North Carolina Innocence Inquiry Commission Brief

STATE v. JOHN PRITCHARD

Yancey County - 11 CRS 304; 11 CRS 305

North Carolina Innocence Inquiry Commission Brief

STATE v. JOHN PRITCHARD Yancey County – 11 CRS 304; 11 CRS 305

Case Presented by:

Lindsey Guice Smith, Executive Director

Brief Prepared by:

Donna Elizabeth Tanner, Associate Director Julie Bridenstine, Staff Attorney

Lead Investigator:

Julie Bridenstine, Staff Attorney

Other Commission Staff:

Catherine Matoian, Grant Staff Attorney II Brian Ziegler, Staff Attorney Corinne Fowler, Grant Staff Attorney Mackenzie Myers, Grant Legal Investigator Jason Fitts, Case Coordinator Kristie Parker, Administrative Secretary Emma Paul, Victim Services Coordinator

Index to Brief

I. Introduction to Case	4
II. Format for Brief	5
III. Standard of Review	7
IV. Timeline	8
V. Factual Summary	15
VI. Post-Conviction Appeals and Other Investigations	32
VII. Proposed Hearing Agenda	33
VIII. Conclusion.	35
IX. Appendices	36

I. Introduction to Case

This case centers on the death of Jonathan Russell Whitson (Victim) on March 6, 2011. The Victim was found dead by his family on their living room couch at 11:33 a.m. (YCSO File, pg. 2). The Victim had been released from jail on March 4, 2011 at 7:40 p.m. after serving approximately two months in jail related to drug possession charges. He spent most of the day on March 5, 2011 with his girlfriend, Stephanie Whitson (Stephanie). In a law enforcement interview, Stephanie reported spending a significant portion of the previous afternoon and evening with the Victim, which they spent "shooting up" morphine. In addition, Stephanie reported that the Victim told her Defendant John Pritchard (Pritchard) was going to bring him morphine and that Pritchard did visit the Victim that afternoon before they used drugs. Stephanie did not actually see an exchange of pills. She did, however, report that the Victim had morphine pills after his time with Pritchard. Pritchard denies providing drugs to the Victim.

Ultimately, the case went to trial where the Medical Examiner testified that the Victim's death was caused by morphine toxicity, an opinion which he based on the amount of morphine found in the Victim's urine sample. After Pritchard was convicted on April 17, 2014 and his convictions were upheld by the North Carolina Court of Appeals, he hired an attorney to investigate grounds for a post-conviction Motion for Appropriate Relief; this investigation primarily centered around the opinion of a forensic pathologist that the cause of death determination by the Medical Examiner was incorrect and the Victim did not die from a morphine overdose. This post-conviction attorney suffered a stroke before he could draft and file a motion.

¹ As far as the Commission is aware, the Victim and his girlfriend had the same last name but were unrelated.

This stroke left him unable to practice law. Pritchard subsequently applied to the Commission. The forensic pathologist hired by Pritchard's post-conviction attorney referred the case to the Wake Forest University School of Law Innocence and Justice Clinic (the Clinic). When Commission staff learned that Pritchard had a case open with the Clinic, Commission staff contacted the Clinic so as not to duplicate efforts. At that point, the Clinic decided to officially refer the case to the Commission.

II. Format for Brief and Hearing

On December 14-15, 2021, the North Carolina Innocence Inquiry Commission ("Commission") will conduct a hearing in this case. Pursuant to statute, this hearing is open to the public.² A court reporter will be present at the hearing.

This brief is submitted to the Commissioners prior to the hearing with the request that each Commissioner carefully read it in preparation for the hearing. This brief covers investigations and legal proceedings that occurred in this case prior to the investigation by the Commission staff. However, some of the information presented herein was not previously presented at trial or considered at any post-conviction hearings. The brief will indicate which information has not been previously presented or considered; this information may be considered "new evidence."

Unlike other Commission cases, this case has a relatively small number of documents related to the initial investigation, trial, and any post-conviction work prior to the Commission's investigation. For that reason, the Brief has a more condensed factual summary below drawn

-

² N.C.G.S. § 15A-1468(a) and NCIIC Rules and Procedures Article 7(E).

from both the pretrial investigation and witness testimony at trial. Appendix A contains the Yancey County Sheriff's Office (YCSO) File³; the YCSO was the primary law enforcement agency that investigated this case. Appendix B contains the entire NC State Bureau of Investigation (SBI) File; the SBI assisted with portions of the investigation. Appendix C contains select documents from the District Attorney's File, which include the photographs taken at the scene by law enforcement and documents related to Pritchard's medical records. Appendix D contains the indictments that were issued in this case from the court file. Appendix E contains documents related to the Victim's autopsy that were obtained from the Office of the Chief Medical Examiner and the Watauga Medical Center. Appendix F contains an interview conducted by ADA Michael Holmes from the Wake Forest University School of Law Innocence and Justice Clinic File. Appendix G contains motions filed by the State and Pritchard prior to trial from the court file. Appendix H contains a trial digest and the trial transcript. Appendix I contains the North Carolina Court of Appeals Opinion in this case. Appendix J contains an unsigned draft affidavit prepared by Dr. Christena Roberts, a forensic pathologist hired by Pritchard to investigate possible grounds for a Motion for Appropriate Relief.

Any attached documents that have notes or highlights were received by Commission staff with these notes or highlights and no other copy was available. Any cited material within the brief that is not provided in full can be made available to Commissioners upon request. Many materials are provided but also summarized (for example testimony by witnesses at trial) so that Commissioners can reference full transcripts as needed.

_

³ The entire file is included except for duplicates, criminal history records, and documents related to victim compensation.

At the conclusion of the hearing, the Commission will be asked to consider the following three (3) options:

- 1. Conclude that there is sufficient evidence of factual innocence to merit judicial review and refer the case to a three-judge panel pursuant to N.C.G.S. § 15A-1468(c). All documents considered by the Commission and the transcript of the proceedings shall become public record once filed with the Clerk of Superior Court in Yancey County.⁴
- Conclude that there is not sufficient evidence of factual innocence to merit judicial review and close the investigation pursuant to N.C.G.S. § 15A-1468(c). Evidence favorable to the convicted person would be disclosed to him and his attorney pursuant to N.C.G.S. § 15A-1468(d).
- 3. Direct the staff to conduct further investigation into this case and continue the hearing to a later date.⁵

III. Standard of Review

This case arises from the convictions of Pritchard for the second-degree murder of the Victim as well as various drug convictions arising from the sale of drugs to the Victim. After trial, Pritchard was convicted of Second-Degree Murder, Delivery of Controlled Substance Schedule II (H Felony), Possession with the Intent to Sell, Manufacture, Deliver (PWISMD) Schedule II Controlled Substance (H Felony), and Maintain Vehicle/Dwelling/Place for Controlled Substances (Misdemeanor).

⁴ N.C.G.S. §§ 15A-1468(c) and 15A-1468(e) and NCIIC Rules and Procedures Article 7(G).

⁵ The Commission staff requests that if the hearing is continued, it be rescheduled prior to December 31, 2021 without the need for a full rehearing. Many of our Commissioners are up for re-appointment with terms ending in 2021. Therefore, to continue the hearing beyond December 31, 2021 will require a full rehearing on the matter.

The Commission's governing statute provides that a "claim of factual innocence" is a claim "on behalf of a living person convicted of a felony" in North Carolina, "asserting complete innocence of any criminal responsibility for the felony for which the person was convicted and for any reduced level of criminal responsibility relating to the crime, and for which there is <u>some</u> <u>credible</u>, <u>verifiable</u> <u>evidence</u> <u>of innocence</u> <u>that has not previously been presented at trial or</u> <u>considered at a hearing granted through postconviction relief.</u>" (N.C.G.S. § 15A-1460(1)).6

When a case is presented to the Commission at hearing, all eight voting members are required to participate in a vote to determine whether there is "sufficient evidence of factual innocence to merit judicial review." (N.C.G.S. § 15A-1468(c)). For cases where defendant was found quilty after trial, "if five or more of the eight voting members of the Commission conclude there is sufficient evidence to merit judicial review, the case shall be referred to the senior resident superior court judge in the district of original jurisdiction." (Id). In the present case, Pritchard was convicted after trial.

IV. Timeline

DATE/TIME	DESCRIPTION
12/27/2010-	Jonathan Whitson (the Victim) is hospitalized at Mission St. Joseph Hospital in
12/30/2010	Asheville, NC.
1/6/2011	The Victim begins 60-day jail sentence in the Madison County Jail.
6:16 p.m.	
2/11/2011	Pritchard fills a prescription from the VA Hospital in Asheville, NC for 75 morphine
	sulfate SR tablets. The instructions include taking a pill every eight hours for pain.
3/3/2011	Pritchard calls VA Hospital to renew prescriptions for morphine and oxycodone.
	[Note: Prescription is not renewed at this time as he calls again on 3/10/2011
	regarding same request.]
3/4/2011	The Victim completes jail sentence in Madison County and is transferred to the
6:34 p.m.	Buncombe County Detention Center.

⁶ Also see the Commission's Rules and Procedures, Article 2(A).

oss from the gel alking. Dot, which is I sober. His in jail and
gel alking. Dot, which is I sober. His
llking. Dot, which is I sober. His
Dot, which is I sober. His
l sober. His
in jail and
•
door to
aves. This is
hanie
them there
/ictim is
rd).
tchard's
20200000000000
lrooms at
han ana 20
han one 30
and
ina
the Victim.
Victim
e. The Victim
Stephanie's
th of them
ar Branch
he Victim
piece and

DATE/TIME	DESCRIPTION
	then sell the pills for \$15.00 apiece. She believes Pritchard gave the Victim the
	morphine pills because Pritchard wanted to help the Victim out after not having anything in jail.
3/5/2011	According to Nathan, Stephanie leaves his home.
~4:00 p.m.	
3/5/2011 ~4:00 p.m.	According to Christine, Stephanie and Victim arrive back at her residence. Stephanie then stays until 9:30 p.m.
3/5/2011	The Victim and Stephanie then return to Christine's house. Stephanie drops off the
~6:00 p.m.	Victim. She keeps the remaining four morphine pills. She leaves to meet a friend at Hardee's for dinner.
3/5/2011	According to Stephanie, she returns to Christine's house. She and the Victim go into
~7:30 p.m.	the bathroom next to Christine's bedroom. The Victim melts down the last four morphine pills. The Victim injects each of them three times. There is leftover morphine in the spoon that the Victim places under the bathroom sink. They then talk for a while.
3/5/2011	According to Nathan, he and the Victim leave his home and go to Christine's house.
~9:00 p.m.	They talk a few minutes and then Nathan says goodnight. Nathan goes to sleep at Christine's house. At that time, the Victim is watching television in the living room.
3/5/2011	According to Christine, Stephanie leaves Christine's house. The Victim then prepares
~9:30 p.m.	to go to sleep on the living room couch.
3/5/2011	According to Stephanie, she leaves Christine's house for the night. She never speaks
~9:50 p.m	to the Victim again.
10:00 p.m.	
3/5/2011 10:00 p.m.	YCSO Chief Deputy Farmer (Chief Dep. Farmer) learns from Lieutenant Higgins (Lt. Higgins) that Stephanie reported to him that she and the Victim return to Christine's house at this time after leaving earlier in the day.
3/6/2011	Nathan wakes up at Christine's house. He can hear the Victim snoring loudly on the
4:00 a.m	couch. Wade Angel (Wade), Christine's husband, shakes the Victim, which causes him
4:30 a.m.	to snore less. Nathan goes back to sleep.
3/6/2011	Nathan wakes up again. The Victim is still snoring on the couch.
8:00 a.m.	
3/6/2011	Christine wakes up. The Victim is snoring loudly on the living room couch. Christine
~9:00 a.m.	and Wade travel to Sav-Mor supermarket in Burnsville.
3/6/2011	Christine and Wade return from the grocery store. The Victim is still snoring on the
~10:30 a.m.	couch.
3/6/2011	Christine cooks breakfast, and everyone but the Victim eats breakfast.
After 10:30 a.m.	
3/6/2011	Nathan tells Christian Angel (Christian), his young son, to wake up the Victim.
~10:40 a.m.	Christian discovers the Victim deceased on the couch. Present in the residence are Nathan, Christine, Wade, Christian, and James Angel, another young son of Nathan's. [Note: No one other than Nathan reports what the time is.]
3/6/2011	Yancey County Emergency Operations Center receives a 911 call from Christine that
11:33 a.m.	the Victim is not breathing and is deceased.
3/6/2011 11:40 a.m.	Lt. Higgins responds alone to residence of Christine and observes the Victim lying flat on his back and covered with a blue blanket on the living room couch.

DATE/TIME	DESCRIPTION
3/6/2011	Lt. Higgins takes the statement of Christine.
After	
11:40 a.m.	
3/6/2011	Lt. Higgins takes photographs of the Victim's body.7
After	
11:40 a.m.	
3/6/2011	Ann Whitson Greene (Greene), mother of the Victim, arrives at the residence and
After	requests Yancey Funeral Services for burial services.
11:40 a.m.	
3/6/2011	Lt. Higgins speaks to Chief Dep. Farmer on the phone and reports what he has
12:01 p.m.	learned. Lt. Higgins tells Chief Dep. Farmer that he did not see any noticeable injury to
	the outside of the Victim's body. Lt. Higgins also tells Chief Dep. Farmer about
	recovering two syringes from the Victim's coat pocket. Chief Dep. Farmer tells Lt.
	Higgins that he is going to call Dr. Brent Hall (Dr. Hall), the Medical Examiner, to obtain
	permission to move the body and to request an autopsy to determine cause of death.
3/6/2011	Chief Dep. Farmer calls Dr. Hall and leaves a message requesting that Dr. Hall call him
After	or Lt. Higgins so that they could request an autopsy and advise Dr. Hall about the
12:01 p.m.	scene.
3/6/2011	Dr. Hall calls Lt. Higgins on the phone. Lt. Higgins notifies Dr. Hall of the death. Dr. Hall
After	agrees to do an autopsy.
12:01 p.m.	
3/6/2011	Yancey Funeral Services arrives at the residence.
1:18 p.m.	
3/6/2011	Christine reveals to Lt. Higgins that she discovered items in the Victim's inside coat
1:18 p.m.	pocket. The coat is located on the back of a loveseat. Lt. Higgins sees one syringe in
	the Victim's inside coat pocket and locates a second syringe in the pocket.
3/6/2011	Lt. Higgins takes photographs of syringes and seizes them as evidence. ⁸ Yancey County
After	Funeral Services then takes custody of body and transports it to Watauga Medical
1:18 p.m.	Center.
3/6/2011	Lt. Higgins and Chief Dep. Farmer speak on phone again about case. Lt. Higgins tells
2:00 p.m.	Chief Dep. Farmer that he plans to interview Stephanie and others who were present
	at Christine's house.
3/6/2011	Chief Dep. Farmer speaks to the Victim's father, Russell Wilson, who reports that the
3:10 p.m.	Victim was clean from drugs following his release from jail in Madison County.
3/6/2011	Lt. Higgins interviews Stephanie. ⁹
5:49 p.m.	
3/6/2011	Chief Dep. Farmer and Lt. Higgins discuss the interview of Stephanie. According to
6:00 p.m.	Chief Dep. Farmer, Lt. Higgins reports that he interviewed Nathan. [Note: The
	Commission has not located any interviews of Nathan by law enforcement from
	around the time of the Victim's death.]

 ⁷ These photographs are contained in Appendix C.
 ⁸ These photographs are contained in Appendix C.
 ⁹ This interview is contained in Appendix A.

DATE/TIME	DESCRIPTION
3/7/2011	Chief Dep. Farmer calls SBI Agent Charles Vines (Agent Vines) and requests that the
10:00 a.m.	SBI contact the Madison County Jail for records to see if the Victim had suffered any
	medical conditions or was given any medication during his confinement.
3/7/2011	Chief Dep. Farmer receives a phone call from Sheriff Gary Banks (Sheriff Banks).
11:00 a.m.	Sheriff Banks reports that James Whitson (James), told him that his sister Greene, the
	Victim's mother, was concerned about the investigation and wanted to make sure
	that her son had died at Christine's house and not at any other location. James
	reported that there are rumors that the Victim had died somewhere else, and his
	body had been moved to Christine's house.
3/7/2011	Chief Dep. Farmer attempts to interview Greene, but she is not home. He speaks to
After	James, who states he had no information about the Victim's death.
11:00 a.m.	
3/7/2011	Dr. Hall performs the autopsy on the Victim.
11:30 a.m.	
3/7/2011	Chief Dep. Farmer calls Greene but does not speak to her. James reports that she is
1:00 p.m. 3/7/2011	very upset and does not feel like talking. Chief Dep. Farmer speaks on the phone to Dr. Hall. He asks Dr. Hall for any
2:00 p.m.	information related to the autopsy. Dr. Hall states in his professional opinion after
2.00 p.m.	performing the autopsy that the Victim died as a result of an overdose. There were
	needle tracks on the Victim's left arm and the marks appeared to have been recently
	made. Chief Dep. Farmer tells Dr. Hall that the Victim had been released from jail on
	3/4/2011 after being confined in jail for 60 days. Dr. Hall states that controlled
	substances would remain in the body for days. Chief Dep. Farmer informs Dr. Hall that
	he is getting records from Madison County Jail to determine whether or not the
	Victim had taken any medications there.
3/7/2011	Chief Dep. Farmer meets with ADA Virginia Thompson. He advises her that Pritchard's
2:00 p.m.	name had been mentioned as a possible source for the drugs provided to the Victim
	and that Pritchard had previous offenses on his record surrounding the sale of
	controlled substances, one of which involved aiding and abetting Robbie Brown
	(Robbie), Pritchard's girlfriend, in the sale of oxymorphone in September 2010. Chief
	Dep. Farmer also reminded Ms. Thompson that Pritchard was on probation for drug
	offenses. Chief Dep. Farmer requested that Ms. Thompson issue subpoenas for
	prescription records for Pritchard and Robbie. According to Chief Dep. Farmer, Ms.
	Thompson issues the subpoenas for Pritchard and Robbie, and Chief Dep. Farmer
	serves them on the CVS Pharmacy and Ingle's Pharmacy in Burnsville. Robbie has
	prescriptions for Opana ER 40 mg and Oxymorphone HCL 5 mg from CVS Pharmacy.
	Pritchard does not have any prescriptions filled at any North Carolina locations for
	either store. [Note: The Commission has not located the subpoenas or the
	prescription records that are referenced by Chief Dep. Farmer, and they are not part
3/8/2011	of the YCSO File.] Chief Dep. Farmer receives an inmate medical screening for the Victim from the
3/0/2011	Madison County Jail via email from Agent Vines. The records state that the Victim did
	not have any medical issues and was not prescribed any medications while he was in
	jail. [Note: The medical screening received from Agent Vines is not part of the YCSO
	File.]

DATE/TIME	DESCRIPTION
3/9/2011	Chief Dep. Farmer speaks to Pritchard's Probation Officer, David Thomas (Thomas), about Pritchard and his drug use. Thomas reports that Pritchard is taking opiate prescription drugs. A recent drug test had not revealed the presence of opiate drugs in his system.
3/9/2011	Chief Dep. Farmer speaks to Stephanie on the phone and conducts an interview.
8:30 p.m.	[Note: The contents of this interview are unknown as the interview is not part of the YCSO File.]
3/14/2011	YCSO interviews Floyd, the cousin of the Victim who picked him up on 3/4/2011. ¹⁰
7:14 p.m.	
3/16/2011	Dr. Hall lists the cause of death as "pending" on the Medical Examiner's Certificate of Death.
4/3/2011	Russell Wilson, the Victim's father, calls the Yancey County Sheriff's Office and reports
	that he paid for the Victim's funeral. He also reports that Greene put Pritchard on the pall bearer's list.
4/3/2011	The Office of the Chief Medical Examiner issues a toxicology report. The results
5089 48	include the following: "trace" morphine in the femoral vessel, "present" morphine in
	the aorta, "present" nicotine in the aorta, 40 mg/dL ethanol in the aorta, and 15 mg/L
	morphine in the urine.
4/4/2011	Dr. Hall receives the toxicology report via email.
4/26/2011	Sheriff Banks speaks to Robert Silvers (Silvers). Silvers stated they would find a drug
position control	called Opana in the Victim's system. Silvers reported that people were saying
	Pritchard gave the Victim the pills that probably killed him. He had talked to Pritchard
	and knew Pritchard took the Victim to pick up the pills, but that Robbie sold Opana
	pills to the Victim. He knew that Robbie had a prescription for Opana. Silvers said he
	was willing to do an undercover buy of Opana from Pritchard so long as his name did
	not appear on any paperwork. Silvers was on probation and requested help with his
	probation officer, who wanted to send him back to prison.
5/31/2011	Dr. Hall issues Report of Autopsy Examination. He rules that the cause of death is
8:32 p.m.	morphine toxicity. His final anatomic diagnosis includes the following: (1) pulmonary
	edema and congestion, severe; (2) acute bronchial pneumonia, moderate; (3)
	pulmonary emphysema, mild; (4) cardiomegaly, mild, with left ventricular
7/15/2011	hypertrophy.
7/15/2011	Dr. Hall lists the immediate cause of death as "morphine toxicity" on the
0/26/2011	Supplemental Report of Cause of Death.
9/26/2011 9/26/2011	Lt. Higgins contacts SBI to assist with interviews in case.
10:30 a.m.	Agent Vines and Lt. Higgins interview Tammy Ayers (Tammy). Tammy saw the Victim leave Nathan's place with Pritchard in a silver truck the day before the Victim died.
10.30 d.III.	Tammy asked Nathan if the Victim was going to score 30s (meaning morphine), and
	Nathan said he was. As Tammy was driving away later, she saw the Victim return with
	Pritchard. The next day, Stephanie told her that the Victim got the 30s from Pritchard,
	and Stephanie and the Victim did four to five. When Stephanie left, the Victim had the
	remaining pills. Robbie told her that Pritchard sold the morphine to the Victim, and
	most of the pills were given on credit or "fronted."
	I meeting the man of t

-

 $^{^{\}rm 10}$ This interview is contained in Appendix A.

DATE/TIME	DESCRIPTION
9/26/2011	Lt. Higgins interviews Nathan, the Victim's stepfather. 11
2:41 p.m.	
9/26/2011 3:12 p.m.	Agent Vines and Lt. Higgins interview Robbie, Pritchard's girlfriend. Robbie states that Pritchard gave the Victim eight pills the day prior to his death. Pritchard told her he
	went to Nathan's home to pick up Robbie's son, Aaron Collins (Aaron), and the Victim.
	Pritchard told her he took the Victim and Aaron to the store and then back to Aaron's
	home. At some point, Pritchard gave the Victim eight morphine pills and brought him
	back to Nathan's home. She knew that Pritchard had provided morphine to the Victim
	in the past. She personally saw Pritchard provide two pills around Christmas 2010,
	which was the only time she saw anything. The Victim did yard work for her. Pritchard
	keeps his pills locked in a lockbox in his house. When they lived together, he received
	his morphine from the VA hospital in Asheville. According to Robbie, Pritchard is
	worried about the Victim's death. He is very worried that he gave the Victim the
11/20/2011	morphine that killed him.
11/28/2011	Pritchard is indicted for Second-Degree Murder, Delivery of Schedule II Controlled
	Substances, PWIMSD Schedule II Controlled Substances, and Maintain a Vehicle/Dwelling for Controlled Substances. 12
11/28/2011	Orders for Arrest issue for Pritchard's for Second-Degree Murder, Delivery of Schedule
11/20/2011	II Controlled Substances, PWIMSD Schedule II Controlled Substances, and Maintain a
	Vehicle/Dwelling for Controlled Substances.
12/1/2011	Pritchard is arrested at his home.
11:17 a.m.	
12/1/2011	Pritchard refuses to waive his Miranda Rights and declines to make a statement to law
11:40 a.m.	enforcement at the Burnsville Police Department. Pritchard advises he has an
	attorney. He is held in the Yancey County Jail on a \$150,000.00 secured bond.
12/20/2011	Daniel Hockaday enters his appearance as Pritchard's attorney and requests
	discovery.
2/2/2012	The North Carolina State Crime Lab issues a laboratory report. The two syringes
	collected at the scene containing possible residue were examined for controlled
	substances. The results are that each syringe was found to contain "no controlled
5 /25 /2012	substances indicated" and "residue amount."
6/26/2013	ADA Devon Munro files Motion for Medical Records for Pritchard from Charles George
	Veterans Administration Medical Center in Asheville for the time period of 3/7/2010- 2011. ¹³
6/27/2013	Court issues Order for Pritchard's medical records from the VA Hospital.
7/18/2013	Charles George VA Medical Center in Asheville, NC provides the medical records of
7/10/2013	Pritchard to the DA's Office. Records show that at the time of this offense, Pritchard
	had active prescriptions for morphine sulfate 30 mg SR tabs and oxycodone 5 mg IR
	tabs.
11/26/2013	Christine is interviewed by ADA Michael Holmes. She reports information she had not
The second section of the sect	previously reported to law enforcement. When Stephanie arrived on 3/5/2011, she
	and the Victim argued about breaking up. They sat in vehicle in the driveway for some
	time discussing it. The Victim told her that Stephanie wanted to break up with him.

This interview is contained in Appendix A.
 These indictments are contained in Appendix D.
 Documents related to Pritchard's medical records are contained in Appendix C.

DATE/TIME	DESCRIPTION
	The Victim was crying and upset when discussing it with Christine. After Christine went to bed, she heard the Victim go to the bathroom. Then the Victim stuck his head in her doorway and said, "I love you." He went to the bathroom three times total that night, and every time afterwards he said "I love you" to her. Christine also remembered "Bryan Silver" and "C.R." coming to her house on 3/5/2011 to visit the Victim. They did not come into the house but spoke to the Victim in the driveway.
12/2/2013	A superseding indictment is issued for Pritchard. The added language includes "of malice aforethought kill and murder Jonathan Russell Whitson." 14
1/2/2014	SBI issues subpoena for Stephanie's phone records from 3/5/2011. Records are subsequently produced.
4/14/2014-	Pritchard's jury trial is held. He is convicted of Second-Degree Murder, Delivery of
4/17/2014	Schedule II Controlled Substances, PWIMSD Schedule II Controlled Substances, and
	Maintain a Vehicle/Dwelling for Controlled Substances.
5/1/2014	Pritchard files Notice of Appeal with the North Carolina Court of Appeals.
8/2/2016	The North Carolina Court of Appeals issues opinion upholding Pritchard's convictions.

V. Factual Summary

This factual summary walks the case from the initial investigation through trial. As previously mentioned, the relevant portions from the pretrial investigation of this case and the trial transcript, along with a digest, are provided in the Appendices to this Brief.

On March 6, 2011 at 11:33 a.m., the Yancey County Sheriff's Office (YCSO) was called regarding the unattended death of Jonathan Russell Whitson (Victim). The Victim's family discovered him dead on the living room couch of their house at 410 English Branch Road in Burnsville, NC. Lieutenant Higgins (Lt. Higgins) arrived at the house at 11:40 a.m. Lt. Higgins saw the Victim lying flat on his back with his legs straight out on the couch. He was covered by a blanket. Present in the home were his step grandmother Christine Angel (Christine), his step grandfather Wade Angel (Wade), his stepfather Nathan Angel (Nathan), and Nathan's young

¹⁴ This indictment is contained in Appendix D.

¹⁵ The YCSO File, excluding duplicates, criminal history records, and documents related to victim compensation, is contained in Appendix A.

children Christian Angel (Christian) and James Angel. They were all in the home when Christian discovered the Victim. (YCSO File, pg. 2).

Christine reported that the Victim had been recently released from jail. He came to her house on the previous day, March 5, 2011, arriving at 1:00 a.m. ¹⁶ The Victim's girlfriend, Stephanie Whitson (Stephanie) came over on that day at approximately 2:30 p.m. The Victim and Stephanie left Christine's house and returned together about an hour and a half later. Stephanie then stayed at the residence until approximately 9:30 p.m. The Victim went to sleep. Christine woke up on March 6, 2011 at 9:00 a.m. The Victim was asleep on the couch and snoring loudly. Christine and Wade went to the grocery store and returned home at approximately 10:30 a.m. The Victim was still snoring. Christine cooked breakfast and everyone ate except the Victim. Christian then tried to wake up the Victim and found him dead on the couch. (YCSO File, pgs. 2-3).

After obtaining Christine's statement, Lt. Higgins took photographs of the scene.¹⁷ Lt. Higgins spoke to Dr. Brent Hall (Dr. Hall), the Medical Examiner, on the phone about requesting an autopsy and having the body released. Dr. Hall agreed to perform an autopsy. Annette Whitson Greene (Greene), the mother of the Victim, arrived at the house and arranged for a funeral service to receive the body of her son. The funeral service arrived at 1:18 p.m. to collect the body for transportation to the Watauga Medical Center for the autopsy. Christine informed Lt. Higgins that she had found a syringe in the coat pocket of the Victim. Lt. Higgins located two

_

¹⁶ Lt. Higgins' handwritten notes have the time the Victim arrived as 13:00, or 1:00 p.m., but his report has the time listed as 1:00 a.m. (YCSO File, pgs. 2, 89)

¹⁷ These photographs are provided in Appendix C.

syringes in the inside coat pocket, photographed them, and seized them as evidence. (YCSO File, pgs. 3, 35, 43).

Chief Deputy Farmer (Chief Dep. Farmer) spoke to Lt. Higgins via telephone at 12:01 p.m. on March 6, 2011. Lt. Higgins reported that he learned that the Victim had arrived at noon on March 5, 2011 after being released from the Buncombe County Detention Center on the evening of March 4, 2011. The Victim had just spent 60 days at the Madison County Jail. He was transferred to the Buncombe County Detention Center on March 4, 2011 prior to his release due to having outstanding warrants in that county. (YCSO File, pgs. 34-35). He was released from the Buncombe County Detention Center at 7:40 p.m. that day after the warrants were served. (TT, pg. 206). Lt. Higgins reported to Chief Dep. Farmer that he did not see any noticeable injury to the outside of the Victim's body. (YCSO File, pg. 35). Chief Dep. Farmer later spoke to the father of the Victim, Russell Wilson, who told him that the Victim had been clean of drugs the entire time he was incarcerated. (YCSO File, pg. 36).

On March 6, 2011, Lt. Higgins also interviewed the girlfriend of the Victim, Stephanie. Stephanie reported that she and the Victim met up the previous day at Christine's residence around 3:00 p.m. (YCSO File, pg. 52). She said she had spoken about Pritchard the previous day with the Victim, and she and the Victim had "shot up" morphine together. The Victim told her that Pritchard was coming up "Marion Mountain" and would call the Victim when he got home. According to Stephanie, this meant that Pritchard had morphine and would call and arrange a

¹⁸ The information from Chief Dep. Farmer's report that the Victim arrived at Christine's house at noon on March 5, 2011 is not consistent with other witness statements and testimony at trial, which place the Victim's arrival at or around 1:00 a.m.

delivery to the Victim when he arrived. 19 (YCSO File, pg. 37). Pritchard did not call, but showed up at Christine's house in a silver Ford Ranger around 3:30 p.m. The Victim told her that Pritchard wanted to take the Victim to a store. (YCSO File, pgs. 37, 52-53). The Victim left with Pritchard in his truck. They returned about 15 minutes later, and the Victim came into the house. Nathan, a.k.a. "Fruit," the Victim's stepfather, went out and spoke to Pritchard for a few minutes. She did not know what they discussed. The Victim showed her ten purple 30 mg morphine pills in his possession. (YCSO File, pgs. 37, 53). Stephanie believed that Pritchard gave them to the Victim because he knew the Victim had been in jail and did not have any money and had not received drugs recently. (YCSO File, pgs. 37, 54). The Victim crushed up and melted three pills in Stephanie's jeep. Stephanie and the Victim each injected the morphine using two syringes. They then drove to another location, pulled off the road, and injected more morphine. Stephanie then dropped off the Victim at Christine's and left at 6:00 p.m. She held onto the remaining four pills and met a friend at Hardee's. She returned to Christine's residence at 7:30 p.m. The Victim and Stephanie went into Christine's bathroom. The Victim melted down the remaining four morphine pills. (YCSO File, pg. 53). They injected the morphine three times each. There was morphine left in the spoon that the Victim placed under the bathroom sink. They talked for a while, and she left Christine's home at approximately 9:50 p.m. (YCSO File, pg. 54). The Victim reported to her that Pritchard said that the Victim could sell the pills for \$15.00 apiece and pay him \$8.00 for each pill. (YCSO File, pgs. 38, 54). Stephanie said that she had been present on approximately

_

¹⁹ There are two YCSO reports regarding this interview. Lt. Higgins wrote a handwritten report regarding this interview, found in the YCSO File, pgs. 52-54. Chief Dep. Farmer wrote a report of the interview based on information that he learned from Lt. Higgins, found in the YCSO File, pgs. 36-38. One notable difference between the reports is that Lt. Higgins' report lacks the detail that Pritchard was planning to deliver morphine to the Victim after coming up "Marion Mountain." Lt. Higgins' report states that the Victim reported that Pritchard wanted to take the Victim to a store after coming up "Marion Mountain."

eight occasions when the Victim purchased morphine from Pritchard. She knew that Pritchard received a prescription for 30 mg morphine once a month. (YCSO File, pgs. 38, 54). The Victim once told her that Pritchard was prescribed morphine from a doctor in South Carolina. (YCSO File, pg. 38).

On March 7, 2011, Chief Dep. Farmer requested that the SBI assist with the case and obtain any records from the Madison County Jail on the Victim to determine if he had any medical conditions or took any medications during his incarceration.²⁰ (YCSO File, pg. 38). Those records showed that the Victim did not have any medical issues when he was in custody, and he was not prescribed or taking any medications while he was there. (YCSO File, pg. 41).

Yancey County Sheriff Gary Banks (Sheriff Banks) spoke to James Whitson, the brother of Anne Whitson Greene and the uncle of the Victim, on March 7, 2021. He reported that there were rumors from unknown people that the Victim did not die at Christine's house and his body had been moved. (YCSO File, pgs. 38-39).

The autopsy was performed on March 7, 2011 by Dr. Hall. Dr. Hall noted that the Victim was a thin adult male, 29 years old, wearing blue jeans and white briefs. His body was wrapped in a blanket. The Victim had abrasions on his upper legs, an abrasion on his right thumb, and a 2.0 cm ulcer on his left heel. Needle marks were present in the left antecubital fossa and left forearm. Dr. Hall diagnosed the Victim with pulmonary edema and congestion, severe; acute bronchial pneumonia, moderate; pulmonary emphysema, mild; and cardiomegaly, mild, with left ventricular hypertrophy. (YCSO File, pgs. 27-28).

²¹ Documents and photographs related to the autopsy are contained in Appendix E.

²⁰ The entire SBI File is contained in Appendix B.

Chief Dep. Farmer spoke to Dr. Hall on March 7, 2011. According to Chief Dep. Farmer, Dr. Hall stated that in his professional opinion after performing the autopsy the Victim died as a result of an overdose. Dr. Hall stated that the needle marks in his left arm appeared to have been recently made. Dr. Hall said that controlled substances would remain in the body of a deceased person for days. (YCSO File, pg. 39-40).

Chief Dep. Farmer consulted with ADA Virginia Thompson (Thompson) about the case on March 7, 2011. He advised her that Pritchard's name had come up in the investigation as the possible source for providing prescription drugs to the Victim. He also discussed with her the fact that Pritchard had offenses related to selling controlled substances and aiding and abetting Robbie Brown (Robbie) in the sale and delivery of controlled substances (oxymorphone) prescribed to Robbie to an undercover informant named Jennifer Black in September 2010. Pritchard was also on probation at the time for drug offenses. Thompson issued subpoenas for the prescription records for both Robbie and Pritchard. The prescription records showed that Robbie was prescribed Opana ER 40 mg, a form of morphine, and Oxymorphone HCL 5 mg. (YCSO File. pgs. 40-41). The subpoenas did not return any prescription records for Pritchard. Pritchard's probation officer did not have any information about Pritchard's drug use or medical providers beyond the fact that he had passed recent drug tests and he reported to probation he was an opiate user. (YCSO File, pg. 41).

On March 14, 2011, law enforcement interviewed Floyd Ayers (Floyd), a cousin of the Victim. Floyd received a missed phone call from the Victim on March 4, 2011 at 9:42 p.m. The Victim called again, and they spoke on the phone at 11:07 p.m. The Victim requested a ride to Christine's house from a store. The Victim reported he had just gotten out of jail and was walking.

Floyd picked up his uncle, Stanley Wilson, and then picked up the Victim at the Green Dot store at approximately midnight. The Victim was waiting outside the store. He looked healthy and his color was good. He appeared to be clean and sober. Floyd took the Victim directly to Christine's, dropping him off at 12:45 a.m. Floyd left and did not speak to the Victim after that. (YCSO File, pgs. 55-56).

The toxicology report was issued on April 3, 2011 and provided to Dr. Hall the following day. Morphine was found in trace amounts in the blood from the femoral vessel. Morphine and nicotine were noted to be present, and ethanol was noted to be 40 mg/dL in the aorta blood sample. Morphine was noted to be 15 mg/L in the urine sample. (YCSO File, pgs. 30-32). The autopsy was signed on May 31, 2011. Cause of death was listed to be morphine toxicity. (YCSO File, pgs. 27-28).

Sheriff Banks had a conversation with Robert Silvers (Silvers) on April 26, 2011. Silvers asked if a final autopsy had been completed on the Victim, and Sheriff Banks reported that they were waiting for toxicology results. Silvers stated that he knew people were saying the Victim died of an overdose of morphine, but that they would find a drug called Opana in the Victim's system. Silvers reported that people were saying Pritchard gave the Victim the pills that probably killed him. Silvers said he had talked to Pritchard and knew Pritchard took the Victim to pick up the pills, but that Robbie sold Opana pills to the Victim. He knew that Robbie had a prescription for Opana. Silvers said he was willing to do an undercover buy of Opana from Pritchard so long

as his name did not appear on any paperwork. Silvers was on probation and requested help with his probation officer, who wanted to send him back to prison.²² (YCSO File, pg. 33).

Nathan Angel (Nathan), the Victim's stepfather, was interviewed by law enforcement on September 26, 2011 at the Yancey County Jail. He reported that he woke up at 4:00 – 4:30 a.m. on March 6, 2011 at Christine's house. He could hear the Victim snoring loudly on the living room couch. His father Wade shook the Victim, causing him to snore less. Nathan went back to sleep and woke up again at approximately 8:00 a.m. The Victim was still asleep on the couch and snoring. At approximately 10:40 a.m. his son Christian made the comment that the Victim was "sleeping good." Nathan told Christian to wake up the Victim. Christian then tried to shake the Victim awake and discovered that he had died. Nathan then also shook the Victim. Christine called 911. (YCSO File, pgs. 57-58).

The day before, Nathan woke up and went to Christine's house next door at 7:00 a.m. — 8:00 a.m. He saw the Victim for the first time since before the Victim had gone to jail in Madison county. They talked and Nathan left. Nathan returned home, and the Victim came to his home and said he had talked to Stephanie. Stephanie arrived at Nathan's home at approximately 12:00 p.m. Nathan left. He returned an hour later, and the Victim was not there. Stephanie told him that the Victim had gone to see Pritchard. Twenty to thirty minutes later Nathan heard a vehicle and saw the Victim walk up the driveway from Pritchard's gray Ford or Toyota truck. Nathan spoke to the Victim. The Victim and Stephanie went into the Victim's old bedroom for 30 minutes to an hour. The Victim came out smiling and told him he had something for the Nathan. He gave

²² There is nothing in any of the files reviewed thus far that indicates that Silvers was contacted again about this case.

him one 30 mg morphine tablet. Stephanie left his home a couple of hours later. Nathan and the Victim left Nathan's home at approximately 9:00 p.m. and went to Christine's home. They talked for a few minutes, and then Nathan said goodnight and went to sleep at Christine's. He left the Victim watching television in the living room. Nathan knew that Pritchard was prescribed 30 mg morphine pills, and he knew Pritchard to sell those pills in the past year. (YCSO File, pgs. 58-59).

On September 26, 2011, Tammy Ayers (Tammy) was interviewed by SBI agent Charles Vines (Agent Vines) and Lt. Higgins. Tammy said she was at Nathan's residence the day before the Victim died. When she arrived, Nathan and Stephanie were there. She thought that Robbie Silvers may have also been there. The Victim was leaving with Pritchard in a silver truck when she arrived. Tammy asked Nathan if the Victim was going to score 30s (a reference to morphine), and Nathan said he was. As she was driving away, the Victim and Pritchard were returning. Tammy did not speak to either. At some point, Stephanie told Tammy that the Victim said he got 30s from Pritchard. Stephanie told her that she and the Victim did four to five of the pills at Nathan's. The Victim had the remaining pills. Tammy also said that Nathan had gotten pills for her in the past from Pritchard, but she never bought them directly from Pritchard. Robbie told Tammy that she knew Pritchard sold the morphine to the Victim. Most of the pills were given to the Victim on credit or were fronted to him. Tammy thought Pritchard got his pills from Tennessee. Nathan told Tammy during the funeral visitation that the Victim would not have bought the pills if Stephanie did not have any money. (SBI File, pgs. 4-5).

Robbie, Pritchard's girlfriend/fiancé, was also interviewed by Agent Vines and Lt. Higgins on September 26, 2011. Pritchard told her he went to Nathan's residence to pick up Robbie's son, Aaron Collins (Aaron), and the Victim. Pritchard told Robbie he took the pair to the store,

then took Aaron back to Aaron's residence. At some point Pritchard said he gave eight morphine pills to the Victim and took the Victim back to Nathan's residence.

The Victim did yard work for Robbie. She said that Pritchard and the Victim first met in the fall of 2010. She knew that the Victim had gotten morphine from Pritchard in the past and personally saw Pritchard give the Victim two pills around Christmas 2010, which was the only time she ever saw anything. Pritchard kept his pills locked in a lockbox in his house. When Pritchard and Robbie lived together, Pritchard received 15 mg morphine pills from the VA hospital in Asheville. Robbie said that Pritchard had been worried about the Victim's death and was very worried he gave the Victim the morphine that killed him. (SBI File, pgs. 7-8).

Following indictments that were issued on November 28, 2011 for Second-Degree Murder, Delivery of a Controlled Substance, Possession with Intent to Distribute, Sell, or Manufacture a Controlled Substance, and Maintain Vehicle, Dwelling, Place for Controlled Substances, orders were issued for Pritchard's arrest.²³ Pritchard was arrested on December 19, 2011. He refused to waive his rights and did not make a statement. (YCSO File, pgs. 7-8).

In July 2013, the District Attorney's office obtained a court order for Pritchard's medical records from the VA Hospital in Asheville for the time period of March 7, 2010 – March 7, 2011.²⁴ Those records show that Pritchard filled a prescription for 75 morphine sulfate 30 mg SR tablets on February 11, 2011. The instructions provided were to take one pill every eight hours for pain. His prescription for morphine from the VA Hospital dated back to October 2010. (DA File, pgs. 116-127, 256-259).

²³ These indictments are contained in Appendix D.

²⁴ Select documents related to Pritchard's medical records are contained in Appendix C.

On November 26, 2013, ADA Michael Holmes interviewed Christine.²⁵ She reported additional information that was not previously provided in any discovery materials. She stated that after Stephanie arrived at her house on March 5, 2011, Stephanie and the Victim began to argue. The Victim told Christine that Stephanie wanted to break up with him. The Victim and Stephanie sat in a vehicle in the driveway for some time discussing the matter. After Stephanie left that night, the Victim was "distraught" and crying. He talked to Christine about it. After Christine went to bed, she heard the Victim go to the bathroom three times. After he went to the bathroom each time, he stuck his head in her doorway to say, "I love you." She thought it was strange at the time. She also recalled someone named "C.R." and "Bryan Silver," who came over on March 5, 2011 to visit with the Victim. They spoke to the Victim in the driveway. (WFU Clinic File, pg. 774).

Pritchard's jury trial was held on April 14, 2014 – April 17, 2014. Floyd Ayers, Christine Angel, Stephanie Whitson, and Robbie Brown all testified for the state. Floyd's testimony was consistent with what he originally told law enforcement, except that he additionally reported that the Victim told him he was clean and wanted to stay that way, that he did not have any money, and that he walked from the Buncombe County Detention Center to the gas station where Floyd picked him up. (TT, pgs. 45, 50, 52). He did not know if the Victim talked to anyone or saw anyone from the time he was released from jail around 7:30 p.m. until the time he picked him up. (TT, pg. 50).

²⁵ This interview is contained in Appendix F.

²⁶ Motions filed prior to trial by the State and Pritchard that are referenced in the trial transcript are contained in Appendix G. The entire trial transcript, along with a digest of the testimony, is contained in Appendix H.

²⁷ This gas station was located 15 miles from the jail, according to law enforcement testimony. (TT, pg. 207).

Christine testified that the Victim arrived at her house on March 5, 2011 at 1:00 a.m. (TT, pg. 65). In addition to what she originally told law enforcement, she testified that the Victim told her that he was clean and was never going to do more drugs when he arrived at her house. (TT, pg. 66). She also testified that the Victim and Stephanie left two times in the afternoon on March 5, 2011. (TT, pgs. 73-74). Other people came to her house that day to see the Victim after he got out of jail, including Brian Silvers and "CR." They arrived in a truck and stayed in the driveway to talk to the Victim. (TT, pgs. 91-93). She never saw Pritchard with the Victim. (TT, pg. 95). She thought the Victim went to bed around 9:00 p.m. after Stephanie left and Christine went to bed. As she was preparing for bed, the Victim used the bathroom next to her bedroom three times and came to her door to tell her loved her three times. (TT, pgs. 75, 97). The next morning, she woke around 6:00 a.m. or 7:00 a.m. The Victim was snoring on the couch. When she returned from the grocery store with her husband, the Victim was in the same position and still snoring. (TT, pgs. 76-77). Christine was not aware that drug use was going on in her home on March 5, 2011, and she did not see alcohol that night. (TT, pgs. 99-100). Christine testified that both the Victim and Nathan had drug problems. (TT, pgs. 83-84). Christine also testified that Nathan was living with her at the time because he had cancer and his mobile home was uninhabitable due to having no power. (TT, pgs. 84). She was not aware that the autopsy report said that the Victim had pneumonia. She knew that the Victim had asthma, a blood clot, and a hole in his heart. (TT, pg. 100). She maintained at trial that the Victim went to sleep at 9:00 p.m. or 9:30 p.m., stayed in her house the entire time, and died more than 12 hours later, sometime after they returned from the store at 10:00 a.m. the following day. (TT, pg. 101).

Stephanie testified that on March 5, 2011 when she arrived at Christine's home around 3:00 p.m., the Victim told her he had called Pritchard and that he was going to get some medicine. The Victim said Pritchard wanted to help him out since he had been in jail and had not had anything in a while. (TT, pg. 111). No one else was at Christine's home that day other than Nathan and the people who were living there. She did not see anyone else and was not aware of other people coming over. (TT, pg. 112). Pritchard wanted to take the Victim to the store. He arrived 30 minutes after she did. Pritchard and the Victim were gone about 15 minutes, and Pritchard dropped the Victim back off at the house. The Victim showed her ten morphine 30 mg pills in Nathan's trailer, and gave one of the pills to Nathan. (TT, pg. 123-124, 136, 155). She also testified that Nathan was living at Christine's at the time because the power was off at his place. (TT, pg. 133).

In her jeep at 3:45 p.m. and later after stopping along a road for a couple of hours, Stephanie and the Victim consumed a total of five pills together by crushing them, melting them, and injecting them with two syringes. (TT, pgs. 124-125, 135). When she left alone to go to Hardee's at 6:00 p.m. to meet up with a friend, the Victim left the remaining four pills with her. (TT, pg. 125). After she returned to Christine's at 7:30 p.m., she and the Victim went into the bathroom. The Victim crushed up the remaining four pills, and they each injected themselves three times. (TT, pg. 126). Before she left at 9:50 p.m., she argued with the Victim about her leaving. The Victim put the leftover liquid morphine that was in the spoon under the bathroom sink. There was no morphine left in the syringes, but she estimated that there were six syringes worth of morphine left. (TT, pgs. 126-127, 142, 150). On March 5, 2011, she did not see the Victim inject more morphine himself than he used to inject her. (TT, pg. 150). She did not see the Victim

drink alcohol and did not smell alcohol on him. She could not explain how alcohol got into his system. (TT, pg. 145). She had seen the Victim get morphine from Pritchard on previous occasions. They were the same pills as those she saw the Victim with on March 5, 2011. (TT, pg. 129). The Victim went to St. Joseph's hospital in November and December of 2010 because he complained of an abscess in his arm and had an infection. (TT, pgs. 147-148). She was aware that the Victim obtained morphine in the past from Thelma Massey, who was the mother of "CR." (TT, pgs. 153-154).

Robbie testified that she had known the Victim since he was a child as he grew up with her son. The Victim did odd jobs for her at her house. (TT, pg. 156). Pritchard was prescribed morphine from the VA, and he kept his morphine at his house in a locked box. (TT, pg. 157, 166). She heard the Victim ask Pritchard for morphine once around Christmas 2010. The Victim's arm was swollen, and he was in pain. She did not see Pritchard give the Victim any morphine, but she assumed Pritchard did because the Victim stopped begging for it. After the Victim died, she spoke to Pritchard on the phone. He was upset about the Victim's death. She asked him if he gave the Victim morphine. Pritchard said he gave the Victim "eight." He did not say when he gave the morphine to the Victim. (TT, pg. 158). She did not know if Pritchard saw the Victim on March 5, 2011. (TT, pg. 160).

Robbie also testified that the statement she made to the SBI was not accurate and several things were wrong. Her son did not see the Victim and was not at the Victim's house. Both of her sons lived with Pritchard and Pritchard's girlfriend. (TT, pg. 160). She did not say that Pritchard gave the Victim eight pills on the day before he died. (TT, pg. 161). Pritchard did not say when he gave the Victim morphine pills. He did not say he was worried about the Victim's death; *she* said

she was worried about the Victim's death. When she spoke to Pritchard, it was soon after the Victim died. Pritchard was upset. It was not a long conversation. (TT, pg. 162). At times in the past, Pritchard told her that he gave pills to the Victim and at other times he told her that he did not give pills to the Victim. (TT, pg. 164). She did not know if Pritchard ever gave the Victim any morphine pills. (TT, pg. 170). She testified that she was still friendly with Pritchard and had been writing him letters about once a month in jail for the past three years. (TT, pg. 162). She also testified that law enforcement threatened her with life in prison when she spoke to them. (TT, pg. 163). During her testimony, she identified a note that she wrote to Pritchard that said she did not make those statements to law enforcement, and that they added to it and twisted what she said. (TT, pg. 169). Her statement from 2011 was also taken out of context and twisted. (TT, pg. 169).

Law enforcement officers testified as well about their investigation. They testified that no threats were made to Robbie when she was interviewed. (TT, pg. 173). The four photographs that were taken at the scene were entered into evidence at trial and show the Victim in the position he was found. (TT, pg. 180). At some point, Lt. Higgins inspected the Victim's body on the couch and removed the comforter covering him; he did not see any obvious signs of trauma to the body. (TT, pg. 203). There are no photos that show the condition of the Victim's arms. (TT, pg. 204). They never looked into whether or not there was any type of delivery of drugs on March 5, 2011 between "CR," who is "CR Henson" and the Victim. (TT, pg. 189). No one ever located the spoon used in the bathroom to melt the morphine pills. (TT, pg. 197). No one ever said that

_

²⁸ CR Henson has been identified as Charles Robert Hensley.

the Victim had been drinking. (TT, pg. 205). There was no evidence to support the contention that the Victim's body had been moved. (TT, pg. 208).

Law enforcement also testified about a controlled drug buy with a confidential informant on January 26, 2010. The confidential informant arranged a meeting with Pritchard, who arrived in a gray Ford Ranger pickup truck. The confidential informant purchased two 15 mg morphine pills and four oxycodone pills from Pritchard. Pritchard was charged and pled guilty to drug possession and delivery charges, as well as maintaining a vehicle to sell controlled substances. (TT, pgs. 225-226). Pritchard's medical records from the VA Hospital were admitted at trial. (TT, pg. 230). Those documents showed that Pritchard had an active prescription for morphine sulphate 30 mg SR tablets in March 2011. (TT, pg. 231).

Dr. Hall testified as an expert in pathology and forensic pathology. (TT, pg. 237). He testified that the cause of death in this case was morphine toxicity or morphine overdose. (TT, pg. 238). Indirect findings were severe pulmonary edema and congestion, as well as acute bronchial pneumonia. These conditions were related to the morphine toxicity. A screening test done of the aorta blood was positive for morphine. There was a trace amount of morphine in the peripheral blood vessel. There were 15 mg/L of morphine in the urine. Morphine is metabolized in the liver and excreted through the kidneys into the urine. Dr. Hall testified that the cut off point for toxicity resulting in death in urine is 14 mg/L. (TT, pg. 239). The Victim had alcohol present in his system at 40 mg/dL, or .04 on the breathalyzer scale. The alcohol was not a cause of death. (TT, pg. 241).

Dr. Hall testified that he was a medical examiner for 23 years. He was the Medical Examiner in Watauga, Ashe, Avery, Mitchell, and Yancey counties. He had also previously been a

medical examiner in Durham for three years in the beginning of his career. Dr. Hall resigned as Medical Examiner in June 2013. (TT, pgs. 241-242). In his career, he had conducted more than 3,000 autopsies. (TT, pg. 257). Dr. Hall determined that the time of death was 11:00 a.m. based on information given to him from the Yancey County Sheriff's Office. (TT, pg. 247). When he signed the initial death certificate on March 16, 2011, he initially marked that the cause of death was pending. He did not make any conclusions at that time as to cause of death. He amended and signed the death certificate on July 15, 2011 after he received the toxicology report. (TT, pg. 248). Because no urine alcohol test was done in this case, Dr. Hall was unable to determine what level of metabolism the Victim was in at the time of death. (TT, pg. 250). There is no metabolism of alcohol after death. (TT, pg. 249). At some point, the Victim could have had a high level of alcohol prior to his death. (TT, pg. 258). Dr. Hall did not know that the Victim had been drinking alcohol until he received the toxicology report after March 7, 2011. (TT, pg. 254). Dr. Hall testified that mixing alcohol and morphine is not smart because they are both central nervous system respiratory depressants. Mixing the two together can kill a person; one by itself can also kill a person. (TT, pg. 253). Any amount of alcohol mixed with morphine could potentially be fatal. (TT, pg. 254). In his opinion, the risk for death when mixing alcohol with morphine is greater when the method of injecting morphine is used. (TT, pg. 254). Dr. Hall testified that but for the morphine, there is no other explanation for why the Victim would have died; the levels of morphine found in the Victim were fatal. (TT, pgs. 259-260).

During the autopsy, Dr. Hall noted abrasions, an ulcer of the left heel, and needle marks in the area of the left forearm. The abrasion on the heel was consistent with shoes rubbing. (TT, pgs. 240-241). For the last 100 autopsies he had performed, he only went to the scene in a few

cases. The state of NC did not require him to go; he was paid the do the report, investigation, and autopsy. (TT, pg. 256). At the time of this autopsy, he was charged with DWI. (TT, pg. 257). He also testified that he was not aware of ever making a conclusion in an autopsy of an overdose or toxicity and being corrected at a later time. (TT, pg. 258).

At the conclusion of Pritchard's trial, he was found guilty of all charges. He was sentenced to 170-213 months on the Second-Degree Murder charge. The court arrested judgment on the Delivery of a Controlled Substance Schedule II charge. He received concurrent sentences on the Possession with Intent to Sell and Deliver Controlled Substances Schedule II charge and the Maintain Vehicle/Dwelling/Place for Controlled Substances. (TT, pgs. 291-292, 300).

VI. Post-Conviction Appeals and Other Investigations

A. Appellate Decision

Pritchard appealed his convictions to the North Carolina Court of Appeals. He appealed the denial of a Motion to Dismiss that was based on an argument that the State failed to show malice and proximate cause, that it was error to allow in evidence at trial of Pritchard's prior drug related convictions, and that it was error to allow evidence of Pritchard's prior drug transactions with the Victim. The North Carolina Court of Appeals issued a decision on August 2, 2016 upholding his convictions. The opinion outlining the appeal is provided in Appendix I.

B. Post-Conviction Motion for Appropriate Relief

Pritchard hired attorney David Belser (Belser) to file a Motion for Appropriate Relief in his case in January 2017. Belser consulted with Dr. Christena Roberts (Dr. Roberts), a forensic pathologist. Dr. Roberts reviewed the autopsy documents, the trial transcript, and a letter from

Pritchard in July 2019. During his representation of Pritchard, Belser suffered a debilitating stroke in September 2019 and was no longer able to continue the practice of law. Belser never filed a Motion for Appropriate Relief for Pritchard.

C. Wake Forest University School of Law Innocence and Justice Clinic

After his attorney suffered a stroke, Pritchard applied to the North Carolina Innocence Inquiry Commission in September 2019. Dr. Roberts referred Pritchard's case to the Wake Forest University School of Law Innocence and Justice Clinic (Clinic) on or about February 26, 2020. Belser's attorney file was provided to the Clinic. The Commission learned through a conversation with Dr. Roberts on February 26, 2021 that she had previously referred Pritchard's case to the Clinic. The Commission reached out to the Clinic on that same day to avoid duplicating efforts in investigating Pritchard's innocence claim. After that contact, the Clinic decided to officially refer the case to the Commission and closed their innocence investigation. The Clinic provided its entire file to the Commission. The Commission obtained a copy of Dr. Roberts' unsigned draft affidavit dated January 11, 2021. This draft affidavit is provided in Appendix J. The Clinic still represents Pritchard for purposes of the Commission's process. Pritchard has always maintained his innocence to the Clinic.

VII. Proposed Hearing Agenda

The North Carolina Innocence Inquiry Commission will convene on December 14-15, 2021. Before hearing evidence for this case, the Commission will hold its first public comment meeting on December 13, 2021 following a brief administrative meeting. *See* Commission's Rules and Procedures Article 12(B). That public comment meeting and the guidelines regarding that

meeting can be found on the Commission's website at https://innocencecommission-nc.gov/december-2021-public-comment-meeting/. This public comment meeting is intended for the Commission to listen to those comments; it is not a time for answering questions or for conversations between the public and the Commission or the Commission staff. Any issues that are brought up during the meeting can be addressed in an administrative meeting in 2022 so that staff has time to prepare for any questions or concerns Commissioners may have after hearing public comments.

On December 14, 2021 the Commission will begin its hearing on the Pritchard case and the Commission's Executive Director will present in detail the evidence uncovered during the Commission's investigation.

Due to the nature of this case, there will be several experts providing testimony. Prior to the hearing on this matter, the Commissioners will receive the following:

- 1. Transcript and Summary of interview of Pritchard, Defendant
- 2. Transcript and Summary of Deposition of Dr. Hall, Medical Examiner
- 3. Expert Report by Dr. Jerri McLemore, Forensic Pathologist
- 4. Expert Report by Dr. Barbara Wolf, Forensic Pathologist
- 5. Expert Report by Dr. Christena Roberts, Forensic Pathologist
- 6. Expert Report by Dr. Andy Ewens, Forensic Toxicologist
- 7. Expert Report Dr. George Behonick, Forensic Toxicologist
- 8. Expert Report by Dr. Christopher Holstege, Professor of Medicine and Toxicologist

Additionally, Commission staff plans to provide Commissioners with all other handouts prior to the hearing in order to most efficiently utilize time during the hearing. Please plan to

review these documents prior to the first day of the hearing.

During the hearing, Commission staff will present evidence through the primary investigator, Julie Bridenstine, testimony by Defendant Pritchard, and testimony by several expert witnesses regarding the cause of death and generally about death by morphine overdose.

VIII. Conclusion

The Commission is charged with considering "credible, verifiable evidence of innocence that has not been previously presented at trial or considered at a hearing granted through post-conviction relief." At the conclusion of the hearing, each Commissioner shall determine whether "there is sufficient evidence of factual innocence to merit judicial review." All eight Commissioners are required to participate in this vote.

²⁹ N.C.G.S. § 15A-1460.

³⁰ N.C.G.S. § 15A-1468(c).

IX. Appendices

- A. YCSO File (Select Documents)
- **B. SBI File (Entire File)**
- C. DA File (Select Documents)
- D. Indictments from Court File
- E. OCME Autopsy Documents and Photographs from Watauga Medical Center
- F. Interview of Christine Angel Interview on November 26, 2013 from Wake Forest University School of Law Innocence and Justice Clinic File
- G. Motions Filed Prior to Trial from Court File
- H. Trial Digest and Trial Transcript
- I. North Carolina Court of Appeals Opinion
- J. Unsigned Draft Affidavit of Dr. Christena Roberts

APPENDIX A: YANCEY COUNTY SHERIFF'S OFFICE FILE (SELECT DOCUMENTS)

	Agen	cy Nam	ie													OCA						
	Yar	icey (Count	y Sheriff	s Office				IN	ICIDE	NT/II	VV	EST	IGATIO	N	11-	01	51				
A	ORI		0								RE	P	ORT			Date /	Time		ted S	м т		
INCIDENT DATA	NC	1000	000													Mont 03		Day 06	201		Time 11:33	
Ë		Crime	/ Incide	nt(s)						Attempt	At Fou	nd	(S) M	TWT	F S				ure 🕲 I			
Ë	#1	9910) - Una	ttended D	eath					Complete	Month 03		Day .	Yr Tin 2011 11:30	ne.	Mont 0	h	Day 1 06	y Yr		Tim 10:30	
吕		Crime	Inciden	t						Attempt			Incident	.011 11.00	7 [1115.		<u> </u>	00	7 20		fense T	
Z	#2									Complete	410 E	ngli	ish Brai	nch Rd., Bu	rnsville	NC 2	871	4		0	6	
		Crime	Inciden	ŧ						Attempt	Premise	_						_	tim Reside	nce T	уре	
	#3								- Address	Complete	01 - H	om	e of Vid	ctim - Single	Family	/ Dwel	ling		Single Fam	ilv [Multi F	amily
0	How A	Attacke	d or Co	mmitted			Market Selection		-						Forcible	allerantis a	-	THE RESERVE OF THE PERSON NAMED IN	n / Tools			
MO	Bv ti	he vic	tim be	ing found	deceased	t at 4	10 Fn	alish Bra	nch R	hen					☐ Yes	■ N//	A	97 1	Not Appl	icah	lo/Non	•
A CONTRACTOR OF	# of V	10.000	Туре		Telephone Committee Commit	ALCOHOL: NAME OF PERSONS ASSESSMENT	siness	giion bra					None	Minor	ACCUPATION NAMED IN	oss of T		57 - 1		-	-	
	<i>"</i> 0. •			The same of the sa	Governm			Financial Ins	stitute		Injury: Broker			Severe Lac		055 01 1	eeur		Drug/ ■ Ye		ol Use:	nown
		1		eligious	L.E. Of		ine of D	uty [Other/	Unk	Interna	al	Ur	nconscious	Oth	er Major			□ No	,	□ N/A	
		Victim	/Busine	ss Name (La	st, First, Mic	idle)							Victim of	DOB / Age		Race	s	ex	Relations	3.55	Residen Resid	t Status
Σ	V1												Crime #						To Offend	ler		Resident
VICTIM				JR., JON	ATHAN R	USS	ELL						1	01/20/198	2 29	W		М	NA		Unkn	own
>		Addres		RANCH F	ROAD BI	IDNI	21/11 1 1	= NC 28	711									ome P	hone 682-938	2		
	Towns of the last	1100/2000/2000	me/Add		(0), 50		VILLI	-, 140 201	17								-		s Phone	3		
	•																٦	domes	3 i none			
	VYR	- 1	Make		Model		Sty	le		Color	Lic/	Lis			Vin							AVAILABILITY OF THE PARTY OF TH
	2005																					
	Type:			Denote V2, V3 Business	Societ	-	Gove	er than victir		R = Repo	Accordance .			an victim) L.E. Officer Lii	a of Duta			Jnknow				
	Code			First, Middle		,	_ 0070	milent L	_ I IIIaii	iciai iristitute		aligio	ous	L.E. Ollicei Lii	le of Duty			DOB			Race	Sex
	R		•	•												1 (of ime	DOD ,	ngu		Mack	000
		Ang	gel, Ch	ristine Hig	ggins												#	02/1	7/1945	66	l w	/ F
	Home	Addres			,,,												\neg		Phone			<u> </u>
2	410	Englis	h Brai	nch Rd, B	urnsville,	NC 2	8714											(828) 682-93	83		
\geq	Emplo	yer Na	me/Addi	ress														Busine	ess Phone	0)		
OTHERS INVOLVED			Г	7.0			7.		7													
ᇍ	Type: Code	_		Business First, Middle	Societ	у	Gover	nment	_ Finan	cial Institute	Re	eligio	ous 🔲	L.E. Officer Lir	e of Duty			DOB /			Īp	Jour
ĖΙ	oout	l'am	c (Last,	i ii st, iiiluule	•1											(of me	DOB /	Age		Race	Sex
Ŭ																	#		1			
- 1	Home	Addres	s			-						-						Home	Phone			
1															Name and Address of the Owner, where							
	Emplo	yer Nar	ne/Addi	ess														Busine	ess Phone			
Chatura	1 - 1 -		- Ctala	. D - D-		0 0		7 0		D D		^										
Status Codes			= Stole	if recovered	covered d for other j	jurisdi	amageo	Z = Se	zea	B = Burne	a C=	Cou	interfeit / I	Forged F =	Found							
	Victim	DOL	C4-4			۵.	071			_								100 000				
Ì	#	DÇI	Status	Val	iue	OJ	QTY			PI	operty D	escn	iption				viake.	Model	_	Sei	ial Num	ber
ı																			_			
1																						
1																						
[[
PROPERTY																						
ğ																						
<u>a</u>																						
Ļ																						
-																						
-			-						Name and Address of the Owner, where		-	-	-		AND DESCRIPTION		NAME OF TAXABLE PARTY.	No.		-		
ALUXANIA S	out Mayeria	NAME OF TAXABLE PARTY.	nicles Sto	olen					Accession to the Control of the Cont	-	Number of	f Veh	nicles Rec	covered						-		
()	Officer		-liagin	•				1D# Off 873	icer Sig	gnature					Supe	rvisor S	ignat	ure				
	NAME OF TAXABLE PARTY.		Higgin: Signatur	MARKET BEAUTY BE			1 0		se Statu	us	-	To	Case Dis	position.		Name and Address of the Owner, where			-	-		
S)	Joinple	andni (orginatui						Further	Investigation	n		Unfour	nded	Juvenile/N				Extradition		ned	
STATUS									Inactive Closed/	e /Cleared				d by Arrest d by Arrest by		ise to Co	oper	ate	Locat	ed		
တ										Leads Exha	usted	Ī		of Offender		ecution	Decli	ned		Pag	e <u>1</u> c	of _3_
	DCI-60	OF									38		1 7 1			-				100	M	W 3/92

INCIDENT/INVESTIGATION REPORT

Page 2

OCA 11-0151

Status Codes	₹ = L	ost :	S = Stolen R =	Recovered	D = Da	maged	Z = Seized	B = 1	Burned C = C	ounterfeit	/ Forge	ed F	= Foun	d				
	DCI	Ctatus	Quantity	Toma Mana									(Check	up to 3 t	pes of	activity for ea	ch
တ္သ	DCI	Status	Quantity	Type Meas	ure			Suspecte	ed Type			Poss	ess	Buy	Sale	Mfg.	Importing	Operating
DRUGS													_					
Ω													_					
				Ц														
OFFENDER	Offende Alcohol Comput	Drugs	Yes Unk No N/A Yes Unk No N/A	Age:	Race:	Se		Age:	Race:	Sex:		Age:		ace:	Sex		Resident Resident Non-R	Status ent esident
	Name (L	ast, Firs	st, Middle)	Age:	Race:	Sex	C Alias or Ni	Age:	Race:	Sex:		Age:	ome Ac	ace:	Sex			
	Occupation Business Address																	
	DOB / A	je		Race	Sex	Heig	nt V	Veight	ight Build Hair Color Hair Style Hair Length			Eye Color	Glasses					
5			·															
SUSPECT	Scars, Marks, Tatoos, or other distinguishing features (i.e. limp, foreign accent, voice characteristics)																	
SUS																		
12	Hat		Jacket	Shirt/Bl	ouse		Tie/Scarf		Coat	/Suit		T '	Pants/D	ress/SI	kirt		Socks	Shoes
	Was Suspect Armed? Type of Weapon Direction of Travel Mode of Travel																	
	VYR Make Model Style Color Lic/Lis Vin																	
	Name (la	st, first,	middle)				-		DOB / Age			Race	Sex	OCA				
SS																		
WITNESS										Д_								
>	Home Ad	dress					Home Pho	one		Employ	er					Phor	ne	
	Suspect	Hate / E	Bias Motivated:	Yes 🗌 📗	No 🗆													
ш	Narrative		/Investiga	ation Do	nort	Narr	ativo		A STATE OF THE STA									
NARRATIVE	THET	ienc,	/ Investiga	acton Re	port	Nall	ative											
RR/	On O	3/06	/2011 at a	annrovin	atol	v 11.	33 a c:	all w:	as receiv	ed by	, the	o Vai	ncov	Col	inty	Emor	gency	
≨			ns Center															he.
ŀ			ounty Sher								_							
l			Branch	LIIID OI	LICC	WILL	on com	31000	a or a wir	ICC II	idic	DCI	iig i	Ouric	ucc	case	a ac III	<u> </u>
			on arrival	l to the	sce	ne at	approx	ximate	elv 11:40	the	res	iden	ce w	as e	enter	ed a	nd the	
l			,who was o															the
ı			oom couch.															
l			ack with h											100000				
ı			of the re		2000						_				-		Sent to	
			Wade Angel															
			esent at t															
			ep-grandmo															
İ																		011 at
	recently released. Angel also stated that Whitson had arrived to her residence on 03/05/2011 at approximately 01:00. Angel stated that Whitson's girlfriend Stephanie Whitson had came to the																	
	residence on 03/05/2011 at approximately 14:30. Angel stated that the two had left the																	
Ì			e together															on
	returning to her residence that Stephanie Whitson stayed until approximately 21:30 before																	
	may .		Angel sta															

CONTINUATION PAGE

1. AGENCY	2. ORI	3. CONTINUAT		4. OCA FILE	NO.						
Yancey County Sheriff's Office	NC1000000	■ INVESTIGA □ SUPPLEME		11-0151							
Narrative Angel stated that she woke on 03/06/20	011 at approximately 09	:00 and 0	Jonathan was stil	l aslee	p on						
the couch snoring loudly. Angel stated											
to Burnsville to Sav-Mor supermarket	returning at approximate	ely 10:30). Angel stated t	hat							
upon their return Jonathan was still a	asleep on the couch and	still sr	oring. Angel sta	ted tha	t she						
then cooked and that everyone but Jona	athan ate. Angel stated	that her	son Nathan, who	was th	e						
deceased's stepfather, then told his s	son Christian to wake Jo	onathan u	p. Angel stated	that it	was						
then that they discovered Jonathan was	s deceased. Upon complet	tion of t	he statement obt	ained f	rom						
Christian Angel the body of the deceased was photographed. Medical Examiner Brent Hall of Watauga											
Medical Center was contacted by telephone and made aware of the death at which time he agreed to											
receive the body for autopsy. The dece	eased's mother Ann Anne	tte Green	, who had arrive	d to th	е						
residence, requested to use Yancey Fur	neral Services for buria	al. Yance	y Funeral Servic	es was	then						
contacted-and requested to be en-route	e to the residence to the	ransport	the body. Yancey	Funera	1						
Service assistants John Paul Kirk and	Scottie Mathis arrived	to the r	residence at appr	oximate	ly						
13:18. Christine Angel then revealed	***************************************										
observing the inside coat pocket a syn											
pocket an additional syringe was locat											
evidence. Yancey Funeral Services then took custody of the body and transported the deceased to											
Watauga Medical Center.					_						

		-									
	ě										
					-						
Officer Name / ID	Officer Signature		Date / Time Submitted								
Officer Name / ID Sgt. L. R. Higgins - 8873	Smoot digitature		Date / Time Gubinitieu		Page 3						

DCI-602 F

ARREST REPORT Date/Time of Arrest Mo Date Year OCA Agency Name HA 11-015 L Yancey County Sheriff's Office NC1000000 Hrs Arrest Number Taken Fingerprint Car | Check Digit # (CKN) Arrest Tract Residence Tract 1 Photos RAISB74 Country of Race Sex Place of Birth Name (Last, First, Middle) D.O.B. Age Citizenship Resident
Non-Resident U.S Pritchard John Herbert INFORMATION Occupation [] Unknown Phone Current Address 208/808-399C 74 Turtle Trot Phone Employer's Name Address Consumed Drug/Alcohol Skin Tone Wgl Hair Hgt Also Known As (Alias Names) ARRESTEE L'Yes No L'Unk 189 Misc. # and Type Social Security # **OLN and State** Scars, Marks, Tattoos Tattons-Chest, upper Arms, Back Phone Address Nearest Relative Name 250-1280 (BDB) Charlie Brown Rd. Burns Robbie Jean Brown Place of Arrest If Armed, Type of Weapon On-View Criminal Summons Order for Arrest Citation ☐ Warrant Turtle Trot Warr. Date Mo Date Yr Statule # Offense Jurisdiction (if not arresting agency) DCI Code Charge #1 Fel Counts ARREST INFO. SECOND . Misd 110 11 8811 Warr. Date Mo Date Yr DCI Code Offense Jurisdiction (if not arresting agency) Statute # Fel Counts Deliver Sch Misd 1182 90-95/AY Warr. Date Mo Date Yr DCI Code Offense Jurisdiction (if not arresting agency) Fel Counts Mainth Veh/ 890 [] Misd 90-108/AY7)11 |d8|11 DWELL/Place CS Vin Color Lic/Lis Style Model Secured Unsecure Date/Fime [] Left at Scene 1 Vehicle: VEH. Released to other at owners request Name of Other Inventory on File?.. 3. Impounded Place of Storage Committing Magistrate Place Confined Date/Time Confined CONFINED BOND INFO. MCAU Count City Trial Date Court of Amt. Bond Type Bond Written Promise [] Unsecured Burnsville Secured No Bond Cl Other 1/24/10 150,000.00 Date/Time Released Released By: Name/Dept/ID Assisting Officer Name/ID Number Hrs Roscoe Bailey F = Found B = Burned C = Counterfeit / Forged S = Stolen R = Recovered D = Damag
"OJ" column if recovered for other jurisdiction) Z = Seized D = Damaged Status Codes Check up to 3 types of activity for each Suspected Type Type Measure Importing DCI Quantity Sale Mig. Operating Status DRUGS AT TIME OF ARREST Possess Buy Phone: Address: PLAIN-ANT Name: Complainant Victim [BUTHEVILLE N.C. 28714 of North Carolino * see Attached * NARRATIVE Supervisor Signature Date/Time Submitted Arresting Officer Signature/ID # 19 m 887 Arrestee Signature Case Status: Case Disposition: Cleared By Arrest / No Supplement Needed 41 ☐ Inactive Closed ArresVNo Investigation NCIIC - Yancev Co SFF

DCI-608F

ARREST REPORT Date/Time of Arrest Mo Date Year OCA **Agency Name** Jancey County Sheriff's Office Taken Fingerprint Card Check Digit & (CKN) NC Residence Tract Prints Photos Country of Piece of Birth Name (Last, First, Middle) D.O.B. Age Sex Citizenship ARRESTEE INFORMATION Resident Unknown Current Address Occupation Non-Resident Employer's Name Address Consumed Drug/Alcohol Skin Tone Also Known As (Alias Names) Hật Wgt OLN and State Misc. # and Type Social Security # Scars, Marks, Tatoos Phone Address Nearost Relative Name On View Criminal Summons If Armed, Type of Weapon Place of Arrest Citation Warrant Warr. Date Mo Date Yr ARREST INFO. XFeI ☐ Misd DCI Code Offense Jurisdiction (if not arresting agency) Statute # Counts Charge #1 Fel Misd Warr. Data Mo Date Yr Statule DCI Code Offense Jurisdiction (If not arresting agency) Charge #2 Counts Warr. Date Mo Date Yr Statute # DCI Code Offense Jurisdiction (if not arresting agency) □ Fel Charge #3 Misd Make Model Style Color Lic/Lis Vin VEH. INFO. Secured 1. Left at Scene Unsecure Date/Time. Hrs Vehicle: 2. Released to other at owners request Name of Other. Inventory on File? 3. Impounded Place of storage. Committing Magistrale Date/Time Confined Place Conlined CONFINED BOND INFO. Hrs. Court of Type Bond

Written Promise Unsecured
Secured No Bond Other City Amt. Bond Trial Date Date/Time Released Released By: Name/Dept/ID Assisting Officer Name/ID Number Hrs. C - Counterfeit / Forged L-Lost S-Stolen R-Recovered D-Damaged (Check "OJ" column if recovered for other jurisdiction F-Found Z - Selzed B - Burned Status Check up to 3 types of activity for each Suspected Type DRUGS AT TIME OF ARREST Status Quantity Type Measure Buy Sale Mig. Importing Address: Name: Complainant 🔲 NARRATIVE Supervisor Signature Date/Time Submitted Mo Date Yr Arresting Officer Signature/ID # Arrestee Signature Case Status: Case Disposition: Cleared By Arrest / No Supplement Needed Arrest/No Investigation Inactive Closed

DCI-608F

Arrest Report Narrative

Subject was taken into custody at his residence and transported to the Burnsville Police Department, where North Carolina State Bureau of Investigation Special Agent Charles Vines was met. The Defendant was advised of his Constitutional Rights for the purpose of conducting an interview. The Defendant then refused to wave his rights and make any type of statement. The Defendant was then transported to the Yancey County Sheriff's Office, where he was processed. The Defendant was then taken before Magistrate Julia Tipton, where this Order for Arrest was served. The Defendant was then held in the Yancey County Jail in lieu of a \$150,000.00 secured bond.

