apartment H25. They then
4 place him under arrest for that event at the Walmart, but
5 he informed them and he confirmed that his apartment was
6 H25 to them. You know, could there have not been drugs
7 in that apartment? Of course. I mean, was it
8 unreasonable to think that there was a, I'll call it a
9 good probable chance that those drugs could have been
10 there? In light of all the totality there and the
11 circumstances it appears reasonable. Now, Mr. Stitely,
12 I'm gonna allow you to keep making this --

13 MR. STITELY: And, Judge, that's not the standard.
14 The standard is not reasonable.

15 THE COURT: Again, I'm --

16 MR. STITELY: The standard is probable cause which
17 is a higher degree than reasonable suspicion.

18 THE COURT: Okay. Well, I'm using the word
19 reasonable.

20 MR. STITELY: Judge, if you look at the cases, you
21 can't just say we're gonna go search a location and in
22 the one case it's specific. They say there's a drug lab
23 there. They see all these chemicals, they see this, that
24 and the other, and they say no, that's not even enough.

25 THE COURT: Which case is that?

1 MR. STITELY: In Dill. In the other case they say,
2 well, he was staying at the hotel room so we're gonna go
3 look for the bloody knife at the hotel room, and the
4 Supreme Court says that that's not enough. You have to
5 have some indicia that there was an actual -- Because a
6 Fourth Amendment violation, that's what these cases keep
7 talking about, Judge, it is a serious invasion that
8 requires a higher standard.

9 THE COURT: Okay. Now, you know, one is State
10 versus Kinlock. You may know that one off the top of
11 your head. Probable cause supported the totality of the
12 circumstances set forth in the affidavit. There is
13 a fair probability contraband or evidence of a crime was
14 to be found at a particular place. Fair probability.

15 MR. STITELY: Probability is 50 plus one. There is
16 no -- That's your civil standard.

17 THE COURT: Well, a preponderance. Okay. Well,
18 fair probability.

19 MR. STITELY: But, Judge, once again, there's
20 nothing in the document, nothing to the magistrate. And
21 like I said, so why was it dismissed at prelim? But
22 there's nothing in that document that says we have a
23 reasonable articulable suspicion of probable cause that we
24 will find, and it does say crack cocaine, I'm sorry,
25 that's not a scrivener's error, it's what they

1 specifically said what they were looking for, at his
2 home. And, Judge, if we're gonna go, and he argued it,
3 it wasn't testimony, that they were surveilling his
4 apartment for two hours because of DMV records with
5 arrest warrants in hand, they could have went in an
6 arrested him at his house in those two hours. But, Judge
7 --

8 THE COURT: And I can't get into why he wasn't
9 arrested sooner.

10 MR. STITELY: Sure.

11 THE COURT: I'm just trying to look at the totality
12 of the situation where you've got a person who is clearly
13 under surveillance for some time. Now, look, the
14 affidavit lays forth they observed him leaving the
15 apartment, his apartment, they observed this, I'll use
16 the word suspicious conduct and I don't know if that's in
17 the affidavit or not, that's just me speaking, but they
18 saw something that was outside of what would be based
19 upon their experience ordinary conduct, getting into a
20 vehicle, getting right back out of the vehicle at the
21 Walmart, finding the drugs on him, and Mr. Carver stating
22 where he got them from. This doesn't seem like it would
23 be unreasonable for a search to result in evidence being
24 found at the residence that he had been observed leaving.
25 This wasn't just a, hey, I got it from him. Let's go

1 arrest him.

2 MR. STITELY: Right.

3 THE COURT: This was more of --

4 MR. STITELY: But the surveillance element --

5 THE COURT: -- several factors corroborate it.

6 MR. STITELY: You hit two things.

7 THE COURT: Okay.

8 MR. STITELY: The surveillance, there's no
9 specificity what that surveillance was. These were two
10 year old quote unquote "arrest warrants", not recent
11 activity so you can't just say he was under surveillance
12 for the last two years. There's a thousand cases that
13 talk about what fresh has to mean.

14 THE COURT: I don't think the arrest warrants, and
15 again --

16 MR. STITELY: But again, that's --

17 THE COURT: I think the arrest warrants under this
18 situation are a part of the whole. Now, had they just
19 showed up --

20 MR. STITELY: But they're two years old, Judge.
21 That's the problem. They're not fresh. That's the
22 problem. These are from 2017 conduct. That's not an
23 active investigation. It might have --

24 THE COURT: All right. To your point --

25 MR. STITLEY: And the parking lot thing, I can pull

1 the cases if you want. The Fourth Circuit just said that
2 two people getting into a car in a parking lot no longer
3 is sufficient to justify a stop. That just happened.
4 I'll find the case if you want it. But we have to rely
5 on the affidavit and the standard once again, Judge, and
6 that's what those cases talk about, is it possible they
7 could have found drugs at the house? I mean, it's always
8 possible you could find drugs at the house. What they
9 have to show is what the actual probable cause was to
10 ascertain a search of that residence, specifically laying
11 out the details of what they were gonna find at that
12 residence, how they knew they were there, what they were
13 looking for in that residence that had something to do,
14 it has to be in the body of the document.

15 THE COURT: A crucial element is not whether the
16 target of the search is suspected of a crime but whether
17 it's reasonable to believe that the items to be seized
18 will be found in the place to be searched.

19 MR. STITELY: Right. And what in there says, what
20 in that document says we know that there's gonna be this
21 or that in the house? We haven't even gotten to it yet,
22 but there's someone else in the house who's not even my
23 client, but that's not even --

24 THE COURT: Well, to me it would be the --

25 MR. STITELY: So, Judge -- I'm sorry.

1 THE COURT: The affidavit says one of two things.
2 We saw him leave the house. We saw the car at the
3 Walmart. The drugs --

4 MR. STITELY: They could have been in the car.

5 THE COURT: Based upon Mr. Carver's talking in the
6 investigative detention, the drugs came from the vehicle
7 so either the drugs were in the vehicle for a period of
8 time or the drugs were located in the house before he got
9 in the vehicle. Either way 50/50 is a probability.

10 MR. STITELY: I have no problem with the search
11 warrants for the car, Judge, but it's not for the car. I
12 don't know if they searched the car.

13 THE COURT: I'm just trying to -- You have good
14 arguments, of course, but I'm trying -- I'm not -- I read
15 the affidavit the way I see it.

16 MR. STITELY: Sure. And once again, Judge, my
17 problem is, and if you look at the cases, and both of
18 them contain a far greater amount of specificity of what
19 they're looking for in the actual house. And the Fourth
20 Amendment, particularly when you're talking about a home,
21 it's the highest standard of protection one can have.

22 Now, I can pull all those Federal cases and state
23 cases. The search of a car is subject to an automotive
24 exemption. The search of the body of a person is subject
25 to an exemption. The house is sacred. The Fourth

1 Amendment holds that a person's castle is his sacred
2 domain and you have to have an absolute reason to enter
3 it and violate that and that's why these search warrants
4 of a location that's not where the defendant is have
5 caught so much scrutiny. I mean, and that, and I would
6 --

7 THE COURT: Not where he is at that moment or not
8 where --

9 MR. STITELY: Not where he is when you arrest him or
10 where the actual drug trans -- Say the drugs were in the
11 car. Say my theory of the case -- which I'm gonna spoil
12 it -- is that he drops him off at the front door, the guy
13 goes into the store, walks around the store for 10
14 minutes, maybe he's getting the drugs from the store to
15 come sell them to my client. Don't know. But there's
16 nothing proving that. And when they search -- And once
17 again, it's not in the affidavit so we don't know.

18 There's no mention of drugs on my client. There's
19 no mention of extra drugs on my client. There's no
20 mention of money found from the purchase of the drugs on
21 my client in that affidavit. You'd think that would be
22 in there if he really sold drugs. There's no mention of
23 paraphernalia. There's no mention of any videos.
24 There's no mention of any pictures. None of it is in
25 there and you have to put it in there to establish how

1 you're gonna invade someone's home when it's not the
2 location of the crime.

3 And if the comment was we've surveilled this
4 suspicious activity at his home, that should have been in
5 there. But simply saying we followed him to a Walmart
6 parking lot, there's no indication as to why they were
7 following him to a Walmart parking lot to begin with.
8 That would have to be in there. They could have said,
9 well, we had a surveillance that said we were watching
10 him go to this parking lot from his house every so often.
11 I don't care what it is. None of that is in there.
12 Judge, that's like saying, Ben goes up to the Walmart,
13 walks out, they say Ben just sold that dude some weed.
14 Cool. Let's go back to Ben's house and rip his house
15 apart looking for weed because he might have it in his
16 house.

17 THE COURT: Well, they didn't arrest him for being
18 in the parking lot. They didn't arrest him for having it
19 on his --

20 MR. STITELY: They arrested --

21 THE COURT: They didn't arrest him for having a guy
22 get out of his car.

23 MR. STITELY: Correct. And they didn't arrest him
24 for the transaction at that point. They arrested him on
25 old warrants which are stale as far as the search warrant

1 goes. They didn't charge him with distribution until
2 later. The arrest was for the old warrants which is
3 indicated in their incident reports. It's just an end
4 run, Judge. And I'm not -- You know, maybe we're arguing
5 semantics. The law exists for a reason. If we're gonna
6 just rubber stamp, and that's what that last case is, we
7 can't just rubber stamp search warrants. You need to be
8 specific. You need to be detailed because it is a Fourth
9 Amendment violation and the Fourth Circuit, I can think
10 of about three cases in the past three years that it has
11 gotten tighter and tighter and actually saying maybe we
12 really do have a Fourth Amendment Right. Particularly
13 when it comes to your home and I'll pull some cases if
14 you want where it talks about how sacred one's home is
15 and how even that's the highest standard and it's not
16 subject to one of the eight exemptions for a warrantless
17 search. The home always requires it and you've got to
18 put in specificity what reason do you have to think that
19 you were gonna find stuff at his home and even if you're
20 gonna argue from the 2017 stuff, it was a different home
21 at that time so you can't even say his apartment had
22 anything to do with it.

23 THE COURT: Okay. Well, I'll allow you to give me
24 additional materials. I've read the affidavit, of
25 course. I mean, I've read it. It's not just a - reading

1 it in whole I think it appeared to be just a set of
2 conclusory allegations. It appeared to be somewhat of a
3 -- I realize this was two years in advance where some of
4 the history comes from, but this wasn't - I think it's
5 important that he was apparently being surveilled the day
6 it happened for whatever reason and you can ask them that
7 or we can call whoever you need to ask that for pretrial
8 purposes, but based on what I have now I don't want to
9 suppress anything at this time.

10 MR. STITELY: Okay. So, Judge, I guess for this I
11 will call the special agent.

12 THE COURT: I never gave the State a chance to even
13 respond.

14 MR. STITELY: Well, you said you weren't suppressing
15 it.

16 MR. COX: Your Honor, I'm not gonna disrupt your
17 ruling if you're not gonna suppress it.

18 THE COURT: Well, no. At this time. That doesn't
19 mean Mr. Stitely can't continue to make his argument. In
20 my mind when we talked, we talked about several different
21 factors leading to your motion to suppress. We've talked
22 about one so...

23 MR. COX: Your Honor, just so we can protect the
24 record and get everything, try to get it as organized as
25 we can before we start calling witnesses, we've already

1 determined, or at least Your Honor has, that as far as
2 the staleness argument and the four corners of the
3 affidavit and the false information and the actual
4 probable cause laid out in the affidavit, there's not a
5 warrant suppression. If he's gonna, if he wants to call
6 witnesses at this time to address another issue that
7 these witnesses are gonna testify to for the search, for
8 the stop, then we can go from there. I'm just trying to
9 get as organized as we can so we can appropriately
10 respond, Mr. Stitely can appropriately argue too.

11 MR. STITELY: I'm gonna stay on the search warrant
12 issue, Judge. I'm not talking about anything else at
13 this point. I'm gonna go ahead and call a witness to ask
14 what that surveillance was so we can get a further
15 justification as to any concerns you may have as to what
16 she meant by surveillance.

17 THE COURT: Okay. Fine.

18 MR. STITELY: Ms. Shaw. Your Honor, we call Ms.
19 Shaw.

20 THE COURT: Thank you. Please come forward.
21 Thereupon,

22 JAMIE SHAW
23 after having been first duly sworn, testified as follows,

24 THE CLERK: Please have a seat. Once you're seated,
25 state your full name spelling your last please.

1 THE WITNESS: My name is Jamie Shaw, S-h-a-w.

2 DIRECT EXAMINATION

3 BY MR. STITELY:

4 Q. Ms. Shaw, I know we know, but what do you do for a
5 living?

6 A. I'm a special agent in the narcotics unit for the
7 South Carolina Law Enforcement Division.

8 Q. And that was the capacity you were working with at
9 the time of this case, correct?

10 A. Yes, sir.

11 Q. And specifically, do you have a copy of your stuff
12 with you?

13 A. I do.

14 Q. Okay. Cool. I just didn't want to talk to you
15 about it and you not have it in front of you.

16 A. No. I got you.

17 Q. Okay. So the arrest that ultimately leads to the
18 case that we're here for today was October 23rd of 2019; is
19 that correct?

20 A. October 23rd of 2019. Yes, sir.

21 Q. Okay. And on that date -- I guess, why don't we
22 start with three days before that, 72 hours before that. What
23 conduct did you witness of Mr. Jerome Smith during the three
24 days prior to October 23rd, 2019?

25 A. The conduct within the 72 hours was that day, the

1 October 23rd, 2019 incident.

2 Q. Okay. So prior to that morning, you didn't in the
3 past 72 hours watch Jerome Smith in any law enforcement sense
4 of surveilling him, correct?

5 MR. COX: Your Honor, let me object to this line of
6 questioning. It's my understanding he's challenging
7 probable cause found in the search warrant and trying to
8 use agent Shaw's testimony to address those issues.
9 We've already established the time frame within the
10 search warrant. I want to make sure he's staying --

11 THE COURT: He told me he was gonna bring her up to
12 clarify what surveillance was. I used the word generally
13 surveillance. The bottom line as I read the affidavit,
14 the defendant was - law enforcement saw the defendant
15 leave his apartment and go to the Walmart and this stuff
16 occurred under that surveillance and Mr. Stitely just
17 asked was there anything else that was done prior to
18 October 23rd so I think that clarifies where we are.

19 MR. COX: Thank you, Your Honor.

20 MR. STITELY: And obviously, Judge, there was stuff
21 way before but in the 72 hours prior to.

22 THE COURT: Right.

23 BY MR. STITELY:

24 Q. That morning what time did you arrive at Mr. Smith's
25 home?

1 A. It was -- I apologize. I have the search warrant
2 out with the affidavit.

3 Q. No problem. It was early morning hours, correct?

4 A. It was I think approximately 6:30 in the morning.

5 Q. Okay. And that was an address you located from DMV
6 records?

7 A. Yes.

8 Q. The long and short, you pretty much checked one of
9 his vehicles, traced it back and then went and looked for him
10 then, correct?

11 A. No. I queried his name and it came up to his
12 registered driver's license.

13 Q. Okay. So that morning starting at 6:30 did you
14 witness Mr. Smith conduct any illegal activity at the
15 premises?

16 A. No.

17 Q. Did you witness any suspicious or drug related
18 looking activity in the time you were watching his house?

19 A. No.

20 Q. At what point did you see him leave the home?

21 A. It was -- The individual that was in the white van
22 departed at approximately 8:25 in the morning.

23 Q. Okay. And you say the individual. Did the van come
24 out of a garage or --

25 A. No. It's an open parking lot.

1 Q. Is there any surveillance, I say surveillance, you
2 were physically present, are there any pictures, videos, or
3 anything of this part?

4 A. No.

5 Q. So at this point a gentleman gets in a white van and
6 drives away. At this point has there been any reasonable
7 indicia of drug dealing activity that you witnessed at this
8 home?

9 A. No.

10 Q. Okay. So the van eventually arrives at Walmart?

11 A. Yes.

12 Q. What time do you guys get to Walmart?

13 A. We arrived at 8:30 a.m.

14 Q. And then we kind of hashed it out, but you witness
15 an individual ultimately get in the van with the black male
16 who was driving it because you hadn't identified him at this
17 point?

18 A. At that point I had.

19 Q. You identified him?

20 A. Correct.

21 Q. Okay. So at this point you knew it was Mr. Smith in
22 the van?

23 A. Correct.

24 Q. Okay. But you hadn't arrested him on the old
25 warrants at this point?

1 A. No.

2 Q. So then you observed some activity that in your
3 training you determined to be suspicious, correct?

4 A. Yes.

5 Q. Okay. And you kind of fleshed it out, followed Mr.
6 Carver. Tell me what you saw, the simple version.

7 A. Uhm, the white van pulled into the right side of the
8 parking lot, I pulled in front of his nose. He was behind me.
9 I identified Mr. Smith as the driver of the vehicle. The
10 vehicle then sat there for approximately 20 minutes before
11 surveillance units noticed a white male walking like he didn't
12 know where he was going, uhm, and then he made a straight
13 beeline to the white Honda Odyssey and entered the passenger
14 side. Uhm, Mr. Smith immediately backed the vehicle out and
15 drove along the front of the building to the left entrance
16 where the white male exited the vehicle. It was probably
17 under a minute.

18 Q. Okay. So he gives him a ride in theory to the front
19 door of Walmart, to the door of Walmart?

20 A. Correct.

21 Q. Okay. And then at this point you don't go inside
22 Walmart, you stay on the white van, correct?

23 A. I instructed the two agents to go inside.

24 Q. Okay. At any point after that is there anyone else
25 who gets in contact with Mr. Smith in the white man --

1 A. Agent Stoertz.

2 Q. -- but not law enforcement related?

3 A. Negative.

4 Q. Okay. And then I guess your guys get Mr. Carver who
5 tells you he just bought some drugs. This is related to you
6 I'm assuming?

7 A. Yes.

8 Q. Okay. And then you go and actually effectuate the
9 arrest on my client?

10 A. We had already pulled him out of the vehicle at that
11 point before I learned that heroin was located on Mr.
12 Carver.

13 Q. Okay. So at that point you were arresting him on
14 the old warrants which you already had in your hand,
15 correct?

16 A. Yes.

17 Q. Nothing new?

18 A. No.

19 MR. STITELY: This is the only testimony I would
20 like to elicit as far as for the search warrant
21 argument.

22 THE COURT: Any cross?

23 MR. COX: Yes, Your Honor.

24 CROSS EXAMINATION

25 BY MR. COX:

1 Q. Agent Shaw, how long from the time you saw who was
2 later identified as Jerome Carver get into the van that you
3 saw the van then move out of the parking space?

4 A. Immediately.

5 Q. Okay. I think you said under a minute?

6 A. That was from Mr. Carver entering to Mr. Carver
7 exiting.

8 Q. Okay. Prior to Mr. Carver getting into the van, had
9 Mr. Smith gotten out, walked around, gone inside, done
10 anything other than waiting in the parking spot?

11 A. No.

12 Q. Okay. After dropping Mr. Carver off at the door,
13 did Mr. Smith go inside himself?

14 A. No. He drove toward the exit of the parking lot.

15 Q. Okay. Did he go anywhere else, go inside any other
16 buildings, get out of his vehicle prior to your stopping the
17 vehicle?

18 A. No.

19 Q. Okay. Mr. Stitely referred to the arrest warrants
20 that you stopped Mr. Smith and placed him under arrest for
21 whenever you stopped the vehicle. When were those warrants
22 signed?

23 A. I believe it was several days prior. Apologize.

24 Q. That's okay. Same year?

25 A. Yes. Yes.

1 Q. Same week?

2 A. It says -- I can't tell. I think it's 10/16/19.

3 THE COURT: What was that last question? I'm sorry.

4 MR. STITELY: When did they sign the warrants.

5 BY MR. COX:

6 Q. The old warrants that Mr. Stitely was referring to,
7 the arrest warrants that SLED had on hand that day. So you're
8 saying those warrants were from October 2019?

9 A. They were October 16th, 2019 is when they were
10 signed. Yes.

11 Q. Okay. So you sent two agents inside of Walmart to
12 make contact with the white male that you all had observed get
13 into Mr. Smith's vehicle?

14 A. Correct.

15 Q. Okay. You're not in Walmart?

16 A. No.

17 Q. They go in and make contact?

18 A. Yes.

19 Q. They bring him outside, they pat him down?

20 A. Yes.

21 Q. Okay. And they find what on him?

22 A. I believe he made a verbal statement stating that he
23 had it on him. They found a yellow Baggie containing a tan
24 powdery substance.

25 Q. Okay. Through your training what did you believe

1 that to be?

2 A. Heroin.

3 Q. Okay. And what did Mr. Carver say it was?

4 A. Heroin.

5 Q. Where did Mr. Carver say he got that from?

6 A. Mr. C.

7 Q. He never identified Mr. Smith by name, right?

8 A. Not as Jerome Smith. No.

9 Q. Okay. Mr. Carver's description of what he did and
10 why he was at Walmart was consistent with Mr. Smith's van
11 being at Walmart, correct?

12 A. Yes.

13 Q. Okay. So when Mr. Carver described, I was at
14 Walmart, I made contact with Mr. C in order for him to meet me
15 to sell me heroin?

16 A. Yes.

17 Q. Okay. And after that information -- Sorry. After
18 that information that you got from Mr. Carver, he signed a
19 statement?

20 A. Yes.

21 Q. Okay. And it was after you received that
22 information and the heroin was found on Mr. Carver that
23 you went to obtain the search warrant?

24 A. Yes.

25 Q. Okay. Agent Shaw, you said you arrived at

1 Mr. Smith's apartment, or the apartment that was listed for
2 Mr. Smith around 6:30 in the morning?

3 A. Yes.

4 Q. Okay. And you and other agents had surveillance on
5 the apartment complex and the white van all morning starting
6 at 6:30, right?

7 A. Yes.

8 Q. Okay. Did you ever lose sight of the van from 6:30
9 until the time Mr. Smith was pulled over?

10 A. No.

11 Q. From the apartment to Walmart did Mr. Smith make any
12 stops?

13 A. No.

14 Q. Did he ever get out of his car?

15 A. No.

16 Q. So based on Mr. Carver's statement that he contacted
17 Mr. C to meet him at Walmart to sell him heroin, that was
18 consistent with Mr. Smith leaving directly from his apartment
19 to Walmart?

20 A. Yes.

21 MR. COX: Your Honor, that's all I have.

22 MR. STITELY: Super briefly.

23 REDIRECT EXAMINATION

24 BY MR. STITELY:

25 Q. You didn't search the van before it got to Walmart,

1 did you?

2 A. I did not.

3 Q. And there's no indicia, and let's pretend all the
4 rest of it is true, that if there was drugs, they weren't in
5 the van to begin with?

6 A. I couldn't make that assumption.

7 MR. STITELY: I have no further questions.

8 THE COURT: Any recross?

9 MR. COX: No, Your Honor.

10 THE COURT: The witness may step down. Thank you.
11 All right. I've allowed everybody to make their record.
12 I have reviewed additional materials and my reading is
13 still the same. I deny the motion to suppress the search
14 warrant for the house.

15 MR. STITELY: And, Judge, just to make sure I flesh
16 it out, I think the reason I put that witness up there
17 very specifically is to indicate there is no indicia
18 anywhere that there was a wrongdoing at the house. She
19 said that they get there. She saw no criminal activity
20 or nothing that was ringing bells as criminal activity.
21 She doesn't even know who it is who leaves the premises.
22 I think that's important. She said she saw a black male
23 and didn't identify him until they get to the Walmart
24 parking lot down the road. So she sees an unknown person
25 leave the premises, no criminal activity, nothing wrong

1 with getting in the mini van, nothing wrong with driving
2 to Walmart, nothing wrong at all, and actually when she
3 arrests him, it's for an unrelated matter out of Richland
4 County. I guess that's how we decided to call it. In
5 order to get a search warrant for his home there has to
6 be some probable cause presented of criminal activity
7 being conducted at the home and, Judge, I'm just making
8 the record clear.

9 THE COURT: Very well.

10 MR. STITELY: In that document that you have in
11 front of you nowhere does it indicate any wrongdoing at
12 the home. Nowhere does it say what they believe
13 specifically was going on in the home. Nowhere does it
14 say why they thought illegal conduct was happening in the
15 home. And nowhere does it say anywhere in the past 72
16 hours there was any indicia that there was a reason to
17 violate his Fourth Amendment protection to search and
18 seizure at his home which is not the location of the
19 arrest and any potential subsequent actual criminal
20 activity. That's very specifically where I'm going.

21 THE COURT: Okay.

22 MR. STITELY: And in the Dill case you have someone
23 saying they're making meth at the house, he lives at the
24 house, they go search it. In the Smith case they say
25 he's staying at the apartment, or he's staying at the

1 hotel room. They say, well, where else would the bloody
2 knife be but probably in his hotel room. That's not good
3 enough. And in Baccus the same situation. They make a
4 finding arrest. They're like, well, this is where he
5 stays. Let's go search it. You can't just search
6 somewhere because that's where they live. You need to
7 have independent in the document probable cause that
8 that's where you're gonna find criminal activity and it's
9 not present in this case.

10 THE COURT: Very well. I have allowed you to make
11 your record. Did you need to say something, Mr. Cox?

12 MR. COX: No, Your Honor.

13 THE COURT: All right. I'll say in closing that I
14 believe it's reasonable to believe in light of the
15 surveillance that was underway that day it was reasonable
16 to believe that the items seized subsequently those drugs
17 would have been found in that home and that's my position
18 and that's my final comment. All right. What's next?

19 MR. STITELY: Judge, we did come to a conclusion I
20 think of how we're gonna word it because she's gonna have
21 to mention why she arrested him, so I think with the
22 language and the agent's been told this is how she's
23 gonna put it is that the actual arrest when it happens
24 was for an unrelated matter out of Richland County. She
25 was serving an unrelated arrest warrant out of Richland

1 July 13, 2021

2 (Whereupon, State's Exhibits #1 through #34 marked
3 for identification.)

4 BAILIFF: All rise. The Honorable Judge Walton
5 McLeod presiding.

6 THE COURT: All right. Good morning. Thank you.
7 Please be seated. All right. We've had a lengthy bench
8 conference this morning talking about various issues, a
9 lot of discussions which I'll let the attorneys put on
10 the record at this time. Mr. Stitely, you're standing up
11 already. I think I'll begin with you.