ARREST REPORT

_	Agency Na	me		ORI Date/Time of Arrest Mo Date Year						OCA							
Š	Yancey	County Sherif	f's Office			NC100	0000	- 1			ar 11 11:17	Hrs.	11-	-015	1		
AGENCY INFO.	Taken Prints Photos	Fingerprint Card C	heck Digit#(CKN)	C ////////////////////////////////////	Arrest Trac	t	- 1	Residenc	ce Trac	t	Arre	st Num	ber			
	Name (Las	t, First, Middle)					D.O.E	3.	Age		Race	Sex		Place of	Birth		country of
Z	PRITCH	ARD, JOHN HE	BERT				09/07/1	951	60		w	М		HARLE SC	STON	С	itizenship US
ATIO	Current Ad		DI IDNIO III				Phone				Occupation			Resident Unknown Non-Resident			
RM	Employer's	Name	BURNSVII	LE, NC	28/14	Addres	(828) 208	3-399	90		UNEMP	LOYED		L Non	Phone		
P. OF						Address									riono		
RRESTEE INFORMATION	Also Know	n As (Alias Names)					Hgt 5'11"		Wgt 198	Ha Bl	air .K	Eye BRO	Ski	in Tone			rug/Alcohol No 🗌 Unk
ARRES	Scars, Mar Tattoo C	ks, Tattoos hest; Tattoo Up	per Arm; Ta	attoo Bad	ck	Social Security # OLN and State Misc. # and Type 774296 NC											
	Nearest Re	lative Name				Addres	s							Ph	ione	-	
		N, ROBBIE JEA	N		100000	CHARLIE E	RO	WN RO	AD, I	BURNSV	ILLE, N	IC 287	100	328) 68	2-03	61	
- Marian Marian		ype of Weapon		On-Vie		nal Summons		-	ace of An	-		ACCUPATION ASSESSED.				-	-
o.	97 - Not Charge #1	Applicable/None)	Order f		Citation	Warrant	_	a rees me		Drive, B		, NC				
NFO		Degree Murder		Fel Misd	Counts	DCI Code	Offens	e Juri	isdiction	(if not	arresting a	gency)	4	Statut	136	Mo	arr. Date Date Yr
ST	Charge #2			■ Fel	1 Counts							11	28 2011 arr. Date				
RREST INFO	Deliver S	Sch II CS		Misd	1	1810			io alou on	(iii iiot	arresting a	geneyy	1.	90-95(Mo	Date Yr 28 2011
4	Charge #3	eh/Dwell/Place	00	■ Fel	Counts	DCI Code	Offens	e Juri	isdiction	(if not	arresting a	gency)	+	Statute		W	arr. Date
	wainth v	en/Dwell/Place	CS	☐ Misd	1	1890							9	0-108	A)(7)		Date Yr 28 2011
o.	VYR	Make	Model	Sty	yle	Color	Lic/Lis	R			Vin						
Ę	Vehicle:	Left at Scene		Secured	Unsecure	Date/Time		-					1100				
VEH. INFO		2. Released to of	her at owners	request	Name of Ot					Hrs							
	Date/Time	3. Impounded	☐ Place of										Inv	entory or	r File?		
00	12/01/20		1:47 Hrs.	Place Col	ntinea				ľ		itting Magi: Tipton	strate					
NE	Type Bond	192 - 271		T	Amt. Bond		Trial Date Court of							City			
CONFINED BOND INFO.	Written f ■ Secured		ored Other		\$150,000	0	1/24/2012		District	t				BUI	RNSVII	LE	
28	Assisting C	fficer Name/ID Numb	per			Releas	ed By: Name	Dept	/ID			-	D	ate/Time	Release	d	
-		heriff Roscoe R		460													Hrs.
Status Codes	L = Lost (Check "O.	S = Stolen R = F column if recover	tecovered ed for other i	D = Damag urisdiction)		ed B = Bur	ned C = C	ounte	erfeit / For	ged	F = Found	i					
	DCI Sta	tus Quantity	Type Mea			C				I		Check up	to 3 ty	pes of a	tivity for	each	
DRUGS AT TIME OF ARREST	DOI Ste	tus Quantity	Туре меа	sure	San Color Maria Carlo	Suspect	ed Type			-	Possess	Buy	Sale	Mfg.	Importir	ng	Operating
ARF				_						-						_	
PAP			-	_				_		-						4	
								_	-				-	_			
COM- PLAIN- ANT	Service Services	omplainant OF NC, YCSD	/ictim 🗌			Address 4 E M	s: AIN STRE	ET,	Burnsvi	ille, N	C 28714			(82	ne: 28) 682-	212	4
gran	Arrest	Report Nam	rative														
NARRATIVE																	180
EA.	Subjec	t was taker	into c	ustod	y at his	residen	ce and	tra	nspoi	rted	to th	e Bur	nsv	ille	Polic	e	
NA.	Depart	ment, where	North	Carol	ina State	Bureau	of Inv	est	igati	ion	Specia	1 Age	ent (Charl	es Vi	nes	s
	was me	t. The Def ϵ	endant w	as ad	vised of	his Con	stituti	ona	al Ric	ghts	for t	he pu	rpos	se of	cond	luc	ting
m	Arresting O	ficer Signature/ID #			Date/Time Sub Mo Date	Yr	1	Supe	rvisor Sig	gnature							- I a francis
STATUS		nt L. R. Higgins		8873	12 19	2011 1				242-35				<u> </u>			
ST/	Case Status Futher In	1.		Arrest / No	o Supplement Ne	eded	Arrestee Sig	jnatu	re								
	☐ Inactive	Closed	☐ Arrest/No	Investigatio	n	******	44	-							00	D- C	

CONTINUATION PAGE

1. AGENCY	2. ORI	3. CONTINUATION TO:	4. OCA FILE NO.
Yancey County Sheriff's Office	NC1000000	☐ INVESTIGATION ■ ARREST ☐ SUPPLEMENTARY INV.	11-0151 - 1
Narrative an interview. The Defendant then refus	sed to wave his rights	and make any type of sta	tement. The
Defendant was then transported to the			
Defendant was then taken before Magis	trate Julia Tipton, whe	re this Order for Arrest	was served.
The Defendant was then held in the Yan	ncey County Jail in lie	u of a \$150,000.00 secur	ed bond.

			E-rear and the second s
Officer Name / ID	Officer Signature	Date / Time Submitted	Page 2
Lieutenant L. R. Higgins - 8873		12/19/2011 12:30	of3

DCI-602 F

CONTINUATION PAGE

1. AGENCY	2. ORI	3. CONTINU	3. CONTINUATION TO:		
Yancey County Sheriff's Office	NC1000000	☐ INVESTIGATION ■ ARREST ☐ SUPPLEMENTARY INV. 11-			- 1
Officer Name / ID	Officer Signature		Date / Time Submitted		Page 3
Lieutenant L. R. Higgins - 8873			12/19/2011 12:30		of3

Offense/Charge(s)

Charge #4 PWIMSD Sch. II CS	Fel	Counts	DCI Code	Offense Jurisdiction (if not arresting agency)	Statute #	Warr. Date Mo Date Yr
T WINISD SCII. II GG	Misd	1	1810		90-95(A)(1)	11 28 2011

Criminal Paper

Yancey County Sheriff's Office

250002000000	nal Numb	oer:		riminal Pap	oer:		Offense			Offense Des					Count	
	09090		Order Fo					7_Dup_*	_	Murder - 2n						
Orien	se Type:		Offense	Date:	OCA Num	iber:		File Num				ounty:				sued:
lanua	J D							11CRS0		804	-	ancey			11/28/	2011
Issue	а ву:				Date Rece 11/30/20			er Location rant Box	n:		Ag	ency With	Paper:			
Office	r With Pa	aper:				Date Ta	ken/Assi		Sta	tus:				T	Date S	erved:
									A -	Active/Outs	tandin	a a		- 1	10/1	
Date F	Returned	Offi	cer Making	Return:						To Clerk:		D Number:	1	NCIC N	lumber	
Arrest	Date:	Arre	sting Offic	er:				Check	Dig	git Number:	Bon	d Type:	E	Bond A	mount	:
	1/11	Le	wis R	yan His	aning											
-5127-735-51	Location	:			33							Court Da	ate:	Co	ourt Tin	ie:
Burns												11/24/2012 9:30				
Care C	of Name:				Ca	re Of A	ddress:						Care	e Of PI	none N	ımber:
		or homes and a second				-						TAXAS Market and to be been				
								ndant								
	lant Nam				1		nt Addres	77-17							ımber:	
	HARD,			1			7.75-7-1-1			BURNSVILL				_	2-0361	
	1		Race: Se		The reserve to the	1	ild:	Hair Co	lor:			ir Length:	Eye C	olor:	Skin:	
09/07/			N N	5'11"	195	HV		BLK		STR	ME	D	BRO			
ociai	Security	Number	77429	s License N 6	Number:	Dri NO	ver's Lice	nse State	: :	FBI Numi	oer:		SID N	umber	:	
Occupa	ation:)	Emplo				Employer	Address	:				Pho	ne Nur	nber:	Ext.:
7112111	LOTEL															
							Compla	inant(s)							
Seq.#	Name:				Add	ress:						Phone Nu	ımber:	Da	ate of B	irth:
	State of	NC							11.501.00							
	Age:	Race:	Sex:	Employe	er:					Employer A	ddress:			-		
	Employe	r Phone	#: Ext.	: Depa	artment:											
							Service	Notes			and a file of the					Service County of

File No. 11CRS00030	4 See Attachment	Law Enforcement Case No.	LID No.	SID No.	FBI No.	1
ORDER FOR # 110FA1440633	ARREST	STATE OF NORTH C	Section 10 to 10 to 100	n The General Court istrict 🗓 Superior C	A STATE OF THE PARTY OF THE PAR	00001
I SECOND DEGREE MURDE	ER.	To any officer with authority and The Court finds that: 1. FTA - RELEASE ORDER the defendant has been	R [G.S. 15A-305(b)(2)	1	us failed on t	he data shows to appear
THE STATE OF NORT Name, Address & Telephone No. Of Defe	ndant	as required by the Relea on these charges.	se Order. This is	s the defendant's seco	ond or subse	equent failure to appear
JOHN HERBERT PRITCHAR 737 CHARLIE BROWN RD	D	2. FTA - CRIMINAL SUMM the defendant has failed Summons or by a Citation	on the date shown to in that charged the de	appear as required be fendant with a misder	v a duly exe	15A-305(b)(3)] cuted Criminal
BURNSVILLE YANCEY COUNTY	NC 28714		ed a true bill of indictn	nent against the defen	ndant, a copy printed. G.S. 1	y of which is attached. 5A-502(a).]
	T	4. FTA - SHOW CAUSE ANd the defendant has failed this criminal proceeding.	on the date shown to	305(b)(8)] appear as required in	a Show Ca	use Order entered in
Race W M Social Security No. Dr. Name And Address Of Defendant's Emplo	Date Of Birth Age 09/07/1951 vers License No. & State oyer	5. FTA - SHOW CAUSE Of [G.S. 15A-305(b)(8); -13 the defendant has failed entered in this case and cause why the defendant	RDER IN ORIGINAL 62(c); -1364(a)] by the date shown to has also failed, as re	pay a fine or costs or quired upon such failu	both as reg	uired by a judgment on that date and show
		G. PROBABLE CAUSE TH. [G.S. 15A-305(b)(9); 5A- this Court has initiated p G.S. 5A-16, has issued a not appear as required ir	.16] lenary proceedings fo a show cause order a	r contempt against the	e defendant	under
Date Defendant Failed To Appear Amount Of Bond Tyl	pe Of Bond OFFICIAL'S DISCRETION	7. PROBATION VIOLATIO the probation officer has alleging that the defenda the written statement is a	N [G.S. 15A-305(b)(4) provided the court wint has violated specifications.	l); -1345(a)] th a written statement	; signed by defendant's	the probation officer, probation and a copy of
PER MANAGEMENT	10-20-00-0	8. Other: (specify)				
TRUE BILL OF INDIC Date Of Arrest & Check Digit No. (As Sho	wn On Fingerprint Card)	You are DIRECTED to take the purpose of:				
X 0.0 40	ense In Violation Of G.S. 14-17	✓ determining condition ✓ commitment since rel	s of release, and for dease of the defendan	commitment if the defe t is not authorized.	endant is un	able to comply.
Date Of Offense Da	te Issued	Signature TAMMY R MCENTYRE		County Courthouse; 000		Court Date 11/24/2012
03/05/2011	11/28/2011	☐ Magistrate ☐ Deputy CSC ☐ Asst. CSC ☒ Clerk Of Superior Court		VNE SQUARE ROOM VILLE,NC 28714	5	Court Time 09:30 AM X AM PM
AOC-CR-217, Rev. 4/11 © 2011 Administrative Office of the	Courts	OTHER AGENCY COPY -	NOT FOR SERVI	CE		

NORTH	CAROLINA WARI	RANT R	EPOSITORY	File No.	11CR S304		
YANCEY	County	28		In The General C District \(\sqrt{Superior} \)	20 87 756		
Name Of Defen	dant			RELATE	CASES		
JOHN H	ERBERT PRITCHA	RD		ATTACHME			
		ATTA	CHED TO PROCESS				
Process Type			ry Of Process Details				
# 110FA1440	FOR ARREST	judicia	e DIRECTED to take the defe	defendant into custody and bring the defendance in the defendance			
Date Issued	Issued By		Location Of Court		Court Date		
2011-11-28	TAMMY R MCENTYRE		Yancey County Courthouse;		11/24/2012		
	Title CLRK OF CRT		110 TÓWNE ŠQUARE RO BURNSVILLE,NC 28714	OM 5	Court Time 09:30 AM		
		1 F	RELATED CASES				
File No.	Name and Address Of			Offense (Count)			
11CR S305	JOHN HERBERT PRITO	RD		I DELIVER SCH II CS (II MAINTN VEH/DWEI	L/PLACE CS (F) (1)		

PHON	E CALL
FOR 104 DATE 11-9 TIME M John Pritchard	806 A.M.
OF	PHONED
PHONE 828) 208-3990	RETURNED YOUR CALL
MESSAGE 6-8 heghs below	PLEASE CALL
Medication levels but in	WILL CALL
to his counselos of VA	CAME TO SEE YOU
Vanay	WANTS TO SEE YOU
A TOTAL CONTRACTOR OF THE PARTY	RSAL. 48003

YANCEY COUNTY SHERIFF'S OFFICE GARY BANKS, SHERIFF 4 EAST MAIN STREET BURNSVILLE, NORTH CAROLINA 28714 TELEPHONE: (828) 682-2124 FAX: (828) 682-0070

FAX COVERSHEET

TO: Buncombe County Jail (Rachel)
DATE: /d/5/11
FROM: Lt. Lewis Ryan Higgins
FAX#: (808) 250-6035
NUMBER OF PAGES INCLUDING THIS COVERSHEET:

CONFIDENTIAL: This is an official FAX of the Yancey County Sheriff's Office. To make public or reveal the contents thereof to any unauthorized person is a violation of the General Statutes of North Carolina.

Please provide all information in regards to Jonathan Russell Whitson Junior DOB: 01/20/1982 being in your custody on 03/04/2011.

Thanks,

Lt. Lewis Ryan Higgins

Dec. 8. 2011. 5:15PM



OFFICE OF THE SHERIFF BUNCOMBE COUNTY, NORTH CAROLINA

202 Haywood Street Asheville, N.C. 28801

Van Duncan, Sheriff

Buncombe County Detention Facility 20 Davidson Drive Asheville, NC 28801 828) 250-4610 Fax (828 250-6086

FAX COVER SHEET

To:	CT. Lewis Ryan Higgins
Fax #:	0F00-68d-868
	Rachel
Date: _	12-8-11
Re:	Confinement dates for Whitson, Jonathan
Pages:	<u> </u>
	Comments
(Dony for the wait



OFFICE OF THE SHERIFF BUNCOMBE COUNTY, NORTH CAROLINA

202 Haywood Street Asheville, N.C. 28801

Van Duncan, Sheriff

Request for Documentation

RE: Jonathan Russell Whitson Jr.

Dates of Incarceration: 3-4-11/3-4-11

Docket #	Charges
09CR002054	DWLR
09CR002054	Exp. Registration Card/Tag



OFFICE OF THE SHERIFF BUNCOMBE COUNTY, NORTH CAROLINA

202 Haywood Street Asheville, N.C. 28801

Van Duncan, Sheriff

Buncombe County Detention Facility 20 Davidson Drive Asheville, NC 28801 828) 250-4610 Fax (828 250-6036

FAX COVER SHEET

To: Vancey Co Sherift - Deputy Higgins
Fax #: 828-682-0070
From: Deputy P.J. S. How 828-250-4597
Date: 12-8-2011
Re: Jonathon Russell Whittson JR
Pages: 4
<u>Comments</u>
This is the information you requested from Capt Sayles
this subject does have a open warrant for us if that helps your case any.
more your case only.

Service + Accountability + Integrity + Professionalism + Dignity

Name: WHITTSON, JONATHAN RUSSELL JR



Name: JONATHAN RUSSELL WHITTSON JR

Home Phone: 828-682-9383

Work: 828-682-1263

Cell #: 828-808-0907

Alias:

DOB: 01/20/1982 Age:

Race: W

Height: 5'11

Wgt: 150 Hair: BRO Eye:

POB: SPRUCEPINE, NC

SSN #:

Name #:

728652

DL/ State: 27667850,NC

Local #:

State Id:

FBI #:

NCIC:

Cautions:

Nenry 2:

410 ENGLISH BRANCH RD BURNSVILLE NC 28714

Employment History: DOYLE WHITTSON BURNSVILLE 03/04/2011 DOYLE WHITTSO

SMT:

Henry 1:

TATT RIGH ARM / REBEL FLAG

Photo Date: 03/04/2011

Address History:

Physical Char:

PAGE

90/20

Comments:

BCDF

WHITTSON, JONATHAN RUSSELL JR

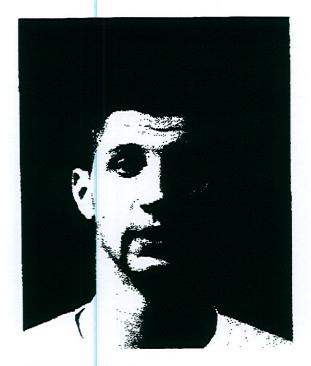


Photo Date: 03/04/11

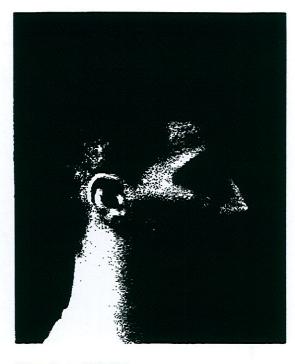


Photo Date: 03/04/11

WHITTSON, JONATHAN RUSSELL JR (W M 01/20/1982)

User: SALYERSB

BUNCOMBE COUNTY SHERIFF'S OFFICE

12/08/2011 17:36

WHITTSON, JONATHAN RUSSELL JR Jail Release History:

[03/04/2011 19:40, BLAIRH, 5638, BCSD] release to self wp

sidmemo

CO /bO

58

BCDE

Page 1 000023

12/09/2011

12:20

User: SITTONPA,

BUNCOMBE COUNTY SHERIFF'S OFFICE

12/09/2011 09:56

tij

Name: WHITTSON, JONATHAN RUSSELL JR

SysId: 728652

BLAIR, H. C.)

Race: W

Sex: M

DOB:01/20/1982

									Case Id/	
Sta	Status Type Relationship		Description		Date	Agency Jv	Book Id			
1	AR	ARRESTEE		DWLR			03/04/2011	BCSD		TIGH 1787 1788 1886 1886 1887 1887 1887 1887 1887 1887 1887 1887 1887 1887
		II DWT.O	T Crt	Date 03/07/2011.	Dkt: 09	CR 002054	(03/16/2009	9. BLAIR,	H. C.)	

2) EXPIRED REGISTRATION CARD/TAG, T Crt Date 03/07/2011, Dkt: 09CR 002054 (03/16/2009,

the warrant is comfirmed

as of 12-9-2011



State of North Carolina General Court of Justice

GERALD W. WILSON DISTRICT ATTORNEY Jwenty-fourth Prosecutorial District
YANCEY COUNTY COURTHOUSE
ROOM 6
BURNSVILLE, NC 28714
PHONE: (828) 678-5721

State Bureau of Investigation Western Crime Lab Unit P.O. Box 2408 Skyland, NC 28776-2408

Re: Victim Jonathan Russell Whitson Jr.

Case: 11CRS (Pending)

To Whom It May Concern:

Please analyze every item submitted for the presence and identification of controlled substances.

Thank you for your prompt attention in this regard.

Very truly yours,

Virginia Thompson

Assistant District Attorney

100

FAX TRANSMITTAL

WATAUGA MEDICAL CENTER PATHOLOGY DEPARTMENT PO BOX 2600, 336 DEERFIELD RD BOONE, NORTH CAROLINA 28607

Phone: (828) 262-4106 Fax: (828-265-2554)

DATE: 1-6-11. TO: 5gt. Ryan Aliggins FROM: Pathalogy	NUMBER OF PAGES 8 FAX #: 828 - 682 - 0150
RE:	PHONE #:

If there is a problem with receiving this message, please call (828) 262-4106

CONFIDENTIALITY NOTICE

The information contained in this facsimile is personal and confidential and intended for the sole use of the addressee. If the reader is not the above named, or the employee or agent responsible for delivering it to the above name, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this facsimile in error, please immediately notify the person listed above and return the original message to the sender at the address listed below.

Watauga Medical Center, Pathology Department, PO Box 2600, Boone, NC 28607



Phone: 828-262-4106 Fax: 828-265-2554

833 State Farm Road Boone, North Carolina 28607

Name:

WHITSON, JONATHAN RUSSELL

Age/Sex: Date of Autopsy Date of Death

29 Y M 03/07/2011 03/06/2011 Brent Hall, M.D.

Authorized By: Persons Present At

Irene Coffey, Catlin Mack

Autopsy:

Autopsy #:

AP-11-5

Race: Time: White 11:30

Received From: Body Identified By: Yancey County

Accompanying papers

REPORTOFAUTOPSYEXAMINATION

FINAL ANATOMIC DIAGNOSIS:

Pulmonary edema and congestion, severe Acute bronchial pneumonia, moderate Pulmonary emphysema, mild Cardiomegaly, mild, with left ventricular hypertrophy

CAUSE OF DEATH: Morphine toxicity

BRENT D. HALL, MD

Electronically Signed: 05/31/2011 20:32

WHITSON, JONATHAN RUSSELL

Autopsy #: AP-11-5

EXTERNAL DESCRIPTION:

Body condition: Intact

Length: 71.0 inches

Weight: 150.0 pounds

Body heat: Cold

Rigor: Complete

Livor: Posterior/purple

Hair: Brown

Eyes: Brown

Teeth: natural

Facial hair: Mustache and goatee

The body is that of a thin adult white male wrapped in a blue/green blanket. A black and white pillow case is present within the blanket. The decedent is wearing blue jeans and white briefs. Within the right rear pocket of the pants is a black wallet with an identification card, various papers and various cards. No money is present in the wallet. A tattoo of the right arm of a Rebel flag with lightening is identified.

EVIDENCE OF INJURY:

Abrasions of both upper legs measuring up to 2.8 cm in greatest diameter are present. There is a 0.5 cm abrasion of the right thumb. A 2.0 cm ulcer of the left heel is also identified. Needle marks are present in the left antecubital fossa and left forearm.

ADDITIONAL PROCEDURES:

Radiographs: None

Microbiology: None

Chemistry:

Glucose-

<20.0 mg/dL

Chloride-

114.0 mmol/L

Potassium-Sodium12.2 mmol/L

UREA nitrogen 16.0 mg/dL

158.0 mmol/L

Calcium-

6.6 mg/dL

Evidence collected: None

Personal Effects Disposition: Clothing, pocket contents, blanket and pillowcase released with the body to the funeral

home

INTERNAL EXAMINATION:

Body Cavities: Unremarkable

WHITSON, JONATHAN RUSSELL

Autopsy #: AP-11-5

detected; morphine, present; nicotine, present; other opiates/opioids, none detected; other organic bases, none detected. A trace of morphine was present in the fernoral blood. Morphine was present in the urine at concentration of 15.0 mg/L.

The case of death in this case was morphine toxicity.

Shile of North Carolina

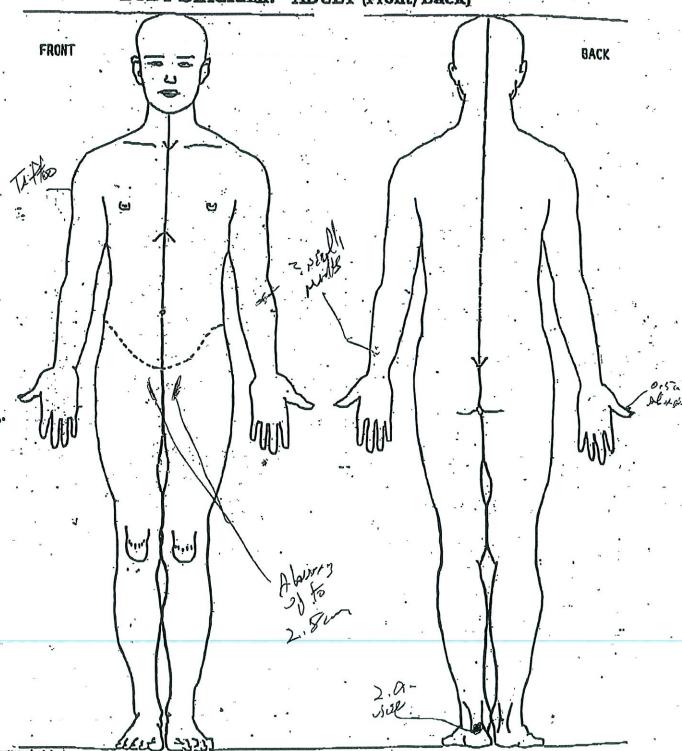
Name of Decedent: South Autopsy

Office of the Chief Medical Examiner

Chapel Hill, North Carolina 27599-7580

Examined By: Date: 3/

BODY DIAGRAM: ADULT (Front/Back)



besing 1917 (4/97) Redical Empliner

This form may be photocopied.

Brent Hall

From: Sent:

documents@ocme.unc.edu Monday, April 04, 2011 7:11 AM

To:

Brent Hall

Subject:

Report T201101851

TOXICOLOGY REPORT

Office of the Chief Medical Examiner

Chapel Hill, NC 27599-7580

Toxicology Folder: T201101851 Case Folder: F201102509

Date of Report: 03-apr-2011

Page: 1

Brent D. Hall Boone Pathology Associates 336 Deerfield Rd P.O. Box 2600 Boone, NC 28607-0000

DECEDENT: Jonathan Russell Junior Whitson

Status of Report: Approved

Report Electronically Approved By: Ruth Winecker, Ph.D.

SPECIMENS received from Brent D. Hall on 09-mar-2011

S110004482: 6.0 ml Blood

SOURCE: Femoral Vessel

CONDITION: Postmortem

OBTAINED: 07-mar-2011

Morphine ----- Trace

04/03/2011

S110004483: 16.0 ml Blood

SOURCE: Aorta

CONDITION: Postmortem

OBTAINED: 07-mar-2011

Benzodiazepines ----- None Detected LCMS 04/03/2011 Cocaine ----- None Detected LCMS 04/03/2011 Ethanol ----- 40 04/03/2011 mg/dL Morphine ----- Present LCMS 04/03/2011 Nicotine ----- Present 04/03/2011 Other Opiates/Opioids ----- None Detected LCMS

04/03/2011

Other Organic Bases ----- None Detected

04/03/2011

S110004484: 5.0 ml Urine

CONDITION: Postmortem

SOURCE: Urinary Bladder

OBTAINED: 07-mar-2011

Morphine ----- 15

Liver

mg/L

04/03/2011

S110004485:

SOURCE:

CONDITION: Postmortem

OBTAINED: 07-mar-2011

1..

TOXICOLOGY REPORT

Office of the Chief Medical Examiner

Chapel Hill, NC 27599-7580

Toxicology Folder: T201101851

Case Folder: F201102509

Date of Report: 03-apr-2011

Page: 2

Decedent: Jonathan Russell Junior Whitson

040417. 07:11 * * * E N D

* * * END OF REPORT * * *

YANCEY COUNTY SHERIFF'S OFFICE D. GARY BANKS SHERIFF

4 EAST MAIN STREET BURNSVILLE, NC 28714 TELEPHONE (828) 682-2124, FAX (828) 682-0150

04-26-2011

Subject: Conversation with Robert Sterling Silvers and Sheriff Gary Banks

On this date I was on Bill Allen Branch Road and came into contact with Robert Sterling Silvers and Holly Bowers Silvers. Robert or Robbie as he is known stated that he wanted to speak to me about Jonathan Whitson. (Jonathan Whitson died on 03-06-2011). Robert asked me if I had the autopsy results back on Jonathan. I told him that we did not have the final autopsy yet and we were waiting for the toxicology report also. Robert stated that he knew that people were saying that Jonathan died of an overdose of Morphine but we would probably find a drug named Opana in Jonathan's system.

Robert stated than he had spoke to that Indian guy (John Prichard) that people were saying had given Jonathan the pills that probably killed him. Robert knows this guy as John and knows where he lives. Robert states that knows that John took Jonathan to pick up the pills and probably was the person that actually handed Jonathan the pills but that a lady named Robbie (Robbie Brown) sold Jonathan the pills known as Opana. Robert states that he knows that Robbie has a prescription for Opana.

Robert states that he can probably buy Opana from John Prichard and would be willing to make a buy so just as long as his name did not appear on any paper work. Robert states that his wife Holly is pregnant and he is fearful that John or someone may retaliate against him.

Robert is currently on probation and asked for assistance in dealing with his Probation Officer. Robert states that his Probation Officer has it in for him and is trying to send him back to prison. Robert's PO is Hal Copley. I gave the name of Officer Copley's supervisor and told him that any concerns about his conduct should be forwarded to them.

The conversation was cut short due to activity nearby and pending calls for service I was involved in.

Subject:

Robert Sterling Silvers, DOB 10-06-1983 Bill Allen Branch Rd. Burnsville, NC 28714 Cell No. 828-783-0371

YANCEY COUNTY SHERIFF'S DEPARTMENT CRIMINAL INVESTIGATIONS DIVISION

TITLE: Investigation Notes of Chief Deputy Thomas L. Farmer

OCA NUMBER: 11-

ACTIVITY: March 6, 2011

VICTIM: Jonathon Russell Whitson

OFFENSE: Unattended Death

DISTRIBUTION: (1) Records

(2) Sheriff D.G. Banks

(3) District Attorney G.W. Wilson

On Sunday March 6, 2011 at approximately 12:01 p.m. I Chief Deputy Sheriff Thomas L. Farmer received a telephone call from Sgt. L. Ryan Higgins who had responded to a call for assistance at the residence of Wade and Christine Angel located in the Jacks Creek Community of Yancey County.

Sgt. Higgins stated that he was at the residence of Wade and Christine Angel located at 410 English Branch Road, Burnsville, North Carolina.

Sgt. Higgins stated that he was there to investigate the unattended death of Jonathan Russell Whitson W/M/DOB: 1/20/1982

Sgt. Higgins stated that at approximately 11:33 a.m. on Sunday March 6, 2011 Christine Higgins Angel had called Yancey County 911 and reported that Jonathan Whitson was at her residence on a couch in the living room and was not breathing.

Sgt. Higgins stated that he upon his arrival he observed Whitson in fact deceased laying on the couch in the living room.

Sgt. Higgins stated that he had talked with all present at the Angel residence and had photographed the deceased and the area of the Angel residence where the deceased was observed.

Sgt. Higgins stated that he had been advised that Jonathan Whitson had arrived at the Angel residence around noon on Saturday March 5, 2011 after being released from the Buncombe County Jail on Friday evening March 4, 2011.

Chief Deputy Farmer learned that Jonathon Whitson had been in the Madison County Jail where he had served a 60 day sentence prior to being released on March 4, 2011to authorities in Buncombe County who had a warrant for his arrest for previous matters.

Sgt. Higgins stated that he had learned that Stephanie Whitson had arrived at the Angel residence soon after he arrived home on Saturday March 5, 2011 and the two of them had left together but returned later in the evening of Saturday March 5, 2011 at approximately 10:00 p.m.

I Chief Deputy Farmer advised Sgt. Higgins that I would telephone Medical Examiner Brent Hall and obtain permission to move the deceased body.

I Chief Deputy Farmer advised Sgt. Higgins that I was going to request an autopsy be performed on the deceased in an effort to determine what caused Whitson's death.

Sgt. Higgins stated that he did not see any evidence of noticeable injury to the exterior of Whitson's body.

Sgt. Higgins did stated that he had recovered two used syringes in the coat pocket of a coat that belonged to Whitson that was present at the scene near his body. Sgt. Higgins stated that he had collected the syringes.

I Chief Deputy Farmer telephoned Watauga Medical Center and requested Dr. Brent Hall telephone me or Sgt. Higgins so we could request an autopsy of the deceased and advise him of the scene that Sgt. Higgins had responded to.

Dr. Brent Hall telephoned Sgt. Higgins and authorized the removal of the deceased from the Angel residence and stated that he would perform an autopsy.

Sgt. Higgins made telephone contact with Yancey Funeral Service at the request of the family of Jonathan Whitson and they responded to the Angel residence and removed the deceased body and transported to Yancey Funeral Service and then on to Watauga Medical Center.

Sgt. Higgins requested that Yancey County Deputy Sheriff Bobby Austin travel to the residence of the deceased biological father Russell Wilson and tell him about the death of his son. Deputy

Austin arrived at the Wilson residence and advised him about the death.

Chief Deputy Farmer was notified by Deputy Austin that notification had been made and Chief Deputy confirmed that the biological mother of the deceased Ann Whitson Green had been notified as well and had actually arrived at the Angel residence and remained there with Sqt. Higgins.

At approximately 2:00 p.m. on Sunday March 6, 2011 Sgt. Higgins and Chief Deputy Farmer had a telephone conversation in regard to the matter of Jonathan Whitson. Higgins and Farmer agreed that Stephanie Whitson and others present at the Angel residence be interviewed in detail in an attempt to obtain information about Whitson. Sgt. Higgins stated that he would make contact with Stephanie Whitson and attempt to conduct an interview with her and others present at and nearby the Angel residence on English Branch Road.

At approximately 3:00 p.m. on Sunday March 6, 2011 I Chief Deputy Farmer received a message on my cellular phone from Yancey County Telecommunicator Rhonda K. Voland stating that Russell Wilson had telephoned the Yancey County Sheriff's Department and requested that I telephone him at his residence in regard to the death of his son Jonathan Whitson.

At approximately 3:10 p.m. I Chief Deputy Farmer telephoned Russell Wilson at his residence. Wilson stated that he wanted me to attempt to find out exactly what happened to Jonathan and I assured him that I would be investigating the death of his son and would be getting help in the case from other officers who work at the Sheriff's Department and other agencies. I advised Wilson that an autopsy was going to be performed on Monday March 7, 2011. Wilson stated that Jonathan had been in jail over in Madison County for two months and was clean of drugs and he was so upset that he had died within hours of being released from jail. Wilson also reminded me that Jonathan had dated Christine Latham in 2010 and she was getting ready to deliver his unborn child. Chief Deputy ended the conversation by advising Wilson that he and all family members would be kept informed of the findings of the investigation as it continued.

At approximately 6:00 p.m. on Sunday March 6, 2011 Sgt. Higgins and Chief Deputy Farmer met at the Yancey County Sheriff's Department and Higgins advised that he had completed an interview with Stephanie Whitson in regard to her time spent with Jonathan Whitson on Saturday March 5, 2011.

During the interview Whitson admitted that she and Jonathan Whitson had spent several hours together on Saturday March 5, 2011 at the residence of Christine Angel and away from the residence of Christine Angel. In addition Stephanie Whitson admitted that she and Jonathan Whitson had used prescription drugs together and admitted that they had both "shot up" morphine drugs.

Sgt. Higgins stated that Stephanie Whitson advised him that on Saturday March 5, 2011 while she was present with Jonathan Whitson at the residence of Christine Angel she and Jonathan had a conversation about John Pritchard. Stephanie Whitson stated that Jonathan Whitson told her that he had talked with John Pritchard and that "Johnnie" (Pritchard) had told him (Jonathan Whitson) that he was coming up "Marion Mountain" and would call him when he got home. According to Stephanie Whitson this meant that John Pritchard was on his way home to Turtle Trot Drive with Morphine and he would call Jonathan Whitson when he arrived and arrange a delivery of Morphine to Jonathan Whitson.

Stephanie Whitson stated that John Pritchard did not call Jonathan Whitson but showed up at the residence of Christine Angel instead. Stephanie Whitson stated that she visually observed John Pritchard arrive at the Angel residence driving his silver colored Ford Ranger pick up truck. Stephanie Whitson stated that that Jonathan Whitson got inside the Ford Ranger truck with Pritchard and Pritchard drove away from the residence. Stephanie Whitson stated that after Jonathan Whitson was gone with John Pritchard for approximately 15 minutes they returned to the residence of Christine Angel and Jonathan Whitson got out of the truck and came back inside the house where she was at. Stephanie Whitson stated that Nathan "Fruit" Angel went out and met with John Pritchard fro a few minutes and she has no knowledge what they discussed.

Stephanie Whitson told Sgt. Higgins that when Jonathan Whitson arrived back into the house where she was at he showed her ten (10) dosage units of 30 mg Morphine pills in his possession. Stephanie Whitson told Sgt. Higgins that according to Jonathan Whitson he had received the Morphine 30 mg pills from John Pritchard while they were together during the time they had left the residence of Christine Angel on March 5, 2011. Stephanie Whitson told Sgt. Higgins that Jonathan Whitson told her that John Pritchard had given him the ten dosage units of Morphine 30 mg tablets because he knew Jonathan had been in jail and had not had anything in a while nor did he have any money. Stephanie

Whitson also stated to Sqt. Higgins that Jonathan Whitson told her that John Pritchard had told him that he (Whitson) could purchase the Morphine pills from him for \$ 8.00 a pill in the future and then turn around and sell them fro \$ 15.00 a pill if he decided to do that. Stephanie Whitson did admit to Sqt. Higgins that she had been with Jonathan Whitson on many previous occasions while Jonathan Whitson was purchasing Morphine 30 mg pills from John Pritchard. Stephanie Whitson stated that she knew for a fact that Pritchard was the person Jonathan Whitson obtained prescription drugs from on past recent occasions. Stephanie Whitson also told Sgt. Higgins that she recalled a conversation that she had with Jonathan Whitson on a prior occasion when Jonathan Whitson told her that John Pritchard had a doctor in South Carolina who was prescribing him Morphine and that Pritchard was traveling to South Carolina to get the prescriptions from the doctor and getting the prescriptions filled in South Carolina as well.

(SEE INTERVIEW WITH STEPHANIE WHITSON CONDUCTED BY Sgt. Higgins on March 5, 2011)

Sgt, Higgins also stated that he had conducted a brief interview with Nathan Angel in regard to the death of Jonathan Whitson. (SEE INTERVIEW WITH NATHAN ANGEL CONDUCTED ON MARCH 5, 2011 by Sqt. Higgins)

Activity: March 7, 2011

On Monday March 7, 2011 at approximately 10:00 a.m. I Chief Deputy Thomas L. Farmer made telephone contact with S/A Charles E. Vines, Jr. by telephone. I advised Agent Vines that I was working an unattended death in the matter of Jonathan Whitson. I gave Agent Vines a synopsis of the case and I requested that he make contact with Madison County Sheriff Administration and request the jail confinement and medical screening records for Jonathon Whitson that were generated during his recent stay at the Madison County Jail in an attempt to determine if Jonathan Whitson had suffered any medical conditions or been given any medication or prescribed any medication while he was incarcerated at the Madison County Jail. Agent Vines stated that he would make contact with Madison County authorities and attempt to collect the requested documentation.

On Monday March 7, 2011 at approximately 11:00 a.m. I Chief Deputy Thomas L. Farmer received a telephone call from Yancey County Sheriff Gary Banks. Sheriff Banks stated that he had received a telephone call from James Whitson. Sheriff Banks

73

stated that James Whitson is a brother to Ann Whitson Greene, the mother of Jonathan Whitson (deceased).

James Whitson told Sheriff Banks that his sister (Ann Greene) was concerned about the investigation being conducted in regard to the death of her son stating that she wanted to make sure that her son had died at the residence of Christine Angel and not at any other location.

James Whitson told Sheriff Banks that rumor from unknown persons about the death of Jonathan Whitson was that he had died somewhere other than the residence of Christine Angel and his body had been moved.

I Chief Deputy Farmer advised Sheriff Banks that I did not feel that there was any evidence that the deceased had been moved. I advised Sheriff Banks that I would attempt to interview Ann Whitson Greene about her concerns.

I Chief Deputy Thomas Farmer arrived at the residence of James Whitson located at Woodland Apartments in an attempt to speak with Ann Greene. Upon arrival I was advised by James Whitson that Ann had left his residence.

While I was present I asked James if he had any information in regard to the death of Jonathan Whitson and he stated that he had no information but was very upset that his nephew had died.

At 13:00 p.m. on Monday March 7, 2011 I Chief Deputy Thomas L. Farmer attempted to make telephone contact with Anne Whitson Greene at the residence of her brother James Whitson and I was advised by James Whitson that Ann was very upset and did not feel like talking. I advised James that I would be in contact with her at a later time but was available if needed. At 14:00 p.m. on Monday March 7, 2011 I Chief Deputy Thomas L. Farmer made telephone contact with Dr. Brent D. Hall by telephone (828)262-4107 at his office located at Watauga Medical Center in Boone, North Carolina. I ask Dr. Hall id he could offer any information in regard to the autopsy of Jonathan Whitson and he stated that in his professional opinion after performing the autopsy that Jonathan Whitson died as a result of an overdose. Dr. Hall stated that there were needle/track marks present on the left arm of the deceased and the marks appeared to have been recently made.

I Chief Deputy Thomas Farmer advised Dr. Hall that the deceased (Jonathan Whitson) had been released from having been confined 60 days in jail on March 4, 2011.

I Chief Deputy Farmer asked Dr. Hall how long controlled substances would remain in the body of the deceased and he stated days.

I Chief Deputy Farmer advised Dr. Hall that I was in the process of getting jail records from the Madison County Jail to determine whether or not Jonathan Whitson had been given any medication while he was incarcerated there.

Dr. Hall stated that the toxicology results would not be available for a couple of weeks.

At 14:00 p.m. March 7, 2011 I Chief Deputy Thomas L. Farmer arrived at the District Attorney's Office in Burnsville, North Carolina and talked with Assistant District Attorney Virginia A. Thompson about the unattended death of Jonathan Whitson. During my conversation with Thompson, I advised her that the name of John Pritchard had been mentioned as a possible source of providing prescription drugs to Jonathan Whitson within hours of his death. I also reminded Thompson that she had prosecuted Pritchard recently for the offense of selling controlled substances that was a result of charges filed by the Burnsville Police Department and also reminded her of a case that I had filed charges alleging that Pritchard did aid and abet Robbie Jean Brown in the sell and deliver of Schedule II Oxymorphone prescription drugs in September 2010. During my conversation with Thompson I reminded Thompson that Pritchard was currently on probation for drug offenses and that I suspected that he did in fact deliver Morphine or some form of Morphine based prescription drug to Jonathan Whitson. I also reminded Thompson that when I had arrested Robbie Brown and John Pritchard in September 2010 my evidence revealed that Pritchard and Brown sold Oxymorphone drugs prescribed to Brown to Jennifer Black who was an informant. I advised Thompson that I felt it was possible that Pritchard may have delivered Morphine type drugs to Jonathan Whitson that were prescribed to his girlfriend Robbie Brown which he has done on past occasions or he had delivered Morphine type drugs to Jonathan Whitson that were prescribed to himself. I requested that Thompson issued subpoenas for the prescription records of both Robbie Jean Brown and John Pritchard. Thompson issued the subpoenas and I served them at CVS Pharmacy in Burnsville, North Carolina and Ingle's Pharmacy in Burnsville, North Carolina. The Patient Prescription record

in regard to Robbie Jean Brown at CVS Pharmacy revealed that Robbie Brown is prescribed Opana ER 40 mg (morphine time released drug) and Oxymorphone HCL 5 mg by Penny Hill NP who is employed by "The Pain Relief Center" located in Morganton, North Carolina. The Pharmacy Patient Prescription Record for Robbie Jean Brown at Ingles revealed that Robbie Brown did not get prescriptions filled at Ingles.

The Pharmacy Patient Prescription Record fro John Pritchard revealed that Pritchard gets no prescriptions filled at CVS or Ingles at any North Carolina location.

Tuesday March 8, 2011

On Tuesday March 8, 2011 I Chief Deputy Thomas L. Farmer received a copy of the Jail Medical Records for Jonathan Whitson while he was incarcerated at the Madison County Jail. The records stated that Jonathan Whitson did not have any medical issues while in custody in Madison County and was not prescribed any medication while he was there and was not taking any medication while he was there.

PLEASE SEE ATTACHED INMATE MEDICAL SCREENING FOR JONATHON RUSSELL WHITSON SENT TO CHIEF DEPUTY FARMER VIA E-MAIL FROM S/A C.E. Vines, Jr.

Wednesday March 9, 2011

On Wednesday March 9, 2011 I Chief Deputy Thomas L. Farmer arrived at the North Carolina Probation and Parole office in Burnsville, North Carolina at the Yancey County Courthouse in an attempt to talk with John Pritchard's supervising Probation Officer. I spoke with David Thomas who was the only official in the office. I ask Thomas if he could tell me whether or not John Pritchard had informed Probation 7 Parole Officers as to whether or not he was taking opiate prescription drugs. Thomas advised that Pritchard had advised that he was an opiate user but recent drug test had not revealed the presence of opiate drugs in his system. Thomas stated that he did not have any information as to who was the medical provider for John Pritchard. No other information was learned in regard to Pritchard prescription drug use. I did confirm from Thomas that John Pritchard is now living in a mobile home where Margaret Penland used to live. The address where Pritchard lives is off of Turtle Trot Road and Turtle Trot Road is off of English Branch Road.

Wednesday March 9, 2011

I Chief Deputy Farmer documented some research on the drug Oxymorphone. See attached information.

76

000041

Wednesday March 9, 2011

On Wednesday evening March 9, 201 at approximately 8:30 p.m. I Chief Deputy Farmer conducted a telephone interview with Stephanie Whitson by calling her at the residence of her father Steve Whitson (828) 675-5114. See interview with Stephanie Whitson.

SBI-5 (1/2000)

North Carolina State Bureau of Investigation

_	. 100
Page	_ of
Use SBI-5A Contin	
list additional its	ems of evidence

PART A

REQUEST FOR EXAMINATION OF PHYSICAL EVIDENCE

Reques	ting Offic	cer: 🐛	disesses 6	Hogan F	lica	jms_	County of	of Offense:			SBI Lab	# WZ	1011-015/2		
			omoby S		. S						SBI File	#			
p	LEASE	EPLA	CE A CHE	CK MARK	(4)	BESIDE	THE PRE	FERRED	ADDRE	SS					
⊡ Áger	ncy P. C). Box,	City and Zip): <u> </u>	`™o≻	(60 B	Vermo	illa al	B7/4		Agency File # _//-ole/				
☐ Age	ncy Stre	et Add	ress, City a	nd Zip :							Type of Case: Unnit and Danth				
			:					:			Date of 0	Offense: 🜊	3/16/11		
			ame and Be			r - Name:	bulledell	s Ryo.	n Hio	oins_	_ Contact N	lumber: 🙋	168) 68a-6164		
VICTIM((S)			Rad	ce/Sex	DOB	SUSPEC	T(S)	•	_	Race/Sex	DOB	SID#		
Tono-	Han	W. 11	thitear	(Jr. 221	/in	1/610/6	5 <i>6</i> 3.								
Has any	evidence	e in this	case been s	submitted to	the labo	oratory previ	iously?		If ye	es, to which s	section(s)?				
Lab Item #	Agen		Type Con	tainer/Desc	cription	n of Evide	nce		Examir	ne For			ocation Found or body fluid/DNA Evidence)		
	- Septice		Tula :	Burina	à6				Comb	rolled		Insic	le pocket of		
				د ا					Sub	starias	è	Victin	ns coat.		
												100			
												Ú.			
												* .			
8 10 4 1												4;7 (2)	§ 1		
												15			
Additiona	al Analys	sis Red	quested / Ins	structions:											
							E DETUD	IED TO TH	- p-011	ECTING OF	TICED				
the order we wanted								NED TO TH				\/			
CONTAIL	NER / D	ESCR	Carolina S IPTION OF	tate Bureau	of Inve	estigation e	emplovees	appearing	below ind	licate that the	ne material o	described a	above under <i>TYPE</i> stated, and was delivered in		
ITEM(S	-		ed By:	(Print)			(Initial)	Received	From:	(Print)	MATERIAL STREET, STREE	(Initial)	, DATE		
	,	.4	F// 10				110	120.1			311	15.5	white		

 Stephanie Jo Whitson

12/3/85

205 Weeping Willow Lane Burnsville N.C. 28714

(828) 675-5114 (828) 208-3992

Stephanie Jo Whitson was interviewed on 3/6/11 at approximately 15:57. The interview was in regard to the death of Jonathan Russel Whitson. The interview was conducted at the Jancey County Sheriff's Office Annex by Sgt. Lewis Ryan Higgins.

Stephanie Jo Whitson states that she and Jonathan Russel Whitson had been dating for the past six to seven months. Whitson states that Jonathan had been incarcerated in the Madison County Jail since around the First week of January. Whitson states that she received a telephone call From Jonathan on 3/5/11 at approximately 12:00. Whitsom States that she then went to Jonathans grandmothers residence located on English Branch Road at approximately 15:00. Whitson states that once she arrived she and Jonathan talked and Jonathan told her that Johnny Pritchard was comming up Marion mountain and that Pritchard was supposed to call when he got home. Whitson states that Pritchard did not call but came to the residence at approximately 15:30. Whitson states that Jonathan told her that

Pritchard wanted him to go to the store with him. Whitsen States that Jonathan and Pritchard them leave the residence in Pritchard's Silver Ford Ranger. Whitson states that Jonathan and Pritchard returned approximately Fifteen minutes later, Whitson states that she and Jonathan then went into the kitchen where Jonathan showed her ten 30 mg. Morphine tablets that were purple in color. Whitson states that she and Jonathan then went outside to her Fathers Jeep Cherokee where Jonathan crushed three of the Morphine tablets and melted them down. Whitson states that Jonathan then drew two syringes and injected both Her and Himself in the arm. Whitson states that she and Jonathan then left in the Jeep and traveled to Star Branch Road Off of Jacks Creek Road, Whitson States that they went to a pull off on Star Branch Road where Jonathan injected both her and himself again. Whitson States that she returned to English Branch Road where she dropped Jonathan of at his grandmothers. Whitson states she kept the remaining Four Morphine tablets. Whiteon states that she left at approximately 18:00 and met a Friend to eat at Hardee's. Whitson States that she returned to English Branch Road at approximately 19:30. Whitson states that she and Jonathan went into Jonathans grandmothers bathroom where Jonathan melted down the last Four Morphine tablets. Whitson states that

Jonathan then injected her and himself three times apiece. Whitson states that there was remaining Morphine in the spoon that Jonathan placed under the bathroom sink. Whitson states that she and Jonathan talked For a while and she then left at approximately &1=50. Whitson states that she never spoke to Jonathan again. Whitson states that Jonathan Had told her on 3/5/11 that Pritchard had wanted him to buy Morphine For eight dollars apiece and then sell them for Fifteen dollars apiece. Whitson states that she belived Pritchard had given Jonathan the ten tablets on 3/5/11 due to Pritchard had told Jonathan he would help him out since he had been in jail and had not had anything. Whitson states that over the last six or seven months she has witnessed on approximately eight occasions Jonathan receiving morphine among other pills From Pritchard. Whitson states that she knows Pritchard receives a prescription For 30 mg. Morphine monthly.

Stephanie fo Wheeser 5:49 pm

Floyd Joseph Ayers

12/28/86

63 Country Meadows Burnsville N.C. 28714

(828) 682-9733 (828) 284-8716

Floyd Joseph Ayers was interviewed on 3/14/11 at approximately 17:51. The interview was in regard to the death of Jonathan Russel Whitson. The interview was conducted at the Yancey County Sheriff's Office Annex by Sqt. Lewis Ryan Higgins.

Floyd Joseph Ayers states that he and Jonathan Russel Whitson were First cousins. Ayers states that he and Whitson had a close relationship. Ayers states that on 3/4/11 at 21:42 he received a phone call From Whitson but did not have enough cell phone. Service For a conversation. Ayers states Whitson called again on 3/4/11 at 23:07 and ask if he could come pick him up at the store across From the Red Dot. Ayers states that he asked Whitson where he would be going and that Whitson said he wanted to go to christines. Ayers states that whitson told him that he had just gotten out of joil and was walking. Ayers states that he told whitson that he had to go by his house and

would then be on his way. Ayers states that he then went to his house where he picked up his and whitsons uncle, stanley wilson. Ayers states that he and Wilson then went to the Green Dot which is the store across From the Red Dot. Ayers states that he and Wilson arrived to the Green Dot on 3/5/11 at approximately 00:00. Ayers states that whitson was outside the store waiting on Him. Ayers states that whitson got into the truck and he noticed that whitson looked healthy and that his color was good. Ayers states that whiteon appeared to be clean and sober. Ayers states that Whitson told him that he had been clean the whole time that he had been in jail and that he planned to stay sober. Ayers states that he took whitson straight From the Green Dot to Christines house located of of Jacks Creek Road. Ayers states that Christine was whitsons step grandmother. Ayers states that he belives Christines last name to be Angel. Ayers states that he dropped whitson off at Christines house on 3/5/11 at approximately 00:45. Ayers states that he then left and never spoke to Whitson again.

Jacy ages

3-141-11 7:14 pm

Nathan Murph Angel
11/29/63
410 English Branch Road Burnsville N.C. 28714
(828)682-9383

Nathan Murph Angel was interviewed on 9/00/111 at approximately 16:41. The interview was in regard to the death of Jonathan Russel whitson. The interview was conducted at the Jancey County Jail by Sgt. Lewis Ryan Higgins.

Nathan Murph Angel states that on a Sunday morning in March of doll heawoke at approximately 04:00-04:30. Angel states he was staying at his mothers home located at 410 English Branch Road. Angel states that when he awoke he could hear Jonathan whiteon snoring loud. Angel stated that whiteon was sleeping on the living room couch. Angel stated that his Father wade Angel went to whiteon and shook him which caused him to snor less. Angel states that he went back to sleep and awoke at approximately 08:00.

Angel states that whiteon was still asleep on the couch and snoring. Angel states that at approximately 10:40 his son Christian 8470de the comment that 000057

Bubba John was sleeping good. Angel stated that he then told christian to wake him up. Angel states Christian put his hands on Whitsoms chest and shook him and that he could tell at that time Whitson was deceased. Angel states that he then Shook Whitson Himself and called All. then his mother Christene Angel called 911. Angel states that on the Baturday before whitsoms death that he had amoke at approximately 07:30-08:00. Angel states that when he awoke he went to his mothers mext door and whitson was there. Angel states whitsom had been in jail in Madison county and that this was the First time he had saw him since before he had went to jail. Angel states he and whitsom talked for a while and that he then left. Angel states that he returned home and that a couple Hours later Whitson came to his home and stated that he had got a hold of Stephanie Whitson. Angel states Whitson and Stephanie had been in a relationship. Angel states that Stephanie arrived to his home at approximately 102:00. Angel states he then left his home to give whitson and Stephanie some time alone. Angel states when he returned home approximately an hour later to Find Stephanie there but whitson gone. Angel states that he then questioned Stephanie about where whitson had gone. Angel states that stephanie told him that whitson had text with

Johnny Pritchard. Angel states that approximately 00-30 minutes later he heard a vehicle and looked out to see whitson walking up the driveway from Johnny Pritchard's grey Ford or Toyota truck. Angel states Whitson walked up on the porch and they spoke. Angel states whitson came into the home and that he and stephanie went into whitson's old bedroom. Angel states the two stay 30 minutes to an hour in the bedroom. Angel states whitsom came out of the bedroom and was smiling at him and said I've got you something. Angel states that whitson held out his hand and he held out his and whitsom dropped a Morphine 30 mg. tablet in his hand. Angel states that Stephanie left his home a couple of hours later. Angel states that whitson left his home at approximately 9:00 p.m. Angel states that he left with him and they both went to his mothers home. Angel states that they talked a few minutes and then he told whitsom goodnight and went to bed at his mothers home. Angel states that when he went to bed whitson was sitting in the living room watching television. Angel states that he has knowledge that Johnny Pritchard was prescribed Morphine 30 mg. Angel states that he has Known Pritchard For approximately one year. Angel states that he has First hand knowledge that Pritchard has sold his Morphine 30 mg. in the past year that he Neithers Angel 4-26-011 \$ 700059 Has known him.

Call From Russell Wilson

Ann fut John Pritchard on as Pall Dearers list
Funeral Paid For by Victims Compensation?
Hobbic Gilvers (Doffer) Paul Dearer
Ann & Nathon together at Euneral Arrangments

Close Print this page



Opana

Generic Name: oxymorphone (ox ee MOR fone)

Brand Names: Opana, Opana ER

What is oxymorphone?

Opana is in a group of drugs called narcotic pain relievers. It is similar to morphine.

Opana is used to treat moderate to severe pain. The extended-release form of this medication is for around-the-clock treatment of pain.

Opana is not for treating pain just after surgery unless you were already taking Opana before the surgery.





Important information about Opana

Opana may be habit-forming and should be used only by the person it was prescribed for. Opana should never be given to another person, especially someone who has a history of drug abuse or addiction. Keep the medication in a secure place where others cannot get to it. Do not drink alcohol while you are taking Opana. Dangerous side effects or death can occur when alcohol is combined with a narcotic pain medicine. Check your food and medicine labels to be sure these products do not contain alcohol. Never take more than your prescribed dose of Opana. Tell your doctor if the medicine seems to stop working as well in relieving your pain. Opana can cause side effects that may impair your thinking or reactions. Be careful if you drive or do anything that requires you to be awake and alert.

What should I discuss with my healthcare provider before using Opana?

Do not use this medication if you are allergic to oxymorphone, if you have severe liver disease, if you are having an asthma attack, or if you have a bowel obstruction called paralytic ileus. You should also not take Opana if you have ever had an allergic reaction to a narcotic medicine (examples include codeine, methadone, morphine, Oxycontin, Darvocet, Percocet, Vicodin, Lortab, and many others). Opana may be habit-forming and should be used only by the person it was prescribed for. Opana should never be given to another person, especially someone who has a history of drug abuse or addiction. Keep the medication in a secure place where others cannot get to it.

Before using Opana, tell your doctor if you are allergic to any drugs, or if you have:

- asthma, COPD, sleep apnea, or other breathing disorders;
- · liver or kidney disease;
- · underactive thyroid;
- · curvature of the spine;
- · a history of head injury or brain tumor;



- · epilepsy or other seizure disorder;
- · a pancreas disorder;
- Addison's disease or other adrenal gland disorders;
- · enlarged prostate, urination problems;
- · mental illness; or
- · a history of drug or alcohol addiction.

FDA pregnancy category C. This medication may be harmful to an unborn baby, and could cause addiction or withdrawal symptoms in a newborn. Tell your doctor if you are pregnant or plan to become pregnant during treatment. Opana can pass into breast milk and may harm a nursing baby. Do not use this medication without telling your doctor if you are breast-feeding a baby. Older adults may be more sensitive to the effects of this medicine.

How should I use Opana?

Take this medication exactly as it was prescribed for you. Never take Opana in larger amounts, or use it for longer than recommended by your doctor. Follow the directions on your prescription label. Tell your doctor if the medicine seems to stop working as well in relieving your pain.

Take this medicine with a full glass of water. Do not crush, chew, or break an extended-release tablet. Swallow the pill whole. It will release medicine slowly in the body. Breaking the pill would cause too much of the drug to be released at one time. The Opana ER tablet should be taken on an empty stomach, at least 1 hour before or 2 hours after a meal. Tell your doctor if you feel sick after taking the medicine on an empty stomach. Do not stop using Opana suddenly, or you could have unpleasant withdrawal symptoms. Talk to your doctor about how to avoid withdrawal symptoms when stopping the medication. Store this medication at room temperature, away from heat, moisture, and light.

Keep track of how many tablets have been used from each new bottle of this medicine. Opana is a drug of abuse and you should be aware if any person in the household is using this medicine improperly or without a prescription.

After you have stopped using this medication, flush any unused pills down the toilet.

What happens if I miss a dose?

Since Opana is sometimes used as needed, you may not be on a dosing schedule. If you are using the medication regularly, take the missed dose as soon as you remember. If it is almost time for the next dose, skip the missed dose and wait until your next regularly scheduled dose. Do not use extra medicine to make up the missed dose.

Extended-release Opana is not for use on an as-needed basis for pain.

What happens if I overdose?

Seek emergency medical attention if you think you have used too much of this medicine. An overdose of Opana can be fatal.

Overdose symptoms may include extreme drowsiness, pinpoint pupils, confusion, cold and clammy skin, weak pulse, shallow breathing, fainting, or breathing that stops.

What should I avoid while using Opana?

Do not drink alcohol while you are using Opana. Dangerous side effects or death can occur when alcohol is combined with Opana. Check your food and medicine labels to be sure these products do not contain alcohol.

Opana can cause side effects that may impair your thinking or reactions. Be careful if you drive or do anything that requires you to be awake and alert.

Opana side effects

Get emergency medical help if you have any of these signs of an allergic reaction: hives; difficulty breathing; swelling of your face, lips, tongue, or throat. Call your doctor at once if you have any of these serious side effects:

- shallow breathing, slow heartbeat;
- · seizure (convulsions);
- · cold, clammy skin;
- · confusion;
- · severe weakness or dizziness; or
- · feeling light-headed, fainting.

Less serious side effects are more likely to occur, such as:

- · nausea, vomiting, constipation;
- · dizziness, headache;
- · dry mouth;
- · sweating; or
- itching.

This is not a complete list of side effects and others may occur. Tell your doctor about any unusual or bothersome side effect. You may report side effects to FDA at 1-800-FDA-1088.

What other drugs will affect Opana?

Do not take Opana with other narcotic pain medications, sedatives, tranquilizers, muscle relaxers, or other medicines that can make you sleepy or slow your breathing. Dangerous side effects may result.

Before taking Opana, tell your doctor if you are using pentazocine (Talwin), nalbuphine (Nubain), butorphanol (Stadol), or buprenorphine (Buprenex, Subutex). If you are using any of these drugs, you may not be able to use Opana, or you may need dosage adjustments or special tests during treatment.

This list is not complete and there may be other drugs that can interact with Opana. Tell your doctor about all the prescription and over-the-counter medications you use. This includes vitamins, minerals, herbal products, and drugs prescribed by other doctors. Do not start using a new medication without telling your doctor.

Where can I get more information?

Your pharmacist can provide more information about Opana.

What does my medication look like?

Oxymorphone is available with a prescription under the brand name Opana. Other brand or generic formulations may also be available. Ask your pharmacist any questions you have about this medication, especially if it is new to you.

· Opana 5 mg blue, round tablet

- · Opana 10 mg red, round tablet
- · Opana ER 5 mg pink, octagon film-coated tablet
- Opana ER 10 mg light orange, octagon film-coated tablet
- · Opana ER 20 mg light green, octagon film-coated tablet
- · Opana ER 40 mg yellow, octagon film-coated tablet
- Remember, keep this and all other medicines out of the reach of children, never share your medicines with others, and use this medication only for the indication prescribed.
- Every effort has been made to ensure that the information provided by Cerner Multum, Inc. ('Multum') is accurate, up-to-date, and complete, but no guarantee is made to that effect. Drug information contained herein may be time sensitive. Multum information has been compiled for use by healthcare practitioners and consumers in the United States and therefore Multum does not warrant that uses outside of the United States are appropriate, unless specifically indicated otherwise. Multum's drug information does not endorse drugs, diagnose patients or recommend therapy. Multum's drug information is an informational resource designed to assist licensed healthcare practitioners in caring for their patients and/or to serve consumers viewing this service as a supplement to, and not a substitute for, the expertise, skill, knowledge and judgment of healthcare practitioners. The absence of a warning for a given drug or drug combination in no way should be construed to indicate that the drug or drug combination is safe, effective or appropriate for any given patient. Multum does not assume any responsibility for any aspect of healthcare administered with the aid of information Multum provides. The information contained herein is not intended to cover all possible uses, directions, precautions, warnings, drug interactions, allergic reactions, or adverse effects. If you have questions about the drugs you are taking, check with your doctor, nurse or pharmacist.

Copyright 1996-2009 Cerner Multum, Inc. Version: 5.05. Revision Date: 4/12/2009 4:38:25 PM.;

North Carolina State Crime Laboratory

Department of Justice Western

Laboratory Report

TO:

Lewis Ryan Higgins

Yancey County Sheriff's

Department

P.O. Box 6

Burnsville, NC 28714

Yancey County

LOCATION: TYPE OF CASE:

Controlled Substances Act

SUBJECT(S):

Jonathan R. Whitson, Jr.

(Victim)

DATE:

CRIME LAB NO .:

SBI FILE NO .:

AGENCY FILE NO.:

EXAMINED BY: DATE OF OFFENSE:

Collin Andrews

March 6, 2011

February 2, 2012

W201101512

11-0151

ITEM SUBMITTED BY MICHAEL B. DAVIS ON APRIL 6, 2011:

Item # 1:

Two syringes each containing possible residue.

TYPE EXAMINATION REQUESTED:

Examine for controlled substances.

RESULTS OF EXAMINATION:

Item 1

Two syringes were individually analyzed and were each found to contain No Controlled Substances Indicated.

Residue Amount

DISPOSITION OF EVIDENCE:

The evidence is being returned via First-Class Mail.

I, Roy Cooper, Attorney General of the State of North Carolina, hereby certify that the form identified as: North Carolina State Crime Laboratory, North Carolina State Bureau of Investigation, Department of Justice, Laboratory Report is a form approved by me for the purpose stated in G.S. 90-95(g) and approved by me in compliance with the said statute.

THIS REPORT IS TO BE USED ONLY IN CONNECTION WITH AN OFFICIAL CRIMINAL INVESTIGATION.

COPIES TO:

Gerald W. Wilson, DA

This report contains the opinions/interpretations of the examiner(s) who issued the report. All supporting documentation generated during the examination is released with the report.

Augory I. M. Food Gregory S. McLeod, Director

collin R. Condnews

Confidential:

This is an official file of the North Carolina State Crime Laboratory, North Carolina State Bureau of Investigation. To make public or reveal the contents thereof to any unauthorized person is a violation of the General Statutes of North Carolina.

Madison County Sheriff's Office All Confinements

Name: WHITSON, JONATHAN RUSSELL		10	ID Number: 8850			Age: 31		
Booking ID	Original Booking ID	Time Srvd	Admit Date Time	Release Date Time	Admit Code	Rels Code	Juv Booking	Weekender
17060	17060	57	01/06/2011 18:16	03/04/2011 18:34	44	13		
16747	16747	0	09/07/2010 18:45	09/07/2010 18:51	44	13		

Page 1 of 1

TABBLILLI V

Jonathan Russel
Whitsom 1/00/81

238-37-1564

410 English Branch Road
680-9383
Christene H. Angel
Nathan Angel
Wade Angel
Christian Angel
James Angel

IIIIIIII

Christene states that
the victim had arrived
at her residence on
3/5/11 at approximatley
13:00. Christene states
that the victims
girlfriend stephine
Whitson had came to
the residence at
approximatley 14:30. The
victim and girlfriend
left the residence
together

2444444444

returning approximatly an hour and a half later.
The victim and girlfriend came back to the residence and girlfriend stayed a couple of hours before leaving at approximatly \$\pi 1:30. The victim then prepaired to go to bed on the living room couch. Christene states that she

Adddddddddd

woke at approximately 09:00. The victim was lying on the couch shoring loudly. Christene and wade left the residence going to Save-mor returning at approximately 10:30. The victim was still asleep on the couch shoring. Nathan then told christian to wake the victim up at which time he was discovered deceased

Ann Annette Green 284-9308

Ward Russel Wilson 688-1496

Christene located coat on back of love seat where she discovered a syringe.