12 MR. STITELY: Judge, in light of the rulings that
13 occurred at this point in the trial process, it's my
14 client's intent to waive his constitutional right to a
15 jury trial and in lieu to proceed under a bench trial
16 before the Court to allow the Court to determine both
17 issues of law and issues of fact. In coming upon that
18 is, of course, part of the rulings that have already
19 happened and in accordance with that the defendant at
20 this time would be stipulating to what I call chain
21 matters, the custodians of records such as the DMV, we
22 would bypass the Rule 6 requirement of the chemist coming
23 to testify, we would allow the report to come in as to
24 the testimony of the chemist so there would be a
25 stipulation as to any chain witnesses leading to the

1 chemist and her report as well as a stipulation to things
2 like DMV records and those like.

3 So in theory we're saying we're not challenging the
4 drugs admissibility based on any kind of chain objections
5 or any kind of they didn't get tested objections. And,
6 Judge, he'll confirm that for you on the record.

7 THE COURT: Okay.

8 MR. COX: Your Honor, before you engage in that kind
9 of colloquy with the defendant, you asked us to put on
10 the record just kind of parts of the conversation we've
11 been having this morning.

12 THE COURT: Yeah. You can finish that. Yeah.

13 MR. COX: The State does consent at this time to
14 moving forward on a bench trial. As far as the
15 defendant's waiver for a jury trial we do consent. The
16 next thing, Your Honor, during the conversations outside
17 court, we did extend an additional offer for Mr. Smith
18 through his attorney Mr. Stitely. That offer was a
19 negotiated 15 years on a trafficking, on the trafficking
20 indictment down to a 14 grams weight, also with
21 distribution first, possession with intent to distribute
22 first, along with the other only pending warrant in our
23 office which is a DVHAN. That offer was in an attempt to
24 kind of resolve all of the pending matters in our office.
25 It's our understanding the defendant has rejected that

1 offer. Also part of that negotiation, just so we make it
2 clear, we negotiated that all of the sentences were going
3 to be run concurrent for each charge. So his exposure
4 would have been 15 years and we would have allowed the
5 opportunity for a DVHAN to be pled as a no contest plea.

6 THE COURT: Okay.

7 MR. STITELY: That's all accurate, Judge, and our
8 concern, of course, was appellate issues.

9 THE COURT: Very well. Mr. Smith, you have heard
10 your attorney just now. You have heard both the
11 attorneys. It's my understanding that you wish to
12 proceed forward on a bench trial; is that correct?

13 JEROME SMITH: Yes, sir.

14 THE COURT: And obviously you have a right to a jury
15 trial. You have a right to have the 12 people in the
16 jury box here determine whether the State has met their
17 burden of proof. Do you understand that?

18 JEROME SMITH: Yes, Your Honor.

19 THE COURT: By you waiving that jury trial, you will
20 be asking the Court to do that. Do you understand that?

21 JEROME SMITH: Yes, Your Honor.

22 THE COURT: Whether the State meets the burden is a
23 question for the Court now, not the jury. Is that what
24 you want to do?

25 JEROME SMITH: Yes, Your Honor.

1 THE COURT: Okay. Anything else that we need to
2 note?

3 MR. STITELY: No, sir.

4 THE COURT: We've addressed all the chain issues so
5 at this time --

6 MR. COX: Your Honor, can we have just one moment?
7 We want to make sure --

8 THE COURT: Yes. Go right ahead.

9 MR. COX: -- we have everything on the record.

10 THE COURT: I don't want to let them go until we've
11 done it all.

12 MR. COX: We ready, Your Honor. Nothing else from
13 the State.

14 THE COURT: Just so we're all on the same page, I
15 think at this time I'll bring the jury up. I will thank
16 them for their service. I'll advise them that the
17 defendant has waived his right to a jury trial and we'll
18 proceed without a jury and that they are free to go.
19 Anything -- What's that? I would like to make sure we --
20 I don't want to --

21 MR. STITELY: I think you can just say that they've
22 decided to resolve the case without the need of a jury.

23 MR. POGUE: Yeah. I think that would be better,
24 Your Honor. Just say that their services aren't needed
25 any longer, that we've resolved, we're gonna be able to

1 resolve the matter without their service.

2 MR. STITELY: And you can always put in there we
3 greatly appreciate you coming and things would not move
4 forward if they weren't here.

5 MR. POGUE: Yes. Proffusive praise is always good
6 for the constituents.

7 THE COURT: Well, I would have added in some nice
8 things.

9 MR. STITELY: Okay.

10 MR. POGUE: Okay. We know that.

11 THE COURT: I was just talking about the general
12 language. So we'll just let them know that we're gonna
13 resolve the case without a jury and other things. All
14 right. Let's bring them up.

15 (Whereupon, the jury entered the courtroom at 10:45
16 a.m.)

17 THE COURT: Okay. Ladies and gentlemen of the jury,
18 welcome back to the courthouse. When I spoke with you
19 yesterday, I told you that we would always be cognizant
20 of your time and try not to waste it. I want you to
21 understand, you all were here this morning at the
22 appropriate time. It's now 10:45. So I want you to know
23 while you have been down there, we've been working very
24 hard on this case. There's plenty going on. We weren't
25 just sitting up here. The first thing I want to let you

1 know is that we've reached a point where we're going to
2 be able to resolve this case moving forward without the
3 assistance of a jury. So your jury service is going to
4 be very short. In fact, it is over.

5 So I appreciate -- But let me be clear, your
6 presence in the building is what helps move cases.
7 Regardless of what the case is, a jury's presence always
8 helps cases move and your presence even sitting in that
9 room this morning was helpful. So I need you to
10 understand that, but we won't need a jury moving forward.
11 I want to thank you for your service. It's important for
12 you to be here. It turned out to be that your service is
13 shorter than I thought it would be, but it's appreciated
14 nevertheless on behalf of all of us.

15 The bailiffs will take you back down to your jury
16 room. There will be a check mailed to you as well as a
17 work excuse. If you need a work excuse today, you'll
18 need to go down to the Clerk of Court's Office and speak
19 with Carol, I believe, madam clerk, and if I say, if I
20 get anything wrong, she'll correct me, but you can get
21 that work excuse today if you need it, otherwise the
22 check and the work excuse will go out in the mail soon.
23 Thank you again for being here. You're free to go at
24 this time.

25 (Whereupon, the jury was released from further jury

1 service at 10:50 a.m.)

2 THE COURT: All right. Any issues with the jury
3 dismissal?

4 MR. STITELY: None from the defense, Your Honor.

5 MR. COX: None from the State, Your Honor.

6 THE COURT: All right. Are we ready to proceed?

7 MR. STITELY: We are, Your Honor.

8 THE COURT: The State, if you would like to give me
9 a little bit of an intro.

10 MR. POGUE: May it please the Court, Your Honor.

11 THE COURT: Yes, sir.

12 MR. POGUE: Your Honor, obviously you already know a
13 good bit about this case from our pretrial hearings and
14 arguments so I have abbreviated my opening statement to
15 hopefully account for that although the State did wish to
16 address the Court in regards to a couple initial matters
17 before we can begin to present our case.

18 Your Honor, this case is about common sense. Don't
19 get me wrong, obviously this case is about drugs and
20 money, but ultimately at its core this case is about
21 common sense. Let's move on a bit. As you already know,
22 on October 13th (sic), 2019, we intend to - at 6:30 a.m.,
23 Special Agent Shaw, Special Agent Perry and Special Agent
24 Fowler all with SLED, evidence will show that they met at
25 100 River Bend Drive, apartment H25 which is the West

1 Columbia area of the county, Your Honor, to locate and
2 serve arrest warrants on the defendant in this case.
3 Around 8:25 the defendant walks to his white Honda
4 Odyssey, drives directly to Walmart in the West Columbia
5 area which is just a few miles away, Your Honor.

6 Evidence will also show that when he gets to the
7 Walmart parking lot, he sits there in the Walmart parking
8 lot, does not go into the store. At that particular
9 point in time, Your Honor, the evidence will show that
10 they were able to positively confirm direct visual
11 contact with the defendant as the driver, the sole
12 occupant of the vehicle as the person that they were
13 intending to serve the arrest warrants on the defendant
14 Jerome Smith.

15 Your Honor, after a few minutes of sitting there, a
16 individual by the name it was later discovered as Roland
17 Carver the evidence will show walks up to the defendant,
18 gets into his van. The defendant drives the van to the
19 front of the Walmart parking lot at which point Mr.
20 Carver gets out of the vehicle and begins to enter the
21 Walmart parking lot. The defendant drives away.
22 Obviously, Your Honor, the evidence will show and there
23 was previous testimony at pretrial that special agents,
24 two special agents followed Mr. Carver to the Walmart
25 bathroom where they brought him, detained him back out

1 into the parking lot.

2 At that point in time while the agents were
3 following Carver, Agent Shaw placed the defendant - well,
4 a traffic stop was conducted on the vehicle when he
5 dropped Carver off and he was placed under arrest and
6 served the arrest warrants by Special Agent Shaw. Your
7 Honor, Mr. Carver obviously, the evidence will show Mr.
8 Carver ends up giving a statement indicating that he
9 purchased the heroin that he had on his person, that he
10 admitted to having on his person to special agents from
11 the defendant in the vehicle.

12 Your Honor, the evidence will also show that he was
13 transported to SLED and at that point in time when he
14 arrived at the SLED annex which is also in Lexington
15 County, Your Honor, he dropped a Baggie that was
16 consistent with Baggies that were subsequently found in
17 the execution of the search warrant on his property.
18 Your Honor, I should also mention that evidence will show
19 that the Baggie that was recovered from Mr. Carver was
20 also a yellow Baggie consistent with the Baggie that was
21 found, that was dropped in the interview room at SLED
22 annex and consistent with the yellow Baggies that were
23 found in the defendant's bedroom, in his closet along
24 with 16.53 grams of heroin, a money counter, and \$1800.00
25 in cash all in his bedroom closet, the cash being in a

1 safe.

2 Your Honor, as you know Mr. Smith has three charges
3 pending. Trafficking heroin, 14 grams to 28 grams,
4 distribution of heroin, possession with intent to
5 distribute heroin. Let's take them one at a time.
6 Trafficking heroin, Your Honor, there's two elements to
7 that that the State has to prove beyond a reasonable
8 doubt. The weight, which it has to be at least 14 grams,
9 and knowing, actual or constructive possession. Just two
10 elements.

11 In regard to the actual constructive possession,
12 Your Honor, obviously as you I'm sure already know,
13 actual possession, Your Honor, is when you have an item
14 physically in your personal custody on your person, Your
15 Honor. You have direct physical custody of an object.
16 For example, I have this pen in my actual possession.
17 Constructive possession, Your Honor, is different
18 obviously in that a person does not have it on their
19 personal - excuse me - on their person, but they have
20 dominion and control over the area in which the item is
21 found and they intended to control that particular item.
22 For example, obviously I'm sure you have many valuables
23 in your home. Although you're not at your home right
24 now, you still possess those items even though you are
25 not at your home.

1 Your Honor, distribution of heroin, again, two
2 elements that there was a distribution and that the item
3 that was distributed was heroin. In regards to the PWID,
4 Your Honor, there's actually three elements of that. You
5 actually have to show an intent element in that one, Your
6 Honor. Possession with the intent to distribute heroin.

7 We obviously have the burden of proving this beyond
8 a reasonable doubt, Your Honor. I'm sure as you have
9 given many jury charges in your day, you know exactly
10 what or how South Carolina law through case law has
11 defined the term beyond a reasonable doubt which is that
12 it's proof that leaves you firmly convinced, or, in the
13 alternative, reasonable doubt would be the kind of doubt
14 that causes a reasonable person to hesitate to act.
15 Obviously there are very few things that we know in this
16 world with absolute certainty. We do not have to prove
17 our case beyond all possible doubt. Any doubt obviously
18 must be reasonable, Your Honor.

19 Your Honor, we just simply ask that if you feel that
20 we have not met our burden, that we have not put forth
21 evidence to sufficiently prove the defendant as to every
22 element guilty beyond a reasonable doubt, that you
23 obviously find him not guilty. We would ask that you do
24 that and we believe that you would, Your Honor. By the
25 same token, Your honor, we also ask that if we put forth

1 the evidence that would support his guilt beyond a
2 reasonable doubt as to every element, we believe, Your
3 Honor, that again, obviously you have the duty to find
4 him guilty.

5 We only ask, Your Honor, that you don't make the
6 mistake of losing the forest for the trees. We have no
7 doubt that you will not. You know, you strike us
8 obviously as somebody who, obviously is somebody who is
9 keen on the law, but also who possesses good old fashion
10 common sense which is again going back to what I
11 initially said, Your Honor. That's what this case is
12 about. Ultimately at the end of the day it's the
13 utilization of good common sense in determining the
14 circumstantial evidence and how it's connected and how
15 the defendant is clearly guilty beyond a reasonable doubt
16 as to the charges that he has been indicted for.

17 Your Honor, there are some other things that I would
18 have spoken to the jury about, Your Honor, but again, I
19 believe those are unnecessary for the purposes of this
20 bench trial, Your Honor, and I just simply ask obviously
21 that you give the defense counsel the same courtesy you
22 have given us should he choose to give opening remarks.

23 MR. STITELY: Your Honor, may it please the Court.
24 We'll defer until the defense.

25 THE COURT: Very well. All right. First witness.

1 MR. COX: Your Honor, the State calls Kyle Fowler.

2 Thereupon,

3 KYLE FOWLER

4 after having been first duly sworn, testified as follows,

5 THE CLERK: Please have a seat. Once you're seated
6 you can remove your mask, and state your full name
7 spelling your last please.

8 THE WITNESS: My name is Kyle Fowler, F-o-w-l-e-r.

9 MR. COX: May it please the Court, Your Honor.

10 THE COURT: Yes, sir.

11 DIRECT EXAMINATION

12 BY MR. COX:

13 Q. Do you prefer officer or agent?

14 A. Your preference.

15 Q. Okay. Agent Fowler, if you would, please tell us
16 where you work and what are some of the duties through your
17 line of work?

18 A. I work for the South Carolina Law Enforcement
19 Division. In 2019 I worked for the Alcohol Enforcement Unit
20 doing general duties with alcohol laws and regulations in the
21 state. Periodically we would also work with our narcotics
22 unit or some of the other vice services units to supplement
23 manpower as needed.

24 Q. Okay. You said in 2019. Are you still in that same
25 unit now?

1 A. I'm not currently.

2 Q. What do you do now?

3 A. I'm currently assigned to the tracking team using
4 bloodhounds.

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

6 A. A little over 10 years.

7 Q. Okay. We kind of already touched on it a little
8 bit. How did you become involved in the incident we're here
9 for today?

10 A. So again, I was contacted by Special Agent Shaw the
11 investigator for the case to assist her with serving an arrest
12 warrant.

13 Q. Okay. And what day was that?

14 A. I believe it was Wednesday, October 23rd, 2019.

15 Q. Okay. All right. When she contacted you about
16 serving the arrest warrant, where were you instructed to go?

17 A. We were to meet at 100 River Bend Drive in West
18 Columbia in Lexington County.

19 Q. Okay. What kind of building is this?

20 A. It's an apartment complex.

21 Q. What time did you arrive at the apartment complex?

22 A. I believe around probably 8:25ish, between 8:20 and
23 8:30 that morning.

24 Q. Is that when you arrived or --

25 A. Yes. For myself.

1 Q. When you arrived, was there anyone else there?

2 A. It was Special Agent Shaw and Special Agent Perry.

3 Q. Okay. Kind of walk us through, if you will, when
4 you arrived, had the arrest warrant already been served?

5 A. No, sir. It had not.

6 Q. Okay. What were you tasked, what did you do when
7 you arrived at the apartment complex?

8 A. I was there basically as a surveillance unit. I
9 remained in my vehicle for if any vehicles that needed to be
10 followed left the apartment complex to follow the vehicles.

11 Q. Okay. Was there a vehicle in particular you were
12 following that day?

13 A. Yes. There was a white Honda Odyssey van that left
14 from the apartment complex that was followed.

15 Q. Did that belong to the person or did you understand
16 that to belong to the person that you were there to serve the
17 arrest warrant on?

18 A. Yes, sir.

19 Q. Okay. How long were you at the apartment complex
20 when any sort of further surveillance took place?

21 A. It was pretty much for me kind of instantaneous.
22 Almost as soon as I was arriving at the apartment complex the
23 vehicle was in motion leaving from the apartment complex so it
24 was kind of pretty much as soon as I got there we started
25 moving.

1 Q. Okay. Where did you start moving to?

2 A. Well...

3 Q. You said as soon as you got there, that's when you
4 started moving?

5 A. Yeah.

6 Q. Where did you and the other officers start moving
7 to? Where did you go?

8 A. Like what was the - like final destination?

9 Q. Sure. Yes.

10 A. The Walmart Super Center at -- Give me just one
11 second -- 2401 Augusta Road in West Columbia also in Lexington
12 County.

13 Q. Okay. About how far was the Walmart that you went
14 to from the apartment complex you started at?

15 A. I mean, I would say a couple of miles.

16 Q. But not too far?

17 A. No, sir. I mean, a short drive. I mean, two
18 minutes.

19 Q. Okay. From - during the drive from the apartment
20 complex to Walmart, did you and your team maintain
21 surveillance on the white van?

22 A. Yes.

23 Q. Were there any stops in between the apartment and
24 Walmart?

25 A. No, sir.

1 Q. Did anyone, did you observe anyone get in or out of
2 the van from the time you started your visual on the van until
3 the time you got to Walmart?

4 A. I did not. No.

5 MR. COX: Your Honor, could I have just a minute?

6 (Proffering.)

7 MR. STITELY: No objection. I'll stipulate to those
8 coming in at the appropriate time.

9 BY MR. COX:

10 Q. Agent Fowler, I'm going to hand you two documents.
11 If you will look them over for me. What I am offering you is
12 premarked as State's Exhibits 1 and 2. Can you tell me what
13 it appears to be in these photos?

14 A. Exhibit 1 appears to be the complex referenced at
15 100 River Bend Drive in West Columbia, and the second photo
16 appears to be an overview of the parking lot of the Walmart
17 shopping center at 2401 Augusta Road in West Columbia.

18 Q. Do those two photo visuals fairly and accurately
19 depict the locations that you have described for us today?

20 A. Yes, sir.

21 MR. COX: Your Honor, at this time the State would
22 offer exhibits 1 and 2 into evidence.

23 THE COURT: All right. Without objection so
24 admitted.

25 MR. COX: Your Honor, if I may, can I ask Agent

1 Fowler to come down.

2 THE COURT: That's fine. You may step down, sir.

3 THE WITNESS: (Complies.)

4 BY MR. COX:

5 Q. All right. Agent Fowler, if you would, kind of
6 describe for us around 8:30 that morning where did you come in
7 with your vehicle and where were you located when you started
8 the surveillance on this white van?

9 THE COURT: Is it upside down?

10 THE WITNESS: Yeah. I'm having a little hard time
11 with it.

12 MR. STITELY: It's upside down.

13 THE WITNESS: All right.

14 MR. STITELY: Judge, I'm not going to object to him
15 leading if he needs to.

16 BY MR. COX:

17 Q. Are you able -- Just tell us, if you're looking at
18 this photo that you identified as the 100 River Bend complex,
19 are you able to now point to us where you entered the
20 complex?

21 A. I can't because I can't see all of the streets and
22 everything connected to it. Like to me the picture's not big
23 enough showing the full area like where I would have driven my
24 vehicle in.

25 Q. I understand. Let's move onto this one, okay?

1 A. This one I can because it shows me the road and
2 everything so this is the Walmart from Augusta Road. Should I
3 do like this (indicating)?

4 THE COURT: I've got a pointer. Do y'all have a
5 laser?

6 MR. COX: We do not have one available, Your Honor.

7 BY THE WITNESS:

8 Q. So looking at the Walmart building up here, this
9 building, so I came in out here off of Augusta Road into the
10 parking lot and I came to this side and I was somewhere around
11 in here on this side of it, so looking facing the building I
12 was parked somewhere on the left side of the building is where
13 my vehicle was.

14 BY MR. COX:

15 Q. Were you the only agent in the Walmart parking lot
16 at that time?

17 A. I was not. Also Special Agent Shaw and Special
18 Agent Perry were there as well.

19 Q. Okay. Tell us, while you're in the Walmart parking
20 lot, where is the white van?

21 A. The white van initially was somewhere in this
22 general area right in here.

23 Q. Okay. How long did you maintain surveillance on the
24 van while you were in that parking lot?

25 A. I would guess 20 to 30 minutes.

1 Q. At that point did you observe anyone get in or out
2 of the vehicle in the parking lot?

3 A. From where I was I could not see everything with the
4 vehicle. I could tell in the general area where the vehicle
5 was, but from my perspective I didn't have a direct line of
6 sight of the vehicle if that makes sense.

7 Q. So for that first, you called it 20, 30 minutes, you
8 did not see anyone at that time enter the vehicle?

9 A. No, sir. I did not.

10 Q. Okay. At any point while you were in the Walmart
11 parking lot, did anyone approach, enter, did anyone exit the
12 vehicle?

13 A. That's -- So I was told that someone --

14 MR. STITELY: Your Honor, I object to hearsay.

15 THE COURT: Yeah. Rephrase your question.

16 Sustained.

17 BY MR. COX:

18 Q. Agent Fowler, did you observe anyone enter the
19 vehicle, get out of the vehicle at any point while the vehicle
20 was parked in the Walmart parking lot?

21 A. I did not.

22 Q. Okay. While you were in the parking lot in your
23 position, were you given any instructions from Agent Shaw or
24 from anyone else on how to proceed?

25 A. I was. Yes.

1 Q. What were those instructions?

2 A. I was instructed that a person had got into the
3 vehicle.

4 MR. STITELY: I'm gonna object to hearsay. I think
5 he can testify as to what he did with the information,
6 but not specifically what he was told.

7 THE COURT: I understand your objection. He
8 received tasking from someone else. Move on. What did
9 he do?

10 MR. COX: I can rephrase.

11 THE COURT: What's his direct testimony?

12 BY MR. COX:

13 Q. Agent Fowler, without going into other parts of the
14 instructions or what someone described what they saw, just
15 tell us what you did when you were given instructions by Agent
16 Shaw.

17 A. Sure. So the van moved from the parking space where
18 it was on this side of the building and drove around the front
19 of the building where I could see the vehicle moving and
20 somewhere in this general area closer to this entrance on this
21 side the vehicle stopped and a subject exited from the
22 passenger side of the vehicle and from there I moved my
23 vehicle from where I was up to the front on the left-hand side
24 of Walmart and I followed the subject that got out of the
25 white van into the Walmart.

1 Q. Okay. Were you the only person who went inside the
2 Walmart at this time?

3 A. Initially, yes. I was the first person to go into
4 Walmart.

5 Q. Okay. Could you describe for us, just briefly
6 describe the person that you observed getting out of the
7 passenger compartment of the white van and entered the
8 Walmart?

9 A. It was a white male subject. He had on a hoodie,
10 long-sleeved style shirt. He appeared to be older than
11 myself, but not I would say old enough to be like my father,
12 but he just appeared to be older than me.

13 Q. Okay. You can take your seat.

14 A. (Witness complies.)

15 Q. All right. Agent Fowler, when you entered the
16 Walmart, how long was it from the time that you observed the
17 person get out of the van to when you entered the Walmart?

18 A. Less than 30 seconds probably.

19 Q. Upon entering the Walmart, where did you go?

20 A. So I walked through the entrance doors on the
21 left-hand side of the shopping center if you're looking at it
22 and I went in through where the shopping carts and things are
23 kind of in the little entranceway and as soon as I got inside
24 of the store essentially I saw the subject to my right walking
25 down the front of the store towards the area where the

1 restrooms typically are in Walmart.

2 Q. Okay. At that point did you observe this white
3 subject, did he go down any aisles? Did he stop anywhere?

4 A. No, sir.

5 Q. Did you maintain or did you wind up making contact
6 with this person?

7 A. Yes, sir. So the subject walked into the restroom,
8 the men's restroom and I went into the restroom behind him.
9 He had gone into a bathroom stall and as I was coming in, he
10 was shutting the door and I tapped on the door and he opened
11 the door back up and I had my neck badge out, I identified
12 myself and I told him who I was and I just explained to him
13 that I needed to talk to him and that I was placing him in
14 investigative detention and at that time he wasn't under
15 arrest and so I placed him in the handcuffs. Around that time
16 Agent Perry came into the bathroom as well because he was a
17 little bit behind me getting into the store and at that point
18 I walked the subject from the restroom back out to my vehicle
19 where it was parked in front of the store.

20 Q. Okay. So, Agent Fowler, at what point from the time
21 you entered the Walmart and saw the white male subject did you
22 lose a visual of him from that point from when you placed him
23 in investigative detention?

24 A. Did I lose contact of him?

25 Q. Did you lose a visual of him?

1 A. So I did lose visual of him when he went into the
2 bathroom.

3 Q. How long was that?

4 A. A few seconds. I mean, not very long at all.

5 Q. Okay. Outside of the Walmart now that you're back
6 outside, were you able to identify who the subject was?

7 A. Yes, sir.

8 Q. Did you conduct any searches of this person? Did
9 you conduct a search of this person?

10 A. Yes, sir. I did. I initially -- I asked him if he
11 had anything on him that I should essentially know about for
12 my safety or his safety and which he stated that he did have
13 items on him that could harm me or him.

14 Q. Okay. First, let me back up. When you identified
15 who this person was, what was his name?

16 A. That would be Roland Carver.

17 Q. What did you find on Mr. Carver during your
18 search?

19 A. That would be a syringe, a yellow zip lock bag with
20 a tan powder substance, reddish pinkish type little plastic
21 cap that had like a cotton type of filter of some sort in it
22 that appeared to have some kind of, I guess you could say that
23 it was used, it wasn't clean, and then like a black glove.

24 Q. Okay. When you found these items, you described a
25 yellow Baggie containing a brown substance. Did you collect

1 these items?

2 A. I did.

3 Q. Okay. Would you be able to identify those items if
4 I showed you a photo of them?

5 A. Yes.

6 Q. Agent Fowler, when you collected these items, what
7 method did you use to collect them? How did you collect these
8 items?

9 A. I essentially kind of asked him where stuff was on
10 him on his person.

11 Q. I apologize. That was a bad question. What did you
12 use to store these items when you collected them? How did you
13 collect them?

14 A. So initially when I was first collecting them off of
15 him, I carry evidence bags in my vehicle for other things and
16 that's when initially everything I got off of him I stuck into
17 an evidence bag that I had inside my vehicle and placed it on
18 the dash of my truck inside of my truck is what initially
19 occurred.

20 Q. Okay. Would you be able to identify those items if
21 I brought them to you?

22 A. Yes.

23 Q. Agent Fowler, I'm showing you what's been premarked
24 as State's Exhibit 3. Do you recognize these items?

25 A. Yes, sir. These are the items that were taken off

1 of Mr. Roland Carver.

2 Q. Okay. And who is it that collected the items in
3 this way?

4 A. Myself.

5 Q. Okay. Are there any identifying markers of any kind
6 on this item that you would be able to identify it with?

7 A. If I could add to, so after the initial collection
8 of these items, they were turned over to the case agent,
9 Special Agent Shaw at which point they were placed into a BEST
10 kit which is labeled and has the additional chains of custody
11 with it which this does have the BEST kit number on it that is
12 associated with that and that is how I can identify that.

13 MR. COX: Your Honor, at this time the State moves
14 exhibit number 3 into evidence.

15 THE COURT: Without objection?

16 MR. STITELY: I'm assuming they're going to clarify.
17 He's saying he didn't put them in the BEST kit, the other
18 agent did, but he handed them to her, and we're not
19 objecting to any chain, so as long as that's what's gonna
20 happen, we need to make sure that that's what she intends
21 to say then I won't object.

22 THE COURT: Sure.

23 MR. COX: Your Honor, just to clean this up, I would
24 like to at this point withdraw my motion to admit this
25 evidence at this time.

1 THE COURT: Is it marked for identification?

2 MR. COX: We have marked it for identification
3 purposes only at this time.

4 THE COURT: So State's Exhibit 3 is marked for
5 identification purposes only at this time?

6 MR. COX: That's right, Your Honor.

7 THE COURT: Very well.

8 BY MR. COX:

9 Q. Agent Fowler, I'm showing you what's been marked as
10 State's Exhibit 4. Are you able to identify that?

11 A. Yes, sir. These are the contents from the previous
12 exhibit. This is the evidence that was taken off of Roland
13 Carver.

14 Q. The evidence that you collected off of Roland
15 Carver?

16 A. That's correct.

17 Q. This photo of that evidence, does this fairly and
18 accurately depict what you found on Mr. Carver that day?

19 A. Yes.

20 MR. STITELY: No objection.

21 MR. COX: Your Honor, at this time the State, or we
22 move State's Exhibit number 4 into evidence.

23 THE COURT: All right. State's Exhibit 4 is
24 admitted into evidence without objection. Thank you.

25 BY MR. COX:

1 Q. Agent Fowler, this item that I have my finger at --

2 THE COURT: What was your question?

3 MR. COX: I'm trying to frame the question, Your
4 Honor. I'm trying to actually figure out where I'm going
5 with it myself.

6 BY MR. COX:

7 Q. Agent Fowler, after collecting this evidence with
8 Mr. Carver in investigative detention, did Mr. Carver give a
9 statement at any point without going into the details of the
10 statement please?

11 A. He did later.

12 Q. When you say later, what do you mean later?

13 A. It wasn't directly to me.

14 Q. Okay.

15 A. It was with Special Agent Shaw and Special Agent
16 Stoertz and I was present.

17 Q. In addition to any verbal statement, did Mr. Carver
18 at any point sign a statement or give a signed statement of
19 any kind?

20 A. Yes.

21 Q. Did you eyewitness him sign that statement?

22 A. I did.

23 MR. COX: Your Honor, we have no further questions
24 at this time for Agent Fowler. We would ask that he
25 remains under possibility of recall.

1 THE COURT: Cross examination?

2 MR. STITELY: Just briefly.

3 THE COURT: I have a quick question for
4 clarification.

5 (Side bar off the record.)

6 BY MR. COX:

7 Q. Agent Fowler, when I asked you did you witness the
8 written statement by Mr. Carver, did you sign that document?

9 A. I did.

10 Q. So you witnessed it with your name and signature?

11 A. Yeah. I printed my name and signed my name on it.

12 MR. COX: Thank you, Agent Fowler.

13 THE COURT: Thank you. Cross examination. Please
14 answer any questions Mr. Stitely may have.

15 MR. STITELY: Just briefly.

16 CROSS EXAMINATION

17 BY MR. STITELY:

18 Q. Agent Fowler, you were told when you came out that
19 day that there was an active arrest warrant for Jerome Smith;
20 is that correct?

21 A. Yes, sir.

22 Q. You were to act as back up in case something went
23 awry or they needed an extra man on the job, correct?

24 A. I suppose. Yes, sir.

25 Q. Okay. Would you have had the authority to arrest

1 him at any point that morning knowing that there was a warrant
2 in hand?

3 A. I suppose. Yes.

4 Q. Where did he turn into Walmart? Do you know how he
5 specifically turned into Walmart?

6 A. There's two entrances. There's one entrance that
7 you're not supposed to turn in I believe and one you can
8 lawfully turn into.

9 Q. While you were watching him, and you said that you
10 couldn't see the van perfectly in the parking lot, could you
11 ascertain if there was only one person in the van?

12 A. From my position I did not have that visual.

13 Q. Okay. So you can't say with certainty as far as
14 what you witnessed who was in the van to start and who was in
15 the van until you saw someone get out of it?

16 A. Correct. That's all that I saw was the person
17 exiting the van.

18 Q. And you said once the person exited, you moved your
19 van from kind of a midpoint in the parking lot in front and
20 then got out and followed him in, correct?

21 A. Correct.

22 Q. So that would be at least a couple seconds?

23 A. Yes, sir.

24 Q. And then you can't say with any certainty that the
25 man who exited the van didn't have any contact with anyone

1 else inside the Walmart before you got inside, correct?

2 A. I did not see any of that. No, sir.

3 Q. But you did at least lose him you said 30 seconds
4 between when he parked and went in and then a couple seconds
5 when he went in the bathroom?

6 A. Sure. Yes.

7 MR. STITELY: No other questions.

8 THE COURT: Any redirect?

9 MR. COX: No redirect, Your Honor, but Agent Fowler
10 is still subject to recall.

11 THE COURT: All right. You can step down. Thank
12 you.

13 MR. POGUE: Your Honor, the State calls Roland
14 Carver.

15 (Side bar off the record.)

16 Thereupon,

17 ROLAND CARVER

18 after having been first duly sworn, testified as follows,

19 THE CLERK: Please have a seat. Once you're seated,
20 state your full name spelling your last please.

21 THE WITNESS: Roland Carver, C-a-r-v-e-r.

22 THE COURT: Mr. Carver, I just had a bench
23 conference here with the attorneys and obviously you're
24 here to provide potential testimony in the case State of
25 South Carolina versus Jerome Smith. I want you to

1 understand that you also have pending, charges pending
2 that you are entitled to talk to your lawyer about at any
3 time during today's questioning. You can talk with your
4 lawyer who I believe is nearby in the building right now
5 down on the third floor. If you have any issues to
6 discuss with her, you just need to make we aware or make
7 the attorneys aware of that when you feel like you need
8 to talk to your attorney. Now, they're not gonna ask you
9 anything about charges specific to you. You are here
10 only to talk about this case. Do you understand that?

11 THE WITNESS: I understand that, Judge.

12 MR. POGUE: Your Honor, just to clarify, you may
13 want to instruct him, he's not able, once he takes the
14 stand, to discuss his testimony with her in this trial,
15 with anybody once he's taken the stand.

16 THE COURT: Even his own lawyer.

17 MR. POGUE: Right.

18 THE COURT: Once you have begun questioning between
19 you and the State or Mr. Stitely for that matter. So if
20 you wish to talk to your attorney now, let us know.

21 THE WITNESS: I think I probably should before.

22 THE COURT: That would be fine. All right. Let's
23 get Ms. Simpson and we'll arrange for him to be able to
24 speak. That's fine. I'm glad we're making sure you talk
25 to whoever you want to talk to. We can take a five

1 minute recess.

2 MR. COX: Your Honor, I believe they are going to
3 take Mr. Carver to the waiting area.

4 THE COURT: All right. If you can't find Ms.
5 Simpson, please let us know.

6 MR. COX: I just contacted her and Mr. Pogue has
7 gone down to get her.

8 THE COURT: All right.

9 (Short break.)

10 THE COURT: All right. We're back on the record.
11 We took a short recess. Mr. Carver had an opportunity to
12 speak with his attorney Ms. Simpson who is here. We took
13 a short recess and they have had a chance to communicate
14 with one another. She is still here so that's a-okay.
15 All right. Anything else before we proceed?

16 MR. POGUE: Nothing from the State, Your Honor.

17 THE COURT: All right. The State can proceed.

18 MR. POGUE: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. POGUE:

21 Q. Good morning, Mr. Carver.

22 A. Good morning.

23 Q. How old are you?

24 A. I'm 42.

25 THE COURT: Mr. Carver, not to cut you off, but

1 you're free to remove your mask, if you like. It might
2 help with hearing your voice.

3 BY MR. POGUE:

4 Q. And try to speak up too. This gentleman here has
5 one of the toughest jobs in the courtroom. He has to write
6 down everything that we say so try to speak as loudly and as
7 clearly as you can.

8 Where do you currently live?

9 A. [REDACTED], Blythewood.

10 Q. Blythewood. Where were you living on October 23rd,
11 2019?

12 A. I just want to plead the Fifth, Your Honor. I don't
13 want to talk.

14 Q. I haven't even asked you a question to implicate
15 your guilt in any particular crime at this point to ask you
16 where you live, correct?

17 A. I'm just - I'm just getting it out of the way. If
18 you want to ask me my address and stuff, I guess that's fine,
19 but I'm not gonna get into anything else.

20 Q. Okay. I'm asking you where you lived on October
21 23rd.

22 A. I believe the same address.

23 Q. The same address?

24 A. Yes.

25 Q. In Blythewood?

1 A. Yes.

2 Q. All right. And where were you the morning of
3 October 19th? Excuse me. October 23rd, 2019?

4 A. Are you telling me I have to tell you that?

5 Q. I'm not telling you that you have to tell me
6 anything. I'm asking you a question and you respond however
7 you want to, whatever the truth is.

8 A. I don't want to say. I would rather not say.

9 Q. You would not?

10 A. I plead the Fifth.

11 THE COURT: Let's come over to the side.

12 (Side bar off the record.)

13 MR. POGUE: Your Honor, at this time the State
14 requests to treat the witness as a hostile in asking him
15 any questions.

16 THE COURT: Very well.

17 MR. POGUE: Thank you, Your Honor.

18 BY MR. POGUE:

19 Q. Mr. Carver, you were at the Walmart in West Columbia
20 on the morning of October 23rd, 2019 around 8:30 in the
21 morning, correct?

22 A. Once again, do I have to answer that?

23 Q. Are you asserting your Fifth Amendment Right
24 concerning the incidents that took place that morning?

25 A. I would like to do that. Yes.

1 MR. POGUE: Okay. Your Honor, at this time the
2 State would like to put on the record that the State is
3 granting him immunity for any criminal drug possession
4 related charge stemming from the incidents that occurred
5 on October 23rd in the Walmart parking lot so he has no
6 fear of criminal prosecution in relation to those
7 particular incidents.

8 THE COURT: All right. The record will reflect the
9 State has communicated to the witness that he's being
10 granted immunity for drug related activities on October
11 23rd, 2019. In laymen's terms, any testimony that he
12 provides today regarding his actions on that date would
13 not result in criminal prosecution. Is that what you're
14 asserting?

15 MR. POGUE: Cannot be used in the prosecution of any
16 crime as to the witness in this particular case relating
17 to the incidents that occurred that morning, correct. He
18 would not be subject - or the evidence that he gives us,
19 any oral testimony will not be used against him to
20 prosecute him for a crime that occurred here in this time
21 period.

22 THE COURT: Okay. He has not been charged at this
23 time and based upon his testimony today he will not be
24 charged in the future.

25 MR. POGUE: That's correct, Your Honor.

1 THE COURT: Do you understand that, Mr. Carver?

2 THE WITNESS: I do.

3 THE COURT: All right.

4 MR. POGUE: Thank you, Your Honor.

5 BY MR. POGUE:

6 Q. So now that we have established that, Mr. Carver,
7 you were again on October 23rd, 2019 in the parking lot of a
8 Walmart in West Columbia on Augusta Road, I believe it is; is
9 that correct?

10 A. I'm not gonna answer it.

11 THE COURT: Can you answer the question?

12 THE WITNESS: Do I have to?

13 THE COURT: Earlier you spoke about a Fifth
14 Amendment Right. That has been cured by you being
15 granted immunity for the activities you participated in
16 at the, I'm gonna say the Walmart, during the October
17 23rd, 2019 incident that's the subject of this separate
18 trial.

19 THE WITNESS: But I didn't ask for that.

20 THE COURT: Hmm?

21 THE WITNESS: I didn't ask for that.

22 THE COURT: You didn't ask for what?

23 THE WITNESS: Immunity.

24 THE COURT: Well, you asserted your Fifth Amendment
25 Rights against self incrimination so any testimony that

1 you give now will not incriminate you.

2 THE WITNESS: Okay.

3 THE COURT: So you are able to answer the question

4 --

5 THE WITNESS: You have to understand, it's been a
6 long time and at that time I can't tell you. I don't
7 know for sure and I don't feel like it's right for me to
8 speak on something I am not a hundred percent.

9 THE COURT: Okay. With that said, I want you to
10 answer the questions as best you can to the attorneys
11 that ask you questions here in the courtroom.

12 MR. STITELY: Judge, if you ask him to put the mic -
13 I'm struggling to hear him.

14 MR. POGUE: I am too, Your Honor.

15 THE WITNESS: I'm sorry. Better?

16 MR. STITELY: Yes. Thank you.

17 BY MR. POGUE:

18 Q. Mr. Carver, it's safe to say that you don't want to
19 be here today, correct?

20 A. Correct.

21 Q. You don't want to testify, correct?

22 A. No.

23 Q. And you are aware that any testimony that you give
24 under oath, if you should give false testimony, that that is a
25 crime, correct?

1 A. Of course, and that's why I don't want to.

2 Q. I understand that.

3 A. It's a long time ago.

4 Q. All right. So we have established that you do not
5 want to be here, correct?

6 A. Correct.

7 Q. All right. So again, going back to October 23rd of
8 2019, you were in the parking lot of a Walmart on Augusta
9 Road, correct?

10 A. Yes.

11 Q. Yes. Okay. And when you were in that parking lot,
12 you got into a vehicle, specifically a white Honda Odyssey van
13 that was in the parking lot of the Walmart, correct?

14 A. That I couldn't tell you for sure because there's no
15 way I know what kind of car, what color, what make, any of
16 that.

17 Q. So your testimony to this Court under oath is that
18 you don't recall getting into a Honda --

19 A. Correct.

20 Q. -- white Odyssey van?

21 A. Correct.

22 Q. All right. And when you got into the white Honda
23 white Odyssey van, if you did, do you recall purchasing any
24 heroin from any individual that morning in the parking lot in
25 the van?

1 A. I'm not positive.

2 Q. So your testimony is under oath again under penalty
3 of perjury is that you don't recall?

4 A. I do not.

5 Q. Okay. And do you recall exiting the van and getting
6 into a - walking into Walmart?

7 A. I do.

8 Q. Okay. So you do remember walking into Walmart?

9 A. Yeah.

10 Q. But you don't remember what happened before that?

11 A. I remember that because that's where I got grabbed
12 by the police so I do remember that.

13 Q. Okay. And you said you got grabbed by the police.
14 Where specifically where you when you got grabbed by the
15 police?

16 A. In the restroom.

17 Q. In the restroom of Walmart?

18 A. Yes, sir.

19 Q. Okay. And after you were grabbed in the restroom in
20 the Walmart, you were then detained and brought to the parking
21 lot, correct?

22 A. Correct.

23 Q. And when you were brought to the parking lot, you
24 were asked -- Let me rephrase. Was a search done of your
25 person?

1 A. Yes.

2 Q. Okay. And what items did you have on your person
3 when you were searched?

4 A. I couldn't tell you.

5 Q. Okay. Did you have a -- Just to clarify, is it your
6 testimony that you don't recall what you had on your person?

7 A. I do not recall.

8 Q. Okay. If you saw a item - excuse me - a photo of
9 those particular items or if you saw those particular items,
10 would that refresh your recollection?

11 A. Maybe. I don't know.

12 Q. I'm handing you up what's been entered as State's
13 Exhibit 4. Those are the items that were collected off of
14 your person, correct?

15 A. I mean, it looks like something I could have had at
16 that time.

17 Q. Okay. I understand that everybody has their
18 personal struggles, but would it be fair to say that you had
19 an addiction to heroin at that particular point in your
20 life?

21 A. Yes.

22 Q. Okay. Do you recall telling the officers that you
23 purchased that heroin from an individual that you --

24 MR. POGUE: Apologize, Your Honor.

25 BY MR. POGUE:

1 Q. Do you recall telling the officers after they found
2 the items on you that you purchased the item in a yellow
3 Baggie, the brown substance that's in a yellow Baggie, from an
4 individual that you knew as Mr. C in a white van in the
5 Walmart parking lot?

6 A. I do not recall.

7 Q. You don't recall telling them that or you didn't
8 tell them that?

9 A. I don't recall telling them that.

10 Q. Okay. Do you recall giving a written statement to
11 the law enforcement officers about purchasing that substance
12 that was in that yellow Baggie from a Mr. C?

13 A. Kind of.

14 Q. Mr. Carver, I'm handing you up what's been marked as
15 State's Exhibit 5 for identification purposes. Do you
16 recognize the document that I've handed up to you?

17 A. I do not.

18 MR. POGUE: Beg the Court's indulgence. Your Honor,
19 may we approach?

20 THE COURT: Sure.

21 (Side bar off the record.)

22 MR. POGUE: Your Honor, during our bench conference
23 we had a chance to discuss State's Exhibit 5 for ID
24 purposes. We have substituted that document for a
25 redacted version which takes out evidence that was in

1 that particular, or was purported to be a written
2 statement that would be inadmissible for a fact finder's
3 consideration in the trial of this case. I just want to
4 make sure --

5 MR. STITELY: Correct.

6 MR. POGUE: -- the defense stipulates to that.

7 THE COURT: All right. So noted.

8 MR. POGUE: Thank you, Your Honor.

9 BY MR. POGUE:

10 Q. Again, so, Mr. Carver, I don't recall whether you
11 answered my question. Do you recall or do you recognize that
12 particular item?

13 A. I do not.

14 Q. Okay. Do you recognize that as your signature?

15 A. Yes.

16 Q. That is your signature?

17 A. Yes.

18 Q. Okay. In October of 2019 - in October of 2019, did
19 you know an individual by Mr. C or C?

20 A. I couldn't tell you that.

21 Q. You couldn't tell me whether you knew somebody named
22 C?

23 A. No. Not for sure.

24 Q. Is that your truthful testimony here under oath?

25 A. It is.

1 Q. That you could not say whether you knew somebody
2 named C?

3 A. That's right.

4 Q. So you say that you don't recall whether you knew
5 somebody named Mr. C and you don't recall whether you
6 purchased an item of what you believe to be heroin from an
7 individual named Mr., or C in the Walmart parking lot. Is
8 that your testimony here today?

9 A. Yes.

10 Q. Okay. And you don't recall giving a written
11 statement that says, I, Roland Carver, called a black male I
12 know as C by telephone. I have known C --

13 MR. STITELY: Your Honor, objection to him
14 publishing it. He said he can't identify or recollect
15 it, Your Honor.

16 MR. POGUE: Your Honor, this is - where I'm at right
17 now is that I have to give him notice of what the
18 statement is that he is either equivocating on or denying
19 outright that he made so that we can then call another
20 witness to offer extrinsic evidence of a prior
21 inconsistent statement.

22 MR. STITELY: And I think he can --

23 MR. POGUE: I have to give him notice of what the
24 statement is.

25 MR. STITELY: He showed it to him. I don't think he

1 can publish it to the fact finder at this point. I think
2 he can say, did you write this statement? Do you recall?
3 And then put up his impeachment evidence, but I don't
4 think he can publish it yet. That would be my position.

5 THE COURT: All right. Very well.

6 MR. STITELY: To the fact finder.

7 MR. POGUE: And we can just presume that the jury
8 has left.

9 MR. STITELY: That would be fine if he's doing it as
10 an in camera. So I guess let's just state that. If it's
11 an in camera to determine whether or not he can identify
12 the statement, that's good. I just don't think it can be
13 published as evidence yet.

14 MR. POGUE: I would agree to that, Your Honor. I
15 would absolutely agree to that.

16 THE COURT: It's still marked for identification
17 purposes only. You can advise him of what the statement
18 says. He can either admit or deny it and you can go from
19 there.

20 MR. POGUE: Thank you, Your Honor.

21 BY MR. POGUE:

22 Q. So again, Mr. Carver, did you --

23 THE COURT: I'll tell you what. Just -- Well, never
24 mind. Proceed.

25 MR. POGUE: Your Honor, I'm almost done.

1 BY MR. POGUE:

2 Q. So, Mr. Carver, did you give a signed written
3 statement that reads, on October 23rd, 2019, I, Roland Carver,
4 called a black male I know as C by telephone. I have known C
5 for several years -- redacted portion -- I asked via telephone
6 call if he, Mr. C, would come meet me and he said that he
7 could not. Mr. C then told me to meet him at the Walmart in
8 West Columbia. I then got a ride to the Walmart. When I
9 arrived at Walmart, I saw him -- excuse me -- I saw his car in
10 the parking lot, a white van. I then got into the front
11 passenger seat of the white van with Mr. C in the driver's
12 seat. I then handed Mr. C \$80.00 and Mr. C reached into a
13 driver door pocket and grabbed a yellow Baggie. Mr. C then
14 handed me the yellow Baggie. Mr. C then drove me to the front
15 door of the Walmart from the parking spot. I then exited the
16 vehicle and walked into Walmart. I walked to the bathroom and
17 was approached by law enforcement. I then provided this
18 statement to Special Agent Lewis Stoertz with SLED. The
19 yellow Baggie to my knowledge contained heroin.

20 Do you recall signing and agreeing that that was
21 your written statement given to law enforcement on the morning
22 of October 23rd, 2019?

23 A. I signed it, but obviously I did not write it. That
24 sounds nothing like what I would say or how I would talk and I
25 would like to also say that at that point I probably would

1 have signed anything if I did.

2 Q. Okay. Let's take that in two parts. So are you
3 saying that --

4 A. I'm saying --

5 THE COURT: Let him ask the question.

6 BY MR. POGUE:

7 Q. Let me ask my question. Are you saying that these
8 are not your initials at the beginning and at the end of that
9 paragraph on that document?

10 A. Those are my initials. Yes. R.C.

11 Q. And so you didn't acknowledge that this was going to
12 be your written statement when you initialed it and signed it?
13 That was not --

14 A. I can't remember if that's what they said.

15 Q. Okay. All right. The second part of that, you say
16 you would have written or signed just about anything at that
17 particular point in time. What makes you say that?

18 A. Uhm, you got to understand, it's kind of --

19 THE COURT: Speak up a little bit, Mr. Carver.

20 Thank you.

21 BY THE WITNESS:

22 A. Three cops come and kind of snatch you up and throw
23 you into an unmarked car, it's kind of scary.

24 BY MR. POGUE:

25 Q. Okay. So what you're saying is that, what you're

1 telling me is that you gave the law enforcement officers a
2 false statement? Is that what you're telling me? Or are you
3 telling me that you don't recall the event? Or are you
4 telling me that what's in that written statement is not
5 true?

6 A. I'm saying I do not recall and I'm saying I was
7 terrified at the time.

8 Q. So just again to clarify, you don't recall whether
9 you agreed to make this statement even though it has your
10 initials on it and has your signature at the end of it, you
11 don't recall whether you made that statement and whether it
12 was true?

13 A. I don't recall any of those particular words. No.

14 MR. POGUE: No further questions, Your Honor.

15 THE COURT: Cross examination.

16 CROSS EXAMINATION

17 BY MR. STITELY:

18 Q. Just for clarification, you didn't hand write that
19 statement?

20 A. Correct.

21 MR. STITELY: No other questions, Judge.

22 THE COURT: Any redirect?

23 MR. POGUE: No redirect, Your Honor.

24 THE COURT: All right. This witness may be excused.

25 You may step down, sir. Next witness.

1 MR. COX: The State calls Agent Lewis Stoertz.

2 THE COURT: Stoertz?

3 MR. COX: Stoertz.

4 Thereupon,

5 LEWIS STOERTZ

6 after having been first duly sworn, testified as follows,

7 THE CLERK: Please have a seat. Once you're seated
8 you can remove your mask. State your full name spelling
9 your last please.

10 THE WITNESS: Spencer Lewis Stoertz,
11 S-t-o-e-r-t-z.

12 DIRECT EXAMINATION

13 BY MR. COX:

14 Q. Thank you, Agent Stoertz. If you could for us --

15 MR. COX: Sorry, Your Honor. May it please the
16 Court.

17 THE COURT: Yes, sir.

18 BY MR. COX:

19 Q. Mr. Stoertz, tell us briefly where you work and what
20 are your duties where you work?

21 A. I work at SLED in narcotics. Been there since 2016
22 in the vice unit doing narcotics.

23 Q. You say you're doing narcotics. Explain that to us
24 just very, very briefly.

25 A. So my main purpose is actually parcel interdiction,

1 parcel profile, parcel interdiction through parcel means, and
2 then before I did that I was a regular case agent. I worked
3 CI's, do buys, create search warrants, things like that.

4 Q. Were you in this position back in October of 2019?

5 A. I was.

6 Q. How did you become involved in the investigation
7 that's brought us here today?

8 A. I work very closely with Agent Shaw. She asked me
9 to come help serve arrest warrants in an unrelated matter so
10 after I got done doing my parcel interdiction job at the store
11 at Fed-Ex on 150 Queens Parkway, I headed over to meet them.

12 Q. Okay. When you say you went over to meet them,
13 where did you go?

14 A. To the Walmart parking lot that was on Augusta Road.
15 I think the address is 2401 Augusta Road right at U.S.1 and
16 26.

17 Q. What were you informed as to the reason you were
18 going to Walmart?

19 A. To serve arrest warrants on an unrelated matter on a
20 target that we had that was Mr. Jerome Smith.

21 Q. What time did you arrive at Walmart?

22 A. Approximately 8:45 a.m.

23 Q. Okay. When you arrived, where did you position
24 yourself at Walmart?

25 A. So if you're looking at the front of Walmart, I was

1 closer to the left-hand side but still in the middle and then
2 I just pulled in a parking spot right there and then I saw a
3 white Honda Odyssey van that was parked up closer to the store
4 on the right-hand side of the parking lot and then I saw the
5 white van begin to start moving and it drove down in front of
6 the Walmart and then stopped. I watched a white male get out
7 of the passenger seat and it continued in front of me and then
8 turned left up the parking lot like headed back towards U.S.1,
9 and that's when I pulled out, followed behind the van and then
10 activated my blue lights in the parking lot and performed a
11 traffic stop on the vehicle because it had been identified
12 that Mr. Jerome Smith was driving it and we had active arrest
13 warrants for him.