Page A0000008 of A0000026 Account Number: 914321163 Bill Date: 4/04/11 Involce Number: 914321163-130 Bill Reprint

	TEVEN	J. WHIT	SON								828-208	-3992
Line	Date	Time	Calls To	1	Number Called	Feature	Period	Min	Airtime Charge	Toll Charge	Add'I Charge	Amoun
7	3/05	12:20PM		CL	828-208-3992		OP	3.00	0.00			0.00
8	3/05	12:24PM	MAIL	CL	828-208-3992		OP	3.00	0.00			0.00
9	3705		CALL WAIT		828-208-3992	CW	OP	15.00	0.00			0.00
10	3:05	12:41444	INCOMING	CL	828-208-3992		OP	1.00	0.00			0.00
: !	3705	12:42PM	BURNSVILLE	NC	828-678-0014		OP	2.00	0.00			0.00
173	3/05	3:11194	INCOMING	CL	828-208-3992		OP	12.00	0.00			0.00
13	3/05	6:14PM	BURNSVILLE	NC	828-678-0014		OP	1.00	0.00			0.00
14	3/05	6:31 PM	MICAVILLE	NC.	828-675-5114		OP	3.00	0.00			0.00
15	3/05	6:40PM	INCOMING	CL	828-208-3992		OP	2.00	0.00			0.00
16	3/05	7:59PM	INCOMING		828-208-3992		Oh	2.00	0.00			0.00

M01 BAN - 914321163, ST	EVEN J. WHITSON	
Type Individual	Open since: 05/30/2000 (Activate: Activation)	
<u>Billing Name</u>	SSN 111,20,6651 Password Delinguent: Group Sp. instruct	
STEVEN J. WHITSON	Balance: \$.00 Start Service: 06/30/2000 Follow Up:	
	Deposit: 4.00 Gr. Class A. Cycle Close 37 Discount:	
A CONTRACTOR OF THE PARTY OF TH	(luty: IVR/single payment. (99999., 07/202013)	
206 WEERING WILLOW UN BURNSVILLE NC 287/4-7539	Last Bill Summary Last Bill Information Previous Balance: \$82,91 Bill Date: 07/04/201	2
Personal transport (4.1338)	Payments Received \$82.91 Bill Type Regular	
	t Credits/Adj Applied: \$.00 # Cells # Minutes	
Phone List Home: 028:675:5114	Rest Due: \$,00 Home 179 413. Current Chrgs/Crots: \$82.65 Roaming: 9 16.	Car.
VVork: 828:584:1022 Ext	Total Amount Due: \$82.85 Total 188 429.0	4000
CTN Count	Due Date: 07/24/2013 SMS Messages	
Active: 2 Reserved:	0 Other Using GD 0 22	*115
Suspended: 0 Canceled: 101a):	(Sales a Mild Hilysical Address []	
A/S/Total: 2 (Bellet Plans)		
	Rewards On Out No.	
	Rew Opt Out In Date: 00/00/0000	
Contact Information Vame:		
hone - Ext		
Other Contact Informat	tlon: D. MyAccount Enrollment: V.	
ndividual information State: NC	Business Information SIC Tay Exemption	
lver/s:Lig: 2961347	TAXID. Established 00/0000 Special indicators.	× 550
Expires: 09/2003	Additional information. Spc]: Bill Params.	STATE
9rth Data: 09/07/1948	Location DS30 Phase II DirectFulfilmntC Future Request Comp. PH001 PHASE II Loyally Program Comp. Phone Phase II P	25.24
	LDC Block Indicators 🖫	
Employer: ENGLE BONDING Position: SUB AGENT	Lead Code: Sub Market 177	
A STATE OF THE STA	Lest Campaign 03/03/2006 ASHEVILLE - 177	
Cellular Telephone: 8:	28;208:3992: Canceled/since:41/01/2012 (Cancel-Port Out C	
EVEN J. WHITSON	GTN information First Adilyation Date 02/18/2005 Loyalty Type	
	MSID: 8282083992 Port In: N Phone Upgrade	
BI ACCIOSS	Location Local Agent 656 Timer: 00:000:0	373
) WEERING WILLOW LN RNSVILLEING 287147339	Comp. NC203 EKL, INC DBA DEYTON GELL Flig. REVIEW Tax Exemption.	
MM41ECF UC 20114-(338	Fulure Request:	
User TN: 828-208-2214		
Japanent	SPANC:	
270113100106098238 E 12	21142 AELGUS760GEN Private 6/13/2 DEGGS	
268436468802422633 E 9	8344 PRD20636004 Private 12/21/ Update	
	<u>It</u> Zoom	
nancial Summary 2.BAN Prof	ile: 3, 828-208-3992 Services: 4, 828-208-3992 Profile	
)	[A70V207200538574[/(O)]][6]	2



NORTH CAROLINA STATE BUREAU OF INVESTIGATION ADMINISTRATIVE SUBPOENA



GREETINGS: By the service of this subpoena upon you, you are hereby commanded and required to:							
By the service of this subpoena upon you, you are hereby commanded and required to:							
Produce business records that disclose all subscriber information, date of birth, social security number, ESN, activation dates, and any accounts for telephone number 828-208-3992 for March 5, 2011							
Produce inbound/outbound local and long distance call detail records and the direct connect log							
for telephone number 828-208-3992. The information being sought is for the date(s)							
<u>March 5, 2011</u>							
PLEASE PROVIDE THE INFORMATION IN ELECTRONIC Excel Format .csv/.txt							
AND EMAIL TO: pbyrd@ncdoj.gov							
Identify all phone numbers listed in the name of							
Identify all telephone numbers located at							
You are hereby directed not to disclose to the subscriber or to any other person, the existence of this subpoena or inquiry. Disclosure could impede an ongoing criminal investigation.							
Please email to: pbyrd@ncdoj.gov or fax to Analyst Pandora Byrd at 919-662-4483							
Issued under the authority of North Carolina General Statute 15A-298. I certify that this subpoena is issued in furtherance of a criminal investigation and the information sought is material to the said investigation.							
This ? Ge							
Signature:							
Title: Special Agent in Charge							
SBI Case Number 2011-02340							
Issued this 2nd day of January, 2014 Subpoena No. 36672							
Return of service: Received							
Servedon							
Ву							

Log Off

	Office Outlook Web Access	Type here to search	This Folder	٥	Address Book	© Options
Ē	3	ca Reply @ Reply to All 🔓 Forwa	rd 🖺 Move 🗙 Delete	Close		
İ	Calendar	FW:				
8	Contacts	Vines, Charles [cvines@no	doj.gov]			
a	Drafts Inbox (3)	Sent: Monday, February 03, To: Brian Shuford Attachments: 20140131095759		eb Page]		
6	Junk E-Mail Sent Items	Please give this to Ryan				
	Click to view all folders ATF Bryant's Land Developmen Federal Reports HSI TFO ICAC	From: Williams, Ronald Sent: Friday, January 31, To: Vines, Charles Subject: FW: Ryan's Case info SPECIAL AGENT R.V. WILLIAM NORTH CAROLINA STATE BUREA WESTERN DISTRICT, ASHEVILL	S U OF INVESTIGATION			
	James Anglin Homicide Keepers Neighborhood Watch Tips Parker Lumber Silva Case	From: WesternDistrictRicoh Sent: Friday, January 31, To: Williams, Ronald Subject: This E-mail was sent from	2014 9:57 AM		icoh5001@ncdoj.g	ov]
٨	Manage Folders	Scan Date: 01.31.2014 09:5 Queries to: WesternDistric	7:59 (-0500) tRicoh5001@ncdoj.go	v		

44 3

Evidence/Stored Property Item

Yancey County Sheriff's Office

	Control #		Incider	nt Number:		Date Obtaine	d: Reas	on Er	ntered:		Owner:		
201600	0058		11-015	51		03/06/2011	Evid	ence			Whitson, Jonathan Russell		
Branch Course	ALCONOMIC SERVICE					Item	Informa	tion	NAME OF THE OWNER OF THE OWNER OF THE OWNER OF THE OWNER OF THE OWNER OF THE OWNER OF THE OWNER OF THE OWNER O				
Seq. #:	Item Tag	Number	: Т	Property Ty					Т	tem Categor	v:		
1								Z- Miscellan					
Make:						Model:					Value:		Quantity:
													2
Item Des	cription:												
Syringe	S												
Serial No	umber:		Owner	Number:		Primary Co	olor:		Secondary	Color:	Container	:	
Date Ser	nt To Lab:	Lab S	ent To:		L	ab Number:	Lab R	sults					
Vehicle ⁻	Гуре:			Year:	Vehic	le Style:		Lice	nse Plate#:	State:	VIN:		
Drug Typ	oe:			Descrip	otion:	n:				Measurement: Q			Quantity:
			AMERICAN SERVICE SERVI		1 (()) = 1 (9) (S	NAME OF THE PARTY							Average and Argus
					•	Storag	e Inform	atior	1				
Date Sto	red:	Time St	tored:	Storing	Officer	:			Impound L	ocation:			
02/21/20	012	13:00		7523 - I	t. Det.	Randall J. S	Shuford		S				
Stored L	ocation:												
Bd: Ann	ex/Rm: Ev	idence/	Sh: G-3										
			1 - VIIV 6 1 A - 5 3 A		to Augusta		ON THE REAL PROPERTY.				THE RESERVE OF THE PERSON NAMED IN	- PE - IPO MES	W HOLD WATER TOWN
						Item	Disposi	ion					
Disposit	ion:			Dispos	sition D	escription:					Disp. Date:	Di	sp. Time:
Officer E	xecuting D	Dispositi	on:	Dispos	sition A	uthority:		Au	uthority Date:	Officer W	itnessing Iter	n Destru	iction:
Austion/Sale Amount: Polesced To Name:							Palazead .	To Add	droce:			Phone	Number

Jonathan Wilson 11-015)

Jonathan Russell Whitson Wilson, 29, of Jacks Creek, died Sunday, March 6, 2011. A native of Yancey County, he was a son of Russell Wilson of Pensacola and Annette Whitson Greene of Bakersville. He was also preceded in death by grandparents, Harley and Martha Whitson; uncle, Carl Wilson and great-grandmother, Maude Riddle. Jonathan was a 2002 graduate of Mountain Heritage High School, who loved bull riding, horses, motorcycles, ATVs and the outdoors.

Surviving are his parents: Annette Whitson Greene of Bakersville and Russell Wilson and wife, Michele, of Pensacola; former stepfather Nathan Angel and Carrie of Jacks Creek; grandparents: Ward and Ruby Wilson of Pensacola and Wade and Christine Angel of Jacks Creek; sisters and brothers: Bradley Wilson, Jamie Whitted, Jessica Scott, C. J. Wilson, Natasha Yelton, Nikki Angel, Nena Angel and Christian Angel; mother of his unborn son, Colton: Christine Latham of Davie County, Florida. Several aunts, uncles and cousins also survive.

Funeral services were held Wednesday in the Chapel of Yancey Funeral Services. The Rev. Brian Blankenship officiated. Graveside service was held Thursday in Wilson-Wheeler Cemetery on Pensacola.

APPENDIX B: SBI FILE

CASE IDENTIFICATION REPORT

								Date: 02	/12/2013
Case Number: 2011-02340	2011-02340 Sheriff's Department		Date of Offense: 03/06/2011	Time of Offense:	Location of Offense:				
City / Town & Zip:			County/Code:		CAT:	CAA:		DIC:	
Burnsville/29714			Yancey/100		1		905		8
OCA #:		1st Crime	Class: H15	2nd Crime Class:	3	rd Crime (lass:	•	
Operation(s):									
Other Data, Tools	, Weapons Us	sed:							
VIN #:	Ve	hicle (Make/Mod	el/Color/Year):	License #:	State:				
	reports indicat			n Russell Whitson ne Toxicity. The SB					-
0001. Name(Last, First, Middle) Whitson, Jonathan Russell		* * *	Race: W Ethnic: Prof:	Other Descripti		Fingerprin Arrest Dat Class: Misc #:			
AKA:					İ				
				İ	İ				
Address:									
Case Status: Lin Date Initiated: 09, Disposition Date:		ce			Name CAA:	· Continual			
						•			

	NAME CONTINUATION SHEET											
Case Number:	2011-02340				Date: 02/12/2013							
0002.	Name(Last, First, Middle) Pritchard, John Herbert	Type: S Sex: M DOB: 09/07 Rel: SS #:	Race: W Ethnic: 7/1951 Prof:	Other Descriptive Data: Disposition: C06	Fingerprint #: Arrest Date: Class: Misc #:							
AKA: Address:	737 Charlie Brown Road	•										
	Burnsville, NC 28714											



[PART A]				RECLIVED
DEFENDANT/SUSPECT	DISPOSITION REPORT	CASE #: _201	1-02340	DEC - 5 2012
CODE: CO6	· · ·	VICTIM: Jon	ell Whitson	
		NEW CODE:	PROF:	SBI WESTERN DISTRICT OFFICE
DEFENDANT/ SUSPECT: John Herbert	Pritchard	VICTIM:		
		NEW CODE:	PROF:	
NEW CODES: REL:	PROF:	COURT:		DATE:
DOCKET#	CHARGES	VERD	ICT	SENTENCE/DISPOSITION
		·		
		•		
·				·
·	•			
	•		į	
		Ì		
				DECEIVED N JAN 3 1 2013
				NCSBI - Records Center
REMARKS:				
On March 6, 2011, Jonathan Ru Morphine toxicity. SBI assista	ussell Whitson ws found d nce was requested to assi	ead at a residence st with interviews	e in Yancey (County. Whitson's dead was caused by
	•		•	
			£1	
PART B)				
PARIBI		1		ASS CODES:
CASE CLOSING I	REPORT	1 ^{SI} CRIME	_	H15
**************************************		2 ND CRIME	· . —	
CODE: CO6		3 RD CRIME	CLASS _	
VIDENCE: NONE SE	EIZED H	IANDLED BY OTH	ER AGENCY	AND DOCUMENTED IN REPORT
SBI 69A	AND B'S ATTACHED			
pecial Agent: G.E. Vines J	D-4 44/07/2		. 11	05 Date: 1-8-13
pecial Agent: G.E. Vines J BI-19 (REV 1/98)	r. Date: 11/26/1	4 Appr	oved: LA	Date: 1-8-13

000003 NCIIC-SBI

CONFIDENTIAL: This is an official file of the North Carolina State Bureau of Investigation. To make public or reveal the contents thereof to any unauthorized person is a violation of the General Statutes of North Carolina.

SBI CASE: 2011-02340 (905) ACTIVITY: September 26, 2011

VICTIM(S): Jonathan Russell Whitson

COPIES: (1) Case Records Management Section

(2) SA C. E. Vines Jr.(3) SAC W. B. Hallman

(4) District Attorney G. W. Wilson

Tammy Mae Joann Ayers, W/F/DOB: 07/24/1977 (Witness)

Residence: 164 Candy Lane, Burnsville, North Carolina 28714

Business: Unemployed

Tammy Mae Joann Ayers was interviewed on Monday, September 26, 2011, beginning at approximately 10:30 a.m. by Special Agent (SA) C. E. Vines and Deputy R. Higgins of the Yancey County Sheriff's Office. The interview was conducted at the Yancey County Sheriff's Office Annex.

Ayers was interviewed regarding the death of Jonathan Russell Whitson.

Ayers stated she was at the residence of Nathan Angel the day prior to Whitson's death. Ayers said when she arrived, Nathan Angel and Stephanie Whitson were there and Robbie Silver may have been there. Ayers stated Jonathan Whitson was leaving as she arrived. Whitson was leaving with John Pritchard in what Ayers believes was a silver truck. Ayers said the truck may be a two-door Toyota. Ayers stayed at the residence while Whitson was gone. Ayers asked Angel if Whitson was going to score 30s, referring to Morphine. Angel said he was.

Ayers said as she was driving away, Whitson and Pritchard were returning, but Ayers did not speak to either one of them. The following day, Ayers spoke with Stephanie Whitson. Stephanie was the girlfriend of Whitson. Stephanie told Ayers that Whitson got ten 30s from Pritchard and that she and Whitson did about four or five of the pills at Angel's. Stephanie further told Ayers when she left, Whitson had the remaining pills.

Ayers stated Angel had gotten pills for her in the past from Pritchard, but stated she had never bought from Pritchard directly. Ayers further stated Robbie Brown told her that she

knew Pritchard sold the Morphine to Whitson and added that most of the pills were given to Whitson on credit or were fronted to Whitson. Ayers thinks Pritchard gets his pills from Tennessee. Angel told Ayers during the funeral visitation that if Stephanie would not have had any money, then Whitson would not have bought the pills.

The interview concluded at approximately 11:00 a.m.

CEV:lm

CONFIDENTIAL: This is an official file of the North Carolina State Bureau of Investigation. To make public or reveal the contents thereof to any unauthorized person is a violation of the General Statutes of North Carolina.

SBI CASE: 2011-02340 (905) ACTIVITY: September 26, 2011

VICTIM(S): Jonathan Russell Whitson

COPIES: (1) Case Records Management Section

(2) SA C. E. Vines Jr.(3) SAC W. B. Hallman

(4) District Attorney G. W. Wilson

PREDICATION INTERVIEW:

On Monday, September 26, 2011, Special Agent (SA) Vines was contacted by Sergeant R. Higgins of the Yancey County Sheriff's Office. Sgt. Higgins requested the assistance of the NCSBI with interviews regarding the death of Jonathan Russell Whitson.

Sgt. Higgins stated he received an autopsy report related to the death of Whitson. The report indicated Whitson died of Morphine Toxicity.

CEV: lw

CONFIDENTIAL: This is an official file of the North Carolina State Bureau of Investigation. To make public or reveal the contents thereof to any unauthorized person is a violation of the General Statutes of North Carolina.

SBI CASE: 2011-02340 (905) ACTIVITY: September 26, 2011

VICTIM(S): Jonathan Russell Whitson

COPIES: (1) Case Records Management Section

(2) SA C. E. Vines Jr.(3) SAC W. B. Hallman

(4) District Attorney G. W. Wilson

Robbie Jean Brown, W/F/DOB: 02/23/1957 (Witness)

Residence: 176 Charlie Brown Road, Burnsville, North Carolina

28714, Telephone: 828-682-0361

Business: Unemployed

Robbie Jean Brown was interviewed on Monday, September 26, 2011, beginning at approximately 3:12 p.m. by Special Agent (SA) C. E. Vines Jr. and Sergeant R. Higgins of the Yancey County Sheriff's Office. The interview was conducted at the Yancey County Sheriff's Office Annex.

Brown was interviewed regarding the death of Jonathan Russell Whitson. No other person was present at the time of the interview.

Brown is the girlfriend/fiancée of John Pritchard. Brown told SA Vines that Pritchard gave Whitson eight pills the day prior to the death of Whitson. Brown stated she was told by Pritchard that he went to the residence of Nathan Angel, AKA: "Fruit," to pick up Brown's son, Aaron Collins, and Whitson.

Pritchard told Brown he took the pair to the store, then took Collins back to Collins' residence. Pritchard told Brown at some point he gave Whitson eight Morphine pills and took Whitson back to the residence of Angel.

Brown stated she knows Whitson has gotten Morphine from Pritchard in the past and personally saw Pritchard give Whitson two pills around Christmas of 2010. Pritchard and Whitson first met in the fall of 2010 and that occasion at Christmas was the only time she ever saw anything. Brown added Whitson did yard work for her around the house.

According to Brown, Pritchard keeps his pills locked in a lockbox in his house and when the two lived together Pritchard received 15 mg Morphine from the VA Hospital in Asheville.

Brown stated Pritchard has been and is worried about Whitson's death and is very worried that he gave Whitson the Morphine that killed him.

The interview concluded at approximately 4:00 p.m.

CEV:lm

CONFIDENTIAL: This is an official file of the North Carolina State Bureau of Investigation. To make public or reveal the contents thereof to any unauthorized person is a violation of the General Statutes of North Carolina.

SBI CASE: 2011-02340 (905) ACTIVITY: December 1, 2011

VICTIM(S): Jonathan Russell Whitson

COPIES: (1) Case Records Management Section

(2) ASAC C. E. Vines Jr.(3) SAC W. B. Hallman

(4) District Attorney G. W. Wilson

John Herbert Pritchard, W/M/DOB: 09/07/1951 (Suspect)

Residence: 737 Charlie Brown Road, Burnsville, North Carolina

28714

Business: Unemployed

John Herbert Pritchard was interviewed on Thursday, December 1, 2011, beginning at approximately 11:40 a.m., by Assistant Special Agent in Charge (ASAC) C. E. Vines and R. Higgins of the Yancey County Sheriff's Office. The interview was conducted at the Burnsville Police Department.

Pritchard was interviewed regarding the death of Jonathan Russell Whitson. Pritchard was in custody at the time of the interview and was advised of his rights prior to any questions being asked.

Pritchard advised he would not make any statements and had an attorney.

CEV:ap

CONFIDENTIAL: This is an official file of the North Carolina State Bureau of Investigation. To make public or reveal the contents thereof to any unauthorized person is a violation of the General Statutes of North Carolina.

SBI CASE: 2011-02340 (905) ACTIVITY: February 15, 2012

VICTIM(S): Jonathan Russell Whitson

COPIES: (1) Case Records Management Section

(2) ASAC C. E. Vines Jr.(3) SAC W. B. Hallman

(4) District Attorney G. W. Wilson

HANDWRITTEN NOTES, EMAILS, AND INVESTIGATIVE DOCUMENTS SUBMITTED BY ASAC C. E. VINES JR.:

Attached to this report is a copy of the handwritten notes, emails, and investigative documents submitted by ASAC C. E. Vines Jr., for the period of September 26, 2011, through February 15, 2012; see Attachment #905-01.

CEV:jd

(Attachment #905-01)

200 TAMMY MAE JOANN AYERS: W/F/DOB 7/24/77 77905-01 10:30 AM 11:00 AM · STEPHANIE WHITSON · JOHNA THAN - N. ANGEL BOBBIE SIWER MAY HAVE BEEN THERE. · FEUIT AT FRUITS. (NATHAN ANGEL) AT HOUSE WHEN GOT THERE JOHNATHAN WAS LEAVING WITH JOHNNY P. IN TRUCK GONE AROUT BO MINS V SILVER (TOYOTA?) 2 DOOR I WAS LEAVING WHEN THEY COME BACK DIDN'T 7. JOHNS GOING TO SCORE MORHINE, (FELIT) NEXT DAY TO GOT 10 DONE FOUR OR FIVE LEFT HAD 5 WITH HIM. USED AT FRUITS. FRUIT GOT PIUS FOR ME IN PAST FROM J. PRITCHAT / HAVE NEVER BOUGHT FROM HEITCHARD THREECT

ROBBIE BROWN TOLD ME THAT SHE KNEW
PRITCHARD SOLD TO JONATHAN AND MOST
WERE ON CREDIT/FRONTED

THINKS HE FETS PIUS FROM TENN.

N ANGEL - TOLD ME AT VIEWING IF STEPH.
WOULDN'T HAVE HAD & HE WOULDN'T HAVE BOUGHT.

3:12 PM ROBBIE JEAN BROWN W/M/2/B/57

RES 174 CHARLIE BROWN ROAD, BURNSVILLE, NC 28714

682-0341 - 216-4408

BUS: --

· 8 PILLS

J. PRITCHARD TOLD ME THAT HE WENT TO FEUITS HOUSE PICKED UP MY SON AARON AND JOHNATHAN TOOK THEM TO STORE (PIDDLES) TOOK COULDS HOUSE AT SOME FROMET J. P. GAVE JOHNATHAN & MORPHINE PILLS. TOOK JOHNATHAN BACK TO FRUITS HOUSE.

I KNOW THAT JOHNATHAN HAS GOT MORPHINE FROM PRITCHARD IN THE PAST.

SAW P GIVE HIM 2 IN OR AROUND CHRISTMAS

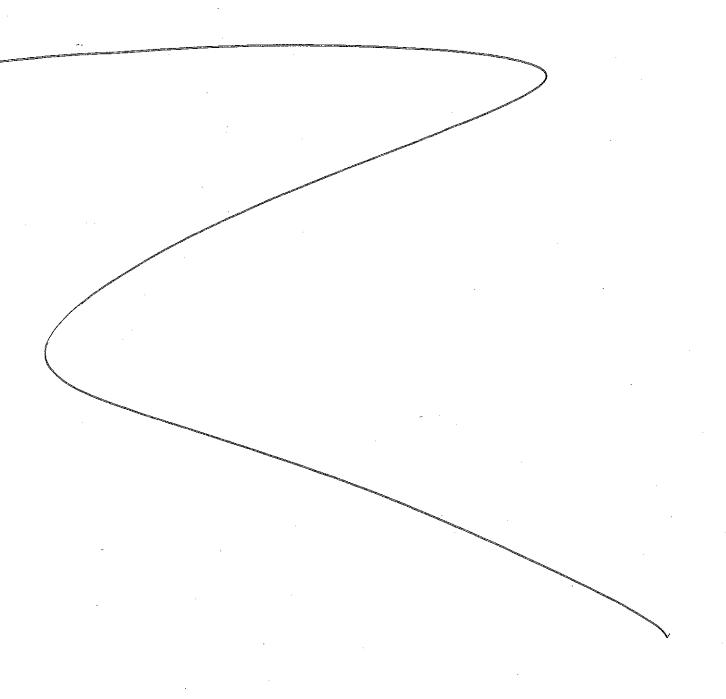
JP AND JOHNATHAN FIRST MET IN FALL OF 2010.

ONLY TIME IN EVER SAW ANYTHING.

JOHNATHAN PID WORK AROUND THE HOUSE.

PRITCHARD KEEPS HIS PILLS LOCKED UP IN COCK BOX IN HOUSE. WHEN WE CIVED TOGETHER HE GOT 155 PRITCHARD AN AMEDN WED TOGETHER AT THE TIME PRITCHARD GETS HIS PILLS FROM VAIN ASHEVILLE. *PRITCHARD HAS AND IS WORRIED ABOUT JOHNATHANS DEATH. VERY WORRIED THAT HE GAVE HIM THE MORPHINE THAT KILLED HIM.

4:00 PM



905-01 5 of S

		5° of 5
12/1/2011		
11:40 A		
	J.H. PRITCHAD 09/7/1	1051
terminare and a filmen to the analysis of dissipation of the second section of the section of the second section of the second section of the second section of the second section of the second section of the second section of the second section of the second section of the second section of the second section of the section of the section of the second section of the section of		
	a Rupal-11115 Rupa	B.—
	· BURNSVILLE POUCE DEPARTMENT, BURN · AL MESSER.	isville, NC
<u></u>	ADVISED OF PIGHTS AT 11:42 AM	
······································		
There are no set the one of the second secon		
P Million C. and arms in particular department of the state of the sta		
		and the second s
erendig and record constant and a series and analysis of		



NORTH CAROLINA STATE BUREAU OF INVESTIGATION

DEPARTMENT OF JUSTICE

3320 GARNER ROAD PO Box 29500 RALEIGH, NC 27626-0500



CONFIDENTIAL: This is an official file of the North Carolina State Bureau of Investigation. To make public or reveal the contents thereof to any unauthorized person is a violation of the General Statutes of North Carolina.

2011-02340 (905) SBI CASE NUMBER:

DATE: March 2, 2012

Jonathan Russell Whitson VICTIM(S):

W/W

TYPE OF CASE: Overdose

CITY/COUNTY: Burnsville/Yancey

DATE INITIATED: September 27, 2011

REQUEST FROM: Sergeant R. Higgins

Yancey County Sheriff's Office

SUSPECT (S): John Herbert Pritchard

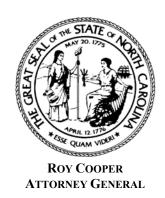
W/M/DOB: September 7, 1951

Pending STATUS:

Assistant Special Agent in Charge REPORT MADE BY:

C. E. Vines:ap

RECEIVED: March 2, 2012



NORTH CAROLINA STATE BUREAU OF INVESTIGATION

DEPARTMENT OF JUSTICE

3320 GARNER ROAD PO Box 29500 RALEIGH, NC 27626-0500



DIRECTOR

CONFIDENTIAL: This is an official file of the North Carolina State Bureau of Investigation. To make public or reveal the contents thereof to any unauthorized person is a violation of the General Statutes of North Carolina.

March 28, 2012 TRANSCRIBED:

Special Agent In Charge W. B. Hallman COPIES:

District Attorney G. W. Wilson

SBI CASE NUMBER: 2011-02340 (905)

SYNOPSIS:

On Tuesday, September 27, 2011, Assistant Special Agent in Charge (ASAC) C. E. Vines Jr. was contacted by Sergeant R. Higgins of the Yancey County Sheriff's Office. Sergeant Higgins advised that on March 6, 2011, the Yancey County Sheriff's Office responded to a residence in Yancey County regarding an overdose death. The SBI was requested to assist with interviews on a limited basis.

Jonathan Russell Whitson was found dead at the residence. Whitson was autopsied, and autopsy results indicated Whitson died from Morphine toxicity.

Tammy Ayers was interviewed by ASAC Vines and Sergeant Higgins. Ayers stated she was at the residence of Nathan Angel the day prior to Whitson's death. Ayers said when she arrived, Nathan Angel and Stephanie Whitson were there and Robbie Silver may have been there. Ayers stated Jonathan Whitson was leaving as she arrived. Whitson was leaving with John Pritchard in what Ayers believes was a silver truck. Ayers said the truck may be a two door Toyota. Ayers stayed at the residence while Whitson was gone. Ayers asked Angel if Whitson was going to score 30s, referring to Morphine. Angel said he was.

Ayers said as she was driving away, Whitson and Pritchard were returning, but Ayers did not speak to either one of them. The following day, Ayers spoke with Stephanie Whitson. Stephanie was the girlfriend of Whitson. Stephanie told Ayers Whitson got ten 30s from Pritchard, and that she and Whitson did about four or five of the pills at Angel's. Stephanie further told Ayers when she left, Whitson had the remaining pills.

Ayers stated Angel had gotten pills for her in the past from Pritchard but stated she has never bought from Pritchard directly. Ayers further stated Robbie Brown told her she knew Pritchard sold the Morphine to Whitson and added that most of the pills were given to Whitson on credit or were fronted to Whitson. Ayers believes Pritchard gets his pills from Tennessee. Angel told Ayers during the funeral visitation, if Stephanie would not have had any money then Whitson would not have bought the pills.

Robbie Jean Brown was interviewed by ASAC Vines and Higgins. Brown is the girlfriend/fiancée of John Pritchard. Brown told ASAC Vines Pritchard gave Whitson eight pills the day prior to SBI CASE NUMBER: 2011-02340 (905)

SYNOPSIS:

the death of Whitson. Brown stated she was told by Pritchard that he went to the residence of Nathan Angel, also known as "Fruit," to pick up Brown's son, Aaron Collins, and Whitson.

Pritchard told Brown he took the pair to the store then took Collins back to Collins' residence. Pritchard told Brown at some point, he gave Whitson eight Morphine pills and took Whitson back to the residence of Angel.

Brown stated she knows Whitson has gotten Morphine from Pritchard in the past and personally saw Pritchard give Whitson two pills around Christmas of 2010. Pritchard and Whitson first met in the fall of 2010, and that occasion at Christmas was the only time she ever saw anything. Brown added Whitson did yard work for her around the house.

According to Brown, Pritchard keeps his pills locked in a lock box in his house, and when the two lived together, Pritchard received 15 mg of Morphine from the VA Hospital in Asheville.

Brown stated Pritchard has been and is worried about Whitson's death and is very worried that he gave Whitson the Morphine that killed him.

ASAC Vines and Higgins attempted to interview John Herbert Pritchard on December 1, 2011. Pritchard declined the interview, and advised ASAC Vines and Higgins he had an attorney. This case is pending court.

CEV:ap

APPENDIX C: DISTRICT ATTORNEY'S FILE (SELECT DOCUMENTS)

This document was obtained during the Commission's investigation of State v. John Pritchard – 11 CRS 304-305. It was also used in the Commission's Hearing Brief. Due to the sensitive nature of this document the Commission Chair has ordered that it not appear on our website.

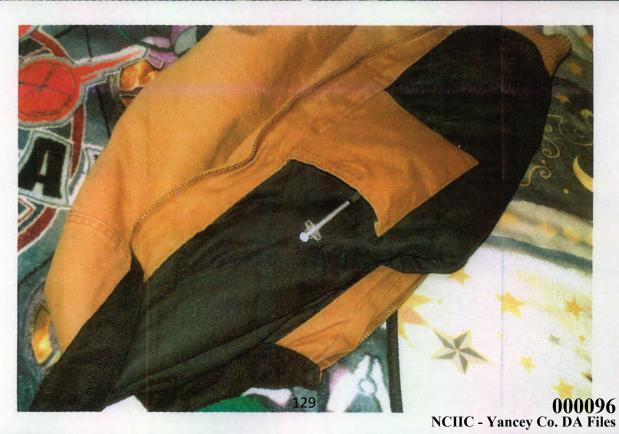
If you wish to review this document, you may contact the Yancey County Clerk's Office or you may make a Public Records Request through the North Carolina Administrative Office of the Courts. This document was obtained during the Commission's investigation of State v. John Pritchard – 11 CRS 304-305. It was also used in the Commission's Hearing Brief. Due to the sensitive nature of this document the Commission Chair has ordered that it not appear on our website.

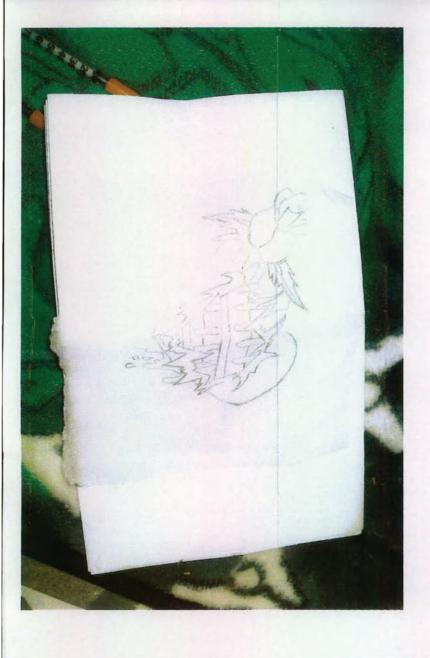
If you wish to review this document, you may contact the Yancey County Clerk's Office or you may make a Public Records Request through the North Carolina Administrative Office of the Courts. This document was obtained during the Commission's investigation of State v. John Pritchard – 11 CRS 304-305. It was also used in the Commission's Hearing Brief. Due to the sensitive nature of this document the Commission Chair has ordered that it not appear on our website.

If you wish to review this document, you may contact the Yancey County Clerk's Office or you may make a Public Records Request through the North Carolina Administrative Office of the Courts.









DEPARTMENT OF VETERANS AFFAIRS

Charles George VA Medical Center 1100 Tunnel Road Mail Stop: 136D Asheville, NC 28805

> DATE: 7/18/2013 In Reply Refer To: 136D SSN: 5265

DEVON J. MUNRO ASSISTANT DISTRICT ATTORNEY PROSECUTORIAL DISTRICT 24 YANCY COUNTY COURTHOUSE, RM 6 BURNSVILLE, NC 28714

RE: ROI Request for JOHN HERBERT PRITCHARD

Dear DEVON J. MUNRO:

A determination has been made to disclose the information per your request in full.

We thank you for your support of our mission. If you wish to discuss anything in this letter with me, please contact me at [828 299 2508].

Sincerely,

ELLA F WRIGHT - Release of Information

JUL 0 2 2013

STATE OF NORTH CAROLINA YANCEY COUNTY

In The GENERAL COURT OF JUSTICE, SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA

No.: 11 CRS 304, 11 CRS 305

VS.

ORDER TO PRODUCE MEDICAL RECORDS

JOHN PRITCHARD, Defendant.

NOW COMES THE STATE OF NORTH CAROLINA, pursuant to N. C. G. S. §§ 8-53 and 90-21.20B, by and through Assistant District Attorney Devon J. Munro, and moves the Court to enter an ORDER commanding and authorizing disclosure to the Office of the District Attorney for Yancey County of certified copies of certain medical records of the defendant, to wit: admission and discharge summaries, pharmaceutical and prescription records, and toxicology blood or urine screens and other lab tests for the defendant between March 7, 2010 and March 7, 2011.

WHEREAS, this matter came to be heard before the undersigned Judge upon the Motion of the State, pursuant to N.C.G.S. §§ 8-53 and 90-21.20B, and the Court having considered the Motion for an Order compelling production of the above-described records from the Charles George V.A. Medical Center, the Court hereby finds, for the purpose of this Order, that there is good cause shown for the reasons set forth in the District Attorney's *ex parte* Motion, to order production under these applicable statutes.

WHEREAS, the Court finds that these medical records could provide material evidence in this case, should they indicate the prescription, administration, or other availability to the defendant of controlled substances that may have been involved in or connected to the drug-related charges and second degree murder charges in the above-captioned cases.

WHEREFORE, based on the foregoing findings it is ORDERED, ADJUDGED, and DECREED that the Charles George Veterans Administration Medical Center, must provide certified copies of certain medical records of the defendant: admission and discharge summaries, pharmaceutical and prescription records, and toxicology blood or urine screens and other lab tests for the defendant while a patient between March 7, 2010 and March 7, 2011. Such items shall be delivered to the office of Devon J. Munro, Assistant District Attorney, Prosecutorial District 24, Yancey County Courthouse, Room 6, Burnsville, NC 28714. The District Attorney shall provide a copy of these records to any attorney assigned for the defendant upon proper disclosure of requested discovery. While this Order provides for obtaining certified copies, questions regarding admissibility will still be determined at trial.

Entered by my hand on this the 21

day of Jun 2 2013.

Court Judge

I ask for this:

Devon J. Munro

Asst. District Attorney, Dist. 24

110 E. Main St.

Yancey County Courthouse Room 6

Burnsville, NC 28714

Seen and

Daniel Hockaday

Hockaday & Hockaday

9 E. Main St., # 300

Burnsville, NC 28714

STATE OF NORTH CAROLINA YANCEY COUNTY

In The GENERAL COURT OF JUSTICE, SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA

No.: 11 CRS 304, 11 CRS 305

VS.

MOTION FOR ORDER TO PRODUCE

JOHN PRITCHARD, Defendant.

MEDICAL RECORDS

9-7-51 5265

NOW COMES THE STATE OF NORTH CAROLINA, pursuant to N. C. G. S. § 8-53, by and through Assistant District Attorney Devon J. Munro, and moves the Court to enter an ORDER commanding and authorizing disclosure to the Office of the District Attorney for Yancey County of certified copies of certain medical records of the defendant, to wit: admission and discharge summaries, pharmaceutical and prescription records, and toxicology blood or urine screens and other lab tests for the defendant between March 7, 2010 and March 7, 2011.

In support, the State submits the following:

- 1. The defendant named above has been indicted for charges of second degree murder and felony charges relating to the possession and sale of Schedule II controlled substances, specifically morphine, to Jonathan Russell Whitson, who died of an overdose on or about March 6, 2011;
- 2. Upon information and belief, the defendant was a patient of the Charles George Veterans Administration Medical Center in Asheville, NC during the time period between March 7, 2010 and March 7, 2011;
- 3. Upon information and belief, the defendant may have had opportunity to obtain the controlled substances at issue, including morphine, in whole or in part through prescriptions from or visits to this medical center;
- 4. The District Attorney needs the information contained in the medical records described herein to competently represent the State of North Carolina in the prosecution of this matter;
- 5. The medical records concerning admission and discharge summaries, pharmaceutical and prescription records, and toxicology blood or urine screens and other lab tests are relevant and necessary to the proper administration of justice under N.C.G.S. § 8-53, et seq.;
- 6. N. C. G. S. § 8-53 authorizes the Court to compel disclosure of confidential medical records in the interest of justice which are necessary to a proper administration of justice;
- 7. N. C. G. S. § 8-53 and the cases interpreting this statute authorize the District Attorney to apply to the Court *ex parte* for an Order disclosing medical records to the State without a hearing prior to trial. *See State v. Drdak*, 330 N.C. 587 (1992) (hospital blood tests are admissible as "other competent evidence of defendant's blood alcohol content" where the State obtained a Court order under N. C. G. S. § 8-53); *State v. Miller*, 80 N.C.App. 425, *review denied*, N.C. 711 (1986) (pursuant to N. C. G. S. § 8-53 a

prosecutor obtained an ex parte Court Order to compel disclosure of defendant's medical records);

- 8. Despite these rulings, the Assistant District Attorney has served a copy of this Motion and draft Order upon counsel for the defendant, and he has indicated he does not oppose the motion. Such records that are produced will be available to the defense;
- 9. N.C.G.S. 90-21.20B ("Access to and disclosure of medical information for certain purposes") provides in pertinent part:
 - (a) Notwithstanding G.S. 8-53 or any other provision of law, a health care provider may disclose to a law enforcement officer protected health information only to the extent that the information may be disclosed under the federal Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. § 164.512(f) and is not specifically prohibited from disclosure by other state or federal law...
 - (b) A prosecutor or law enforcement officer receiving identifiable health information under this section shall not disclose this information to others except as necessary to the investigation or otherwise allowed by law.
 - (c) A certified copy of identifiable health information, if relevant, shall be admissible in any hearing or trial without further authentication.

WHEREFORE, the State prays that the Court enter said order directing Charles George Veterans Administration Medical Center in Asheville, NC, to provide certified copies of the medical records of the defendant to the District Attorney, or his designee, to include admission and discharge summaries, emergency room records of nurses and attending physicians, triage records, and toxicology blood and urine screens and other lab tests or results for the above named defendant during the time period between March 7, 2010 and March 7, 2011.

Respectfully submitted, the 26 day of June, 2013.

Devon J. Munro,

Assistant District Attorney

CERTIFICATE OF SERVICE

I, Devon J. Munro, certify that I served Daniel Hockaday, Esq., attorney for defendant John Pritchard, with a copy of the Motion for medical records and draft Order by electronic mail on June 4, 2013.

Devon J. Manro

ADA, Yancey County, Dist. 24

NC Innocence Inquiry Commission Brief

Pages 137-152

Sealed by Order of the Court.

APPENDIX D: INDICTMENTS FROM COURT FILE

STATE OF NORTH CAROLINA	FILE NO. 11CRS_	MCRS 1 31.4			
YANCEY COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION				
STATE VERSUS JOHN HERBERT PRITCHARD	INDICTMENT				
OFFENSE SECOND DEGREE MURDER 9940	DATE OF OFFENSE OR DATE RANGE 03/05/2011-03/06/201	5.57.1.0			
The jurors for the State upon their oath present that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did KILL JONATHAN RUSSELL WHITSON JR. BY DISTRIBUTING TO JONATHAN RUSSELL WHITSON JR. MORPHINE, A SUBSTANCE INCLUDED IN SCHEDULE II OF THE NORTH CAROLINA CONTROLLED SUBSTANCES ACT, AND THAT SUBSTANCE CAUSED THE DEATH OF JONATHAN RUSSELL WHITSON JR.					
Nignature Signature	of Prosecutor				
WITNESSES LT. L.RYAN HIGGINS, YCSO					
The Witnesses marked "X" were sworn by the undersitestimony, this Bill was found to be:	gned Foreman of the Grand	Jury and, after hearing			
X A TRUE BILL by twelve or more grand jurors, are attest the concurrence of twelve or more grand jurors in	nd I the undersigned Foremann this Bill of Indictment.	an of the Grand Jury,			
NOT A TRUE BILL 11 - 23 - 200	e of Grand Jury Forem				

STATE OF NORTH CAROLINA FILE NO. 11CRS

11 CRS 365

YANCEY COUNTY

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

STATE VERSUS

JOHN HERBERT PRITCHARD

INDICTMENT

OFFENSE(S)	DATE OF OFFENSE OR DATE RANGE	G.S. NO CL
I. DEL. SCH. II CS 3460 II. PWIMSD SCH II CS 3516	03/05/11 03/05/11	90-95(a)(1) G 90-95(a)(1) H
III. MAINT. VEH/DWELL CS 9968	03/05/11	90-108(a)(7) I

- I. The jurors for the State upon their oath present that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did DELIVER TO JONATHAN RUSSELL WHITSON JR. TEN DOSAGE UNITS OF MORPHINE, WHICH IS INCLUDED IN SCHEDULE II OF THE NORTH CAROLINA CONTROLLED SUBSTANCES ACT.
- II. And the jurors for the State upon their oath present that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did POSSESS WITH THE INTENT TO SELL OR DELIVER TEN DOSAGE UNITS OF MORPHINE, WHICH IS INCLUDED IN SCHEDULE II OF THE NORTH CAROLINA CONTROLLED SUBSTANCES ACT.
- III. And the jurors for the State upon their oath present that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully, and feloniously did KNOWINGLY KEEP AND MAINTAIN A VEHICLE, NAMELY A SILVER IN COLOR FORD RANGER, WHICH WAS USED FOR THE KEEPING OR SELLING OF MORPHINE, WHICH IS INCLUDED IN SCHEDULE II OF THE NORTH CAROLINA CONTROLLED SUBSTANCES ACT, IN VIOLATION OF THE NORTH CAROLINA CONTROLLED SUBSTANCES ACT.

Signature of Prosecutor

WITNESSES

LT. L. RYAN HIGGINS, YCSO

The Witnesses marked "X" were sworn by the undersigned Foreman of the Grand Jury and, after hearing testimony, this Bill was found to be:

A TRUE BILL by twelve or more grand jurors, and I the undersigned Foreman of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.

___ NOT A TRUE BILL

11-28.204

Date

Signature of Grand Jury Foreman

PRITCHARD INDICTMENT TWO, PG 2

	STATE OF NORTH CAROLINA		File No. 11CRS000304				
YANCEY County		In The General Court Of Justice Superior Court Division					
STAT	E VERSUS						
Name And Address Of Defendant IOHN HERBERT PRITCHAR	D						
737 CHARLIE BROWN RD		INDICTMENT					
BURNSVILLE	NC 28714						
ace W Sex	Date Of Birth 09/07/1951	☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐					
	Offense(s)	Date Of Offense OR Date Range Of Offense	G.S. No.	CI			
I. SECOND DEGREE MURDER		03/05/2011-03/06/2001	14-17	B2			
I.							
I.							
The jurors for the State up	oon their oath present that on or	about the date(s) of offense shown ar	nd in the county na	med			
above the defendant nam							
above the defendant nam							
above the defendant nam	JGHT KILL AND MURDER JON						
above the deteriorit han							
above the deteridant nam							
above the deteriorit fight							
above the deteriorit fight							
above the deteriorit half							
above the deteriorit han							
above the defendant nam							

III.	And the jurors for the State upon their oath present that on named above the defendant named above unlawfully, willf	or abou ully and	t the date feloniousl	(s) of offens y did	e shown and	d in the cou	nty
	•						
		Signature C	of Prosecutor	P			*
F. C. C. C. C.	WITN	L), ESSES	71,2	Ffres			
[X]	LT. L. RYAN HIGGINS (YCSO)			(
	LI. L. KIAN INGGING (1650)						
_							
							Hein
Bill	e Witnesses marked "X" were sworn by the undersigned Fowas found to be:						
K	A TRUE BILL by twelve or more grand jurors, and I the und of twelve or more grand jurors in this Bill of Indictment.	dersigne	d Foreper	son of the G	irand Jury, a	ittest the co	ncurrence
	NOT A TRUE BILL.					/.	
Date	12-2-13	Si	gnatùre Of G	rand Jury Forepa	son M	7// 🥄	
	1201)			A Brown	<u> </u>		*

FILE NO. 11CRS_	WCRS 1 31.4			
IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION				
INDICTMENT				
OR DATE RANGE				
The jurors for the State upon their oath present that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did KILL JONATHAN RUSSELL WHITSON JR. BY DISTRIBUTING TO JONATHAN RUSSELL WHITSON JR. MORPHINE, A SUBSTANCE INCLUDED IN SCHEDULE II OF THE NORTH CAROLINA CONTROLLED SUBSTANCES ACT, AND THAT SUBSTANCE CAUSED THE DEATH OF JONATHAN RUSSELL WHITSON JR.				
e of Prosecutor				
WITNESSES				
gned Foreman of the Grand	Jury and, after hearing			
nd I the undersigned Forem n this Bill of Indictment.	an of the Grand Jury,			
/				
	IN THE GENERAL SUPERIOR COURT INDICTMENT DATE OF OFFENSE OR DATE RANGE 03/05/2011-03/06/201 ent that on or about the trained above unlawful WHITSON JR. BY DRPHINE, A SUBSTANA CONTROLLED STOLLED S			

STATE OF NORTH CAROLINA	File No. / ODC 201/ Od
- Janey County	In The General Court Of Justice
STATEUTPOUG	District Superior Court Division
John V. Prelchan	
Additional File No.(s) And/Or Offense(s)	G.S. 7A-457; 15A-1242
ACKNOW! EDGMEN	T OF DIQUES
As the undersigned party in this action. If	T OF RIGHTS AND WAIVER
the consequences of my decision to waive the right to ass I freely, voluntarily and knowingly declare that: (check only one)	assigned to assist me and my right to have the assistance of these proceedings, and that I fully understand and appreciate signed counsel and the right to assistance of counsel.
1. I waive my right to assigned counsel and that I, he	reby, expressly waive that right.
 I waive my right to all assistance of counsel which assistance of counsel. In all respects, I desire to a do. 	includes my right to assigned counsel and my right to the appear in my own behalf, which I understand I have the right to
SWORN AND SUBSCRIBED TO BEFORE ME	Date 1.7 /
Date Signature	Signature Of Defendant
Deputy CSC Assistant CSC Clerk Of Superior Court	John H. Futchud
CERTIFICA	
TOURN WIGHT ADOVE DAMAG dofondont beet a	armed in open court of the charges against him/her, the nature ature of the proceeding against the defendant and his/her right ave the assistance of counsel to represent him/her in this narges and proceedings and the range of punishments; that
 2. without the assistance of counsel, which includes the counsel. 	e right to assigned counsel and the right to assistance of
NOTE: For a waiver of assigned counsel only, both blocks numbered "1" must be checked. For a waiver of all assistance of counsel, both blocks numbered "2" must be checked.	Date Signature Of Judge Name Of Judge (Type Or Print)
OC-CR-227, Rev. 6/97 1997 Administrative Office of the Courts 1	ne Al Messeno 128 NCIIC-Court File

APPENDIX E:

OCME AUTOPSY DOCUMENTS AND PHOTOGRAPHS FROM WATAUGA MEDICAL CENTER



Mark T. Benton Assistant Secretary, Division of Public Health

Dr. Cardra Burns, DBA, MPA, CLC Senior Deputy Director, Division of Public Health

Michelle Aurelius, M.D. Chief Medical Examiner

April 7, 2021

CERTIFICATE

I certify that I am Custodian of Records at the Office of the Chief Medical Examiner in Raleigh, North Carolina.

I further certify that the attached document(s) pertaining to *Jonathan Russell Whitson*, consisting of thirteen pages (13), are true and accurate copies of the document(s) which are on file at the Office of the Chief Medical Examiner.

I further certify that the original records were made and kept in the regular course of the investigation of this death as required by N.C.G.S. 130A-385(a) and 130A-389(a), and that they were made by persons having knowledge of the information set forth.

PATHOLOGIST/CUSTODIAN OF RECORDS

State of North Carolina, County of	ham
I, Mary & Harrell Hedi that Sa Quita Sinarry	, a Notary Public for said County & State, do hereby certify
that La Dinta Sindrey	personally appeared before me this day & acknowledged
the due execution of the foregoing instrument.	Witness my hand and official seal, this the day of
april , 20 21	

Mary & Harrell Gedi, Notary Public

My Commission expires: July 15, 2024

NC DEPARTMENT OF HEALTH AND HUMAN SERVICES • DIVISION OF PUBLIC HEALTH
OFFICE OF THE CHIEF MEDICAL EXAMINER

LOCATION: 4312 District Drive, Raleigh, NC 27607
MAILING ADDRESS: 3025 Mail Service Center, Raleigh, NC 27699-3025
www.ocme.dhhs.nc.gov • TEL: 919-743-9000 • FAX: 919-743-9099





PATHOLOGY ASSOCIATES OF BOONE

Phone: 828-262-4106 Fax: 828-265-2554

833 State Farm Road Boone, North Carolina 28607

Name:

Autopsy:

Age/Sex: Date of Autopsy Date of Death Authorized By: Persons Present At WHITSON, JONATHAN RUSSELL

29 Y M 03/07/2011 03/06/2011 Brent Hall, M.D. Irene Coffey, Catlin Mack Autopsy #:

Race: Time: Received From: Body Identified By: AP-11-5

White 11:30

Yancey County Accompanying papers

REPORT OF AUTOPSY EXAMINATION

FINAL ANATOMIC DIAGNOSIS:

Pulmonary edema and congestion, severe Acute bronchial pneumonia, moderate Pulmonary emphysema, mild Cardiomegaly, mild, with left ventricular hypertrophy

CAUSE OF DEATH: Morphine toxicity

BRENT D. HALL, MD

Electronically Signed: 05/31/2011 20:32

EXTERNAL DESCRIPTION:

Body condition: Intact

Length: 71.0 inches

Weight: 150.0 pounds

Body heat: Cold

Rigor: Complete

Livor: Posterior/purple

Hair: Brown

Eyes: Brown

Teeth: natural

Facial hair: Mustache and goatee

The body is that of a thin adult white male wrapped in a blue/green blanket. A black and white pillow case is present within the blanket. The decedent is wearing blue jeans and white briefs. Within the right rear pocket of the pants is a black wallet with an identification card, various papers and various cards. No money is present in the wallet. A tattoo of the right arm of a Rebel flag with lightening is identified.

EVIDENCE OF INJURY:

Abrasions of both upper legs measuring up to 2.8 cm in greatest diameter are present. There is a 0.5 cm abrasion of the right thumb. A 2.0 cm ulcer of the left heel is also identified. Needle marks are present in the left antecubital fossa and left forearm.

ADDITIONAL PROCEDURES:

Radiographs: None

Microbiology: None

Chemistry:

Glucose-Chloride<20.0 mg/dL

Potassium-

114.0 mmol/L 12.2 mmol/L

Sodium-UREA nitrogen 16.0 mg/dL

158.0 mmol/L

Calcium-

6.6 mg/dL

Evidence collected: None

Personal Effects Disposition: Clothing, pocket contents, blanket and pillowcase released with the body to the funeral

home.

INTERNAL EXAMINATION:

Body Cavities: Unremarkable

WHITSON, JONATHAN RUSSELL AP1645

Page 2 of 4

NCIIC - OCME

WHITSON, JONATHAN RUSSELL



Cardiovascular system: Heart weight-420 grams. The coronary arteries display normal anatomic distribution and are free of significant atherosclerotic change. Sections of the heart demonstrate mild concentric left ventricular hypertrophy. The cardiac valves, cardiac chambers and myocardium are otherwise unremarkable. The aorta is unremarkable.

Neck: The thyroid is of the usual size and configuration. The hyoid bone and thyroid cartilage are intact. The larynx and trachea are unremarkable.

Respiratory tract: Lungs: Right weight-1040 grams; left weight-900 grams. Sectioning demonstrates marked edema and congestion. Mild emphysematous change is also identified. The lower trachea and major bronchi are unremarkable.

Gastrointestinal tract: The gastrointestinal tract is intact throughout its length. The stomach contains about 200 cc of partially digested food among which are recognizable bits of white meat. Unusual odor is not detected. The appendix is present. The large bowel contains a small amount of semisolid stool.

Liver: 1760 grams. Glisson's capsule is intact. Sectioning demonstrates unremarkable hepatic parenchyma. The extrahepatic biliary system is patent. The gallbladder contains liquid bile.

Pancreas: Unremarkable.

Spleen: 210 grams. Unremarkable.

Adrenals: Unremarkable.

Urinary tract: Kidneys: Right weight-180 grams; left weight-160 grams. The capsules strip with ease to reveal smooth cortical surfaces. Sectioning shows good corticomedullary differentiation. Bladder: The bladder contains about 10 cc of straw colored urine. The bladder mucosa is unremarkable.

Reproductive tract: Unremarkable

Musculoskeletal system: Unremarkable.

Immunologic system: Unremarkable.

Head: Scalp: Intact. Skull: Intact. Brain: Weight-1260 grams. The meninges are thin, delicate and without evidence of hemorrhage or exudate. Sectioning demonstrates unremarkable parenchyma. The blood vessels at the base of the brain are unremarkable.

MICROSCOPIC:

Heart: Sections of the heart show mild myelocyte hypertrophy.

Lungs: The lungs demonstrate marked edema and congestion. Moderate acute bronchial pneumonia is present. Perihilar lymph nodes contain granulomas with birefringent material.

Liver: No pathologic diagnosis.

Kidneys: No pathologic diagnosis.

Brain: No pathologic diagnosis.

SUMMARY AND INTERPRETATION:

Mr. Whitson was a 29 year old found dead in bed 3-6-11. Autopsy was requested by the Yancey County Sheriff's Department.

Autopsy demonstrated marked pulmonary edema and congestion with a moderate degree of acute bronchial pneumonia. Mild pulmonary emphysema was also present. The heart was mildly enlarged with left ventricular hypertrophy. An ethanol level performed on aortic blood obtained at the time of autopsy was 40.0 mg/dL (0.04% of Breathalyzer scale). Additional toxicology performed on aortic blood demonstrated the following: Benzodiazepines, none detected; cocaine, none

6/1/2011 6:56 AM

WHITSON, JONATHAN RUSSELL AP1165s Page 3 of 4 final Report

WHITSON, JONATHAN RUSSELL



detected; morphine, present; nicotine, present; other opiates/opioids, none detected; other organic bases, none detected. A trace of morphine was present in the femoral blood. Morphine was present in the urine at concentration of 15.0 mg/L.

The case of death in this case was morphine toxicity.

16

Page 4 of 4
00005inal Report

State of North Carolina

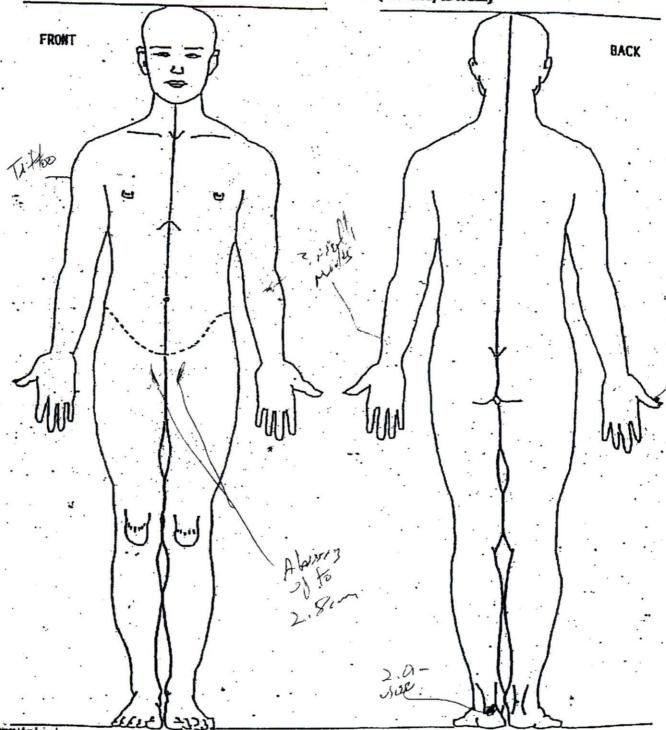
Office of the Chief Medical Examiner

Chapel Hill, North Carolina 27599-7880

Examined By

Name of Decedent: South A White South Antopsy # APV - S Date: 3/1/1

BODY DIAGRAM: ADULT (Front/Back)



DEBRE 1917 (4/97) Medical Risminer

This form may be photocopied.



DHHS 1114 (Revised 10/00) Medical Examiner (Review 10/02)

Signature of Medical Examiner

NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES OFFICE OF THE CHIEF MEDICAL EXAMINER Chapel Hill, North Carolina 27599-7580

REPORT OF INVESTIGATION BY MEDICAL EXAMINER

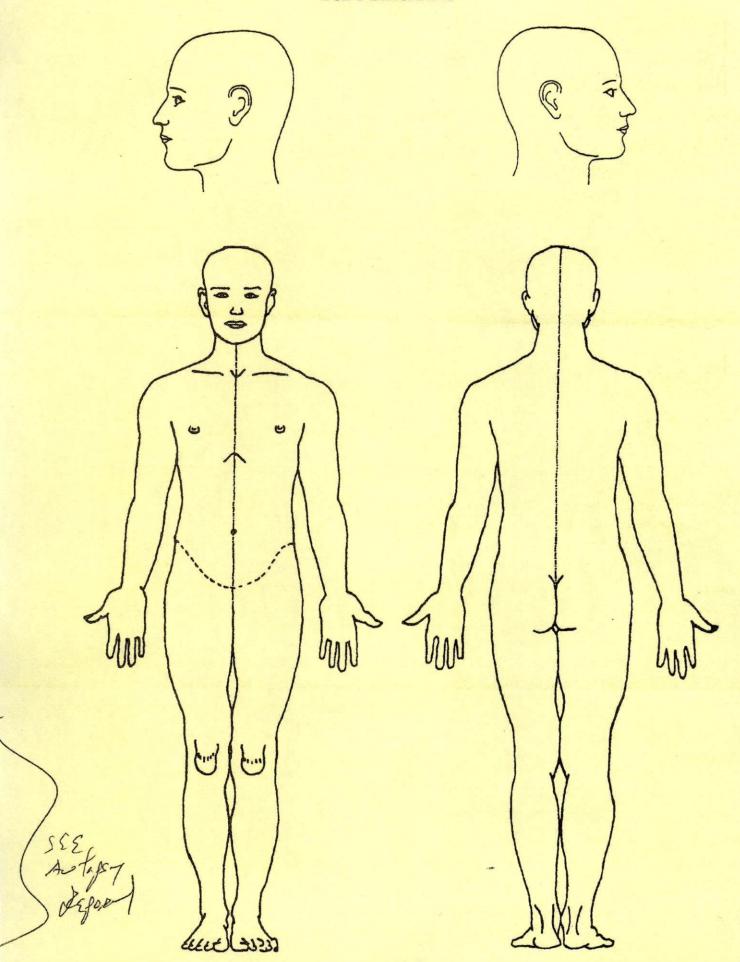
		- T 1	13		0 1	
OCME USE ONLY	DECEDEN	T: First	sto	Middle Last	TSON	Suffix
11-0509	RESIDENC	CE: 1268	1 51	P. Huy, 1975 Buzasvilla,	NC	JANCET
Case number MAR 0 9 2011	AGE: 29 Number and Street City, State SEX: TMale Female Unknown				County	
Date received	RACE:			Native American Oriental White		T.T
□ Res □ NR		ORIGIN:		Yes No Unknown	e u	Unknown
				ON ABOUT OCCURRENCE		
	DATE	TIME		ADDRESS OR FACILITY	C	COUNTY
ONSET OF INJURY OR ILLNESS	3/6/11	AM	1	flowe	TANCE	
DEATH	11	11		1	4	
VIEW OF BODY	3/7/11	11:30	Oth	ne of death Hospital Funeral home		., 00
M.E. NOTIFIED	3/2/11	121.30	LAW	ENFORCEMENT AGENCY: JANES- CER: 4-7 AND HIGH'S TELEPHON	Co.	(hs. if
LAST KNOWN TO BE ALIVE	3/8/11		OLLIC	occurred while in custoriy: Yes No	1L.	
BLOOD SAMPLE	E:	d Obta	ined by	Non-M.E. Autopsy facility: Autopsy facility: Reason not obtained: By whom:		
PROBABLE CAU	SE OF DEAT	TH: Pendi	ng	OCME REVIEW		SDC
1. Sin	dry			x. Morphine texicity		□ None
DUETO	5		/	DUE TO		Dictated
2		/		2		□ COG
DUETO				DUE TO		
3				3		
DUETO	/			DUETO		
4				4		
			-	CONTRIBUTING CONDITIONS		
CONTRIBUTING CON MANNER OF DEA				□ Natural Accident □ Homicide □ Suicide □		
□ Natural □ Acciden		□ Suicide ☑-Pe	ending	Reviewer: Date: Information in this block supersedes that contained in space at	7761 left.	4
			- 1	I took charge of the body and made inquiries regarding the	ne cause of de	eath in accordance
				e information contained herein regarding such death is tru		

NCIIC - OCME

MEDICAL HISTORY

☐ Alcoholism☐ Seizure disorder	☐ Diabetes ☐ Cancer		☐ Ischemic heart disease☐ Depression	
1 Other AM	a bus {		City	
		MEANS OF DE	ATH	
O VEHICLE:	Type of vehicle association	ciated with this deceden	t:	
			☐ Truckmore than 2 axles	☐ Motorcycle
			☐ ATV ☐ Moped	
		☐ Passenger ☐ Ped		A
	Devices: Seat res	traints Air bag	Helmet Child restraint	☐ None ☐ Unknown
	Number of vehicles i	nvolved		
GUN:			liber Shotgun-	
			Unknown	
D POSTRUMENT:	☐ Blunt ☐ Sh	arp Description:	ners MSQ	
TOXIC AGENT(S	S) SUSPECTED:	☐ Alcohol ☐ Oth	iers MSW	
☐ DROWNING:	G Fond G Lake	n liver a occasi c	a roof a bauntuo a of	iller
			Able to swim: ☐ Ye	s O No O Unknown
☐ FIRE: Suspec	ted cause		Smoke detector: Ye	es 🗆 No 🔾 Unknown
O FALL: From_		_ to	Approximate d	istance feet
	ACTIV	TY OF DECEDENT	AND PREMISES	1
FATAL INJURY	Activity >122	PS.	Specific location	
OR ILLNESS:	Type of place	Home	Specific location	
Catal injury on illusor		Van D. Hala		
		Yes No Unk		
			inteer work Unknown	
	dustry		Decedent's occupation	
		•		
DEATH:	Type of place	Ave Junk	Specific location	
Examples:				
			truck, sleeping, bathing, watching	
			taurant, store, street, hospital, farm	
			g lot, emergency room, roadside, a t including farming or part time w	
generating volunteer or cl		oguration of ago of account	a morada de maria de part anno de	
		DESCRIPTION O	F BODY	
CONDITION				
CONDITION:		composition Ske		ha.d
	☐ Embalmed	☐ Charred ☐ Prol	onged immersion	humed
RIGOR: No	ne 🔾 1+ 🔾 2+ 🔾	3+ LIVOR:	□ None □ Anterior □ F	Posterior Lateral
HEIGHT:	inches	mate WEIG	HT: pound	Is
BODY TEMPERATI	JRE: D Warm D	Cool Cold	HAIR: Color C	Beard Mustache
			ties	
			ties	
CLOTHING:				Not clothed
VALUABLES:		169		-000008 valuables
			N	CIIC - OCME

BODY DIAGRAMS



Indicate nature and location of wounds and other lesions (scars, tatteen medical therapy, etc.) on these diagrams. NCIIC - OCME

NARRATIVE SUMMARY OF CIRCUMSTANCES SURROUNDING DEATH

MR. Celition was A 29 70 REKASEN
Lionini in Madicad Co. 3/4/11. ON
3/5/11 LE is Alleged to have taken browning
attle his girlfaignt. The sext and by with
tool dent in bel. Anteren was sig well
Le Ala YCSD.
The state of the s
To the second se

PURPOSE: To document the findings of a medical examiner investigation. When completed, this form constitutes a report to the Chief Medical Examiner as required by G.S. 130A-385(a).

PREPARATION: The investigating medical examiner completes all appropriate information, and signs the certification statement on the front of the form.

DISTRIBUTION: Mail original copy to the Office of the Chief Medical Examiner, Chapel Hill, NC 27599-7580.

DISPOSITION: This form is maintained by the Chief Medical Examiner in accordance with the current records disposition schedule published by the N.C. Division of Archives and History.

COPIES: Additional copies may be ordered from the Office of the Chief Medical Examiner, Chapel Hill, NC 27599-7580.

TOXICOLOGY REPORT

Office of the Chief Medical Examiner

Raleigh, NC 27699-3025

Toxicology Folder: T201101851 Case Folder: F201102509

Date of Report: 04-apr-2011

DOD: 06-mar-2011

Page: 1

DECEDENT: Jonathan Russell Junior Whitson

Status of Report: Approved

Report Electronically Approved By: Ruth Winecker, Ph.D.

SPECIMENS received from Brent D. Hall on 09-mar-2011

6.0 ml Blood S110004482:

SOURCE: Femoral Vessel

CONDITION: Postmortem

OBTAINED: 07-mar-2011

Morphine ----- Trace

04/04/2011

S110004483: 16.0 ml Blood

SOURCE: Aorta

CONDITION: Postmortem

OBTAINED: 07-mar-2011

Benzodiazepines ----- None Detected LCMS 04/04/2011 Cocaine ----- None Detected LCMS 04/04/2011 Ethanol ------ 40 mg/dL 04/04/2011

Morphine ------ Present LCMS Nicotine ------ Present

Other Opiates/Opioids ----- None Detected LCMS

Other Organic Bases ----- None Detected

04/04/2011 04/04/2011 04/04/2011

04/04/2011

S110004484: 5.0 ml Urine CONDITION: Postmortem OBTAINED: 07-mar-2011

SOURCE: Urinary Bladder

Morphine ----- 15 mg/L 04/04/2011

S110004485: Liver SOURCE:

CONDITION: Postmortem OBTAINED: 07-mar-2011

TOXICOLOGY REPORT

Office of the Chief Medical Examiner

Raleigh, NC 27699-3025

Toxicology Folder: T201101851

Case Folder: F201102509

Date of Report: 04-apr-2011 DOD: 06-mar-2011

Page:

Decedent: Jonathan Russell Junior Whitson

032421 15:22

E N D OF REPORT ***

D2011-02962

MEDICAL EXAMINER'S CERTIFICATE OF

1	Jonathan R	ussell Jun	ior Whits	ON	,	2 25	Mar 6.	2011
Soc	IAL SECURITY NUMBER	AGE—Last Birthday (Years) 5a. 29 5b	UNDER 1 YEAR Months Days	Hours M	nutes Year)	BIRTH (Month, Day 20.198)	or Foreign Cou	(County and State
WAS ARN	DECEDENT EVER IN U.S IED FORCES? (Yes or No)			9a. PLACE OF D	EATH (Check only o	ne: see instructions o	n o(her side)	
FAC	ILITY NAME (If not institute	n, give street and number)	A STATE OF THE STA	DOA OTHE	R. [] Nursing Heime F-DEATH	Residence L INSIDE CITY LIMI	Other (Specify) 87: COUNTY	OF DEATH
	ITAL STATUS - Manied, N				ENTS USDAL OCC	9d Co UPATION (Give kind		ncay Businessandu
10.00 Mar.	ed Widowed Divosed (S	eafk!	A. D. A. B. S.	done 1 124. 5	unito maet at mortene Gillatia	lite (Do not use refl Control	ed) 125 C	onatelic
0 10	IDENOE-STATE	COUNTY	OTY, TOWN OF	COCALCIA COCALCIA		STREET AND NU	ABER	i en e
A Principal Control of the Control o	DE CITY LIMITED REP COL or No.		i of Tuspunc Onigin 2.3) ecify Cuban, Mekican, P		-Artesion funder White Etc (Specif	DECLORNTS	LIGHTION (Special	Vorily highest grad
138.	110 13f, 2	8714 de 14	No (Specify) 1	16.	White -	6 12	A. CA	
17.	HER'S NAME (First, Middle) Ward Russe	ll Wilson			hersname (fils). Annotto			·
	RMANT'S NAME (Type/Pri Annollo An		MAILING ADDRESS City or Town States 19b.	(Street and Number Zip Code)	or Rural Route Num	MC 287	05 P	ATE AMENDED
10000 A 10000 A 10000 A 1000	. Enter the diseases, injuries,	or complications that caused	the death. Do not enter th	mode of dying, such				Approximate Intel
Then	If appropriate_enter tobacco	alcohol or drug use. List on	ly one cause on each line,	(PRINT of TYPE)				Between Onset Death
cor	nal disease or idition resulting	a. ""	CONSEQUENCE OF)				<u> </u>	184,251
Œ Se	puentially tist conditions	b.		and the	*****		fig. 14 (1990) This residence is a second	Maria de la composición dela composición de la composición de la composición de la composición de la composición dela composición dela composición dela composición de la composición dela composición de la composición dela composición dela composición dela composición dela composición dela composición dela composición dela composición dela composición dela composición de
# Call	ny, leading to immediate ise, Enter UNDERLYING	DUE TO (OR AS A	CONSEQUENCE OF)					
80 m	USE (Disease or injury initiated events of the control of the cont	DUE TO (DR AS A	CONSEQUENCE OF)				200	
20a.	IL Other significant conditi	d.	of out resulting in the up	deriving cause given	in Part I WAS AN	AUTOPSY PER-	Were Autopsy Fine	lines Available nric
20b.		ol, or drug use; diabetes, e				(Yes or No)	to Completion of D 21b. (Yes or No)	eath Certificate?
14	IER OF DEATH □ Natural □ Accident □	Suicide (Month	DF INJURY TIME.O	FINJURY INJURY (Yes or		RIBE HOW INJURY	OCCURRED	
PLACE	_ Homisiqe E Pending L E OF MUHRY — Achome ng eloi (SEe:19)		LOCATION (Site	M: 22c, er and Number of Ri	220 rai Rome Number (ity or (zwn, State)	. I W. J.	TIME OF DEATH
	Dest of the substactive ties	n occaried at the type, da	227 Gland place States (Sc	netine wat file of C	SURGO.		DATE BEN	Zam ED Michael Day, 1
		10 11 11 1					Ja. 34	Selfer :
2 355650 76650	AND ADDRESS OF PERS SCHOOL ROLL		MOSE OF DEATH (TEX		- 100 ·	28667	DATE PROJ Monto Car	CONCERTEAD
teer Will	OD OF DISPOSITION	Statement Statement Constitution	PLACE OF DISPOSI			N — City or Town	State, Zip Code	Gallinara.
O 259	C) Other (Specify) Ann y (San Es S (Figure)		25b - 1 28 100 2 3 0	COMPC	25c E OF FUNERAL DIREC		NG AS SUCH LIK	CENSE NUMBER
O 25a.	178 Charlie	Brown Rd,	Burnsvil	le,NC 266	Mark K.	Grindet	aff 26	_ F82171
O REGIS	TRANS SIGNATURE	eputy zaistrar	DATE FILED (Mont		FOE EMBALMEN	chard Ga	ssaway ^{LIC}	FISTINGER

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES DIVISION OF EPIDEMIOLOGY - VITAL RECORDS SECTION

F201102509	SU	PPLE	MENTAL	REPORT (OF CA	AUSE OF DEAT	TH	JUL 2 0 201
NAME OF DECEASE		nior V	Vhiteon					
Jonathan Ru	<u>ıssen Jur</u>	IIOI V	COUNTY OF I	DEATH		SEX M		RACE White
O3/06/11 PART 1. Enter the diseases, inju List only one cause on	ries, or complications	that caused		the mode of dying, such	as cardiac	or respiratory arrest, shock or hea		Approximate Interval Between Onset and Death
IMMEDIATE CAUSE (Final disease or condition resulting in death)	a Morphir	ne toxic As a cons	ity BEQUENCE OF):					
Sequentially list conditions if any, leading to immediate cause, Enter UNDERLYING CAUSE (Disease or injury that initiated events	bOUE TO (OR	AS A CONS	SEQUENCE OF):				•	
resulting in death) LAST.	DUE TO (OR	AS A CON	SEQUENCE OF):	,				
PART II. Other significant cond	itions contributing to o	death but not	resulting in the underly	ring cause given in Part	i	WAS AN AUTOPSY PER- FORMED (YES OR NO) 21s. Yes	pletion of 21b. (Yes	psy Findings Available Prior to Com- Death Certificate? or No. Y OS
MANNER OF DEATH ☐ Natural		DATE OF (Month, D 22a.		TIME OF INJURY 22b.	. (1	NJURY AT WORK? 'ES OR NO) &c.	DESCRIB 22d.	E HOW INJURY OCCURRED
PLACE OF INJURY - At home building, etc. (Specify) 22e.	, farm, street, factory,	office	LOCATION (Street as	nd Number or Rural Ro	ite Number.	City or Town, State)	TIME OF	M , /
To the best of my knowledge, de	ath occurred at the time	date and p	lace stated. (Signature	and Tille of Certifier)			23b. (NED (Month, Day, Year)
NAME AND ADDRESS OF PE	RSON WHO COMPL	ETED CAU	SE OF DEATH (ITEM	20) (Type or Print)		•	DATE PRO	ONOUNCED PEAD

Note: All entries in the medical and cause-of-death section supersede the corresponding entries on the original certificate.

Boone, NC 28607-0000

 $_{24a}$. Brent D. Hall , MD

This document was obtained during the Commission's investigation of State v. John Pritchard – 11 CRS 304-305. It was also used in the Commission's Hearing Brief. Due to the sensitive nature of this document the Commission Chair has ordered that it not appear on our website.

If you wish to review this document, you may contact the Yancey County Clerk's Office or you may make a Public Records Request through the North Carolina Administrative Office of the Courts. This document was obtained during the Commission's investigation of State v. John Pritchard – 11 CRS 304-305. It was also used in the Commission's Hearing Brief. Due to the sensitive nature of this document the Commission Chair has ordered that it not appear on our website.

If you wish to review this document, you may contact the Yancey County Clerk's Office or you may make a Public Records Request through the North Carolina Administrative Office of the Courts. This document was obtained during the Commission's investigation of State v. John Pritchard – 11 CRS 304-305. It was also used in the Commission's Hearing Brief. Due to the sensitive nature of this document the Commission Chair has ordered that it not appear on our website.

If you wish to review this document, you may contact the Yancey County Clerk's Office or you may make a Public Records Request through the North Carolina Administrative Office of the Courts.