14 Q. Okay. I'm going to go back to briefly when you
15 arrived at the Walmart parking lot and positioned yourself.
16 Was the white van already in a parking spot?

17 A. Yes. It was.

18 Q. From the time that you got in position and observed
19 the white van to the point where you activated your blue
20 lights and pulled the van over, did you observe anyone get in
21 or out of the driver's seat of the vehicle?

22 A. No.

23 Q. Okay. You discussed the van moving to the front
24 entrance. Did you observe someone get in and out of the
25 passenger seat?

1 A. I observed someone getting out. I didn't - I didn't
2 see someone get in, but when it pulled in front of the Walmart
3 at the front door, I had a clear unobstructed view and I saw a
4 white male get out of the passenger seat.

5 Q. Was that white male later identified as Roland
6 Carver?

7 A. He was.

8 Q. At that point when you made the traffic stop, did
9 anyone else get in or out of the van?

10 A. No.

11 Q. When you made the stop of the vehicle, did you
12 approach the driver side of the vehicle?

13 A. I did. So I walked up to the driver side, rolled
14 the window down. The only thing I said was, hey, man, are you
15 Jerome Smith? He said, yep. I said, step out. We've got an
16 arrest warrant for you, and he got out of the car.

17 Q. At that point tell us, after you had gotten --
18 Excuse me. Let me back up. After speaking with the driver
19 and getting him out of the vehicle, you were able to get a
20 pretty good clear look at who it was in the driver seat?

21 A. Yes, sir.

22 Q. Do you see that person in the courtroom here
23 today?

24 A. I do. He's sitting over there on the left in the
25 blue shirt and gray jacket.

1 MR. COX: Your Honor, for the record, I would like
2 to state that the witness has identified the defendant as
3 the person removed from the white van in the driver's
4 seated.

5 THE COURT: Very well. And he's seated in the
6 courtroom. Thank you.

7 BY MR. COX:

8 Q. Agent Stoertz, after removing Mr. Smith from the
9 vehicle, what was your next step?

10 A. I called Agent Shaw over there and she brought the
11 warrants and then I read him Miranda, or advised him of his
12 Miranda Rights from my pocket card, and then we just went to
13 interview him from there, or actually Agent Shaw took over
14 most of the interview process. After I got him out, she came
15 over there and at some point I served the arrest warrants that
16 we were there to serve and then from there I ended up going
17 over and dealing with Mr. Carver.

18 Q. So just to clarify, shortly after you got Mr. Smith
19 out of the car, Agent Shaw came over and took over?

20 A. That's correct.

21 Q. When you went over to the other vehicle you said
22 with Mr. Carver, what was your role when you walked over to
23 Mr. Carver?

24 A. Well, to interview Mr. Carver and see what happened,
25 see if he wanted to cooperate or if he would even be willing

1 to be interviewed. He was actually in Agent Fowler's car at
2 that time that was parked in the Walmart parking lot so just a
3 little ways away from where we had Mr. Smith.

4 Q. During that interaction, did Mr. Carver give a
5 written statement?

6 A. He did.

7 Q. Were you present when he gave that written
8 statement?

9 A. I was.

10 Q. Who actually wrote the language in the written
11 statement?

12 A. So the first two sentences were actually written by
13 Agent Shaw and then she had to leave to go deal with other
14 matters and then I finished the statement from there.

15 Q. Did you write or sign as a witness to that written
16 statement?

17 A. I did.

18 Q. Would you be able to identify that statement if I
19 showed it to you?

20 A. Yes, sir.

21 Q. This has been marked as State's Exhibit 5. Do you
22 recognize what I'm showing to you?

23 A. Yeah. This is the statement that I wrote that was
24 given to me by Mr. Carver.

25 Q. All right. Agent Stoertz, you have identified this

1 as your handwriting?

2 A. All except for the first two sentences. Yes, sir.

3 Q. Right. Who provided, or did anyone, or who provided
4 the context within this written statement? Did anyone provide
5 any oral statement?

6 A. Mr. Carver provided everything that I wrote down.

7 Q. As far as the contents within this written statement
8 that you have identified, were there actual words spoken by
9 anyone other than Mr. Carver?

10 A. No.

11 Q. Agent Stoertz, at any point did you tell Mr. Carver
12 what to say in this written statement?

13 A. Absolutely not.

14 Q. Did you use any coercive tactics or any other
15 possible forms of duress in order to obtain this statement
16 from Mr. Carver?

17 A. No, sir.

18 Q. Mr. Carver gave this statement on his own accord?

19 A. That's correct.

20 Q. Did he sign this statement in front of you?

21 A. He did. And he also initialed before and after so
22 nothing could be added before or after so he has two initials
23 in marking what was written and after I wrote it, I read him
24 line by line and said, do you agree with this? And he said,
25 yes. And that's when he initialed both sides and signed and

1 dated.

2 Q. So you said you read the words back to him --

3 A. Back to him.

4 Q. -- before he signed it?

5 A. Yes.

6 Q. You asked him if he agreed to what you read to
7 him?

8 A. Right. I said, is all this accurate? Is this what
9 happened? He said, yes.

10 MR. COX: Your Honor, at this time we would offer
11 State's Exhibit 5 into evidence.

12 THE COURT: Without objection?

13 MR. STITELY: No objection.

14 THE COURT: All right. State's Exhibit 5 is
15 admitted into evidence.

16 BY MR. COX:

17 Q. Agent Stoertz, after taking the statement from Mr.
18 Carver, did you participate in any further investigation? Did
19 you leave and go anywhere else from this location?

20 A. Yes. So after leaving the Walmart, I drove to 1731
21 which is the annex - or 1731 Bush River Road in Lexington
22 which is our annex headquarters. I met with Agent Shaw who
23 was writing a search warrant for Mr. Smith's residence. I
24 then rode with her to the Judge's office, got the search
25 warrant signed, left and went to 100 River Bend Drive and

1 executed the search warrant.

2 Q. So you were on scene when Agent Shaw and SLED agents
3 arrived at 100 River Bend Road?

4 A. I was there when we executed the search warrant.
5 There were already agents there prior to see if anybody came
6 and left while we were getting the search warrant signed.

7 Q. Did you participate in the search of the
8 apartment?

9 A. I did.

10 Q. What area in this apartment were you searching?
11 Where were you looking into?

12 A. I believe I just searched like going down the hall.
13 The two rooms on the left was like a storage room was one of
14 them whatever they were using it for which was a bedroom just
15 being used as storage and had like crafts and stuff in it and
16 the other one appeared to be a child's bedroom. I didn't find
17 anything of evidence or value in either one of them.

18 Q. So during your portion of the search of this
19 apartment, you did not find anything else to collect as
20 evidence?

21 A. Correct.

22 MR. COX: Your Honor, we have no further questions
23 at this time. We just request that Agent Stoertz remains
24 under subpoena as a possible recall witness.

25 THE COURT: Very well. Please answer any questions

1 Mr. Stitely has on cross examination.

2 CROSS EXAMINATION

3 BY MR. STITELY:

4 Q. Good afternoon, Agent Stoertz. I'm Ben. I don't
5 think we've actually met before.

6 A. We have.

7 Q. We have?

8 A. Yep. I was on patrol for a while. I met you over
9 there.

10 Q. Okay. Got you. Cool. Sorry about that. I'm
11 getting old. All right. So you were called out and you
12 arrived, the van is already parked at Walmart, correct?

13 A. Correct.

14 Q. So you didn't witness who may have been in the van
15 as it was leaving wherever it came from? It's already parked
16 when you get there, correct?

17 A. Correct.

18 Q. You can't ID who is in it at that time?

19 A. Correct.

20 Q. You do eventually see someone get out --

21 A. Yes.

22 Q. -- at the front entrance, a white male who walks
23 into Walmart, correct?

24 A. Correct.

25 Q. Okay. You weren't here earlier, but Fowler gets out

1 and follows him in originally, correct?

2 A. Yes.

3 Q. Did you watch that exchange happen? Like did you
4 watch Fowler get out and follow him?

5 A. I watched Special Agent Fowler's vehicle pull up and
6 then by that time I was moving with the van. I couldn't tell
7 if he got out or not.

8 Q. Okay. You do the traffic stop to serve the arrest
9 warrants on the van and Mr. Smith, correct?

10 A. Correct.

11 Q. He acknowledges he's Mr. Smith?

12 A. Correct.

13 Q. Doesn't give you a problem or a fake name or
14 anything like that?

15 A. No, sir.

16 THE COURT: Sorry. You had him stopped and served
17 for what? I thought you said served.

18 MR. STITELY: Arrest warrants.

19 THE COURT: Okay.

20 MR. STITELY: He said he had unrelated arrest
21 warrants to serve.

22 THE COURT: Yeah. I misheard.

23 MR. STITELY: I could have said the wrong words. I
24 apologize, Judge.

25 BY MR. STITELY:

1 Q. All right. And so then after, you put him in cuffs
2 in your car, in your patrol car?

3 A. I didn't put him in my patrol car.

4 Q. Where did he go?

5 A. He stood right there until Agent Shaw pulled up and
6 then Agent Shaw had him.

7 Q. Okay. So you handed him off to Agent Shaw and then
8 you went to go deal with Carver?

9 A. Correct.

10 Q. Okay. And you said you wrote most of that
11 statement, correct, except for the first two sentences?

12 A. Yes, sir.

13 Q. Were any promises on the side of the road given to
14 Mr. Carver about cooperating? Because he wasn't charged then,
15 correct?

16 A. So there were no promises given and no, he was not
17 charged.

18 Q. Okay. Now, and I guess I'm confused and I'll ask
19 Agent Shaw. I'm reading the report, I guess. Do you have a
20 copy of like the old report like the SLED packet, SLED
21 officer's report packet?

22 A. Not the full report, but I have like the report for
23 the surveillance and the arrest.

24 MR. STITELY: May I approach?

25 THE COURT: Sure.

1 BY MR. STITELY:

2 Q. I'm just grabbing one page. Do you have like this
3 series of reports in there?

4 A. Yes.

5 Q. Could you go to like page 3 on that one. It
6 indicates that you ran a SLED K-9 dog. Did you do that?

7 A. Yes, sir.

8 Q. Okay. We didn't go over that in direct. I just
9 wanted to make sure that it was really you. Okay. So before
10 or after you went to speak to Mr. Carver, did you run the
11 K-9?

12 A. Before.

13 Q. Okay. And I'm reading through your report and it
14 says that -- Is that your dog? You said you do package
15 interdiction?

16 A. Yes, sir.

17 Q. Okay. So you run K-9 as well?

18 A. That's correct.

19 Q. Okay. Cool. And it says in your report that he
20 gave a positive on the front driver's door of the white Honda
21 Odyssey, correct?

22 A. That's correct.

23 Q. So then did you search the white Honda Odyssey?

24 A. Correct.

25 Q. Did you find any drugs in the car?

1 A. No, sir.

2 Q. Okay. It talks about a black LG cell phone that was
3 taken, correct?

4 A. Correct.

5 Q. You secured that into evidence?

6 A. I think Agent Shaw secured it into evidence.

7 Q. Okay. So that's not your part? Dealing with the
8 cell phone was not your part?

9 A. I saw it in the car and then I was like Agent Shaw,
10 there's a cell phone here.

11 Q. But you didn't do anything further with the cell
12 phone?

13 A. No. No. No, sir.

14 Q. Okay. And you didn't find any drugs on my client
15 there at the scene either, correct?

16 A. That's correct.

17 Q. When you executed the search warrant later that
18 night or day, whatever time it was, I apologize, you said
19 other agents were already at the house. Do you know who they
20 were by chance?

21 A. I think Lieutenant Downing. Or he might not have
22 been a lieutenant at the time, and Jack Thompkins.

23 Q. Okay. Do you know when they arrived?

24 A. No, sir. I have no idea.

25 Q. Was anyone inside the home when you go inside?

1 A. When I entered the home?

2 Q. Yes.

3 A. I'm not sure if she was -- I can't remember. There
4 was somebody there. I don't know if she was inside the home
5 when I went in or she had already came outside.

6 Q. But there was another individual present at the
7 apartment? Whether they were inside or outside, you're not
8 sure?

9 A. Correct.

10 Q. Was that my client's wife?

11 A. I'm not a hundred percent sure about the status, but
12 that was what I was led to believe.

13 Q. There was a woman who was present at the apartment,
14 you don't remember where she was though?

15 A. Correct.

16 Q. Did you talk to her at all?

17 A. No.

18 MR. STITELY: No other questions. Thank you.

19 THE COURT: Redirect?

20 MR. COX: Briefly, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. COX:

23 Q. Agent Stoertz, when you ran the K-9 and he alerted
24 on the vehicle, where at on the vehicle did it alert?

25 A. The driver's side door.

1 Q. And when you were -- Where in Roland Carver's
2 statement when he was speaking to you did he indicate Mr. C
3 had retrieved the drugs he bought from?

4 A. From the driver's side door.

5 Q. Okay. Agent Stoertz, Mr. Stitely asked you if you
6 found any drugs on Mr. Smith's person. Did you search
7 Mr. Smith?

8 A. No. I did not.

9 Q. And you didn't check in and around his clothes,
10 anything like that?

11 A. No, sir.

12 Q. Didn't check anywhere for any potential other
13 narcotics or anything that could have been found?

14 A. Could you rephrase?

15 Q. You didn't search anywhere on his body?

16 A. No. I didn't search anywhere on his body.

17 MR. COX: That's all I have, Your Honor.

18 RECROSS EXAMINATION

19 BY MR. STITELY:

20 Q. One brief. But he was right there with you and the
21 dog and the van, correct?

22 A. Correct.

23 MR. STITELY: No other questions.

24 THE COURT: All right. The witness may step down.

25 All right. It's 12:30. Is this a good breaking point

1 for the State?

2 MR. COX: I believe it is, Your Honor.

3 THE COURT: All right. We're gonna take lunch for
4 an hour, one hour. We'll get back on the record in one
5 hour. Have a good lunch.

6 (Lunch break.)

7 THE COURT: All right. State ready to call your
8 next witness?

9 MR. POGUE: Yes, Your Honor.

10 THE COURT: All right. Let's proceed.

11 MR. POGUE: Your Honor, at this time the State calls
12 Special Agent Zachary Perry.

13 Thereupon,

14 ZACHARY PERRY

15 after having been first duly sworn, testified as follows,

16 THE CLERK: Please have a seat. Once you're seated
17 you can remove your mask and state your full name
18 spelling your last please.

19 THE WITNESS: Zachary Perry, P-e-r-r-y.

20 DIRECT EXAMINATION

21 BY MR. POGUE:

22 Q. Just as a preliminary matter, if you want to pull
23 that microphone as close as you can get it that's comfortable
24 to you, that way the court reporter and I can hear you because
25 he has to take down everything that we say.

1 Good afternoon, is it Special Agent?

2 A. Yes, sir.

3 Q. Good afternoon, Special Agent Perry. Where are you
4 currently employed?

5 A. South Carolina Law Enforcement Division.

6 Q. How long have you been employed at SLED?

7 A. Six and a half years.

8 Q. In what capacity are you employed there?

9 A. As a special agent.

10 Q. What are your duties as a special agent there?

11 A. Currently I'm assigned to the FBI's Joint Terrorist
12 Task Force working in international agency.

13 Q. And if you've been there for six and a half years,
14 my math says that you were also working there on October 23rd
15 of 2019; is that correct?

16 A. Yes, sir. That's correct.

17 Q. Okay. And in what capacity were you employed at
18 SLED on that date?

19 A. I was in the SLED vice unit, alcohol in specific.

20 Q. What is the vice unit very briefly?

21 A. I'm sorry. Say that again.

22 Q. What is the vice unit? Just very briefly explain
23 what the vice unit is.

24 A. I work alcohol, narcotics, prostitution, gambling.

25 Q. Did you work within a specific division within

1 vice?

2 A. Alcohol enforcement.

3 Q. Did you typically deal with the narcotics side?

4 A. In small matters we help out. Yes, sir.

5 Q. But you primarily dealt with the alcohol side of
6 it?

7 A. Yes, sir. That's correct.

8 Q. Okay. Tell me how you became involved in this
9 case?

10 A. Agent Shaw called me on October 22nd and asked if I
11 could help her out with an arrest warrant.

12 Q. Okay. And after having spoken with Agent Shaw on
13 October 23rd, 2019, where did you go that morning?

14 A. 100 River Bend Drive, an apartment complex.

15 Q. Okay. And from your understanding what were y'all
16 there to do?

17 A. We were there to serve arrest warrants.

18 Q. Okay. And had you been involved in the case, the
19 investigation of the case pertaining to those arrest warrants
20 that were being served?

21 A. No, sir.

22 Q. Okay. So you were just there to assist?

23 A. Yes, sir.

24 Q. Do you recall approximately what time you arrived?

25 A. Around 6:30 in the morning.

1 Q. Okay. Do you recall who else was there?

2 A. Just Agent Shaw.

3 Q. Do you have your report with you?

4 A. Yes, sir. I do.

5 Q. You want to take a look at your report and refresh
6 your recollection and answer that question again?

7 A. When I arrived?

8 Q. Was there anybody else other than just you and Shaw?

9 Was there anybody else?

10 A. At that time at 6:30 it was just the two of us.

11 Q. I apologize. Did anybody else later come?

12 A. Yes, sir.

13 Q. Okay. I apologize. That's my fault. That's my
14 bad. I apologize. Who else came after?

15 A. Special Agent Fowler came later.

16 Q. Approximately how long after y'all arrived did he
17 get there?

18 A. I don't recall that, sir.

19 Q. All right. Special agent, what did you say the
20 address was that you all responded to to serve those arrest
21 warrants?

22 A. It was in the proximity of 100 River Bend Drive.

23 Q. Okay. Was that an apartment complex?

24 A. Yes, sir. It was.

25 Q. Do you recall the apartment number of the individual

1 that you were there to serve arrest warrants on?

2 A. No, sir. I don't.

3 Q. Okay. Do you recall the name of the individual who
4 it was that you were there to help serve arrest warrants on?

5 A. Jerome Smith.

6 Q. Is that the defendant in this case?

7 A. Yes, sir.

8 Q. Okay. All right. I'm handing you up what is
9 pre-marked as State's Exhibit 6 for identification purposes.
10 Tell me, do you recognize that image or can you tell me what
11 that image is?

12 A. I would say it's the apartments at 100 River Bend.

13 Q. Okay. Is that an aerial photograph of the River
14 Bend Apartments from your recollection?

15 A. Yes, sir.

16 Q. And does it appear to be a fair and accurate
17 reflection from your recollection of the apartment, the
18 layout, the aerial layout of the apartment that morning?

19 A. Yes, sir.

20 MR. POGUE: Your Honor, at this time the State would
21 move State's Exhibit 6 into evidence.

22 MR. STITELY: No objection.

23 THE COURT: So admitted.

24 BY MR. POGUE:

25 Q. Can you see that, agent?

1 A. Yes, sir.

2 Q. I'm going to hand you a laser pointer. When you
3 arrived at 6:30, can you just approximately show me about
4 where it was that you were parked or that you set up and
5 parked?

6 A. Yes, sir. I believe it was approximately right
7 about here.

8 Q. Did you have information as to where the subject's
9 apartment was at that time?

10 A. I knew it was close by. Yes, sir.

11 Q. Okay. But you didn't know the exact location?

12 A. I did not.

13 Q. All right. And at some point when you were sitting
14 there -- Well, let me ask you this: What was your assignment
15 sitting there? What were you assigned to do?

16 A. Basically if the defendant were to get in his
17 vehicle and drive off at that point if we could at least see
18 him come out of one of the exits and follow.

19 Q. Did the defendant ever come out of his apartment and
20 get into his vehicle?

21 A. Yes, sir.

22 Q. Did you actually personally see that?

23 A. No, sir. I did not.

24 Q. Okay. Did you have radio communication with other
25 agents?

1 A. Yes, sir.

2 Q. After radio communication, what action did you
3 take?

4 A. We followed the white Honda Odyssey van.

5 Q. All right. And where did you follow the white Honda
6 Odyssey van to? Or how long did you follow it?

7 A. How long I do not recall. Eventually we followed it
8 to 2401 Augusta Road which is the Walmart.

9 Q. Approximately how far away is that? Are we talking
10 a couple of miles, 10 miles?

11 A. A couple miles. Yes, sir.

12 Q. And the address of this apartment, is that in
13 Lexington County?

14 A. Yes, sir. I believe so.

15 Q. How about the Walmart, is that in Lexington County
16 that you went to?

17 A. Yes, sir. I believe so.

18 Q. Okay. And were you able to see the white van when
19 you pulled into the Walmart?

20 A. No, sir. I could not see it.

21 Q. Okay. I'm showing you State's Exhibit 2. Is that a
22 fair and accurate reflection of an aerial image of the
23 Walmart?

24 A. Yes, sir. It is.

25 Q. Do you still have the laser pointer up there?

1 A. Yes, sir. I do.

2 Q. Can you show me where it was when you arrived at the
3 Walmart following the white Honda Odyssey van where you
4 parked?

5 A. I parked right here in I believe it's Arby's parking
6 lot.

7 Q. Okay. And what kind of vehicle were you driving?

8 A. State issued truck.

9 Q. What kind of truck is that?

10 A. It's a Toyota Tundra.

11 Q. Okay. Is it a marked vehicle or unmarked?

12 A. It's unmarked.

13 Q. And from your vantage point you could not see the
14 white Honda Odyssey?

15 A. No, sir.

16 Q. All right. How long do you park there just
17 approximately in that spot until you later, until you got out
18 of your vehicle?

19 A. I really -- 20 minutes maybe. 20, 30 minutes.

20 Q. All right. Did you eventually get out of your
21 vehicle?

22 A. Yes, sir.

23 Q. What did you do when you got out of your vehicle?

24 A. Went inside Walmart.

25 Q. Prior to getting out of your vehicle, were you

1 maintaining radio contact with the other special agents that
2 were there on scene?

3 A. Yes, sir.

4 Q. Can you tell me who it was that was there with SLED
5 at the Walmart parking lot? What other special agents were
6 there?

7 A. Yes, sir. Special Agent Shaw, Special Agent Fowler
8 and Special Agent Stoertz.

9 Q. And was it you -- Just rewinding just very briefly.
10 When you left the apartment complex and followed the van to
11 the Walmart, what special agents followed the van from the
12 apartment complex to the Walmart?

13 A. Myself, Special Agent Shaw and Special Agent
14 Fowler.

15 Q. And on the way to the Walmart parking lot, did the
16 van make any pit stops or detours? Did the defendant ever get
17 out of, or the subject ever get out of the vehicle to your
18 knowledge?

19 A. I don't think he ever got out of the vehicle. No,
20 sir.

21 Q. Okay. So he never made any stops other than stop
22 lights and stop signs from the time he left the apartment
23 complex to the Walmart parking lot to your knowledge?

24 A. That's correct, sir.

25 Q. So when you get out of your vehicle in the Walmart

1 parking lot, what are you going to do?

2 A. We are going to place Mr. Carver in investigative
3 detention.

4 Q. Why? Who was Mr. Carver?

5 A. That was a white male that got into the van, the
6 white Honda Odyssey.

7 Q. Okay. Did you follow Mr. Carver into the Walmart?

8 A. Yes, sir.

9 Q. Okay. But just for the Court's clarification, you
10 could not see the white Honda Odyssey until you got out of
11 your vehicle, correct?

12 A. Move my vehicle. Yes, sir.

13 Q. Okay. All right. It was due to radio traffic that
14 you got out of your vehicle, correct?

15 A. That is correct.

16 Q. So you followed Carver into Walmart; is that
17 correct?

18 A. Yes, sir.

19 Q. Were you the only agent that followed him in?

20 A. No, sir. Special Agent Fowler did as well.

21 Q. Were you ahead of Special Agent Fowler or behind
22 him?

23 A. I was behind him.

24 Q. And where did you and Special Agent Fowler follow
25 the subject Roland Carver to?

1 A. The Walmart bathroom.

2 Q. And when you got to the Walmart bathroom, what did
3 you and Special Agent Fowler do at that point in time?

4 A. By the time I got there Special Agent Fowler already
5 had Mr. Carver in investigative detention.

6 Q. Okay. Was he then brought to the parking lot?

7 A. Yes, sir.

8 Q. When he was brought to the parking lot, what
9 happened after that?

10 A. After that, I believe Special Agent Fowler asked him
11 if there was anything on --

12 Q. Without saying what anybody else said -- Let me
13 rephrase the question a better way. Was Mr. Carver searched
14 at any particular point in time when he was brought to the
15 parking lot?

16 A. Yes, sir.

17 Q. Were there any items that were recovered that
18 Mr. Roland Carver had on his person?

19 A. Yes, sir.

20 Q. Okay. If you saw those items, would you recognize
21 those items?

22 A. Yes, sir. I would.

23 Q. I'm handing you what's been marked for ID as State's
24 Exhibit 3. Do you recognize the items that are in that BEST
25 kit?

1 A. Yes, sir.

2 Q. Okay. Were those the items that were recovered from
3 Mr. Carver?

4 A. Yes, sir.

5 Q. Okay. Were you present -- Well, let me ask you
6 this: Were you aware, personally aware whether Mr. Carver
7 gave any oral or written statement regarding how he came into
8 possession of the yellow bag that's in that BEST kit?

9 A. I know he gave a statement. As to what that
10 statement says, no, sir.

11 Q. So you were not present for that?

12 A. No, sir.

13 Q. What were you doing after Mr. Carver was brought
14 back out to the Walmart parking lot? Do you recall what you
15 were doing at that time?

16 A. Probably just watching Mr. Carver as I recall.

17 Q. But you were not within ear shot or privy to what he
18 was telling other special agents at that time?

19 A. No, sir. I wasn't.

20 Q. All right. Did you ever have any interactions with
21 the defendant in this case in the Walmart parking lot?

22 A. Yes, sir.

23 Q. Okay. Tell me about those interactions.

24 A. I transported the defendant from the parking lot to
25 the SLED annex.

1 Q. Just to clarify, were you a part of the traffic stop
2 that was conducted on the defendant's vehicle?

3 A. No, sir.

4 Q. Did you play any part in actually serving the arrest
5 warrant or speaking to the defendant in this particular
6 case?

7 A. No, sir.

8 Q. Okay. So prior to you transporting him, you had no
9 real interactions with him?

10 A. That's correct.

11 Q. Okay. All right. So you say that you transported
12 the defendant in this case. Do you see the person that you
13 recall transporting in this courtroom?

14 A. Yes, sir.

15 Q. Can you point that individual out?

16 A. Right there, sir.

17 Q. The defendant in this case, Mr. Jerome Smith?

18 A. Yes, sir.

19 MR. POGUE: Your Honor, we would like the record to
20 reflect that he has identified the defendant in this
21 case.

22 THE COURT: Very well.

23 MR. POGUE: Thank you, Your Honor.

24 BY MR. POGUE:

25 Q. So where did you transport the defendant to?

1 A. To the SLED annex located on Bush River Road.

2 Q. Is that in Lexington County or Richland County?

3 A. That's Lexington County.

4 Q. So this isn't the main SLED complex. This is the
5 annex that's in Lexington County?

6 A. Right, sir.

7 Q. All right. And when you arrived -- Well, let me
8 back up for just a second. Do you recall whether Mr. Smith
9 was searched prior to him being transported?

10 A. I do not recall, sir.

11 Q. Okay. All right. But you were not, you did not
12 personally search him before you transported him?

13 A. That's correct, sir.

14 Q. All right. So when you transported him, where did
15 you transport him, in the front seat or the back seat?

16 A. Front seat.

17 Q. Is that per regulation or protocol?

18 A. Yes, sir.

19 Q. Do you have only one individual that you're
20 transporting or if you're transporting them by yourself
21 I should say, do you transport them in the front or the
22 back?

23 A. Front seat.

24 Q. Is that for safety reasons?

25 A. Yes, sir.

1 Q. When you arrived at the SLED annex, what did you do
2 next?

3 A. Waited on Special Agent Shaw to arrive.

4 Q. Okay. Did you do anything with the defendant or did
5 you leave him in your vehicle?

6 A. Once Special Agent Shaw arrived, we both escorted
7 him into the SLED interview room.

8 Q. Okay. And when you brought him to the SLED
9 interview room, did you stay in the room with him?

10 A. Yes, sir.

11 Q. Were you the only person in the room with him at the
12 time?

13 A. Yes, sir.

14 Q. Okay. Can you say approximately about what time
15 this was that y'all arrived there, just approximately?

16 A. I would say probably around 10:00, sir.

17 Q. Okay. All right. When you brought him to the
18 interview room, when you walked into the room, do you recall
19 seeing anything on the floor in the interview room?

20 A. No, sir.

21 Q. Are those rooms cleaned on a regular basis?

22 A. Yes, sir.

23 Q. Are you familiar with the cleaning patterns or
24 anything like that?

25 A. No, sir.

1 Q. But you do have knowledge that they are cleaned on a
2 regular basis?

3 A. Yes, sir.

4 Q. Okay. So there was nothing on the floor that you
5 observed when you walked in?

6 A. No, sir.

7 Q. And tell me what happened after you and Agent Shaw
8 brought him into the interview room. What took place after
9 that?

10 A. Agent Shaw had to prepare search warrants, something
11 of that nature. I stayed with Mr. Smith in the room.

12 Q. There was only you and the defendant that were in
13 the interview room?

14 A. Yes, sir.

15 Q. Was there a table in that room?

16 A. Yes, sir.

17 Q. Okay. Chairs at the table?

18 A. Yes, sir.

19 Q. Square table or round table?

20 A. It's rectangular.

21 Q. And were you sitting across from the defendant?

22 A. Yes, sir.

23 Q. Was he within your line of sight and vision the
24 whole time?

25 A. Yes, sir.

1 Q. Could you see the area beneath the table when you
2 were sitting at the table across from him?

3 A. At points depending on how I was sitting. Yes,
4 sir.

5 Q. Did you ever see anything on the ground underneath
6 the defendant when you looked under the table?

7 A. Yes, sir.

8 Q. Okay. What did you see?

9 A. I saw a small yellow zip lock style bag with a
10 powdery substance inside.

11 Q. Based upon your training and experience, what did
12 you believe that was?

13 A. Heroin.

14 Q. An illegal substance of some sort?

15 A. Yes, sir.

16 Q. What did you do after you saw the Baggie on the
17 ground? And was this underneath the defendant, directly
18 underneath his chair or was this like to his side or was this
19 more towards you?

20 A. To the side of his foot under his chair, yes, sir.

21 Q. All right. And what did you do after you saw the
22 Baggie?

23 A. I notified our office. I can't remember exactly
24 how, but I had another agent come into the interview room.

25 Q. And then what did you do?

1 A. Took custody of the illegal drug.

2 Q. Okay. All right. Did you ever check your vehicle
3 to see if he had also potentially left anything in your
4 vehicle?

5 A. Yes, sir.

6 Q. Was there anything in your vehicle?

7 A. No, sir. There was not.

8 Q. Okay. All right. Special Agent Perry, I'm handing
9 you up what's been marked for ID as State's Exhibit 7. Do you
10 recognize that item?

11 A. Yes, sir.

12 Q. Can you tell me what it is?

13 A. It's the yellow zip lock bag that I recovered in the
14 interview room.

15 Q. Does it appear to be in the same or substantially in
16 the same condition that it was when you collected it?

17 A. Yes, sir.

18 Q. Okay. And what did you do after you collected the
19 Baggie?

20 A. I put it in an evidence bag, a BEST kit.

21 Q. Okay. And what did you do with the BEST kit at that
22 point in time?

23 A. At that point in time I stored it in my station
24 locked box.

25 Q. Okay. I don't remember if I asked you this or not,

1 but prior to transporting defendant subjects in your vehicle,
2 do you have a policy of searching your vehicle prior to
3 transporting them?

4 A. Yes, sir.

5 Q. Do you recall seeing anything in your car remotely
6 similar to the Baggie that was found in the, that you saw in
7 the interview room in your car --

8 A. No, sir.

9 Q. -- prior to transporting him?

10 A. No, sir.

11 MR. POGUE: No further questions, Your Honor.

12 THE COURT: Cross examination.

13 MR. STITELY: Sure.

14 CROSS EXAMINATION

15 BY MR. STITELY:

16 Q. Agent Perry, you didn't see who was occupying the
17 vehicle when it left the apartment complex; is that correct?

18 A. Yes, sir. That is correct.

19 Q. And you didn't see who was in the vehicle when it
20 was at Walmart, correct?

21 A. That's correct, sir.

22 Q. Did you actually see the individual get out of it or
23 you were just on the radio and you knew someone got out of
24 it?

25 A. Yes, sir. A description was put across the radio.

1 Q. But you didn't put eyes on him?

2 A. No, sir. I did not.

3 Q. What is SLED's procedure typically when you're
4 arresting someone? Say you're arresting me and serving a
5 warrant, what is your typical procedure?

6 A. Read you your Miranda Rights and usually search
7 after that.

8 Q. Okay. Do you cuff me?

9 A. Yes, sir.

10 Q. How do you cuff people?

11 A. Well, it depends on the situation.

12 Q. In Mr. Smith's situation how was he cuffed?

13 A. I don't recall, sir.

14 Q. Can you do either hands forward or hands
15 backwards?

16 A. Yes, sir.

17 Q. But you don't recall in this case?

18 A. No, sir.

19 Q. You didn't actually see Mr. Smith throw a Baggie on
20 the floor in the interview room though, correct?

21 A. No, sir. I did not.

22 MR. STITELY: No other questions.

23 THE COURT: Any redirect?

24 MR. POGUE: No redirect, Your Honor.

25 THE COURT: All right. The witness may step down.

1 MR. POGUE: Your Honor, we don't anticipate it, we
2 just ask that he be subject to recall.

3 THE COURT: Very well.

4 MR. COX: At this time the State calls Jack
5 Thompkins.

6 Thereupon,

7 JACK THOMPkins

8 after having been first duly sworn, testified as follows,

9 THE CLERK: Please have a seat. Once you're seated
10 you can remove your mask and state your full name
11 spelling your last please.

12 THE WITNESS: My name is Jack Warren Thompkins. The
13 spelling of the last name is T-h-o-m-p-k-i-n-s.

14 DIRECT EXAMINATION

15 BY MR. COX:

16 Q. Do you prefer agent or special agent?

17 A. Whatever is good.

18 Q. Agent Thompkins, if you would for us, please tell us
19 where you work and how long you've been in that position.

20 A. I work at the South Carolina Law Enforcement
21 Division in the narcotics unit. I have been there since
22 October of 2013.

23 Q. What is the role of a narcotics agent? What are
24 some of your duties that you perform at SLED?

25 A. My main job in narcotics is K-9 as well parcel

1 interdiction.

2 Q. Okay. What are some of the activities or some of
3 the tasks that you go through as an agent in your role?

4 A. My role is pretty multifaceted. So my main job is,
5 like I said, parcel interdiction, Fed-Ex and UPS. I also
6 assist other agents with search warrants, arrest warrants,
7 drug buys, drug deals, surveillance. Any operation that
8 narcotics may need an extra body I can be called to assist
9 with that.

10 Q. Okay. Can you tell us what was your role back in
11 October 2019 on this case?

12 A. Yes, sir. I was called to assist Special Agent Shaw
13 with a search warrant on River Bend Drive.

14 Q. At what point did you -- Did you go straight to the
15 apartment complex or did you have any other role in the
16 investigation prior?

17 A. My role was simply I was asked to report to 100
18 River Bend Drive to assist with a search warrant.

19 Q. Around what time did you arrive at the apartment
20 complex?

21 A. I would say probably around 11:30.

22 Q. But at that point that was your first steps to this
23 incident to this investigation?

24 A. Yes, sir.

25 Q. All right. At what point -- Tell us, when you got

1 to the apartment complex, what were next steps?

2 A. The next steps were to help secure the apartment and
3 make sure there's no individuals inside the apartment while
4 we're conducting the search warrant.

5 Q. Okay. So when you left the parking lot, you were
6 one of the individuals who went to the front door of the
7 apartment?

8 A. Yes, sir.

9 Q. Agent Thompkins, I'm showing you what's been marked
10 as State's Exhibits 8, 9, and 10. Look those over for me and
11 do you recognize what's in those photos?

12 A. (Witness complies.) Yes, sir. That's the apartment
13 where we did the search warrant.

14 Q. That's the apartment that you yourself approached?

15 A. Yes, sir. The downstairs apartment on the left
16 side.

17 Q. Do those photos fairly and accurately represent the
18 apartment that you approached that day?

19 A. Yes, sir.

20 MR. COX: Your Honor, at this time we offer State's
21 Exhibits 8, 9, and 10 into evidence.

22 MR. STITELY: No objection.

23 THE COURT: All right. State's Exhibits 8, 9, and
24 10 are admitted into evidence. Thank you.

25 BY MR. COX:

1 Q. Agent Thompkins, what was the number of the
2 apartment that you entered that day?

3 A. The apartment number would have been H25.

4 Q. Just to be clear, that is the apartment that you
5 executed a search warrant on?

6 A. Yes, sir.

7 Q. Okay. When you arrived, was anyone at the home?

8 A. Yes, sir.

9 Q. Was it one person, multiple people?

10 A. Just one person that was home at the time.

11 Q. Male or female?

12 A. It was a female.

13 Q. Who did this person appear to be?

14 A. This person was identified as a Tameikia Harris.

15 Q. Did she indicate she lived in this apartment?

16 A. Yes, sir.

17 Q. Okay. Were you the only one who executed the search
18 warrant or were there other agents that assisted?

19 A. There were other agents that assisted.

20 Q. Specifically what areas of the home did you
21 search?

22 A. The master bedroom. What I believe to be the master
23 bedroom.

24 Q. Where in the house would that have been or
25 apartment? I apologize.

1 A. That's fine. As you're coming through the door,
2 there's a hallway to the left, it would have down the hallway
3 on the right, if I remember correctly.

4 Q. Agent Thompkins, I'm going to hand you what has been
5 marked as State's Exhibits 11 through 29. If you would please
6 review those and just let me know when you're done looking
7 through them.

8 A. (Witness complies.) Okay, sir.

9 Q. Were you able to identify what was in those
10 photos?

11 A. Yes, sir.

12 Q. Okay. Without going into detail of the items in the
13 photos, briefly describe what those photos contain.

14 A. Photo 21 --

15 Q. You don't have to do each individual one.

16 A. It would be the inside of the apartment itself, the
17 front room, pictures of the hallway and the master bedroom.

18 Q. So those photos contain areas and items in which you
19 personally saw yourself or searched?

20 A. Yes, sir.

21 Q. Do those photos fairly and accurately depict the
22 areas, the locations and the items that you searched?

23 A. Yes, sir.

24 MR. COX: Your Honor, at this time we offer State's
25 Exhibits 11 through 29 into evidence.

1 MR. STITELY: No objection.

2 THE COURT: State's Exhibits 11 through 29 are
3 admitted into evidence.

4 BY MR. COX:

5 Q. Agent Thompkins, I want to walk through some of
6 these and have you explain what we're looking at, okay? Do
7 you have the laser pointer up there?

8 A. (Indicating.)

9 Q. Okay. Some of these I'm gonna go through a few
10 questions, some I'll stick to a little bit more. What are we
11 looking at here in this photo?

12 A. That would be the room when you first walk into the
13 apartment.

14 Q. Did you search or locate anything in this room?

15 A. No, sir.

16 Q. What are we looking at here?

17 A. I believe that's going to be the kitchen area.

18 Q. What about this area starting to open up on the
19 left?

20 A. That's the hallway.

21 Q. This hallway?

22 A. Yes, sir.

23 Q. Okay. What are we looking at down the hallway?

24 A. Down the hallway it's an open closet in front and
25 then the room which I searched was right here.

1 Q. Point that out one more time for me.

2 A. (Witness complies.)

3 Q. So the room on the right?

4 A. Yes, sir.

5 Q. Is that this room with the open door?

6 A. Yes, sir.

7 Q. Okay. What did you find when you walked in?

8 A. There's a dresser right in front of me and a bed to
9 the left.

10 Q. Is this that same room?

11 A. Yes, sir.

12 Q. Were there any other beds in the room?

13 A. Not that I recall.

14 Q. Is this that same room, Agent Thompkins?

15 A. Yes, sir.

16 Q. Okay. What are we looking at here?

17 A. That would be the closet of the bedroom.

18 Q. How many closets were in the master bedroom?

19 A. If I recall, just that one.

20 Q. As you are conducting your search, what type of
21 clothing, what did you find inside the closet?

22 A. There was multiple types of clothing. I'm not sure
23 how to answer that one. Men and women's if that helps.

24 Q. Did you say men and women's?

25 A. Men and women's clothing.

1 Q. All right. What else did you find inside the
2 closet?

3 A. A Royal Sovereign money counter and there was a
4 black safe located in the closet.

5 Q. Is this that same closet?

6 A. It seems to be, sir.

7 Q. Okay. And what is here in this bottom corner?

8 A. There's kind a light glare. I'm having a hard time
9 seeing the picture so...

10 Q. We're going to get rid of that light that's causing
11 some of the glare.

12 A. That would be the black safe with the money counter
13 on top.

14 Q. This would be the money counter and the safe?

15 A. Yes, sir.

16 Q. Okay. When you say money counter, what exactly are
17 we talking about?

18 A. The device that you would use to count bills.

19 Q. Just dollar bills?

20 A. Yes, sir.

21 Q. Did you collect that item as evidence?

22 A. I did not personally. I made note of it and advised
23 Special Agent Shaw.

24 Q. But you did identify it during your search?

25 A. Sir?

1 Q. You did identify it during your search?

2 A. Yes, sir.

3 Q. Okay. All right. What are we looking at in this
4 photo?

5 A. That would be the dresser that you would see
6 immediately as you walk into the bedroom.

7 Q. How many dressers were in the bedroom?

8 A. I don't recall. I just remember that one.

9 Q. Okay. Do you remember conducting a search on any
10 other dressers?

11 A. No, sir.

12 Q. Had there been any other dressers in the bedroom,
13 would you have conducted a search?

14 A. Yes, sir.

15 Q. When you were conducting the search of this dresser,
16 what were the areas that you were looking?

17 A. Well, I like to start in a pattern so I would have
18 started on the left top draw and then work my way over and
19 down.

20 Q. Where was this photo from?

21 A. That would have been, let's see, a drawer in that
22 dresser.

23 Q. Do you need me to zoom in if I can, or do you want
24 to come down?

25 A. If you don't mind if I can walk down and look at it?

1 MR. COX: Your Honor, can the witness come down?

2 THE COURT: You can go down.

3 BY THE WITNESS:

4 A. That would have been a drawer on the right side of
5 the dresser.

6 BY MR. COX:

7 Q. And what are these items that we're looking at in
8 the dresser?

9 A. Those would be small plastic Baggies. I'm not sure
10 what this item right here would be.

11 Q. Were any of these - were the bags identified for
12 collection?

13 A. Yes, sir.

14 Q. You can sit back down.

15 A. (Witness complies.)

16 Q. I'll bring the photos up. All right. Agent
17 Thompkins.

18 A. That would have been inside one of the drawers on
19 the right side as well.

20 Q. Okay. And what are we looking at in this drawer?

21 A. It's a metal, I guess, cup you would say that also
22 contained multiple plastic Baggies. There's some white ones,
23 clear ones and yellow ones.

24 Q. You say clear ones and yellow ones?

25 A. Yes, sir.

1 Q. What are we looking at here?

2 A. I'm not sure exactly what the case is, but it
3 appears to me to be like a CD case.

4 Q. Where was this located?

5 A. That was in the top right drawer of that dresser.

6 Q. Okay. Did you open this case?

7 A. Yes, sir.

8 Q. And I can try to zoom in or if you are able to see
9 that?

10 A. I'm able to see that.

11 Q. Okay. What are we looking at here?

12 A. We're looking at more plastic Baggies as well as a
13 small plastic bag containing a brown powder.

14 Q. Containing a brown powder?

15 A. Yes, sir. Or a tan powder.

16 Q. Was this found in the drawer or where was this
17 found?

18 A. It was in that case in the drawer.

19 Q. The case that I just showed you?

20 A. Yes, sir.

21 Q. All right. What are we looking at in this photo,
22 agent?

23 A. That would have been the contents of that CD case.

24 Q. Okay. So this item in the middle?

25 A. The item in the middle. Yes, sir.

1 Q. That is the Baggie that you discussed --

2 A. Yes, sir.

3 Q. -- with the brown substance?

4 A. Yes, sir.

5 Q. Now, did you collect these evidence or did you
6 collect these items or did someone else collect them?

7 A. Somebody else collected them.

8 Q. Now, in this to the left this bigger Baggie, what
9 was inside this Baggie?

10 A. That was the bags, the other bags that were found in
11 the drawer below.

12 Q. In this photo here what do we have?

13 A. One of the yellow plastic Baggies as well as the
14 plastic bag containing the powder substance.

15 Q. Okay. Agent Thompkins, after completing your search
16 -- Agent Thompkins, would you be able to identify the items
17 found during your search?

18 A. I believe so. Yes, sir.

19 Q. Okay. I'm showing you what's been marked as State's
20 Exhibit 30. Are you able to identify what is in that
21 exhibit?

22 A. A few of the items. Yes, sir.

23 Q. And those appear to be in the same, if not
24 substantially the same condition as they were in when you
25 found them on October 23rd?

1 A. Yes, sir.

2 MR. COX: Your Honor, I have no further questions
3 for Agent Thompkins at this time, just request that he
4 remain as a possible recall witness.

5 THE COURT: Okay. Cross examination. Please answer
6 any questions Mr. Stitely has.

7 MR. STITELY: Please the Court.

8 CROSS EXAMINATION

9 BY MR. STITELY:

10 Q. Where did you work before SLED?

11 A. Highway patrol.

12 Q. I thought so. We met years and years ago.

13 A. Yes, sir.

14 Q. I'm Ben. Sorry.

15 A. Yes, sir.

16 Q. We're going to look at number 27 when I get there.
17 Sorry. We're going to look at 27. All right. Where were
18 these items located?

19 A. The bag in the middle was located in that little
20 container.

21 Q. The CD case that we saw in 26?

22 A. Yes, sir.

23 Q. Okay.

24 A. And that was in the top right dresser drawer.

25 Q. Okay. What about those other items?

1 A. The item to left of that, that Baggie with the
2 little Baggies was located in the second dresser drawer on the
3 right on the top and if - I'm not sure which currency that is.
4 I did find \$1800.00 in the black safe.

5 Q. Okay. What about the bag? Where was this bag?

6 A. Which bag is that?

7 Q. A white bag with some kind of substance in it.

8 MR. STITELY: Your Honor, may I approach him?

9 THE COURT: Yes, sir.

10 BY MR. STITELY:

11 Q. Show him. Maybe it's easier. (Proffering.) Where
12 was that bag?

13 A. That's the one in the middle that I told you was
14 located in the --

15 Q. So that was in the CD case?

16 A. Yes, sir.

17 Q. Did you eventually get into that safe?

18 A. Yes, sir.

19 Q. What was located in that safe?

20 A. It was \$1800.00 in U.S. currency.

21 Q. Was there anything else located in the safe of
22 note?

23 A. Not that I recall.

24 Q. Were these items easily accessible to anyone else in
25 the home, the ones particularly in the drawer?

1 A. I would assume they could be. Yes, sir.

2 Q. And there was someone in the home when you arrived,
3 correct?

4 A. Yes, sir.

5 Q. All right. And that was Ms. Harris?

6 A. Yes, sir.

7 Q. Were you able to ascertain what her relationship is
8 to my client?

9 A. I did not personally. No, sir.

10 Q. But you said there was no doubt women's stuff was in
11 that room as well, correct?

12 A. Yes, sir.

13 Q. Women's clothing. I think it was pictures?

14 A. Yes, sir.

15 Q. All right. Let me ask you a couple questions real
16 quick. You said you're a K-9 handler as well, correct?

17 A. Yes, sir.

18 Q. How good are your dogs?

19 A. I like to think they do well.

20 Q. Like so if I had a bag of dope in my pocket and you
21 walked your dog up to me, could it probably figure that out?

22 A. Yes, sir.

23 Q. What range?

24 A. That I couldn't tell you. It depends on conditions
25 I guess.

1 Q. But like if you walked your dog right around me and
2 I had some dope in my pocket, your dog would do something?

3 A. Yes, sir. I'm sure he would show something.

4 Q. Which dog is your dog? What's your dog called?

5 A. Deek. He's a black lab.

6 Q. Black lab.

7 A. Or excuse me. Brown lab.

8 Q. Did you do the training with him?

9 A. Sir?

10 Q. Did you do the training with him?

11 A. Yes, sir.

12 Q. How long is the training?

13 A. My initial training, I mean, I train, I have to
14 train a minimum of at least four hours a week and it never
15 ends.

16 Q. Did you get him as a puppy or was he already --

17 A. He was over a year old.

18 Q. Okay. Were you there like from like the onset of
19 his training?

20 A. Yes, sir.

21 Q. I'm sorry. This doesn't have to do with the case.
22 I was kind of interested how the dog handling works.

23 A. Yes, sir.

24 Q. You didn't have your dog involved in this case
25 though?

1 A. No, sir.

2 Q. One other quick query. So SLED's policy, do you
3 arrest people as an agent yourself?

4 A. Yes, sir.

5 Q. Okay. If you had an arrest warrant and say you were
6 going to arrest Ben right now, what would be SLED's procedure
7 as to how you would do that?

8 A. It would depend on the situation and where you are
9 and what we're doing.

10 Q. Okay. Say it's a traffic stop. You pull me out of
11 the vehicle, you have a warrant in your hand for Ben, what is
12 the procedure that SLED has you follow?

13 A. I would have to handcuff you and search you before I
14 place you into my vehicle, read you your rights.

15 Q. And that's a standard procedure that you follow at
16 SLED?

17 A. Yes, sir.

18 Q. Not dissimilar to the one you had at the highway or
19 anywhere else you have worked in law enforcement?

20 A. Well, it's similar. Yeah. Make sure that whatever
21 area you're gonna put somebody in your vehicle is clean of any
22 foreign objects or anything that should not be there.

23 Q. Okay. And you had no interaction with my client in
24 this case at all?

25 A. No, sir.

1 MR. STITELY: No other questions. Thank you very
2 much.

3 THE COURT: Redirect?

4 MR. COX: No redirect, Your Honor.

5 THE COURT: All right. The witness may step down.
6 Thank you.

7 THE WITNESS: Thank you, sir.

8 MR. COX: The State calls Jamie Shaw.

9 Thereupon,

10 JAMIE SHAW

11 after having been first duly sworn, testified as follows,

12 THE CLERK: Please have a seat. Once you're seated,
13 state your full name spelling your last please.

14 THE WITNESS: My name is Jamie Shaw, S-h-a-w.

15 DIRECT EXAMINATION

16 BY MR. COX:

17 Q. Good afternoon, Agent Shaw. If you would, tell us
18 where you work and what your role is at that place of
19 employment.

20 A. So I work at the South Carolina Law Enforcement
21 Division. I am a narcotics investigator. I'm also on the
22 FBI's Violent Crime Task Force. I'm a task force officer with
23 them.

24 Q. How long have you been with SLED?

25 A. Six years this week.

1 Q. What role were you with SLED back in October of
2 2019?

3 A. The same I am now.

4 Q. Okay. Could you just walk us through some of your
5 duties and what type of cases you work in this role.

6 A. I work with long term and short term conspiracy
7 investigations and drug trafficking investigation and ongoing
8 drug trafficking investigation and ongoing drug trafficking
9 organizations which include surveillance, buys, interviews,
10 things like that.

11 Q. How did you become involved in this case?

12 A. I was the case agent originally.

13 Q. So this is your case?

14 A. Yes, sir.

15 Q. If you could, just start us off. What brought you
16 to Lexington back in October 2019?

17 A. I had gotten arrest warrants for unrelated matters
18 and queried the defendant through the DMV and realized that
19 the defendant had changed his driver's license address.

20 Q. Okay. When you say the defendant, who is the
21 subject of this unrelated arrest warrants?

22 A. Jerome Smith.

23 Q. Agent Shaw, I'm showing you what's been marked as
24 State's Exhibits 31 and 32. Do you recognize what's in those
25 documents?

1 A. I do.

2 Q. Briefly before going into them, what do they appear
3 to be?

4 A. The first is the driver's license and registration
5 for Jerome Smith. The second is a registration, vehicle
6 restriction for a 2013 Honda Odyssey.

7 Q. These were the type of records you used in your
8 investigation?

9 A. Yes, sir.

10 MR. COX: Your Honor, at this time we move to have
11 State's Exhibits 31 and 32 entered into evidence per the
12 stipulation to the SCDMV records as far as authentication
13 and we're offering them pursuant to that stipulation.