APPENDIX F:

INTERVIEW OF CHRISTINE ANGEL ON NOVEMBER 26, 2013 FROM WAKE FOREST UNIVERSITY SCHOOL OF LAW INNOCENCE AND JUSTICE CLINIC FILE

Christine Angel 11/26/2013 Interview with Assistant District Attorney D. Michael Holmes

On 11/26/2013 I met with Christine Angel regarding the John Herbert Pritchard case. During the course of my conversation with Christine on this day she told me information which was not disclosed in any of the discovery materials to date. Christine told me that when Stephanie Whitson arrived at her residence on 3/5/2011 that Stephanie and Jonathan Whitson began to argue about possibly breaking up. Specifically, she stated that Jonathan told her that Stephanie wanted to break up with him. She stated that Jonathan and Stephanie sat in a vehicle in the drive way for some time apparently discussing this matter. She stated that after Stephanie left that evening that Jonathan was distraught. Jonathan was crying and upset about Stephanie wanting to break up with him and discussed the matter with Christine Angel. Christine further stated that after she went to bed that evening that she heard Jonathan go to the bathroom. After being in the bathroom Jonathan stuck his head in her doorway and said "I love you." Christine stated that Jonathan did this (i.e. went to bathroom and then afterward stuck his head in and said "I love you.") three separate times and that she thought it was strange at the time.

Christine also stated that she remembers Brian Silver and an individual called C.R.? coming to her house on 3/5/2011 to visit with Jonathan Whitson. These individuals did not come into the house. They arrived together and spoke with Jonathan in the drive-way for a while.

The undersigned believes this to be all of the information disclosed by Christine Angel that is not previously included in the State's discovery. This the 26th day of November, 2013.

D. Michael Holmes, Assistant District Attorney

W

APPENDIX G: MOTIONS FILED PRIOR TO TRIAL FROM COURT FILE

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION COUNTY OF YANCEY THE PROPERTY SOLVERS 304, 11CRS 305

STATE OF NORTH CAROLINA	A NOTICE OF INTRODUCTION OF
vs. () () () () () () () () () () () () ()	NOTICE OF INTRODUCTION OF EVIDENCE OF PRIOR BAD ACTS AND MOTION IN LIMINE FOR INTRODUCTION OF PRIOR BAD ACT
)	EVIDENCE- RULE 404(b)
Defendant	

NOW COMES Assistant District Attorney, D. Michael Holmes, and hereby moves this Honorable Court, pursuant to the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, Article 1 §§ 19 and 23 of the North Carolina Constitution, N.C.G.S. § 8C-1, Rules 403, and 404 of the North Carolina Rules of Evidence, to issue an Order allowing the Prosecution to admit and or elicit the evidence of prior bad acts as set forth below. In support of the foregoing Motion in Limine, the Prosecution would show unto the Court as follows:

- The Defendant was convicted of Sale and Deliver of Morphine, a 1. Schedule II C.S. in Yancey County Superior Court in file number 10CRS 50162 on January 31, 2011.
- The Defendant committed the offense described above on January 26, 2. 2010.
- The Defendant is presently charged with Delivery of Morphine, a 3. Schedule II C.S.
- The Defendant used a silver/grey Ford Ranger truck during the 4. commission of the Sale and Delivery of Morphine offense described above.
- The Defendant used a silver/grey Ford Ranger truck during the 5. commission of his presently pending criminal charges.
- This prior bad act of Sale and Delivery of Morphine and the Defendant's 6. use of the same silver/grey Ford Ranger truck speak directly to the defendant motive, opportunity, intent, preparation, plan, knowledge, and identity as reflected in Rule 404(b).

- 7. This prior bad act of Sale and Delivery of Morphine while using a silver/grey Ford Ranger truck is almost factually identical to the present offense.
- 8. This prior bad act and the current offense are temporally proximate inasmuch as this prior bad act of Sale and Delivery of Morphine occurred on January 26, 2010 and the present offense occurred on March 5, 2011.

WHEREFORE, the Prosecution respectfully prays unto this Court for the following relief:

- 1. That the Court issue an Order allowing the Prosecution to introduce and or elicit the proposed 404(b) evidence in the trial of these matters; and
- 2. For such other and further relief to which the Prosecution may be entitled and which the Court may deem just and proper.

This the 11th day of April 2014.

Rv

D. Michael Holmes

Assistant District Attorney

Certificate of Service

This shall certify that a copy of the foregoing Notice of Introduction of Evidence of Prior Bad Acts and Motion in Limine For Introduction of Prior Bad Act Evidence-Rule 404(b) was this day served upon the attorney for the Defendant, Daniel M. Hockaday, by serving the Office of Daniel M. Hockaday via hand delivery

This the 11th day of April 2014.

Assistant District Attorney

STATE OF NORTH CAROLINA	GENERAL COURT OF JUSTICE
	FILE NO: 10 CRS 50162; 11 CRS 304 & 305
trace of the	11 CRS 304 & 305
STATE OF NORTH CARÔLINA)
-V-) MOTION IN LIMINE
JOHN HERBERT PRITCHARD,)
Defendant)

NOW COMES, the defendant, by and through the undersigned attorney, and moves the Court to enter an Order to prohibit the District Attorney and State of North Carolina from presenting any and all statements of the deceased, Jonathan Whitson, as outlined in those items which have been provided in discovery to the defendant including, but not limited to:

- 1) Statements made by the deceased to Christine Angel;
- 2) Statements made by the deceased to Stephanie Whitson;
- 3) Statements made by the deceased to Nathan Angel (also now deceased);
- 4) And any other statement the deceased has made that has not been provided in discovery.

These statements are hearsay and not admissible under either Rule 803 or 804 of the Rules of Evidence and therefore defendant is seeking an Order prohibiting testimony regarding these statements or the use or reference of the same during the trial of these matters.

This the 24 day of Februs, 2014.

HOCKADAY & HOCKADAY

Daniel M. Hockaday Post Office Box 65

Burnsville, NC 28714

(828) 682-7060

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing Motion upon the District Attorney, by hand delivery of the same in Open Court.

This the 24 day of February, 2014.

HOCKADAY & HOCKADAY, P.A.

Daniel M. Hockada

Post Office Box 65

Burnsville, NC 28714

(828) 682-7060

APPENDIX G: TRIAL DIGEST AND TRIAL TRANSCRIPT

Trial of John Pritchard April 14, 2014 — April 17, 2014

Page #	Description
1	Appearances: Bob Orr, DA and Michael Holmes, ADA
	Danny Hockaday, attorney for Defendant
2-4	Certificate of Court Reporter and Index
5-40	The pretrial motions filed by the State and Pritchard are addressed and ruled upon by the
	Court but are not summarized here. The motions are provided in Appendix G.

FLOYD AYERS—First Cousin of Victim

Page #	Description of Testimony
41	Direct Examination Begins
41-42	Floyd Ayers (Floyd) is 27 years old. He lives in Pensacola, Yancey County and has lived there for his entire life. The Victim was his first cousin, like a brother. They were close. The Victim was caring and helpful.
42	The Victim called on Friday, March 4, 2011 because he wanted to be picked up after he got out jail. Floyd took the Victim to the house of Christine Angel (Christine).
43	When the Victim called, he said he was walking and needed someone to come and pick him up. He picked the Victim up at the Forks and Ivy exit at the gas station.
44	There is a gas station on the right and one on the left. He can't remember the name of the gas station on the left. It took him 45 minutes to get there. The Victim was alone. He called around 9:30 p.m. or 10:00 p.m. After he picked him up in the truck, they went back toward Burnsville.
45	Before he got the Victim, he picked up his uncle, Stanley Whitson, who rode with him over there. The Victim looked good. His face and everything looked good. The Victim said he had been clean and wanted to stay that way. It took 45 minutes to an hour to get to Christine's.
46	He does not recall what time they arrived at Christine's. He told police it was 12:45 a.m. He never saw the Victim again. He found out the Victim died on Sunday morning. When he was with the Victim that evening, he never saw anyone give the Victim morphine.
47	Cross Examination
47	He was a little younger than the Victim. He knew the Victim was in jail in February or March of 2011. The Victim did not have a vehicle or driver's license; he lost it based on his prior history. He was in jail for at least 60 days for convictions for driving without a driver's license.
48	The Victim had been in jail on the evening he picked him up on Friday, March 4 th . He does not know what time he was released; he has no reason to disagree with records showing 7:30 p.m. He picked up the Victim around 10:00 p.m. after getting a call at 9:30 p.m. They went straight to Christine's.
49	Christine was the Victim's "step-granny." He did not know if other family members lived near her house. The Victim was his first cousin. He knows of Nathan Angel (Nathan). He does not know how close he lived to Christine. The Victim told him that he walked from the

	Buncombe Detention Center to the gas station at Forks and Ivy. He thinks Buncombe
	Detention Center is in Asheville.
50	He picked up the Victim at 10:00 p.m. or a little bit after. Ayers does not know how he got there other than walking. He does not know if he had contact with other people during that 2.5-hour time period. The Victim looked good, healthy. His color was good. He appeared to be clean and sober. The Victim told him he had been clean and planned to stay clean. This obviously was not true. Within a day or two he was dead. Within a day or two he was using drugs.
51	The Victim had "serious substantial drug" use during that day. Anita Ayers (mother) called him a little after twelve and told him the Victim was dead. When he took the Victim to Christine's it took about 45 minutes to pick him up, and 45 minutes to get him to Christine's in Jack's Creek. After he dropped him off, he had no contact with the Victim. He dropped him off late on the 4 th . He did not see him on the 5 th and had no interaction with him.
52	He had no interaction with the Victim on March 5 th or with Stephanie Whitson (Stephanie) or any of the other people involved. He has no knowledge of what the Victim did, who he spoke to, or who he came into contact with on March 5 th or early March 6 th . The extent of his interaction with the Victim was when he got in the truck with him and they talked. The Victim told him he did not have any money. He did not know what the Victim may or may not have had on him.
53	He made a statement to Deputy Higgins (Lt. Higgins) on March 14 th at 7:15 p.m., eight days after the Victim died. The events were fresh in his mind and he would have recalled the events and details clearly. After reviewing the statement, he agrees that two phone calls were made to him.
54	The first time the Victim called, he did not have cell phone service. The Victim called him back. He received the first call around 9:00 p.m. or something. He got the second call five or ten minutes later. He agrees statements says he got a phone call at 9:42 p.m. He agrees statement says the Victim called again at 11:07 p.m. It was not five or ten minutes later.
55	He talked to the Victim after 11:00 p.m. What he said before was not accurate. He probably picked him up after 12:00 a.m. or 12:30 a.m. – two hours after what he said in initial testimony.
56	The Victim was sitting at the gas station on the left, outside the store. He did not look at the times. He has known he was going to testify for a long time. He gave a statement. He did not have anything to do with the Victim after he dropped him off at Christine's.
57	The Victim told him he was going to stay sober, which was incorrect. He does not know if he walked from jail to the gas station. He does not know if someone can walk from downtown Asheville to Exit 13 in two and a half hours, or four and half hours. It is at least 15 miles.
57	Redirect Examination
57	He made a statement to police within days of the Victim's death.
58	It has been three years since the Victim's death. The times that he gave to the officer would have been the correct to the best of his knowledge. He did not talk to the Victim on the 9:42 p.m. call. He had problems with cell service and getting a phone call. The Victim called back. It took 45 minutes to get there, and 45 minutes to get back.
59	He picked up the Victim just before midnight and dropped him off at Christine's at 12:45 a.m. He does not know where Buncombe County Detention Center is or have any idea how long it would take for the Victim to walk. He has no idea what was going on in the Victim's mind or if he actually planned to stay sober; he said he had been clean and planned to stay sober.

60	He did not observe the Victim with a controlled substance. He said he had no money and did not appear to be carrying anything. He did not mention seeing anyone else prior to Floyd.
60	Recross Examination
60	He does not know if the Victim had anything in his pockets or not. He remembers a little
	different story about the times. Initially, his testimony was vastly different than the times he
	gave Lt. Higgins, but it has been over three years.
61	The Victim was wearing a pair of blue jeans and a blue jean jacket. He was wearing a tee
	shirt. He did not investigate the Victim's statement about being clean. He did not say why he
	did not have any money. He thought it was because he just got out of jail. He does not know
	if he had money and spent it. He does not know how long the Victim was at the store. It was
	closed.
62	He does not know where the Victim was when he called.

CHRISTINE ANGEL—Grandmother of Victim

Page #	Description of Testimony
64	Direct Examination Begins
64	She has lived at in the same place for almost 40 years. She was living there March 4, 5, and 6 th of 2011. The Victim was her step-grandson. She had known him since he was 18 months old.
65	She knew him pretty well. He was loving and caring. The Victim came to her house on Saturday, March 5, 2011 when he got out of jail. She had pneumonia and was pretty sick with a fever. She was asleep on the couch and he came in at 1:00 a.m. She did not know he was coming or that he was out of jail after 2-3 months. Her husband, her son James, Christian and David were also present. The Victim was beating on her door and wanted in.
66	He said he was tired. He said he got out "awhile ago." He also told her his cousin picked him up. He sat in the recliner and they talked. The Victim said he called his mother and she would not come and get him. He said he was clean and was never going to do more drugs.
67-70	Bench Conference re hearsay objection (sustained)
71	After her conversation with the Victim, she laid down on the couch and he stretched out in the chair. The Victim went to sleep. He woke up on Saturday at approximately 9:00 a.m.
72	On Saturday, after the Victim woke up, she cooked and cleaned. The Victim and Nathan went outside. Stephanie came to the house around 9:00 a.m10:00 a.m. to pick up the Victim.
73	After reviewing her statement, agrees that Stephanie came by to pick up the Victim at 2:30 p.m. They sat on a loveseat in the living room talking. She did not see John Pritchard (Pritchard) that day. When the Victim left with Stephanie, they were gone for about an hour.
74	They came back to the house and sat in the car for a while then left again. When they came back again, Stephanie left around 10:00 p.m. – 11:00 p.m. She told police a slightly different time.
75	After Stephanie left, the Victim and Nathan were outside playing with the boys. The Victim went to bed about 9:00 p.m. He went to bed right after Stephanie left and told Christine he loved her, then she went to bed. She told the Victim to go to bed but did not see him do it. He went to the bathroom three times, poked his head around the door and said, "Granny I love you." He had never done that before.

7.0	Cl. I c. I see Leth. Lean. The True is
76	She woke up on Sunday, March 6 th around 6:00 a.m. or 7:00 a.m. The Victim was snoring on
	the couch. She saw him asleep. She left with her husband to buy groceries and returned
	around 10:00 a.m.
77	When they returned, they saw the Victim on the couch. He did not look like he had moved
	because he was lying there with his arms still crossed. It would be correct if she told law
	enforcement that she observed him still snoring. She cooked breakfast. No one tried to wake
	up the Victim until later. Everyone except the Victim ate breakfast.
78	Christian tried to wake up the Victim, but he did not wake up. She looked at the Victim and
78	said, "Oh my God he is dead." Nathan pulled him up and said, "Mamma call 911, he is dead."
	If she told law enforcement she got back from the store at 10:30 a.m. that would be correct.
79	She called 911 and told them he was dead. They said an ambulance was not needed. She
	does not know the time. The deputies got there about 30 minutes later. She never saw
	Pritchard. She has only seen his truck. She did not see his truck that day.
80	She did not see anyone give the Victim drugs during the time he was with her.
80	Cross Examination
80	The Victim was 28 or 29 years old when he died. She had known him since he was 18 months
00	old. Her husband of 52 years is "Blake." He was home March 5-6, 2011.
81	She stayed in the house on March 5 th and went to store on March 6 th . She made the call to
91	· ·
	911. She does not dispute records that say the call was made at 11:33 a.m. She thinks it was
	from the house phone. Law enforcement got there pretty quick, about 30 minutes. It was a
	little after 12:00 p.m. Lt. Higgins was there from the Sheriff's Dept. She told him about her
	recollection of events.
82	She did not know the Victim was coming to her house after he got out of jail. He did not live
	with her. He sometimes lived at Russell's (his dad) and sometimes with Nathan (his stepdad).
	Nathan was her oldest son. Nathan's home was close behind her house.
83	The distance was probably less than a football field. The Victim stayed with Nathan a lot.
	Before the Victim came to her house, she knew he had been in Madison Co. jail. The Victim
	had criminal trouble and a drug problem consistent with a long period of drug use.
84	She was aware of the Victim's issues. Her son Nathan also had drug problems. At times they
•	lived together in Nathan's house. Nathan was not living there when the Victim was released
	from jail in Buncombe. Nathan was living with her because he had cancer and the power in
	his mobile home was "messed up." He could access the residence, but it was not fit to live in.
	·
0.5	She guessed that the Victim kept personal items there, but she did not know what was there.
85	When Nathan lived there, the Victim would stay there. Nathan had lived with her about a
	year prior to March 2011. When the Victim arrived, he slept on the chair and she was on the
	couch. He was still in the house when she woke up. Stephanie got there about 10:00 a.m.
	She has no reason to disbelieve Lt. Higgins' notes, which say it was 2:30 p.m. when Stephanie
	got there.
86	When Stephanie arrived, they visited for little while and then left together. She does not
	know where they went. She did not ask. She saw them in the driveway for a little bit. She
	saw them leave in Stephanie's car. She does not know what kind of car.
87	She does not know how long they were in the car before they left or what went on in the car.
0,	They stayed inside the car. She guessed that they were gone about an hour. She is not sure
00	how long. They came back together in her car. The Victim came into the house.
88	She does not know if Stephanie came in the house or stayed outside. She does not know
	what Stephanie was doing—if she was in her car or doing something else. They left again.
	She does not know where they went or how long they were gone. She is not sure if it was

	five minutes or several hours. At some point they came back together. Stephanie left sometime around 9:00 p.m. or 10:00 p.m.
89	She does not remember what she told Lt. Higgins, or that they only left once. She told him that Stephanie got there at 2:30 p.m. and they left at 4:00 p.m. and came back.
90	Lt. Higgins took notes when she spoke to him. He was the only officer there. When Stephanie left at 9:00 p.m. or 10:00 p.m., the Victim, her, her husband, her son James, Nathan, and Nathan's son Christian were there. The kids came in and out of the house that night.
91	On March 5 th , other people came into the house. Bryan Silvers, JR, and Brandy's boyfriend were there. Brandy's boyfriend was there to see the Victim. A lot of people wanted to see the Victim after he got out. Bryan Silvers probably got there around 11:00 a.m. or 12:00 p.m.
92	Bryan Silvers came with JR. They did not come into her home. She saw them in the driveway. Bryan is her cousin. JR is CR. She does not know CR's real name, but she recognizes him. She has no idea how long they stayed.
93	They stayed in the driveway. The Victim was out there with him. Stephanie was not there at the time. She was cleaning in the house, but she could hear the truck come up the driveway. She looked out her window and saw Bryan and CR in the truck.
94	She has no idea what the Victim talked about or did with them. She cannot recall anyone else coming to the house to see the Victim. A third person, Brandy's boyfriend, talked to Lt. Higgins. He came by that day. She does not know Brandy's last name. Brandy is her stepgranddaughter. Brandy's boyfriend was in the house on Sunday and spoke to Lt. Higgins.
95	Brandy's boyfriend was not at her house on Saturday, March 5 th . She never saw Pritchard with the Victim. She did not know Pritchard. That whole day she was close to the driveway doing housework. Her husband and other kids were around. The kids stayed there all day. The Victim spent that night in the living room; she slept in her bedroom at the end of the hall.
96	Her bedroom was at least 20 feet from the living room. When she went to bed, the Victim was pulling off his shoes. She told him to lay down and sleep. This was around 9:00 p.m. She always went to bed at 9:00 p.m. She did not have any contact with the Victim until the next morning except when he stuck his head around the door and said, "I love you." She was in her bed.
97	It was sometime after 9:00 p.m., might have been 9:30 p.m. She does not know why the Victim was up. She figured he was going to the bathroom. He came back and said it again. He said it three times. She went to sleep reasonably quick. She does not know what the time was.
98	She did not have any more contact with the Victim. Nathan, the kids, and her husband were in bed. Nathan had an extended drug problem. He had battled it for a number of years. If she saw some drugs, it would not be pretty. She did not like it. She did not want it in her home.
99	She has not reviewed any statements from any other witnesses. She did not know that Stephanie said that drug use was going on in her home that night or that she and the Victim used in the bathroom next to her bedroom, melting pills down on a spoon and using them there. "Maybe she is the one that needs to be on trial instead of him." If she had been aware, they would have been out in the street. She is a Christian woman who raised 12 kids.
100	She does not condone it. She hates it. She knows nothing about the spoon and is not aware if the Sheriff's Department ever located it. Nathan or somebody went over and tried to shake the Victim. He had been snoring. She was not aware of how sick the Victim was. She was not aware that he had pneumonia or that the autopsy report said he had pneumonia. She knew he had asthma, a blood clot, and a hole in his heart. She did not see alcohol that night.

If there was alcohol in his system when he died, that was not at her house. She have put up with that. The Victim went to sleep at 9:00 p.m. or 9:30 p.m. He pa sometime after 10:00 p.m. It had been at least twelve hours since he went to sl was in their home the whole time. There was no alcohol or "weird stuff" going a patient him sperior. She does not know if a proportion to shake him to quit see	ssed away
noticed him snoring. She does not know if anyone tried to shake him to quit sno	on. She
Nathan pulled him up toward him on the couch and tried to get him to breathe minutes. The Victim was cold. Nathan told her to call 911. The Victim was wear jeans. She thinks he still had a shirt on. He had a comforter over him. He had a Carhart coat that he brought with him from jail.	ing blue
She never inspected the coat. It was on the back of the couch. She sat down an there was something in the pocket. She gave the item to her daughter Emma W gave it to Lt. Higgins. She found out later it was needles.	
When she takes her medicine, she takes it as prescribed. She would not melt do medication in a spoon and shoot it with a syringe. She agrees that it is importar the protocol for taking medications.	
104 Redirect Examination	
On Saturday, March 5 th , Silvers and CR came to the house after Stephanie got the Stephanie and the Victim left the house twice, but she only told law enforceme once. She is having trouble remembering the exact events of Saturday.	
It is possible that Stephanie and the Victim left once together, came back and the left by herself and came back. The Victim knew that she did not tolerate drugs of her house. It is possible he was using drugs and alcohol at her home behind her day.	or alcohol in
She is not saying that Pritchard should not be on trial today.	
106 Recross Examination	
Stephanie should be on trial. She agrees that they did not have a good relations was none of her business. She does not know if they used drugs together.	ship, but it
She did not see them use drugs in March. Before the Victim went to jail, he live Nathan. Stephanie lived there too. The Victim went to jail for 60 days in January not know for sure when they last lived at Nathan's trailer. The power was "tore house.	y. She does
She does not know the dates. He moved due to the power issue. The Victim wa with her when he went to jail. As far as she knew, he was living with Nathan and	_

STEPHANIE WHITSON RANDOLPH—Girlfriend of Victim

Page #	Description of Testimony
108	Direct Examination Begins
109	She is 28 years old. In March 2011 she was living at her parents' house. She dated the Victim
	since she met him six to seven months prior to March 2011.
110	They met through a friend and began dating in August or September of 2010. The Victim was
	happy, caring, and cocky. He was a hard worker and a good friend. On the day he died, she
	gave a truthful statement to law enforcement. Her memory is not as good today, but it is
	better than Christine's. On Saturday, March 5 th the Victim called her about 12:00 p.m., said

	he was out of jail and wanted to see if she would come to Christine's. The phone call lasted ten to fifteen minutes. She got to Christine's at about 3:00 p.m.
111	She heard Christine's testimony. She is positive she arrived at 3:00 p.m. When she arrived at the house, the Victim told her that he had called Johnny and that he was going to get some medicine. He said Johnny wanted to help him out since he had been in jail and had not had anything in a while. The Victim said Pritchard was coming up Marion Mountain. He was going to go home first and then call. He did not call—Pritchard just showed up at Christine's house.
112	When she arrived, the only other person there was Nathan and the people who were living at the house. She is not aware of other people coming over later and did not see anyone. Pritchard arrived 30 minutes after her. He pulled up in his silver Ford Ranger. The Victim said, "We are going to go to the store, we will be back."
112-122	Bench Conference: The Defense objects to hearsay. The Court strikes statement about "helping out since I have been in jail" as overly prejudicial. The State argues statements re: \$8.00 and resell for \$15.00 each are not hearsay and go to malice and prior bad acts and corroboration of the delivery on that day. The Court finds it is unfairly prejudicial because there is no evidence money exchanged hands and excludes statements.
122	Direct Examination Resumes
123	She saw Pritchard when he arrived. She recognized him. She had seen him before. Prichard wanted to take the Victim to the store. Pritchard and the Victim left for about fifteen minutes. When they returned, Pritchard dropped the Victim off. She and the Victim went into the kitchen and the Victim showed her ten morphine 30 mg pills.
124	The Victim did not have anything else with him, including anything that appeared to be from a store. She had seen morphine before and recognized the pills. She had seen this exact kind of pill before. In the kitchen, the Victim gave one pill to Nathan. The Victim had nine left. They went outside to her dad's Jeep Cherokee. The Victim crushed three pills and drew two syringes. He injected her first and then with the other syringe injected himself.
125	They were probably in the jeep for 30 minutes. They left and went to Star Branch Road. They were talking and did two more pills. She got a phone call from a friend and went to Hardees to eat. She dropped the Victim off at Christine's and left. There were four morphine pills left. The Victim left them with her. She went to Hardees, ate, and then went back to Christine's at 7:30 p.m.
126	She went to Hardees at 6:00 p.m. When she got back, they went into Christine's house and hung out for a while. They went into the bathroom. The Victim crushed the last four morphine pills and injected her. They injected three times a piece. She did not know how much was left because she never drew it up. There was some remaining after that, but she does not know exactly how much, maybe six syringes left.
127	After the bathroom, they talked and argued. She was going to leave, and he did not want her to. The Victim stuck the remaining morphine that was crushed under the sink in the bathroom. She left around 9:50 p.m. that night. She had known Pritchard for six to seven months before this. She had seen him on at least eight prior occasions, along with the Victim.
128	Pritchard picked her up once with the Victim when she worked at a Chinese restaurant and when they did not have a ride. She sometimes stayed at Jack's Creek. She would stay for two or three days at a time. Most of the other times she saw Pritchard was at Robbie Brown's house. The Victim would pick up stuff there.
129	On those occasions, the Victim would make a phone call and they would go there. The Victim would get morphine. She witnessed Pritchard giving morphine to the Victim on those prior occasions. She saw Pritchard in possession of the morphine.

The pills were the same she saw on Saturday, March 5 th . She did not see anyone who was not a resident at Christine's house that day. When Pritchard picked her up at work, he picher up in his truck and took her to Nathan's. Morphine was involved that time. The Victim gave money to Prichard and received morphine in exchange. Now she is clean and does not have a drug addiction. She just stopped. She is married now with a fifteenmonth-old child. She got married on August 18, 2012. Cross Examination She and the Victim started dating in August or September of 2010 and saw each other at least every other day, or three or four days a week. They did not see each other at her plass he was living with her parents and had use of her dad's jeep. When the Victim went to jail in January 2011, he was not living at Nathan's because the power was off. He and Nathan were staying at Christine's. Prior to that, she was going to Nathan's house. They were involved in drugs. The Victim acquired morphine pills from Pritchard. The Victim had morphine pills in March. She would only use drugs around the Victim. On March 5 th , the Victim crushed the pills in spoon using a lighter. He added water and drew it up. He first did this on the 5 th in her car Christine's driveway. They were there for 30 minutes and then went down to Jack's Creek She got a call from the Victim at 12:00 p.m. or 12:30 p.m. She went there at 3:00 p.m. The went to her car to use drugs at 3:45 p.m. They left Christine's to go to Jack's Creek at 4:00 p.m. They pulled off Star Branch Road to use drugs. They were there for a couple of hours She got a call from a friend. When they were there, they used two more pills and talked. The pills were crushed, liquif and injected. She is sure he started off with ten and gave one to Nathan. He went to	ace.
her up in his truck and took her to Nathan's. Morphine was involved that time. The Victim gave money to Prichard and received morphine in exchange. Now she is clean and does not have a drug addiction. She just stopped. She is married now with a fifteen-month-old child. She got married on August 18, 2012. Cross Examination She and the Victim started dating in August or September of 2010 and saw each other at least every other day, or three or four days a week. They did not see each other at her pla She was living with her parents and had use of her dad's jeep. When the Victim went to jail in January 2011, he was not living at Nathan's because the power was off. He and Nathan were staying at Christine's. Prior to that, she was going to Nathan's house. They were involved in drugs. The Victim acquired morphine pills from Pritchard. The Victim had morphine pills in March. She would only use drugs around the Victim. On March 5 th , the Victim crushed the pills in spoon using a lighter. He added water and drew it up. He first did this on the 5 th in her car Christine's driveway. They were there for 30 minutes and then went down to Jack's Creek She got a call from the Victim at 12:00 p.m. or 12:30 p.m. She went there at 3:00 p.m. The went to her car to use drugs at 3:45 p.m. They left Christine's to go to Jack's Creek at 4:00 p.m. They pulled off Star Branch Road to use drugs. They were there for a couple of hours She got a call from a friend. When they were there, they used two more pills and talked. The pills were crushed, liquif	a r in k.
The Victim gave money to Prichard and received morphine in exchange. Now she is clean and does not have a drug addiction. She just stopped. She is married now with a fifteen-month-old child. She got married on August 18, 2012. Cross Examination She and the Victim started dating in August or September of 2010 and saw each other at least every other day, or three or four days a week. They did not see each other at her pla She was living with her parents and had use of her dad's jeep. When the Victim went to jail in January 2011, he was not living at Nathan's because the power was off. He and Nathan were staying at Christine's. Prior to that, she was going to Nathan's house. They were involved in drugs. The Victim acquired morphine pills from Pritchard. The Victim had morphine pills in March. She would only use drugs around the Victim. On March 5 th , the Victim crushed the pills in spoon using a lighter. He added water and drew it up. He first did this on the 5 th in her car Christine's driveway. They were there for 30 minutes and then went down to Jack's Creek She got a call from the Victim at 12:00 p.m. or 12:30 p.m. She went there at 3:00 p.m. The went to her car to use drugs at 3:45 p.m. They left Christine's to go to Jack's Creek at 4:00 p.m. They pulled off Star Branch Road to use drugs. They were there for a couple of hours She got a call from a friend. When they were there, they used two more pills and talked. The pills were crushed, liquif	a r in k.
and does not have a drug addiction. She just stopped. She is married now with a fifteen-month-old child. She got married on August 18, 2012. Cross Examination She and the Victim started dating in August or September of 2010 and saw each other at least every other day, or three or four days a week. They did not see each other at her plass he was living with her parents and had use of her dad's jeep. When the Victim went to jail in January 2011, he was not living at Nathan's because the power was off. He and Nathan were staying at Christine's. Prior to that, she was going to Nathan's house. They were involved in drugs. The Victim acquired morphine pills from Pritchard. The Victim had morphine pills in March. She would only use drugs around the Victim. On March 5 th , the Victim crushed the pills in spoon using a lighter. He added water and drew it up. He first did this on the 5 th in her cal Christine's driveway. They were there for 30 minutes and then went down to Jack's Creek She got a call from the Victim at 12:00 p.m. or 12:30 p.m. She went there at 3:00 p.m. The went to her car to use drugs at 3:45 p.m. They left Christine's to go to Jack's Creek at 4:00 p.m. They pulled off Star Branch Road to use drugs. They were there for a couple of hours She got a call from a friend. When they were there, they used two more pills and talked. The pills were crushed, liquif	a r in k.
 month-old child. She got married on August 18, 2012. 132 Cross Examination 132 She and the Victim started dating in August or September of 2010 and saw each other at least every other day, or three or four days a week. They did not see each other at her pla She was living with her parents and had use of her dad's jeep. 133 When the Victim went to jail in January 2011, he was not living at Nathan's because the power was off. He and Nathan were staying at Christine's. Prior to that, she was going to Nathan's house. They were involved in drugs. The Victim acquired morphine pills from Pritchard. The Victim had morphine pills in March. 134 She would only use drugs around the Victim. On March 5th, the Victim crushed the pills in spoon using a lighter. He added water and drew it up. He first did this on the 5th in her car Christine's driveway. They were there for 30 minutes and then went down to Jack's Creek 135 She got a call from the Victim at 12:00 p.m. or 12:30 p.m. She went there at 3:00 p.m. The went to her car to use drugs at 3:45 p.m. They left Christine's to go to Jack's Creek at 4:00 p.m. They pulled off Star Branch Road to use drugs. They were there for a couple of hours She got a call from a friend. 136 When they were there, they used two more pills and talked. The pills were crushed, liquif 	a r in k.
 Cross Examination She and the Victim started dating in August or September of 2010 and saw each other at least every other day, or three or four days a week. They did not see each other at her plass he was living with her parents and had use of her dad's jeep. When the Victim went to jail in January 2011, he was not living at Nathan's because the power was off. He and Nathan were staying at Christine's. Prior to that, she was going to Nathan's house. They were involved in drugs. The Victim acquired morphine pills from Pritchard. The Victim had morphine pills in March. She would only use drugs around the Victim. On March 5th, the Victim crushed the pills in spoon using a lighter. He added water and drew it up. He first did this on the 5th in her car Christine's driveway. They were there for 30 minutes and then went down to Jack's Creek She got a call from the Victim at 12:00 p.m. or 12:30 p.m. She went there at 3:00 p.m. The went to her car to use drugs at 3:45 p.m. They left Christine's to go to Jack's Creek at 4:00 p.m. They pulled off Star Branch Road to use drugs. They were there for a couple of hours She got a call from a friend. When they were there, they used two more pills and talked. The pills were crushed, liquif 	a r in k.
She and the VIctim started dating in August or September of 2010 and saw each other at least every other day, or three or four days a week. They did not see each other at her pla She was living with her parents and had use of her dad's jeep. When the Victim went to jail in January 2011, he was not living at Nathan's because the power was off. He and Nathan were staying at Christine's. Prior to that, she was going to Nathan's house. They were involved in drugs. The Victim acquired morphine pills from Pritchard. The Victim had morphine pills in March. She would only use drugs around the Victim. On March 5th, the Victim crushed the pills in spoon using a lighter. He added water and drew it up. He first did this on the 5th in her car Christine's driveway. They were there for 30 minutes and then went down to Jack's Creek She got a call from the Victim at 12:00 p.m. or 12:30 p.m. She went there at 3:00 p.m. The went to her car to use drugs at 3:45 p.m. They left Christine's to go to Jack's Creek at 4:00 p.m. They pulled off Star Branch Road to use drugs. They were there for a couple of hours She got a call from a friend. When they were there, they used two more pills and talked. The pills were crushed, liquif	a r in k.
least every other day, or three or four days a week. They did not see each other at her place She was living with her parents and had use of her dad's jeep. When the Victim went to jail in January 2011, he was not living at Nathan's because the power was off. He and Nathan were staying at Christine's. Prior to that, she was going to Nathan's house. They were involved in drugs. The Victim acquired morphine pills from Pritchard. The Victim had morphine pills in March. She would only use drugs around the Victim. On March 5 th , the Victim crushed the pills in spoon using a lighter. He added water and drew it up. He first did this on the 5 th in her car Christine's driveway. They were there for 30 minutes and then went down to Jack's Creek She got a call from the Victim at 12:00 p.m. or 12:30 p.m. She went there at 3:00 p.m. They went to her car to use drugs at 3:45 p.m. They left Christine's to go to Jack's Creek at 4:00 p.m. They pulled off Star Branch Road to use drugs. They were there for a couple of hours She got a call from a friend. When they were there, they used two more pills and talked. The pills were crushed, liquif	a r in k.
She was living with her parents and had use of her dad's jeep. When the Victim went to jail in January 2011, he was not living at Nathan's because the power was off. He and Nathan were staying at Christine's. Prior to that, she was going to Nathan's house. They were involved in drugs. The Victim acquired morphine pills from Pritchard. The Victim had morphine pills in March. She would only use drugs around the Victim. On March 5 th , the Victim crushed the pills in spoon using a lighter. He added water and drew it up. He first did this on the 5 th in her car Christine's driveway. They were there for 30 minutes and then went down to Jack's Creek She got a call from the Victim at 12:00 p.m. or 12:30 p.m. She went there at 3:00 p.m. The went to her car to use drugs at 3:45 p.m. They left Christine's to go to Jack's Creek at 4:00 p.m. They pulled off Star Branch Road to use drugs. They were there for a couple of hours She got a call from a friend. When they were there, they used two more pills and talked. The pills were crushed, liquif	a r in k.
 When the Victim went to jail in January 2011, he was not living at Nathan's because the power was off. He and Nathan were staying at Christine's. Prior to that, she was going to Nathan's house. They were involved in drugs. The Victim acquired morphine pills from Pritchard. The Victim had morphine pills in March. She would only use drugs around the Victim. On March 5th, the Victim crushed the pills in spoon using a lighter. He added water and drew it up. He first did this on the 5th in her car Christine's driveway. They were there for 30 minutes and then went down to Jack's Creek She got a call from the Victim at 12:00 p.m. or 12:30 p.m. She went there at 3:00 p.m. They went to her car to use drugs at 3:45 p.m. They left Christine's to go to Jack's Creek at 4:00 p.m. They pulled off Star Branch Road to use drugs. They were there for a couple of hours She got a call from a friend. When they were there, they used two more pills and talked. The pills were crushed, liquif 	r in k. ey
power was off. He and Nathan were staying at Christine's. Prior to that, she was going to Nathan's house. They were involved in drugs. The Victim acquired morphine pills from Pritchard. The Victim had morphine pills in March. She would only use drugs around the Victim. On March 5 th , the Victim crushed the pills in spoon using a lighter. He added water and drew it up. He first did this on the 5 th in her car Christine's driveway. They were there for 30 minutes and then went down to Jack's Creek She got a call from the Victim at 12:00 p.m. or 12:30 p.m. She went there at 3:00 p.m. The went to her car to use drugs at 3:45 p.m. They left Christine's to go to Jack's Creek at 4:00 p.m. They pulled off Star Branch Road to use drugs. They were there for a couple of hours She got a call from a friend. When they were there, they used two more pills and talked. The pills were crushed, liquif	r in k. ey
Nathan's house. They were involved in drugs. The Victim acquired morphine pills from Pritchard. The Victim had morphine pills in March. She would only use drugs around the Victim. On March 5 th , the Victim crushed the pills in spoon using a lighter. He added water and drew it up. He first did this on the 5 th in her car Christine's driveway. They were there for 30 minutes and then went down to Jack's Creek She got a call from the Victim at 12:00 p.m. or 12:30 p.m. She went there at 3:00 p.m. The went to her car to use drugs at 3:45 p.m. They left Christine's to go to Jack's Creek at 4:00 p.m. They pulled off Star Branch Road to use drugs. They were there for a couple of hours She got a call from a friend. When they were there, they used two more pills and talked. The pills were crushed, liquif	r in k. ey
Pritchard. The Victim had morphine pills in March. She would only use drugs around the Victim. On March 5 th , the Victim crushed the pills in spoon using a lighter. He added water and drew it up. He first did this on the 5 th in her car Christine's driveway. They were there for 30 minutes and then went down to Jack's Creek She got a call from the Victim at 12:00 p.m. or 12:30 p.m. She went there at 3:00 p.m. They went to her car to use drugs at 3:45 p.m. They left Christine's to go to Jack's Creek at 4:00 p.m. They pulled off Star Branch Road to use drugs. They were there for a couple of hours She got a call from a friend. When they were there, they used two more pills and talked. The pills were crushed, liquif	r in k. ey
She would only use drugs around the Victim. On March 5 th , the Victim crushed the pills in spoon using a lighter. He added water and drew it up. He first did this on the 5 th in her car Christine's driveway. They were there for 30 minutes and then went down to Jack's Creek She got a call from the Victim at 12:00 p.m. or 12:30 p.m. She went there at 3:00 p.m. The went to her car to use drugs at 3:45 p.m. They left Christine's to go to Jack's Creek at 4:00 p.m. They pulled off Star Branch Road to use drugs. They were there for a couple of hours She got a call from a friend. When they were there, they used two more pills and talked. The pills were crushed, liquif	r in K. Ey
spoon using a lighter. He added water and drew it up. He first did this on the 5 th in her call Christine's driveway. They were there for 30 minutes and then went down to Jack's Creek She got a call from the Victim at 12:00 p.m. or 12:30 p.m. She went there at 3:00 p.m. They went to her car to use drugs at 3:45 p.m. They left Christine's to go to Jack's Creek at 4:00 p.m. They pulled off Star Branch Road to use drugs. They were there for a couple of hours She got a call from a friend. When they were there, they used two more pills and talked. The pills were crushed, liquif	r in K. Ey
Christine's driveway. They were there for 30 minutes and then went down to Jack's Creek She got a call from the Victim at 12:00 p.m. or 12:30 p.m. She went there at 3:00 p.m. They went to her car to use drugs at 3:45 p.m. They left Christine's to go to Jack's Creek at 4:00 p.m. They pulled off Star Branch Road to use drugs. They were there for a couple of hours She got a call from a friend. When they were there, they used two more pills and talked. The pills were crushed, liquif	c. ≘y)
She got a call from the Victim at 12:00 p.m. or 12:30 p.m. She went there at 3:00 p.m. The went to her car to use drugs at 3:45 p.m. They left Christine's to go to Jack's Creek at 4:00 p.m. They pulled off Star Branch Road to use drugs. They were there for a couple of hours She got a call from a friend. When they were there, they used two more pills and talked. The pills were crushed, liquif	ey)
went to her car to use drugs at 3:45 p.m. They left Christine's to go to Jack's Creek at 4:00 p.m. They pulled off Star Branch Road to use drugs. They were there for a couple of hours She got a call from a friend. When they were there, they used two more pills and talked. The pills were crushed, liquif)
 p.m. They pulled off Star Branch Road to use drugs. They were there for a couple of hours She got a call from a friend. When they were there, they used two more pills and talked. The pills were crushed, liquif 	
She got a call from a friend. When they were there, they used two more pills and talked. The pills were crushed, liquif	5.
When they were there, they used two more pills and talked. The pills were crushed, liquif	
	·1
	ied,
	_
Nathan's house and gave it to him. She went with him. He then had nine in his pocket. Sh remembers speaking to Lt. Higgins on March 6 th .	٤
137 Nowhere in her statement did she indicate that a pill was given to Nathan. She was rattle	4
that day. She agrees that Christine said that they stayed at her house when she got there	
but the Victim took her into Nathan's kitchen at his mobile home and showed her ten	,
morphine pills. Then they used morphine in her car.	
138 She drove them after and parked for two hours until 6:00 p.m. He shot her up and then	
himself. Then she dropped him off at Christine's house. He did not go to Hardees. She me	t
her friend Jane Honeycutt at Hardees. No one else was there. She was there for an hour a	
a half.	
She went back to Christine's at 7:30 p.m. The Victim was there. She stayed until 9:50 p.m	
The Victim left the house one time with Pritchard. She brought him back and went to	
Hardees. It is possible he left when she was gone. She never left Christine's twice with the	جَ آ
Victim. She does not know who visited the Victim that day. She does not know if CR or Sil	vers
was there.	
She heard Christine say today that they were there. She knows of Silvers and CR. She doe	
not know CR's name, but understands he is "Stella" Massey's son. Silvers and CR have a d	rug
history. She does not have a drug problem and never did have one.	
She agrees it is a problem that they were driving around after shooting up on at least two	,
occasions. They were arguing about that. She only used when she was around him. The	
Victim had a drug problem. She assumes that he was in jail for driving without a license.	
When they got back to Christine's they used four more pills in Christine's bathroom near	
bedroom. The Victim melted the morphine in a spoon. He put it under the sink. They used	k
two syringes. There was still liquid left in the spoon and not in the syringes.	

	The state of the s
143	When she left, she did not think there was anything left in either of the two syringes. She shared pretty much all of the drugs with the Victim. They used nine pills of morphine. She initially never said anything about giving a pill to Nathan. No other time that night did they go to Nathan's. They argued because the Victim wanted her to stay and she said this was going to be the last time. That was all they did in their relationship. She told him she was done with the relationship and using drugs and did not want to see him again.
144	They used drugs for about six consecutive hours. She drove to Jack's Creek and back, and to Hardees and back after using drugs. At 9:50 p.m., she went home to South Toe, also after using drugs. She was fine the next day. She had no physical problems after using half the pills with the Victim. She was able to be interviewed and give a full statement to the officer. When she was with the Victim, he did not drink alcohol.
145	She was with him on and off for about six or seven hours and does not know how alcohol got in his system. She did not know he was drinking until she heard Christine say it today. She did not know he had pneumonia. She did not know he had asthma. She did not know if he had been drinking when she got there. She did not smell any alcohol on him. When she left by 9:50 p.m., he did not have alcohol on his breath.
146	He was standing at her passenger side talking through the open window. She was not close enough to smell his breath. She did not suspect that he had been drinking earlier that day. She would stay at Nathan's house from time to time. Nathan had a drug problem.
147	The Victim gave Nathan the pill. In November and December, she went to the hospital, St. Joseph, for a medical issue of the Victim's. Something was wrong with his arm. She does not remember which arm. He said it hurt. He had an abscess.
148	She thinks he had an infection. He stayed overnight. Prior to going to jail, she saw the Victim receive and use morphine. He would inject it into his arm. She went to the Victim's funeral. Pritchard went to the funeral. She does not remember if Pritchard was a pall bearer. Pritchard was good friends with the Victim.
149	There was no ill will or ax to grind. She remembers hugging Robbie Brown (Robbie) at the funeral. She does not remember details of any conversations with Robbie. On March 5 th , she does not know where the Victim and Pritchard went together for 15 minutes or what they talked about.
150	On March 5 th , she never saw Pritchard deliver or hand over morphine pills to the Victim.
150	Redirect Examination
150	There was more morphine left after they used the remaining four pills. There were six syringes left. During the day, she did not see the Victim inject himself more than he injected her.
151	She knew the Victim's arm was bothering him and that he went to the hospital. She was not aware of other things. When they went to Robbie's house, the Victim always called Pritchard. She does not recall how much morphine was given to the Victim on those occasions or if it was the same amount each time.
152	In the course of her relationship, she saw him do morphine with someone else. She saw him get it from Thelma Massey (Massey) before.
152	Recross Examination
152	The last four morphine pills were left in the spoon at Christine's house underneath the sink. There were six syringes left. They only used two syringes. If one was in the spoon, there would have been six more shots left. There was a substantial amount left.

153	If she had to estimate, they got 12 shots a piece that day. She thinks they used about the same amount. She was aware that the Victim took morphine from other individuals in the
	past. One person was Massey. She witnessed the transaction.
154	She does not know if Massey was charged. She does not remember anyone saying she was. She does not remember the Victim ever being a witness against Massey for delivering morphine pills. CR is Massey's son. She heard Christine say today that CR was in the driveway at some point that day. She does not know what time he might have been there. It could have been before she as there or after.
154	Re Redirect Examination
154	The Victim did not show her any morphine pills when she initially arrived at the house.
155	He only showed her morphine pills after he came back after leaving with Pritchard.
155	Re Recross Examination
155	She had been at the house 30 minutes when the Victim left with Pritchard.

ROBBIE BROWN—Former Girlfriend of John Pritchard

Page #	Description of Testimony
155	Direct Examination Begins
156	She has lived on Charlie Brown Rd. for 25 years. The Victim grew up with her son Aaron and her nephew Bryan Silvers. She was a den mother for cub scouts and knew the Victim since then. They played baseball, went to school together, and did odd jobs together on the weekend. They worked at her house, her mother's house, and her sister's house. The Victim would earn \$20.00 when he mowed; he was not reimbursed other ways. Four officers interviewed her.
157	She met with them on September 26, 2011. She has a copy of a modified statement that is a "little twisted from what the original is." She saw Pritchard with morphine before that he kept locked up in a box he had on his person. Pritchard had been in a car wreck and had back surgery. He was out of work for two years and drawing unemployment. Toward the end before his surgery he had to have it because he was hurting pretty bad.
158	She heard the Victim ask Pritchard for morphine once close to Christmas. They picked up the Victim hitch hiking. His arm was swollen and he was hurting. She assumed Pritchard gave it to the Victim because he quit begging, but she did not see it. After the Victim's death, she spoke to Pritchard on the phone. They were not living together. Pritchard lived in her aunt's trailer park above Nathan and Christine on English Branch. They were next door neighbors. Pritchard had moved out of the house about a year before. When Pritchard got put on probation, he called; Pritchard was upset about the Victim's death. He was worried about the whole family. He liked the whole family and was friends with them. She asked Pritchard if he gave the Victim morphine. Pritchard said no. On another occasion he told her that he gave the Victim eight. Pritchard told her different stories.
159	He did not say when he gave the Victim eight pills. She was in a relationship with Pritchard until 2010. They lived together from 2007-010. He moved to the trailer on English Branch. He had been there for a little over a year. They still talked, but he was seeing other people. In the fall of 2010, the Victim and Stephanie came to her house when Pritchard was there. They helped her some around the house.

160	After the Victim's death, Pritchard admitted to her on the phone that he gave pills to the Victim. She does not know anything about Pritchard meeting the Victim on Saturday, March 5, 2011. She had not been told anything about it. The CI Statement is not accurate. She has a really good memory and she knows exactly what she said that day. The statement says he picked up her son at the Victim's house. Her son was not at the Victim's house. He lived with her other son at Pritchard's trailer, along with Pritchard's girlfriend, at his trailer on English Branch. She did not sign it. The statement she received today has issues. There are certain points that are wrong. Her son did not go to the Victim's that day and "he" did not come to Pritchard's residence.
161	Pritchard did not say to her where he took the Victim after he picked him up. He had no reason to tell her "all this." Her nephew told her about the Victim's death and then she talked to Pritchard on the phone after he had just found out. She does not know why the SBI report indicated that Pritchard told her that he had given the Victim eight pills the day prior to his death. She asked him if he given him any. She does not know why the report says Pritchard told her that he was with the Victim. She heard about this through hearsay and gossip. She heard Pritchard took him to Riverside Store. The SBI officer included in his interview report statements that he heard elsewhere—that is what they were asking her.
162	The report is "pieces of the interview of me, not fully what I said or what was asked, this paper that I was given today. Some is left out, some is a condensed version, some is wrong, some is right." Prichard did not say when he gave morphine pills to the Victim. It was not a long conversation. He was upset and someone was at the door. He had company. She is still friendly with Pritchard and writes to him. She has done so since he has been in custody—three years. She initiated the call to Pritchard to ask if he knew about the Victim's death. Prichard did not say he was worried about the Victim's death. She was worried about it. She said she thought Pritchard was worried, but she can't say what he thinks.
163	Cross Examination
163	Chuck Vines (Agent Vines) interviewed her. There were four men there—Sergeant Letterman, two Higgins (young Higgins was writing), and the SBI man. The two-page report she now has is new. It is not the same as the one she first received. The report says that two people were there—Lt. Higgins and Agent Vines. There were more milling around and throwing in comments. She was threatened with life in prison that day. She was in tears. It was a horrible experience.
164	She and Pritchard lived together for a few years and were engaged. Pritchard is a good man, kind-hearted, and generous. They have not lived together since he was put on probation in 2010. At times Pritchard told her in the past he gave pills to the Victim and at times Pritchard told her did not give pills to the Victim. She never saw Pritchard hand pills to the Victim. She was not in the presence of the Victim or Pritchard on March 5, 2011.
165	She was not around Stephanie that day. She was not around Pritchard that day. She is not clear on whether Pritchard ever gave the Victim any kind of pills. The only thing she knew for sure was that Pritchard was on probation for the girl he gave some to, but she did not see that happen. If Pritchard had made a statement that he had given eight pills to the Victim, she did not know when that would have occurred. She does not know the day she had a conversation with Pritchard. She raised the Victim's death. She called Pritchard about the death. She saw Pritchard at the funeral. Pritchard and the Victim were friendly.
166	She went through the line and hugged everyone. She hugged Stephanie and told her she was sorry and that it was such a horrible thing. They did not discuss the case when she was there. The statement is also incorrect about where her son lived; he was living with Pritchard. He

	and his girlfriend stayed there free. Pritchard was generous and helped a lot of people.
	Pritchard had a prescription for morphine from the VA based on back problems. He locked
	his pills in a box at his home. She thinks he was afraid people might steal them.
167	When they lived together, he kept his medications in a locked box. That was his habit. She
	wrote to Pritchard in jail once every month or so, but more at first. She never signed her
	statement with Agent Vines. In 2011, she never signed any kind of paperwork or statement.
168	After she saw the discovery of the contention of what she said, she probably wrote a note to
	Pritchard. After reviewing a yellow piece of paper, she identifies it as her note that she wrote
	to Pritchard after she saw a copy of the statement that was attributed to her. She got a copy
	from Pritchard's attorney and became of aware of what she allegedly said.
169	From her note, "I did not make those statements. I never signed any statement, ever." This is
	true and that is why she wrote that. She had not seen any document that she signed. She
	never made those statements to the officers. She wrote, "they wrote what they wanted and
	added to and twisted what I did say to what they wanted, it won't work." She made
	statements in 2011, but they were taken out of context and twisted.
170	She does not know that Pritchard gave the Victim pills the day before he died. She did say
	her son lived with Pritchard. She does not know whether Pritchard ever gave the Victim any
	morphine pills. Pritchard said one time he did not and said one time he did. She is not sure.

CHUCK VINES—SBI Special Agent

Page #	Description of Testimony
170	Direct Examination Begins
171	He has been assistant special agent in charge of the Western District with the SBI for a year and a half. In March 2011 he was assigned as a criminal and drug agent for Mitchell, Yancey, and Madison counties. He and Lt. Higgins interviewed Robbie on September 26, 2011. Robbie's testimony was substantially different from what she told him.
172	Robbie said she was the girlfriend/fiancé of Pritchard. Pritchard gave the Victim eight pills the day before he died. Pritchard said he went to Nathan's residence to pick up her son, Aaron Collins (Aaron), and the Victim. She knew Nathan as "Fruit." Pritchard took Aaron and the Victim to the store and then took Aaron back to Aaron's residence. Pritchard at some point gave the Victim eight morphine pills and then returned the Victim to Nathan's residence. She said the Victim had received morphine from Pritchard in the past. She personally saw Pritchard give the Victim two pills around Christmas 2010. Pritchard told her he was worried about the Victim's death and worried he gave the Victim the morphine pills that killed him.
173	No threats were made to Robbie. Also present was Lt. Higgins. Robbie did not appear to have trouble recalling events.
173	Cross Examination
173	He did not have any contact with Robbie prior to September 26, 2011.
174	He has not had any contact with Robbie since. What she testified to and what she told him appear to be different. He has no personal knowledge as to which version is accurate.
175	He does not believe that Robbie gave any dates for when Pritchard gave the Victim pills. He has been present during most of the trial. Heard Stephanie say it was ten pills and not eight

	pills. That is different from what she told him. The eight pills that Robbie told him Pritchard gave the Victim could be a separate occasion from the ten pills that Stephanie said he had. It
	could be that neither happened since the witness has recanted her statement.
176	Robbie indicated that Pritchard said he picked him up at Nathan's house. He agrees that
	Stephanie testified that Pritchard picked the Victim up at Christine's house. This is the
	opposite of the statement he received in September 2011 that the Victim was picked up at
	Fruit's house. Robbie told her that Pritchard picked up Aaron and the Victim at Fruit's house.
177	He heard Christine say that Aaron was not at her house on March 5 th . He believes Stephanie
	said no one else was there that day. He agrees that today Robbie testified that she was the
	one worried about the Victim's death. There are inconsistencies between Robbie's testimony
	and her statement. He cannot say what is true, he can only testify to what she told him.

RYAN HIGGINS—Yancy County Sheriff's Office Deputy

Page #	Description of Testimony
178	Direct Examination Begins
179	He has worked at Yancey County Sheriff's Office for 14 years. On Sunday, March 6, 2011 he got a call at 11:33 a.m. regarding a death at a house on English Branch. He arrived at 11:40 a.m. and spoke with Christine. He saw a white male on the living room couch covered with a blue blanket. He recognized the deceased person to be the Victim. Christine's testimony was inconsistent regarding the coming and going of the Victim and Stephanie.
180	She originally stated they left one time and returned. She testified that there may have been a second occasion. He took photographs on that day that he brought with him. The first three photographs show the deceased in the position he was found. The last photograph shows his coat and two syringes that were located and collected as evidence.
181	These four photographs are admitted as State's Exhibit # 1 . That day he also spoke to his supervisor and Dr. Brent Hall (Dr. Hall). He got a statement from Christine. He collected the two syringes. The Victim's mother, Ann Greene, had arrived at the scene. She wanted to use Yancey Funeral Services. He got permission from Dr. Hall to remove the body. Yancey Funeral Services took the body. He was present during the interview of Robbie on September 26, 2011 and heard her testimony. His recollection of what she said is different.
182	Agent Vines testified to the correct version of events.
182	Cross Examination
182	He has been the lead investigator on a couple of murder cases. Other death investigations have been ruled accidental or natural. He was at the house seven minutes after he received the call at 11:33 a.m. It was less than 30 minutes, as was represented in court.
183	Christine, her husband Wade Angel, and Nathan, a.k.a. Nate or Fruit, were there. Younger children were there—Nathan's son, Christian, and another young male child. He knew the Victim because they were both lifelong residents of Yancey County. He knew he had drug problems and a criminal history. He was familiar with Stephanie and knew her before March 5, 2011. He does not know if he knew before this that she had a drug problem.
184	He had heard speculation of a drug problem. He was aware that Nathan had a drug problem. He is possibly related to Christine, whose maiden name is Higgins. She has referred to a distant relative, but he is not aware of it. He does not know if she told him that day or not.

	His supervisor was Thomas Farmer (Chief Dep. Farmer), who is no longer with the Sheriff's
	Department. He talked to Dr. Hall after he spoke to Chief Dep. Farmer at 12:01 p.m. Chief
	Dep. Farmer took notes.
185	Officers take notes, which then become part of their file. As officers gather information, they prepare summaries. He has no reason to think that any information provided by Chief Dep. Farmer was inaccurate. If Chief Dep. Farmer's notes say they spoke at 12:01 p.m., that would be a fair approximate time. He was initially involved in gathering information about the Victim's death.
186	He interviewed Christine and took handwritten notes that morning. She was the only person he spoke to at the residence. All the information he received then was from her. She told him the times that she remembered the Victim and Stephanie were present at the house on March 5 th . She said Stephanie came over at 2:30 p.m. His notes say, "Victim and girlfriend left residence together, returning approximately an hour and a half later" at 4:00 p.m.
187	The girlfriend stayed a couple of hours before leaving at 9:30 p.m. She said that she woke up at 9:00 a.m., the Victim was on the couch snoring loudly, she went to Save More with Wade, and got back at approximately 10:30 a.m. The Victim was still asleep and snoring. Nathan told Christian, his son, to wake up the Victim. They discovered he was deceased.
188	Christine testified that the Victim and Stephanie left two times. When he spoke to Christine, she made no mention of the second exit from the home or of being gone for a substantial period of time. She made no mention of other people being there.
189	He never heard that Silver or CR (possibly Henson) were at the residence. He has been on the case since March 2011. He heard Christine talk about CR. He never investigated whether there was any type of delivery on March 5 th between CR and the Victim.
190	He was not aware that Christine disclosed to ADA Holmes four to five months ago on November 26, that CR and Bryan Silvers came to the house. He was never advised on that date that Stephanie and the Victim went to Nathan's house for a period of time on March 5 th . He was told that during an interview with Nathan at a later date.
191	His notes don't say if there was an immediate direction to wake up the Victim or a gap in time after they got back from the store. There is nothing in his notes about Christine
	preparing breakfast or taking time to eat. It would be relevant to try to determine the time of death. He is not aware that the death certificate indicates that the Victim died at 11:00 a.m.
192	Defendant's Exhibit #2 , death certificate, shows the time of death as 11:00 a.m. on March 6, 2011. He does not have any information that when he was at the crime scene, that the death occurred any time after 11:00 a.m. No one mentioned any kind of family breakfast.
193	The call to EMS was at 11:33 a.m. No family members contacted him about the body being moved. The Victim's brother James contacted the Sheriff's Department about it. He took the photos at approximately 12:00 p.m., within 30 minutes of arriving. He took them all at one time.
194	The photo of the jacket with syringes was taken a little later. The funeral home arrived at 1:18 p.m. He stayed until the body was loaded and removed – around 2:00 p.m. The photos show how the body looked when he arrived.
195	He recalled from an interview that the family joked about how the Victim was snoring loudly. The photos show the Victim lying flat on his back, head in the middle of the pillow, and the comforter all the way up to his neck. Dr. Hall did not come to the scene. After the body was removed, Christine took the jacket on the back of a chair near the coach and located the syringes in the pocket. He collected it and sent them to be analyzed.

196	No controlled substances were found. Nothing was found to indicate controlled substances
	in the syringes that were allegedly used on Stephanie and the Victim. He did not locate any
	other syringes. These two syringes were the ones that were supposedly used.
197	He is aware that a spoon was used in the bathroom to melt the morphine pills and inject
	Stephanie and the Victim. The spoon was left under the sink. He was not made aware of a
	spoon until after the initial interviews at the scene. The spoon has never been found or
	analyzed. There is no analysis of a spoon or syringe that would indicate any controlled
	substance was used in any of those instruments.
198	He talked to Floyd on March 14 th and was present when he testified. Christine testified to
	some things that were not disclosed to him, including the second leaving from home and
	other people who were present at the home on March 5 th . Floyd was a little confused on
	times. The testimony was accurate as compared to his statement.
199	Floyd told him he had picked up the Victim around midnight, but testified he picked him up
	at 10:00 p.m. Robbie's testimony was inconsistent. On one occasion she said that Pritchard
	told her he gave the Victim some morphine pills. She testified that she did not know whether
	he did or not or if he did, when. She told him that Pritchard was concerned about the
	Victim's death and that he was maybe afraid he had given him medication that killed him.
200	She testified that she brought up the death. She was not sworn in a courtroom when she
	spoke to him in 2011. Floyd was inconsistent on times. Christine was inconsistent on times,
	when people left, how many times they left, and who was there.
201	Robbie was all over the map. No one has testified that they witnessed a delivery of morphine
201	from Pritchard to the Victim on March 5, 2011. He was not there and was not privy to any
	discussions between Pritchard and the Victim. Pritchard did not make any statement. He
	never admitted to delivering morphine pills to the Victim on the date in question. There is no
202	documentation from the lab that there were any controlled substances in Christine's house. No one searched Stephanie's car. He never had any contact with anyone at the residence
202	
	after March 6, 2011 at 2:00 p.m. No one came forward to deliver the spoon or anything else
202	that may have been relevant. He knows what he observed when he arrived at 11:40 a.m.
203	He spoke to Dr. Hall on March 6 th and told him about the state in which the body was found
	and the conditions surrounding, and he got permission to move the body. The comforter was
	transported with the body. At one point the comforter was removed; his notes reflect that
	there were no obvious signs of trauma to the body, which he inspected on the couch.
204	He did not take photographs of his arms or with the comforter off the body. There are no
	photographs that show the condition of either of his arms. He was wearing blue jeans, socks,
	a t-shirt. There were cowboy boots on the floor. He does not know if he soiled his clothes.
205	He does not know if there was a smell or whether or not his clothes had been changed
	before he got there. He was not told about the spoon. He was not told that the Victim had
	been drinking. No one said that. Not Christine, Stephanie, Nathan, or Floyd.
206	The Victim was released from jail in Buncombe County at 7:40 p.m. on Friday, March 4 th . He
	was transported there from Madison County. He was incarcerated in Buncombe County on
	3/4/2011. That was 4 hours and 20 minutes before Floyd picked him up. He has no
	information how he got to the gas station on Exit 13 other than he told Floyd he walked. He
	does not know if the Victim came into contact with anyone before Floyd.
207	There is no way to know what he was in possession of at the time Floyd picked him up. The
	jail in Buncombe County is in downtown Asheville, 15 miles from Exit 13. He is familiar with
	CR Hensley, who has a drug history. He is somewhat familiar with Bryan Silvers. He is not
	, , , , , , , , , , , , , , , , , , , ,

	sure if Silvers has criminal charges for drug possessions, but he knows there have been
	allegations.
208	Redirect Examination
208	He took notes. He prepared a report. His report says that Christine told him that she cooked
	on their return and everyone but the Victim ate, but it is not in his notes. James Whitson
	called and said the body had been moved. James was not there on Sunday morning.
209	There was no other evidence to support the idea his body had been moved. Stephanie and
	her car were not there. He does not know if the syringes that were tested were the exact
	syringes that were used the day before. The lab report did state residue amount. The lab was
	unable to identify the residue. He does not know if the spoon was still under the bathroom
	sink that morning. He was not made aware of that until later. He does not know what
	amount was in the spoon or what happened to it. He does not know if it was still there.
210	Recross Examination
210	He likely completed his summary later the same evening, but he is not sure. Standard
	procedure is to provide the report to the medical examiner as soon as possible in a death
	case. He has no reason to believe the body was moved prior to his arrival, but he has no
	knowledge. He only found two syringes in the Victim's coat pocket. He did not find any more
	in the bathroom or anywhere else in the house. He was not alerted to any other syringes.
211	He was aware pretty quickly after the investigation started that Stephanie was using on the
	5 th . He never looked in her car. He does not know what controlled substance, if any, was in
	the syringes. The spoon was not found. There would have been some device used to melt it
	down. He does not have independent knowledge that a spoon was used. He does not know if
	the Victim used any of it. He called Chief Dep. Farmer from the scene.
212	Chief Dep. Farmer kept notes on his involvement. He relayed information to Chief Dep.
	Farmer as he got it.

RANDALL SHUFFORD—Burnsville PD and Yancey County Sheriff's Office

Page #	Description of Testimony
212	Direct Examination Begins
213	Shufford works at Burnsville PD and Yancey County Sheriff's Office. He has been in law
	enforcement for 21 years. He was a lieutenant detective for Burnsville PD when he saw
	Pritchard.
214-224	Voir Dire Outside Jury re: the facts of Pritchard's 2010 case in which he was charged with
	two counts of possession with intent to manufacture, sell and deliver Schedule II (morphine
	and oxycodone); sale of Schedule II; and maintaining a vehicle for sale. Pritchard pled guilty
	to the charge related to morphine and maintaining a vehicle for sale. Ruling: Court admits
	evidence under 404(b) to show a common scheme/plan and to show malice, an essential
	element to the current charge.
224	Direct Examination Resumes
225	On January 26, 2010, he and the chief of police conducted a controlled drug buy with a CI,
	who called Pritchard via cell phone and asked if he would sell any drugs. Prichard agreed and
	set up a meeting at Fred's Department Store parking lot. He arrived in a gray 2005 Ford
	Ranger Pickup. He got into the passenger side of the CI's car. Prior to her arrival, they

	searched her car. Pritchard left. They followed the CI back to the town hall. She turned over two 15 milligram morphine pills and four oxycodone pills. Pritchard was charged with maintaining a vehicle to sell controlled substance, and two counts possession with intent to manufacture, sell, and deliver, due to two separate types of pills. He was charged with two counts of sale and deliver, due to two types of pills.
226	Pritchard pled guilty to maintaining a vehicle to sell controlled substance and to both counts of possession with intent to manufacture, sell, and deliver a controlled substance. He pled guilty to one sale of controlled substance, for the morphine.
226	Cross Examination
226	After Pritchard was charged, he accepted responsibility and entered a plea of guilty. The date was January 26, 2010. Shufford was not involved in the investigation of this case. He has no personal knowledge about the events occurring at Christine's house on March 5-6, 2011.
227	He has not had any conversations with anyone. He knows CR Hensley, or Charles Robert Hensley, Massey's son or nephew. CR Hensley was always with Massey for most of his life. He has been involved in investigations where they made controlled buys from CR Hensley. He was a charging officer in 2011 or 2012 for drug charges in Yancey County. It sounds correct that he pled guilty to a felony sale for that.
228	CR Hensley was charged with trafficking in opium, or heroin, sale and delivery of Schedule II controlled substance, and possession with intent to manufacture a controlled substance. The pills were hydrocodone. Charges stemmed from 6/29/2011. Tammy Ayers was the confidential informant. CR Hensley pled guilty to sale and maintaining a vehicle.

XYLIAN MCBEE—Medical Records Administrator at VA Hospital

Page #	Description of Testimony
228	Direct Examination Begins
229	McBee has worked at the VA Hospital since July 2013 as a medical records administrator maintaining the privacy and security of the medical records. She was originally a medical coder. Documents are stored electronically and are retrieved on paper. She maintains the records under her control and custody. She brought a copy of Pritchard's medical records.
230	Documents are admitted into evidence. On page 22, the local title is medical primary care telephone contact note.
231	The date of entry was March 3, 2011. Under phone, it states, "Renew morphine LF 2-11." The date at the bottom is 3/10, with "called in regarding above meds will forward to PCP" (primary care physician). Outpatient notes on Pages 24-25 are dated February 28, 2011. The label is Medication Active Combined and the line below it reads, "Active Outpatient Medication." The highlighted medication is Morphine Sulfate 30 milligram SR tab, take one tablet by mouth every eight hours for pain. It is active.
232	Cross Examination
232	She is the custodian of the records and does not know anything about the case. She has not been involved in the investigation and has never spoken to Pritchard. She does not know him and has never interacted with him at the VA. She did not start working there until 2013. She was not keeping the records in 2011. She just knows what his record has been, as he has been treated there. He has been prescribed medications, including morphine sulfate 30 mg

	SR tabs. She believes SR means sustained release, meaning it is released over a period of
	time.
233	The instructions state take one tablet my mouth every eight hours for pain. It is for a slow
	release to assist with pain. The recommended use was not to take four at a time, crush, melt,
	and inject into arm.

DR. BRENT HALL—Medical Examiner and Forensic Pathologist

Page #	Description of Testimony
234	Direct Examination Begins
234	Dr. Hall has worked at Pathology Associates of Boone since 1993. He looks at tissue that is removed from a patient and attempts to render a diagnosis as to what pathological process has taken place in the tissue. He oversees the running of the local labs at Watauga, Blowing Rock, Linville, Cannon Memorial Hospital in Linville, Blue Ridge in Spruce Pine, and Clinic Care in Burnsville. He was licensed to practice medicine in NC in 1988. He went to medical school at East Carolina and did his internship/residency at Duke. He also did a fellowship in Human Pathology at Duke and fellowship in Forensic Pathology at UNC Chapel Hill.
235	He is board certified and has been since 1993. Not all doctors are board certified. He has testified over 50 times and was tendered as an expert in pathology and forensic pathology.
237	Dr. Hall is qualified as an expert in forensic pathology. Lt. Higgins called him on 3/6/2011 at 12:3 p.m. 0 to inform him that he had a 29-year-old decedent. He saw the body the next morning at 11:30 a.m. when he performed the autopsy.
238	An autopsy is a complete examination. They get blood samples of the aorta and a piece of the liver for toxicology. He has performed over 3,000 autopsies. He took notes and prepared a report. The cause of death in this case was morphine toxicity or morphine overdose.
239	Indirect findings were severe pulmonary edema and congestion, and acute bronchial pneumonia. Opiates are a respiratory depressant. They slow respiration, making the body starve for oxygen. For oxygenation of the tissues, the lungs open the air sacs or alveolar spaces, as well as the capillaries, the small blood vessels inside the lung to try to facilitate the exchange of oxygen. The capillaries often become leaky and protein fluid will leak from inside the blood vessels to the alveolar spaces or air sacs in the lung. This leads to pulmonary edema or heavy lungs. That protein fluid serves as a media for growth of organisms which leads to pneumonia. He found pulmonary edema and acute bronchial pneumonia in the lungs, which were related to the morphine toxicity. Morphine was also measured in the blood and urine. The aortic blood sample was positive for morphine. He tried to quantitate how much drugs are present by looking at blood from the peripheral blood vessel. There was a trace of morphine there. There were 15 mg/L of morphine in the urine. Morphine is metabolized in the liver and excreted through the kidneys into the urine. The cut off point for toxicity resulting in death is 14 mg/L. The Victim had 15 mg/L in his urine.
240	Morphine is a Schedule II controlled substance typically used to treat pain. In some people it can cause a feeling of euphoria. Each person has an individual reaction and tolerance. Drugs can act differently on different people considering how much morphine each person took and the route of administration (orally or injected) Was it diluted? Did it go directly in the vein? Did it go into the surrounding soft tissue? During the external exam, he noted abrasions, an ulcer of the left heel, and needle marks in the area of the arm and left forearm.