14 MR. STITELY: No objection.

15 THE COURT: So admitted. State's Exhibits 31 and 32
16 admitted into evidence.

17 BY MR. COX:

18 Q. Agent Shaw, based on your investigation of these
19 records, where did Mr. Jerome Smith live?

20 A. At 100 River Bend Drive, apartment H25, West
21 Columbia which is in Lexington County.

22 Q. And that was listed on both his DL records and his
23 vehicle registration, correct?

24 A. Correct.

25 Q. After getting the arrest warrants, what were your

1 next steps as the lead case agent?

2 A. I attempted to confirm the one vehicle that I knew
3 to be operated to be in the parking area where his driver's
4 license had him residing. The two occasions that I did go
5 before the date of October 23rd, 2019, the vehicles were not,
6 the vehicle was not in the parking lot so I decided to
7 organize a group of co-workers to attempt to get there early
8 in the morning to surveil the address at approximately 6:30 in
9 the morning on October 23rd, 2019 to serve the arrest
10 warrant.

11 Q. On that morning who were the other, you said
12 co-workers, who were the other agents on scene when you first
13 arrived that morning?

14 A. I had arranged with Special Agent Perry and Special
15 Agent Fowler. In the morning Special Agent Fowler called me
16 and said that something had come up, he would be a second
17 late. Special Agent Perry and I were in the parking area
18 first.

19 Q. Okay. Where were you positioned at this time at the
20 apartment complex at 6:30 in the morning?

21 A. I was directly behind the white Honda Odyssey and I
22 had a view of a walkway that led from the apartment
23 building.

24 Q. When you say the white Honda Odyssey, is this the
25 vehicle that you had the records showing belonged to Jerome

1 Smith?

2 A. Yes, sir.

3 Q. And the walkway of the apartment complex, why were
4 you at this particular walkway?

5 A. I saw it as what I would call a path of least
6 resistance or the easiest way to get to the vehicle. There
7 was a secondary way, but it would be kind of out and around so
8 I made the assumption that this would be the path that I would
9 use so that's where I set up.

10 Q. Okay. So from starting at 6:30 tell us about the
11 surveillance you had on the vehicle and the apartment.

12 A. Uhm, there was, at approximately 6:35 I observed a
13 black male dressed in a gray hoodie, the hood was pulled over
14 his head, walked from the area I knew Mr. Smith to reside to
15 the Honda Odyssey and then return back to the area where I
16 knew him to reside.

17 Q. Okay. At this point had you confirmed the identity
18 of this person who walked towards the van?

19 A. No.

20 Q. All right. Take us, after this person left the van,
21 what was your next steps as far as surveillance?

22 A. Just remain in the parking lot. Then at 8:25 I
23 observed the same black male walk to the white Honda Odyssey
24 and actually enter the driver's compartment of the vehicle. I
25 saw the brake lights come on, knew it was going in reverse, so

1 I put out on the radio that we were getting ready to move or I
2 thought getting ready to move. At that point Special Agent
3 Fowler entered the apartment complex parking lot to join.

4 Q. At this point from where you were positioned were
5 you able to identify, were you able to confirm the identity
6 who this person was?

7 A. No.

8 Q. Okay. Walk us through, what were your next steps
9 after Agent Fowler arrived and you left the parking lot?

10 A. The white Honda Odyssey reversed and then exited out
11 of the apartment complex, we then surveilled it directly to
12 the Walmart parking lot at 2401 Augusta Road in West Columbia,
13 Lexington County.

14 Q. Okay. How far of a drive was this?

15 A. Several miles.

16 Q. Several miles?

17 A. Yes, sir.

18 Q. Okay. Tell us about, what time frame or how long
19 did it take you to make this drive?

20 A. It was approximately five minutes.

21 Q. During this five minute drive to Walmart from the
22 apartment complex, what were you observing, what were you able
23 to keep your eyes on?

24 A. On the white Honda Odyssey.

25 Q. So you maintained surveillance the entire time?

1 A. Yep.

2 Q. Where did the vehicle stop? Did it make any stops
3 other than the regular traffic stops or did it go anywhere
4 else?

5 A. No.

6 Q. So it went directly from the apartment to Walmart?

7 A. Yes, sir.

8 Q. Once you get to the Walmart, tell us what the white
9 van did and where did you position yourself?

10 A. It pulled into the parking lot. It parked on the,
11 near the right entrance. I parked what would be directly in
12 front of it so I had direct eyes on the vehicle.

13 Q. Did you remain in this position throughout the rest
14 of your time at Walmart?

15 A. Yes. I did. And I was able to, so I could turn
16 around and see the driver, I could identify that it was Jerome
17 Smith in the driver's seat. I then utilized binoculars in my
18 rear view mirror which works actually the same as just
19 normally looking through binoculars and was able to clearly
20 see up close Mr. Smith in the driver's seat.

21 Q. So you were not able to confirm the identity of your
22 target until you were in the Walmart parking lot?

23 A. Correct.

24 Q. Do you see the person that you identified in the
25 courtroom today?

1 A. I do.

2 Q. Are you able to locate him?

3 A. I do. Mr. Smith right there.

4 MR. COX: Your Honor, the record will reflect Agent
5 Shaw has identified Mr. Smith as the person in the white
6 van.

7 THE COURT: Very well.

8 BY MR. COX:

9 Q. Agent Shaw, you get to the Walmart parking lot, you
10 have located Mr. Smith. What time is this at?

11 A. Approximately 8:30 in the morning.

12 Q. All right. Tell us what was, what did you observe
13 next? What was the next step in your surveillance?

14 A. Uhm, so Special Agent Stoertz, I had contacted him
15 on the phone just to get more people in case the car moved
16 again. He had entered the parking lot at this point and then
17 I saw a white male who was walking from more the center of the
18 parking lot towards the right door, looked a little bit
19 confused kind of like they're looking for your car in a
20 parking lot, can't find it, started walking towards the right
21 door and then kind of beelined straight for the white Honda
22 Odyssey.

23 Q. If you could, I believe there's a laser pointer
24 there for you. I'm showing you what's been marked as State's
25 Exhibit 2 identified as the Walmart parking lot. Using the

1 laser pointer, point to us where you were positioned and where
2 the white van was?

3 A. He was right about here, and I was directly in front
4 of it about right here.

5 Q. So you had a clear line of sight to the vehicle?

6 A. I did.

7 Q. Okay. And where was the white male? Were you able
8 to identify who this white male was eventually?

9 A. Roland Carver. So he started -- I was looking
10 around at this point looking for other people in the parking
11 lot and then obviously looking back at the white Honda
12 Odyssey. He started walking around here in front of me and
13 then was just confused kind of going through cars and then
14 kind of walked towards the right entrance and then straight
15 beeline to the white Honda Odyssey.

16 Q. All right. Did Mr. Carver enter the white van?

17 A. He did. He entered the front passenger
18 compartment.

19 Q. Prior to Mr. Carver entering the van, had anyone
20 other than Mr. Smith entered or exited the van?

21 A. No.

22 Q. Now, from the point that you first saw that you now
23 knew was Jerome Smith get in the van at the apartment, who
24 else got into the van at any time?

25 A. Only Roland Carver in the parking lot.

1 Q. How long was Mr. Carver in the van in the parking
2 lot?

3 A. As soon as he entered the van, pretty much
4 immediately the van started backing up and pulled and went
5 directly in front of the business to the left door. As soon
6 as it came to a stop at the left door, immediately the white
7 male Roland Carver got out of the passenger seat.

8 Q. Since this was your case, did you instruct any other
9 officers of anything at this point? What were the next steps
10 in your case?

11 A. Because Special Agent Stoertz had a police package
12 Tahoe with full blue light packaging because a lot of our
13 uncover narcotics vehicles only have a limited amount of blue
14 lights, I instructed him to conduct a traffic stop so that it
15 would be very obvious that it was a police officer behind
16 Mr. Smith. I then instructed Mr. Fowler and Special Agent
17 Perry to make contact with Roland Carver.

18 Q. All right. Where did you go after giving these
19 instructions to other officers?

20 A. I came up the other side of the parking lot after
21 they made the traffic stop around here. I pulled in, pulled
22 forward and pulled in a parking spot facing the stop with my
23 vehicle.

24 Q. Okay. You did not go inside the Walmart?

25 A. I did not.

1 Q. All right. Tell us what you observed and what were
2 the next steps after the vehicle is pulled over?

3 A. Special Agent Stoertz went to the driver's
4 compartment of the vehicle pulling Mr. Smith out of the
5 vehicle. For due diligence purposes, I asked Mr. Smith his
6 name, his birth date, which he provided his name and his birth
7 date, we confirmed his name and birth date on the warrants. I
8 then handcuffed him behind his back and informed him that I
9 had an arrest warrants for him.

10 Q. All right. After handcuffing him, I guess, where
11 was Mr. Smith at this point located, on the outside of the
12 vehicle, right next to it? Where was he located?

13 A. If you were to walk away from the driver's
14 compartment, kind of closer to where the vehicle was parked,
15 we moved him away from the vehicle a little bit.

16 Q. Okay. All right. What did you learn from Agent
17 Fowler and Agent Perry as far as when you instructed them to
18 go get Mr. Carver? What did you learn?

19 A. Just that they had made contact with him, that he
20 had been placed under investigative detention and during a pat
21 down of his person, what I would call a heroin kit was found
22 along with a Baggie containing possible narcotics.

23 Q. Okay. Were Mr. Carver or Mr. Smith ever seated next
24 to each other, ever brought to each other?

25 A. No. We intentionally separated them. Mr. Fowler,

1 even when Mr. Carver was placed in his vehicle, Mr. Fowler
2 parked his vehicle facing away from the stop so Mr. Carver
3 could not see.

4 Q. Agent Shaw, at this point with the two now detained
5 individuals did you ever interact with Mr. Roland Carver?

6 A. I did.

7 Q. Tell us about that interaction.

8 A. So as the case agent I was trying to figure out what
9 all was going on with both parties just to stay organized as
10 much as possible so I walked over to Special Agent Fowler's
11 vehicle. Mr. Carver was seated in the front passenger seat.
12 The window was rolled down. I introduced myself. I read Mr.
13 Carver his Miranda Rights from a SLED pocket card. I then
14 asked if he wanted to talk about what happened today which he
15 did. He explained the interaction that had happened in the
16 parking lot. I asked if he would be okay with a written
17 statement. He agreed. Also on the dashboard in front of him
18 in a evidence bag was the items taken by Special Agent Fowler
19 from Mr. Carver's person.

20 Q. Okay. Let's start with the statement. Did you have
21 any role in providing the statement?

22 A. I did. I began taking the statement. I wrote, I
23 believe, the first two lines of the statement.

24 Q. When you say you wrote these lines, who was
25 providing - or did Mr. Carver provide any oral statements or

1 --

2 A. I asked him to explain to me what had happened today
3 and I was writing as he was talking.

4 Q. So --

5 A. I began writing as he was speaking.

6 Q. So, Agent Shaw, this is the statement that you began
7 writing for Mr. Carver?

8 A. Yes.

9 Q. And it would reflect the statement that he provided
10 that day about entering the white van and purchasing heroin
11 from Mr. C?

12 A. Yes. He had already explained to me the whole
13 incident of the day prior to the statement so I had already
14 heard his version of the day so the statement is consistent
15 with what I was informed by him.

16 Q. Mr. Carver, before getting the statement from him,
17 did you promise Mr. Carver anything in exchange for the
18 statement?

19 A. No.

20 Q. Did you use any kind of coercive or tactics or place
21 Mr. Carver under any duress to get this statement?

22 A. No.

23 Q. At any point during the statement did you suggest to
24 Mr. Carver anything that he should include or should say in
25 his statement?

1 A. No.

2 Q. Simply recorded what he told you?

3 A. Yes.

4 Q. You mentioned the evidence bag that was located in
5 Agent Fowler's vehicle. Would you be able to identify that?

6 A. Yes.

7 Q. Okay. Let me back up one second. The evidence bag
8 itself, what were your next steps with this particular bag?
9 What was collected?

10 A. So alcohol agents don't normally carry BEST kits.
11 They're interaction with narcotics is very, very limited so I
12 would have retrieved the BEST kit for the items to be placed
13 into.

14 Q. Who placed these items into the BEST kit?

15 A. I did.

16 Q. Would you be able to identify those items in the
17 BEST kit?

18 A. I would.

19 Q. So I'll show you what's been marked as State's
20 Exhibit 3. Can you identify what's in that exhibit?

21 A. Yes. I can. It's the yellow small zip lock bag
22 containing the brown powder substance, and also what I would
23 call a kit, the needle, cap and black gloves seized from his
24 person.

25 Q. When you say his person, Mr. Carver?

1 A. Mr. Carver's person.

2 Q. Okay. How do you know those are the items from Mr.
3 Carver?

4 A. Those are the ones that I took an image of next to
5 the BEST kit number for identification purposes. Also I just
6 remember.

7 Q. Okay. Do these items at this time appear to be in
8 the same or substantially the same condition in which you
9 collected them?

10 A. Yes.

11 MR. COX: Your Honor, at this time we move to have
12 State's Exhibit 3 admitted into evidence.

13 MR. STITELY: No objection.

14 THE COURT: State's Exhibit 3 is admitted into
15 evidence without objection. Thank you.

16 MR. COX: Thank you, Your Honor.

17 BY MR. COX:

18 Q. Agent Shaw, after obtaining this statement and the
19 information from Mr. Carver and collecting the evidence found
20 on his person, what were your next steps in this
21 investigation?

22 A. Prior to that, before going over to Special Agent
23 Fowler's vehicle, Special Agent Stoertz had utilized his K-9
24 to perform an open air sniff. I had knowledge that the in K-9
25 used before had been a bite dog so we had made sure that

1 no one was in the proximity of where the dog was working so
2 that there wouldn't be an incident with the animal.

3 Q. When you say bite dog, what do you mean?

4 A. Like he was used when we would serve very violent
5 warrants.

6 THE COURT: Is that fight or bite?

7 MR. COX: Bite.

8 THE WITNESS: Bite.

9 THE COURT: Okay. Thank you.

10 BY THE WITNESS:

11 A. So he was an apprehension K-9. I'm sorry. That's a
12 better term. He was an apprehension K-9, but known for,
13 utilized for biting individuals.

14 BY MR. COX:

15 Q. So knowing this information about this K-9, Agent
16 Stoertz --

17 MR. STITELY: I'm gonna object to any speculation of
18 what Agent Stoertz was doing. He's now asking her to
19 speculate as to what Agent Stoertz was doing and the way
20 he did his job.

21 THE COURT: Rephrase your question. You can try it
22 again.

23 MR. COX: I will try, Your Honor.

24 BY MR. COX:

25 Q. You've already testified, Agent Shaw, that you had

1 knowledge that Agent Stoertz was going to use his K-9 as part
2 of the search of the vehicle or do an open air sniff as you
3 described it.

4 A. Right.

5 Q. What was your reaction or what steps did you take
6 with this knowledge?

7 A. I had we say hands on Mr. Smith. We usually try to
8 keep some sort of positive control over someone in handcuffs
9 so they made sure, I made sure that there was a good distance
10 between where the dog would be working and near the vehicle
11 and where Mr. Smith and I would stand.

12 Q. Okay. So at this point where were you and Mr. Smith
13 located?

14 A. Just further towards the vehicles in the parking lot
15 on that one side.

16 Q. All right. To your knowledge was anything located
17 inside of the vehicle during this search?

18 A. Two cell phones and I believe Mr. Smith's driver's
19 license was also in the vehicle.

20 Q. Was any other types of narcotic evidence or anything
21 else collected?

22 A. No.

23 Q. Nothing?

24 A. Not from the vehicle. No.

25 Q. Okay. Agent Shaw, the K-9 unit that you discussed

1 of Agent Stoertz, to your knowledge was there ever an open air
2 sniff or ever a search utilizing this K-9 done on the
3 defendant himself?

4 A. No.

5 Q. Was there ever a search done within a close
6 proximity to where the defendant was ever standing using this
7 dog?

8 A. Besides pulling him out of the vehicle, no.

9 Q. Was the dog involved in pulling him out of the
10 vehicle?

11 A. No.

12 Q. The dog was not --

13 A. The dog was still secured in the back of Special
14 Agent Stoertz's vehicle.

15 Q. Okay. At this point, Agent Shaw, after searching
16 the vehicle and Mr. Carver, what were your next steps in the
17 investigation?

18 A. I instructed Special Agent Perry to transport
19 Mr. Smith back to the SLED annex and I would follow in my
20 vehicle.

21 THE COURT: Quick question.

22 (Side bar off the record.)

23 BY MR. COX:

24 Q. Just as a point of clarification, Agent Shaw, to
25 your knowledge was the K-9 unit of Mr. Stoertz or any other

1 K-9 unit on this day utilized or ever in close proximity to
2 the defendant?

3 A. They were in the middle of the parking aisle and we
4 were towards the vehicle. The vehicle is parked in, so I
5 don't know what you would consider close proximity.

6 Q. Well how close were they?

7 A. Six feet, something like that.

8 Q. All right. After I believe you were testifying as
9 to handing over Mr. Smith to Agent Perry?

10 A. Yes.

11 Q. Prior to making this, I guess I'll call it a hand
12 off, prior to handing him over to Agent Perry, did you conduct
13 a search on Mr. Smith?

14 A. No.

15 Q. To your knowledge at this point did any agent do a
16 search of Mr. Smith?

17 A. Not to my knowledge.

18 Q. Did you witness Agent Perry pat down or do a search
19 of Mr. Smith?

20 A. I did not.

21 Q. What did you observe Agent Perry do with
22 Mr. Smith?

23 A. Once Agent Perry had positive control of Mr. Smith,
24 I kind of organized myself and my things and went to my
25 vehicle in order to pull in behind them and follow.

1 Q. Where were you following to?

2 A. To the SLED annex located within Lexington County.

3 Q. Walk us through what happened at the SLED annex.

4 A. Special Agent Perry had arrived there first. When I
5 pulled in the parking lot, Mr. Smith was taken from his into
6 the Midlands investigative room and placed on the left side of
7 the table.

8 Q. Agent Shaw, after Mr. Smith is in the investigation
9 room with Agent Perry, just kind of walk us through what
10 happens next. What happened next in your investigation?

11 A. I went and wrote the search warrant, printed it
12 myself and Special Agent Stoertz who had arrived at the annex
13 drove to the Cayce Magistrate's Office and presented the
14 search warrant to the Judge. It was signed. On the way I had
15 made a phone call to my lieutenant and my captain kind of
16 letting them know the status of what was happening that day.
17 I then asked if someone who was Special Agent Thompkins could
18 go ahead and watch the apartment which would be 100 River Bend
19 Drive, apartment H25.

20 Q. And that's where you were planning on searching?

21 A. Executing the search warrant. Yes.

22 Q. Okay. In between that point when you got to the
23 apartment what happens?

24 A. We had it signed and then made copies, one for me,
25 one to be left at the residence. We then drove to the

1 apartment complex at 100 River Bend Drive in West Columbia,
2 Lexington County, knocked on the door that I believe to be
3 apartment H25 and it was answered by a female.

4 Q. Before we go into the actual apartment, were you
5 ever contacted from anyone at the annex?

6 A. After I had written the search warrant but before we
7 had made contact at the apartment, I had instructed Special
8 Agent Perry to transport Mr. Smith to the Alvin S. Glenn for
9 the original arrest warrants that we had. I was then informed
10 that a yellow zip lock Baggie containing a powder substance
11 was found underneath him in the interview room.

12 Q. So just a point of clarification. These arrest
13 warrants was for an unrelated matter --

14 A. Yes.

15 Q. -- from Richland County?

16 A. Yes.

17 Q. So where would Mr. Smith had to have been
18 transported to?

19 A. Alvin S. Glenn Detention Center.

20 Q. Okay. Did you go back to the annex?

21 A. I did not.

22 Q. All right. Did you have any other interaction with
23 Agent Perry that day?

24 A. He came -- I don't even remember -- I don't think I
25 saw him. I apparently came to the apartment complex. I was

1 still trying to speak to Ms. Harris and make sure the
2 apartment was organized when we were leaving.

3 Q. As the lead investigator, the lead agent, did you
4 collect any evidence from the annex or any other location
5 before the search of the apartment?

6 A. No.

7 Q. All right. Take us to the apartment.

8 A. We knocked on the door of apartment H25 at 100 River
9 Bend Drive, West Columbia, a female answered the door who was
10 later identified as Ms. Tameikia Harris. We informed her that
11 we had a search warrant for the residence and then asked her
12 to step outside just to take her out of the residence and
13 asked if anybody else was present and she said no.

14 Q. So no one else was present?

15 A. Besides her, no.

16 Q. Were you able to identify who this person was?

17 A. Tameikia Harris.

18 Q. Who did you learn Ms. Harris was?

19 A. The wife or ex-wife of Mr. Smith.

20 Q. Okay. I believe you mentioned Agent Thompkins was
21 already at the scene?

22 A. Yes.

23 Q. During the search of the apartment, what was your
24 role as the search was going on?

25 A. I Mirandized Ms. Harris and then I stayed outside

1 speaking to her occasionally going in to get updates from
2 inside and then I would also go to collect evidence.

3 Q. Okay. What updates did you get from Agent
4 Thompsons?

5 A. That there were multiple bags containing smaller zip
6 lock Baggies of different colors located. There was a safe
7 containing \$1800.00 in assorted cash that was found. There
8 was a money counter that was found and also a clear plastic
9 bag containing a tan powder substance that was located by
10 Special Agent Thompsons.

11 Q. After these items were located, who actually
12 collected these items?

13 A. I did.

14 Q. How would you have collected these items?

15 A. I would have -- So they would -- When they were
16 located, they would remain in place, photographed and then I
17 would take them into my possession and place them into a BEST
18 kit.

19 Q. Okay. Would you recognize those items from the
20 master bedroom if I showed them to you?

21 A. I would.

22 Q. I'm showing you what's been marked as State's
23 Exhibit 30. Are you able to recognize what's in that kit?

24 A. I am.

25 Q. What does it appear to be?

1 A. The contents or the items found in the master
2 bedroom along with items found in the living room area.

3 Q. These are the items that you collected?

4 A. I did.

5 Q. And are they in the same or substantially the same
6 condition as it was when you were, as they were when you
7 collected them?

8 A. They are.

9 MR. COX: Your Honor, at this time we offer State's
10 Exhibit 30 into evidence.

11 MR. STITELY: Without objection.

12 THE COURT: State's Exhibit 30 is admitted into
13 evidence.

14 BY MR. COX:

15 Q. Agent Shaw, I believe you identified a money counter
16 was found by Agent Thompkins?

17 A. Yes.

18 Q. Did you also collect this item?

19 A. I did.

20 Q. Would you recognize it if I brought it to you?

21 A. Yes, sir.

22 Q. Very carefully I'm showing you what's been marked as
23 State's Exhibit 33. Do you recognize this item?

24 A. Yes.

25 Q. What is it?

1 A. The Sovereign money counter.

2 Q. Is this an item you collected yourself?

3 A. It is.

4 Q. Does it appear to be in the same or substantially
5 the same condition as when you collected it that day?

6 A. It is.

7 MR. COX: Your Honor, we move State's Exhibit 33
8 into evidence.

9 THE COURT: Mr. Stitely?

10 MR. STITELY: No objection.

11 THE COURT: It's admitted as exhibit what?

12 MR. COX: 33.

13 THE COURT: State's Exhibit 33 admitted into
14 evidence.

15 BY MR. COX:

16 Q. Agent Shaw, tell us exactly where was this money
17 counter located?

18 A. In the master bedroom closet on the left-hand side
19 above a black safe.

20 Q. What other evidence collected in this case was
21 located close to this money counter?

22 A. In the black safe, contained in the black safe was
23 \$1800.00 in various currency.

24 Q. The other items that you identified that you
25 collected, they all came from the same room that you collected

1 in this BEST kit?

2 A. No. So --

3 Q. What other item in that BEST kit did you collect
4 from the same room, from the master bedroom?

5 A. It's the clear plastic bag containing a tan powder
6 substance, yellow and clear zip lock Baggies containing
7 various larger Baggies, and then a spoon. I believe that's
8 it.

9 Q. Okay. It's been referred to as the master bedroom.
10 Agent Shaw, how many bedrooms were in this apartment that you
11 conducted the search at?

12 A. It's listed as three bedrooms, however, two bedrooms
13 being utilized appeared to be for sleeping, the other appeared
14 to be for storage or a work area.

15 Q. Okay. And again, these items were also located in
16 the same apartment that you had the DMV record showing as
17 Mr. Jerome Smith's place of residence?

18 A. Yes.

19 Q. Okay. After completing the search and collecting
20 this evidence, what were your next steps? What did you learn?
21 What did you learn about -- Actually, what did you learn about
22 what occurred at the annex?

23 A. I had, before we got to the apartment, I had just
24 learned that a Baggie, a yellow small zip lock Baggie
25 containing a tan powder substance had been found underneath

1 Mr. Jerome Smith's person in the interview room.

2 Q. Who did you learn found that Baggie?

3 A. Special Agent Perry.

4 Q. At any point did you collect the evidence from that
5 incident?

6 A. I did.

7 Q. When you say you collected it, what do you mean?

8 A. I took possession of the BEST kit from Special Agent
9 Perry.

10 Q. Do you think you could recognize it if I showed it
11 to you?

12 A. Yes, sir.

13 Q. This has already been marked as State's exhibit 7
14 for identification purposes, but if you can look at it for me.
15 What appears to be in this exhibit?

16 A. It is the single yellow zip lock, small zip lock bag
17 containing a tan powder substance.

18 Q. This is the Baggie you collected from Agent Perry?

19 A. It is.

20 Q. And does it appear to be in the same or
21 substantially in the same condition as it was when you
22 collected it that day?

23 A. It does.

24 MR. COX: At this time we move to enter exhibit 7
25 into evidence.

1 MR. STITELY: No objection.

2 THE COURT: State's Exhibit 7 is admitted into
3 evidence.

4 BY MR. COX:

5 Q. Agent Shaw, you have collected at this point in your
6 investigation the money counter and the three BEST kits?

7 A. Yes.

8 Q. What is your next step with the BEST kits?

9 A. Well, I added the contents of the items that were
10 located in the living room area of the residence by Special
11 Agent Fowler, I added those to the BEST kit. I then sealed
12 all the BEST kits, make sure they're sealed and properly
13 documented, and then I submit them to the SLED laboratory for
14 testing.