241	The abrasion on the heel is consistent with shoes rubbing. At the time of the autopsy he was a pathologist at various hospitals and served as the ME and regional forensic pathologist for five counties. He is no longer the ME. He served for 20 years in Boone and prior to that for three years in Durham. He still performs autopsies. During this autopsy, he detected alcohol at 40 milligrams per deciliter, which is .04 percent on the breathalyzer scale - not a cause of death.
242	Cross Examination
242	He was ME in Watauga, Ashe, Avery, Mitchell, and Yancey. He resigned in June 2013. On March 6, 2011, Lt. Higgins said he had a 29-year-old deceased male who had been recently released from jail with a history of drug abuse. He was aware of the background of drug use before he looked at the body on March 7 th .
243	He never went to Christine's home. The body was transported by Yancey Funeral Service. He does not know where they took it prior to taking it to Boone or to how many places. He got it on the next day, March 7 th . He looked at the body 24 hours later. He did not talk to any family members prior to the autopsy. He may have talked to Chief Dep. Farmer.
244	If Sheriff Department notes indicate he had a conversation with Chief Dep. Farmer, it is likely he did, but he does not remember what was said. He is familiar with Chief Dep. Farmer and has worked with him before. He never saw any of the needles. Prior to this morning, he was not aware of the results of the tests done by the lab. He is aware that they found a residue amount, but no controlled substances in those syringes.
245	He is aware that the Victim's girlfriend described the substances going into his body by needles. He did not inspect or look at the spoon. He has no personal knowledge of how these drugs were ingested by the Victim. He found needle marks, but the morphine could have been injected or taken orally. He did not note residual pills in the gastric contents. He does not know what time or how the drugs were taken.
246	He does not know if that happened earlier or later on March 5 th , and he has no way of knowing the time/manner the pills were taken. Irene Coffee assists with autopsies, and Katelyn Mack was a student from ASU, who observed autopsies. They did not perform the autopsy in this case. He does not know the time the Victim died. Defendant's Exhibit #2 is a copy of the death certificate that he signed on March 6, 2011. On the back is a supplemental death certificate. They are two separate documents.
247	He determined that the time of death was eleven o'clock based on information given to him by Lt. Higgins or Chief Dep. Farmer. He did not talk to anyone else in Yancey County about details of the Victim's death. On the supplemental death certificate, the time was changed to a.m. The autopsy was performed on March 7, 2011. The report on the autopsy was signed on May 31, 2011 and that was when he determined that the cause of death was morphine toxicity.
248	When he signed the initial death certificate on March 16 th , as a result of his autopsy, he initially marked that the cause of death was pending. He had not made any type of conclusion at that point. He amended and signed it on July 15 th after receiving the toxicology report. The toxicology report indicates 15 mg/L or morphine in the urine. It also indicates that the Victim had .04 alcohol or ethanol level (40 mg per deciliter).
249	24 hours after his death he determined that there was a .04 alcohol level. There is no metabolism of alcohol after death. At some point if someone stops drinking and they are still alive, after a few hours their alcohol level starts to go down. The .04 could be anywhere on the bell curve distribution of the blood alcohol level. If you had a urine alcohol level to

	compare, you can tell which side of the curve the metabolism rate was on, whether it was going up, plateauing, or coming down.
250	A urine alcohol test was not done. There is no way to know what level of metabolism the Victim had at the time of his death. The standard for a drunk driving charge in NC is .08, double the Victim's level at the time of death. It is highly individualistic to say how long it would generally take for one at .08 to dissipate to 0 after a person has stopped drinking. It depends on how well the person's liver can metabolize the alcohol and how well the heart is working to pump blood through the liver. There are a lot of variables.
251	Looking at a study about alcohol in the system and dissipation rates (provided by defense counsel), he agrees in general that alcohol is metabolized at a rate of .015 per hour. Two hours would be .03 and three hours would be .045, four hours would be .06, and eight hours would .12. Twelve hours would be .18.
252	That is a fair metabolism rate of alcohol in a given hour. It is possible that at the time the Victim went to sleep, if he did not drink for at least 12 hours before his death, and his rate at death was .04, he could have been a .18 or higher alcohol. He could have been more than two times the legal limit to drive when he went to bed on March 5, 2011. He has no way of knowing when he last drank, how much, and the manner he drank any alcohol that day. A 30 mg of morphine time release means it is released over an extended period of time, so the absorption is over a longer period of time than a typical tablet.
253	They are supposed to be taken orally with relief over a period of time. A responsible medical professional would not recommend that one crush a pill, turn it into fluid, and then inject it into an arm. When it is crushed, liquified, and injected intravenously, it is released much quicker—all at once rather than over an extended period of time. It is not smart to combine morphine pills and alcohol because alcohol is also a central nervous system respiratory depressant. Mixing the two can kill you and one by itself can kill you.
254	Any amount of alcohol mixed with morphine could be fatal, even much lower than the numbers he was talking about. The literature supports that mixing alcohol with morphine can cause death. In his opinion, the risk of the impact (of death) of mixing alcohol with morphine with the method of injecting morphine is greater. Prior to the autopsy, he was not aware that the Victim had been drinking alcohol. He did not know anything about that until he got the toxicology report after March 7, 2011. When he received the report, he did not know about the background or length of time that the Victim had been drinking over, how long it had been since he had stopped drinking, or how long he had slept before he died.
255	After he got it back, he did not follow up to determine how much the Victim had been drinking. He makes his determination based upon the levels in the system at the time of death. He did not go outside of the documents he had to make any determination as to how much the Victim had been drinking on March 5 th . He is not aware that not a single witness has given any evidence that the Victim had been drinking the day before he died. The alcohol got into his system somehow.
256	He did not go to this scene. For the last 100 autopsies he has done, he has only gone to the scene in a few cases. Generally, people in his work do not go to the scene and they are not required to go to the scene. He is paid to do the report, investigation, and autopsy.
257	He received \$75.00 for the report and \$1,000.00 for the autopsy. He reimbursed the hospital \$500.00 for the use of their facilities. There is no particular reason that he did not go to the scene in this case. He was charged with DWI at that time. He does not agree that it was because his license was suspended at the time. He is not prepared to discuss why he resigned. He has conducted more than 3,000 autopsies.

258	He is not aware of ever making a conclusion in an autopsy of an overdose or toxicity and being corrected at a later time. (Objection to question about this happening in a case in a hotel in Boone is sustained. Objection to question about this happening where a couple was ruled to die from overdose and it was in fact carbon monoxide poisoning, is sustained). His opinion is that the Victim died of morphine toxicity. At some point the Victim could have had a high level of alcohol before his death.
259	Redirect Examination
259	There was no reason for him to go to the scene. The first half of the bell curve is blood alcohol rising, the top is the plateau, and the last half of it is the blood alcohol being metabolized and going down. Without a measure of blood alcohol level, you can't tell if it is going up or down. There is no way for him to determine what this blood alcohol level would have been ten hours earlier or twelve hours earlier. Blood alcohol does not plateau as soon as you stop drinking. Blood alcohol continues to rise for some period of time. But for the morphine in the Victim's system, there is no other explanation for why he would have died.
260	The levels of morphine that he found in the Victim's system were fatal.
260	Recross Examination
260	If one stops drinking, shortly thereafter they would reach the plateau. You would not expect it to still be increasing to the plateau 12-14 hours later. More likely it would be on the way down.

Page #	Description
260	STATE RESTS
261-266	Defense Motion to Dismiss is denied.
267	DEFENSE RESTS
267-289	Charge Conference and Jury Instructions
290-292	Verdict: Guilty on Second-Degree Murder, Guilty on Felony Delivery of Morphine, a Schedule
	II Controlled Substance, Guilty on Possession with Intent to Deliver Morphine, a Schedule II
	Controlled Substance, and Guilty on Knowingly Maintaining a Motor Vehicle.
293-296	Roy Russell Wilson (father of Whitson) testifies re: restitution
297-302	Sentencing: On the Second-Degree Murder, the Court sentences Pritchard to 170-213
	months, with credit for 868 days. On the Possession with Intent to Sell and Deliver, the Court
	sentences Pritchard to 10-12 months, to run concurrent to the previous sentence. The Court
	arrests judgment on the Delivery charge. On the Maintaining a Vehicle for Controlled
	Substances, the Court sentences Pritchard to 120 days to run concurrent to the other
	sentences. On the case Pritchard was on probation for—10 CRS 50162, Pritchard admits to
	the allegations of new charges. The Court sentences him to serve the suspended sentence of
	12-15 months, with credit for 23 days. This sentence runs consecutive to the other sentences
	entered today.
	END OF TRANSCRIPT

STATE OF NORTH CAROLINA

COUNTY OF YANCEY

IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
11 CRS 304, 305

STATE OF NORTH CAROLINA

Vs.

TRANSCRIPT OF TRIAL

JOHN PRITCHARD,
Defendant

Defendant

This case came on for TRIAL at the April 14, 2014 Session of Criminal Superior Court for Yancey County. The Honorable Mark Coward, Superior Court Judge Presiding.

APPEARANCES:

Attorney for The State: Michael Holmes

Assistant District Attorney and Bob Orr – District Attorney

110 Town Square Burnsville, NC 28714

Attorney for the Defendant: Danny Hockaday

Attorney at Law 9 E. Main St. Ste. 300 Burnsville, NC 28714

Appellate Attorney Christine Vance, Esq.

Counsel for Defendant-Appellant

Brownstone, P.A.

201 N. New York, Suite 200 Winter Park, Fla. 32789

REPORTED BY: Rose Gates

Court Reporter P.O. Box 341

Crossnore, NC 28616

Received request for transcript on or about June 10, 2014 from Appellate Defender – Extension granted

Transcript Delivered: July 12, 2014

STATE OF NORTH CAROLINA COUNTY OF YANCEY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 11 CRS 304, 305
STATE OF NORTH CAROLINA Vs.))) CERTIFICATE OF COURT REPORTER
JOHN PRITCHARD, Defendant))) _)
· · · · · · · · · · · · · · · · · · ·	cer before whom the foregoing proceeding was taken, do ages 1 through 302 inclusive, is a true, correct and ng.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was heard; and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, and am not

THIS ALSO CERTIFIES; that the foregoing transcript of proceeding was taken at the April 14, 2014 Session of Criminal Superior Court for Yancey County, North Carolina before the Honorable Mark Coward, Superior Court Judge Presiding. And is a true and accurate transcription of the proceedings taken by me in stenomask and transcribed by me personally.

That the undersigned Court Reporter received a request for transcript on or about June 10, 2014 from appellate defender. Transcript was mailed to the District Attorney's Office on July 12, 2014 to brandi.m.deyton@nccourts.org, to the Appellate Attorney at Jessica@brownstonelaw.com., and to the Attorney General Office at crimtranscripts@ncdoj.gov.

Rose J. Hotes

This the _12th___ Day of July, 2014.

financially or otherwise interested in the outcome of this action.

Rose T. Gates

My Commission Expires: July 9, 2015

INDEX

Motions: 4-19Jury Instructions 19-24Motions 26-

STATE'S WITNESSES:

FLOYD AYERS Direct Examination by Mr. Holmes: Cross Examination by Mr. Hockaday Redirect Examination by Mr. Holmes Re Cross Examination	40 46 56 59
CHRISTINE ANGEL	<i>(</i> 2
Direct Examination by Mr. Holmes (Motions) 66-70	63
Cross Examination by Mr. Hockaday	79
Redirect Examination by Mr. Holmes	103
Re Cross Examination by Mr. Hockaday	105
STEPHANIE WHITSON	
Direct Examination by Mr. Holmes	107
(Motions $-112-120$)	107
Continued Direct Examination	122
Cross Examination by Mr. Hockaday	131
Redirect Examination	149
Re Cross examination	151
Re – redirect by Mr. Holmes	153
Re – re-cross by Mr. Hockaday	154
ROBBIE BROWN	
Direct Examination by Mr. Holmes	154
Cross Examination by Mr. Hockaday	161
21000 21111111111111	101
CHUCK VINES	
Direct Examination by Mr. Holmes	169
Cross Examination by Mr. Hockaday	173
RYAN HIGGINS	
Direct Examination by Mr. Holmes	178
Cross Examination by Mr. Hockaday	182
Redirect Examination	208
Re cross examination	210

RANDALL SHUFFORD Direct Examination by Mr. Holmes (Voir Dire) Arguments Order (Continued) Direct Examination Cross Examination by Mr. Hockaday	212 214 – 218 218 222 224 226		
XYLIAN MCBEE			
Direct Examination by Mr. Holmes	228		
Cross Examination by Mr. Hockaday	232		
BRENT HALL			
Direct Examination by Mr. Holmes	233		
Cross Examination by Mr. Hockaday	244		
Re Direct Examination	258		
Re Cross Examination	260		
STATE RESTS	260		
Charge conformed	260 – 281		
Charge conference Jury charge	282 282		
Verdict	291		
Sentencing	293		
Roy Wilson (Witness)	294 - 296		
Probation Violation	301		
1 Tobution Violation	301		
END OF TRANSCRIPT	302		
STATES EXHIBITS	Introduced	offered	entered
1. Photographs	180	181	181

211

264

264

264

DEFENDANT'S EXHIBITS

1 - Note from Ms. Brown

2 – Death Certificate

3- Syringe analysis

- 1 (April 14, 2014)
- THE COURT: Members of the Jury, the Court needs to hear some motions.
- We need you to step outside the courtroom and thankfully it is not raining. We don't have a
- 4 jury assembly room for you. It is not appropriate for you to be here when these motions are
- 5 heard. I want you to be back here and in your seat at 11:00.
- 6 (All prospective jurors leave the courtroom)
- 7 THE COURT: Is there anybody in the courtroom who has been summoned
- 8 for jury duty? No one appears to be here who has been summoned. I take it we would have
- 9 them back in their seats at 11:00. If you would post some people at the door to make sure
- 10 that the jury does not come in.
- All right, what motions do you have?
- MR. HOCKADAY: The first motions I think we need to address are several
- that I filed before the last term this matter was set for trial back in February. They were
- 14 filed I believe on February 24. Specifically a motion in Limine. Your Honor we are asking
- 15 that the Court make some determination and we are objecting to any statements in this case,
- obviously we have the deceased Jonathan Whitson. We have statements from the deceased
- 17 Jonathan Whitson. There were interviews of several witnesses in the case. One being
- 18 Christine Angel, the deceased grandmother. One being Stephanie Whitson, the deceased's
- 19 girlfriend. And one being Nathan Angel, also a relative. They were all interviewed after
- 20 Mr. Jonathan Whitson passed on March 6, 2011. The discovery that was provided included
- statements that each of these three individuals had made attributed to the deceased. I have
- copies of those statements from Christine Angel, Stephanie Whitson and Nathan Angel.
- 23 And also Nathan Angel is also deceased since my client well it was about the time my
- 24 client was charged.

We are arguing that none of those statements would fit any hearsay exception. One of the issues in this case obviously is whether my client made either a sell or a delivery of a controlled substance, Schedule II, to the deceased. The statements of particularly Stephanie Whitson and Mr. Nathan Angel go directly to that point. We would say and contend that there is no hearsay exception. They are not excited utterances, they are not made for any purpose of medical treatment. We would say and contend they are not even present sense impressions. Statements are whether deceased came to these individuals and said, I got these drugs from my client, the Defendant John Pritchard, at some time after the State is contending that this transaction occurred. We would know of no exception of his state of mind, simply these are not trustworthy statements as to the purpose of hearsay rule to insure that any out of court statement in the trustworthy. We of course will argue that trial beyond just these statements, these are interested witnesses that are going to be testifying on behalf of the State. But we had no opportunity to cross examine those statements. They do not fit within the hearsay exceptions. They are not trustworthy. Again, Mr. Jonathan Whitson is deceased and even one of the declariants Mr. Nathan Angel was the gentleman that was interviewed that was part of the discovery is now deceased since his statement was taken. And we – before we pick a jury want to be clear about what may or may not be admitted, particularly as we begin the trial in defense of this case knowing what may or may not be admitted as any statement attributed to the deceased Jonathan Whitson in this case. That is our motion. I know Mr. Holmes has filed a separate motion 404-B notice that I received Friday about 1:00. I will respond to that after he makes his argument. But specifically as to these specific statements, our motion in Limine, we are asking for some instruction from the Court as to whether these statements are admissible. And we are objecting to the admission of these statements from Nathan Angel, even from the officer to

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

- 1 reference that he interviewed him and this is what was said, since Mr. Angel is deceased.
- 2 Anything that Christine Angel may say, she was interviewed I think by law enforcement,
- 3 also reviewed by Mr. Holmes, a second statement was provided, and any statement from
- 4 Stephanie Whitson that the deceased gave her.
- 5 The point being these would go directly we think to the truth of the matter if they are
- 6 admitted because the specific crime charged is whether he delivered, and then of course that
- 7 relates to the second degree murder charge as to whether the delivery of the controlled
- 8 substance was eventually the proximate cause so we think certainly those statements go to
- 9 the truth of the matter that is asserted by the state, and therefore would not fit any exception.
- We would ask that those be prohibited from being spoken about, talked about, referenced at
- all during the trial of this case.
- 12 THE COURT: Is Christine Angel subpoenaed to testify and is Stephanie
- Whitson subpoenaed to testify?
- MR. HOCKADAY: Yes sir, and I have been handed again, Mr. Holmes has
- a previous witness list and they are two of the individuals they have listed as witnesses that
- will testify. I know they are going to testify about other things they observed, that is fine.
- 17 Specifically the statements of the deceased is the issue we have.
- THE COURT: Mr. Holmes.
- MR. HOLMES: Your Honor we hearsay statements in several people's
- statements. One other one that Mr. Hockaday didn't mention is Floyd Ayers, there are
- 21 hearsay statements in that one as well. So I am thinking it would make more sense to take
- each statement one by one as they come up in each person's statement that they gave to law
- enforcement, and determine the individual whether or not they fit in any exception. I
- 24 maintain that several of them do fall into exceptions, and they are different ones. If we

- 1 could do that, that would be a better way to approach this as opposed to a blanket, they
- 2 should come in or they shouldn't come in.
- THE COURT: Can you address any of the exceptions under the hearsay rule
- 4 at this time, or do you need to see what the evidence shows?
- 5 MR. HOLMES: Well I have, I mean I for instance Floyd Joseph Ayers, the
- 6 first witness the state is going to call. And there are a few statements in his statement to law
- 7 enforcement. For example the first one would be that when he had picked the deceased up
- 8 that Jonathan Whitson, the deceased, stated to him that he wanted to go to Christine Angel's
- 9 house. That is a hearsay statement. I think it would very clearly fall within 8033, as a then
- existing mental, emotional, or physical condition. Right in this rule it says, parenthesis, such
- as intent, plan, and clearly his desire to go to Christine Angel's house that statement would
- fall directly into 8033 as to intent or plan at that time. So I would maintain that very clearly
- would fall within the exception.
- 14 THE COURT: What do you say about that Mr. Hockaday?
- MR. HOCKADAY: I did not Mr. Ayers, did not object to that specific
- statement because that really wasn't addressing the issue of any of the elements that the state
- is trying to prove. So that particular statement I did not file an objection to.
- THE COURT: We are talking about Christine Angel, Stephanie Whitson,
- and Nathan Angel.
- 20 MR. HOLMES: Are you going to object during trial to his to Floyd Ayers
- 21 hearsay statements?
- MR. HOCKADAY: The one you mentioned specifically I do not object to.
- MR. HOLMES: That in particular. I would say we move on to the next one.
- 24 The next hearsay statement to Floyd Joseph Ayers statement is that the deceased told him
- 25 that he had just gotten out of jail, he was walking down the side of the road somewhere.

- 1 Again that would be hearsay, I would maintain that its presence sense impression he is
- 2 describing an event or condition as it is happening. He is being released and he is walking
- 3 out side of the road.
- 4 MR. HOCKADAY: We do not have any objection to any evidence about the
- 5 fact that the deceased was just getting out of jail, he had been in jail and why, and he was
- 6 walking down the road.
- 7 MR. HOLMES: The next one would be Floyd Joseph Ayers testimony that
- 8 the deceased told him that he, the deceased, had been clean the whole time he was in jail and
- 9 that he planned to stay sober. Again, I would say that is existing mental, emotional, and
- physical condition. 803.3 I think arguable, be 803.1 is a present sense impression as well.
- But I think 803.3 is directly on point as it again addresses that statement his intent and plan
- mental feelings, bodily health at the time.
- MR. HOCKADAY: We would object to the testimony that the deceased is
- saying that he had been clean the whole time that he had been in jail and planned to stay
- sober. That clearly goes to the issue of whether there was use of controlled substance in this
- case. If they can show that my client delivered that and whether that was a proximate cause
- of this gentleman's death.
- MR. HOLMES: And again the rule, quote unquote, statement of the
- declariants then existing state of mind, emotions, sensation, or physical condition, which I
- would contain is directly on point.
- MR. HOCKADAY: We would say and contend that is a description of
- 22 apparently by the decedent of what had occurred or not occurred while he was in jail, which
- was prior to, I think the evidence would be he was released around 7:30 that evening I
- 24 believe that is from Buncombe County. He was not picked up until after midnight. There
- 25 would certainly have been time that had elapsed from when he was released until the time he

- 1 was picked up sometime after midnight this statement was supposedly made. I don't know
- 2 how that is a present sense impression or state of mind because it certainly was not an event.
- 3 He is describing something that has happened in the past allegedly and we would object to
- 4 that.
- 5 THE COURT: I will reserve ruling on that particular one. All right, Mr.
- 6 Holmes what about --.
- 7 MR. HOLMES: Christine Angel the hearsay statements she gave initially
- 8 to law enforcement (Pause)
- 9 MR. HOCKADAY: They are just saying that the deceased reportedly made
- 10 to Christine Angel between where he was sleeping and going to the bathroom, that he loved
- her. It is alleged by her that he said that three separate times. We would be objecting to that
- statement. I don't' know how that is relevant to any of it with these proceedings.
- MR. HOLMES: I am not going to argue that Your Honor, it is not a
- 14 necessary statement as far as I am concerned.
- MR. HOCKADAY: I am not aware of any other statement Ms. Angel plans
- 16 to testify to in this case. We would make for the record we are contending she has made two
- massive different statements. And we don't know what we are going to get today, or this
- week. So our concern would be that Ms. Angel would not get on the stand and attempt to
- make any other statement that the deceased has reportedly made to her. That her testimony
- is limited to whatever she observed, saw, heard, but not anything he said.
- 21 THE COURT: Motion will be allowed as to Christine Angel, specifically she
- shall not be allowed to testify concerning statements made by the defendant. Mr. Holmes
- advise her of that. I don't want there to be a mistrial because she was not told that.
- 24 MR. HOLMES: We can do that. That would take us to Stephanie Whitson.
- 25 There is only one hearsay statement in her statement to law enforcement. I will read you

1	what the report says. Stephanie Whitson states that Jonathan, the deceased, told her that the
2	defendant had wanted him, the deceased, to buy morphine for \$8.00 a piece and sell them
3	for \$15.00 a piece. Whitson states that she believed Pritchard had given Jonathan the tablets
4	on 3/5/11 due to Pritchard had told Jonathan he would help him out since he had been in jail
5	and not had anything. So essentially it is the defendant's – the deceased statement that
6	Pritchard wanted him to buy morphine for \$8.00 a piece and sell them for \$15.00 a piece.
7	And then the statement that the Defendant had told the deceased, this is the deceased saying,
8	telling her this, that he would help him out and had been in jail. Help him out because he had
9	been in jail and hadn't had anything. It is essentially hearsay within hearsay. And just start
10	with parts of it it would – I think you get over the first aspect of hearsay against the party
11	which clearly apply if the defendant made these statements, which leaves us then with the
12	remaining hearsay. With respect to that I would say that the statement is not being offered
13	for the truth of the matter asserted. Her statement that Pritchard had said that he wanted him
14	to buy morphine for \$8.00 a piece and sell them for \$15.00 a piece, we are not trying to
15	prove that. That is not the truth – we are not trying to prove that whether that is true or not.
16	And with regard to the second statement that Pritchard was trying to help him
17	out since he hadn't had anything I would argue again we were just trying to corroborate that
18	he had – well delivered the drugs to the deceased. To the first statement we would say it is
19	not to the truth of the matter asserted. The second statement is the admission of a party and
20	then we have got that he was trying to help him out because he hadn't had anything in jail. I
21	would say present sense impression would be the hearsay exception that would apply
22	because the deceased is describing or explaining the event or condition at the time this
23	happened.
24	THE COURT: I am going to reserve ruling on that statement.

MR. HOLMES: Both of them or the whole thing together?

1	THE COURT: Yes, unless she is your first witness out of the box. I want to
2	look at exactly what you are talking about.
3	MR. HOLMES: I have got it sorted out, it just took me a minute to get there.
4	Do you want me to go over it again, or do you just want to reserve ruling?
5	THE COURT: I am going to reserve ruling, unless she is witness Number
6	1.
7	MR. HOLMES: No, it is third I believe.
8	THE COURT: Mr. Hockaday, do you have anything you with to say.
9	MR. HOCKADAY: We would object to those statements. Again we - direct
10	to whether there was delivery or not, and any statement reportedly made by my client to Mr.
11	Whitson the deceased, that a sell certainly applies, and if it is believed by the jury the
12	statement is too vague, and delivery was yours, but you can do with it once it is delivered.
13	So I think it does go directly to the truth of the matter asserted. And then that I will try to
14	help you out, if Jonathan as allegedly told Stephanie, I want to try to help you out, that
15	certainly implies there was a delivery, that is why I would be giving it to you. So we would
16	certainly say and contend that is hearsay.
17	And then in that same statement on the first page of it, there is another statement she
18	says, Jonathan and her talked, and Jonathan told her that Johnny Pritchard was coming up
19	Marion Mountain, Pritchard was suppose to call when he got home. We would say and
20	contend that is a hearsay statement, there is no exception and that should be precluded. Ms.
21	Whitson should be precluded in her testimony about that during the trial.
22	MR. HOLMES: That would be the third, Stephanie Whitson.
23	THE COURT: Do we have copies of the statements. I will look at those
24	during – while we are doing other things, while you are picking the jury.
25	(GRAND JURY REPORT)

1	MR. HOLMES: Your Honor, he is deceased, the State is not going to
2	introduce his statements.
3	THE COURT: That motion is moot.
4	MR. HOCKADAY: Nathan.
5	THE COURT: They are not going to offer any statements that he made prior
6	to his demise.
7	MR. HOCKADAY: And no officer would be testifying to that. Your Honor
8	if I can have a moment to talk to my client.
9	(Pause)
10	MR. HOLMES: I guess that would be all the hearsay statements addressed
11	from the Defendant's motion. That would leave us with the motion that I filed Friday.
12	Specifically I filed a notice of introduction of 404(b) evidence and a motion in Limine for
13	introduction of 404(b) evidence. I would point out that I don't believe that I was required to
14	give notice, bit I did label it as notice of introduction. And specifically they 404(b)
15	evidence.
16	THE COURT: In which case file?
17	MR. HOLMES: It should be in both 11 CRS 304 and 305. Specifically what
18	we would be asking to introduce Your Honor is the Defendant is currently on probation for a
19	conviction of sell and delivery of morphine. Now the defense has obviously been aware of
20	that since the beginning of the case. I believe Mr. Hockaday represents him on probation
21	violations. They are aware of the conviction, but specifically the new detail I guess is that in
22	looking at the old report for the old conviction it jumped out at me that the Defendant had
23	used his silver grey Ford Ranger Pickup truck during the commission of that prior offense,
24	and during the commission of this current charge. And that is directly relevant and on point
25	for the State's case of maintaining a vehicle for the purpose of keeping and/or selling

- distributing controlled substances as it shows the defendant's use of the vehicle over a
- 2 period of time. So essentially we are asking to introduce the prior conviction under 404(b)
- 3 as well as the limited circumstances surrounding that conviction to be by limited
- 4 circumstances I mean specifically that he used the silver grey truck during the commission
- 5 prior and during the commission of this one.
- Now it also I believe the prior conviction would also be relevant to the issue of
- 7 malice for the State's case. In the same way that a prior conviction for DWI would be
- 8 relevant to the issue of malice in a felony DWI case. So I think it goes to a couple of issues
- 9 for the state, but I think primarily malice and the malice in maintaining a vehicle charge.
- And just specifically the 404(b) speaks to the Defendant's motive of which I think it would
- be relevant to his motive opportunity and goes as well to his intent, plan, and even his
- identity. So I think it is a number of 404(b) issues as well as being directly relevant to
- several of the elements in the State's case.
- 14 THE COURT: Mr. Hockaday.
- MR. HOCKADAY: Your Honor, 404 talks about character evidence and the
- evidence of any other crime, or act as a general rule are not admissible to prove that his
- character to show that he acted in conformity with what we are looking at here this week,
- unless you find some exception. I was made aware of this on Friday, Mr. Holmes did call
- me and brought me the motion I discussed it with my client. I was not the attorney in the
- separate case, he had separate counsel, perhaps Mr. Laws.
- We would respond as follows. This is a totally different set of circumstances. I
- don't believe there is any evidence in the case that we are going to be hearing this week any
- 23 reported sell. The case I am looking at discusses a sale he plead guilty, he is on probation
- for a sale of schedule II. I am not aware of any evidence in this case, even indirectly argues
- 25 there was a sale in this case.

In addition the maintaining a vehicle charge if the argument is, well it helps us for that charge because we really didn't have anything. That case was specifically dismissed in his prior case he did not plead guilty, was not found guilty, and is not on probation. Any type of maintaining a vehicle case out of the 2010 circumstances, which I have been made aware of. In addition on maintaining you got to have prior use of that for the purpose – and of course in that case the argument was it was a sale. This case I assume the argument is a, what I have seen so far is a delivery. Certainly we would say that is simply not sufficient, not enough, there is not any evidence of any kind of pattern or this was the way this guy operated. The two cases are completely different. Specifically in the prior case any evidence of the use of that vehicle, maintaining a vehicle was right out dismissed by the State when he plead – MR. HOLMES: That is not true, he was convicted of maintain. MR. HOCKADAY: I stand corrected. I understood he was on probation for the sale, the alleged two sales. But nonetheless there is still no evidence as a result of the prior case that would show any type of pattern, plan, intent, motive, I am not aware of any evidence in that case that would be – could be used in this case to show that was an intent,

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

the sale, the alleged two sales. But nonetheless there is still no evidence as a result of the prior case that would show any type of pattern, plan, intent, motive, I am not aware of any evidence in that case that would be – could be used in this case to show that was an intent, plan, for how he operated because I don't believe in this case there is any evidence that there was any kind of sale. And in addition, as to the issue of malice I am not aware. If the argument is what malice issue on murder I don't know how that shows whether or not a vehicle was used or not. Goes to an issue of criminal intent or recklessness, or more than simply a delivery. I don't know that the use of a vehicle or non use of a vehicle has anything to do with the malice issue on a murder II. So we would say and contend it is not admissible on that case. We would object to any evidence from the 2010 case pled January

- of 2011 in which he was convicted of a prior sale of a controlled substance, we believe 404
- 2 is not allowable.
- 3 MR. HOLMES: Just to be clear, he was convicted of sell and delivery, so the
- 4 fact that it is money exchanged hands I don't think should mean that it is factually, or that it
- 5 is not significantly factual distinguishable from current offense.
- THE COURT: The current offense, nobody exchanged money.
- 7 MR. HOLMES: Correct, and I don't have in the current offense is delivery.
- 8 There is no evidence of remuneration. So they are similar, and in looking at 404(b) I know
- 9 the Court is supposed to look at the similarity of the factual situations as well as temporal
- proximity. And with regard to similarity in facts it is a sell and delivery, and on that prior
- occasion he is delivering morphine which is the same substance we have here, and he is
- using his truck to drive to a location which is what he is doing here and delivering, which is
- what he did here. So I believe there is a significant factual similarity and with regard to
- temporal proximity, the conviction occurred two months prior to the date of offense for this
- charge. And the actual date of offense was January 26, 2010. The date of offense for this
- charge was March 5, 2011. So about a year and two months apart, which is not an
- 17 extremely long time.
- THE COURT: Is it possible that the Supreme Court or maybe the Court of
- 19 Appeals has some opinion on this. The connection and as to how it is a MO, or intent,
- 20 plan or preparation, it seems a little tenuous. You have to use some kind of automobile if
- 21 you are going to deliver it. Does it matter whether you are using a Ford Ranger or a Chevy
- 22 Impala?
- MR. HOLMES: Well it does with regard to the State's maintaining a vehicle
- 24 case. Because we have to specifically show that over a period of time he was using a
- 25 specific vehicle to engage in this behavior of sell or delivery of drugs.

1	THE COURT: He was convicted of using that vehicle after he allegedly did
2	what he did in this case in January of 2010.
3	MR. HOLMES: The old one is January of 2010. The new one is March 5,
4	2011.
5	THE COURT: So he did the old one in January of 2010. And he still had the
6	truck and used the truck again March of 2011.
7	MR. HOLMES: YES SIR.
8	THE COURT: But again, maintaining a vehicle you have to describe the
9	vehicle, that is relevant I suppose to the charges, whether it was – whether it forms the basis
10	of an MO.
11	MR. HOCKADAY: Your Honor we would argue that it does not. It
12	basically puts a conviction for the defendant in front of the jury without him getting on the
13	stand, which he is not required to testify. He may or may not, I mean that is the practical
14	effect of what we are doing is, hey jury guess what, we have got a prior, and he is sitting up
15	here again. And that is the prejudice to my client, particular in light of the fact he is charged
16	with maintaining a vehicle in this specific case. So with the other arguments we are
17	objecting to it.
18	MR. HOLMES: I would contend it is not all that unusual, as I said, speaking
19	about the DWI convictions coming in on Melony, in a DWI fatality that is not uncommon.
20	THE COURT: Again I will ask you if you have some cases I could read?
21	MR. HOLMES: I did not pull any case law Your Honor. We could attempt
22	to find something between now and - actually that would be a completely different witness
23	for the State, that would be the officer.
24	THE COURT: All right, what I am going to do. I am going back to the
25	green book, maybe the brown books and look and see what is out there. In the meantime

1	let's not talk about it when you are picking the jury. I guess the evidence we have gone in
2	through which witness?
3	MR. HOLMES: It would be a ninth witness that is actually not on that copy.
4	MR. HOCKADAY: It would not be today?
5	MR. HOLMES: No.
6	MR. HOCKADAY: As long as there is no argument during jury selection.
7	Would ask you to table that issue, and as you – we would object to there being any reference
8	to that, hey he has done this before, while we are making statements to the jury or asking
9	questions.
10	MR. HOLMES: And truthfully this kind of touches on something else that
11	we maybe we should address as we are going over all this. Both Robie Brown and Stephanie
12	Whitson would both I believe be testifying that there have been other instances of Mr.
13	Pritchard delivering or selling morphine or controlled substances. So thinking that is not the
14	only witness the State has that is touching on prior bad acts. Those are all - Robie Brown's
15	statement, I mean that is in Robie Brown's statement and that is in Stephanie Whitson's
16	statement to law enforcement, so the defendant's are aware of those.
17	MR. HOCKADAY: We are aware of those and plan to object to those if
18	testified to, depending on what they testify to.
19	THE COURT: Stay away from it. You are not to make statements at jury
20	selection, we will look into it.
21	MR. HOLMES: Your Honor, when you say stay away from it am I – are you
22	wanting me to stay away from all three of those persons statements regarding prior
23	conviction – not prior conviction, specifically prior acts of a similar nature. I guess that is
24	what I am asking because I was planning on mentioning Robie Brown's and Stephanie

1	Whitson's statements about prior occasions. In light of the statement I wanted to make sure
2	I was –
3	THE COURT: This is different from the conviction?
4	MR. HOLMES: Yes sir, these are not the convictions, these are the prior –
5	Robie Brown specifically witnessed a delivery or sale, it is not clear in her statement.
6	THE COURT: You are going to say his MO is to ride around in a Ford
7	Ranger and sell drugs.
8	MR. HOLMES: Honestly I don't know enough about what Stephanie
9	Whitson would say about these prior occasions. She mentions in her statement that it has
10	occurred seven or eight times prior, but she has given me some details so I couldn't tell you
11	in this time what exactly she is going to say in terms of describing these prior acts.
12	MR. HOCKADAY: Exactly, there is not information specific on her, and
13	Robie Brown's statement isn't even signed.
14	MR. HOLMES: That is the officer –
15	THE COURT: It is hard for me to rule on the statement if it is inadmissible
16	when I haven't seen the statement and we don't know. Am I missing something here?
17	MR. HOLMES: No, I have got three potential who are all saying, describing
18	prior bad acts. Like I said I mean I –
19	THE COURT: Was the MO the same, you don't know so what other
20	exception.
21	MR. HOLMES: I guess he can object, we will excuse the jury and get her
22	testimony and Your Honor can rule on it at the appropriate time.
23	THE COURT: Okay, be quick on your feet there Mr. Hockaday and make
24	sure nothing comes out before we have a offer of proof out of the presence of the jury. If
25	nothing else bring the jury back in please.

1 MR. HOCKADAY: Your Honor my client has asked me to address one 2 matter with Mr. Holmes if I can talk with him. 3 THE COURT: All right. You all come on in. 4 (ALL POTENTIAL JURORS ENTERED THE COURTROOM AT APPROXIMATELY 5 11:15 A.M. ON MONDAY, APRIL 14, 2014) 6 THE COURT: Members of the jury I thank you for coming back in timely. 7 We have one grand jury matter that has nothing to do with this case or any case that you might hear. 8 9 (grand jury report) 10 Those of you on this side of the room, potential jurors, I want to welcome you. You 11 have been selected to possibly appear as jurors in this criminal session of superior court in 12 Yancey County. My name is Bill Coward, and I hale from Macon County, North Carolina. 13 I have been assigned to preside at this session of superior court in your county by the chief 14 justice of the supreme court of North Carolina. 15 (Introduction of court personnel and preliminary jury instructions) 16 (Jurors sworn) 17 THE COURT: Ladies and Gentlemen, now that you have taken that oath you 18 have become the most important people in Yancey County for a week. Because of your 19 status as jurors, it is important that you remember that during this week of court it is your 20 duty to not talk among yourselves about the proceedings of this court or about the cases here 21 for trial. And not talk with any of the parties, any of the witnesses or any of the lawyers 22 about the case, or engage in any type of conversation with them even if it is just to pass the 23 time of day. I mention that in particular because you will no doubt see in the courtroom and 24 about the courthouse lawyers, law enforcement officers and others that may be involved in

the case to be tried this week that you would usually speak or be friendly with. You may

25

- think that you are avoiding you or being aloof. I assure you that is not the case. You should
- 2 understand that it would be improper for them to be particularly friendly to you or to engage
- 3 you in any conversation because of your special status as a juror.
- 4 The State of North Carolina and the parties in the case to be tried this week are
- 5 entitled to jurors who approach their case with open minds and who agree to keep their
- 6 minds open until a verdict is reached. Jurors must be as free as humanly possible from bias,
- 7 prejudice or sympathy. They must not be influenced by preconceived ideas either as to the
- 8 facts or as to the law.
- 9 You must not form an opinion or express an opinion about any of the cases that are
- 10 here for trial. I am sure during the first step of jury selection the Court and the Lawyers will
- ask you questions. These questions are not designed to pry into your personal affairs, but to
- discover if you have any knowledge about the case to be tried, and if you have any
- preconceived notion or opinion that you cannot lay aside. Or if you have any experience
- that might cause you to identify yourself with either party, in any case these questions are
- 15 necessary to assure each party an impartial jury.
- Now there may have been some publicity in a case at the time it happened or since
- 17 then. You must not permit anything you have read or heard or seen to influence your
- verdict, because what you have read, heard or seen was not under oath at this trial. It is not
- 19 evidence. None of you would want to be tried based on what was reported by others outside
- of the courtroom. Being fair minded persons, certainly none of us would rely on that kind of
- 21 information in the trial of a case.
- You must exclude all that you have seen, heard, or read and render a verdict based
- solely on the evidence brought out in court and the law I give you in my charge or
- 24 instructions. You may not let your present opinion or information influence your decision in

a case or let it prevent you from rendering any proper verdict required by the facts and the

2 law.

Test for qualification for jury service is not private feelings of a juror, rather it is
whether the juror can honestly set aside any such feelings, law and evidence and impartially
determine issues.

Now in the process of selecting a jury, jurors may be excused by the Court for cause if there is a valid reason why he or she cannot serve. In this counsel on each side makes use of limited number without giving a reason for doing so. If you are excused by one of the lawyers from serving on the jury, you should not be concerned about that or be upset with the lawyer who excused you. The fact that the lawyer may excuse you in one case, does not mean the same lawyer will object to you serving as a juror in another case which is called for trial.

I hope you will enjoy your week of service. You should not be scared or afraid of serving as a juror. We ask no more of you this week than that you use the same good judgment and common sense that you use in handling your own affairs last week and that you will use in the handling of your own affairs in the weeks to come. I also hope that these introductory remarks will serve to make you feel at ease here, also that they would impress upon you the importance of jury service and acquaint you with what will be expected of you and the strength of your will and your desire to enter upon your duties with determination to discharge them honorably.

If you are selected as a juror you must wear a juror badge at all times unless I instruct you otherwise. We will have a telephone call back service in the clerk's office to keep you informed of our trial schedule, which I briefly described before. Finally while I will endeavor at every juncture to make the most sufficient use of your time, please be

1	mindful that the court is a serious and sober process with great importance forevermore
2	effecting the lives of people from your community.
3	Counsel approach please.
4	(Attorneys approach the bench)
5	MR. HOLMES: Now the District Attorney has called for trial the cases
6	entitled The State of North Carolina versus John Herbert Pritchard. The defendant in this
7	case is John Herbert Pritchard. With the defendant in this case is Danny Hockaday. At the
8	other table is the Assistant District Attorney Michael Holmes. And I am sorry I didn't get
9	introduced –
10	MR. HOLMES: Lora Farmer.
11	THE COURT: Lora Farmer. And then Bob Orr is sitting here as Assistant
12	DA also.
13	MR. HOLMES: Actually Acting District Attorney Your Honor.
14	THE COURT: The Defendant has been charged with Sell and Delivery of a
15	Scheduled II controlled substance, Second Degree Murder, another charge of Delivery of a
16	Scheduled II Controlled Substance, Possession with Intent to Manufacture Sell or Deliver a
17	Schedule II Controlled Substance, and Maintaining a Vehicle for Controlled Substances.
18	The offense is alleged to have occurred in March of 2011. The alleged victim of the
19	offense is Jonathan Whitson. The Defendant has entered a plea of Not Guilty. After a jury
20	has been selected an impaneled in this case you will hear the evidence. The evidence is
21	presented according to certain rules of law. The judge enforces those rules and determines
22	what evidence may be admitted.
23	After all the evidence has been presented, and after you have listened to the
24	arguments of counsel, I will instruct you as to all of the law that you are to apply to the
25	evidence in this case. It will be your duty to apply the law as I give it to you, not as you

- think the law is, or as you might like it to be. This is important because justice requires that
- 2 everyone tried for the same crime be treated in the same way and have the same law applied
- 3 in each such case.
- 4 At this point you are not expected to know the law. Counsel should not question you
- 5 during jury selection about the law, except to ask whether you will accept and follow the law
- 6 as given by the Court.
- 7 I will tell you now a few preliminary things about the law in a criminal case. The
- 8 Defendant has entered a plea of Not Guilty. Under our system of justice a defendant who
- 9 pleads Not Guilty is not required to prove his innocence, he is presumed to be innocent. This
- presumption remains with a Defendant throughout the trial until the jury selected to hear the
- case is convinced from the facts and the law beyond a reasonable doubt of the guilt of a
- 12 Defendant.
- The burden of proof is on the State to prove to you that the Defendant is guilty
- beyond a reasonable doubt. A reasonable doubt is not a vain or fanciful doubt, it is a doubt
- based on reason and common sense arising out of some or all of the evidence that has been
- presented, or the lack or insufficiency of the evidence as the case may be.
- Proof beyond a reasonable doubt is proof that fully satisfies or entirely convinces
- 18 you of the Defendant's guilty. There is no burden or duty of any kind on the Defendant.
- 19 The mere fact that the Defendant has been charged with a crime is no evidence of guilt. A
- 20 charge is merely the mechanical or administrative way by which any person is brought to
- 21 trial. If the State proves guilt beyond a reasonable doubt, then the function of this jury by its
- verdict is to say guilty. If the State fails to prove guilt, or you have a reasonable doubt, then
- of course you must say not guilty.
- Madam Clerk, will you call twelve jurors.
- 25 (At approximately 11:50 a.m. twelve jurors were called to the jury box)

THE COURT: Members of the Jury, we will now take our lunch time recess. During this recess and all other recesses that we have while the trial is in progress I instruct you it is your duty to carefully observe the cautions I am now giving to you. During the course of the trial and including recesses, you should not talk with each other about the case. You may only talk with each other about the case at the end of the trial when you go to the jury room to consider your verdict. While it may be difficult for you to understand why you may not discuss the case among yourselves until it is finally submitted to you, please allow me to explain. It would be unfair to discuss the case among yourselves before you receive everything necessary to reach a informed decision. Until you are

instructed to begin deliberations on your verdict, you should not form nor express any opinion about the case. You should not talk or have any contact with any kind with any of the parties, attorneys, or the witnesses. You should not talk to anyone else or allow anyone else to talk with you in your presence about the case. If anyone attempts to communicate with you about the case, you must notify the bailiff immediately. If that person persists, you just simply walk away and then notify the bailiff.

Now in this age of instant or electronic communications research I want to emphasize that in addition to not speaking face to face with anyone about the case, you should not engage in any form of electronic communication about the trial, that includes twitter, face book, text messaging, and instant messaging, and blogging, and Google searching, any other form of electronic communication about the case. Any such discussion or communication could lead to a mistrial, which severely compromises the parties right to a fair trial.

Now you must explain the rule that I just stated for you to your friends and your family, because they may ask you what is the case about. You will have to tell them that you can't talk about it until it is over. When your jury duty is completed you are certainly

free to, but you are not required to discuss the case freely and talk about your experiences as a juror.

You should avoid watching, reading, or listening to any accounts of the trial that might come from any news media. That is you should not read, listen, or watch anything about it that might be in the newspaper, radio, television, or on the internet. Media reports may be incomplete or inaccurate. You may only consider and decide this case upon the evidence received at trial. If you acquire any information from an outside source, you must not report it to the other jurors, and you must disregard it in your deliberations. Don't pull out your I-phone and do a Google search about anything in this case. If you become aware of any outside source of information, report that to the bailiff or to the Court at the first opportunity.

While the trial is going on please do not go to the place where the case arose, or make any independent inquiry or investigation about this matter. No internet research about this matter or anything related to it. You are prohibited from performing any experiments. This case involves the scene of the events as they existed at the time, not as they exist today. Viewing the scene of the events of this case with pictures or other materials without the benefit of explanation in court is unfair to the parties. We need you to decide this case based solely on the evidence that is submitted here.

If you base your verdict on anything other than what you learned in this courtroom, it could be grounds for a mistrial. Which means that all the work that you and your fellow jurors put into this trial will have been wasted. It further means that lawyers, parties and judge will have to do this all over again. Furthermore, if you communicate with others in violation of these orders, you could be held in contempt of court, that is why it is so important.

1	After you have rendered your verdict, as I have said, you will be free to do any
2	research you chose or share your experiences or post anything, blog or whatever you want to
3	do. Keep your cell phones turned off while you are in the courtroom or in the jury room. If
4	during the trial issues arise that would affect your ability to pay attention and sit as a fair and
5	impartial juror, you may explain the matter to the bailiff who will inform me.
6	Finally if at anytime you cannot hear a witness or attorney, please make the fact
7	known immediately by raising your hand. Do we have an assembly room for these twelve
8	to come back to? You who are sitting here you have now been finally selected as jurors, we
9	are going to treat you a little bit more special. There is room back here if you will assemble
10	there at 2:00. Everyone else who is out there in the jury pool be back here at 2:00 and we
11	will continue with the jury selection process.
12	We will be in recess until 2:00.
13	(AT APPROXIMATELY 12:40 P.M. ALL JURORS AND POTENTIAL JURORS LEFT
14	THE COURTROOM AT THIS TIME FOR THE LUNCH RECESS)
15	(THE FOLLOWING IS OUT OF THE PRESENCE OF THE JURY)
16	THE COURT: There are a couple of things outside the presence of the jury
17	that I have. There is a question about a expert who performed an autopsy. The Court heard
18	about that a bench conference. I am not sure what relief is being asked for by either party as
19	to that. Does counsel for either party want to be heard about that any further?
20	MR. HOCKADAY: Nothing further than what we discussed.
21	THE COURT: Secondly, as I was describing the charges in this case. I
22	stopped myself from saying probation violation, that is the first thing on the calendar. There
23	is a Sell and Delivery of a Schedule II, and Delivery of Schedule II Controlled Substance. I
24	want to see if there are any corrections about that, if anything I need to say to the jury about
25	what in fact is for trial here today. I was under the impression Tell me about this.

1	In 10 CRS 050162, Probation Violation. That is not for trial, that is not being heard?
2	MR. HOCKADAY: Correct.
3	THE COURT: The Sell and Delivery of Schedule II Controlled Substance in
4	that file, the underlying offense that is not being heard?
5	MR. HOLMES: No sir.
6	THE COURT: Then we have Second Degree Murder of course and we have
7	Delivery of a Schedule II Controlled Substance, and Possession with Intent to Manufacture,
8	Sell or Deliver Schedule II, Maintaining a Vehicle for Controlled Substances. I believe I
9	went over those accurately. I want to make sure there is no objection from the Defendant
10	about how those charges were laid out for this jury.
11	MR. HOCKADAY: No sir.
12	THE COURT: Now as to these statements. I have had a chance to look at
13	this statement by Stephanie Whitson. Are you ready to talk about that now?
14	MR. HOLMES: That is fine Your Honor.
15	THE COURT: The first statement is, Mr. Whitson said the Defendant is
16	coming up the mountain, call me when he gets home. What is the purpose? If it was offered
17	to explain what was going on, or what somebody did next it comes in, it is not hearsay.
18	What other purpose is it?
19	MR. HOLMES: I think that is essentially it Your Honor. Stephanie is with
20	the deceased that morning and this happened, he makes this statement and then a short while
21	later Mr. Pritchard shows up at the house. So he is simply just explaining what is going on
22	there and what is about to happen. He is explaining I guess – Mr. Pritchard arrived shortly
23	thereafter.
24	I think what happened she would say - I know she will say that the deceased
25	received a phone call and she didn't hear that conversation, she heard his side of it, and then

- 1 he hangs up the phone and a short while later the Defendant is at the house. So I think in
- 2 terms of if you do say it is hearsay, I think it would be impression as she said just
- 3 explaining what is going on. The State is not offering it for the truth of the matter asserted,
- 4 it was actually going on at the time, offered to explain his arrival shortly thereafter.
- 5 THE COURT: All right. There is no argument under 403 basis that this is
- 6 somehow unfairly prejudice. This is basically saying this guy is coming up the mountain, he
- 7 is bringing –
- 8 MR. HOCKADAY: The issue about that statement from our end Your
- 9 Honor is if she says the deceased made that statement, she then makes the statement right
- after that as to what she thinks that means.
- 11 THE COURT: For the record I am going to mark what I have been handed
- as Court's Exhibit 1. And it has been marked with a Number 1 with brackets around it as to
- the statement we talked about now. Jonathan told her that Johnny Pritchard was coming up
- Marion Mountain and that Pritchard was suppose to call me when he got home. That is the
- one we are talking about.
- MR. HOLMES: YES SIR.
- 17 THE COURT: Nothing else. All right. I think that statement should be
- allowed. I will throw in that in my discretion under Rule 403, it is not overly prejudicial
- otherwise violate Rule 403. It appears that the only purpose of offering up that statement is
- 20 to explain the circumstances underlying what may or may not have occurred after Mr.
- 21 Pritchard got up the mountain.
- MR. HOCKADAY: If the record would note our objection.
- 23 THE COURT: So noted. Will also note the Court's continuing ability to
- 24 rethink that, as you get closer to the statement and the Court gets a better idea of exactly
- 25 whether this is some foundational block or is fact it is difficult to see what we don't know at

1 this point. But I would say right now it is admissible. First of all it is not a violation of the 2 hearsay rule. Second segment is on the last page of the statement it says. Jonathan had told 3 her on 3/5/11 Pritchard had wanted to buy morphine for \$8.00 a piece and sell that for 4 \$15.00 a piece. The purpose of this sort of goes to the heart of the charges, doesn't it? 5 MR. HOLMES: It definitely corroborates the delivery certainly. 6 MR. HOCKADAY: Therefore we say it is being introduced to try to prove 7 that there was a delivery, and for the truth of the matter. 8 MR. HOLMES: The truth of the statement is what you are looking at to 9 determine the truth of the matter asserted. The statement is that he wanted him to buy 10 morphine for \$8.00 and sell it for \$15.00 a piece. That has nothing to do with the State's case. We are not trying to prove sale, we are not trying to prove future sale. We are not 11 12 trying to prove that he actually wanted him to do that. We are trying to prove the delivery 13 and looking at the truth that the statement is trying to assert, that is not what we are trying to 14 prove. 15 MR. HOCKADAY: Our position is, this had nothing do to with it, that is 16 some future agreement they are going to have about, I will give it to you later and you can 17 buy it for \$8.00 and sell it for \$15.00. I has nothing to do with it. I think it is highly 18 prejudicial that it comes in. 19 THE COURT: It sort of cases the Defendant as a dealer, wholesale. 20 MR. HOCKADAY: It goes beyond the case that we are trying. I don't 21 believe there is any evidence of money, and now we are giving a statement that has nothing 22 to do with it about money, that confuses the jury on this issues and it is highly prejudicial. 23 THE COURT: All right, in my discretion under Rule 403 I am going to

exclude that statement because it appears that it could confuse the jury and seems highly

24

1 prejudicial. In light of the statement evidence that there was no money that passed hands in 2 this transaction. 3 Number 3. Mr. Whitson said, Pritchard said he will help me out. Read into the 4 record. Pritchard had told Jonathan he would help him out since he had been in jail and had 5 not had anything. This is on the last page of Court's Exhibit 1 in brackets, Number 3. The 6 purpose of offering that statement Mr. Holmes? 7 MR. HOLMES: Are you asking why the State would want it in? 8 THE COURT: Yes. 9 MR. HOLMES: Well, I mean you are saying hearsay. So again it is 10 admission of the party that is primarily why the State would want it in. It is his own 11 admission that he delivered the controlled substances that day. 12 THE COURT: In other words, Mr. Pritchard was only going to give it to him 13 because he had been in jail and he needed something right away. It almost a favor. 14 MR. HOLMES: That is more or less what happened, yes that is what we 15 think came out. 16 THE COURT: Might explain why there is not money changing hands 17 MR. HOLMES: It does. 18 MR. HOCKADAY: Our issue would be the person to whom this statement 19 supposedly was made to, it was not a statement my clients an individual who has come in 20 and testified as to what my client said, then does that – it is impossible to know what that 21 really meant is another problem. Does it mean, I will give it to you now, since you been in 22 jail you owe me later. Does it mean I will help you out, is that this transaction or is that two 23 years from now? There is no way to know without Mr. Whitson being here to testify as to

what those circumstances were. There is no way to allow that in with any kind of test to

determine how trustworthy that statement is, no way to know what the circumstances were.

24

25

1 It doesn't even say I will help you out on this occasion, help you out next year, next week. 2 In no way know what help out means, money or not. Again Mr. Whitson can't testify to the 3 circumstances. Mr. Whitson was dead and Ms. Whitson was not present to hear. 4 THE COURT: I am going to exclude that under 403 as well right now in 5 my discretion. We will see how the evidence turns out, I reserve the right to change my 6 mind on that. 7 MR. HOLMES: I was going to ask that as well Your Honor, in light of the 8 prior statement, the second hearsay statement, just that if some of the 404(b) evidence that 9 we discussed on prior bad acts, then I think these statements would serve to corroborate. 10 THE COURT: How is that corroboration for two -- hearsay evidence? 11 MR. HOLMES: Well I - again I think on that first one it is not - the initial 12 finding it not being offered for the truth and then - So my understanding would be just like 13 you would be left with 404(a), that it is too prejudicial to let it in – the same thing all over 14 again. 15 MR. HOCKADAY: We would say that this particular statement, there is no 16 way to know that statement where it talks about March 5, if that is even said there is no way 17 that date, another date, what that did obviously going to people they know. What it meant it 18 was made by my client and the deceased. There is certainly no – not knowing what the 19 circumstances were, we don't think that comes under character evidence, 20 THE COURT: All right, I am going to exclude that, 403. 21 MR. HOLMES: Does Your Honor want to address the Floyd Ayers 22 statement. I don't know if you got a copy of that. 23

24

MR. HOCKADAY: I think we narrowed it down to one statement that was

an issue about where Mr. Whitson told me he had been clean the whole time he had been in

- jail and he intended to stay sober, that is the statement we are talking about. It is on Page 2
- 2 of that statement. Floyd Ayers.
- THE COURT: Let's see if we can round up Court's Exhibit 2 and talk about
- 4 that statement, if somebody can give me a clean copy. We can talk about it after lunch.
- 5 We will be in recess until 2:00.
- 6 (COURT WAS IN RECESS FOR LUNCH UNTIL APPROXIMATELY 1:00 P.M. UNTIL
- 7 2:00 P.M.)
- 8 (COURT RECOVENED AT APPROXIMATELY 2:00 P.M.)
- 9 (ALL JURORS ENTER THE COURTROOM)
- THE COURT: The jury is with the State.
- 11 (CONTINUED WITH JURY SELECTION)
- 12 (3:40 P.M.)
- THE COURT: Let the record reflect that we went through an exercise of
- excusing a couple of jurors and entertaining an inquiry about another and the court reporter
- was not in the courtroom. I want to restate what I think we did and make sure that counsel
- on the record stipulate that they have no objections. Mr. Crisson, Juror Number 5 stated that
- she had sensitive personal problems about the case and she did not want to serve. The
- parties agreed she could be excused for cause. Counsel for the State any objection to that?
- MR. HOLMES: We do not object.
- THE COURT: Mr. Hockaday, any objection?
- 21 MR. HOCKADAY: No sir.
- 22 THE COURT: The Court further determined that the time spent trying to
- figure out the grand jury situation with David McFee would make it more efficient if we
- 24 excused him for cause, and we have now selected replacement jurors for both of those seats.
- 25 As to Mr. McFee, any objection from counsel about that?

1 MR. HOLMES: No sir.

- 2 MR. HOCKADAY: No sir.
- THE COURT: The new jurors are Howell, in Seat Number 5, and Gail
- 4 McBride in Seat 10. The jury selection is back to Mr. Holmes.
- 5 (CONTINUED WITH JURY SELECTION)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

- 6 (JURY IMPANELED AT APPROXIMATELY 4:10 P.M.)
- 7 THE COURT: Those of you who have been fortunate enough not to be
- 8 called up into the box are now excused. (Jurors leave the courtroom)
 - Ladies and gentlemen of the jury, you have been selected and you have been impaneled to serve as jurors in the case of the State versus John Herbert Pritchard. At this time I want to explain to you a little bit about the manner in which we will proceed as we attempt together to find the truth in this case. First of all the attorneys will have an opportunity to make opening statements. The purpose of an opening statement, which we will do tomorrow morning, is narrow and limited. It is an outline of what the attorney believes the competent and admissible evidence will be. An opening statement is not evidence. It must not be considered by you as evidence. The evidence will come in the form of testimony, witnesses in that chair right there, admissions of the parties if any, stipulations of counsel, if any, and any physical exhibits that may be offered by the parties. After the opening statements evidence will be presented. Witnesses will be placed under oath and they will be questioned by lawyers. It may be that there are documents and other tangible exhibits that can be offered, received as evidence. If evidence for such an exhibit is offered, you will have a chance to look at it, examine it carefully and individually without comment. It is the right of lawyers to object when testimony or other evidence is offered that the lawyer believes is not admissible. When the Court sustains an objection to a question you must disregard the question and the answer if one has been given, and draw no

1 inference from the question, or the answer or speculate as to what the witness would have

2 said if permitted to answer. When the Court overrules an objection to any evidence you

3 must not give such evidence any more weight than if the objection had not been made. Now

4 if the Court grants a motion to strike all or part of the answer of a witness to a question, you

5 will have to disregard it and not consider the evidence that has been stricken.

During the course of the trial it may be that questions of law will arise and need to be considered by the Court out of the presence of the jury. When this happens I may ask you to go to the jury room for a few minutes and if that happens you are not to worry or speculate about what takes place during your absence. We will be merely considering questions of law that have to be heard out of the presence of the jury.

All of the competent evidence in this case will come in the form or evidence and it is present while you are in the courtroom. When the evidence is completed, the lawyers will make their final statements or arguments. Final arguments of the attorneys are not evidence either, but are given to assist you in evaluating the evidence. And finally just before you retire to consider your verdict I will give you further instructions on the law that applies in this case. At that time I will explain to you the law that arises from the evidence, then you will be taken to the jury room to deliberate on your verdict.

I want to reiterate some of the rules we have already talked about. First, you are not to talk among yourselves about the case until you are in the jury room and deliberating. Second, you cannot talk about this case with anyone else or allow anyone to talk to you about the case or say anything about the case in your presence. If anyone communicates or attempts to communicate with you, or in your presence about the case, you need to notify me of that fact immediately. Third, while you sit as a juror in this case, you are not to form an opinion about the guilt or innocence of the Defendant. Nor, are you to express to anyone any opinion about the case until I tell you to begin your deliberations. Four, you must not

- 1 talk or communicate in any way with any of the parties in this case, or lawyers, or any of the
- witnesses. This rule applies both in here as well as outside the courtroom. And it prohibits
- any type of conversation with these people, whether it is about the evidence in this case,
- 4 about the weather, or just to pass the time of day, no communication.
- 5 Fifth, you must not read about this case in the newspapers, or listen to radio
- 6 broadcasts or watch television reports about this trial. Such accounts can be inaccurate, or
- 7 they may contain references to matters which are not proper for your consideration. Your
- 8 verdict will be based exclusively on what is brought out in this courtroom.
- 9 Sixth, don't go about the scene or places of the subject matter of this trial or make
- any inquiry or investigation about this matter, certainly you wouldn't do any Google
- searches or anything like that to try to inform yourself. All the evidence you are to base
- 12 your verdict on will come from testimony under oath in this courtroom.
- Now why is it important for you to obey these rules to the letter, unless you do so
- there is no way the state or the Defendant can be assured of absolute fairness and
- impartiality. It is your duty both while the trial is in progress or while it is in recess, or
- while you are in the jury room to see that you remain a fair and impartial trier of the facts. If
- 17 you violate these rules, you violate an order of the court and this is contempt of court and
- 18 could subject you to punishment as provided by law.
- I need to tell you, as you have probably already seen that this trial will probably be
- different from what you might expect, many people don't have the opportunity to attend real
- 21 court. They may think that television, and that every trial is full of high drama and intense
- action. There may be high drama and intense action during this trial, and the purpose of this
- trial is not to entertain, the purpose of this trial is to search for the truth in an effort to make
- sure that justice is done between the parties in this case. Search for the truth and making

- sure that justice is done is always slow, deliberate, and repetitive, which is opposite of what you see on television.
- The courtroom is a place that is dedicated to the protection and preservation of all of our rights, the lawyers in this case are advocates for the parties they represent. But first and foremost they are officers of the court, sworn to uphold the integrity and fairness of our judicial system and to help you in your search for the truth in this case.

You expect them to be professional, competent, and ethical in their representation of their clients interest, remember that you too have taken an oath to reach a fair and just verdict in this case, and you should also be professional and reasonable and ethical in all respects as to your service as jurors.

Just a couple bits of information for you. You see me up here using a computer. I want to explain to you the function of the computer you see here on the bench, your taxpayers have paid for this computer, and you are entitled to know what I am up here doing. It allows me access to a law library, as the trial proceeds I can see that certain issues are coming up and I will need to be prepared to make some decision. I can use the computer to look up the law, and I don't have to go back to the law library to do that. If I see that a certain instruction on the law will be needed for the jury charge at the end of the case I can research, compose a particular instruction and include it in the instructions that I will give you. I can receive messages having to do with the court system on this computer too. And I tell you this because I don't want you to think I am up here playing video games. It is just simply part of the job of being a judge in this electronic age.

You will see that during this process, and even right now, I am referring to written materials. These materials have been approved by the courts and they are to make sure that I cover all the topics that are important for you to know. I apologize for not having fully

1	memorized all these notes. Please listen to their content because they are especially
2	important in your duties as jurors in this case.
3	In my discretion I will allow you to take notes during the trial. Mr. Bailiff do you
4	have notepads? In the morning we will distribute note pads to you. I want to caution you
5	when you are taking notes, don't turn off your ears while you are taking notes. You have to
6	stay listening as you are taking down notes. Those who are taking notes, they are not to be
7	considered as evidence in the case. It is not an official transcript of the trial, and so for that
8	reason you must remember that when you go back for deliberations, your notes are not
9	entitled to any greater weight than the individual recollections of the other jurors. If you take
10	notes you are to disclose them only to your fellow jurors. You are not to show them to
11	anyone else. And as I said, even though I am going to allow you to take notes, I want you to
12	still listen to all the evidence very carefully.
13	We will start off in the morning with opening statements, and I will give you
14	instructions about opening statements in the morning. We were going to stop at 5:00 unless
15	some of you object we will stop a little bit early, let you go home and be back here
16	tomorrow morning at 9:30. Counsel approach please. (Counsel approaches bench)
17	All right we will start in the morning then at 9:30 and we will see you then.
18	Everybody remain seated while the jury exits the room.
19	(ALL JURORS LEAVE THE COURTROOM AT APPROXIMATELY 4:30 P.M. ON
20	April 14, 2014)
21	(Alternate juror has a question for the Court)
22	THE COURT: What is your question?
23	ALTERNATE: I am a spare, right?
24	THE COURT: You are the alternate juror. You are going to sit and listen to
25	the evidence and in case one of these people –

- 1 ALTERNATE: I am going to sit right there.
- THE COURT: You are going to sit right there by the window.
- 3 ALTERNATE: I thought maybe I was on call or something, I didn't know.
- 4 THE COURT: No, you be here in the morning just like everybody else.
- 5 ALTERNATE: All right.
- 6 (Alternate leaves the courtroom)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

(THE FOLOWING IS OUT OF THE PRESENCE OF THE JURY)

THE COURT: All right, the jury is out of the room. I have been doing some research on this 404(b) question. And I am asking if either of you gentlemen have had a chance to look – it seems to me, I am going under the name of a case I was looking at. The case called State versus Wilkerson, which is a Court of Appeals case, it shows that it was overruled by the Supreme Court, citation is 148 nc. Ap. 310. It appears to me from this case 2002 case, I think it is good. It appears to me that the prior bad act which was the events surrounding the conviction, not just the conviction, that is Rule 609, the prior bad act. The most important circumstance surrounding that prior bad act for them to be compared to the question here are admissible. To quote that case – somewhere in here the court says – our courts have repeatedly held that in a second degree murder case prior bad acts are admissible to show malice. Most of the cases involve someone who was speeding 70 in a 45, speeding 80 in a 55, and on and on and finally ran into somebody. And it was second degree murder when that happened. And the other previous convictions were allowed. What they point out in that case also is that lawyers often confuse 404(b) with 609, whereas 609 all you can do is present the fact of the conviction. 404 the fact of the conviction is pretty much allowed, it is unnecessary. You can have a prior bad act without a conviction and it is still a 404(b) prior bad act. That is how I am thinking right now, maybe unconventional for the Court to talk about it in these terms, but that is where I am thinking, that seems to be the best case. It

- discusses but I think we would need to have offer of proof or voir dire on what exactly
- 2 happened in the prior case. I am not sure I can actually make a ruling on that without
- 3 hearing sworn testimony about what was involved in that case. Then I would have to make
- 4 a determination of similarity a temporal proximity. I believe temporal proximity within a
- 5 year or something like that I think. But the sufficient similarity would be something we
- 6 would need to investigate a little bit further.
- 7 I will say I am not impressed by the distinction that one of them was a sale for
- 8 money and one of them was a gift, provision of drugs for somebody falls under the same
- 9 statute, sell or deliver. It is like ham and eggs. So the use of the same truck, I am not sure
- about that either, but the other circumstances will be something that the Court would be
- interested in, so that is where we are on that. I guess we can we don't have the witnesses
- here to do a offer of proof or voir dire on that right now do we?
- 13 MR. HOLMES: No sir.
- 14 THE COURT: Anyway that is what I have. Anybody else have anything?
- MR. HOCKADAY: Not at this time sir.
- THE COURT: We will have opening statements then in the morning at 9:30.
- 17 If we need to talk about anything else I can be here a little bit earlier. We will meet in
- chambers at 9:00 if you want to. I will be here at 9:00 then.
- 19 (COURT ADJOURNED AT APPROXIMATELY 5:00 ON MONDAY, APRIL 14,
- 20 2014)
- 21 (COURT RECONVENED AT APPROXIMATELY 9:30 A.M. ON TUESDAY,
- 22 APRIL 15, 2014)
- 23 (ALL PARTIES ARE PRESENT IN THE COURTROO. JURY IS BROUGHT
- 24 INTO THE COURTROOM)

- 1 THE COURT: Good morning ladies and gentlemen. I hope you had a
- 2 restful evening. The next thing that is going to happen is we are going to hear opening
- 3 statements from the attorneys. The opening statement is not to be considered by you as
- 4 evidence in this case. The opening statement is merely a forecast of what the attorneys
- 5 believe that the evidence will show. The evidence will come in the form of testimony under
- oath, exhibits if any, photographs if any, but the opening statements is not evidence. Do all
- of you have your notepads? Do any of you need pens or pencils? Okay, Mr. Holmes.
- 8 (OPENING STATEMENTS BEGAN AT APPROXIMATELY 9:35 A.M. BY MR.
- 9 HOLMES)
- 10 (OPENING STATEMENTS BEGAN AP APPROXIMATELY 9:45 A.M. BY MR.
- 11 HOCKADAY)
- THE COURT: Mr. Holmes, call your first witness.
- MR. HOLMES: Floyd Ayers.
- 14 FLOYD AYERS, being first duly sworn testified as follows during DIRECT
- 15 EXAMINATION BY MR. HOLMES:
- 16 Q. State your name please?
- 17 A. Floyd Ayers.
- 18 Q. How old are you Mr. Ayers?
- 19 A. 27.
- Q. Where do you live?
- 21 A. Pensicola.
- 22 Q. Is that here in Yancey County?
- 23 A. Yes.
- Q. How long have you lived here?
- All my life.

- 1 Q. Did you know Jonathan Russell Whitson?
- 2 A. Yes, he was my first cousin.
- 3 Q. So you have known him your whole life, right?
- 4 A. Yes.
- 5 Q. Can you describe your relationship with him?
- 6 A. He was pretty much like a brother.
- 7 Q. You had a close relationship with him?
- 8 A. Yes.
- 9 Q. Can you tell us a bit about what kind of person Jonathan was?
- 10 A. He was caring, he cared about everybody. He would do anything, I mean, if he
- 11 could help you with anything he would. But I –
- 12 Q. Did you have any contact with Jonathan on Friday, March 4, 2011?
- 13 A. Yes.
- 14 Q. What was that?
- 15 A. He called me and wanted me to come and pick him up after he got out of jail.
- Q. And when he initially called you, you say he wanted you to pick him up. Did he tell
- 17 you anything about what he was doing at the time, or where he was?
- MR. HOCKADAY: Objection.
- THE COURT: Overruled.
- 20 A.He just called and said he just got out of jail, wanted me to come and pick him up. And I
- 21 went and picked him up and I took him to Christine's.
- THE COURT: Took him where?
- A.Christine's.
- 24 Q. By Christine's do you mean –
- 25 A. Christine Angel.

- 1 Q. Do you recall making a statement to law enforcement after Jonathan died?
- 2 A. Yeah.
- 3 Q. And there is would it help to refresh your memory if you were able to see the
- 4 statement?
- 5 A. Yeah.
- 6 MR. HOLMES: May I approach the witness.
- 7 THE COURT: Yes.
- 8 Q. (Approaches witness with document) I ask you the question again. Do you recall
- 9 making a statement to you to the effect about what he was doing.
- MR. HOCKADAY: Objection.
- THE COURT: Overruled.
- 12 A.When he called he said he was walking, needed someone to come and pick him up.
- 13 Q. Now, where did you pick him up?
- 14 A. It was at the Forks of Ivy exit.
- 15 Q. Say that again?
- 16 A. Forks and Ivy exit.
- 17 THE COURT: Move that microphone around there and make sure you are
- speaking into it so we can hear you.
- 19 Q. Forks and Ivy Exit?
- 20 A. Yes sir.
- Q. And where did did he ask you to meet him at a specific place?
- A. At the gas station.
- 23 Q. Did you meet him there?
- 24 A. Yes.
- 25 Q. And can you describe for us which gas station and where that is?

- 1 A. I can't remember the name of it. I think it is there are two gas stations there, one
- 2 on the right and one on the left. The one on the left there, I can't remember the name of it.
- 3 Q. About how far away is that from where you were traveling, coming from that day?
- 4 How long did it take you to get there?
- 5 A. It might have took me, maybe 45 minutes, I guess.
- 6 Q. And when you arrived there, was Jonathan with anybody?
- 7 A. No.
- 8 Q. You indicated that he told you he had just got out of jail?
- 9 A. Yes.
- 10 Q. Do you know about what time that he called you?
- 11 A. It was probably around 9:30 I guess, 10:00 something like around there.
- 12 Q. And what did you do next when you arrived at the gas station?
- 13 A. I just pulled up and he got in the truck and we started back towards Burnsville.
- 14 Q. Did you come immediately to get him after he had called you?
- 15 A. Yes.
- 16 Q. Now, did you go pick up somebody else before you went to go.
- 17 A. I went went to my house and I left and went and got him.
- 18 Q. (Approaches witness) Sir, I am going to bring you this, and I want to direct your
- attention if you will begin reading there. The date on the statement is 3/14/2011 at 7:14 p.m.
- 20 So that last sentence and then if you will keep reading there.
- 21 A. --- stated that he had to at Whitson's that he –
- MR. HOLMES: If you will just read it to yourself then I will ask you about
- 23 it.
- Q. Now is it correct that you were by yourself, or did you have somebody else with
- 25 you?

- 1 A. No, I went home and I picked my uncle up, Stanley Whitson and he just road with
- 2 me over there.
- 3 Q. So you did have somebody else with you?
- 4 A. Yes.
- 5 Q. Now when you arrived at the gas station and Jonathan was by himself, what did he
- 6 do?
- 7 A. He just he come to the truck and got in.
- 8 Q. When you first saw Jonathan, did you notice anything in particular about his physical
- 9 appearance?
- 10 A. When I first saw I mean he looked good I mean he looked I mean to me I
- mean his face and everything looked good.
- 12 Q. Now what, if anything did Jonathan say to you after he got in the truck?
- MR. HOCKADAY: Objection.
- 14 THE COURT: Overruled.
- 15 A.Only thing he told me said, said he had been clean and wasn't nothing, he said he just
- wanted to stay that way.
- 17 Q. What did you do once he got in the truck?
- 18 A. We left the gas station.
- 19 Q. Where did you go?
- 20 A. We went to Christine's.
- Q. Did it take you about the same amount of time to drive to Christine's as it took you
- 22 to get there?
- 23 A. Yeah.
- Q. You said about 45 minutes, is that right?
- About 45 minutes to an hour.

- 1 Q. Do you know about what time you arrived at Christine's?
- 2 A. I can't recall I mean –
- 3 Q. Would what you told law enforcement at the time be the correct time?
- 4 A. Around, I mean it could be close. I didn't really look at the clock on my phone or
- 5 nothing.
- 6 Q. (Approaches witness with document) So do you recall telling law enforcement to –
- 7 some odd years ago what time you dropped him off at Christine's?
- 8 A. Yes.
- 9 Q. What time was that?
- 10 A. 12:45.
- 11 Q. Did you ever see Jonathan again?
- 12 A. I did not.
- 13 Q. When did you find out he had died?
- 14 A. Sunday morning.
- 15 Q. During the time that you were with Jonathan that evening, did you see anyone give
- 16 him morphine?
- 17 A. No sir.
- 18 Q. Have you ever observed the Defendant giving morphine to Jonathan Whitson?
- MR. HOCKADAY: Objection.
- THE COURT: Sustained.
- Q. Is there anything else that we have not covered that you believe is relevant to this
- 22 case?
- 23 A. No.
- MR. HOLMES: No further questions at this time Your Honor.
- THE COURT: Cross.

- 1 CROSS EXAMINATION BY MR. HOCKADAY.
- 2 Q. Mr. Ayers, have you always lived in Yancey County?
- 3 A. Yes sir.
- 4 Q. How old are you sir?
- 5 A. 27.
- 6 Q. So you are a little younger than Jonathan?
- 7 A. Yeah.
- 8 Q. But you had known him for some time and you knew that he was in jail in February
- 9 or March of 2011, is that right? I will need you to speak up.
- 10 A. Yes sir.
- 11 Q. And when he called you, you went and picked him up. He didn't have a vehicle?
- 12 A. No.
- 13 Q. He didn't have a driver's license did he?
- 14 A. No.
- 15 Q. He had lost that based on his prior history, correct?
- 16 A. Yes sir.
- 17 Q. And he was in jail for convictions for driving without a driver's licenses?
- 18 A. Yes.
- 19 Q. And had he been in jail in Madison County for a period of time leading up to the day
- you picked him up?
- 21 A. Yes sir.
- Q. At least a 60 day period of time, right?
- 23 A. Yes.
- Q. And then he had to be transported over to Buncombe, right?
- 25 A I guess so.

- 1 Q. Is it your understanding that is where he was coming had been most recently in jail
- 2 on the evening that you were going to pick him up on March 4?
- 3 A. Yes sir.
- 4 Q. That was Friday night. Do you know what time he was released from jail in
- 5 Buncombe?
- 6 A. No sir, I don't.
- 7 Q. If the records would show that was at 7:30 p.m., would you have any reason to
- 8 disagree with that?
- 9 A. No, I mean he didn't he didn't tell me when he got out.
- 10 Q. So you got a call from him and you immediately went get him, right?
- 11 A. Yeah –
- 12 Q. Went by your house, got your –
- 13 A. -- uncle -
- 14 Q. -- uncle, went on and it was about 45 minutes, right?
- 15 A. Yes.
- 16 Q. What time did you pick him up?
- 17 A. About say about say about 20 after eight or something like that.
- 18 Q. What time? What time did you pick him up?
- 19 A. It was around 10.
- THE COURT: Around what time?
- 21 A. Ten.
- 22 Q. You are saying you got a call at I think you said you got a call about 9:30, right.
- Got there at 10, and you are saying you went straight from there to Christine's, right?
- 24 A. Yes sir.
- 25 Q. Christine would be who in relation to Jonathan?

- 1 A. His step-granny I think.
- 2 Q. Grandmother?
- 3 A. Yeah.
- 4 Q. And does she have other family members that live in close proximity to her house, if
- 5 you know?
- 6 A. No, I don't know I mean I hadn't.
- 7 Q. You are his first cousin, right?
- 8 A. Yes.
- 9 Q. Known him his whole life?
- 10 A. Yeah. I am his first cousin on his dad's side.
- 11 Q. Do you know Nathan Angel?
- 12 A. I know of him, that is it.
- 13 Q. Do you know whether he lived close to Christine?
- 14 A. I don't know.
- 15 Q. Prior to the time you picked up Jonathan, you have no idea do you how he got from
- the Buncombe detention center to the gas station at Forks of Ivy, do you?
- 17 A. He said he walked, that is all I mean that is what he told me. I don't know.
- 18 Q. That is roughly Exit 13, I think is the exit number. Mars Hill is number 11. So it is
- about a mile or two past that, right?
- 20 A. Yeah.
- Q. And would your understanding be that the Buncombe Detention Center is in
- 22 Asheville?
- 23 A. I don't –
- Q. As far as you know it is?
- 25 A. As far as I know.

- 1 Q. And he described to you that he walked there?
- 2 A. Yes.
- 3 Q. You are saying you got him by about 10:00?
- 4 A. Ten or a little bit after, yeah.
- 5 Q. And he didn't give you any indication of any other way that he got there other than
- 6 walking?
- 7 A. That is it.
- 8 Q. And you don't know whether he had contact with other people or not during that
- 9 period of time, based on your testimony about two and a half hours, right?
- 10 A. Yes.
- 11 Q. And you say that when you saw him he looked good, right?
- 12 A. Yes sir.
- 13 Q. I think your statement said he looked healthy and his color was good, right?
- 14 A. Yes.
- 15 Q. You also said he appeared to be clean and sober, right?
- 16 A. Yes.
- 17 Q. He told you, based on what has been presented that he had been clean, right?
- 18 A. Yes sir.
- 19 Q. He also told you he planned to stay clean, right?
- 20 A. Yes sir.
- 21 Q. And that obviously wasn't true, correct?
- A. Correct.
- Q. And unfortunately within a day, or within two days he was dead, right, correct?
- A. Correct.
- 25 Q. And based on your understanding within a day he is using drugs, right?

- 1 A. Yes.
- 2 Q. A serious substantial drug use during that day, correct?
- 3 A. Correct.
- 4 Q. What time did you learn that he died?
- 5 A. It was probably around a little after twelve my mom called and told me.
- 6 Q. Who is your mom?
- 7 A. Anita Ayers.
- 8 Q. All right, now based on what you are telling us, you believe that is an accurate
- 9 recount of how it happened on March 4th, right. When you got the call, you went and got
- 10 him, and then you took him to Christine's, right? Again, I need you to answer out loud.
- 11 A. Yes.
- 12 Q. And you are saying it took about 45 minutes?
- 13 A. Right.
- Q. About the same amount of time it took you to go get him as it would have taken you
- to get him from the gas station back to Christine's?
- 16 A. Yes.
- 17 Q. What area of the county does Christine live in?
- 18 A. Jack's Creek.
- 19 Q. Once you dropped him off you had no contact with him after that time, right?
- 20 A. No sir.
- 21 Q. You are saying you just dropped him off late on the 4th, Friday night?
- A. Right.
- 23 Q. And so you weren't around him at all on the 5th, correct?
- 24 A. No sir.
- 25 Q. You had no interaction with my client on the 5th of March, correct?

- 1 A. Correct.
- 2 Q. No interaction with Jonathan on the 5th of March, right?
- 3 A. Right.
- 4 Q. You would have had no interaction with Stephanie Whitson or any of the other
- 5 people involved on that day, would you?
- 6 A. No.
- 7 Q. So you don't have any knowledge independent of your own self as to what Jonathan
- 8 Whitson did, who he spoke to, who he came in contact with on the 5th of March, is that
- 9 correct?
- 10 A. Correct.
- Q. Or who he may have had contact with even into the night hours of the 5th or early
- morning hours of the 6^{th} , the day he died?
- 13 A. Correct.
- 14 Q. And when you met him he simply got I assume he got in the back of your truck, if
- 15 you already had –
- 16 A. He got in the front, I had a full size truck.
- 17 Q. He got in and rode with you, you talked, he got out and that was the end of it, right?
- 18 A. Yes sir.
- 19 Q. Wouldn't have had any discussion about what he may or may not have had in his
- 20 pockets, or about his person or anything like that, right?
- A. He has told me, he said he didn't have no money. He said no money at all. I was
- 22 going to stop and get him a drink. And he told me no.
- Q. But as far as what he may or may not have had on him, you don't have any idea,
- 24 right?
- 25 A. Right.

- 1 Q. (Approaches witness) You testified you got that call at 9:30, is that right?
- 2 A. Yeah.
- 3 Q. And that is the call you got which led you to go get him, right?
- 4 A. Yes sir.
- 5 Q. And you do recall making a statement, I think to Deputy Higgins, the gentleman over
- 6 there with the Sheriff's Department. Do you remember making a statement you have
- 7 already been asked about, this two page document, right?
- 8 A. Yeah.
- 9 Q. Did you sign it? Isn't that your signature on the bottom left corner of it with the date
- 10 of March 14 at 7:14 p.m.
- 11 A. Yes sir.
- 12 Q. So if Mr. Whitson died on March 6, you would have made this statement I guess
- about 8 days later?
- 14 A. Yes sir.
- 15 Q. So within a week really, and that would be when things were very fresh on your
- mind, you would have recalled the events and details of what happened really clearly at that
- time, right? Let me ask you if you will read to yourself the first paragraph of your
- statement. Have you had enough time to look at it?
- 19 A. Yes.
- 20 Q. Sir, is it true that there were actually two calls made?
- 21 A. Sir?
- Q. Isn't it true that there were actually two phone calls made to you?
- 23 A. Yes.
- Q. So it is not true that he called you at 9:30 and you went and got him at 10. That is
- 25 not true?

- 1 A. He the first time he called I didn't have no cell phone service. Then I called and
- 2 moved a little bit and got cell phone service and he called me back.
- 3 Q. What time is it you say you got the first call?
- 4 A. It seems like around 9 or something.
- 5 Q. When do you say now that you got the second call?
- 6 A. It was five or ten minutes later.
- 7 Q. (Approaches witness) You have had a chance to reread this and I will ask you to
- 8 look specifically at your statement. Line 4 states that on 3/4/11 at 21:42, which I guess
- 9 would be 9:42 at night, you got a phone call, right?
- 10 A. Yes.
- 11 Q. Didn't have enough cell phone service for a conversation, right?
- 12 A. Yes.
- 13 Q. This is the first time you have mentioned that phone call, but you are saying you got
- one, now you are saying you did get a prior one, right?
- 15 A. Yeah.
- Q. And then you say he called Ayers says Whitson called again at 23:07, that would
- be 11:07 at night, right.
- 18 A. Yes.
- 19 Q. So you told Ryan Higgins it was after 11:00 when he called you, right, the second
- time, eight days later? True?
- 21 A. True.
- 22 Q. So it wasn't five or ten more minutes, was it?
- 23 A. No.

- 1 Q. When you said it was just moved a little bit in the house or where you were and got a
- 2 call five minutes later, that is totally not true is it, based on what you told Mr. Higgins?
- 3 Correct?
- 4 A. Correct.
- 5 Q. So actually when you really got the call from Jonathan, it was really after 11:00
- 6 wasn't it? Call where you talked to him?
- 7 A. Yes.
- 8 Q. So what you said before isn't accurate at all, is it? True?
- 9 A. True.
- 10 Q. So when you went to get him, when you said you went and got him at 10, that isn't
- 11 true either, is it?
- 12 A. Not the same as on the paper, no.
- Q. If he called you at 11:00 you couldn't have gotten to him until 12:00 probably, could
- 14 you? Picked up picked up Stanley. What time did you really pick him up?
- 15 A. It was after 12:00, it was probably fifteen or twenty minutes after twelve or twelve
- 16 thirty, I mean –
- 17 Q. So that is what you remember now?
- 18 A. Yeah that is what I mean I.
- 19 Q. So from your initial testimony to your statement, there is another two hours of time
- at least to when you say you picked him up to now when you say you picked him up, right?
- 21 A. Yes sir.
- Q. So in another two hours Jonathan would have been out of jail from 7:30 before you
- even got to him right?
- 24 A. Yes sir.

- 1 Q. And when you got to him, he was sitting at the gas station. When you say the one on
- 2 the left coming from Burnsville, when you say the one on the left?
- 3 A. Yes sir.
- 4 Q. So you get off and go under 26, and it would be that one?
- 5 A. Yes sir.
- 6 Q. He was just standing outside?
- 7 A. Yeah, he was standing outside of the store.
- 8 Q. You don't remember a lot about that night do you, based on your testimony about the
- 9 time you picked him up?
- 10 A. I didn't really I mean that night I mean I didn't just sit and look at the times.
- 11 Q. Well you knew you were going to testify today right?
- 12 A. Yes.
- 13 Q. You have known for a long time you were going to come in here and testify in this
- 14 case, right?
- 15 A. Yes.
- 16 Q. And you gave a statement, true?
- 17 A. True.
- 18 Q. The one true thing that once you dropped him off at Christine's you didn't have
- anything to do with him after that, correct?
- A. Correct.
- 21 Q. Since Jonathan lied to you about the fact that he said he was going to stay clean and
- sober, we have established that –
- MR. HOLMES: Objection, that is a mischaracterization.
- 24 THE COURT: Overruled.
- 25 Q. He told you he was going to stay sober, right?

- 1 A. Yes.
- 2 Q. Obviously that wasn't correct, right?
- 3 A. Right.
- 4 Q. So you would have reason to disbelieve that statement, right?
- 5 A. Yes.
- 6 Q. You had no reason to know do you, when he told you he had walked from
- 7 Buncombe County detention center to the Forks of Ivy gas station. There is no way of
- 8 knowing if that is true or not, is there?
- 9 A. No.
- 10 Q. And you don't know of your own knowledge whether one can even walk from
- downtown Asheville to Exit 13 in two and a half hours, or four and a half hours, do you?
- 12 A. No.
- 13 Q. A number of miles, is it not?
- 14 A. Yes.
- 15 Q. At least fifteen miles, isn't it?
- 16 A. Yes.
- MR. HOCKADAY: Those are my questions.
- THE COURT: Redirect.
- 19 REDIRECT EXAMINATION BY MR. HOLMES:
- 20 Q. Mr. Ayers, I want to kind of start from the beginning. This statement you made
- 21 indicates, has on it it was made March 14, 2011. Does that sound right?
- 22 A. Yes.
- Q. Within days of Jonathan's death?
- A. Right.

- 1 Q. Now his death occurred on March 4, 2011. So is it correct to say it has been over
- 2 three years since that time?
- 3 A. Yes.
- 4 Q. Have you seen your statement since you made it over three years ago?
- 5 A. No sir.
- 6 Q. And the times that you gave the officer over three years ago, would those have been
- 7 the correct times to the best of your knowledge then?
- 8 A. To the best of my knowledge then, yes.
- 9 Q. Now have you had trouble remembering precise detail what occurred, or what you
- told law enforcement over three years ago?
- 11 A. Yes.
- 12 Q. The cell phone call that you first received that you said occurred around 9:42 p.m.
- did you even have a conversation with him on that call?
- 14 A. No, not on the first call I didn't.
- 15 Q. So did you just receive a signal and then –
- 16 A. It just showed I was having a problem getting a phone call and not no to talk.
- 17 Q. Okay. And then he called back?
- 18 A. Yes.
- 19 Q. And as you stated, it took about 45 minutes for you to get there?
- 20 A. Yes.
- Q. And it took about 45 minutes for you to get back, is that right?
- 22 A. Yes.
- Q. So, you are saying that at the time that you received the second phone call was 11:07
- 24 p.m. If it took you 45 minutes for you to get there, you would have been there just before
- 25 midnight, is that right?

- 1 A. Yes.
- Q. And your testimony was that you dropped Jonathan off at Christine's at about 12:45,
- 3 is that right?
- 4 A. Yes.
- 5 Q. Because it took about 45 minutes to get back?
- 6 A. Yes.
- 7 Q. Now you don't know where the Buncombe County Detention Center is?
- 8 A. No sir.
- 9 Q. You don't have any idea how long it takes a person to walk from there to where
- 10 Jonathan was, is that right?
- 11 A. No.
- 12 Q. And with regard to Jonathan's statement to you that he had been clean the whole
- time he had been in jail and that he planned to stay sober, you don't have any idea what was
- 14 going on in Jonathan's mind at the time, correct?
- 15 A. Correct.
- 16 Q. You don't know if he actually planned to stay sober, correct?
- 17 A. Correct.
- Q. Or if he had no intention to stay sober, and was just saying that, correct?
- 19 A. Correct.
- Q. All you know is that he told you he had been clean the whole time, and he planned to
- 21 stay sober?
- 22 A. Correct.
- Q. Now I asked you if you had seen anybody give Jonathan any controlled substances,
- 24 and you said no. Let me ask it a different way. Did you observe him with any controlled
- substances at all?

- 1 A. No sir.
- 2 Q. And in fact he told you that he didn't have any money?
- 3 A. Yes sir.
- 4 Q. Did he appear to be carrying anything with him?
- 5 A. No.
- 6 Q. So he had just the clothes on his back?
- 7 A. Yes.
- 8 Q. And did he make any mention to you that he had talked with or interacted with
- 9 anybody else prior to you picking him up?
- 10 A. No sir.
- 11 MR. HOLMES: No further questions, Your Honor.
- 12 RE CROSS EXAMINATION BY MR. HOCKADAY:
- 13 Q. You don't know whether he had anything in his pockets or not, and then you don't
- know what he would have, right?
- 15 A. Right.
- 16 Q. And after Mr. Holmes has examined you and after I have cross examined you. Do
- 17 you now remember a little different story as far as the times than you did when you first got
- 18 up there, correct?
- 19 A. Correct.
- Q. And when you took an oath to testify, you took an oath to tell the truth, right?
- 21 A. Yes.
- Q. Initially you say that those times were vastly different than the times you gave Mr.
- 23 Higgins, right?
- 24 A. Yeah, it has been over three years.
- Q. When you picked Jonathan up, do you remember what he was wearing?

- 1 A. He was wearing a pair of blue jeans and a blue jean jacket, and I don't know what
- 2 kind of shirt it was, a tee shirt.
- 3 Q. Did he have a jacket on?
- 4 A. Yeah, he had the jacket on.
- 5 Q. And the statement that said he had been clean, that is what he told you, you made no
- 6 independent investigation about that yourself did you?
- 7 A. No.
- 8 Q. You don't know whether or not that was a true statement?
- 9 A. I mean I just –
- 10 Q. That is what he said?
- 11 A. Yeah.
- 12 Q. You don't know the reason why he had no money?
- 13 A. The only reason I thought he didn't have no money because, you know, he just got
- 14 out of jail.
- 15 Q. But he didn't tell you why?
- 16 A. No.
- 17 Q. You don't know if he had some money and then spent some money, prior to you
- 18 getting there?
- 19 A. No
- 20 Q. So he had been at a store, right?
- 21 A. The store was closed.
- Q. He had been there for some time. He started call you at 9:42, right?
- A. Yeah.
- Q. Or possibly you don't know how long he was there, do you?
- 25 A, No.

- 1 Q. You don't know where he was when he called you at 9:42?
- 2 A. He just told me to meet him at that store.
- 3 Q. You don't know where he was when he called you again at 11:07, do you, or who he
- 4 may have been with?
- 5 A. No, I don't.
- 6 MR. HOCKADAY: Thank you sir, those would be my questions.
- 7 MR. HOLMES: Nothing further Your Honor.
- 8 THE COURT: Members of the Jury, at this time we are going to take our
- 9 morning break. Let me remind you that it is your duty not to talk among yourselves about
- this case. Keep an open mind, don't form any opinions about the case. I want you to leave
- 11 your notebook right there in the chair where you are at. Go to the jury room and we will tell
- 12 you when to come back in. If anyone attempts to communicate with you in any way or talk
- to you about this case, you need to let the bailiff or let me know about that. Everybody
- remain seated while the jury exits.
- 15 (ALL JURORS LEAVE THE COURTROOM)
- THE COURT: We will be at ease for fifteen minutes.
- 17 (COURT RECESSED FOR THE MORNING BREAK AT APPROXIMATELY 10:35
- 18 A.M.)
- 19 (COURT RECONVENED AT 10:45 A.M.)
- 20 (ALL PARTIES ARE PRESENT IN THE COURTROOM, JURY IS NOT)
- 21 THE COURT: The jurors complain about the lack of privacy in the jury
- room with the bathroom facilities. They are getting to know each other pretty well in there.
- I am going to tell them if somebody has a particularly embarrassing experience they don't
- 24 want to share with the other jurors, they can go to my chambers. It is right there close to the
- jury room. Is that okay with everybody? Mr. Holmes?

1 MR. HOLMES: YES SIR. 2 THE COURT: Mr. Hockaday? MR. HOCKADAY: YES SIR. 3 4 THE COURT: The other option would be for them to go out into the 5 hallway, but those are more public restrooms. I think part of what we need to do is to 6 minimize contact between jurors and other people involved in this case as much as we can. 7 We can't control what they do when they leave here at 5:00, but we can control the 8 bathroom. I have also instructed the bailiff to see if the person in charge of these facilities 9 can't make these bathrooms a little bit more private. I understand there is a vent in the door 10 and the fan does not work in the bathroom and never has, there is no point for the vent. I 11 don't know how far we will get with that this week or ever. Until then we will let them have 12 my chambers if needed. Is everybody okay with that? 13 Bring them in please. 14 (ALL JURORS ENTER THE COURTROOM) 15 THE COURT: Members of the Jury, I have not been back to the jury room, 16 but it has come to my attention that the facilities in there, the bathroom facilities may not be 17 the most private facilities in the world. But you are getting to know each other pretty well 18 by now, that is unfortunate. What I am going to do is I am going to encourage you that 19 when you go into the jury room for breaks, or jury deliberations to use those facilities 20 anyway. If you have something that is particularly embarrassing that you need to express, I 21 am going to let you use the bathroom facilities in my chambers, which is right down the hall. 22 I have reported this to the bailiff, hopefully we can get some action on the part of the county 23 to make these facilities a little more accommodating to people who are sensitive to that kind 24 of thing. I am not sure we can accomplish that by the end of this trial. I don't want you to 25 go downstairs, I don't want you to go in the hallway during breaks. I want to make sure

- 1 those badges that you are wearing are visible. If you have a badge that is covered up by a
- 2 piece of clothing or anything, you need to move it to where it can be seen so that everybody
- 3 knows that you are a juror, and everybody knows that you are not to be talked to. It is very
- 4 important in order for us to have a fair trial. Any questions from the jury? (No questions)
- 5 Next witness Mr. Holmes.
- 6 MR. HOLMES: Christine Angel.
- 7 CHRISTINE ANGEL, being first duly sworn testified as follows during DIRECT
- 8 EXAMINATION BY MR. HOLMES:
- 9 Q. Will you state your name please?
- 10 A. I am Christine Angel.
- 11 Q. Where do you live Ms. Angel?
- 12 A. 410 --- Branch Road on Jack's Creek.
- 13 Q. That is here in Yancey County?
- 14 A. Yes sir.
- 15 Q. How long have you lived there?
- 16 A. About 40 years.
- 17 Q. So you were living there on March 4, 5, and 6, 2011?
- 18 A. Yes sir.
- 19 Q. And did you know Jonathan Russell Whitson?
- 20 A. Yes.
- 21 Q. How did you know him?
- A. He was my grandson. He was my step-grandson but he was the world to me.
- 23 Q. How long had you known him?
- A. Ever since he was 18 months old.
- 25 Q. How well did you know him?

- 1 A. I knowed him pretty good.
- 2 Q. Can you tell us about him a little bit?
- 3 A. He was loving, he was caring.
- 4 Q. Did Jonathan come to your house on March 5th, Saturday March 5th, 2011?
- 5 A. Yes, when he got out of jail.
- 6 Q. And about what time did he arrive at your house?
- 7 A. I had phenomena and I was pretty sick. I was running a fever but the best I can
- 8 remember it was around 1:00. I was laying on the couch asleep and he woke me up beating
- 9 on the door.
- 10 Q You said 1:00 in the a.m. or p.m.?
- 11 A. In the morning.
- 12 Q. Did you have any contact with him prior to arriving at your house that morning?
- 13 A. No sir.
- Q. Did you have any knowledge, any prior knowledge that he was going to be coming
- to your house?
- 16 A. No, I didn't even know he was out of jail.
- 17 Q. You say you know that he was coming from jail that he had been released?
- 18 A. Yes.
- 19 Q. And do you know how long he had been in jail?
- 20 A. I am guessing, probably two or three months.
- Q. Who all was at your house when Jonathan arrived that morning?
- 22 A. Me, my husband, and James my son and Christian and David.
- Q. What did Jonathan do when he arrived at your house?
- A. He was beating on the door and I opened the door cause I didn't know who it was, it
- scared me. And I opened the door and I said, 'what are you doing?'. He said, "I want in".

- 1 He said, "I am tired". I said, "when did you get out?" He said, "Awhile ago". And I said,
- 2 "How did you get here?" He said, "My cousin came and picked me up". I said, "Get in here
- and go to bed". He said, "I'm hungry". And I said, "Well go in there and hunt you
- 4 something to eat". And I said, "Go to bed cause I'm sick". He said, "No I'm going to stay
- 5 here in this recliner and aggravate you all night". I said, "No you are not". He sat there and
- 6 he talked. I would get about asleep you know, and he would start something else. I would
- say, "John honey please hush and go to bed. Go in there and get in my bed and go to sleep".
- 8 "No, I'm going to sit right here in this chair". And he told me that he called his mamma and
- 9 she wouldn't come and get him.
- MR. HOCKADAY: Objection to what he said.
- 11 THE COURT: Overruled.
- 12 A.And he just sit there and finally went and got him something to eat. And he told me that
- he was he said, granny, he said I'm clean and I'm not never going to do no more drugs –
- MR. HOCKADAY: Objection.
- 15 A.And I said --
- THE COURT: Hold on a minute, there is an objection.
- 17 A.I'm sorry.
- 18 THE COURT: You got to stop.
- MR. HOCKADAY: Would like to be heard outside the jury.
- THE COURT: All right, members of the jury, we are going to ask you to go
- 21 to the jury room for a minute and we will bring you back as soon as we can. You recall
- 22 there are times when we have to talk about things, just the lawyers and the judge, this is one
- 23 of those times.
- 24 (ALL JURORS LEAVE THE COURTROOM at 11:05 a.m.)
- 25 (THE FOLLOWING IS OUT FO THE PRESENCE OF THE JURY)

THE COURT: The jurors are out of the room. I will hear you Mr.

- 2 Hockaday.
- 3 MR. HOCKADAY: Your Honor we went through a number of pretrial
- 4 motions yesterday. One included any statements Ms. Angel had given any of the law
- 5 enforcement or Mr. Holmes. We had a discussion about what the state was contending from
- 6 this issue and could not make nor allow that she could state that he said he loved her three
- 7 times as he was going back and forth to go to bed on the night of the 5th. There has been no
- 8 disclosure at any point of any other statement. I recall the Court instructing that these
- 9 witnesses would not be coming in and making other statements made by the deceased or any
- provided. We certainly had no knowledge that this particular witness was going to give any
- statement about his condition, whether he was sober or not. It has never been provided, and
- we object it may lead to get in other statements you have ruled. And we would certainly
- oppose this witness being allowed to testify to that, particularly the fact that my client had
- 14 no notice of it. We argued about it yesterday for a number of hours, knowing this witness
- would testify.
- THE COURT: All right, Mr. Holmes.
- MR. HOLMES: Your Honor, Ms. Angel has not made a statement per se at
- any point. What we have in discovery are some notes that are unsigned and would appear to
- be officer notes made at the time that he spoke with Ms. Angel. They are very brief, one,
- 20 two, three, four pages in total on a small binder, hand held notepad. And while the
- 21 Defendant has not been aware that she was going to testify to this, this is the first we are
- hearing of it as well. That is not a reason to exclude it. If it falls within the hearsay
- exception sounds like it was essentially what he had repeated to the cousin that he was sober
- and was going to stay sober. So essentially we have already heard the same testimony.
- 25 And I would add that the case is over three years old and the defendant was free to speak

1 with Ms. Angel at any point in time during those three years had he done so, it is entirely 2 possible that he could have elicited that testimony, or elicited that information from her. I 3 spoke with her, that is what I did, but it was not a very lengthy conversation, so he could 4 have done the same thing. 5 THE COURT: Well, I think the cross examination by Mr. Hockaday was 6 constructive on this subject. He was clean and he planned on staying that way. He 7 obviously didn't follow through with his plan, maybe he was lying about whether he was 8 clean or whether he was planning to stay. I am not sure how compelling the evidence is 9 anyway what he said about being clean at the time, I am not sure how relevant it is. He 10 talked to his grandmother, what is the relevance Mr. Holmes? 11 MR. HOLMES: Our argument would be this is essentially the nightmare 12 scenario where you have someone who has a drug addiction and wants to stay clean, has 13 gone through a period of forced sobriety and does have some intention of staying clean and 14 is going back into society. And then made available to someone who is dealing drugs and 15 caves and falls and does something that but for the Defendant's action wouldn't have done 16 had he not had that opportunity. 17 THE COURT: How does that relate to the elements of the crimes charged? 18 MR. HOLMES: Well if the State is able to get into evidence any of the prior 19 bad acts that have been discussed, whether his prior conviction, or the other prior bad acts 20 evidence that Mr. Whitson did testify to, then I would argue it goes to the issue of malice 21 because the Defendant knew he had a drug addiction. He knew he had a problem, didn't 22 care and was dealing anyway. And the fact that he had some intention to stay clean and be 23 sober. 24 THE COURT: There is no evidence here that the Defendant knew that he

25

was trying to.

1	MR. HOLMES: Not yet, but hope springs eternal that it will be in evidence
2	at some point.
3	THE COURT: I am going to sustain the objection at this time. If it becomes
4	relevant to the elements of the crime at a later time then we can put her back on the stand. I
5	don't find that it is relevant. 403 it is likely to confuse the jurors as to what the issues are
6	and what the elements of the crime are. As far as proving malice, let's just say there is no
7	foundation for that right now.
8	MR. HOLMES: I guess just for the record I would argue that the exact same
9	hearsay exception that applied in the cousin's case would apply here, which would be an
10	existing mental condition. 803.3, then existing mental or emotional or physical condition,
11	because that is essentially what it is, he is making a statement as to his physical condition
12	and his intent.
13	THE COURT: Still it may be a hearsay exception, but it is not relevant.
14	There is no foundation for the relevancy that it should come in at this point. It seems also
15	that it would confuse the jury as to what the issue here is.
16	MR. HOLMES: It would tend to refute the Defendant's assertion so far that
17	he was able to obtain morphine from someone in between the time that he is released from
18	jail and the time that he made it to his grandmother's house. They have a great way of
19	trying to poke holes in how much time he was by himself, how long it took before someone
20	arrived there, and he could have had some in his pocket, and he could have gotten them from
21	somebody else. And the fact is the evidence is that he stated that to two different people that
22	he is clean and sober and intends to stay that way, which directly refutes that assertion.
23	THE COURT: There is also the issue of notice.
24	MR. HOLMES: There is nothing I can do about that. I wasn't aware of it, it
25	is what it is.

1	MR. HOCKADAY: That is obviously one of our biggest issues with it is the
2	lack of notice and it is their witness, and this case is three years old. There was an
3	instruction from the Court yesterday that we weren't talking about statements of the
4	deceased except specifically those ones that you okayed. And here we are about something
5	else.
6	MR. HOLMES: And again the – they were free for three years to seek.
7	MR. HOCKADAY: The issues is obviously whether I am poking holes in
8	something. I think that is my job and I have not put out any names of who the drugs are,
9	they have got to prove it is him. The issue is, they are in control of their witness. You have
10	instructed them not to reference any statements except for those that didn't have a day on
11	them. Your Honor spent a lot of time researching. Here we are right out of the gate and we
12	have something else.
13	THE COURT: I will exclude it for right now. Ma'am, do you understand
14	what testimony you are not allowed at this point in time? Don't want you to say anything
15	that would violate a ruling of the court. The statement that Jonathan made that he was clean
16	and that he planned on staying clean is hearsay, that and other pieces the Court is going to
17	prohibit that from being stated in front of the jury. Do you have any questions about that?
18	Do you understand what I am asking you not to say?
19	A. What about, he told me that he loved me.
20	THE COURT: That will be okay. I suppose.
21	MR. HOCKADAY: I believe you ruled that she can say that, yes sir.
22	MR. HOLMES: Did Your Honor rule on that. That is not my understanding
23	his recollection differs from mine.
24	THE COURT: It is allowed. Okay. Bring them back in.
25	(ALL JURORS ENTER THE COURTROOM AT APPROXIMATELY 11:15 A.M.)

- 1 THE COURT: Continue with your questions Mr. Holmes.
- 2 (CONTINUED WITH DIRECT EXAMINATION OF MS. ANGEL)
- 3 Q. Ms. Angel, you were telling us that you were having a conversation with Nathan
- 4 after he came to your house that night.
- 5 A. Who?
- 6 Q. You were telling us that you were having a conversation with Jonathan, I'm sorry.
- 7 A. Okay.
- 8 Q. After he came to your house that evening.
- 9 A. Yes.
- 10 Q. After you had had a conversation with him what happened, did you go to bed, did he
- 11 go to bed?
- 12 A. I laid back down on the couch, and he stretched out in the chair. I said, 'pull that
- heavy coat off and pull you shoes off and go to sleep'.
- 14 Q. And did he?
- 15 A. Yes.
- Q. Do you know what time he woke up on Saturday, March 5th, approximately?
- 17 A. I am guessing, it has been three years. I don't have that good a mind no way.
- MR. HOCKADAY: Objection.
- 19 THE COURT: Objection sustained. If you don't know don't say.
- 20 Q. To the best of your recollection can you tell us?
- 21 A. It was approximately about 9:00.
- Q. What time?
- 23 A. About 9:00
- MR. HOCKADAY: Objection she said she didn't know.
- MR. HOLMES: The question is, to the beset of her recollection.

- 1 THE COURT: Objection sustained. Ask another question another way.
- 2 Q. When was the next time you saw Jonathan after he went to sleep?
- 3 A. Well I was if he would wake up and talk to me. I don't know what time it was.
- 4 Q. Was it in the morning?
- 5 A. I would say so.
- 6 Q. Were you present at the house that Saturday, all day?
- 7 A. Yes.
- 8 Q. And can you tell us what happened after he woke up that morning?
- 9 A. I cooked breakfast and everybody eat. I went ahead and cleaned the house and
- everybody went outside. Him and Nathan went outside.
- 11 Q. Did Jonathan stay there at the house the remainder of the morning?
- 12 A. Yes, as far as I know, I was busy.
- Q. Did you see him leave --- did Jonathan leave the house at some point?
- 14 A. Yes, Stephanie come and they left.
- 15 Q. About what time do you recall Stephanie Whitson coming to the house?
- 16 A. I would say probably about 10:00, nine or ten.
- 17 Q. Do you remember that for sure?
- 18 A. I can't say for sure.
- 19 Q. If you told law enforcement something different. let me ask you this. Did you
- speak to law enforcement about what happened on that day?
- 21 A. Yes.
- 22 Q. If you told them something different, would that be the correct statement?
- 23 A. Yes, because it has been three years.
- MR. HOLMES: May I approach the witness?
- THE COURT: I want to see what you show her.

- 1 MR. HOLMES: (Approaches with document) May I approach the witness?
- THE COURT: Yes.
- 3 Q. (Approaches witness with document shows to witness)
- 4 THE COURT: Make your questions audible please Mr. Holmes.
- 5 Q. I just asked her to read, if you will just read it to herself, is what I said. I'm sorry, if
- 6 you will okay. So ma'am, the statement that we have that you just read indicates that
- 7 Stephanie came at what time?
- 8 A. 4:30.
- 9 Q. Is it 14:30?
- 10 A. Yes.
- 11 Q. And that being military time would be 2:30, is that correct?
- 12 A. Yes.
- 13 Q. Now does that does that sound to the best of your recollection?
- 14 A., Yes.
- 15 Q. And when she came, what happened after she arrived?
- 16 A. They sat on the I have got a love seat there at the house in the living room and they
- sat back there. I could hear them talking, I went on to the kitchen that is at the far end.
- 18 Q. Did you see John Pritchard that day?
- 19 A. No. I wouldn't have known him if he had walked in my house.
- Q. Did you see Jonathan leave at any point in time with anyone other than Stephanie?
- 21 A. No.
- Q. When Jonathan and Stephanie left, can you say about how long they were gone?
- A. Probably an hour.
- Q. Is that approximate?
- 25 A. Approximately an hour.

- 1 Q. So they came back to the house after an hour?
- 2 A. Yes.
- 3 Q. Did they stay there the rest of the day?
- 4 A. They came in the house and well they sat in the car for awhile. I asked Jonathan
- 5 what was going on. He said –
- 6 MR. HOCKADAY: Objection.
- 7 THE COURT: Sustained.
- 8 Q. After they had left and returned again, did they ever meet again?
- 9 A. Yes.
- 10 Q. Who left and when?
- 11 A. Her and Jonathan left.
- 12 Q. When did they return, or did they return?
- 13 A. Later, yes.
- Q. So am I understanding you to say that they left the house more than once and came
- 15 back?
- 16 A. Yes.
- 17 Q. When they came back again, what happened?
- 18 A. She left.
- 19 Q. Do you know about what time she left? Do you recall telling well answer aloud,
- you are shaking your head.
- 21 A. Probably around ten or eleven, somewhere around there.
- THE COURT: A.M. or P.M.
- A. In the evening.
- Q. And you told law enforcement a slightly different time at that time, correct?
- 25 A. Yes.

- 1 Q. And after Stephanie had left, what happened then?
- 2 A. They was all outside.
- 3 Q. This is after Stephanie left?
- 4 A. Yes.
- 5 Q. You say they, who?
- 6 A. Well, Jonathan and Nathan, I think the boys was out there playing, and that is all I
- 7 seen.
- 8 Q. Do you know about when Jonathan went to bed?
- 9 A. That night about nine.
- 10 Q. Well, so you saying that Stephanie left around nine?
- 11 A. That morning the evening.
- 12 Q. You said Stephanie left around nine p.m. is that correct?
- 13 A. Yeah, well he went to bed right after she left, cause he come in there. I was in the
- bed he said good night, I love you. And I went on to bed. I was in the backroom, and I told
- 15 him to go to bed.
- 16 Q. Did you observe him go to bed?
- 17 A. No.
- 18 Q. Your recollection is that after Stephanie left he went to bed.
- 19 A. Yeah, he explained to me what was going on.
- 20 Q. Do you recall him going to the bathroom?
- 21 A. Yes.
- Q. Did he do that more than once?
- 23 A. Yes, he went to the bathroom three times, poked his head around the door and said,
- 'Granny I love you'. And he hadn't never done that before.
- 25 Q. Do you recall what time you woke up on Sunday, March 6?

- 1 A. I woke up pretty early. I was probably six or seven o'clock and he was snoring.
- Q. Who was?
- 3 A. Jonathan.
- 4 Q. You said he was snoring?
- 5 A. Yes.
- 6 Q. Where was he?
- 7 A. He was in the living room. I have got a hole in the wall and it has got a fan in it and
- 8 you can hear what is going on in the living room.
- 9 Q. Where in the living room was he?
- 10 A. He was on the couch.
- 11 Q. Did you actually see him, or did you just hear him?
- 12 A. I just heard him.
- 13 Q. After you got up, did you observe him on the couch?
- 14 A. Yes.
- 15 Q. Did you notice anything about him?
- 16 A. Yeah, he was asleep.
- 17 Q. Could you still hear him snoring?
- 18 A. Yes.
- 19 Q What did you do after you woke up that morning?
- 20 A. I got ready and me and my husband went to the store.
- Q. What did you do there?
- A. Bought groceries.
- 23 Q. And did you know about what time you returned from the store?
- A. Probably ten, cause it takes a long time to go to the store, probably ten, something
- around there.,

- 1 Q. And did you see Jonathan when you returned?
- 2 A. Yes.
- 3 Q. Where was he?
- 4 A. He was still on the couch.
- 5 Q. Did you observe anything about him?
- 6 A. He didn't look like he had moved, because he was lying there with his arms still
- 7 crossed.
- 8 THE COURT: He what?
- A. He was laying there with his arms crossed, he didn't look like he had moved.
- 10 Q. Did you still hear him snoring?
- 11 A. I didn't pay no attention because I was busy cooking breakfast.
- 12 Q. Okay. Now if you told law enforcement that when you returned from the store you
- observed him still snoring, would that be correct?
- 14 A. Yeah.
- 15 Q. What did you do when you returned from the store?
- 16 A. I put groceries up and cook breakfast. And I told Nathan, I said, wake him up. He
- said, no just let him sleep.
- MR. HOCKADAY: Objection to what Nathan said.
- THE COURT: Sustained.
- Q. Did anyone go try to wake him up?
- A. No, not until later.
- Q. Well at some point someone tried to wake him up?
- 23 A. Yeah.
- Q. Did everyone eat breakfast?
- 25 A. Yes.

- 1 Q. Everyone except Jonathan?
- 2 A. Jonathan, right.
- 3 Q. And then was it after breakfast then that someone tried to wake Jonathan up?
- 4 A. Yeah, it was awhile later, and –
- 5 Q. Who was it tried to wake him?
- 6 A. Christian.
- 7 Q. Did he wake up?
- 8 A. No.
- 9 Q. Okay.
- 10 A. He took hold of his foot and said –
- THE COURT: Ma'am?
- 12 A. Jonathan took hold of his foot and said, brother it is time to get up.
- MR. HOCKADAY: I am not sure who made the statement, but I object.
- 14 THE COURT: The Court will sustain that. Ask another question.
- 15 Q. After it was after he didn't wake up, can you tell us what happened then?
- 16 A. Yeah, I looked at him and I said, "Oh my God he is dead". I said he ain't moving.
- 17 And Nathan took hold of him and pulled him up, and he said, "Mamma call 911, he is
- 18 dead".
- MR. HOCKADAY: Objection.
- THE COURT: Objection sustained. Don't say what anybody else said.
- 21 Q. Now ma'am, you had indicated that you had returned from the store and cooked
- breakfast and you indicated you returned from the store somewhere around ten. If you told
- 23 law enforcement that the time was about ten thirty, would that be correct?
- A. Yeah.

- 1 Q. And do you know you stated that you ate breakfast and then tried to wake him up.
- 2 At what point do you know was 911 called?
- 3 A. I called 911 and I told them he was dead. And they said, you don't need the
- 4 ambulance.
- 5 Q. Don't say what anybody else said.
- 6 A. Anyway they sent the law.
- 7 Q. Do you know about what time you called 911?
- 8 A. No, that was a bad day.
- 9 Q Did law enforcement respond to the 911 call?
- 10 A. Yes.
- 11 Q. Do you know about how long it took the deputies to get there?
- 12 A. Probably about 30 minutes.
- 13 Q. And did you see law enforcement on that day?
- 14 A. Yes.
- 15 Q. Is there anything else that you know of that we have not talked about that is relevant
- 16 to what we are talking about here today?
- 17 A. (No answer)
- 18 Q. You said that you had never even seen John Pritchard before?
- 19 A. No.
- Q. You didn't even see him that day?
- 21 A. No. I seen his truck but I never seen him face to face.
- 22 Q. Did you see his truck that day?
- 23 A. No.
- Q. Did you speak with Jonathan that Saturday evening before he went to bed? Did you
- all talk at all?

- 1 A. Yeah, he told me what was going on.
- 2 Q. You did not see anyone did you see anyone give Jonathan any drugs the time that
- 3 he was with you?
- 4 A. No, if I had it wouldn't been good.
- 5 MR. HOLMES: No further questions at this time.
- 6 THE COURT: Cross.
- 7 CROSS EXAMINATION BY MR. HOCKADAY:
- 8 Q. You are Jonathan's step-grandmother, right?
- 9 A. Right.
- 10 Q. At the time of his death I think he was either 28 or 29 years is that right?
- 11 A. Yes.
- 12 Q. And you have known him all but just the first year and a half of his life, I think you
- 13 said, correct?
- 14 A. Yeah, he was eighteen months old.
- 15 Q. Your husband's name is?
- 16 A. Blake.
- 17 Q How long have you too been married?
- 18 A. 52 years.
- 19 Q. Congratulations.
- 20 A. Thank you.
- Q. Was he living in the home with you at the time of March 2011?
- 22 A. Yes.
- 23 Q Would he have been in the home as well during the days of March 5 and 6, 2011?
- 24 A. Yes.

- 1 Q. And you say you stayed in the home pretty much all day on the 5th I think, you went
- 2 to the store the following day on Sunday, on the 6^{th} .
- 3 A. Right.
- 4 Q. And you are the one that made the calls to 911?
- 5 A. Right.
- 6 Q. And if the records show that call was made 11:33 a.m. you wouldn't have any reason
- 7 to dispute that is when that call was made?
- 8 A. Right.
- 9 Q. Did you make that call off of a cell phone, or your house phone or do you
- 10 remember?
- 11 A. I think it was the house phone.
- 12 Q. And you think it was about 30 minutes before law enforcement got there that is the
- 13 best of your recollection.
- 14 A. They got there pretty quick.
- 15 Q. It would have been a little after 12:00 when they got there?
- 16 A. I would say so.
- 17 Q. Which law enforcement officer got there after you made that call, if you can recall?
- 18 A. It was Higgins.
- 19 Q. Bryan Higgins?
- A. Right.
- Q. Works for the Sheriff's Department.
- A. Right.
- Q. And did you from that point forward have conversations with him about your
- recollection of the events from the time Jonathan got back to your house?
- 25 A. Yes.

- 1 Q. Now before Jonathan got there, you said you had no idea he was coming after he got 2 out of jail, come straight to your house, you didn't know that right? 3 A. No. 4 Q. Did he live with you? 5 A. No. 6 Q. Where did he live? 7 A. Sometimes he was at Russels.
- 8 His dad's? Q.
- 9 A. Yeah.
- 10 Q. Who else?
- 11 A. With Nathan.
- 12 Q. And that is Nathan Angel.
- 13 A. Right.
- 14 Q. What is the relationship there? What is your relationship with Nathan Angel?
- 15 A. He was my oldest son.
- 16 Q. What would his relationship be is he the father of Jonathan or an uncle?
- 17 A. No. Nathan married his mother. He was Nathan's step-son.
- 18 Step-dad. Q.
- 19 A. Right.
- 20 Q. You said at times he stayed with Nathan?
- 21 A. Yes.
- 22 Q. Was Nathan's home close to your home?
- 23 A. Yes.
- 24 Q. How close?
- 25 A. He was behind my house.

- 1 Q. How far a distance between the two residence, estimate?
- 2 A. Probably three or four hundred feet, I don't know for sure.
- 3 Q. A football field?
- 4 A. No.
- 5 Q. Not that far?
- 6 A. No.
- 7 Q. So less than 300 feet?
- 8 A. Yes.
- 9 Q. Is that where Jonathan stayed a lot?
- 10 A. Yes.
- 11 Q. Do you agree that Jonathan, before he came to your house you understood he had
- been in jail for a couple of months, right?
- 13 A. Right.
- 14 Q. That was in Madison County?
- 15 A. Right.
- 16 Q. You would agree that he has had some criminal trouble, would you not?
- 17 A. I agree.
- 18 Q. Would you agree that he has had a drug problem?
- 19 A. Yes.
- Q. And that is consistent with a lengthy period of time of drug use, right?
- A. I would say so.
- Q. You have known him for 20 some years. In particular in the last several years before
- 23 his death he had a drug problem right?
- A. He wasn't with me all the time.

- 1 Q. I understand. But being familiar with him, seeing him from time to time him living
- 2 basically next door to you at times, you were aware of the issues, right?
- 3 A. Yeah.
- 4 Q. And did your son, Nate, also have a drug problems?
- 5 A. Yes.
- 6 Q. And at times they lived together in the house, Nate's house, just some short distance
- 7 from you?
- 8 A. Yeah.
- 9 Q. Is that where Nate was living when Jonathan was released from jail in Buncombe?
- 10 A. No.
- 11 Q. Where was he living then?
- 12 A. He was living with me because the house, the power was messed up on it, he moved
- in with me because he was sick he had cancer.
- Q. So he had come from his house and was now located with you?
- 15 A. Right.
- 16 Q. Was it a mobile home or a house?
- 17 A. It was a mobile home.
- 18 Q. That residence was still there that he could access, right?
- 19 A. Yeah.
- 20 Q. He just wasn't staying there at night?
- 21 A. It wasn't fit to live in.
- Q. Okay. Jonathan had some things he kept there, some of his personal items were
- 23 there, right?
- 24 A. I guess, I don't know what was in there.

- 1 Q. Well some times he slept there and had a bed there and stayed there for a period of
- 2 time, right?
- 3 A. When Nathan was there he did.
- 4 Q. How long had Nathan been living back with you as of March of 2011, if you can
- 5 recall?
- 6 A. Probably a year.
- 7 Q. So he gets there, and you are on the couch, I guess in the living room, right?
- 8 A. Right.
- 9 Q. He wakes you up, bangs on the door, comes in and sleeps in the chair, right?
- 10 A. Right.
- 11 Q. And you are saying the next day at some point you get up, you see him he is still in
- the house, right?
- 13 A. Right.
- 14 Q. And Stephanie Whitson gets there, correct?
- 15 A. Right.
- 16 Q. Now you testified that you believe that was about ten in the morning, right?
- 17 A. Yeah.
- 18 Q. You realize you told Officer Higgins a completely different time that you said he got
- there, do you realize that?
- A. I don't know, probably, because like I said it has been three years.
- Q. Would you acknowledge then that when you talked with Officer Higgins that you
- 22 told him 2:30 is when she got there? You wouldn't have any reason to disbelieve his notes,
- would you?
- 24 A. No.

- 1 Q. Well today your recollection is ten in the morning, which would have been even
- 2 before lunch, right?
- 3 A. Like I said it has been three years.
- 4 Q. I understand, I understand. But that is about four or four and a half hours of
- 5 difference in time from when you say she first got there, correct?
- 6 A. Yeah.
- 7 Q. Now once she got there they visited for a little while at your home, right?
- 8 A. Right.
- 9 Q. And then you say at some point they left together, right?
- 10 A. Right.
- 11 Q. Do you know where they went?
- 12 A. No. I didn't ask.
- Q. And did they is that at the period of time you said you saw them in the driveway
- 14 for a little bit?
- 15 A. Yes.
- Q. When they went out of your house, did they go to one of them's car? Was it her car?
- 17 A. Yes.
- 18 Q. Was she driving?
- 19 A. I don't even remember.
- Q. Was it a jeep?
- 21 A. I don't know.
- 22 Q. But you just remember them getting in her car?
- 23 A. Yes.
- 24 Q. You actually saw them do that?
- 25 A. Yes.

- Q. And did they spend any time in the car together before they pulled out?
 A. Yes.
 Q. Can you approximate how long that was?
- 4 A. No.
- 5 Q. And you don't know what went on in the car?
- 6 A. No.
- 7 Q. Did you stay inside?
- 8 A. Right.
- 9 Q. So then they leave. And you said today you said they were gone about an hour,
- 10 right?
- 11 A. I was guessing at that, because I was busy.
- 12 Q. You are really not sure?
- 13 A. Right.
- 14 Q. You told Officer Higgins before it was longer than that. You are not real sure how
- long they were gone really, are you?
- 16 A. No.
- 17 Q. But anyway they came back, correct?
- 18 A. Right.
- 19 Q. And they came back together, right?
- 20 A. Right.
- 21 Q. And did they come in her car?
- 22 A. Yes.
- Q. Did you see them come back?
- A. He come in the house, so I figured he come back.
- 25 Q Did she come in with him? You said they came back together.

- 1 A. I can't honestly say if she came in with him or not.
- 2 Q. So she may have stayed outside?
- 3 A. Right.
- 4 Q. And you are not sure what she was doing out there?
- 5 A. No.
- 6 Q. You don't even know if she was still in her vehicle or doing something else? I need
- 7 you to answer.
- 8 A. No.
- 9 Q. Then at some point you say they left again, correct?
- 10 A. Right.
- 11 Q. Do you know where they went on that occasion?
- 12 A. No.
- 13 Q. How long were they gone that time?
- 14 A. I don't know.
- 15 Q. So you are not sure whether that was five minutes, ten minutes, or several hours, are
- 16 you?
- 17 A. No.
- 18 Q. All you know is the next thing at some point they came back together and were at
- 19 your house, right?
- A. Right.
- Q. And then you are sure about the fact that she left, you said ten one time, maybe nine,
- sometime around nine or ten o'clock she left?
- 23 A. Yeah.
- Q. Okay. So is it your testimony today that on the 5th after you got up that you stayed at
- 25 that house?

- 1 A. Yes.
- 2 Q. Is it your testimony that when they left the first time, went out the driveway you
- 3 visually saw them go out to her car and get in the car?
- 4 A. Got in her car and left.
- 5 Q. Yeah. And then you did say they stayed in the car for a little while, right?
- 6 A. Yes.
- 7 Q. Then backed out and pulled out, correct?
- 8 A. Yes.
- 9 Q. And your testimony today is that they left twice together, correct?
- 10 A. Yes.
- 11 Q. On one occasion they were gone at least an hour, or not sure but around an hour,
- 12 right?
- 13 A. Yes.
- 14 Q. And then on the second time you really don't have any idea how long they were
- 15 gone, right?
- 16 A. No, because I didn't stand at the window and watch, I was busy.
- 17 Q. Sure. But you specifically remember those two times they left the house together?
- 18 A. Yes.
- 19 Q. Okay, now when you talked with officer Higgins you only told him they left once,
- 20 right?
- 21 A. I don't remember what I told him to tell you the truth, it has been too long.
- Q. Well if you told him that she got there at 2:30 and they left at 4:00 and came back,
- and that is the only reference you made that they ever left the house, that would be one time
- 24 today you said twice, right?
- 25 A. That is what I said.

- 1 Q. No reason to believe you wouldn't get back your notes on what you told him then,
- 2 right?
- 3 A. No, I don't keep notes.
- 4 Q. But he took notes when you talked to him, right?
- 5 A. Yeah.
- 6 Q. He was the first officer on the scene, right?
- 7 A. He was the only one that I know of.
- 8 Q. Then you said that when she left at 9 or 10 o'clock, who all was still there at the
- 9 house, that night, on the 5th?
- 10 A. That night?
- 11 Q. Yeah, when she left to go home I guess. What time, or who all was there?
- 12 A. It was me and my husband and the kids and Nathan.
- 13 Q. And Jonathan?
- 14 A. And Jonathan.
- 15 Q. When you say kids, who are you talking about?
- 16 A. Nathan's son and my son.
- 17 Q. Their names are?
- 18 A. Christian and James.
- 19 Q. You said they were outside?
- 20 A. Yes.
- 21 Q. You remember that specifically?
- A. My youngun, the kids, the night when John died, no they was at the house, they
- come in and out.

- 1 Q. No, I am not talking about when he died, I am talking about when you say that
- 2 Stephanie left, you testified a few minutes ago they were outside. Is that not what you said,
- 3 that Jonathan and Nate –
- 4 A. Yeah.
- 5 Q. And the kids, meaning Christian and. Now at some point you had the discussion
- 6 with Mr. Holmes about this case, right?
- 7 A. Yes.
- 8 Q. Remember that. Did other people come to the house during that day on the 5th, do
- 9 you remember?
- 10 A. It was Bryan Silvers was there and JR, that is what they call him, and Brandy's
- boyfriend, I don't remember what his name is. He was down there to see John.
- 12 Q. John had just gotten out, a lot of people wanting to come and see him, would that be
- fair to say?
- 14 A. Yes.
- 15 Q. You say that Bryan Silver came. Does he live here in Yancey?
- 16 A. Yes.
- 17 Q. How old a person is he, if you know?
- 18 A. How old?
- 19 O. Yeah.
- A. He is probably in his 40's. I'm just guessing.
- Q. When did he get there?
- 22 A. They all the rest of them was around there.
- THE COURT: Speak up a little bit.
- Q. What time of day if you remember?
- 25 A. It was probably eleven or twelve, I don't know.

- 1 Q. Meaning eleven a.m., lunch time, twelve?
- 2 A. Yes.
- 3 Q. When did JR get there?
- 4 A. They come together.
- 5 Q. Did they come into your home?
- 6 A. No.
- 7 Q. How do you know they were there?
- 8 A. I heard a vehicle and I was in the backroom making up beds and stuff, or doing
- 9 something and I looked out and they was up there in the driveway.
- 10 Q. How did you recognize who it was, did you know them?
- 11 A. Yes, Bryan is my cousin.
- 12 Q. And this other individual, did you know him?
- 13 A. Yes.
- 14 Q. But you are not quite sure what he is called though are you?
- 15 A. They call him CR.
- 16 Q. You mentioned JR, but when –
- 17 A. No, it is not JR, it is CR.
- 18 Q. You told Mr. Holmes, you said it was CR. Do you know what his real name is?
- 19 A. No.
- Q. You just know that is what he is called?
- 21 A. Yeah.
- 22 Q. You know him well enough to recognize him?
- 23 A. Yes.
- Q. So they were there, and they got there around 12:00, how long did they stay?
- 25 A. I have no idea.

- 1 Q. You are not sure?
- 2 A. I am not sure.
- 3 Q. They stayed in the driveway?
- 4 A. Yes.
- 5 Q. Did Jonathan go out and greet them since they had come to see him?
- 6 A. Yes.
- 7 Q. Talk to them?
- 8 A. They was all out there together.
- 9 Q. Visited with him there, I guess at the vehicle they came in, right?
- 10 A. Yes.
- 11 Q. Was Stephanie there at that time?
- 12 A. No.
- 13 Q. And you were doing some cleaning work in the house.
- 14 A. Right.
- 15 Q. But you could hear the car come up the driveway?
- 16 A. I heard the truck.
- 17 Q. How close is the driveway to your house? Is it pretty close?
- 18 A. Yeah, it is pretty close.
- 19 Q. Generally are you able to hear a vehicle when it comes up the driveway?
- 20 A. No, not all the time, if it makes a big noise I can.
- 21 Q. So a truck or something like that?
- 22 A. Yeah, if it is loud.
- Q. And because this one was loud, you looked out your window and saw a truck out
- there that Bryan and CR were in, right?
- 25 A. Right.

- 1 Q. And you don't have any idea what your grandson and Bryan Silvers and CR were
- 2 talking about do you?
- 3 A. No.
- 4 Q. You don't know what they did, or talked about, anything that may have gone on
- 5 there at that meeting?
- 6 A. No.
- 7 Q. Anybody else come to the house that you can recall during that day since people
- 8 were coming by and visiting with Jonathan?
- 9 A. No.
- 10 Q. You said there was a third person that maybe came by, do you remember who that
- 11 was?
- 12 A. I can't remember his name, he talked to Higgins. It is Brandy's boyfriend.
- 13 Q. Who?
- 14 A. Brandy I don't remember what his name is.
- 15 Q. What is Brandy's last name?
- 16 A. I can't think.
- 17 Q. Are you related to her in anyway?
- 18 A. Yes, she is my step-granddaughter.
- 19 Q. You are not sure what the boyfriend's name is?
- 20 A. No.
- 21 Q. How did you know he was there?
- A. Because he was in the house. He came in the house and was talking to Higgins.
- Q. What day is it you are saying he was there?
- 24 A. It was on Saturday Sunday.
- 25 Q. I'm asking about on the 5^{th} .

- 1 A. Oh.
- Q. On Saturday, was that gentleman there?
- 3 A. No, not on Saturday, no.
- 4 Q. But at no point while you were there at the house did you see John Pritchard, did
- 5 you?
- 6 A. No. I didn't even know him.
- 7 Q. So, you didn't see him that day. You didn't see him with your grandson at all?
- 8 A. No, I did not.
- 9 Q. You would have been there the whole day at that house, close to that driveway doing
- 10 your housework pretty much all day?
- 11 A. Yes.
- 12 Q. Husband there too, right?
- 13 A. Yes.
- 14 Q. Other kids around, right?
- 15 A. Right.
- Q. Did the other ones stay there pretty much all day, the other children that were there?
- 17 A. Yes.
- 18 Q. You said that after Stephanie left, Jonathan was in the living room and you I guess
- 19 you had gone to a different room to go to bed, is that right?
- 20 A. Yes.
- 21 Q. You were not going to sleep on the couch?
- A. No, John slept on the couch.
- Q. Where did you go to sleep at?
- A. I got three bedrooms, mine is down on the end.
- 25 Q. How far is that from the living room where Jonathan slept?

- 1 A. It is not far.
- 2 Q. It is down a hall?
- 3 A. Yeah, there is a hallway.
- 4 Q. A couple of bedrooms?
- 5 A. No, just a bathroom.
- 6 Q. -- that you pass by do you pass by a couple of bedrooms before you get to yours?
- 7 A. A bedroom and a bathroom.
- 8 Q. So at least 20 feet or so?
- 9 A. I would say so.
- 10 Q. Once you left the living room to go get yourself ready for bed, you didn't observe
- Jonathan going to bed you just know he indicated you indications were he was getting
- ready to go to bed.
- 13 A. He pulled his shoes off and I told him to lay down and go to sleep.
- 14 Q. And what time do you think that was?
- 15 A. I always go to bed about 9.
- 16 Q. So about that time?
- 17 A. Yeah.
- 18 Q. And from that time forward, did you have any other contact with Jonathan until the
- 19 next morning?
- 20 A. No, all but when he stuck his head around the door and said, I love you.
- Q. Now you have talked about that. You are saying that he when is it that you say he
- told you he loved you?
- 23 A. Whenever I was in I was in the bed and –
- Q. But just not asleep yet?
- 25 A. No, I wasn't asleep.

- 1 Q. So what time are we talking?
- 2 A. It might have been 9:30, something after 9, somewhere around there.
- 3 Q. And do you know why he was up. If you don't know don't tell me, but do you know
- 4 why he was up?
- 5 A. No.
- 6 Q. And where is it that he had this conversation with you. Where did he speak to you?
- 7 A. He stuck his head around the door, he didn't come in, he just stuck his head around
- 8 the door and said, I love you.
- 9 Q. What did you understand that he was doing at that time as to why he was in the back
- 10 end of the house?
- 11 A. I figured he was going to the bathroom, I didn't ask.
- 12 Q. And once we got past about 9:30 though, and he said that to you. Did you have any
- more contact with him on that night?
- 14 A. He done that three times.
- 15 Q. When was the last time he said that?
- 16 A. I don't know, it wasn't but a few minutes he come back and said it again.
- 17 Q. I assume you went to sleep reasonably quick, right?
- 18 A. Yeah.
- 19 Q. You don't remember anything about that night that would cause you to believe it
- 20 took you an extended period of time to go to sleep do you?
- A. No, it has been a long time.
- Q. Yes ma'am. So those conversations, went to bed at 9:30, probably were over around
- 23 10:00, right?
- 24 A. It might have been, I don't know, cause I didn't ask him what time it was.
- 25 Q. But you didn't have any contact with him after that did you?

- 1 A. No.
- 2 Q. And obviously your last contact with him, he was up, may have taken his shoes off
- 3 but he was up, right?
- 4 A. Yes.
- 5 Q. And there had been, as you said, still a number of people in the house, right?
- 6 A. No, not that time of night.
- 7 Q. Nate was there, right?
- 8 A. Yeah, he was in the bed.
- 9 Q. The children were there, right?
- 10 A. They was in the bed.
- 11 Q. Husband was there, right?
- 12 A. He was in the bed.
- 13 Q. Nate had a drug problem?
- 14 A. Yes.
- 15 Q He had an extended drug problem, did he not?
- 16 A. Yes.
- 17 Q. That is a problem he battled for a number of years as well, is it not?
- 18 A. Right.
- 19 Q. And you made it clear a minute ago that if you seen some drugs changing hands, that
- wouldn't have been pretty.
- A. No, it wouldn't.
- 22 Q. You don't put up with that do you?
- 23 A. I don't like it.
- Q. You don't want it in your home at all, do you?
- 25 A. No.

- 1 Q. Have you had an opportunity to review any of the other statements that witnesses
- 2 have made about this?
- 3 A. No.
- 4 Q. Were you aware that Ms. Whitson had said that drug use was going on in your home
- 5 that night?
- 6 A. I don't know what she said.
- 7 Q. And that she and Jonathan used in the bathroom, melting pills down on a spoon and
- 8 using them there. Were you aware of that?
- 9 A. No. Maybe she is the one that needs to be on trial instead of him.
- 10 Q. Good point. Were you aware of that?
- 11 A. No, I was not or they would all have been out in the street.
- 12 Q. Sure. You knew for years –
- 13 A. I am a Christian woman.
- Q. Exactly, you are the one for years that has, if there has been a problem in this family,
- say DSS got involved, you are always the one that kept the kids, right. You didn't put up
- with that crap, did you?
- 17 A. I have raised twelve younguns.
- 18 Q. Exactly. So were you aware that the testimony or the statements of Ms. Whitson are
- 19 that she and Jonathan were using in the bathroom right beside your bedroom. Were you
- aware of that?
- 21 A. No, no I was not. Like I said, if I had they would have all been out on the street.
- 22 She is the one that needs to be on trial instead of him.
- Q. Would that be your feeling then if the evidence is that Ms. Whitson and your
- 24 grandson were using in the bathroom, melting this stuff down in a spoon and shooting it up
- in their arms, would that be your feeling?

- 1 A. Yes, cause I don't condone it, I hate it.
- 2 Q. Are you aware if the Sheriff's Department ever located that spoon and had it
- 3 analyzed?
- 4 A. I don't know nothing about that spoon.
- 5 Q. Now when Jonathan died, you are saying that Nathan or somebody went over and
- 6 tried to shake him, right?
- 7 A. Yes.
- 8 Q. You said he had been snoring, right?
- 9 A. Right.
- 10 Q. Were you aware of how sick he was?
- 11 A. Who?
- 12 Q. Jonathan?
- 13 A. No.
- 14 Q. Were you aware he had pneumonia?
- 15 A. No I didn't because he had been in jail.
- 16 Q. Right, but were you aware the autopsy report said he had pneumonia?
- 17 A. No.
- 18 Q. Were you aware he had asthma?
- 19 A. I know he had asthma.
- Q. He had a lot of breathing problems.
- And I know he had a blood clot.
- 22 Q. Something wrong with his heart too, right?
- 23 A. Yeah, he had a hole in his heart.
- Q. Was he drinking alcohol in your house that night also?
- 25 A. I never seen no alcohol.

- 1 Q. So if he was drinking alcohol, and there was alcohol in his system when he died, that
- 2 certainly wasn't at your house was it?
- 3 A. No.
- 4 Q. You were there.
- 5 A. Yes.
- 6 Q. You don't put up with that, so it had to happen somewhere else, right?
- 7 A. Yes.
- 8 Q. And you are saying that to the best of your recollection he went to bed probably
- 9 around 9 or 9:30, and you are saying you guys noticed that he had passed away sometime
- after you got back from the store to get food to make breakfast which was the next morning,
- 11 ten o'clock or after, right?
- 12 A. Right.
- Q. So from when he went to sleep, based on what you remember, it had been at least
- twelve hours, right?
- 15 A. Yes.
- 16 Q. And to your knowledge, he was in your home that whole time, right?
- 17 A. As far as I know.
- 18 Q. And there wouldn't have been any alcohol or weird stuff going on then, right?
- 19 A. No.
- Q. Now, you say he was snoring, enough that you noticed the snoring, right?
- 21 A. Right.
- Q. Were you aware if other members of the family, your husband included, maybe
- during the night got up and tried to shake him as he was snoring to get him to quit snoring?
- A. I don't know nothing about that.

- 1 Q. But you are saying that you know at least when you noticed that or made the
- 2 conclusion that he had died, that I think you said it was Nate that pulled him up toward him
- and shook him to try to, I guess, wake him up?
- 4 A. Yeah.
- 5 Q. Was that while he was laying on the couch? I guess he was on the couch and he
- 6 pulled him up like that?
- 7 A. Yeah, he took hold of him and pulled him up to try to get him to breathe.
- 8 Q. How long did that process go on?
- 9 A. Just a few minutes, because he realized he was gone. He was cold.
- 10 Q. Did you call right then, or did you wait a period of time before you called?
- 11 A. No, he told me, he said call 911.
- 12 Q. Now when Jonathan was on that couch, do you remember, you said he took his shoes
- off, do you remember what else he had on?
- 14 A. He had on his blue jeans and a shirt, and I think he still had them on. I know he had
- 15 his blue jeans on.
- 16 Q. You are not sure about the other?
- 17 A. I think he still had his shirt on. I am not for sure, I can't say.
- 18 Q. Did he have a blanket he slept under?
- 19 A. Yes, he had a comforter.
- 20 Q. Do you remember what color it was?
- 21 A. No, I don't. I know they took it with him.
- Q. Did he have a coat that he brought with him when he got out of jail?
- 23 A. Yes.
- Q. Do you know what color it was?
- 25 A. It was brown, a CarHart coat.

- 1 Q. Did you do any inspection of that even when, after you realized he had died, of the
- 2 coat?
- 3 A. No, I didn't inspect it. It was on the back of the couch and I went back there to sit
- 4 down and realized there was something in the pocket.
- 5 Q. What did you find in the pocket?
- 6 A. I didn't I give it to my daughter, she took it to Higgins.
- 7 Q. Which daughter, what is her name?
- 8 A. Emma.
- 9 Q. Last name?
- 10 A. Wheeler.
- 11 Q. So you are not sure what was in the pocket, but you delivered it to your daughter,
- and are you you are confident that she delivered it to Officer Higgins?
- 13 A. Well I found out what it was, but.
- 14 Q. What did you find out it was?
- 15 A. It was needles.
- 16 Q. How many?
- 17 A. I don't know.
- 18 Q. At least two, right?
- 19 A. I don't know.
- 20 Q. Do you understand these may have been the needles that were used to Stephanie
- and Jonathan used to shoot up these drugs?
- 22 A. It could have been, I don't know.
- 23 Q. Are you on any medications?
- 24 A. Yes, I am.
- Q. When you take your medications, do you take them the way they are prescribed?

- 1 A. Yes.
- 2 Q. You don't melt down medications in spoons and shoot them with syringes, do you?
- 3 A. Are you kidding.
- 4 Q. Exactly, you don't do that do you?
- 5 A. No.
- 6 Q. It is important to follow the protocol for taking medications, is it not?
- 7 A. Yes.
- 8 MR. HOCKADAY: Those are my questions.
- 9 THE COURT: Redirect.
- 10 REDIRECT EXAMINATION BY MR. HOLMES:
- 11 Q. Ma'am, there is a lot I want to cover with you. I will try to start at the beginning.
- On Saturday, Saturday March 5th, did I understand you to say that there were other people
- that came to the house that day? I think you mentioned two of them, is that correct?
- 14 A. Silvers and –
- 15 Q. Silvers and CR?
- 16 A. Yes.
- 17 Q. And did they come to the house before Stephanie got there or after?
- 18 A. After.
- 19 Q. So Stephanie got there first, whenever that was?
- A. Right.
- 21 Q. And is you have stated that Jonathan and Stephanie had left once, came back and
- 22 then left again. Mr. Hockaday pointed out that your statement you originally told law
- enforcement that they only left once. Are you having trouble remembering the exact events
- of that Saturday?
- 25 A. Yes, I am.

- 1 Q. Is it possible that Stephanie and Jonathan left once together, came back and then
- 2 Stephanie left by herself and then came back again?
- 3 A. That is a possibility.
- 4 Q. Now with regard, obviously you made it clear that you didn't tolerate, or don't
- 5 tolerate drugs or alcohol in your house. Was Jonathan aware of that, aware of your feelings?
- 6 A. Yes.
- 7 Q. So he knew how you felt about the issue?
- 8 A. Yes.
- 9 MR. HOCKADAY: Objection to what he knew.
- THE COURT: Objection sustained.
- 11 Q. Had you communicated to Jonathan your feelings and opinions about drugs and
- 12 alcohol?
- 13 A. He knowed.
- MR. HOCKADAY: For the record same objection.
- 15 THE COURT: Objection sustained. Members of the Jury disregard the
- answer the witness gave.
- 17 Q. If you will just answer my specific question. Had you told Jonathan that you did not
- tolerate or want drugs or alcohol in your home?
- 19 A. Yes.
- Q. Is it possible then that he could have been using drugs and alcohol at your home and
- been doing it behind your back on that day?
- 22 A. It is possible.
- MR. HOCKADAY: There is a stipulation on that.
- MR. HOLMES: I would like to be heard.
- MR. HOCKADAY: She has been asked direct about a possibility.

- 1 THE COURT: Ask your question another way, objection sustained.
- 2 Q. Ma'am, you testified that Mr. Hockaday was asking you questions that it was not
- 3 possible that he was doing drugs at the house, is that correct?
- 4 A. I'm sorry, I don't understand.
- 5 Q. Mr. Hockaday, when he was asking you questions, asked you asked if it was
- 6 possible that Jonathan was doing drugs or alcohol at the house. You said that it was not
- 7 possible, is that correct?
- 8 A. It is possible behind my back and I didn't know it.
- 9 Q. Now, you stated that you had some pretty strong feelings about Stephanie Whitson's
- behavior on that day. Do you were you trying to say that John Pritchard should not be on
- 11 trial here today?
- 12 A. No. I am not saying that.
- MR. HOLMES: No further questions at this time Your Honor.
- 14 THE COURT: Further cross?
- 15 RE CROSS EXAMINATION BY MR. HOCKADAY:
- Q. But you did indicate you had some issue about the fact that Stephanie was not trial,
- isn't that what you said?
- 18 A. She should be.
- 19 Q. You had some issues about Jonathan and her relationship, did you not? You had
- some problems with them having a relationship with each other. It wasn't a good
- 21 relationship was it?
- A. No, but it was, you know, none of my business.
- 23 Q. They used drugs together, right?
- 24 A. I don't know.
- 25 Q. Well you understand that at least in March they did, right?

- 1 A. I didn't see it.
- 2 Q. When Jonathan, before he went to jail in Madison, was he living with you?
- 3 A. No.
- 4 Q. Where was he living?
- 5 A. He was living with Nathan.
- 6 Q. With Nathan. He went to jail –
- 7 A. Him and Stephanie were living up there together.
- 8 Q. He was in jail the last two months, right, sixty days?
- 9 A. Yeah.
- 10 Q. He got out in March, right?
- 11 A. Yeah.
- 12 Q. So he would have been living that would have been January when he started in
- 13 Madison, right? Two months back, right.
- 14 A. Yeah.
- 15 Q. You are saying before that he lived with Nathan, your son?
- 16 A. Yeah.
- 17 Q. Down at Nate's house?
- 18 A. Yeah.
- 19 Q. And Stephanie lived there too, is that right?
- A. Yeah.
- Q. So, it would not have been quite the length of time that you had discussed previously
- 22 when you felt like Nathan had not been living down at his trailer for about a year, really
- Nathan had only been displaced out of there since about the time Jonathan left and went to
- jail in Madison County, correct?
- A. I am trying to think. I don't know for sure, but the power tore up at the house.

- 1 Q. The reason he moved was the power tore up, you just really don't know the dates?
- 2 A. No, I can't.
- 3 Q. But you do remember the fact that Jonathan wasn't living with you when he went to
- 4 jail in Madison?
- 5 A. Right.
- 6 Q. As far as you know he was living with Nathan?
- 7 A. As far as I know.
- 8 Q. With Stephanie?
- 9 A. Yes.
- MR. HOCKADAY: Those are my questions.
- MR. HOLMES: Nothing further.
- 12 A. Can I leave and go home?
- THE COURT: Yes ma'am, you can.
- 14 A. Okay thank you, my oxygen is getting low.
- 15 (Witness excused)
- THE COURT: All right Mr. Holmes, call your next witness.
- MR. HOLMES: The State will call Stephanie Whitson.
- 18 STEPHANIE WHITSON, being first duly sworn testified as follows during DIRECT
- 19 EXAMINATION BY MR. HOLMES:
- Q. Good afternoon, Ms. Randolph, will you say your name for the Court.
- A. Sandy Randolph.
- Q. What was your name in March of 2011?
- 23 A. Stephanie Whitson.
- 24 THE COURT: Spell your last name please.
- A. W-h-i-t-s-o-n.