15 Q. When you say you submit them to the SLED laboratory,
16 physically where do you take them for testing?

17 A. At the SLED lab there is a room for evidence
18 submittance and they are pre-logged into the computer and they
19 are then dropped into locked boxes and we basically turn in a
20 card that says that it's full of evidence, they know which
21 boxes to check and once the lock is pushed, no one else has
22 the key except for whoever comes and unlocks it, to unlock the
23 locker.

24 Q. Okay. So after collecting in particular these three
25 items from Agent Perry, Agent Fowler and then yourself

1 collecting, did any other agent with SLED or law enforcement
2 or anyone else collect these items before you submitted them
3 for testing?

4 A. No.

5 MR. STITELY: Judge, part of our stipulation, we are
6 stipulating to the chain. There is no violation of the
7 chain in this case.

8 MR. COX: He's right, Your Honor. I'm just trying
9 to put what I can on the record before we get to that
10 part.

11 THE COURT: Very well.

12 BY MR. COX:

13 Q. Agent Shaw, after submitting the BEST kits to the
14 laboratory for testing, were these BEST kits ever tested?

15 A. Yes.

16 Q. Did you ever, as the lead officer in this case, did
17 you ever receive the results of this testing?

18 A. I did.

19 Q. Okay. I'm showing you what's been marked as State's
20 Exhibit number 34. Look through that for me and just let me
21 know if you recognize it.

22 A. (Witness complies.) Yes. It's the lab results from
23 the three BEST kits submitted under this lab number.

24 Q. Do you recognize who did the testing?

25 A. I never actually met any chemist.

1 Q. Is it reflected in that report?

2 A. I believe it is.

3 Q. Okay. Were you able to identify the BEST kit
4 numbers matching in that report as the ones you submitted for
5 evidence?

6 A. Yes, sir.

7 MR. COX: Your Honor, at this time we offer State's
8 Exhibit 34 into evidence. These are the lab results for
9 the BEST kits.

10 MR. STITELY: Pursuant to the stipulation, no
11 objection.

12 THE COURT: State's Exhibit 34 will be admitted into
13 evidence.

14 MR. COX: Thank you, Your Honor.

15 BY MR. COX:

16 Q. Agent Shaw, I'm going to let you hold onto that. If
17 you could, just identify for us who completed the testing on
18 these items?

19 A. Lawrence Zivkovich.

20 Q. According to that report is he employed with SLED?

21 A. Yes.

22 Q. Okay. All right. If you would, identify for us a
23 BEST kit ending in 2379. What were the results of the testing
24 of the yellow Baggie found in the BEST kit ending in 2379?

25 A. The zip lock bag containing a powder substance

1 tested positive for heroin with a net weight of 0.44 grams.

2 Q. Is there a, I guess, percentage or an accuracy
3 percentage?

4 A. Confidence level for the weight is 99.7 percent.

5 Q. And that BEST kit -- That yellow Baggie in that BEST
6 kit was found where?

7 A. That was the items removed from Mr. Carver's
8 person.

9 Q. If you could, find the results of testing done on
10 BEST kit 3759.

11 A. A zip lock bag containing a powder substance,
12 results are positive test for heroin with a net weight of 0.45
13 grams and the confidence level of 99.7 percent.

14 Q. And this, the item contained in this BEST kit was
15 found where?

16 A. That was found in the interview room below
17 Mr. Smith's person.

18 Q. At the SLED annex?

19 A. Yes, sir.

20 Q. Okay. All right. If you could go to BEST kit
21 number - go to the one remaining BEST kit.

22 A. That's BEST kit 306163, and it has a plastic bag
23 containing a powder substance with a positive result for
24 heroin with a net weight of 16.53 grams and a confidence of
25 99.7 percent.

1 Q. You said 16.53 grams?

2 A. Yes, sir.

3 Q. This Baggie of 16 and a half grams of heroin, where
4 was it located?

5 A. It was located in the master bedroom of 100 River
6 Bend Drive, apartment H25, West Columbia.

7 Q. In that same bedroom what other items were located
8 near the 16 and a half grams of heroin?

9 A. There was a larger plastic bag that contained both
10 small yellow zip lock plastic bags as well clear zip lock
11 plastic bags.

12 Q. Agent Shaw, during your investigation this day, what
13 similarities did you find between the items collected at the,
14 I'll call them incidents, but the three different BEST kits
15 that you collected, what similarities did you find with the
16 items?

17 A. The small yellow zip lock bags were present at each
18 incident.

19 Q. Okay. Did these small Baggies appear to be the
20 same?

21 A. They did.

22 Q. Agent Shaw, there's been testimony that money was
23 found at the scene. Where was the money at the apartment
24 found?

25 A. In the black safe located underneath the money

1 counter.

2 Q. Was that collected?

3 A. It was.

4 Q. Did you fill out the seizure paperwork?

5 A. I did.

6 Q. Again, the safe was located in which part of the
7 apartment?

8 A. The closet in the master bedroom on the left-hand
9 side of the closet.

10 Q. Agent Shaw, just to wrap up, kind of backtrack a
11 little bit. Back at the Walmart parking lot you testified
12 that you or no other agents to your knowledge searched
13 Mr. Smith. When you say no one searched him, you didn't have
14 him, you didn't do a strip search?

15 A. No.

16 Q. You didn't do any kind of full body or full cavity
17 searches?

18 A. No.

19 Q. Would you do that kind of thing in the Walmart
20 parking lot?

21 A. I would not and I would not have done it on a male.

22 Q. Okay. Agent Shaw, after locating the yellow Baggie
23 found on Roland Carver and also the yellow Baggie located in
24 the annex, after all of these were collected, was there
25 anyone, I guess, prior to getting the search warrant, did

1 anyone go back to the apartment previously?

2 A. Law enforcement or?

3 Q. I apologize. That was a bad question. Anyone from
4 your team of agents, after the vehicle was stopped, did anyone
5 go back to the apartment building?

6 A. Not immediately. I made the phone call to my
7 supervisors to have someone sent that was in the office which
8 ended up being Special Agent Thompkins.

9 Q. Okay. And around what time would you have made that
10 call?

11 A. It would have been when I left the Walmart parking
12 lot or was about to leave knowing that I was gonna be typing a
13 search warrant for the residence.

14 Q. So after determining you were going to be doing a
15 search of the apartment, you sent another agent back to the
16 apartment?

17 A. Yes, sir.

18 Q. What did you instruct that agent going back to the
19 apartment to do?

20 A. Just to maintain a visual of the residence door, not
21 interact with anybody coming or going, just keep an eye on the
22 door.

23 Q. To your knowledge that was maintained from that
24 point until you executed the search warrant?

25 A. It was.

1 Q. To your knowledge, did anyone, was anyone seen at
2 the apartment leaving or going other than, I guess, Ms.
3 Harris, Ms. Tameikia Harris found inside the apartment when
4 the search warrant was executed?

5 A. No. When we executed the search warrant, Ms.
6 Harris' son came later to take her to a doctor's
7 appointment.

8 Q. So from the time that you had Agent Thompkins go to
9 the apartment, to your knowledge no one else was seen coming
10 or going from that point until you went inside to do the
11 search?

12 A. Correct.

13 MR. COX: Your Honor, that's all I have at this
14 time.

15 THE COURT: Please answer any questions Mr. Stitely
16 may have for you.

17 CROSS EXAMINATION

18 BY MR. STITELY:

19 Q. Just briefly, Agent Shaw. You stated that when you
20 arrest Mr. Smith, you cuffed him behind his back, correct?

21 A. Yes, sir.

22 Q. At the SLED interrogation room -- What do you guys
23 call it, interview room?

24 A. Interview room.

25 Q. Is there recording devices available out there?

1 A. I don't have knowledge of any. I know there's a
2 camera there. I don't know if it's operable. I know that
3 when they do record interviews, it's done with some sort of
4 separate device.

5 Q. But this is like an actual interview or
6 interrogation room that's used routinely by SLED to talk to
7 people, correct?

8 A. Yes.

9 Q. Actually, I think I've been in that room, longer
10 room, bigger table?

11 A. It's enough to sit two on each side and one at the
12 head.

13 Q. To you knowledge though there was no recording on
14 this case, correct?

15 A. No. With narcotics investigation we do not record
16 interviews.

17 Q. Did anyone go back and grab the surveillance cameras
18 from Walmart following Mr. Carver as he entered in and went to
19 the bathroom?

20 A. No, sir.

21 Q. Were any of your officers, I ask you because I guess
22 you're the supervisor, equipped with any kind of body cams,
23 dashboard cams or anything like that at the time?

24 A. We do not have dashboard cams in our agency and our
25 agency was in the testing phases of body cameras and they were

1 not issued to the agents yet.

2 Q. There's been some talk about a cell phone that was
3 recovered. Did you execute a search warrant on that
4 telephone?

5 A. On two cell phones.

6 Q. There's one last point of clarification. You don't
7 know, I asked Thompkins, but there was no drugs located in the
8 safe, only \$1800.00, correct?

9 A. Correct.

10 MR. STITELY: No other questions. Thank you, ma'am.

11 THE COURT: Redirect?

12 MR. COX: Your Honor, no redirect.

13 THE COURT: All right. You may step down.

14 THE WITNESS: Thank you.

15 MR. COX: Your Honor, the State rests.

16 THE COURT: Mr. Stitely.

17 MR. STITELY: Your Honor, the defense would make the
18 following motion for directed verdict on all three
19 charges. The evidence at this time in a light most
20 favorable to the State are insufficient as a matter of
21 law to proceed forward to a finder of fact.

22 THE COURT: All right.

23 MR. STITELY: As to all three indictments.

24 THE COURT: Any response?

25 MR. POGUE: Your Honor, the State would just simply

1 respond and point to the litany of cases that refer to
2 circumstantial evidence. Your Honor, in this case there
3 is substantial circumstantial evidence that we believe
4 supports the elements of each crime for which he's been
5 indicted in this particular case. The trafficking,
6 there's circumstantial evidence in his possession of the
7 trafficking amount of weight, the heroin that was found
8 in his bedroom closet. The DMV indicates that that's his
9 house. They saw him leave that house. The incident - or
10 the report for the drug analysis clearly shows that it's
11 over 14 grams weight which is a threshold amount for what
12 that particular charge is, Your Honor, and you have the
13 circumstantial evidence for the distribution. Your
14 Honor, you have, well, actually direct -- Let me take
15 that back.

16 There was equivocation in regard to he could not
17 recollect what he told the officers, however, there was a
18 written statement submitted into evidence under the prior
19 inconsistent statements which clearly shows that Mr.
20 Carver indicated to law enforcement that he purchased it
21 from the defendant in this particular case in the Walmart
22 parking lot. There is also eyewitness testimony from a
23 couple of the officers that also corroborates those
24 particular, that particular interaction.

25 Your Honor, there is also, that SLED report also

1 indicates that drug analysis indicates that it was
2 heroin. In regard to possession with intent to
3 distribute, Your Honor, clearly there's circumstantial
4 evidence that he is using these, the heroin to
5 distribute, that he has an intent to distribute this
6 heroin. In regards to these items that were found on the
7 floor in the interview room, all the Baggies are consist
8 with each other, they're unique in that way, Your Honor,
9 and we submit that there is also overwhelming
10 circumstantial evidence for a submission to the fact
11 finder to make a determination as to the guilt or
12 innocence on the charges.

13 THE COURT: Mr. Stitely, anything else?

14 MR. STITELY: Nope.

15 THE COURT: All right. I'm gonna take a short
16 break. It's been two hours. Let me speak with y'all.

17 (Side bar off the record.)

18 THE COURT: Before we take a break, in regard to the
19 defendant's motion for directed verdict, in light of the
20 testimony that we've heard, the evidence presented during
21 trial, in light of the arguments, the motions of the
22 defendant, and the arguments of the State, I'll deny the
23 directed verdict motion at this time. And you, of
24 course, have renewed all of your previous objections I
25 assume?

1 MR. STITELY: Yes.

2 THE COURT: All right. We'll take a short recess.
3 Please refresh yourselves.

4 (Short break.)

5 THE COURT: The State has rested. We'll turn it
6 over to Mr. Stitely.

7 MR. STITELY: Judge, at this time it may be
8 appropriate to give my client the colloquy about whether
9 he wishes to testify.

10 THE COURT: All right.

11 MR. STITELY: I can give an opening statement and
12 then I can kind of go from our direction from there, but
13 that way he gets a moment to think about it in case he
14 wants to change his mind.

15 THE COURT: All right. Thank you for that. Okay.

16 Mr. Smith --

17 THE CLERK: Do you want me to swear him in?

18 THE COURT: Place him under oath.

19 Thereupon,

20 JEROME SMITH

21 after having been first duly sworn, testified as follows,

22 EXAMINATION

23 BY THE COURT:

24 Q. Okay. Mr. Smith, at this time I'm going to explain
25 to you some of your rights. If you do not understand anything

1 I say, just let me know. If you do want me to explain
2 anything in more detail, please let me know that as well. Do
3 you understand that?

4 A. Yes, Your Honor.

5 Q. All right. We have now reached the stage of the
6 trial where you may present your defense. You have the right
7 to claim the protections given to you by the Fifth Amendment
8 of the Constitution of the United States. This amendment
9 states in part that no person shall be compelled in any
10 criminal case to be a witness against themselves, and this
11 means you cannot be required to testify in this case. You
12 have the right to testify on your own behalf, however, no one
13 can make you testify. This is a personal right and no one can
14 waive this right except you.

15 If you decide to testify, you will be subject to the
16 same rules that govern other witnesses and you may be examined
17 or cross examined on any relevant issue in this case. In
18 addition, if you have any convictions that involve dishonesty
19 or false statements or for crimes punishable by imprisonment
20 for more than one year and this Court determines that the
21 probative value of admitting this evidence outweighs the
22 prejudicial effect to you, the Solicitor will be able to
23 introduce your record to attack your credibility. Do you
24 understand that?

25 A. Yes, Your Honor.

1 Q. If you decide to testify, this decision on your part
2 must be freely, voluntarily and intelligently made with
3 knowledge of the protections given to you by the Fifth
4 Amendment and the consequences of your decision to testify.

5 If you decide not to testify, the fact that you did
6 not testify will not be given any consideration by me, the
7 fact finder. Do you understand that?

8 A. Yes, Your Honor.

9 Q. And there's absolutely no prejudice to you because
10 you did not testify. Do you understand that?

11 A. Yes, Your Honor.

12 Q. Okay. It's left entirely up to you whether or not
13 you testify. You may talk with your attorney, your family,
14 friends, or anyone else, but the final decision will be left
15 entirely up to you. Now, do you understand what I have
16 explained to you, sir?

17 A. I do, Your Honor.

18 Q. Do you have any questions about what I have
19 explained to you?

20 A. I do not.

21 Q. Okay. Have you discussed with your lawyer whether
22 you should or should not testify?

23 A. I have.

24 Q. Okay. Do you wish to talk with your lawyer anymore
25 at this time?

1 A. No, Your Honor.

2 Q. Okay. And do you wish to testify?

3 MR. STITELY: Judge, I think we can ask him that
4 question again once we've made our decision as to what we
5 intend to do with his testimony. I'll do my opening
6 first.

7 THE COURT: All right. We will come back to that.

8 MR. STITELY: And, Judge, for the record, say if he
9 does not have anything directly impeachable to our
10 knowledge as far as a criminal record --

11 MR. COX: Your honor, unless the door is opened to
12 any of our convictions, then that's correct.

13 THE COURT: We began the trial with opening
14 statements. The State's counsel went first, and now I'll
15 hear from you.

16 MR. STITELY: Just briefly, Your Honor. Please the
17 Court.

18 THE COURT: Sir.

19 MR. STITELY: In any criminal trial when you sit
20 down in the jury box or as the finder of fact you come in
21 with a blank slate. You don't even know why you're here.
22 It's a unique situation in this case in that you have a
23 depth of legal knowledge, that you kind of have an idea
24 as to why you're here, but as you sit up there and listen
25 to the facts today, you have listened to the facts today,

1 you have to remember the goal is to find out what
2 happened beyond a reasonable doubt. In any criminal
3 trial the defense has absolutely no burden. We don't
4 have to ask a single question. We don't have to prove
5 anything. We don't have to disprove anything. My client
6 stands innocent until proven guilty, and after you
7 consider all the facts, you will be asked that question.

8 It's a unique situation, but in that consideration
9 you get to look at the evidence, but more importantly you
10 have to look at what's not presented. You have to look
11 at things that are missing in the case because the State
12 bears the burden. So as you listen and as you reflect
13 and you hear what everyone has to say as you go through
14 the trial, you have to listen for what could be done,
15 what is done, what should be done so you can make an
16 ultimate determination of the facts because that's your
17 job. Questions of law don't apply to you. They do in
18 other ways, but they don't. The only thing that we have
19 here is to determine whether or not the State can prove
20 Jerome Smith committed three crimes beyond a reasonable
21 doubt. That's all I have to say. Thank you. And,
22 Judge, at this time we rest, so if you want to ask to
23 confirm that he does not want to testify, that would be
24 our position.

25 THE COURT: All right. Mr. Smith, we did hear a

1 brief opening from your attorney. Do you wish to testify
2 on your own behalf, sir?

3 JEROME SMITH: I do not.

4 THE COURT: Okay. Does the defense rest?

5 MR. STITELY: We do, Judge.

6 THE COURT: All right.

7 MR. STITELY: At this time I would renew any and all
8 motions including my motion and now that the evidence of
9 a whole is in for a directed verdict on the basis of no
10 evidence sufficient to go forward to a finder of fact as
11 well as renewing any and all pretrial and trial
12 motions.

13 MR. POGUE: Your Honor, we just renew our response
14 in regards to substantial circumstantial evidence, Your
15 Honor, in regards to the evidence that was presented in
16 regards to the three charges that he was indicted on as
17 you recall in this case.

18 THE COURT: Okay. The renewed motions remain
19 denied. It is 4:10. I have a hearing tomorrow morning
20 at nine. It's a virtual hearing. I suspect I'll be done
21 certainly by ten.

22 MR. STITELY: Judge, one thing that the Solicitor
23 did address as far as timing is we do need to consider
24 the issue of bond. Technically the case is now going in
25 earnest. My client is out on a PR bond. Technically

1 that bond does terminate when he goes before the jury or
2 whatever after trial. He has been out on bond.

3 THE COURT: Y'all haven't done closing argument so
4 --

5 MR. STITELY: No. But technically the case is now
6 going where it wasn't before today.

7 THE COURT: Okay.

8 MR. STITELY: I know you let him out at lunch time
9 but, Your Honor, like I said, he was arrested back in
10 2019, the case was dismissed, he got indicted directly,
11 he actually came in, we did the hearing, he presented
12 himself to the jail, did a walk through, he's been on a
13 PR bond. In the last year he showed up for every
14 appearance. I do not believe there is any reason why he
15 wouldn't return to court. He's been here as you saw
16 everyday. I'd ask that you continue him through any
17 potential sentencing phase if that becomes necessary. I,
18 of course, advised him that if he does not show up, the
19 trial continues forward without him and if he was
20 unsuccessful, his sentence would ultimately be sealed and
21 they would go get him and bring him and that never looks
22 good in front of a Judge to not show up and they're out
23 looking for you. So, Your Honor, I guess technically
24 it's in the Court's discretion. But that's where we're
25 at. You've seen him. He showed up as asked. He's still

1 here.

2 THE COURT: Anything from the State?

3 MR. COX: No, Your Honor. We were just gonna raise
4 the same issue. It's just something we need the Court to
5 address and obviously going forward just the nature of
6 the defendant not showing up will not pause this
7 proceeding. We will proceed forward. The fact finder
8 will have to make a decision. We'll continue this trial
9 in his absence.

10 THE COURT: Sure. And I'm inclined to leave it
11 status quo. So I think he is -- He hasn't given any
12 reason -- Well, he's here today. He's come on his own
13 accord throughout the trial. He's been here the past two
14 years while this case was pending so we'll leave it as it
15 is. Obviously I realize that the case is going forward,
16 but I need to hear your summations.

17 MR. COX: Absolutely.

18 THE COURT: And there's a lot I have to --

19 MR. STITELY: And that's what I explained to him.
20 And that's just the normal --

21 THE COURT: So we've got a ways to go.

22 MR. STITELY: More to do.

23 MR. COX: Just so we have a record, Your Honor, you
24 are continuing, or you are now replacing the defendant on
25 a PR bond for the remainder of this trial?

1 THE COURT: That's correct.

2 MR. STITELY: We will be here whenever you want us
3 to, Judge. That plea I had is off.

4 THE COURT: Okay. Anything else for the record?

5 MR. COX: No, Your Honor.

6 THE COURT: From the defendant?

7 MR. STITELY: Nope.

8 THE COURT: All right. Let's go off the record.

9 (Whereupon, court was adjourned for the evening.)

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1 July 14, 2021

2 BAILIFF: All rise. Court is now in session. The
3 Honorable Judge Walton McLeod presiding.

4 THE COURT: All right. Good morning. Please be
5 seated, ladies and gentlemen. Folks, I'm sorry to keep
6 you waiting. We had a separate case hearing that I had
7 to handle this morning that went on for a while. Got
8 that done and then wanted to meet with the attorneys in
9 this case where we discussed essentially, if we had still
10 had a jury here, it would have been a charge conference,
11 a jury charge conference on how we were going to charge
12 the law essentially. We discussed the applicable laws
13 pertaining to the drug offenses that the State is
14 charging against the defendant in this case. I think
15 we're all on the same page, but I would like to confirm
16 that for the record.

17 Mr. Pogue, you provided a copy to myself and
18 Mr. Stitely of some of the controlling elements and
19 charges pertaining to the drug offenses; is that correct?

20 MR. POGUE: That is correct, Your Honor. That would
21 be just the language that the State would propose and I
22 believe we discussed that in chambers. I believe defense
23 counsel didn't have any objection to that particular
24 language. Obviously, Your Honor, it's at your discretion
25 however you choose to determine the law, but that was

1 just the State's offering in this case.

2 MR. STITELY: That's correct, Judge, and I think
3 what we decided is that we would just provide the entire
4 charge as a court exhibit, make it available to the court
5 reporter if it needed to be recorded at a later time.

6 THE COURT: And just to clarify as far as the entire
7 charge, I'm referring to the drug charges.

8 MR. STITELY: Yes, sir. No problem with those and
9 then no problem with the Court's other standard
10 charges.

11 THE COURT: Obviously, you know, one is evidence,
12 credibility of witnesses, things that we would charge in
13 any jury trial case. Those will just be questions for
14 the Court as a bench trial fact finder. And we also
15 discussed the recent case of State versus Stewart which
16 just had some input as far as a language of constructive
17 possession in a trafficking context.

18 MR. POGUE: That's correct, Your Honor, and removing
19 any, you know, obviously jury instruction. There is no
20 jury in this case, but the instruction I ask, since
21 you're the fact finder of the trial, that there is even a
22 permissible inference of constructive possession if the
23 defendant is shown to have dominion and control over the
24 property under which the drugs were found.

25 THE COURT: All right. Do you concur with that,

1 Mr. Stitely?

2 MR. STITELY: I do.

3 THE COURT: All right. Well, we have heard all of
4 the evidence in the case so I'll allow the attorneys to
5 present some summation, closing points, I'll take the
6 matter under advisement and deliberate upon it for a
7 period of time. I can't tell you how long. It may take
8 a while, but be happy to hear from the parties at this
9 time.

10 MR. COX: Your Honor, may it please the Court.

11 THE COURT: Yes, sir.

12 MR. COX: From the outset of this case, Your Honor,
13 we told you this was going to revolve around common
14 sense. We told you that that's what you were going to
15 need to rely on in reviewing the evidence. We asked you
16 to listen to the testimony and observe the evidence as it
17 was presented to you and now we ask you to rely on your
18 common sense to take even the only logical direction that
19 the evidence can take you.

20 Your Honor, that direction is that on October 23rd,
21 2019, Jerome Smith left his home at apartment H25 on 100
22 River Bend Drive, he got into his white Honda Odyssey
23 van, drove right up the road to the Walmart in Augusta -
24 off of Augusta Road in West Columbia, and while in the
25 parking lot provided just under a half a gram of heroin

1 to a man named Roland Carver. As he attempted to leave
2 that parking lot, he was pulled over by agents with SLED
3 who had been observing him the whole time from his
4 apartment. They watched this go down. He was
5 transported to the SLED annex also in Lexington County
6 where he dropped a Baggie, similar Baggie that was found
7 on Mr. Carver, a very distinct yellow Baggie with another
8 just under a half a gram of heroin by his foot underneath
9 the table where it was just him and one other agent in
10 the room.

11 Following this, Your honor, those same agents who
12 had been there since 6:30 that morning, observed
13 everything, went back to his apartment and found 16.5
14 grams of heroin along with a big bundle of these distinct
15 yellow Baggies in the master bedroom in the only dresser
16 in Mr. Smith's apartment.

17 Your Honor, that is the logical conclusion that the
18 evidence takes you down. That's the only reasonable
19 conclusion you can come to based on this evidence and
20 that is why the defendant sits here before you charged
21 with trafficking heroin, distribution of heroin,
22 possession with intent to distribute heroin. Even though
23 each of these charges we believe to be completely
24 intertwined, we do have to prove elements of each one
25 individually and beyond a reasonable doubt. I'm not

1 gonna harp too much on the legal language required for
2 beyond a reasonable doubt, Your Honor. In order to find
3 someone guilty, you have to be firmly convinced of their
4 guilt beyond any reasonable doubt, not all doubt, not any
5 possible doubt. Any doubt that you have as to the
6 defendant's guilt on these charges has to be based in
7 reason.

8 Just kind of starting chronologically, Your Honor,
9 distribution of heroin, we have to prove that the
10 defendant knowingly distributed this controlled substance
11 and that it was heroin. We know this, Your Honor,
12 specifically because of this statement from Mr. Roland
13 Carver, the statement that he was presented on the stand,
14 that he agreed that was his signature, he agreed that
15 those were his initials, those initials at the beginning
16 and at the end of the statement so nothing could be added
17 by anyone else before or after.

18 Your Honor, when he took the stand, he didn't want
19 to be here. He very clearly did not want to take part in
20 this proceeding, but we believe in the reliability of
21 this statement nonetheless. He confirmed that he was
22 there that morning. He confirmed that he went inside the
23 Walmart from the parking lot. He confirmed that he was
24 apprehended by SLED agents and that he spoke with them
25 out in the parking lot. This is corroborated by the

1 facts in his statement and also by the surveillance done
2 by SLED on scene, that he was the white male that they
3 described entering the van at that time, the van that the
4 only other occupant was Jerome Smith.