- 1 THE COURT: Randolph.
- A. R-a-n-d-o-l-p-h.
- THE COURT: Go ahead.
- 4 Q. How old are you ma'am?
- 5 A. 28 years old.
- 6 Q. Where do you live?
- 7 A. 70 Bell Flower Lane –
- 8 THE COURT: You will have to get closer to the microphone and speak up.
- 9 A. 70 Bell Flower Lane on Hearts Grable Road.
- 10 Q. How long have you lived there?
- 11 A. Two years and nine months.
- 12 Q. So you were not living there in March of 2011?
- 13 A. No.
- 14 Q. Do you recall where you were living at that time?
- 15 A. I was living at my parent's house on South Toe.
- 16 Q. Did you know Jonathan Russell Whitson?
- 17 A. I did.
- 18 Q. How did you know him?
- 19 A. We were friends, and we had been seeing each other for the past six to seven months.
- 20 Q. How long had you known him?
- 21 A. Six to seven months.
- Q. When you say the past six to seven months, would that be six to seven months prior
- 23 to March of 2011?
- 24 A. Yes.

- 1 Q. Would it be correct to say then that you all began dating and you met him in August
- 2 or September of 2010?
- 3 A. That is correct.
- 4 Q. How did you meet him?
- 5 A. Through a friend.
- 6 Q. Can you tell us what kind of person Jonathan was or a bit about him?
- 7 A. He was a happy person. He was very caring. He was cocky. He was a hard worker.
- 8 He was a good friend.
- 9 Q. Did you make a statement to law enforcement on the day of his death?
- 10 A. I did.
- 11 Q. Was that statement truthful?
- 12 A. Yes.
- 13 Q. Is your memory today as good as it was on the day of his death?
- 14 A. It is not as good, but it is a lot better than Christine's.
- 15 Q. Did you have any contact with Jonathan on Saturday, March 5th, 2011?
- 16 A. Yes.
- 17 Q. What was that contact?
- 18 A. He called about 12:00 and said that he was out of jail and wanted to talk to see if I
- 19 would come he asked if I would come down to Christine's.
- Q. Do you know how long the phone call lasted?
- A. About fifteen minutes, ten or fifteen minutes.
- Q. Did you agree to come and see him at Christine's?
- 23 A. Yes.
- Q. What did you do after you hung up on the phone call?
- A. I got ready and went to Christine's about 3:00.

- 1 Q. Now were you able to hear Christine's testimony?
- 2 A. Yes.
- 3 Q. I think she testified that you arrived around 2:30 and is one correct or?
- 4 A. I am thinking it was 3:00 I am almost positive it was 3:00.
- 5 Q. When you arrived at the house did Jonathan say anything to you about his plans or
- 6 what was going to happen that day?
- 7 A. Yes.
- 8 Q. What did he say?
- 9 A. He said that he had called Johnny, that he was going to get some medicine –
- 10 MR. HOCKADAY: Objection.
- 11 THE COURT: Overruled.
- 12 Q. Go ahead.
- 13 A. He said that Johnny wanted to help him out since he had been in jail and not had
- 14 anything in awhile.
- MR. HOCKADAY: Objection Your Honor.
- THE COURT: Sustained.
- 17 Q. Did Jonathan say anything to you about what Pritchard was doing or what he was
- 18 going to do?
- 19 A. He said he was coming up Marion Mountain. He was going to go home first and
- then call, but he didn't call he just showed up.
- Q. Who showed up?
- 22 A. Pritchard showed up at Christine's.
- Q. At Christine's house?
- A. Yeah.

- 1 Q. Now, we have heard some testimony that other people came to the house that day.
- When you arrived at the house was there anybody else there?
- 3 A. There was nobody else there. There was just Nathan.
- 4 Q. Was there anybody else there besides the occupants who were living at the house?
- 5 A. No.
- 6 Q. Did some other people come later?
- 7 A. Not to my knowledge.
- 8 Q. You said Pritchard came to the house. Do you know about how long that was after
- 9 you arrived?
- 10 A. Probably 30 minutes.
- 11 THE COURT: What did you say?
- 12 A. 30 minutes.
- 13 Q. And again, no one else came while you were there that you saw?
- 14 A. No.
- 15 Q. And what happened, you said Pritchard came to the house, what did you see?
- 16 A. I just seen his he pulled up in his silver Ford Ranger, and John told me that he
- said, 'we are going to go to the store, we will be back'.
- MR. HOCKADAY: Objection to what he said.
- THE COURT: Sustained.
- MR. HOCKADAY: Your Honor, I understood that witnesses were
- 21 instructed about the statements.
- THE COURT: I take it this is something we need to discuss a little bit more
- out of the presence of the jury. Members of the Jury, we will take our lunch now. Leave
- 24 your notes there in your seat. I want to remind you to keep an open mind, don't discuss the

- 1 case between yourselves or with anyone else. Don't allow anyone to talk with you about the
- 2 case. And leave your notes there in your chair. Please be back in the jury room at 2:00.
- 3 (ALL JURORS LEAVE THE COURTROOM AT APPROXIMATELY 12:20 P.M. FOR
- 4 THE LUNCH RECESS)
- 5 THE COURT: All right, the jury is out of the room. Gentlemen I am
- 6 looking at some cases under 803.3 there is an exception for plans when one intends to
- 7 engage in a future act. Mr. Hockaday, how does this stuff not fall under that exception.
- 8 Then it says existing mental, emotional, or physical condition, statement of the declarant
- 9 then existing such as intent, plan, design, mental feeling, pain, bodily health. It also sort of
- lays out the groundwork for what people did. I planned to go to the store, so I went to the
- store. I planned to this and then I did that. I felt this way, he said that he felt this way, and
- something else happened. Do you understand what I am saying?
- MR. HOCKADAY: I hear what you are saying.
- 14 THE COURT: The case I am looking at State of North Carolina versus
- 15 Taylor, 70 (a) nc.ap 395, 2006 opinion it is still good law. I remember our discussion
- yesterday that ruling was going to be with reservations to rethink this at a later time. So I
- don't think you should be surprised about what I am saying right now. But to me the victim
- made statements about his plans to do certain things falls under the hearsay exception. Now
- 19 you still have other considerations but as far as the hearsay exception.
- MR. HOCKADAY: I will respond to all of it if I could.
- THE COURT: Go ahead.
- MR. HOCKADAY: Whether or not you are going to the store is less of an
- 23 issue for us in the Court's prior ruling. I know it was also to reconsider. But I know that the
- 24 Court specifically talked about insuring that these witnesses were instructed regarding these
- 25 particular statements, and we are getting statements we didn't even know about. And then

- 1 the one that I thought you ruled on to exclude about helping him out, she has already got
- 2 into that and we are objecting to any statement that you determined should not be admitted
- 3 as inadmissible hearsay. We are asking for some instruction to the jury not to consider it. It
- 4 is out and they have heard it. I know that was the purpose from our end at least to try to
- 5 protect my client in addressing any pretrial issues so that that kind of things would not be
- 6 before the jury. I know the Court has got to weigh it in context in which it is presented but –
- 7 THE COURT: Mr. Whitson said the Defendant is going to help me out since
- 8 I have been in jail. That is not really a state of mind or a plan, right?
- 9 MR. HOCKADAY: No, I agree, that really is –

16

17

18

19

20

21

22

23

24

25

- THE COURT: that is not that he wants me to buy some morphine for \$8.00 each and sell them at \$15.00 each. That comes close to being a plan.
- MR. HOCKADAY: I don't think you had considered how prejudicial that was under 403.
- THE COURT: Because it wasn't a sell here and there was no, they are not setting up a business here.
 - MR. HOCKADAY: Precisely, just how prejudicial that is and I mean within seconds that is where she was going with that testimony so I have to protect my client and I have got to insure that this witness has not gone up there lose as a cannon in making these statements to where it is already in the juries ears, they are taking notes about it, and you instruct them not to it is going to be in their note pads. And we are just trying to insure that any kind of statement like that of the deceased is not heard by this jury. So whatever instructions the Court can give we would appreciate on this issue. We certainly say those are states of mind, and the way I read that is, you know, it is cold outside. You stand outside and it is cold outside, you know. I am driving to the store. I am driving too fast. Those are statements of state of mind exceptions that one would have. I have a little more of an issue

- 1 with the we are going to go to the store when there is no evidence about when that is going
- 2 to be. There is no way to in theory the problem with that is it is an issue with hearsay.
- 3 Being able to show its truthfulness or reliability, that may come in. But there is no way to
- 4 show that is even a true statement, and therefore there is no way to verify if she testifies,
- 5 they are going to the store, then that is the problem we have. That is the reason for the
- 6 hearsay limits. That is why the exceptions are so limited. If she had been outside and
- 7 standing outside with him and they said, man it is really a cold day. And he says, well no,
- 8 she is out there she can talk about how cold it is. I understand that. But I don't believe
- 9 those are statements by exception, that is our position.
- THE COURT: Well I don't know what to do but rule on those statements as
- they come in. If it is a state of mind exception or plan it clearly if it is a plan to do
- something that never happened, like setting up business and reselling, that can be prejudicial
- so you step into 403. But if it is something less than that, how do I deal with that right now.
- 14 I know you are suppose to get discovery. I don't think all the witnesses are suppose to give
- depositions where you can count on them saying nothing more nor less than what is in the
- deposition. People can get on the stand and say all sorts of things. So the best we can do is
- iust I guess sit here and decide, rule upon the segments as they come in.
- We have three segments yesterday we talked about, written things that was in Ms.
- 19 Randolph's statement one, two and three, and we talked about those. Those were the words
- we talked about and the rulings remain as to those words. But she is not limited by what her
- 21 statement is.
- MR. HOCKADAY: I completely agree, but specifically the one we did talk
- about was helping out. We are objecting to that, we want that stricken. I objected to the one
- about the store, whatever the Court's ruling is about that.

1 THE COURT: We will strike the one about helping out since I have been in 2 jail and didn't have anything. That was overly prejudicial. 3 MR. HOCKADAY: And if the witness could be instructed, if the Court 4 would just in fairness to my client she doesn't get up there and talk about this \$15.00 and 5 \$8.00 deal, and I can object all I want, but if they hear it it is another thing highly prejudicial 6 to my client. Whatever other statements she intends to make about the decedent, I agree we 7 just have to deal with them as they come. 8 THE COURT: Well Mr. Holmes, I trust you to speak with your witnesses 9 and let them know you don't want a mistrial here any more than anybody else, it will just be 10 a waste of everyone's time. But if they blurt out things, the cat is out of the bag. 11 MR. HOLMES: Well we have, we are not trying to get away with anything. 12 I would like to - when we talked about Stephanie Randolph's statement, there were three 13 that we specifically talked about. However, we did miss in her statement on Page 2 at the 14 top it says, Pritchard wanted – that Jonathan told her that Pritchard wanted him to go to the 15 store with him. That is one statement that she has testified to and specifically regarding that 16 statement, I would maintain as you were saying that it is a textbook 803.3, then existing 17 mental, emotional, physical condition statement and would be admissible. He is speaking as 18 to his intent or plan. 19 MR. HOCKADAY: I agree on that. 20 MR. HOLMES: Okay, and then just if I could be heard briefly on the other 21 two statements. The statement, I guess this would be the one we marked Number 3. That 22 Pritchard had told Jonathan that he would help him out since he had been in jail and had not 23 had anything. Ms. Whitson's testimony is that he is telling her this after he has hung up 24 with the phone call and before Pritchard has arrived. We are talking about a 30 minute

window there. So he is now hung up, he is telling her this, he is coming up the mountain.

25

- 1 He is going to help me out, and this is what is happening. And in that context there is no
- 2 question that Jonathan is describing or explaining a condition while he is proceeding or
- 3 immediately thereafter.
- 4 He is telling her what is going on. He is describing and explaining what is
- 5 happening. The fact that it is prejudicial to the defendant's case, isn't really the point. It is
- 6 whether or not it is relevant, whether or not it is admissible, and I understand we have to –
- 7 we have to determine whether or not it is still prejudicial and is inadmissible under 404(a),
- 8 but I am reading straight out of the statutes here. You have got State V. White, and they
- 9 have got it highlighted. And it is when evidence reasonably tends to prove a material fact at
- issue in the crime charged it will not be rejected merely because it also proves the Defendant
- guilty of another crime. And I guess that is slightly off point. But the point is the fact that
- he wants to help him out. And the fact that it is prejudicial isn't isn't the problem. It is the
- fact that it is tending to show him guilty of this crime, which is the delivery and it does.
- Because he is saying he is doing it to help him out. That is tending to show that he actually
- did the delivery, is evidence that reasonably prove material facts at issue in the crime
- 16 charged.
- So I would maintain that it is absolutely admissible. It is 803.1, present sense
- impression. It is occurring right at the time or immediately thereafter that he receives the
- 19 phone call and hangs up. And again the fact that it was a prong for the defendant is not the
- 20 point.
- 21 THE COURT: What about the \$8.00 and resell it for \$15.00 each.
- MR. HOLMES: With that statement I really believe the correct analysis of
- 23 that statement is that it is not offered to prove the truth of the matter asserted, and it is not
- hearsay at all. It is a statement that he wanted him to buy for \$8.00 a piece and sell them at
- \$15.00 a piece, we are not trying to prove that at all. What that statement is asserting is not

- 1 what I am trying to prove. It is not offered for that purpose. It corroborates the other
- 2 statements that he is on his way there. That he is going to try to help him out. It establishes
- 3 the kind of relationship that he has with the Defendant. That is a dealer buyer kind of
- 4 situation.
- 5 And that goes to malice because the Defendant knew he was dealing with somebody
- 6 who, well he is dealing with somebody on a regular basis, which establishes he is dealing
- 7 with somebody who has a drug problem, which goes to malice and touches on prior bad acts
- 8 as well. But again, it is not hearsay, it is not offered to prove that he is actually wanting to
- 9 do that or that he is going to do that. That is not the point. But it does again corroborate that
- 10 he delivered drugs, which is what we are trying to prove.
- THE COURT: What about the analysis under Rule 403?
- MR. HOLMES: Again, 403 is not it is concerned with whether or not it is
- so prejudicial that it should not be admissible, and in this case a limiting instruction would
- be more than adequate. I mean the jury could be instructed it would be more than
- adequate. We are not trying to prove that actually occurred, there is no other evidence of a
- sale. It is simply offered to corroborate what actually the state is trying to prove is the
- 17 delivery. And it does corroborate.
- THE COURT: I am not sure that it is corroboration because I don't think
- 19 there will be other evidence of business transaction.
- MR. HOLMES: It is not the business transaction part that is corroborating.
- 21 It is the fact that he is making a statement that he wanted him to buy morphine for \$8.00 and
- sell it for \$15.00 a piece is essentially an admission that he can and will give morphine at
- will, which if that statement is made corroborates a delivery on that day. Especially when it
- taken in context when it is part of that conversation they had on the phone that day.

1	THE COURT: Well evidence of motive to one of delivery to make some
2	money. I am sure motive is at issue here. Go ahead.
3	MR. HOCKADAY: If they are not trying to prove then it is irrelevant. And it
4	is incredibly prejudicial, and then they have got the 404(b) evidence, which talks about a
5	sell, and this wasn't a sell, but we are trying to get in that to arguably that we are in the
6	business of it. So if it is not something that they are wanting to prove then it should not
7	come in because of the prejudice of allowing that in is so great in this case.
8	THE COURT: I think I am going to spend my lunch break looking through
9	the cases, trying to make decision that somebody in Raleigh might respect. I hope you
10	gentlemen will do the same. Maybe we can reconvene a little before 2:00 and see what we
11	have found out. At this time I am going to stick to my previous ruling about the business
12	transaction. I think it is unfairly prejudicial since that did not occur. There is no evidence
13	that money exchanged hands. I guess we just have to establish some parameter as to other
14	things that these witnesses might say that Mr. Whitson said so we will know what the rules
15	are going forward, talk to the witnesses about it. I am sure it is hard for a layman to follow
16	along what we are talking about, but hopefully we can translate that to layman's language
17	and end up with an error free trial.
18	MR. HOLMES: Is Your Honor going to strike Ms. Randolph's testimony so
19	far that the Defendant said he was going to help him out because he had been in jail.
20	Because I think she did get that out on the stand. I wasn't trying to elicit that, but that was
21	what came out. I don't know if you are going to ask the jury to strike that or not.
22	THE COURT: No that is the one that is questionable for me, because the
23	problem of motive thing is unfairly prejudicial I believe, but whether it is unfairly
24	prejudicial that the Defendant wanted to help Mr. Whitson, if you can call it help, but there
25	had to be some motivation for the Defendant wanting to do this. That might explain it, that

- 1 he wanted to help him. But to be -is there any -is there going to be any contention that the
- 2 drugs that he used did not come from Mr. Pritchard at all?
- 3 MR. HOLMES: I think that is the contention, I don't know if there is
- 4 evidence to support it.
- 5 MR. HOCKADAY: I am not aware of any witnesses to offer this, I am not
- 6 aware of any witnesses that are going to come in and testify that they witnessed delivery by
- 7 my client to the deceased, so I guess we are going at it that way. It is one of the arguments
- 8 that the transaction did not come from the Defendant. So obviously we are taking the
- 9 position that it did not come from him.
- 10 THE COURT: So your if it did occur, it was not the proximate cause is
- 11 your second line of defense. The first one is the transaction didn't take place period. And if
- it did, leads to other things, talking with other people, making other deals, who knows what
- 13 the proximate cause was, including the alcohol.
- MR. HOCKADAY: We have a proximate cause issue and we have got a
- 15 malice issue.
- MR. HOLMES: I don't know if it will help Your Honor but I do have a it
- looks fairly similar, State V. Morgan, 359 nc 131, 2004, a brief the declarants statement to
- 18 the defendant's brother that the declarant needed help. It goes to the defendant was tripping
- and it fell within the exception because it explained the Defendant's condition. I would
- 20 maintain that is essentially what we got here, he is saying he is coming up to help me out,
- 21 which is explaining the fact that he is driving up Marion Mountain.
- MR. HOCKADAY: This case is under this whole presence sense. The way I
- 23 understand it Rule 803.1 is we are talking about an event that is being perceived or shortly
- 24 thereafter I am pulling this up on line again to look at it. We are talking about events that
- 25 we are experiencing or witnessing and we are not talking about events that are a number of

- 1 minutes or hours later. There is nothing in this statement that has been presented that shows,
- 2 what we are talking about. And if someone is tripping and someone comes to help them, I
- 3 mean that is something that is occurring in the moment. And that would be the distinction
- 4 between the two. I am sure the Court will look at that.
- 5 THE COURT: I will take a look at that case. Any others that you all find. I
- 6 will probably be sitting right here at the bench eating and researching. We will be at ease
- 7 until 2:00.
- 8 (COURT ADJOURNED AT APPROXIMATELY 12:45 FOR LUNCH RECESS)
- 9 (COURT RECONVENED AT APPROXIMATELY 2:15 P.M.)
- 10 (ALL PARTIES ARE PRESENT, JURY IS NOT)
- 11 THE COURT: It appears that the attorneys need to consult about something.
- 12 I am thinking about how to do that. I am going to bring the jury back in and let them know
- about that and turn them loose for another hour. Is that acceptable to counsel?
- MR. HOCKADAY: Yes sir.
- MR. HOLMES: Yes sir.
- 16 (ALL JURORS BROUGHT INTO THE COURTROOM)
- 17 THE COURT: Members of the Jury, thank you for coming back on time,
- don't get too comfortable though, we are going to have another recess for an hour right now.
- 19 The lawyers and the Court need to work out something, talk about something in this case.
- 20 Don't concern yourself about what it might be, or not be. As I stated to you before, keep an
- open mind about the case. Please don't discuss it among yourselves, don't discuss it with
- 22 anybody else, do any internet searches or anything like that. Just enjoy yourself for another
- hour, be back here at twenty minutes after three.
- 24 (ALL JURORS LEAVE THE COURTROOM AT APPROXIMATELY 2:20 P.M.)
- 25 (THE FOLLOWING IS OUT OF THE PRESENCE OF THE JURY)

1	THE COURT: Mr. Holmes if we are able to work this out, do we have other
2	business for the Court the rest of the week?
3	MR. HOLMES: Yes sir, all the other matters that we held open we will be
4	trying to get those attorneys here and their clients here. We have at least got several
5	probation violations. Since the jury was released we wouldn't be able to do a jury trial.
6	(COURT WAS IN RECESS FOR APPROXIMATELY ONE HOUR)
7	THE COURT: Will counsel approach?
8	(Attorneys Approach the bench)
9	THE COURT: Anything before we bring the jury back?
10	MR. HOCKADAY: No sir.
11	MR. HOLMES: Your Honor would Ms. Whitson retake the stand now.
12	THE COURT: Before we do bring the jury back, I will stand by my rulings
13	before, excluding the statement of – that Mr. Whitson that Mr. Pritchard wanted me to buy
14	morphine for \$8.00 a piece and sell it at \$15.00. I am going to exclude that. Also where the
15	defendant said he would help me out since I have been in jail, I am going to exclude that.
16	Okay, you all didn't have any further cases to hand to me. I have done some
17	research on it. It appears to be a little bit of a legal set of facts, that is all I am going to say.
18	So anything else before we bring in the jury?
19	MR. HOCKADAY: No.
20	MR. HOLMES: No sir.
21	THE COURT: Please bring them in.
22	(ALL PARTIES ARE PRESENT – ALL JURORS BROUGHT INTO THE COURTROOM
23	AT APPROXIMATELY 3:20 P.M.)
24	THE COURT: Ms. Randolph, come back around please. You are still under
25	oath

- 1 (Continued with direct examination by Mr. Holmes)
- 2 Q. Ms. Randolph, before when we took a break you had indicated that Mr. Pritchard had
- 3 arrived at the residence in a silver Ford Ranger truck, about a half hour after you had
- 4 arrived, correct?
- 5 A. Correct.
- 6 Q. Did you actually, physically see him?
- 7 A. Yes.
- 8 Q. Did you recognize him?
- 9 A. Yes.
- 10 Q. So you had seen him before?
- 11 A. Yes.
- 12 Q. And would you say that Jonathan had said something to you about where Pritchard
- wanted to take him, is that right?
- 14 A. Yes.
- 15 Q. And what was that again?
- 16 A. To the store.
- MR. HOCKADAY: Objection for the record.
- THE COURT: Overruled.
- 19 Q. And what happened after Mr. Pritchard arrived at the residence?
- 20 A. They left and was gone about fifteen minutes.
- Q. And so they are gone about fifteen minutes, did they return?
- 22 A. Yes.
- Q. And when they returned, what happened?
- A. He dropped John off and we went into the kitchen and he showed me ten morphine
- 25 30 milligrams.

- 1 THE COURT: I didn't hear that last part, can you speak up.
- 2 A. We went into the kitchen and he showed me ten morphine 30 milligrams.
- 3 Q. My understanding you said ten 30 milligram pills?
- 4 A. Yes.
- 5 Q. And did Jonathan, when he returned with Mr. Pritchard, have anything else with
- 6 him?
- 7 A. No.
- 8 Q. He was not carrying anything else?
- 9 A. No.
- 10 Q. He did not have anything that would appear to be from a store?
- 11 A. No.
- 12 Q. Have you ever seen morphine before?
- 13 A. Yes.
- 14 Q. Did you immediately recognize the pills?
- 15 A. Yes.
- 16 Q. Had you seen this exact kind of pill before?
- 17 A. Yes.
- 18 Q. What happened after you returned to the house and you all went into the kitchen and
- 19 he showed you the pills?
- A. He gave Nathan one of those and he had nine left.
- 21 Q. Okay. And what happened then?
- 22 A. We went outside to my dad's Jeep Cherokee and he crushed three pills and drew two
- 23 syringes and injected my he injected me first and then with the other syringe injected
- 24 himself.
- Q. Were you all in the jeep for awhile, or how long were you in the jeep?

- 1 A. Probably 30 minutes.
- 2 Q. And then what happened?
- 3 A. We left there and went to Star Branch Road.
- 4 Q. Where is that?
- 5 A. It is down on Jack's Creek.
- 6 Q. And what did you go to Star Branch Road for?
- 7 A. We was talking and we did two more there were two more he done two more pills.
- 8 And then I got a phone call from a friend and went to Hardees to eat. I dropped John back
- 9 off at Christine's and left immediately.
- 10 Q. And so at the time that you dropped Jonathan off at Christine's you stated there were
- 9, 10 originally, one was given away, that is nine, and you crushed 3, that is six –
- 12 A. And then two more –
- 13 Q. and you used two more so that would leave you with 4 morphine pills?
- 14 A. Correct.
- 15 Q. When you dropped Jonathan off at Christine's who was in possession of those
- 16 morphine pills?
- 17 A. He left them with me.
- 18 Q. Where did you go when you left?
- 19 A. I left there and went straight to Hardees and eat.
- 20 Q. And after you ate there, what did you do?
- 21 A. I went back to Christine's.
- 22 Q. Do you know about what time?
- 23 A. That I went back to Christine's?
- Q. That you went back to Christine's?
- 25 A. It was right at 7:30.

- 1 Q. What time would you have left to go to Hardees?
- 2 A. 6:00.
- 3 Q. So you returned at 7:30, and what happened then when you arrived back at the
- 4 house?
- 5 A. We went into Christine's house and we hung out for awhile and then went into the
- 6 bathroom.
- 7 Q. And what did you do in the bathroom?
- 8 A. He crushed the last 4.
- 9 Q. And then what happened? You say he crushed the last 4.
- 10 A. We used those, yes.
- 11 Q. Do you know about how many more times you injected each other?
- 12 A. He injected me. I never injected myself. But I would say three times a piece. But I
- don't know how much would have been left, because I didn't I have never drew it up. He
- always knew what was left and what wasn't.
- 15 Q. Was there any remaining after that?
- 16 A. There was, yes. I don't know how much exactly.
- 17 Q. Do you know approximately how much was left? Can you estimate how many
- 18 syringes that would be?
- 19 A. I would say six, I would feel safe saying six syringes.
- THE COURT: Six.
- A. Yes sir.
- THE COURT: Left or total?
- 23 A. Left.
- Q. And what happened after that, when you went in the bathroom, what happened after
- 25 that?

- 1 A. We talked and we argued, I was going to leave and he didn't want me to leave.
- 2 Q. Where was the remaining morphine that was crushed?
- 3 A. He stuck it under the sink.
- 4 Q. Did he do that when you all were leaving the bathroom?
- 5 A. Yeah.
- 6 Q. What time did you leave the residence that night?
- 7 A. It was probably ten until ten or so.
- 8 Q. You indicated you recognized Mr. Pritchard and that you had seen him before.
- 9 When, where, how would you, when did you see him before. Let me ask you this. When
- was the first time you had seen Mr. Pritchard?
- 11 A. I don't remember the first time I seen him.
- 12 Q. How long had you known him?
- 13 A. Six to seven months.
- 14 Q. The same period of time that you knew Jonathan?
- 15 A. Um-hum.
- 16 Q. On how many prior occasions would you say you had seen Mr. Pritchard?
- 17 A. At least eight.
- 18 Q. Was Jonathan with you on the prior occasions that you had seen Mr. Pritchard?
- 19 A. Yes.
- Q. So on all the occasions prior to this that you had seen Mr. Pritchard, you had been
- with Jonathan?
- A. Correct.
- Q. Can you at this time describe these prior occasions for us? Do you recall these prior
- 24 occasions?
- 25 A. I do.

- 1 Q. Where did did you meet him at the same place on all these prior occasions?
- 2 A. Not always, I was working at the Chinese restaurant and he would pick me up, John
- would be there, he would pick us up and take us back to Jack's Creek cause we didn't have a
- 4 ride.
- 5 Q. What is at Jack's Creek?
- 6 A. Taking him back down to where he lived, John.
- 7 Q. To where who lived, John?
- 8 A. Um-hum. I stayed there some, just like two or three days at a time, but I didn't live
- 9 there.
- 10 Q. You said there were prior, when you say prior occasions, you mentioned that he
- picked you up. Did he pick you and Jonathan up on more than one occasion?
- 12 A. No, I think it was just once on that.
- 13 Q. Where did you see him on the other occasion?
- 14 A. I have a vehicle, I drove some too, and John worked done some brush work.
- 15 Q. When you say John, do you mean the Defendant?
- 16 A. Jonathan, I'm sorry.
- 17 Q. So where did you see the Defendant on these other prior occasions?
- 18 A. At Robbie's house.
- 19 O. So all the other occasions were at Robbie Brown's house.
- A. Most of the time.
- 21 Q. You say most of the time.
- 22 A. We would go there and John would pick up Jonathan I'm sorry, would pick up
- 23 stuff.
- MR. HOCKADAY: Objection this is 404 evidence.

- 1 THE COURT: I can hardly hear what you are saying. What was the
- 2 question again?
- 3 Q. I think my last question was, where was she seeing the Defendant on these prior
- 4 occasions. And the answer was at Robbie Brown's house.
- 5 A. Correct.
- 6 MR. HOCKADAY: Objection.
- 7 THE COURT: Overruled at this time.
- 8 Q. On these prior occasions, and I guess specifically talk about the occasions at Robbie
- 9 Brown's house can you tell us what happened on those prior occasions?
- MR. HOCKADAY: Your Honor we object.
- THE COURT: Overruled.
- 12 A. Jonathan would make a phone call and we would go there and he would get
- medicine.
- 14 Q. When you say medicine, what do you mean?
- 15 A. Morphine.
- 16 Q. Did you actually witness -
- 17 A. Yes.
- THE COURT: Finish the question, what is the question.
- 19 A. Sorry.
- THE COURT: Go ahead.
- 21 Q. Did you actually witness the defendant giving morphine to Jonathan on these prior
- 22 occasions?
- 23 A. Yes.
- Q. So you actually saw Mr. Pritchard then in possession of the morphine?
- 25 A. Correct.

- 1 Q. The morphine that you saw on these prior occasions, was that the same type of pill
- 2 that you recognized on the Saturday, March 5th?
- 3 A. Yes.
- 4 Q. Okay, now, was there anybody else at the house Christine Angel's house Saturday
- 5 March 5th, that wasn't a resident of the house, besides you?
- 6 A. Not to my knowledge, no.
- 7 Q. You did not see anyone else?
- 8 A. No.
- 9 Q. Is it possible someone was there when you were not there?
- 10 A. It could be possible.
- 11 Q. On the occasion that you mentioned that Mr. Pritchard picked you up, you said he
- 12 picked you up from work, is that right?
- 13 A. Correct.
- 14 Q. When he picked you up from work, how did he pick you up?
- 15 A. In his truck.
- 16 Q. What truck?
- 17 A. The Ford Ranger.
- 18 Q. And where did he take you, again?
- 19 A. Back to Nathan's.
- Q. Was there morphine involved in that incident?
- 21 A. Yes.
- Q. Okay, what happened?
- A. Jonathan done that, I didn't have any say so in that.
- Q. What did you see, what did you observe?
- 25 A. Gave him some money for –

- 1 Q Gave who?
- 2 A. Jonathan. I don't remember how much, I just I was the one working so.
- 3 Q. Did you see Jonathan receive morphine?
- 4 A. Um-hum.
- 5 Q. Who gave him that morphine?
- 6 A. Pritchard did.
- 7 Q. Now, you stated that you injected yourself, or I'm sorry that he injected you, but you
- 8 were using on this day at least.
- 9 A. Correct.
- 10 Q. Have you taken steps to deal with your drug addiction?
- 11 A. I don't have a drug addiction.
- 12 Q. Well are you, are you cleaned out?
- 13 A. Yes.
- 14 Q. Well, you obviously did you do something to get clean?
- 15 A. No.
- 16 Q. What did you do, did you just stop?
- 17 A. Yeah, I didn't need it.
- 18 Q. And you are married now, is that correct?
- 19 A. That is correct.
- Q. And you have a child?
- 21 A. Fifteen months old.
- Q. When did you marry?
- 23 A. August 18th of 2012.
- MR. HOLMES: I don't have any other questions at this time.
- THE COURT: Cross examination.

- 1 MR. HOCKADAY: YES SIR.
- 2 CROSS EXAMINATION BY MR. HOCKADAY:
- 3 Q. All right, so you were the former girlfriend of Mr. Whitson, right?
- 4 A. Yes.
- 5 Q. Okay. You guys were involved with each other for six or seven months?
- 6 A. Correct.
- 7 Q. Leading up to March of 2011, right?
- 8 A. Right.
- 9 Q. So that relationship started sometime in the fall of 2010, correct?
- 10 A. August or September.
- 11 Q. How frequently did you see him during that period of time?
- 12 A. At least every other day.
- 13 Q. So at least three or four times a week?
- 14 A. Correct.
- 15 Q. And whether that be at his place or your place?
- 16 A. No, not my place.
- 17 Q. Where were you living at the time?
- 18 A. With my parents.
- 19 Q. And I think you had use of your dad's vehicle, is that right?
- A. Correct.
- 21 Q. Is that a jeep?
- A. Um-hum.
- Q. And would that still be the same vehicle you were using in March of 2011?
- A. Um-hum.

- 1 Q. But anyway, you at times would come to Jonathan's place, and when you say his
- 2 place where would that have been?
- 3 A. Nathan's.
- 4 Q. You are aware that Jonathan went to jail in –
- 5 A. The first week of January.
- 6 Q. January of 2011. So was he still living at Nathan's up until that time?
- 7 A. That day that I went there the power was off so he was staying at Christine's then.
- 8 And they said that Nathan was staying there, so he would be staying there from now on.
- 9 Q. You heard Christine testify that he stayed down at Nathan's until about the time he
- went into jail?
- 11 A. Um-hum.
- 12 Q. So it was all at about that same time?
- 13 A. Right.
- Q. But during those months when you would go to Jonathan's house you were going to
- Nathan's house, right?
- 16 A. Right.
- 17 Q. And the nature of your relationship, drugs were involved, correct?
- 18 A. Yes.
- 19 Q. Describe these incidents where you say that Jonathan was acquiring drugs from Mr.
- 20 Pritchard. You are saying these were morphine pills, right?
- 21 A. Yes.
- 22 Q. You are saying this happened or you are saying that Jonathan was in possession of
- 23 morphine pills in March, right?
- 24 A. Yes.

- 1 Q. So, during the time that you two were together for some six or seven months, this is
- 2 something that the two of you did together, used drugs, correct?
- 3 A. Yes, but only when I was around him.
- 4 Q. So when you were around him, the two of you used drugs?
- 5 A. Right.
- 6 Q. Describe for me what you say when how were you how did you use the
- 7 morphine specifically on March 5th?
- 8 A. He crushed the pills in a spoon.
- 9 Q. Tell me what you mean by that? What did you do that actually crushed them to use
- the drug, how is that done? Or how did you do it?
- 11 A. He crushed them up with a lighter, I am assuming. I don't remember what he
- crushed it up with. But he added a little water to it and drew it up.
- Q. Okay, so he would melt it. What would he use to melt it in, what kind of apparatus
- would he have to crush the pills in?
- 15 A. What?
- 16 Q. What did he have to crush the pill in as he was melting it?
- 17 A. A spoon.
- 18 Q. And you say first he did this on the 5th in your car, right?
- 19 A. Yes.
- 20 Q. In Christine's driveway, right?
- 21 A. Yes.
- Q. And you are saying that that lasted about 30 minutes, right?
- A. Um-hum.
- Q. And then you guys left and went down Jack's Creek, correct?
- 25 A. Um-hum.

- 1 Q. And you were gone for how long?
- 2 A. I was gone until 6:00, that is when my friend had called and I went to Hardees. I
- 3 dropped him off back at Christine's and 6:00 and left directly after.
- 4 Q. I want to get this straight. You say you got a call from him at 12:00, right?
- 5 A. Yes. Twelve or twelve thirty.
- 6 Q. You say you went there at three?
- 7 A. Yes.
- 8 Q. You say you left there at what time? What time did you leave Christine's to go out
- 9 to the car?
- 10 A. It is the same driveway pretty much. It is not like you I mean.
- 11 Q. My question, when you left Christine's and went out and sat in your car, and first
- used drugs on the 5th, what time was that?
- 13 A. I would say 3:45.
- Q. So what time did you leave Christine's to go down to Jack's Creek?
- 15 A. Right after, like probably four.
- Q. Where all in Jack's Creek did you go. Did you simply go somewhere to park off the
- side of the road when the additional drugs were used? Did you have any particular place
- 18 you two were going?
- 19 A. We went to Star Branch Road, a pull off on Star Branch Road.
- Q. Is that where you also received a call from your friend. Is that where you were
- 21 located?
- 22 A. Yes.
- 23 Q. So how long were you at Star Branch Road?
- A. A couple of hours I would say.
- Q. What did you do there?

- 1 A. Then used two more pills and talked.
- 2 Q. And were the pills used in the same manner, crushed?
- 3 A. Yes sir.
- 4 Q. Put in a liquid form and then syringes and then injected into the two of you?
- 5 A. Correct.
- 6 Q. Now you said that you saw ten of these when he got back at some point in the
- afternoon, when you were at Christine's, right? He had ten of them, right?
- 8 A. Um-hum.
- 9 Q. You say that one was given to Nate, right?
- 10 A. Correct.
- 11 Q. And you are sure of that?
- 12 A. Positive.
- 13 Q. Where is it you say that occurred, whose house?
- 14 A. That was at Nathan's. He went up to Nathan's and gave it to him.
- 15 Q. Did you go with him?
- 16 A. Um-hum.
- 17 Q. So when you say Jonathan got back and had pills, when you first saw the pills you
- are saying that the two of you went to Nathan's house. And that is where you say he
- delivered a pill to Nathan, correct?
- A. Correct.
- 21 Q. Which left you with nine, right?
- A. He had the nine in his pocket, yes.
- Q. Do you recall giving a statement on the 6th of March to Officer Higgins about what
- all had transpired the prior day?
- 25 A. Yes.

- 1 Q. Nowhere in your statement do you indicate that a pill was ever given to Nathan, is
- 2 that true?
- 3 A. That is true.
- 4 Q. So that is different than the statement you gave the officer the day Jonathan died,
- 5 right?
- 6 A. I was rattled that day.
- 7 Q. I am not asking you if you were rattled, that is different isn't it?
- 8 A. It is different, yes.
- 9 Q. It has never been mentioned in your prior statement that a pill was taken from
- 10 Jonathan down to Nathan's house and given to Nathan, was it?
- 11 A. No.
- 12 Q. And Christine indicated that when you came to the house that you two stayed there at
- her house, correct? When you got there?
- 14 A. Um-hum.
- 15 Q. But you are telling us now that when you got back you are telling me you all went
- down to Nate's house for a period of time, right?
- 17 A. He took me into Nathan's kitchen and showed me ten morphine pills.
- 18 Q. Now that, when you say Nathan's kitchen you are talking about a separate residence
- from Christine's. Nathan's mobile home that is located behind Christine's house, right?
- 20 A. Right.
- Q. And was all that done before you and Jonathan went to the car and first began to use
- 22 morphine?
- 23 A. Yes.
- Q. And then after you used the morphine in your car, were you the one that drove to –
- 25 drove from there?

- 1 A. I did.
- 2 Q. So after shooting up, sharing three morphine pills, you drove a vehicle on the streets
- 3 to another location where you parked, right?
- 4 A. Yes.
- 5 Q. Spent two hours there, right?
- 6 A. Something like that, yeah.
- 7 Q. Until at least 6:00, right?
- 8 A. Yeah.
- 9 Q. Shot up more drugs, right?
- 10 A. He shot me and then himself, yes.
- 11 Q. Shared with him more drugs that were injected in your arm, right?
- 12 A. Yes.
- 13 Q. And then you drove back to Christine's house, right?
- 14 A. Right.
- 15 Q. Let him out, right?
- 16 A. Yes.
- 17 Q. So he didn't go with you at all to Hardees?
- 18 A. No.
- 19 Q. Who did you meet at Hardees?
- A. A friend of mine.
- 21 Q. Who?
- 22 A. Jane Honeycutt.
- 23 Q. Jane Honeycutt, anybody else?
- 24 A. No.
- 25 Q. And you were there how long, about an hour and a half?

- 1 A. Yes.
- 2 Q. And then so Jonathan, when you got back he was where?
- 3 A. He was at Christine's.
- 4 Q. And then when you got back at 7:30, until you say you left at 9:50, ten until ten,
- 5 did you all stay at Christine's?
- 6 A. We did.
- 7 Q. So, the only time based on your recollection of the facts, Jonathan left the house was
- 8 when you say he was with Mr. Pritchard, but once you got there and you all were together,
- 9 you left one time together and then you brought him back and you went to Hardees, correct?
- 10 A. Correct.
- 11 Q. At no other time during all this did you leave?
- 12 A. Not tonight I left, but it is possible that he could have while I was gone.
- 13 Q. But that would not have been you?
- 14 A. No.
- 15 Q. As Christine has said, correct? She said you all left twice together.
- 16 A. We didn't leave twice, no.
- 17 Q. Now, you don't know who came to visit with John during all this, his day back from
- jail while he was at Christine's, do you?
- 19 A. No.
- Q. You don't know whether CR was there, or Mr. Silvers, do you?
- 21 A. Not to my knowledge, they wasn't there when I got there, so I don't –
- Q. You just know they weren't there when you left, and they weren't there when you
- 23 got back?
- A. Right.
- 25 Q. But you have heard Christine say they came, right?

- 1 A. Today, I heard her say that.
- 2 Q. And she has given a statement that they came, you understand that, right?
- 3 A. Right.
- 4 Q. Do you know who they are?
- 5 A. Who?
- 6 Q. Do you know Mr. Silvers?
- 7 A. I know of him, I don't know him.
- 8 Q. Do you know CR, do you know who that is?
- 9 A. I know of him too.
- 10 Q. Who is that, what is his name?
- 11 A. I don't know his name.
- 12 Q. Do you know if that is Stella Massey's son?
- 13 A. I want to say so, yes.
- 14 Q. That is your understanding?
- 15 A. That is my understanding.
- 16 Q. Do you know if these two individuals have some drug history?
- 17 A. Yes.
- 18 Q. They do both in fact have a drug history, don't they?
- 19 A. To the best of my knowledge they do.
- 20 Q. You don't think you have any kind of drug problem, is what you said?
- 21 A. No.
- Q. Never had one?
- 23 A. No.
- Q. Driving around the streets in Yancey County after having shot up on at least two
- occasions, you see nothing wrong with that?

- 1 A. Yes, I do, but my and John's relationship, that is what we did. It is what it is. I am
- 2 married now, I that is what we were arguing about.
- 3 Q. During that period of time you would admit you had a drug problem, would you not?
- 4 A. Excuse me?
- 5 Q. During that period of time is it your testimony that you did not have a drug issue?
- 6 A. I didn't have one, no. I only used when I was around him, or he only done it to me.
- 7 Q. And he had a drug problem?
- 8 A. Yes.
- 9 Q. So, since you didn't have one when you were with him, you certainly was willing to
- use with you and then you with him, right?
- 11 A. Do what, sorry?
- 12 Q. You say you had no problem. But when you were with him you used. So my
- 13 question is, he certainly had a drug problem, right?
- 14 A. Yes.
- 15 Q. And obviously when the two of you together that is a problem that he continued to
- 16 have, right?
- 17 A. Yes.
- 18 Q. It got him in a lot of trouble, didn't it, using drugs?
- 19 A. What do you mean?
- Q. I mean he has had problems with it, right? Are you saying you don't know?
- 21 A. I don't –what do you mean like trouble with it?
- Q. I mean it has caused trouble for him. He has been in jail, he has had other issues as
- a result of his drug problem, has he not?
- A. Right, but I understand he was in jail over a driving charge.
- 25 Q. In January of 2011, that was for driving without a licenses, right?

- 1 A. I assume so. I am not sure, I don't know about the other times they are talking about.
- 2 Q. Now when he, when you got back to Christine's you guys used another 4, is that
- 3 right?
- 4 A. Excuse me?
- 5 Q. You used another 4 more pills.
- 6 A. While we were in there, yes.
- 7 Q. And that was in Christine's bathroom, right?
- 8 A. Correct.
- 9 Q. And that would have been the bathroom I guess that is located close to her bedroom,
- 10 correct?
- 11 A. Yes.
- 12 Q. And how was it used there. Describe how it was melted and then what was used,
- what instrument? Was it a spoon?
- 14 A. He used a spoon.
- 15 Q. Have you seen that spoon since that time?
- 16 A. No.
- 17 Q. Where do you recall it being when you left?
- 18 A. He put it under the sink.
- 19 Q. How many syringes do you say were used when you were at Christine's house?
- 20 A. Two.
- Q. Is it your testimony that there was some liquid form still in the syringes when you
- 22 left?
- A. It wasn't in the syringes, no, it was in the spoon.
- Q. So there was some left, not in the syringes but in the spoon.
- 25 A. Correct.

- 1 Q. Was there anything left in either of the two syringes, when you left?
- 2 A. I don't think so.
- 3 Q. So all that would have been used would have been everything but what might have
- 4 been left in the spoon, correct?
- 5 A. Correct.
- 6 Q. So basically you shared with him pretty much all of it, right?
- 7 A. Yes, to my knowledge.
- 8 Q. You shared at least, according to your testimony nine pills of morphine, right?
- 9 A. That is correct.
- 10 Q. But you admit that initially you never said anything about giving one to Nathan,
- 11 right?
- 12 A. Yes.
- Q. And any other time that night did you two guys go down to Nathan's house?
- 14 A. No.
- 15 Q. What was the argument about?
- 16 A. He wanted me to stay, told me this was going to be the last time, that, that was our
- 17 relationship together and that is all we did. Hey, I was done doing that and he didn't want
- me to leave.
- 19 Q. You said you were done doing what?
- 20 A. I was done with everything, all of it, our relationship. I didn't want to see him
- 21 anymore. I told I didn't ever want to see him again.
- Q. Did you tell him you were done using drugs with him?
- 23 A. Yes.
- Q. You are telling him in spite of the fact you got there at 3:00 you left at ten until ten,
- 25 you had been using for about six consecutive hours, right?

- 1 A. Probably that long, yes.
- 2 Q. And you drove to Christine's house to Jack's Creek and back, and then to Hardees
- 3 and back, right?
- 4 A. Correct.
- 5 Q. After using, right? And then you drove, where did you go when you left Christine's
- 6 at 9:50?
- 7 A. I went home.
- 8 Q. So you drove from Jack's Creek through town, through Micaville all the way to
- 9 South Toe.
- 10 A. Correct.
- 11 Q. After having been using at least half or having had half of this injected into you,
- 12 right?
- 13 A. Yes.
- 14 Q. You were fine the next day, weren't you?
- 15 A. Yes.
- 16 Q. You had no physical problems after using half of these morphine pills with Jonathan,
- 17 did you?
- 18 A. No.
- 19 Q. You were able to, after learning of his death, you were interviewed and were able to
- sit down with an officer and be interviewed and give a full statement about what you knew
- 21 that happened, right?
- 22 A. Yes.
- Q. During the period of time that you were with Jonathan, did he drink any alcohol?
- A. Not to my knowledge, no.

- 1 Q. You were with him off and on for about six or seven hours, based on what you are
- 2 telling us, right?
- 3 A. Yes.
- 4 Q. So you have no way to explain how alcohol got in his system, do you?
- 5 A. No.
- 6 Q. But you are aware that it was, are you not?
- 7 A. No, I didn't know he was drinking until today, until I heard Christine say that. I
- 8 didn't know he had phenominia or any of that, all that.
- 9 Q. You are aware now that he had phenominia, right?
- 10 A. That is what she said.
- 11 Q. You are aware that he had other medical conditions, right?
- 12 A. Like she said he had a hole in his heart, is that correct?
- 13 Q. That, you were aware of that. Were you aware that he had asthma?
- 14 A. No, I didn't know that either.
- 15 Q. When you got there, had he been drinking at all?
- 16 A. If he did, I didn't know it.
- 17 Q. You were around him six or seven hours in a car together.
- 18 A. He hadn't drunk around me, no.
- 19 Q. You didn't smell any alcohol on him, did you?
- 20 A. No.
- Q. And when you left by 9:50, he didn't have any alcohol on his breath to your
- knowledge, did he?
- 23 A. No.

- 1 Q. So if you left at 9:50 and you had no evidence that he had had any alcohol in his
- 2 system, it must have come after that time, would it not have. You certainly had nothing to
- 3 do with it, correct/
- 4 A. I didn't smell any alcohol, like when I was leaving I pulled out facing going, like
- 5 back toward, like leaving –
- 6 Q. At 9:50?
- 7 A. Yes, and he was standing at the my passenger side window rolled down. He was
- 8 standing at the passenger side window talking to me. So and I was at the driver's side so I
- 9 really wasn't close enough to smell his breath.
- 10 Q. You all were in a car together.
- 11 A. I didn't smell it.
- 12 Q. So during the time you are sitting beside him at Christine's and having discussions,
- having a discussion about whether you all were going to continue your relationship, sitting
- in the car on Jack's Creek, at no point did you have any suspicion that he had been drinking
- 15 at all. Did you?
- 16 A. No.
- 17 Q. Do are you fully satisfied in your mind that as of 9:50 at night when you left he had
- had absolutely no alcohol, you didn't have any evidence of that?
- 19 A. No.
- Q. Now, you at times would stay with him at Nate's house, correct?
- 21 A. Correct.
- 22 Q. From time to time.
- A. From time to time.
- Q. Nate had a drug problem as well?
- 25 A. Yes.

- 1 Q. Yes, to the fact that you guys gave him a pill?
- 2 A. I didn't give him a pill, Jonathan did.
- 3 Q. Now, you were dating him in November and December of 2010, before he went to
- 4 jail in Madison, right?
- 5 A. Correct.
- 6 Q. Do you remember the two of you going to the hospital at any point for any medical
- 7 issue that Jonathan was having during one or both of those months?
- 8 A. I do remember going to the hospital.
- 9 Q. Which hospital did you go to?
- 10 A. St Joseph I think.
- 11 Q. So you went to Asheville.
- 12 A. Yes.
- 13 Q. Why did you go?
- 14 A. He had a complaint in his arm.
- 15 Q. Which arm?
- 16 A. I don't remember, I would say it was his right arm.
- 17 Q. Could it possibly have been his left arm?
- 18 A. It possibly could.
- 19 Q. What was the chief complaint?
- A. He just said it hurt.
- Q. Did he have it examined at the hospital?
- A. He did.
- Q. What was was it not determined that he had an abscess of some sort?
- A. Something like that, yes.
- 25 Q. He had an infection, correct?

- 1 A. I think so, yes.
- 2 Q. Were you with him when he went to the hospital?
- 3 A. I was.
- 4 Q. Did he stay overnight?
- 5 A. He did.
- 6 Q. When Jonathan used in the past, prior to the stay at Madison County jail, you are
- 7 saying that you had seen him receive morphine and use morphine before, right?
- 8 A. Correct.
- 9 Q. And when he would use it, would he inject it into his arm?
- 10 A. Yes.
- 11 Q. And one of these arms you are talking about, you are not sure which one, there was
- some type of infection that had set up in it when he was being treated at St. Joseph Hospital,
- 13 correct?
- 14 A. Correct.
- MR. HOCKADAY: If I can have a moment.
- 16 THE COURT: Yes sir.
- 17 Q. Did you go to Jonathan's funeral?
- 18 A. Yes.
- 19 Q. Do you remember if my client went to the funeral?
- A. He did.
- Q. Was he one of his poll bearers, do you remember?
- 22 A. I don't remember that.
- 23 Q. They were pretty good friends, were they not?
- A. They were good friends.
- 25 Q. As far as you know they had always gotten along well?

- 1 A. Correct.
- 2 Q. Never really been any ill will between the two of them that you can point at?
- 3 A. No sir.
- 4 Q. You are not aware of any ax that my client had to ever grind with Jonathan, they had
- 5 always gotten along pretty well, right?
- 6 A. To the best of my knowledge.
- 7 Q Did you ever have any conversations at the funeral with Ms. Robbie Brown?
- 8 A. I remember them coming through the line and hugging me. I mean I don't remember
- 9 really, I am sure it was, oh I'm sorry, bless your heart, something that she said.
- 10 Q. But you don't recall any details as far as the conversations you may have had with
- 11 Ms. Brown beyond something like that?
- 12 A. No.
- Q. On the day that we are talking about March 5th, when you got to the home, you say
- 14 you saw John pick up Jonathan, you never went with Jonathan during that fifteen minute
- period of time?
- 16 A. No sir.
- 17 Q. Of your own independent knowledge you don't know where they went, do you?
- 18 A. I don't really know, no.
- 19 Q. You don't know what they talked about?
- A. I wasn't there.
- 21 Q. You don't know if it could have been about the weather, or doing some work for
- Robbie, you don't know what the conversations were about when the two of them were
- 23 together, do you?
- 24 A. No.

- 1 Q. On that particular day in question, you at no point ever saw John Pritchard deliver or
- 2 hand over any type of morphine pills to Jonathan, did you?
- 3 A. Not on that day, no.
- 4 MR. HOCKADAY: Those are my questions.
- 5 THE COURT: Redirect.
- 6 REDIRECT EXAMINATION BY MR. HOLMES:
- 7 Q. Just to be clear, Mr. Hockaday asked you that when you had come back to
- 8 Christine's after going to eat, he asked you if you or Jonathan had used the remaining four
- 9 pills, you said yes. Did you use the remaining four pills entirely?
- 10 A. You mean was there more left?
- 11 Q. Exactly.
- 12 A. Yes, there was more left.
- Q. And again, you had stated, if I heard correctly that there were about six syringes left?
- 14 A. I would say so, yes.
- 15 Q. In the course of the day, as you all were together and using it at different times, at
- any point in time did Jonathan inject himself more than he was injecting you?
- 17 A. Yes.
- 18 Q. He did. Which time, or was it all the time?
- 19 A. No not there was a detox that –
- Q. But Jonathan used more than you did on that day, is that correct?
- A. I would assume so.
- MR. HOCKADAY: Objection, motion to strike.
- THE COURT: Motion to strike allowed.
- Q. Did you or did you not see him inject himself more times than you were injected?
- 25 A. No.

- 1 Q. You didn't?
- 2 A. No.
- 3 Q. These physical problems that we have heard about, do you personally know about
- 4 any of these problems, or did you just learn about them from hearing about them in court
- 5 today?
- 6 A. I knew about his arm bothering him and him going to the hospital, because I went
- 7 with him, but as far as the other things, no.
- 8 Q. On the on the prior occasions where Mr. Pritchard where you and John or Mr.
- 9 Pritchard were at Robbie Brown's house, how did you and Jonathan end up going to Robbie
- Brown's house? Did Mr. Pritchard call you or Jonathan or did you contact Mr. Pritchard,
- 11 how did that happen?
- 12 A. Jonathan called him.
- 13 Q. Is that what happened on all those occasions?
- 14 A. Most of the time, yes.
- 15 Q. You say most of the time, what happened on the other times?
- 16 A. I mean, yes, he always called.
- 17 Q. And on those occasions, how much morphine was given to Jonathan? Do you recall?
- 18 A. I do not recall, no.
- 19 Q. Let me ask you this. Do you recall if it was approximately the same amount each
- 20 time?
- 21 A. I don't really I would say so. I don't know for sure.
- 22 Q. You just don't recall.
- MR. HOCKADAY: Objection, her answer was she didn't know.
- 24 THE COURT: Objection overruled.

- 1 Q. Have you ever, in the course of your relationship with Jonathan ever seen him or
- 2 seen him or seen him do morphine with anybody else?
- 3 A. Yes.
- 4 Q. Who?
- 5 A. He has got it from Thelma Massey before.
- 6 MR. HOLMES: Those are my questions.
- 7 THE COURT: Further cross?
- 8 MR. HOCKADAY: Briefly.
- 9 RE CROSS EXAMINATION BY MR. HOCKADAY:
- 10 Q. The last four morphine pills that were was left in the spoon right?
- 11 A. Yes.
- 12 Q. Was left in Christine's house, correct?
- 13 A. Underneath the sink.
- 14 Q. You said there were six syringes left. You only used two syringes, right?
- 15 A. Correct.
- 16 Q. What are you talking about another six then, where were they?
- 17 A. I was talking about six shots that was left, like if he I am assuming there –
- 18 Q. You are saying one was in the spoon, there would have been six more shot, in your
- 19 opinion?
- A. Correct.
- 21 Q. So there was a substantial amount, right?
- A. Correct.
- 23 Q. You don't know anything about where that went, do you?
- 24 A. When I left it was underneath the sink. He went out with me, he walked me out to
- 25 my car when I was leaving.

- 1 Q. So there was a substantial amount still left that had not been used, right?
- 2 A. Yes.
- 3 Q. How many shots all together, do you recall receiving that day?
- 4 A. That day?
- 5 Q. Yes.
- 6 A. I really don't know.
- 7 Q. Can you estimate, you had used with him for a number of months, crushed these
- 8 pills, he gave you the shots. Roughly how many shots did he give you?
- 9 A. I don't know.
- 10 Q. I will ask it this way. You crushed three pills. The first time was in the car. When
- those were drawn into the syringes, how many shots would you roughly get out of that
- 12 transaction?
- 13 A. I would say there was twelve shots all day.
- 14 Q. Twelve shots for you and twelve shots –
- 15 A. A piece, I mean for me I would say all day. I am guessing.
- 16 Q. So approximately a dozen shots, and you think that you guys used about the same?
- 17 A. Correct.
- 18 Q .And you are saying that you had seen, or you were aware that Jonathan had taken
- morphine from other individuals, right?
- A. In the past, yes.
- 21 Q. And one of those being Thelma Massey, correct?
- A. Correct.
- Q. Did you witness that? Did you see that transaction?
- 24 A. Yes.
- 25 Q. Are you aware if she ever got charged in that criminally?

- 1 A. I don't I don't know. I don't –
- 2 Q. You don't think. You don't recall her ever being charged?
- 3 A. I don't remember anybody saying anything about, no.
- 4 Q. You don't remember Jonathan ever having to come to court as a witness against
- 5 Thelma Massey for her having delivered any morphine pills do you?
- 6 A. No.
- 7 Q. And you said her son is CR, is that right?
- 8 A. To the best of my knowledge.
- 9 Q. And that is the individual that Christine says was in the driveway at some point
- during that day, you didn't see him but you heard her say that he was there at some point, is
- 11 that correct?
- 12 A. I heard her say that today, yes.
- 13 Q. And you just don't know what time he might have been?
- 14 A. I don't know.
- 15 Q. Could have been before you were there, could have been after, correct?
- 16 A. Correct.
- 17 Q. So it could have been well before you got there at 3:00 right?
- 18 A. Correct.
- 19 Q. As far as you know.
- MR. HOCKADAY: Those are my questions.
- 21 RE REDIRECT BY MR. HOLMES:
- Q. Jonathan didn't show you any morphine pills initially when you arrived at the house,
- 23 correct?
- 24 A. No.

- 1 Q. He only showed you morphine pills after he had come back from after leaving with
- 2 Mr. Pritchard, correct?
- 3 A. Yes.
- 4 MR. HOLMES: No more questions.
- 5 RE RE-CROSS BY MR. HOCKADAY:
- 6 Q. And you had only been there how long when you got there and when he left you say
- 7 with Mr. Pritchard, a few minutes?
- 8 A. Do what?
- 9 Q. When you got there, when you say he left with Mr. Pritchard, how long had you been
- 10 at the house?
- 11 A. 30 minutes, I am assuming.
- 12 Q. So just a few minutes really.
- 13 A. Thirty, it was more than just a few.
- MR. HOCKADAY: Those are my questions.
- MR. HOLMES: Nothing further.
- THE COURT: You may step down.
- 17 (Witness excused)
- MR. HOLMES: The State will call Robbie Brown.
- 19 ROBBIE BROWN, being first duly sworn testified as follows during DIRECT
- 20 EXAMINATION BY MR. HOLMES:
- Q. Will you state your name please?
- A. Robbie Brown.
- Q. Where do you live?
- A. 76 Charlie Brown Rd.
- 25 Q. How long have you lived there?

- 1 A. Over 25 years.
- 2 Q. So you have lived there during March of 2011?
- 3 A. Yes.
- 4 Q. Did you know Jonathan Russell Whitson?
- 5 A. Yes.
- 6 Q. How did you know him?
- 7 A. He grew up with my son and my nephew. Bryan Silvers, my nephew, my son Aaron
- 8 they are all the same age. I knew him from the time he was a cub scout. I was a den
- 9 mother. I knew him all through school, high school, they grew up playing together, played
- baseball together. Once they got out of high school they went into odd jobs on the
- weekends to make a little money to go out and have fun on weekends, and they started doing
- weed eating, yard work and stuff there.
- 13 Q. Around your house?
- 14 A. Yeah, my house, my mom's and my sister's.
- 15 Q. Do you know how he was reimbursed for doing that work?
- 16 A. About 20.00 each time he would mow, sometimes less.
- 17 Q. Was he reimbursed in other ways?
- 18 A. Never.
- 19 Q. Do you recall being interviewed by Special Agent Chuck Vines of the State Bureau
- of Investigation?
- 21 A. I do.
- 22 Q. I believe Sergeant Higgins was with him, is that correct?
- A. Sergeant Higgins, Sergeant Collins, Detective Letterman, and the other Higgins, the
- bigger guy. There were four men there.
- 25 Q, Do you recall when you met with him?

- 1 A. It was one afternoon.
- 2 Q. If I said it was September 26, 2011, does that sound correct?
- 3 A. That is what it says here, yeah.
- 4 Q. Do you have a copy of your statement?
- 5 A. I have a copy of a modified statement that it it is really a little twisted from what
- 6 the original is.
- 7 Q. The SBI file, is that correct?
- 8 A. SBI file, I'm not sure.
- 9 Q. SBI report, is that correct?
- 10 A. I have a copy they gave me of something today that I am supposed to be asked
- 11 questions about.
- 12 Q. So you recall that interview?
- 13 A. I do.
- 14 Q. You recall speaking with them. And during the time that you were with Mr.
- 15 Pritchard, did you ever see him in possession of morphine pills?
- 16 A. He has been on had a car wreck and had back surgery scheduled. He has been on I
- guess two years out of work, and drawing unemployment before he was out of morphine.
- But toward the end before his surgery he had to have that. He was hurting pretty bad.
- 19 Q. So is that a yes?
- 20 A. That is a yes, he had morphine, yeah.
- 21 Q. Do you know where he kept those pills?
- A. He kept them locked up in a box he had on his person.
- 23 Q. And did you ever see Mr. Pritchard give Jonathan morphine before?

- 1 A. I heard Jonathan ask him for some onetime it was close to Christmas. We picked
- 2 Jonathan up one time hitch hiking, his arm was swelled up the size of his leg and he was
- 3 hurting.
- 4 Q. Is that a yes, you have seen him give Jonathan morphine?
- 5 A. I didn't actually see him give them to him, but I assume that he did because he quit
- 6 begging. I didn't see him give them to him.
- 7 Q. And did Mr. Pritchard make any statements to you after Jonathan's death about what
- 8 had happened?
- 9 A. We talked on the phone. We weren't living together at the time. He was living
- above where Nathan and Christine live on English Branch in my aunt's trailer park. So they
- were next door neighbors down there, and he moved out of the house almost a year before.
- When he got put on probation, so he called me and told me that Jonathan well actually it
- was my nephew that told me that Jonathan had died. And I talked to him later that day and
- he was upset about it. He was worried about the whole family. He liked the whole family.
- 15 He got to be friends with them.
- 16 Q. If you will just listen to my question and answer the question. What if anything did
- 17 Mr. Pritchard say to you about giving Jonathan Whitson morphine?
- 18 A. I asked him if he did, because that is what was going around the cause of -
- 19 Q. And what did he say?
- A. He told me flat out he didn't give him anything.
- THE COURT: What?
- A. He said he didn't give him anything. On one occasion he said he gave him eight.
- Q. I'm sorry.
- 24 A. He told me different stories, so I just don't know what really happened. I wasn't
- 25 there.

- 1 Q. So he has told you that he did, and he has told you that he didn't. Is that what you
- 2 are saying?
- 3 A. Yeah.
- 4 Q. And he said that on one of the occasions he told you that he did, he told you that he
- 5 gave him eight pills?
- 6 A. Yeah.
- 7 Q. And did he in fact tell you that he had given him eight pills the day prior to
- 8 Jonathan's death?
- 9 A. He didn't say when.
- 10 Q. And ma'am, you were in a relationship with Mr. Pritchard?
- 11 A. Yes.
- 12 Q. In 2011, correct?
- 13 A. Well, we were apart then. Up until 2010 we were.
- 14 Q. You were living together, correct?
- 15 A. Yeah, in 2007, 8, 9 and part of 10.
- 16 Q. And 2011?
- 17 A. He had been moved into the trailer on English Branch, he had been up there for a
- little over a year. We were still friends and friendly and talked, but he was seeing other
- 19 people.
- 20 Q. Do you recall Jonathan Whitson and Stephanie Whitson coming to your house and
- eating with Mr. Pritchard in 2010 and 2011?
- A. Not in 2011, because he wasn't in my house. But 2010, in the fall they came and she
- 23 helped me pull weeds and he weed-eated, and they worked, they both helped me some
- around the house. John was there until September of December I think of 2010.

- 1 Q. So Mr. Pritchard has admitted to you that he has given pills to Jonathan Whitson.
- When did he say that he hadn't given pills to Jonathan?
- 3 A. The time when I talked to him on the phone.
- 4 Q. After Jonathan Whitson's death?
- 5 A. Yeah.
- 6 Q. What, if anything did the Defendant say to you about meeting Jonathan Whitson on
- 7 Saturday, March 5th, 2011?
- 8 A. I didn't know anything about it. I had not been told anything about that.
- 9 Q. Have you read the copy of that CI Statement?
- 10 A. I know exactly what I said that day. I have got a really good memory. I know
- exactly what was talked about. I read this one and this is like it says that he picked up my
- son at Jonathan's house. My son was not at Jonathan's house. My son lived with him, my
- son and his girlfriend lived with Johnny up on English Branch at his trailer, not down at or
- where Jonathan was, so it is really not one of the reasons I didn't sign it the day that they
- recopied it and gave it to me. They were kind of getting a little off then, but this is really,
- this one they gave me today has got some really issues.
- 17 Q. Your testimony is that the SBI officer got your statement all wrong?
- 18 A. No, I don't know if he got it all wrong, but there are certain points in here that are
- wrong. My son did not live, or was not down at Jonathan's house that day. And he didn't
- 20 come to Johnny's, not at his home residence like this would say. So there are some issues I
- 21 have with this, several points here.
- Q. Did Mr. Pritchard make any statements to you about where he took Jonathan after he
- picked him up?

- 1 A. No. He had no reason to tell me all this. I just they called that day after talked to
- 2 Jonathan was dead. First I talked to, like I said, my nephew he told me about it. Then I
- 3 talked to John on the phone about it and he just found out himself, so.
- 4 Q. Do you have any explanation for why that SBI report indicated that the Defendant
- 5 had told you he had given Jonathan eight pills the day prior to his death?
- 6 A. No, I asked him. I asked Jonathan did he give him any.
- 7 Q. Do you have any explanation for why that report you have in your hands would or
- 8 says that the Defendant, Mr. Pritchard told you that he was with Jonathan Whitson. Do you
- 9 have any explanation as to why that would be in the report if you didn't mention that at all?
- 10 A. No, they had heard that I heard that too, that he took him to the store, that they
- drove to Riverside Store. I mean it is all hearsay, what I heard was just what was told and
- what I heard in gossip.
- 13 MR. HOCKADAY: Objection.
- 14 THE COURT: Objection sustained. Listen to the question and answer the
- 15 question asked.
- 16 Q. Your testimony, if I am understanding correctly, is that the SBI officer has just
- included in his interview report statements that he heard elsewhere?
- 18 A. That is what they were asking me, yes.
- 19 Q. That is what you are saying?
- 20 A. That is the questions they were asking me, what they had heard.
- 21 Q That is what is contained in this report, is that correct?
- 22 A. Say that again, I'm sorry?
- Q. Is it your testimony that this report is not an interview of you, as it says it is, but is in
- fact a summary of statements they received from other people? Is that what you are saying?

- 1 A. This is pieces of the interview of me, not fully what I said or what was asked, this
- 2 paper that I was given today. Some is left out, some is a condensed version, some is wrong,
- 3 some is right.
- 4 Q. What if anything did the Defendant say to you about when he gave morphine pills to
- 5 Jonathan?
- 6 A. He didn't say when. It wasn't that long of a conversation on the phone. He was
- 7 upset. He had someone at the door. He had company, we didn't talk that long.
- 8 Q. Are you still in a relationship with the Defendant?
- 9 A. I think we are friendly, I write to him on occasion. It has been a long time.
- 10 Q. How long?
- 11 A. Maybe I write once a month, or every other month.
- 12 Q. You have done that since he has been in custody?
- 13 A. Yeah. It has been three years. I tried to hang on for awhile but we will see.
- Q. What, if anything, did the Defendant say to you after Jonathan was found dead?
- 15 A. I was the one that initiated the call to him to ask him if he knew once I found out.
- Q. Did he make a statement to you that he was worried about Jonathan's death?
- 17 A. I made the statement, I was the one that was worried. I was the one that was
- 18 worried.
- 19 Q. You understand what perjury is, don't you ma'am?
- 20 A. Yes I do sir.
- 21 Q. You understand it is a crime?
- 22 A. Yeah, and I did say I thought he was worried, but I can't say what he thinks. I think
- you need to ask him that.
- MR. HOLMES: I don't have any other questions, Your Honor.
- THE COURT: Cross examine.

- 1 MR. HOCKADAY: Just a few.
- 2 CROSS EXAMINATION BY MR. DANNY HOCKADAY:
- 3 Q. Ms. Brown how are you, good afternoon.
- 4 A. Okay.
- 5 Q. You have been called by the State to testify on behalf of the State in this case, is that
- 6 right?
- 7 A. Yes.
- 8 Q. And you are saying that you, at some point were interviewed by Chuck Vines with
- 9 respect to this matter, right?
- 10 A. Yes sir, right.
- 11 Q. And you are saying how many other people were there?
- 12 A. There were four people, there were four men there. Sergeant Letterman, two
- Higgins, the younger Higgins was the one doing the writing, and then there was the SBI
- 14 man.
- 15 Q. You have been given a copy of this two page report.
- 16 A. Yeah, this is a new one. It is not the same as the one I got a copy of first off.
- 17 Q. This report says there were two people in there, Mr. Higgins, Mr. Vines, you
- disagree with that. You say there were more?
- 19 A. They were milling around, throwing in comments. I was threatened with life in
- prison and everything that day. They had me in tears, it was a horrible experience.
- 21 Q. Where was the interview?
- 22 A. Down in the annex building.
- 23 O. Right back here?
- A. Um-hum.

- 1 Q. You do agree that you at one point had a girlfriend, boyfriend relationship, dating
- 2 relationship with John Pritchard, right?
- 3 A. We lived together for a few years, yes. We were engaged. He is a good man, he is
- 4 kind hearted. He is generous hearted.
- 5 Q. You guys have not lived together since around 2010?
- 6 A. Right, since he was put on probation, yeah.
- 7 Q. You have not lived together since you were not living together in 2011 were you?
- 8 A. Correct.
- 9 Q. Now you have been asked about whether he has told you in the past that he has given
- pills to Jonathan Whitson, correct?
- 11 A. Yes.
- 12 Q. You say that sometimes he has said that he has, and at times he has said that he has
- 13 not, correct?
- 14 A. Correct.
- One time you said you assumed that he did because Jonathan was asking about it, but
- at any point have you ever seen him give Jonathan Whitson any morphine pills?
- 17 A. I didn't see him actually hand him pills, no.
- 18 Q. And at no point have you, whether you were living together, or at any time since
- 19 have you?
- 20 A. No.
- 21 Q. And you would not have been in the presence of either Mr. Whitson, or Mr.
- 22 Pritchard on March 5th, 2011, would you?
- A. No, I hadn't seen Jonathan since way before Christmas the year before.
- Q. You were not in Christine Angel's home, anywhere around Jonathan Whitson?
- 25 A. No.

- 1 Q. Stephanie Whitson?
- 2 A. No.
- 3 Q. My client at any point on that day?
- 4 A. No.
- 5 Q. And again you say, you are not clear whether you have been called by the State.
- 6 But you were not clear whether Mr. Pritchard has ever given Mr. Whitson any kind of pills?
- 7 A. No. The only thing I know for sure is that he is on probation for probably the girl he
- 8 gave some to, that is all I know. And I didn't even see that happen, so.
- 9 Q. Now, if he had made a statement that he had given eight pills to Jonathan Whitson,
- you don't know when that would have occurred, do you?
- 11 A. No.
- 12 Q. And from your conversations, that you say you had with Mr. Pritchard, you don't
- 13 know whether you don't know what day that was do you?
- 14 A. No.
- 15 Q. You say that the whole conversation about the concern or worry over Whitson's
- death is something you raised?
- 17 A. It was, that is why I called him, yeah.
- 18 Q. Did you go to the funeral?
- 19 A. I did.
- Q. Was Mr. Pritchard there?
- 21 A. Yes.
- Q. As far as you know, were Mr. Pritchard and Mr. Whitson good friends, or friendly?
- 23 A. They were friendly with each other, yes.
- Q. Do you remember whether Mr. Pritchard was to some extent involved in the funeral?
- 25 A. I left early, I wasn't doing good so I am not sure, I heard –

- 1 Q. Just say what you saw. Did you have any opportunity to talk with Ms. Whitson
- 2 while you were at the funeral?
- 3 A. I went through the line and hugged everybody's neck. And I remember hugging her
- 4 and saying I am so sorry, cause it was such a horrible thing.
- 5 Q. Did you have any discussion about this case while you were there?
- 6 A. No.
- 7 Q. And other issues in this statement, you are saying, in addition to the fact that you
- 8 don't know if he ever gave Jonathan pills, or if he did when he gave Jonathan pills, you are
- 9 saying that it is also incorrect as to where you son might have been living. You are saying
- 10 your son was in fact living with Mr. Pritchard.
- 11 A. Yes.
- 12 Q. He was not living with you?
- 13 A. No, he was not living with me. He and his girlfriend had been staying there rent
- 14 free. Johnny was sort of like he helped a lot of people, he was generous maybe to a fault
- 15 at times.
- 16 Q. You were aware thought that Mr. Pritchard had a prescription for morphine based on
- the back problems that he had had?
- 18 A. From the VA, yeah.
- 19 Q. And you are saying that his habit was to lock those in come kind of box, is that right?
- 20 A. Yeah, I think he was afraid people might steal them.
- Q. Where did he keep that box?
- 22 A. I don't know, wherever he –
- Q. Was it at his house?
- 24 A. Yeah, at his home, yeah.