5 Now, Mr. Carver did not identify Mr. Smith himself.
6 He referred to someone as a black male named Mr. C., but
7 we know by circumstantial evidence, Your Honor, that the
8 only other person in the vehicle was Mr. Smith.

9 Now, Your Honor, we did not choose Mr. Carver in
10 this case. Quite simply the defendant chose him. He
11 chose him when he decided to sell or provide Mr. Carver
12 with that heroin that day. We would love to have been
13 able to bring you somebody whose credibility or
14 reliability is without question, but simply those kind of
15 people don't find themselves involved with heroin deals,
16 so we brought Mr. Carver because he was intimately
17 involved in this case.

18 The other evidence that was provided to you was that
19 it was Mr. Smith who distributed this particular Baggie
20 of heroin at this time. It was a distinct yellow
21 packaging of this bag that the heroin was in. It was a
22 small clear but yellow tinted zip lock Baggie, the same
23 as provided in the testimony by Agent Shaw and the other
24 agents who collected more evidence throughout the day,
25 the same packaging found later at the annex and later at

1 his home. The only other person connected to those two
2 other events was the defendant. That proves that the
3 defendant beyond a reasonable doubt is the person who had
4 possession and was the one who distributed this packaging
5 to Mr. Carver. Your Honor, as far as the substance
6 itself being heroin, in this case the evidence shows that
7 Lawrence Zivkovich from SLED tested this controlled
8 substance from this Baggie and that it was confirmed to
9 be heroin with a 99 percent confidence level.

10 The next charge, Your Honor, is possession with
11 intent to distribute. This was at the annex, a small
12 Baggie found directly beside the defendant's foot. The
13 only other person in the room was Agent Perry. This is
14 again the same Baggie found on Mr. Carver, where
15 Mr. Smith was found at his home later on and this Baggie
16 was not found, it was not seen in the room upon when he
17 entered, it was not found on top of the table, it wasn't
18 found near Agent Perry or anywhere else in the room
19 except beside Mr. Smith's foot. He was the only person
20 who could have placed it there. He was the only one in
21 dominion and control of the place underneath his own
22 chair.

23 As far as the intent to distribute that particular
24 amount of heroin, Your Honor, we again reiterate the
25 evidence of this being packaged the exact same way as the

1 heroin found on Mr. Carver and that was provided by
2 Mr. Smith. It's packaged in the same kind of Baggies
3 found later on at Mr. Smith's home, and contained the
4 same brown powder substance confirmed by Lawrence
5 Zivkovich to be heroin. So those consistencies clearly
6 show that this was, at this point Mr. Smith possessed the
7 second Baggie with intent to distribute.

8 Finally, the last charge of trafficking, Your Honor,
9 what we have to prove is that not only did the defendant
10 knowingly possess this amount of heroin, or heroin, it
11 has to be over a certain level. It has to be between 14
12 grams and 28 grams. Simply chemist Zivkovich was able to
13 confirm that this was, in fact, heroin and that it was,
14 in fact, 16.53 grams. Now, where this was located is
15 obviously key, Your Honor. The defendant was not at the
16 home, but it is at the apartment that he was seen leaving
17 at 6:30 that morning, or at 8:30 that morning. It's the
18 home that he identified on his driver's license. It's
19 the home that he identified as his place of residence on
20 the white van registered in his name that he was seen in
21 and stopped in that same day. The same front door of the
22 apartment has a big S beside the front entrance. Your
23 Honor, we would argue that that S clearly stands for
24 Smith.

25 Your Honor, now, this is in the master bedroom. You

1 heard testimony that the only two other rooms in the
2 apartment, one of them was, looked like it was only for
3 storage and the other one appeared to be a kid's room.

4 Your Honor, the only dresser remaining, or the only
5 dresser which this heroin was found was in a black CD
6 case next to it along with these same empty yellow
7 Baggies consistent with the Baggies found throughout the
8 rest of the day, at the annex, on Mr. Carver, this is
9 just another one of these strict consistencies in this
10 case and continue to show Mr. Carver - or Mr. Smith had
11 knowingly possession of the heroin found in his bedroom.

12 Your Honor, we did not, we were not able to provide
13 you with any kind of body cams or security footage, but
14 we heard the testimony from the many law enforcement
15 agents with SLED who were involved in this case, how
16 their surveillance on Jerome Smith started at 6:30 in the
17 morning and did not end until they had him arrested.
18 They gave you the testimony where exactly in the home
19 they searched, where exactly all these items were found.
20 All of their testimony certainly overcomes any lacking of
21 recordings or video footage that could have possibly been
22 gathered in this case in addition. And their
23 surveillance in the Walmart parking lot is also
24 corroborated in the same signed statement from
25 Mr. Carver.

1 Your Honor, particularly to the trafficking, the
2 idea that anyone else could have possessed this, the idea
3 that the 16 grams of heroin could have belonged to anyone
4 other than Mr. Smith, this single remote possibility does
5 not at all fall in line with the rest of the evidence in
6 this case, that the only person found with these same
7 distinct yellow Baggies with the same brown powdery
8 heroin throughout the rest of the day at multiple other
9 locations away from the apartment was Mr. Smith.

10 Your Honor, the evidence in this case removes any
11 reasonable doubt of the defendant's guilt because of
12 those three consistencies I've been harping on. That's
13 the brown heroin that all looks the same, the yellow
14 Baggies found at each step of this case that are all
15 identical, and then the last consistency is simply the
16 defendant himself. At each step of the way there is the
17 defendant. So the only reasonable conclusion that you
18 can come to and the only direction that your common sense
19 can take you is that the defendant is guilty of these
20 three charges so we ask that you do find him guilty.

21 THE COURT: Thank you. Mr. Stitely.

22 MR. STITELY: Judge, if it please the Court.

23 THE COURT: Yes, sir.

24 MR. STITELY: Your Honor, it's always difficult when
25 you're a one man show against an established legal team

1 of three prosecutors, but I try to do the best to
2 represent my clients. Of course, anything I say during
3 the trial please don't make that representative of my
4 client. It's me doing my job.

5 It's interesting that the Solicitor wanted to harp
6 on common sense in this case. When you pick a jury,
7 trier of fact, you are asking them to use their common
8 sense, but what you're asking a specific set of jurors is
9 not just to bring their common sense, but to bring their
10 life experiences, their knowledge, what they know, and
11 what they can offer through everything they've gone
12 through.

13 In this case when you're talking to a jury of very
14 learned people, you're asking them to rely on that
15 learning that they have. It's important because each of
16 these cases is independent and it has to be tried as such
17 and it's hard in this situation, but the only evidence in
18 this case is what came from that stand and is what's
19 sitting right here. It's not extraneous thoughts that
20 have been floating out there. It's not concepts that are
21 not presented in the actual trial of this case.

22 Let's look at the actual trial of this case. This
23 case starts predicated on the concept of a surveillance
24 of Mr. Smith to arrest him. The word surveillance comes
25 with one thought instantly, eyes on the prize. Eyes on

1 the prize implies we're gonna do this right. We're gonna
2 tape it. We're gonna monitor it. We're gonna do it.
3 They spent two hours without identifying their target at
4 what they claimed to be a place they know he resides.
5 They don't ID him until he gets to Walmart is the
6 testimony. I think it's important because if you're
7 setting up a surveillance, and once again, the State
8 bears all the burden here, I don't have to say a word, I
9 don't have to prove anything, but if you're setting this
10 up, you have that obligation to prove it. And if you're
11 surveilling someone, why aren't you bringing a camera?
12 What aren't you getting the security footage from
13 Walmart?

14 They talk about a cell phone being seized and
15 searched. If you want to prove that my client sold drugs
16 to someone, get the cell phone records, bring them in and
17 say, look, this is where he called him, this is where he
18 texted him and set up a drug deal. That's how you prove
19 a case beyond a reasonable doubt.

20 They want to rely on Mr. Carver's statement. You
21 know the thing I though was the most compelling about
22 Mr. Carver and his statement, Mr. Pogue made it
23 abundantly clear he had nothing to lose to come up here
24 and spill the beans, rat him out. You know what he said?
25 I don't remember but, God, I would have signed any piece

1 of paper they put in front of me that day to get out of
2 that situation. Why was he not charged? If the State is
3 so absolutely certain that this quantity of heroin was
4 possession with intent to distribute, they let someone
5 charged with possession, with intent to distribute heroin
6 walk away? Disappear into the nether? Why? A man who
7 said I was terrified that they ripped me right out of the
8 bathroom, I would have signed any piece of paper they put
9 in front of me to get out of there. What does that say?
10 Someone told him if you sign this piece of paper, you're
11 going home, or he would have went in cuffs. That's
12 common sense. He had every motive to take that stand and
13 try to be a hero for the State, but he was honest and
14 said I can't tell you what happened and I would have
15 signed any damn paper they put in front of me.

16 The fact that two different officers wrote a
17 statement and made him sign it is not proof beyond a
18 reasonable doubt. Maybe more likely he's a heroin
19 dealer. Maybe we should have got the surveillance from
20 Walmart to see who he interacted with. Maybe we should
21 have gotten the cameras that are up in the parking lot to
22 see what really went on.

23 They arrested Mr. Smith. And this is fascinating.
24 The officer says we ran a drug sniff, alerted on the car.
25 There's no drugs in the car. Interesting. They said

1 that, I asked a couple of the officers who happen to be
2 dog handlers, how good are your dogs? They're good. And
3 even as they tried to deflect through later witnesses,
4 they said they were no more than six feet away. The dog
5 didn't alert on Mr. Smith. I said, how good are your
6 dogs? If Ben had dope on him, would your dog know it?
7 Yes, sir. That dog passed from me to the clerk right
8 past Mr. Smith and didn't alert. Mr. Smith, stand up
9 please and put your hands behind your back.

10 JEROME SMITH: (Complies.)

11 MR. STITELY: I'm not trying to insult my client.
12 He's not a slight skinny little thing. You can sit down,
13 Jerome.

14 JEROME SMITH: (Complies.)

15 MR. STITELY: That's how he went into the cop car.
16 Every agent said, what is the standard procedure. We
17 search them. I mean, two of them looked offended that I
18 would ask, do you search people when you arrest them? He
19 was searched, handcuffed behind his back and put in a
20 vehicle. He remained that way into a surveillance room
21 with cameras and audio recordings which conveniently
22 weren't on and then miraculously, and the officer didn't
23 say the drugs were right by him, he said they were found
24 under the table over on the other side of his right foot.
25 He's cuffed like this the whole time. At what point is

1 he pulling the drugs out of God knows where and throwing
2 them on the floor when they missed them with the drug
3 dog, they weren't in the car, and they weren't on his
4 body when he was searched? If you want to believe that
5 he wasn't searched by one of the five officers out there
6 who made it abundantly clear that policy says you search
7 someone before you put them in your vehicle, and he
8 miraculously manifested these drugs onto the floor while
9 being cuffed in a position where he can't move, that's up
10 to the finder of fact if that's reasonable, beyond a
11 reasonable doubt.

12 More likely maybe they were left over drugs that
13 they didn't get off of Carver properly. As I asked the
14 questions and you heard, the officer who got the drugs
15 off of Carver didn't put them in the BEST kit. They were
16 moved around a couple times. There's pictures of them
17 being moved around, then they get in a bag. I'm not
18 saying it was intentional. Maybe they just ended up
19 somewhere on that officer's body, that when he sat down
20 too, they just fell out. It was not a clean evidence
21 recovery in this case. That's why they had to bring up
22 three different officers to testify as to who put the
23 drugs in the bag because it wasn't the one who seized
24 them. That's important.

25 It was the officer who ran his drug dog who

1 transports my client. So the drug dog is in the car with
2 my client and there's still no alerting. There's no
3 talking about that. Isn't that interesting? As a finder
4 of fact you've got a car with the officer with his drug
5 dog transporting a guy and you're gonna show up and say
6 he threw drugs on the floor of SLED. Didn't have them in
7 his car, didn't have them on his person, didn't have them
8 when he was searched, handcuffed behind his back, but now
9 they're on the floor.

10 This is a surveillance case. We were surveilling
11 Mr. Smith. Of what? Sounds more like there was a motive
12 to try to pin Mr. Smith. Why don't you charge
13 Mr. Carver? Why do you get two officers to write a
14 statement and then say, by the way, get out of here,
15 buddy. We don't need you anymore. Does that make sense?
16 Is that how it's supposed to work to find someone guilty
17 beyond a reasonable doubt, distribution and then PWID?

18 And then we get to the last charge. I think this
19 one is really interesting. My client is now locked up
20 across town and it's interesting because they did not
21 leave someone at the apartment to monitor surveillance,
22 they all ran to Walmart and then after they get to the
23 annex, the testimony is we decided then we would send
24 someone back to the apartment to secure the scene. So we
25 have a completely unsecured crime scene, alleged crime

1 scene, or whatever you want to call it, for at least an
2 hour because they testified they left at 8:20, they're at
3 SLED at 9:25. Looks like the warrant is signed around 11
4 or so and then they go back and do a search.

5 So when they get there, it's interesting because the
6 officer says, well, there was a lady there and I think it
7 was his ex-wife. I think that's what he said. Ex-wife.
8 I think that's interesting, Judge. When you look at the
9 pictures, and I asked specifically what kind of clothes
10 were in that closet. Women's clothing. If you look at
11 the pictures on top of that dresser, there are women
12 pictures. There's one person in that house and the
13 testimony wasn't that it was a kid's room, there was two
14 bedrooms in that house. I said, was the drugs that were
15 uncovered in the same place as the money you uncovered?
16 No. The money was in a locked safe. The drugs were open
17 in the dresser in the room with the lady's clothing. If
18 you were, and this is where common sense, reasonableness,
19 discretion, all of that comes into play, wouldn't you
20 want to lock your drugs up with your money, if that's the
21 argument, that you're a drug dealer? Or would they want
22 to be in the sock drawer of a lady's dresser?

23 This isn't a mere presence case because he wasn't
24 present at the time at the location. I guess the State's
25 relying on the fact that we're gonna assume dominion and

1 control because he lives there. They didn't establish
2 that was his room. All it would have taken was one
3 officer to get up and say, well, we found this item
4 belonging to Jerome Smith in the room. In any other drug
5 case I've ever tried when they're trying to establish a
6 backpack case, they say, well, look, we found his
7 driver's license in the backpack. We found an electric
8 bill in that room. We found his underwear in the
9 underwear drawer. That didn't happen in this case.
10 There was someone at the house that day. Why was she not
11 charged?

12 If the State wants to say that, to a jury, to a
13 trier of fact, that more than one person can possess
14 drugs, all right, dominion and control floats because you
15 live in the house. We've already let one person go who
16 actually was caught with drugs on them. We get to a
17 house where a woman is there, go to a bedroom with
18 women's clothing in it, into a dresser with women's
19 pictures on it, and we don't charge her? Because she
20 absolutely had dominion and control over the house. She
21 was there. Don't charge her. I don't know if she was
22 questioned or not. That never even came up. Why not?
23 Why not question the person who is there when you find
24 allegedly a bunch of drugs? Are these your drugs? How
25 did they get there? What a perfectly good opportunity.

1 It's not my job to ask that question. It's the State's
2 job to prove their case. There are too many questions in
3 this case. Too many simple questions that could have
4 been answered.

5 It is an important decision in a criminal case.
6 Someone's life is literally on the line. When I say
7 life, I mean their freedom. In our country we value our
8 freedom above everything else. We have a jury system, a
9 trial system, a judicial system, prosecutorial side to
10 ensure justice and to protect freedoms. The burden is
11 the highest burden we have in the law in a criminal case.
12 We have all kinds of burdens in the law. We have
13 preponderance. We got reasonable suspicion. We got
14 greater weight. We have reasonable doubt, and it is the
15 robe of righteousness. I mean, that is a powerful word.
16 I think it's a silly word because of the charge, but it
17 was the best concept that we could establish to say how
18 important it truly is. Do it right.

19 As a fact finder, if you have any concerns of why
20 was this piece of evidence not in there, this case would
21 make more sense if they'd have showed me this. I'm not
22 as convinced as I should be if this piece of evidence
23 existed. If it's not there, you rule for the defendant
24 because that's what the constitution says you do. It's
25 not my job to prove a case or to disprove a case. In

1 this case there are too many problems. There's too many
2 questions. If it's surveillance, you bring the cameras,
3 you bring the eyes. If it's a locked down search, you
4 search them. If it's a drug dog, you run them. If you
5 have two different people who have drugs that day, you
6 arrest them or you at least compel them to tell you what
7 happened in some way, shape or form, not by forcing a guy
8 who says I would have signed any dang document I could
9 have to get out of there. And those were his words, to
10 get out of there. Why would he say it that way? He was
11 told you sign this piece of paper, you get to go home.
12 That's what makes sense. That's common sense.

13 You had someone in a house with drugs. You didn't
14 even question her? And you said, you go on. We got who
15 we want. But you've still got to prove it and in this
16 case the State hasn't done it, Judge, on any of them. On
17 any of the charges independent, and that's what you have
18 to sign. Sign the indictment, sign the verdict form,
19 every case must be tried individually on its own merits
20 and you have to find for each charge by itself. I don't
21 know. It's a tough question to be a juror. But you have
22 to be firmly convinced beyond all reasonable doubts.
23 Existence and non existence of evidence.

24 In this case every step of the line I asked the
25 officers, I said, did he cooperate with you? Did he tell

1 you who he was? Was he honest? Yes. My name is Jerome
2 Smith. This is my birthday. Step out of the car. Got
3 his hands cuffed behind his back. Went for a ride. They
4 asked him where he lived. He even gave his address.
5 Told them the apartment number. Those aren't the actions
6 of a guilty man. Those are the actions of a man who is
7 obeying police commands.

8 They have to prove him guilty beyond a reasonable
9 doubt, Judge, and they didn't do it. He is entitled to
10 every doubt. He is entitled to his constitutional rights
11 and that's why we ask you to find him not guilty. Thank
12 you, Judge.

13 THE COURT: Thank you. Okay. It is 11:15. I'll
14 begin deliberating on it. I would like you all to
15 confirm all the evidence. Anything else for the record
16 regarding closing?

17 MR. STITELY: No, sir.

18 MR. COX: No, Your Honor.

19 THE COURT: All right. Y'all take a look at the
20 evidence and make sure I've got what I need.

21 MR. STITELY: Judge, you will call us or text me
22 when you need me back.

23 THE COURT: Yes. Okay. The charges are Court's
24 Exhibit 2. Before I leave, I want to commend the
25 attorneys for both parties for arguing their cases.

1 Thank you.

2 MR. STITELY: Thank you, Judge.

3 MR. COX: Thank you, Judge.

4 (Whereupon, Court's Exhibit #2 marked for
5 identification.)

6 (Deliberation break.)

7 (Judge's decision at 3:30.)

8 BAILIFF: Keep your seats. Court is now in session.

9 THE COURT: All right. Good afternoon. A minor
10 housekeeping issue. Just prior to going back on the
11 record, I did speak with the attorneys in my chambers. I
12 have no confusion about what the charges were, of course,
13 but two of the drug indictments arise from the same
14 statute and the language is almost identical. I just
15 wanted to confer with both counsel just to clarify, but I
16 believe the State mentioned to me that they had noted
17 that when the case was originally called during voir
18 dire. Just for my purposes here now the indictment
19 number 2020-GS-32-00731 is for distribution, and 730 is
20 for possession with intent to distribute, okay?

21 MR. COX: That's correct, Your Honor.

22 THE COURT: I said earlier when we left before I
23 began to deliberate here, I wanted to thank the lawyers
24 for both their jobs in presenting their respective cases
25 and, you know, I echo that again. In reviewing the

1 evidence you have to certainly review evidence, get some
2 thoughts, review it again and review it again which is
3 what I endeavor to do and certainly endeavored to do here
4 today.

5 Prior to breaking, the State, the defense, agreed
6 upon what would normally be a jury charge, the applicable
7 law that is to be used in the fact finder's
8 deliberations. Those remain as a court exhibit. And I,
9 of course, was guided by those in reviewing the evidence.
10 But in addition, I was also guided by the same things
11 that I would have told the fact finders if we still had a
12 jury here, the evidence in this case, obviously we heard
13 a lot from the attorneys, but the statements that the
14 attorneys make during the course of a case whether it's
15 opening remark or closing remark or even remarks between
16 one another and to the Court are not evidence. The
17 evidence that I was considering was the evidence that was
18 admitted, the documentary evidence, substance evidence or
19 sworn testimony taken from the witness stand. The State
20 has a burden to prove their case beyond a reasonable
21 doubt, each one of their cases, and the only evidence I
22 weighed in reaching those conclusions was the evidence
23 from the witnesses and the documentary additional
24 evidence admitted into the record.

25 With any other case there's always, usually it's

1 direct evidence and circumstantial evidence. This case
2 involved a little bit of both. We had eyewitness
3 testimony in certain parts of the case, but also
4 circumstantial evidence that can be used and weighed just
5 the same. Both direct and circumstantial evidence was
6 present in this case and it was weighed by the Court.

7 The defendant did not testify and I did not take
8 that into any account whatsoever. But ultimately I came
9 up with a decision which I thought, which I believe was
10 appropriate based upon the evidence that I reviewed and I
11 will announce those now.

12 Obviously the State had the burden of proof to prove
13 their respective cases beyond a reasonable doubt. As to
14 indictment number 2020-GS-32-00729, trafficking in
15 heroin, 14 grams or more but less than 28 grams, the
16 Court finds the defendant guilty. As to the charge of
17 distribution of heroin, indictment 2020-GS-32-00731, the
18 Court finds the defendant guilty. And as to indictment
19 2020-GS-32-00730, possession with intent to distribute
20 heroin, the Court finds the defendant guilty. The Court
21 makes these findings on a finding that the State has
22 proven their case beyond a reasonable doubt. Are there
23 any post trial motions that need to be heard now?

24 MR. STITELY: Yes, sir. The defendant would make a
25 motion. It's not a JNOV, I guess, but it's a judgment

1 not withstanding, but that the evidence in a light was
2 insufficient to come back with a finding of guilt. We
3 would ask for a new trial on that basis.

4 THE COURT: You also renew all your prior
5 objections?

6 MR. STITELY: Yes, sir.

7 THE COURT: All right. Anything from the State?

8 MR. COX: Nothing from the State, Your Honor.

9 THE COURT: Okay. The Court has heard the
10 defendant's motion. In light of the evidence that it
11 weighed in reaching its decision, it respectfully denies
12 the defendant's motion.

13 MR. STITELY: Judge, as far as sentencing, it's a
14 statutory mandatory. I don't even believe there's a
15 upper range or a lower range. It's a one sentence
16 shot.

17 THE COURT: I think that's the case too.

18 MR. STITELY: The only mitigation, I would ask you
19 to run them concurrently, but whatever else the State
20 has.

21 THE COURT: All right. Well, I don't think there's
22 much discretion in the trafficking.

23 MR. COX: Your Honor, you will have to make a ruling
24 on the sentence for the possession with intent to
25 distribute first offense and distribution first, but

1 Mr. Stitely is correct, this level of trafficking carries
2 a mandatory 25 years as well as a fine of \$200,000.00
3 attached.

4 THE COURT: Very well. Mr. Stitely, any other
5 mitigation you wish to present?

6 MR. STITELY: It's a mandatory, Judge. I don't
7 think we can mitigate anything. We would ask you to run
8 it concurrent. As you heard, they were first offense by
9 statutory requirement. I don't think he has any criminal
10 convictions that are of a General Sessions level under
11 more than 15 years.

12 THE COURT: Okay. Is the paperwork ready?

13 MR. COX: I have the sentencing sheets here, Your
14 Honor.

15 THE COURT: Have you had a chance to look them over,
16 Mr. Stitely?

17 MR. STITELY: It's the old sentencing sheets, Judge.
18 I understand those.

19 THE COURT: Oh, they are?

20 MR. POGUE: They're the new ones.

21 MR. STITELY: Oh, they're the new ones?

22 THE COURT: Yeah.

23 MR. STITELY: We're good, Judge.

24 THE COURT: All right. Pass them forward.

25 MR. STITELY: In a trial we don't sign them. Only

1 the Judge signs them.

2 MR. COX: (Proffering.)

3 THE COURT: Mr. Stitely, obviously your client
4 understands this is a violent and serious conviction to
5 have on his record and a strike?

6 MR. STITELY: Yes. Judge, we think he was in jail
7 for around 10 days. I think you have to put the number
8 down.

9 THE COURT: That's exactly what I'm doing. The
10 fine is \$200,000.00. I believe you're right.

11 MR. COX: That's correct, Your Honor.

12 THE CLERK: But you can find him of indigency in
13 questioning the defendant, if you wish.

14 THE COURT: He has retained counsel. I don't think
15 I can do that.

16 THE CLERK: Judge Keesley has done that before,
17 asked him if he had that much money.

18 MR. STITELY: He does not have the funds to pay a
19 fine.

20 THE COURT: Come forward.

21 (Side bar off the record.)

22 THE COURT: All right. Mr. Stitely, you mentioned
23 because this is a mandatory minimum trafficking charge
24 the only mitigation that you have is his request for
25 concurrent sentences which, of course, I have done.

1 Mr. Smith, is there anything you wish to say to me?

2 JEROME SMITH: No.

3 THE COURT: Okay. Anything else from the State?

4 MR. COX: Nothing else from the State, Your Honor.

5 THE COURT: Okay. On the charge of trafficking
6 heroin the sentence will be 25 years. Give you credit
7 for your time served. On the charge of distribution of
8 heroin the sentence will be 10 years concurrent. On the
9 charge of possession with intent to distribute heroin
10 first offense the charge will be 10 years concurrent.
11 Credit for time served. I wish you well, Mr. Smith. And
12 that's all.

13 MR. STITELY: Thank you, Judge.

14 MR. COX: Thank you, Your Honor.

15 MR. POGUE: Thank you, Your Honor.

16 (WHEREUPON, THE TRIAL WAS CONCLUDED.)

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1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON)

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5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of General Sessions in and for the
10 State of South Carolina on the 12th through 14th day of July,
11 2021.

12 I FURTHER CERTIFY that the forgoing 258 pages
13 constitute a true and accurate record of said proceedings.

14 I FURTHER CERTIFY that I am neither related, counsel
15 to, nor of interest to any party hereto.

16 IN WITNESS WHEREOF, I have hereunto set my hand at
17 Lexington County, this 10th day of October, 2021.

18

19

By:s/Steven E. LeBlanc

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21

Steven E. LeBlanc, Sr., R.P.R.
Eleventh Circuit Court Reporter
State of South Carolina.

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