- 1 Q. When he lived with you, was that the same way he kept that kind of medications was
- 2 in some kind of box?
- 3 A. Yeah we kept a box, yeah, a locked box.
- 4 Q. So during the period of time that you were involved with when you lived with him,
- 5 was that his habit to keep them in the box?
- 6 A. Yeah.
- 7 Q. You indicated you had written him some statements, is that right?
- 8 A. That I had written to Johnny in jail, yeah.
- 9 Q. This statement that has been attributed to you during this interview with Mr. Vines,
- did you ever sign this statement in anyway?
- 11 A. No.
- 12 Q. In contrast to a number of the other statements that have been asked about where
- people have signed and dated, did you ever sign any kind of paperwork or any kind of
- statement in this case when you were interviewed back in 2011?
- 15 A. Nothing, no.
- 16 Q. You indicated that you wrote Mr. Pritchard maybe once every month or so, right?
- 17 A. Um-hum. I think more at first.
- 18 Q. Did you use a yellow legal pad, or a yellow pad of some sort?
- 19 A. Whatever I had available, yeah.
- Q. At some point after I became his attorney and received a copy of this summary of
- 21 what the contention was that you said, did you get a copy of it and look at it and review it, as
- 22 to the summary –
- 23 A. The discovery thing, yeah.
- 24 Q. As to the summary –
- 25 A. yeah, that is the paper I had.

- 1 Q. And at some point after you had a chance to look at that, did you write a note to Mr.
- 2 Pritchard?
- 3 A. I don't know, probably had written to him.
- 4 MR. HOCKADAY: May I approach?
- 5 THE COURT: Yes sir.
- 6 Q. (Approaches witness) Ms. Brown, I would ask you to look at this yellow piece of
- 7 paper, it appears to have writing on the front and back. Are you able to see that?
- 8 A. Not too well. (Pause)
- 9 Q. Do you recognize this note?
- 10 A. Yes.
- 11 Q. Is this your handwriting?
- 12 A. Yes I think.
- 13 Q. Speak into the microphone?
- 14 A. Yes.
- 15 Q. Do you recognize this note as the note that you wrote John after you saw a copy of
- 16 the statement that was attributed to you of what it is reported that you had said during that
- 17 interview?
- 18 A. Yes.
- 19 Q. Is there some type of response that you sent to John?
- 20 A. Yes.
- 21 Q. And does it say did he get you a copy, or did I get you a copy?
- 22 A. You gave me a copy of several different statements that you had given him.
- 23 Q. You became aware that we had received a copy of what it was that you allegedly
- 24 said.
- 25 A. Right.

- 1 Q. And you had a chance to look at it, correct?
- 2 A. Yeah.
- 3 Q. And in response you said that you had read the papers that were sent, right?
- 4 A. Yeah.
- 5 Q. (reading from statement) 'I did not make those statements. I never signed any
- 6 statement, ever.'
- 7 A. Right.
- 8 Q. Are you saying that is true?
- 9 A. That is why I wrote that.
- 10 Q. You have not seen any document today that you have signed, have you?
- 11 A. No.
- 12 Q. And you are saying that you never made those statements to the officers?
- 13 A. Right.
- 14 Q. You say they wrote what they wanted and added to and twisted what I did say to
- what they wanted yet', I am not sure what that word is. Something, next to the last word on
- 16 the page.
- 17 A. 'to what they wanted it to work.'
- 18 Q. Something, work.
- 19 A. 'to what they wanted, it won't work'.
- Q. 'it won't work', okay. Is it your testimony today that you never made the statements
- 21 that Mr. Holmes has asked you about during that interview of 2011?
- 22 A. No, I made some statements, but –
- Q. It is not the way it has been typed up?
- 24 A. Not the way it is took out of context. I mean it just sort of felt twisted to me.

- 1 Q. Are you saying that you never said, that he gave Jonathan pills the day before he
- 2 died?
- 3 A. I couldn't know that.
- 4 Q. Okay. So you don't know that, do you?
- 5 A. I don't, no. I did tell them that my son lived up there with him. They put on here
- 6 that, you know, he went and picked him up and took him back to his residence, nothing near
- 7 what I, you know, flat out the way I said it.
- 8 Q. You are here today saying you don't know whether John Pritchard ever gave
- 9 Jonathan Whitson any morphine pills, of your own knowledge, are you?
- 10 A. I can't say I saw that happen physically, no.
- 11 Q. And he has never admitted to you personally that he has, has he?
- 12 A. No. He did say he said he didn't one time and one time he said he did. So I don't
- know, all I can say is you need to ask him.
- 14 Q. So you are not sure in your own mind then whether he ever has or not?
- 15 A. No.
- MR. HOCKADAY: Those would be my questions.
- MR. HOLMES: I do not have any other questions, Your Honor.
- 18 (Witness excused)
- THE COURT: Call your next witness.
- MR. HOLMES: I will call Special Agent Chuck Vines.
- 21 CHUCK VINES, being first duly sworn testified as follows during DIRECT
- 22 EXAMINATION BY MR. HOLMES:
- 23 Q. State your name.
- 24 A. Chuck Vines.
- 25 Q. Where do you live?

- 1 A. I live in Mitchell County.
- 2 Q. With whom do you work?
- 3 A. With North Carolina State Bureau of Investigation.
- 4 Q What is your job there?
- 5 A. Currently assigned as a assistant special agent in charge of the Western District.
- 6 Q. How long has that been your job?
- 7 A. That particular job about a year and a half.
- 8 Q. What was your job March 12, in September of 2011?
- 9 A. I was assigned as a criminal and drug agent for Mitchell, Yancey and Madison
- 10 counties.
- 11 Q. In the course of your employment, did you have an opportunity to meet with Robbie
- 12 Brown?
- 13 A. Yes sir.
- 14 Q. How did it come about that you met her?
- 15 A. I was contacted by then Sergeant Higgins with the Yancey County Sheriff's Office
- who requested some assistance from the SBI in conducting a limited amount of interviews,
- one of which was Ms. Brown.
- 18 Q. And did you and Sergeant Higgins interview Ms. Brown?
- 19 A. Yes sir, we did.
- Q. Was that on Monday, September 26, 2011?
- 21 A. Yes sir.
- Q. And could you please, did you hear Ms. Brown's testimony?
- 23 A. Yes sir, I did.
- Q. Was her testimony substantially different than what she told you during your
- 25 interview of her?

- 1 A. Yes sir, it was.
- 2 Q. Could you please tell us what it is that Ms. Brown told you at the time you were
- 3 doing the interview?
- 4 A. Ms. Brown told us at the time she was the girlfriend/fiancé of Mr. Pritchard. Said
- 5 that Mr. Pritchard had given the deceased, Mr. Whitson eight pills the day prior to the death
- 6 of Mr. Whitson. She also stated that Pritchard said that he went to the residence of Nathan
- Angel, also known as Fruit, was one way that she knew him by name, to pick up Ms.
- 8 Brown's son Mr. Arron Collins and Mr. Whitson.
- 9 Q. Did Ms. Brown make any statements to you about whether or not the Defendant said
- anything to her about where he took them?
- 11 A. She did. She said that Mr. Pritchard had told her that he took Mr. Collins and Mr.
- Whitson to the store and then took Mr. Collins back to Mr. Collins residence. And she also
- told us that Mr. Pritchard said that at some point he gave Mr. Whitson eight morphine pills
- and then returned Mr. Whitson back to the residence of Mr. Angel.
- 15 Q. Did Ms. Brown make any statements to you about any other prior occasions of Mr.
- 16 Pritchard giving morphine to Mr. Whitson?
- 17 A. Yes sir, Ms. Brown said that she had knowledge that Mr. Whitson had received
- morphine from Mr. Pritchard in the past, and that she personally saw Mr. Pritchard give
- 19 Whitson two pills around Christmas of 2010.
- Q. Did Ms. Brown make any statements to you about whether the Defendant had made
- 21 any statements to her after about his feelings regarding Mr. Whitson's death?
- A. Ms. Brown indicated that Mr. Pritchard had told her that he has been worried about
- 23 Mr. Whitson's death. And was worried that he gave Mr. Whitson the morphine pills that
- 24 killed him.

- 1 Q. Do you recall during your conversation with her any threats being made to Ms.
- 2 Brown?
- 3 A. Absolutely not.
- 4 Q. Can you describe the demeanor of the interview?
- 5 A. If I may, the interview was conducted at the Sheriff's annex. I am not sure if
- 6 everyone is familiar with where that is located. It is just down below the courthouse, you
- 7 can probably see it out the window there. The office portion of that complex is such that
- 8 when you walk in you are in a large room. When you walk through that room you come to a
- 9 section, a small hallway where there are a couple of offices and a bathroom. And then
- another large area that has a kitchen and a table and a couple of offices off of that. Myself
- and Sergeant Higgins interviewed Ms. Brown in the second portion of that, which I refer to
- 12 as the kitchen. It is a little bit more secluded. We were the two individuals that conducted
- the interview as to whether there was anybody else in the building, I don't recall. But it is
- 14 not it is not a complex as to which other officers, deputies might not be in and out of that
- main part which you walk into. If that makes helps at all.
- Q. Was Ms. Brown, did she appear to be having trouble recalling events when you were
- 17 talking to her?
- 18 A. Not that I recall at the time, this is what I relayed to you is the statement that she
- 19 gave me on the 26th of September, 2011.
- MR. HOLMES: I don't have any other questions, Your Honor.
- 21 THE COURT: Cross.
- MR. HOCKADAY: Yes sir.
- 23 CROSS EXAMINATION BY MR. HOCKADAY:
- Q. Mr. Vines, did you have any contact with Ms. Brown before that date?
- 25 A. No sir.

- 1 Q. Any since?
- 2 A. No sir.
- 3 Q. Basically you are saying we have heard two completely different versions. You
- 4 interviewed her once. Now she has testified in court under oath, and you are saying it is
- 5 substantially different, right?
- 6 A. I am saying what she testified to, and what she told us during the interview appear to
- 7 be different.
- 8 Q. You have no personal knowledge as to which version is accurate though do you.
- 9 You are simply going by the statements of one Bobbie Brown, right?
- 10 A. Yes sir, I can relay to you what she told us the day that I interviewed her.
- 11 Q. And you have no way of knowing whether what she is telling you today, versus what
- she told you back in September of 2011, which version is accurate, do you sir?
- 13 A. Just again, I can only relay what she told me the day that we interviewed her.
- Q. So the witness that the state has put up that you are talking about is a witness that has
- given two completely different stories, right?
- 16 A. In some senses, yes, they are different.
- 17 Q. First of all, at one point you said it was his girlfriend/fiancé, and today she said that
- we are just friends and stopped living together in 2010, right?
- 19 A. Yes sir.
- Q. And then their witness next said that he had given Jonathan eight pills the day before
- 21 he died, right?
- 22 A. I believe that is what she testified to.
- Q. And then she said today she doesn't know if that is true, right?
- A. I believe she testified that he had told her he had given her pills on some occasions,
- some he did not.

- 1 Q. And no way, based on what she has testified today, no idea when those dates were,
- 2 correct?
- 3 A. The only two dates that I can refer to were the two times that she told me during my
- 4 interview.
- 5 Q. But her testimony today, she has given no dates of when any of these transactions if
- 6 they occurred, when they might have occurred.
- 7 A. I don't believe she did.
- 8 Q. And you have been present during most of this trial, have you not?
- 9 A. Yes sir, I have.
- 10 Q. And have you heard the testimony from Stephanie Whitson that it was a ten pill
- 11 count, and not an eight pill count, correct?
- 12 A. I did hear that.
- 13 Q. So that is different as well, correct?
- 14 A. It is different from what she told me.
- 15 Q. So just assuming that Mr. Pritchard had given Jonathan Whitson an eight pill count,
- not knowing the date it could be a separate occasion from the ten pill count that Stephanie
- 17 Whitson is talking about on March 5th, 2011, correct?
- 18 A. I just want to be clear, are you asking me the eight pills that Ms. Brown told me that
- Mr. Pritchard gave Mr. Whitson could be a separate occasion from the ten pills that Ms.
- Whitson?
- 21 Q. Certainly could be a separate occasion.
- A. Could be.
- Q. And could be that neither happened as well, based on the fact your witness has
- basically recanted her statement to you, right?
- A. Could be.

- 1 Q. And then she has indicated that Pritchard said, I went and picked him up at Nathan
- 2 Angel's house, right?
- 3 A. Yes.
- 4 Q. You have heard the testimony throughout this trial, have you not that and from
- 5 Stephanie Whitson in particular as well as Christine that he was at Christine's house,
- 6 according to Christine the entire day, right?
- 7 A. I believe she did testify that she was at her house, and she testified that Nathan's
- 8 house was in extreme close proximity to that.
- 9 Q. Do you recall that I asked Christine specifically if he had ever gone down to
- Nathan's house, she said that he had not, on the 5th of March, isn't that true?
- 11 A. I don't want to be inaccurate, I don't recall exactly what she said about that. I know
- she said that, I believe that she stated that he stayed there. I don't recall exactly.
- 13 Q. And isn't it true that when Stephanie testified, when she said that John Pritchard
- picked Jonathan up that he was at Christine's house?
- 15 A. That is what she testified to sir.
- Q. Which is the opposite, even from the statement that you say you received in
- 17 September of 2011 in that he was picked up at Fruit's house?
- 18 A. It would be.
- 19 Q. And isn't it true, based on the information that you have that Aaron Collins was –
- and the evidence you have heard here today, Aaron Collins was never at Fruit's or Christine
- Angel's house, based on what you have heard?
- 22 A. The only thing I heard said about Mr. Collins is what I was told by Ms. Brown the
- 23 day that I interviewed her.
- Q. And what she told you was that he picked Collins up, her son, at Fruit's house, right?
- 25 That is what she told you?

- 1 A. And Mr. Whitson, yes sir.
- 2 Q. And you have heard Christine say, not identified that Mr. Collins was ever there at
- 3 her house on March 5th, right?
- 4 A. I believe she did.
- 5 Q. And Stephanie Whitson said there wasn't anybody else there when she was there,
- 6 and she was there most of the day, certainly not Mr. Aaron Collins, correct?
- 7 A. I believe that is correct sir.
- 8 Q. And then the next difference would be, she told you that Pritchard was worried about
- 9 Jonathan's death, worried he had given him morphine pills that killed him, is what you say
- she told you, right?
- 11 A. That is what she told me.
- 12 Q. Today she has told this court something completely different, that she is the one that
- was worried about it, and that she is the one that brought that up, correct?
- 14 A. That is what she testified to I believe sir.
- 15 Q. So this witness has testified in at least five or six inconsistent ways from the
- statement you received back in September of 2011, correct?
- 17 A. I don't know the exact number, but there was definitely inconsistencies.
- 18 Q. And again, of your own personal knowledge you don't know what si true about any
- of that do you, just what she has told you?
- 20 A. Yeah, again I can only testify to what she told us during the interview that day.
- 21 MR. HOCKADAY: Those will be my questions.
- MR. HOLMES: Nothing further Your Honor.
- THE COURT: You may step down. Members of the Jury, at this time we
- are going to take our evening recess. I want to remind you once again about the way we
- 25 have a fair trial in a case like this or any kind of case is the jurors keep an open mind. They

- don't talk about the case with anybody. They don't talk about the case between themselves,
- 2 don't allow anybody to talk to you about the case. You will be going home to your
- families, your family is going to ask you what is the case about. You are going to have to
- 4 say I can't tell you until it is over. If that creates a problem then so be it. That is what our
- 5 justice system requires. Leave your notes there in your seat, they will be safe there. We will
- 6 start up again at 9:30 in the morning. Thank you.
- 7 (ALL JURORS LEAVE THE COURTROOM AT APPROXIMATELY 5:00 P.M.)
- 8 (COURT ADJOURNED AT 5:00 P.M. ON April 15, 2014)
- 9 (COURT RECONVENED AT APPROXIMATELY 9:30 A.M. ON April 16, 2014)
- 10 (ALL PARTIES ARE PRESENT, JURY IS NOT IN THE COURTROOM)
- 11 THE COURT: Before we bring the jury back in, are there any matters the
- 12 court should address?
- MR. HOCKADAY: No Your Honor.
- MR. HOLMES: No Your Honor.
- THE COURT: Please bring the jury in.
- 16 (ALL JURORS ENTER THE COURTROOM AT APPROXIMATELY 9:35 A.M.)
- 17 THE COURT: Mr. Holmes, call your next witness please.
- MR. HOLMES: The State will call Officer Ryan Higgins.
- 19 RYAN HIGGINS, being first duly sworn testified as follows during Direct Examination by
- Mr. Holmes:
- 21 Q. State your name please.
- 22 A. Willis Ryan Higgins.
- 23 Q. Where are you employed?
- 24 A. Yancey County Sheriff's Office.
- 25 Q. How long have you been employed?

- 1 A. Fourteen years in June.
- 2 Q. You were so employed on Sunday, March 6, 2011?
- 3 A. Yes.
- 4 Q. Please describe what happened during the course of your employment on that day?
- 5 A. On that morning I received a call for service to a residence on English Branch in
- 6 regards to a reported death. It was approximately 11:33 a.m.
- 7 Q. 11:33 a.m.
- 8 A. When I received the call.
- 9 Q. What time would you have arrived?
- 10 A. 11:40 a.m.
- 11 Q. Can you describe what you saw when you went to the house?
- 12 A. I arrived at the residence, spoke with Christine Angel who was the owner of the
- residence. I observed a white male in the living room lying on the couch covered with a
- blue blanket. And I recognized the individual to be Jonathan Russell Whitson and Mr.
- 15 Whitson was deceased.
- 16 Q. Have you been able to hear all the testimony in the past day or two?
- 17 A. Yes sir.
- 18 Q. Did you hear the testimony of Christine Angel then?
- 19 A. I did.
- Q. Was her testimony how does her testimony compare to what she told you on that
- 21 day?
- 22 A. There were some inconsistencies in regards to coming and going of Mr. Whitson and
- 23 Ms. Whitson, or Ms. Randolph.
- Q. Specifically are you referring to the fact that she had in the past point out and
- 25 mentioned that they left one time and not twice?

- 1 A. Correct, she had originally stated that they had left one time and returned. And she
- 2 stated in her testimony that there may have been a second occasion.
- 3 Q. And did you take any photographs?
- 4 A. I did.
- 5 Q. On that day?
- 6 A. Ye s sir
- 7 Q. Do you have those with you?
- 8 A. I do.
- 9 MR. HOLMES: May I approach the witness?
- 10 THE COURT: Yes sir.
- 11 Q. (Approaches witness) I have four pages of what appears to be photographs. Do
- 12 you recognize these sir?
- 13 A. Yes.
- 14 Q. Can you identify what these are?
- 15 A. Yes.
- 16 Q. What are they?
- 17 A. The first three pages are photographs of the deceased in the position that he was
- found. And the last page is a photograph of his coat and the two syringes that are located
- 19 and collected as evidence.
- Q. And are these the same pictures that you took on that day?
- 21 A. Yes sir.
- Q. And do these fairly and accurately describe what you observed on that day?
- 23 A. Yes sir.
- Q. Your Honor I would move to introduce these at this time collectively as State's
- 25 Exhibit 1.

- 1 THE COURT: They will be allowed.
- 2 MR. HOCKADAY: For the record we would object.
- THE COURT: The Court will allow State's Exhibit 1 over Defendant's
- 4 objection.
- 5 Q. Sir, after you had spoken with Ms. Angel and taken photos, what did you do then?
- 6 A. I was in contact with a couple of different people during this period of time,
- 7 including my supervisor at that time. Also I was in contact with Doctor Brent Hall with
- 8 Watauga Medical Center.
- 9 THE COURT: What was that name again?
- 10 A.Doctor Brent Hall. There again I spoke with Ms. Angel to get a statement from her. I
- also there again collected these two syringes photographed with the body. The victim's
- mother Ann Greene had arrived at the scene. I spoke with her, she conveyed to me that she
- wished to use Yancey Funeral Services. Once I spoke with Doctor Hall and got permission
- 14 to have the body removed, Yancey Funeral Services were contacted. They arrived to take
- the body to Watauga.
- 16 Q. Now there has been testimony that you were present during the interview of Robbie
- 17 Brown, is that correct?
- 18 A. Yes.
- 19 Q. That was on September 26, 2011, does that sound correct?
- 20 A. That sounds correct.
- 21 Q. And you were able to hear Ms. Brown testify?
- 22 A. Yes.
- 23 Q. Is your recollection of what she told you and SBI agent Chuck Vines, is your
- 24 recollection different than what she testified to?
- 25 A. Yes.

- 1 Q. And was the testimony that Agent Vines, how does that compare to your recollection
- 2 of what –
- 3 A. That is the correct version of the events.
- 4 MR. HOLMES: I don't have any other questions at this time.
- 5 THE COURT: Cross Examination.
- 6 CROSS EXAMINATION BY MR. HOCKADAY:
- 7 Q. Officer Higgins, how long have you been working with the Sheriff's Department?
- 8 A. It will be fourteen years in June.
- 9 Q. How many murder investigations have you been involved in, or been the lead worker
- 10 on prior to this?
- 11 A. At least a couple, several death investigation, a couple of which have resulted in it
- being a murder case.
- Others ruled accidental?
- 14 A. Others have been ruled accidental, or natural.
- 15 Q. Some of those were called in for this kind of investigation, what you are saying is
- that at least in some of those you have been involved in previously have been ruled or had –
- 17 not resulted in court action and resulted in someway accident?
- 18 A. Sure.
- 19 Q. And on this day you say that your records indicate that the call came in at 11:33 a.m.
- on that Sunday?
- 21 A. Yes sir.
- 22 Q. And you were there within?
- A. Seven minutes.
- Q. So much less than the 30 minutes that was represented yesterday, you were there
- within seven?

- 1 A. Yes.
- Q. When you got there who was there?
- 3 A. Christine Angel, her husband Wade Angel, Nathan Angel.
- 4 Q. Been referred to as Nate, or Fruit, right?
- 5 A. Correct. Nathan's son, Christina, a younger child, then there was another young
- 6 child there, a male child.
- 7 Q. And then the deceased.
- 8 A. And the deceased.
- 9 Q. You said when you got there you were able to identify him, did you know Jonathan?
- 10 A. I did.
- 11 Q. How long had you known him?
- 12 A. Being, you know, a lifelong resident of Yancey County, and he also being a lifelong
- resident of Yancey County, I mean I have been aware of who he was for a number of years.
- 14 Q. Familiar enough with him to know that he had drug problems?
- 15 A. Yes.
- 16 Q. And that he had a criminal history?
- 17 A. Yes.
- 18 Q. And you are familiar enough with Stephanie Whitson, do you know her?
- 19 A. Yes, I do.
- Q. Did you know her before March 5th of 2011?
- 21 A. Yes.
- Q. Were you familiar enough with her to know that she had a drug problem?
- A. Once, I mean there had been times in the past where, you know, there had been talk
- 24 that there was a drug problem. To say that I had that knowledge before this particular day, I
- don't know that I had that knowledge previous to this incident.

- 1 Q. You had received information through this deputy that there was some –
- 2 A. Speculation.
- 3 Q. Sure. And you were aware Nate, or Nathan had a drug problem, right?
- 4 A. Yes.
- 5 Q. Are you in anyway related to this family?
- 6 A. Possibly, Christine Angle, her maiden name is Higgins. And she had made reference
- 7 that there was some kind of distant relation, but none that I had ever been made aware of.
- 8 Q. Did she make you aware of that when you were there that day?
- 9 A. She had made me aware of that at some point in time. I can't remember if was
- actually at that point, or maybe another occasion where I had spoke with her.
- 11 Q. You mentioned that the people you talked to in addition to those that were there,
- 12 your supervisor. Who was your supervisor at that time?
- 13 A. At that time Thomas Farmer.
- 14 Q. He is now no longer with the Sheriff's Department, correct?
- 15 A. That is correct.
- 16 Q. And then you talked with Doctor Brent Hall.
- 17 A. Yes sir.
- 18 Q. Now did you, once you got out there pretty quickly after you got there, by at least
- 19 12:01 p.m., lunch time, and after you called Mr. Farmer, you discuss with him what was
- 20 going on, right?
- 21 A. Yes.
- 22 Q. Now you have some notes that he had prepared that I assume would be part of your
- 23 Sheriff's Department file, where you indicated you got a call from 911?
- A. I have those notes. I can only testify that that is what his notes say.

- 1 Q. Let me ask you this way. As you would involved in any kind of investigation, you
- 2 would make notes about what occurred, correct?
- 3 A. True.
- 4 Q. Become part of your file?
- 5 A. Um-hum.
- 6 Q. And certainly at times to use in any kind of prosecution of a case.
- 7 A. True.
- 8 Q. As would Officer Farmer, or any other officers that were employed by the Sheriff's
- 9 Department during that period of time, right?
- 10 A. Correct.
- 11 Q. And during your fourteen years as a law enforcement officer with the Sheriff's
- Department, that is the normal procedure that is used for the officers as you are gathering
- information, you certainly would prepare a summary of that information, right?
- 14 A. True.
- 15 Q. And you wouldn't have any reason to think that any of the information that Mr.
- 16 Farmer included as part of this investigation to be inaccurate in any way, would you?
- 17 A. Not that I am aware of. There again I mean, I can't I can testify that I did speak
- with him on the telephone on that date. I can't say it was exactly 12:01, but I did speak with
- 19 him, yes.
- 20 Q. If his notes say 12:01, you wouldn't have any –
- 21 A. I would think that would be a fair approximate time, yes.
- Q. And you relayed information to him, and would it be fair to say that at least initially
- 23 he was involved with you in the process of gathering some information about the death of
- 24 Jonathan Whitson, particularly the first few days?
- 25 A. Correct.

- 1 Q. Now you interviewed Christine when you first got there and took some handwritten
- 2 notes, right?
- 3 A. Yes.
- 4 Q. Was she the only person you talked to about the specifics of what had occurred?
- 5 A. On that morning?
- 6 Q. Yes.
- 7 A. At the residence?
- 8 Q. Yes.
- 9 A. Correct.
- 10 Q. When did you make these notes, was that that day?
- 11 A. That morning as we were speaking yes.
- 12 Q. So all the information you had received was from her at that time?
- 13 A. Correct.
- 14 Q. And when she talked to you, and as she provided you times and when she could
- recall the morning of the death, the day after March 5th, when Jonathan and Stephanie were
- there, she was recalling to you the times that she remembered Jonathan and Stephanie being
- 17 at the house, right?
- 18 A. Correct.
- 19 Q. And she said that Stephanie came over and around 14:30 or 2:30 in that afternoon, is
- 20 that right?
- 21 A. Correct.
- Q. And looking at that last page there, 'victim and girlfriend left residence together,
- returning approximately an hour and a half later', is that right?
- A. Correct.
- 25 Q. Which would put us at 4:00, right?

- 1 A. Correct.
- 2 Q. And they came back and the girlfriend stayed a couple of hours before leaving at
- approximately 21:30, which would be 9:30.
- 4 A. 9:30.
- 5 Q. And again these were notes you took, you call it the morning, but basically it was at
- 6 lunch time, the morning of the or the day of the death of this young man, right?
- 7 A. Correct.
- 8 Q. At no point well let's just go through the rest of the note. Catherine said, 'the
- 9 victim did prepare to go to bed on the living room couch, she woke up' Christine woke up at
- nine, which I assume is the next morning, right?
- 11 A. Yes.
- 12 Q. 'Victim on couch, snoring loudly, Christine and Wade left, went to Save More'. She
- talked about buying groceries, is that your understanding?
- 14 A. Yes.
- 15 Q. Got back approximately 10:30, right?
- 16 A. Correct.
- 17 Q. When she got back he was still asleep, snoring, and still alive at that time, correct?
- 18 That is your understanding.
- 19 A. That is my understanding, correct.
- 20 Q. She says then, Nathan then told Christian to wake the victim up. Nathan being her
- son, Nate, Fruit, that we talked about, right?
- A. Right.
- 23 Q. Christian being his son?
- A. Correct.
- 25 Q. Wake the victim up and at that time it was discovered he was deceased, right?

- 1 A. Yes.
- 2 Q. And again when you interviewed her, did you feel like she was giving you all the
- 3 relevant information. And you were talking to her about what she knew that prior day, into
- 4 that morning leading up to his death, which would have occurred just within an hour or two
- 5 when you set down with her and got this information, right?
- 6 A. Right.
- 7 Q. Now yesterday when she was here, she testified that Stephanie and Jonathan left at
- 8 least two times from her residence, right?
- 9 A. That is what she testified to.
- 10 Q. And that they were gone about an hour and a half, right?
- 11 A. Correct.
- 12 Q. They came back, but they left together again and were gone for a much more
- extended period of time, is that correct?
- 14 A. That is what she testified to.
- 15 Q. And actually they didn't get back to kind of late. They got back, he stayed, people
- were outside and then she left. I think that is what she said, right?
- 17 A. That sounds correct as to what she testified to.
- 18 Q. So when you talked to her the day of the death, she made no mention of this second
- exit from the home, or being gone for a substantial period of time?
- A. No, she did not.
- Q. And when you talked to her the day of the death, she made no mention about other
- people being there, did she?
- A. No, she did not.

- 1 Q. Had you ever heard of the fact that Mr. Silver, and CR I think Henson, were at that
- 2 residence the day before Jonathan died. Had you ever heard that before you heard it
- 3 yesterday?
- 4 A. No, I had not.
- 5 Q. You have been in this case since March of 2011.
- 6 A. Correct.
- 7 Q. Three years, and this witness that the State has presented that was present in the
- 8 home the day before he died, and the day of his death, to your knowledge that was the first
- 9 time you have ever heard that?
- 10 A. Correct.
- 11 Q. You heard her testify, and you heard Stephanie testify that CR I someone from
- whom Jonathan had bought drugs before, or had gotten drugs before, correct?
- MR. HOLMES: Objection, not the testimony.
- 14 THE COURT: Sustained.
- 15 Q. Did Stephanie not testify that Jonathan had gotten drugs from CR before?
- 16 A. I believe her testimony was –
- 17 THE COURT: Sustained on that, whatever she testified to she testified to,
- his memory about what she testified to is sustained. I don't see how that is relevant.
- 19 Q. You heard her talk about CR yesterday, correct?
- A. Correct.
- 21 Q. And at no point prior to this date have you, as a result of your investigation, as a
- result of that information not being provided, you never looked into anything about whether
- 23 there was any type of delivery for March 5th between a CR and Jonathan Whitson have you?
- 24 A. No.

- 1 Q. Were you aware that even when Ms. Angel came and talked to Mr. Holmes back on
- 2 November 26 of last year that she disclosed that information to Mr. Holmes some four
- 3 months ago, some four or five months ago?
- 4 A. No.
- 5 Q. So even though she told Mr. Holmes, as she indicated yesterday, that Bryan Silvers,
- 6 CR, had come to the house. You still didn't know about that since November of 2013, did
- 7 you?
- 8 A. Correct.
- 9 Q. Were you told at any point during the period of time you were there by Christine,
- that Jonathan and Stephanie went to Nate's house for a period of time on March 5th?
- 11 A. Told by Christine, or told in general?
- 12 Q. Told in general while you were there receiving the information. You said the
- majority of which was from Christine. Were you ever advised that day that there had been a
- period of time that Stephanie and Jonathan went to Nate's house?
- 15 A. Not on that date.
- 16 Q. When were you told about that?
- 17 A. That was I was told that during the interview with Nathan Angel at a later date.
- 18 Q. When you got to the home and talking with Ms. Angel and or others, were you able
- 19 to or were you advised the approximate time of the death being as early as 10:30, 10:40
- 20 that morning?
- A. Advised by who?
- Q. Were you advised at any point while you were there by those that you interviewed,
- 23 that the death of Jonathan Whitson occurred as early as 10:40 that morning?
- 24 A. On that morning my initial notes reflect that when Mr. and Mrs. Angel returned
- 25 home at approximately 10:30 that Jonathan was still asleep on the couch snoring.

- 1 Q. Right, and then it says the next sentence, 'Nathan then told Christian to wake him
- 2 up', right?
- 3 A. Yes.
- 4 Q. So they were home at 10:30, and the next entry is, 'wake him up', right?
- 5 A. Correct.
- 6 Q. Somewhere within about that time, right, the way you understood it?
- 7 A. It doesn't specify if there was a gap in time. I just reflects that they returned at
- 8 approximately 10:30 and that he was still asleep snoring, doesn't there is no reflection
- 9 whether there was a gap in time between, you know, if there was an immediate direction to
- wake him up, or if there was, you know, a gap.
- 11 Q. There is no mention at all in Christine's statement that day that once she and Wade
- got home that there was any preparation of breakfast, or any kind of time period taken to do
- that and the family to eat, was there?
- 14 A. There is no reflection in the notes.
- 15 Q. And you took notes as detailed as you could obviously with the death involved. You
- took details of the statements that were made by Christine and others as those actually
- 17 related to you, right?
- 18 A. As the best I could.
- 19 Q. It certainly would be relevant to try to determine the time of death of this individual.
- A. Absolutely.
- 21 Q. Are you aware that the death certificate for Mr. Whitson indicates that he died at
- 22 11:00 a.m.? Were you aware of that?
- 23 A. I don't know that I was aware of what time it reflected, no.

- 1 Q. (Approaches witness) Mr. Higgins, I will show you what I have marked as
- 2 Defendant's 2 and I will show you then Defendant's 1. Do you recognize that as a death
- 3 certificate?
- 4 THE COURT: What have you marked it as?
- 5 MR. HOCKADAY: Defendant's 2.
- 6 A. What was your question?
- 7 Q. Do you recognize that as a death certificate for Jonathan Whitson, does it appear to
- 8 be such a document?
- 9 A. It does appear to be.
- 10 Q. Does it indicate on the right side halfway down a time of death for Mr. Whitson on
- 11 March 6th of 2011?
- 12 A. It does.
- 13 Q. What time does it say?
- 14 A. 11:00 a.m.
- 15 Q. It doesn't say 11:33 or 11:30, it says 11 even, right?
- 16 A. Correct.
- 17 Q. You don't have any information that you received when you were at that crime
- scene, investigating this matter to indicate that the death would have occurred anytime after
- 19 11:00 a.m., would you?
- 20 A. No.
- 21 Q. And in fact, nothing was ever mentioned to you about any kind of family breakfast at
- 22 all once Wade and Christine got back, nothing was ever mentioned to you, was it?
- A. My notes do not reflect that, no.
- Q. Now, if the death occurred at 11:00 as the death certificate says, that would be at
- least 33 minutes from the time was made to EMS, is that correct?

- 1 A. Correct.
- 2 Q. Because you reviewed those records and you are aware that the call was not made
- 3 until at least 11:33, right?
- 4 A. Correct.
- 5 Q. And, at some point during the investigation is it not true that you and/or Mr. Farmer
- 6 were contacted by family members of the deceased expressing any concern about the body
- 7 having been moved. Is that not true?
- 8 A. Say that again.
- 9 Q. At any point during your investigation did any family members of the deceased
- 10 contact you about the body having been moved?
- 11 A. I was not contacted myself.
- 12 Q. Are you aware that Mr. Farmer was contacted about it?
- 13 A. I do recall that someone with the Sheriff's Office had been given that information,
- 14 correct, I had heard that.
- 15 Q. Were you aware that it came from were you aware of a James Whitson, sister to –
- or brother to the deceased mother having contacted the Sheriff's Department about that?
- 17 A. That sounds accurate.
- MR. HOCKADAY: May I approach and look at the exhibits Your Honor.
- 19 THE COURT: Yes sir.
- Q. (Approaches witness) What time do you think you took the photographs? You got
- 21 there at 11:40.
- A. I would say those photographs were taken at approximately 12:00.
- 23 Q. So within the first 30 minutes or so that you were there?
- A. I would think so.
- 25 Q. You took all of them at that one time?

- 1 A. Yes.
- 2 Q. Including the photographs of the jacket with the syringes?
- 3 A. Those would have been taken separately at a later a little later.
- 4 Q. How long were you there all together, if you can recall?
- 5 A. The funeral home arrived at 1:18 p.m.
- 6 Q. You were still there?
- 7 A. I was still there on the scene until after the body was loaded and removed. So I was
- 8 probably there give or take until, I would say 2:00 p.m.
- 9 Q. Is this the condition in which you found the deceased when you got there?
- 10 A. Yes.
- 11 Q. So even though these photographs were taken maybe within 30 minutes later, they –
- he is in the same position he was when you got there?
- 13 A. Yes sir.
- 14 Q. Now you understand from the testimony that he had been snoring and did you also
- receive information or did you hear did you also receive information whether it be
- previously or throughout the hearing of this case that some effort was made to try to stop
- 17 Jonathan from snoring? Was he ever moved, shaken?
- 18 A. There was testimony that Nathan Angel shook him when he realized –
- 19 O. -when he realized that he was dead -
- 20 A. -when he realized that he was dead.
- 21 Q. Picked him up, right, or pulled him to him?
- 22 A. Right. I think the testimony was that Nathan shook him.
- Q. Did you also receive information that Wade Angel, Christine's husband, during the
- 24 night had come to Jonathan to try to shake him to wake him up because of how loudly he
- was snoring? Do you recall?

- 1 A. I don't, however I recall some talk about an interview I believe maybe it was the
- 2 interview with Nathan Angel, that there was some talk about, the family was saying 'oh
- 3 listen at him snore he is, he was cutting them up, you know. They were sort of joking
- 4 thinking that he was just indeed asleep and snoring loud.
- 5 Q. Now these pictures depict the deceased laying flat on his back, head in the middle of
- 6 the pillow, comforter all the way up to his neck, right?
- 7 A. Correct.
- 8 Q. And that is the way he was left when you got there, and that is the way he obviously
- 9 remained the entire time you were there until he was taken out of the home, right?
- 10 A. Correct.
- 11 Q. At any point did Doctor Hall come to the scene to look at Mr. Whitson while you
- were there?
- 13 A. No.
- 14 Q. And to your knowledge did Doctor Hall ever do that?
- 15 A. No.
- 16 Q. How did you become aware of the syringes in Mr. Whitson's jacket?
- 17 A. The body, after the body was removed I moved the jacked was on the back of a
- chair near that couch. And Christine Angel located the coat and made a comment that there
- was she had located something in the pocket and I then received the coat and located these
- 20 syringes.
- Q. And did you take those into your possession at that time?
- 22 A. I did.
- 23 Q. And did you make at some point sent those to be analyzed?
- 24 A. I did.
- 25 Q. And were they analyzed?

- 1 A. They were.
- 2 Q. And what was the result of the ounces?
- 3 A. (Pause)
- 4 Q. (Approaches witness) Let me show you the examination results page that came from
- 5 the lab. And the purpose of sending these syringes was to determine if there was any
- 6 controlled substances in the syringes, right?
- 7 A. Correct.
- 8 Q. Here is the page where the results were typed in. I assume this was sent back to you,
- 9 right?
- 10 A. Yes, correct.
- 11 Q. What are the results? What was found?
- 12 A. No controlled substances indicated.
- Q. So they were unable to make any determination at all if there was any controlled
- substances in the syringes, is that correct?
- 15 A. That is what that would reflect.
- 16 Q. So these syringes that were allegedly used on Stephanie Whitson and Jonathan
- Whitson after tat lab analyzed them when they came back nothing was found to indicate a
- 18 controlled substance. Is that true?
- 19 A. In those particular syringes, correct.
- Q. Were there any other syringes?
- 21 A. None that I located.
- 22 Q. Your understanding is that based upon the evidence that has been presented that
- 23 there were two syringes used, right?
- 24 A. That is, yes there have been two syringes referred to.
- Q. When was the spoon analyzed?

- 1 A. There was not a spoon located.
- 2 Q. You are now aware that a spoon was used in the bathroom of Christine Angel's
- 3 home to melt these morphine pills in and draw the liquid out of to inject both Stephanie and
- 4 Jonathan, correct. You are aware of that, right?
- 5 A. Correct.
- 6 Q. And you are aware a spoon was used in the bathroom, correct, of that house?
- 7 A. Yes.
- 8 Q. And that it was left under the sink, correct?
- 9 A. Yes.
- 10 Q. And at no point during your investigation are you saying that the spoon was never
- 11 even located?
- 12 A. I was not made aware of a spoon until later after the initial scene with the interviews,
- so no the spoon was never mentioned nor located during the initial.
- 14 Q. And it has never been found. It has never been analyzed.
- 15 A. Correct.
- Q. And there is no indication that there is a spoon that Ms. Whitson says was used to
- indicated, I think she said substantial, or certainly some, enough whenever for much more
- use, meaning at least six more shots of morphine, right?
- 19 A. That was her testimony.
- 20 Q. So that is nowhere to be found at all, is it?
- 21 A. Correct.
- Q. So there is no analysis at this point of a spoon or a syringe that would indicate any
- 23 controlled substance was used in any of those instruments, correct?
- A. Correct, the two instruments that were located and collected and analyzed.
- 25 Q. You also talked with Floyd Ayers, right?

- 1 A. Correct.
- Q. And you talked to him I think on the 14th of March, right?
- 3 A. Correct.
- 4 Q. You were present when he testified, right?
- 5 A. Yes.
- 6 Q. Would you agree that he also, you were asked about Christine you were asked
- 7 about Christine and you agree that she testified differently than she talked to you the day
- 8 after the or the day of the death, right?
- 9 A. There were some inconsistencies.
- 10 Q. There were inconsistencies in her testimony, right?
- 11 A. There were some things that she disclosed in testimony that she had not disclosed to
- me, correct.
- 13 Q. And two of those in particular are a second leaving from the home, and other
- individuals that were at the home during the day of March 5th, right?
- 15 A. Correct.
- 16 Q. As to Floyd Ayers, you heard his testimony?
- 17 A. I did.
- 18 Q. He also testified inconsistently with the statement that he gave you on March 14, did
- 19 he not?
- A. As far as the times he, you know, I believe he was a little confused just with the
- 21 times. As far as the testimony, I mean it was accurate as to his statement.
- Q. Well, he told you he got two calls, right?
- A. Correct.
- Q. He testified yesterday he only got one, right?

- 1 A. He initially testified that he received one call. And then he testified that he had
- 2 received the first call, he didn't have enough service to make a conversation.
- 3 Q. He told you that he had gotten to Jonathan around midnight, right?
- 4 A. That is correct.
- 5 Q. He called it the Green Dot.
- 6 A. Yes.
- 7 Q. He testified yesterday at one point that he had picked him up at 10:00 p.m., correct?
- 8 A. That was his testimony.
- 9 Q. And you also interviewed Ms. Brown, or at least were involved in that interview.
- 10 A. I was present in the interview, correct.
- 11 Q. Mr. Vines conducted the interview, you were present?
- 12 A. Correct.
- 13 Q. You would agree after hearing her testimony that we got two completely different
- stories, true?
- 15 A. There were lots of inconsistencies.
- Q. On one occasion she said that John Pritchard told her he gave Jonathan some
- 17 morphine pills, right?
- 18 A. Correct.
- 19 O. She has also testified that inconsistent with that that she doesn't know whether he did
- 20 or not, right?
- 21 A. I believe that is her testimony.
- Q. Or, if he did when he did, right?
- A. Correct.
- Q. She told you that John was concerned about Jonathan's death and that he maybe had,
- or was afraid that he had given him medication that may have killed him, right?

- 1 A. Correct.
- 2 Q. Yesterday she said that that was something she brought up, correct?
- 3 A. That is what she testified to.
- 4 Q. And yesterday when she testified she was put under oath, right?
- 5 A. Correct.
- 6 Q. She was not sworn in a courtroom when she was talking to you back in 2011 was
- 7 she?
- 8 A. No.
- 9 Q. And she was subject to the penalty of perjury as the DA reminded her when she
- 10 came in here and testified yesterday, is that not correct?
- 11 A. Correct.
- 12 Q. Where she could be charged and go to jail if she didn't tell the truth in the
- 13 courtroom, right?
- 14 A. Correct.
- 15 Q. You understand that to be a felony charge, perjury, is it not?
- 16 A. Correct.
- Q. And when she testified yesterday that was completely inconsistent with what she told
- 18 you back in September of 2011, was it not?
- 19 A. There was inconsistencies, correct.
- 20 Q. So the three witnesses that you interviewed in this case, Floyd Ayers, he has had
- 21 inconsistencies at least as to the times, right?
- 22 A. Correct.
- Q. Christine has had inconsistencies as to times, when people were leaving the
- residence, how many times they left and who all was there, correct?
- 25 A. Correct.

- 1 Q. And Robbie Brown was basically all over the map, was she not?
- 2 A. That would be fair to say.
- 3 Q. You have not interviewed anybody that has given you information that they
- 4 witnessed at any point a delivery of morphine from my client to Jonathan Whitson on the
- 5 date of March 5th, 2011, have you?
- 6 A. No one that has testified, no.
- 7 Q. And you would not have been present at the Angel residence on any occasion during
- 8 March 5th?
- 9 A. No.
- 10 Q. You would not have been privy to any discussion, if there even was one, between
- John Pritchard and Jonathan Whitson on that day, would you?
- 12 A. No.
- 13 Q. You were nowhere around on the date of March 5th, March 4th, or March 6th, until
- 14 you got there at 12:00?
- 15 A. Until I got there at 11:40.
- 16 Q. And when you, at some point did you try to talk with John Pritchard about this?
- 17 A. I did.
- 18 Q. And did he he did not make any statement, is that true?
- 19 A. That is correct.
- 20 Q. So at no point when you questioned him has he ever admitted to you of delivering
- any morphine pills to Jonathan Whitson on the date in question?
- A. Correct.
- 23 Q. You have no documentation from the lab that there were any controlled substances
- even in Christine's house, do you?
- 25 A. Correct.

- 1 Q. Even though Ms. Whitson says that they would have been basically all over it, right?
- 2 A. I don't know that I would –
- 3 Q. At least would have been in the bathroom.
- 4 A. There could have been at one point in time, yes, a spoon in the bathroom.
- 5 Q. Did you at any point search Ms. Whitson's car?
- 6 A. No.
- 7 Q. I guess it is her father's car, right?
- 8 A. Correct.
- 9 Q. So that was never done by you or Mr. Farmer?
- 10 A. Correct.
- 11 Q. Once you left the home on the 6th at 2:00, was that the last contact you had with
- 12 anyone at the Angel residence?
- 13 A. I had contact with some of the family afterwards, yes.
- 14 Q. At that residence?
- 15 A. Not at the residence, no.
- 16 Q. At no point did anyone from the family come forward and deliver this spoon or
- anything else that might have been relevant to this case to you?
- 18 A. Correct.
- 19 Q. And you have no way of knowing what might have occurred at that residence before
- even the call was made to 911, of your own personal knowledge, do you?
- 21 A. No.
- 22 Or anything that might have occurred between the time of Jonathan's death and the
- 23 time that call was made of your own personal knowledge, do you?
- 24 A. No.
- 25 Q. The only thing you know is what you observed when you got there at 11:40?

- 1 A. Correct.
- 2 Q. When you talked to Doctor Hall what did you when you talked with Doctor Hall
- 3 do you remember what day that was?
- 4 A. It was on the 6th of March.
- 5 Q. What was the nature of that discussion?
- 6 A. When I notified him that I was on the scene of a death involving a 29 year old white
- 7 male, and gave him a brief summary of the state in which the body was found and the
- 8 condition surrounding, you know, the call for service. And got permission for the body to
- 9 be moved.
- 10 Q. At some point I assume that you either pulled off or the comforter that was on
- Jonathan was pulled off before the body was removed, right?
- 12 A. I know the comforter was transported with the body.
- 13 Q. Did it stay on him the whole time?
- 14 A. At some point in time, at some point in time I am sure it was removed, because I
- believe my notes reflect that there was, that I had observed that there were no obvious signs
- of trauma to the body. So I am sure that at some point in time I would have removed the
- 17 comforter as with any death, and just to make sure there was no obvious signs of trauma.
- 18 That would be from standard procedures.
- 19 Q. So you believe that you at some point inspected the body as he was laying there on
- 20 the couch?
- 21 A. Correct.
- 22 Q. You viewed the body to see if you saw any –
- 23 A. Just to make sure, correct, there is no obvious there again that would be standard
- procedure with any, with any death, just to make sure there was nothing obvious.
- 25 Q. You didn't take any photographs of his arms though, did you?

- 1 A. If there are not photographs there, no I did not.
- 2 Q. Each picture we have seen has got him covered up.
- 3 A. Correct.
- 4 Q. So, I am assuming since there are no photographs presented without a comforter on,
- 5 no photographs would have been taken with the comforter off of him, would there?
- 6 A. Correct.
- 7 Q. So there is no photograph as of that you have as of March 6^{th} that would indicate
- 8 the condition of either of his arms?
- 9 A. Correct.
- 10 Q. Do you remember what he had on?
- 11 A. Blue jeans, wearing socks, cowboy boots that were in the floor, the head of the couch
- where his head was at the end of the couch, and a tee shirt, possibly a black tee shirt, I can't
- 13 remember.
- 14 Q. So you are not sure.
- 15 A. Correct.
- 16 Q. Had he soiled his clothes?
- 17 A. Excuse me?
- 18 Q. Had he soiled his clothes?
- 19 A. I don't recall that he had.
- 20 Q. You don't know whether he had or not?
- 21 A. Correct.
- Q. During the time you were there though, would it be your testimony that nothing
- would have alerted you to the fact that there was some indication that he had soiled his
- 24 clothes?
- 25 A. I don't recall.

- 1 Q. You don't remember a smell, you don't remember seeing any?
- 2 A. I don't recall.
- 3 Q. And you wouldn't know whether or not his clothes had been changed before you got
- 4 to him, would you?
- 5 A. I would have no knowledge of that.
- 6 Q. You certainly weren't made aware of any clothes that perhaps had been changed out
- 7 of, right?
- 8 A. Correct.
- 9 Q. But you weren't made aware of that spoon anywhere?
- 10 A. Correct.
- Q. While you were there, were you ever made aware of the fact that Jonathan had been
- 12 drinking?
- 13 A. No.
- Q. All of the people that you interviewed made absolutely no mention of that, is that
- 15 true?
- 16 A. That is true.
- 17 Q. Whether that be Christine, right?
- 18 A. Correct.
- 19 Q. Stephanie, right?
- A. Correct.
- 21 Q. Nathan, right?
- A. Correct.
- 23 Q. And certainly Mr. Floyd Ayers who picked him up, right?
- A. Correct.

- 1 Q. Now, your information is that Mr. Whitson got out of jail in Buncombe County at
- 2 7:30, right?
- 3 A. He was released from Madison County at 6:30 on the 4th.
- 4 Q. On Friday?
- 5 A. Correct. And my understanding was that he was transported to Buncombe County
- 6 from Madison County to be served on an outstanding criminal process.
- 7 Q. Do you know what time he got there or what time he left?
- 8 A. (Pause) I am looking. I have some documentation. This shows the document from
- 9 Buncombe County reflects dates of incarceration 3/4/11 through 3/4/11, it doesn't specify
- 10 the times, just the dates.
- 11 Q. Does it not indicate on there that he got out at 7:30?
- 12 A. Let me look here, I have some more documentation. Okay, it looks like 7:40
- released to self on 3/4/11.
- 14 Q. He got out at 7:40.
- 15 A. Correct.
- Q. Which would, based on Mr. Ayers direct testimony that would be about 4 hours and
- 17 20 minutes until Mr. Ayers picked him up at the gas station on the left at Exit 13, right?
- 18 A. Correct.
- 19 Q. You don't have any information as to how Jonathan got from the Buncombe County
- 20 detention center to the gas station on the left at Exit 13, do you?
- 21 A. Other than what he had related to Mr. Avers that he was walking, and the phone
- conversation that he had been released from jail and he was walking and needed him to pick
- him up.
- Q. And you don't know who Jonathan may have come in contact with during those four
- 25 hours prior to the time Mr. Ayers picked him up, right?

- 1 A. Right, there was no way to know.
- 2 Q. No way to know any of that, is there. And no way to know what he may or may not
- 3 have been in possession of at the time Mr. Ayers picked him up and took him to Christine's,
- 4 correct?
- 5 A. Correct.
- 6 Q. But you do know that based on Mr. Ayers statement there are at least four
- 7 unaccounted for hours?
- 8 A. Correct.
- 9 Q. And where is the jail in Buncombe County?
- 10 A. In downtown Asheville.
- 11 Q. So it is in downtown Asheville?
- 12 A. Yes.
- 13 Q. Which would be approximately how far from Exit 13?
- 14 A. Probably fifteen miles.
- 15 Q. Are you familiar with CR Hensley?
- 16 A. Somewhat.
- 17 Q. Does he have a drug history?
- 18 A. He does.
- 19 Q. Are you familiar with Bryan Silvers?
- 20 A. Somewhat.
- 21 Q. Do you know whether he has a drug history?
- 22 A. I am not sure if he has any prior criminal charges for drug possessions, but I have
- 23 knowledge that there has been allegations.
- MR. HOCKADAY: Those are my questions.
- 25 REDIRECT EXAMINATION BY MR. HOLMES:

- 1 Q. Sir, you have notes on the notepad that Mr. Hockaday was referring to?
- 2 A. Yes.
- 3 Q. There was also an incident investigation report narrative that was prepared?
- 4 A. Correct.
- 5 Q. Was it you that prepared that?
- 6 A. Yes.
- 7 Q. Is that essentially a report then?
- 8 A. Yes.
- 9 Q. You are summarizing what you found?
- 10 A. Yes.
- 11 Q. And in that report do you have that with you?
- 12 A. I do.
- 13 Q. In that report it states, does it not, that Angel, being Christine Angel stated that she
- 14 then cooked on their return, Jonathan was still –
- 15 A. I'm sorry –
- Q. Stated that she then cooked and that everyone but Jonathan ate, is that correct?
- 17 A. Yes, that is correct.
- 18 Q. So she had told you that at some point?
- 19 A. Yes, she had.
- Q. Although it is not included in the note pad notes that you have?
- A. Right.
- Q. Now, with regards to the gentleman, James Whitson who allegedly called in and
- 23 indicated that the body had been moved. He was not present there Sunday morning, was he?
- A. No sir.

- 1 Q. And there was no other evidence that you observed that day to support the idea his
- 2 body had been moved, is that correct?
- 3 A. Correct.
- 4 Q. And with regard to Ms. Whitson's car being searched, was Ms. Whitson there?
- 5 A. No.
- 6 Q. Was her car there?
- 7 A. No.
- 8 Q. With regard to the lab, and the syringes that were sent off to the lab, do you know
- 9 whether or not those are the exact syringes that were being used the day before?
- 10 A. No.
- 11 Q. And the lab report that Mr. Hockaday showed you did state residue amount, correct?
- 12 A. That is correct.
- 13 Q. Although it was unable to identify what that residue was.
- 14 A. It states two syringes were individually analyzed and each was found to contain no
- 15 control substance indicated residue amount.
- 16 Q. And with regards to the spoon that we have heard testimony was left under the
- bathroom sink. You don't know if it was still there the morning of do you?
- 18 A. Correct. I was not made aware of that until later.
- 19 Q. You don't know if that residue or whatever, you don't know if that amount that was
- in the spoon that was left was used, thrown away, you don't know if it was still in there.
- 21 You don't know anything about it?
- 22 A. Correct.
- MR. HOLMES: Those are my questions Your Honor.
- 24 RE CROSS EXAMINATION BY MR. HOCKADAY.

- 1 Q. Do you know when you did your investigative summary? I assume you took the
- 2 notes while you were at the house?
- 3 A. Correct.
- 4 Q. You were sitting down, looking at her, talking to her. When did you do your
- 5 summary if you remember?
- 6 A. More than likely I would have completed it later that same evening would be
- 7 standard, the ideal.
- 8 Q. That would be ideal, but you are not sure if it was that same day or at a later time?
- 9 A. Right, but that would have been especially in a death case because it is standard
- procedure to provide the medical examiner with a copy of that report as soon as possible.
- Q. And again, whether or not the body was moved, you don't know either way, do you?
- 12 A. Are you talking about prior to my arrival?
- 13 Q. Yes, you don't know whether it was or not?
- 14 A. I have no reason to believe that it was, but I mean I don't –
- 15 Q. But you had no knowledge to say that it was not moved?
- 16 A. Correct.
- 17 Q. And the syringes that were sent, those are the only two that you found there, right?
- 18 A. Correct.
- 19 Q. And they were in the deceased pocket, right?
- 20 A. Coat pocket, correct.
- 21 Q. The coat belonged to Jonathan Whitson?
- A. Correct.
- 23 Q. You didn't find any more in the bathroom or anywhere else in the house did you?
- 24 A. No.
- 25 Q. And you were never alerted to any other syringes?

- 1 A. Right.
- 2 Q. You heard that testimony from Stephanie yesterday that two were used, right?
- 3 A. Correct.
- 4 Q. And she was the one that was using with him admittedly on the 5th, and you were
- 5 aware of that pretty quick after this investigation started, right?
- 6 A. Correct.
- 7 Q. But again at no point did you ever look in her car?
- 8 A. Correct.
- 9 Q. And again, the residue amount still didn't identify what if any controlled substance
- was in those syringes, if there even was one, right?
- 11 A. Correct.
- 12 Q. And the spoon that wasn't found you don't know whether there was a spoon, right?
- 13 A. There would have had to have been some kind of device in order to melt down.
- 14 Q. But you don't know if you are only relying on what she said I mean you don't of
- your own independent knowledge if there was even a spoon used, right?
- 16 A. Correct.
- 17 Q. You didn't find one there, right?
- 18 A. Right.
- 19 Q. And you don't know if there was some substance left in there. You don't know if
- anybody used it, threw it away, injected it or not, do you?
- 21 A. Correct.
- Q. And you certainly don't know whether Jonathan Whitson used any of that, do you?
- 23 A. No, I don't have any first hand knowledge.
- Q. Now when you have got to the scene you called Tom Farmer, right?
- 25 A. Yes.

- 1 Q. As you indicated previously he kept notes about his involvement in the case, right?
- A. He did.
- 3 Q. And you would have been relaying to him information as you were getting it from
- 4 the family, right?
- 5 A. Sure.
- 6 THE COURT: Mr. Hockaday, before you do that it is time for us to take our
- 7 morning break. Members of the jury we are going to take a fifteen minute morning break.
- 8 And remember what I have told you repeatedly, keep an open mind, leave your notes in your
- 9 chair. Don't talk about the case among each other yet. Obviously don't allow anybody
- related to this case or anyone else to talk to you about the case. Be back here in fifteen
- 11 minutes.
- 12 (ALL JURORS LEAVE THE COURTROOM AT APPROXIMATELY 10:50 A.M.
- 13 COURT WAS IN RECESS FOR APPROXIMATELY 15 MINUTES FOR THE
- 14 MORNING RECESS)
- 15 (COURT RECONVENED AT 11:05 A.M. ALL PARTIES ARE PRESENT ALL
- 16 JURORS ARE IN THE COURTROOM)
- 17 THE COURT: Mr. Hockaday, you may continue.
- MR. HOCKADAY: I don't have any further questions.
- THE COURT: Mr. Holmes, call your next witness please.
- MR. HOCKADAY: Call Randall Shufford.
- 21 RANDALL SHUFFORD, being first duly sworn testified as follows during DIRECT
- 22 EXAMINATION BY MR. HOLMES:
- Q. Good morning.
- A. Good morning.
- 25 Q. State your name please?

- 1 A. Randall Shufford.
- 2 Q. Where are you employed sir?
- 3 A. I am employed by the Burnsville Police Department, I am also employed by the
- 4 Yancey County Sheriff's Office.
- 5 Q. How long have you been employed there?
- 6 A. I have been in law enforcement for 21 years.
- 7 Q. And which department were you working for on Sunday March 6th. I'm sorry, which
- 8 department were you working for when you have you ever seen Mr. Pritchard before?
- 9 A. Yes, I have.
- 10 Q. What department were you working in your capacity as an officer when you saw Mr.
- 11 Pritchard?
- 12 A. I was working as a lieutenant detective for the Burnsville Police Department.
- Q. Can you please describe what happened, or the events surrounding how it is that you
- saw Mr. Pritchard in the course of your employment?
- MR. HOCKADAY: Objection.
- THE COURT: Do you wish to be heard outside the presence of the jury?
- 17 MR. HOCKADAY: YES SIR.
- THE COURT: Members of the jury, I am going to have to excuse you from
- 19 the courtroom one more time. There are matters that we need to hear, legal matters. Again
- 20 please don't discuss the case among yourselves, keep an open mind, leave your notes there
- 21 in your chair.
- 22 (AT APPROXIMATELY 11:06 A.M. THE JURY WAS EXCUSED FROM THE
- 23 COURTROOM)
- 24 (THE FOLLOWING IS OUT OF THE PRESENCE OF THE JURY)
- 25 THE COURT: I suppose your objection is based on 404-B.

- 1 MR. HOCKADAY: YES SIR.
- THE COURT: Would it be to ask testimony as to the facts and
- 3 circumstances of prior activities. So Mr. Holmes, why don't you go ahead and lay this out
- 4 for us.
- 5 Q. (By Mr. Holmes) Again I guess the question would be sir please describe what it is
- 6 that happened to cause you to see Mr. Pritchard here in the course of your employment?
- 7 A. On January 26, 2010 myself and the chief of police Bryan Buchanan conducted what
- 8 we call a law enforcement committee a controlled buy in which we used a confidential
- 9 informant and made a controlled drug buy from the defendant of two 15 milligram morphine
- pills and four oxycodone pills.
- 11 Q. And how was the buy arranged, or set up?
- 12 A. The confidential informant made a phone call to Mr. Pritchard who stated at the time
- of this phone call that he was in Asheville, but he did have some pills to sell to give him a
- 14 little bit of time to return back to Burnsville and give him a call back at somewhere around
- 4:30. That afternoon placed another phone call to Mr. Pritchard, and he stated that yes he
- had some morphine to sell and some oxycodone to sell. Stated to me in Fred's parking lot
- here in Burnsville that he would sell those pills.
- 18 Q. Okay, and so is that where the meeting occurred?
- 19 A. Yes, it is.
- 20 O. And how did Mr. Pritchard arrive?
- A. He arrived in a 2005 grey ford truck with a tool box on the back. It was an extended
- cab pickup and had a handicapped placket. He parked in front of Fred's near the shopping
- cart return area. He got out of his vehicle and got into the vehicle with the informant.
- Q. You said it was a Ford, is that right?
- 25 A. Yeah, a 2005 Ford Ranger pickup.

- 1 Q. What happened after the meeting?
- 2 A. Mr. Pritchard got out of his vehicle, got in the vehicle with the CI. Myself and the
- 3 chief of police, and I can't tell you which one of us made which photograph, but we made
- 4 some photographs of the transaction the best we could from our observation point. They
- 5 were only there for a short period of time. Mr. Pritchard drives off and the chief of police
- 6 and myself follow our CI right to the Town Hall where she turns over the pills that she had
- 7 just purchased.
- 8 Q. And were charges taken out as a result of this?
- 9 A. Yes.
- 10 Q. And what were those charges?
- 11 A. He was charged with maintaining a vehicle to sell controlled substance. He was
- 12 charged with possession with intent to manufacture, sell or deliver two counts because there
- were two separate pills. He was charged with sell and deliver of each pill.
- 14 Q. Was Mr. Pritchard convicted of any of those?
- 15 A. As I recall he plead guilty.
- 16 Q. Do you know what he plead guilty to?
- 17 A. I think he plead guilty to two counts of possession with intent to manufacture, sell
- and deliver, sell of Schedule II and maintaining a vehicle, as I recall.
- THE COURT: What was the last part?
- A. Maintaining a vehicle for sale.
- 21 Q. So, sale, possession with intent.
- A. He pled as charged.
- Q. Well there was a second sale, is that correct that he was charged with?
- 24 A. There were two separate types of pills, he was charged with sale and delivery of the
- 25 morphine, and sale and delivery of the oxycodone.

- 1 Q. One of the sale and delivery was dismissed.
- 2 A. Yeah, one ended up being dismissed.
- 3 Q. Did he plead to the sale that involved morphine?
- 4 A. I can't answer that question I don't know.
- 5 Q. If you had the file number with the charge, would you be able to determine that?
- 6 A. Yeah, there is a copy of the warrant.
- 7 Q. 10 CR 50161, what was the sale alleged in that.
- 8 A. As I have it 10 CR 050162 is the sale.
- 9 Q. I am sorry, I was reading the wrong line, that is correct.
- 10 A. The first charge on that, on the file number is morphine, and the second charge is
- 11 oxycodone.
- 12 Q. Okay.
- 13 A. And they are both a Schedule II controlled substance in the State of North Carolina.
- 14 Q. That answers my question.
- THE COURT: Which one was dismissed and which one was guilty?
- MR. HOLMES: He plead in Count 1 of 50162, which is the morphine
- 17 charge.
- THE COURT: Oxycodoen?
- MR. HOLMES: No it was morphine.
- A. Count 1 would have been morphine and Count 2 would have been oxycodone.
- MR. HOLMES: That is all I have.
- THE COURT: Mr. Hockaday.
- 23 CROSS EXAMINATION BY MR. HOCKADAY:
- Q. Mr. Shufford on this particular occasion it is your testimony that this was a it is
- 25 your testimony this was a sale or transaction that was set up ahead of time, right?

- 1 A. That is correct.
- 2 Q. That it occurred by a meeting of two vehicles at a parking lot at a public parking lot
- 3 in Burnsville, right?
- 4 A. Correct.
- 5 Q. That actually on this occasion Mr. Pritchard did not meet and pick up your
- 6 confidential informant, Ms. Walter, but in fact had met her somewhere where you and the
- 7 other officer observed?
- 8 A. That is correct.
- 9 Q. So on no occasion did he go pick her up at her home, correct?
- 10 A. That is correct.
- 11 Q. Did not ride around with her in any way, shape or form, is that right?
- 12 A. That is correct.
- 13 Q. Your testimony that he pulled up beside her, got out of his vehicle, got in her vehicle,
- and then he got back into his. That is what you are saying that you observed, correct?
- 15 A. That is correct.
- Q. And you are saying he came in and accepted responsibility for that by entering a
- 17 plea, right?
- 18 A. That is correct.
- 19 Q. You at no point were privy to any conversations or you didn't have any
- 20 conversations with Mr. Pritchard on that particular day, did you?
- A. I didn't talk to Mr. Pritchard at all on that date. The first time I actually spoke to Mr.
- 22 Pritchard was probably was early March, March 3rd when I arrested him.
- Q. March 3rd of 2010. And you are saying that this transaction occurred January of
- 24 2010?
- 25 A. Yes, January 26.

- 1 Q. And this would be the one transaction that involved him being charged and taken to
- 2 court and having entered a plea, correct?
- 3 A. That is correct.
- 4 Q. And you are telling me that the substances that were involved one of which was
- 5 morphine, was a 15 milligram, two 15 milligram pills, correct?
- 6 A. That is correct.
- 7 Q. Not 30 milligram pills, correct?
- 8 A. Correct.
- 9 MR. HOCKADAY: Those are my questions for this limited purpose Your
- 10 Honor.
- MR. HOLMES: No further questions. I guess I have one other question.
- 12 Q. How many morphine pills were there?
- 13 A. There were two morphine.
- MR. HOLMES: Nothing further.
- THE COURT: Anything else
- MR. HOLMES: Your Honor, I know the Court has to look at temporal
- proximity, I think that speaks for itself. I am not going to belabor that. With respect to the
- other thing the Court needs to look at which is similarity in the events. We have a delivery
- 19 you have a delivery, you have the defendant communicating with the person who is to
- 20 receive the morphine, communicated by cell phone. You have in this case and the prior case
- 21 a prearranged meeting which is what happens in both of those. You have the same drug, the
- fact that it is 15 milligrams, and 30 milligrams I think is kind of a red herring. The point is it
- 23 is the same drug. And he was in possession of it then, and he was in possession of it this
- 24 time.

Even if that is in dispute, the fact is he had a prescription for it at this time, that is 2 undisputed. So he has had possession of it, whether or not he has delivered I guess is at 3 issue, but whether or not he is in actual possession is not. So it is the same drug, and in 4 terms of amounts of the drug, you have got a similarity there. You have got – we have heard 5 testimony that they were either ten pills or eight pills. In this prior case you have two. He 6 said that either are relatively small amounts. We are not talking about trafficking level 7 amounts, or bottles or bags of pills both amounts can be described accurately as a handful. 8 So I think there is substantial similarity between the offense and I would also say that 9 the case – Your Honor may have mentioned Wilkerson, 148 nc ap 328, has language in it to 10 the effect that again that is a traffic. In a second degree murder case, motor vehicle, second 11 degree murder case. The language they use is, 'our courts have recognized having ---12 exception, quote unquote, that allows an admission prior traffic convictions. In this case we 13 have drug related second degree murder charge, and we aren't introducing drug related prior 14 convictions to prove the issue of malice. So it would seem to be the same. 15 I guess just to be clear, the other purpose for which the State is wanting to introduce 16 it, under 404-B is not offered simply to prove malice alone, but also again to prove an 17 element of the maintaining a vehicle crime. Which is he was using that vehicle over a period 18 of time for the purposes of delivering controlled substances. So there are multiple other 19 reasons in which the State is seeking to introduce it. 20 I think even if you said that we are talking about events that occurred in January of 21 2010, and then we have evidence from Stephanie Whitson that she knew Mr. Pritchard 22 beginning in the Fall of 2010, August, September 2010, that is when she had interactions 23 with him and Jonathan the deceased where morphine was delivered or sold and when you 24 put all this together, I think it is pretty clear that we are also establishing a common scheme 25 or plan that has gone on here. This is something that has occurred now on multiple days of

1

- offense over a period of time, I guess that would be over a year long, approximately a year
- 2 and a couple of months. And that is all put together very clearly shows a common scheme
- 3 or plan which is another basis for which the Court can allow 404-B evidence in. That is what
- 4 he is doing, a common scheme or plan to engage in the sale of controlled substances, or
- 5 deliver controlled substances.
- 6 THE COURT: Mr. Hockaday.
- 7 MR. HOCKADAY: Your Honor, there certainly not similar amounts. I
- 8 think the evidence is perhaps two versus the evidence in this case on one occasion it has
- 9 been ten, and testimony from Ms. Brown there was eight, we have two here. It is remote,
- we are talking more than a year apart. There is no evidence in the case at hand of any
- exchange of money. In the other case there was a buy, there is no similarity in the setup.
- My guy met Jonathan allegedly at Christine's house. They got in the vehicle in fifteen
- minutes. Here it is a totally separate incident where this young lady never even got in the
- vehicle with my client. There is no evidence that any transaction occurred in this vehicle,
- we contend in either case. But certainly in the case that is being presented now, there is no
- evidence that anything occurred in the vehicle. It is not even the same level of medication in
- the pills, and one is a public place and one is at allegedly a private home. There are
- completely different circumstances. When you look at 404-B, a determination must be made
- whether the danger of the undue prejudice outweighs the probative value of the evidence in
- view of the unavailability of -- and other factors.
- Your Honor we contend there is a danger of undue prejudice of my client by
- 22 presentation of this evidence. It certainly would outweigh any probative value, particularly
- 23 when you look at how dissimilar these incidents are with remoteness of different alleged
- 24 medications. No evidence of a sale at all in the case at bar, versus this other evidence being
- 25 presented. And in no way is there even an allegation the vehicle was used in the same

- 1 manner. We would object to it, we ask the Court to rule it be excluded. We ask the Court
- 2 rule that this evidence not be allowed, and not be presented in front of the jury.
- We contend even if you find or are inclined under 404-B and feel it does support any
- 4 type of plan or scheme, we certainly the prejudicial value of it is so great that it should be
- 5 excluded. We do not we are not conceding in any way that this is proof of any motive,
- 6 preparation, plan, violation of those things for which the State is contending.
- 7 THE COURT: We proved evidence that Officer Shufford that there was a
- 8 cell phone used to arrange this transaction in 2010. I am trying to recall the evidence of a
- 9 cell phone being used in the present case that we have.
- MR. HOLMES: Your Honor, with respect to the cell phone, I think what we
- have is the confidential informant in this case calling the Defendant and then w have Mr.
- 12 Whitson well in this case Stephanie Whitson testified that the deceased called Mr.
- 13 Pritchard, and she also testified in this prior, other prior occasions where he was getting
- morphine that Jonathan would arrange those by calling Mr. Pritchard. So all of the
- evidence, and all of the circumstances we have would all be by purchasing using a cell
- phone to call the Defendant. It would not be the Defendant using his cell phone. They were
- all initiating by phone call and then making arrangements, making it happen.
- MR. HOCKADAY: On that particular issue Your Honor, I would ask the
- 19 Court to look back at your notes as to whether Ms. Whitson testified about that phone call.
- Obviously if you look back at your notes, whichever way, that is an alleged phone call
- between the deceased who cannot testify, Ms. Whitson did not testify, in anyway I don't
- believe that she was present when that call was made. So there is nobody at the case at bar
- 23 that has testified that they observed her, witnessed any type of call between my client and
- the deceased on March 5. Vastly different from what Officer Shufford testified about as to
- being present when the CI is called.

1	MR. HOLMES: Your Honor, State V – first of all as to what Ms. Whitson
2	said, I am correct, I know I am correct. I recall specifically that she said that Jonathan was
3	the one that called Mr. Pritchard, and she very clearly testified that on the other occasions
4	that calls were made to Mr. Pritchard, and again that is what is happening here. And in
5	terms of that being a similarity, I would point that State V. Hargrave, 198 nc ap 579, and this
6	is in the statutes. I am reading from it, it says, past incidents of drug sales between the
7	defendant and the same buyer, we don't have the same buyer, in the charged crime.
8	Sufficiently similar to the crime charged, because as in all occurrences the buyer called the
9	defendant prior to the sale. So they are finding there that the fact that you have got a buyer
10	repeatedly calling to arrange a delivery or sale as being similar granted. We don't have the
11	same person involved in the 2010 case as we do in the other prior incidents that happened.
12	But the fact that he is waiting around to receive phone calls in all the cases is similar.
13	MR. HOCKADAY: We would contend there is no evidence he is waiting
14	around to receive phone calls. They are dissimilar in that we have got an alleged – we have
15	one phone call here and that is with a different individual. We don't have any evidence of
16	the CI and my client of any type of repeated phone call or arrangement, or prior drug sales
17	or deliveries in anyway. So the evidence we are talking about is in no way similar to the
18	evidence that has been presented in this case, on the case in chief.
19	THE COURT: Anything else?
20	MR. HOCKADAY: No Your Honor.
21	MR. HOLMES: No Your Honor.
22	THE COURT: I am going to make some findings of fact here. Findings are
23	as follows. In this case the State has offered evidence of similar prior acts, and contends that
24	the evidence is admissible under Rule 404-B of the Rules of Evidence.

1	The Court would find that the two dates of offense are within a year of each other.
2	The date of offense sought to be introduced January 26, 2010. The date of offense in the
3	present case being March 5, 2011. As to the 2010 offense, the Court finds that it involved
4	the delivery and sale of two 15 milligram morphine pills, which is a relatively small amount.
5	That the Defendant used a grey 2005 Ford Ranger to deliver the controlled
6	substances. That the delivery was made in a public place. That the delivery was made after
7	a cell phone call, or two cell phone calls. That the defendant entered the confidential
8	informant's vehicle to consummate the transaction. And that the transaction involved the
9	exchange of money.
10	The present case the alleged delivery consisted of either eight or ten morphine pills,
11	which is a relatively small amount. That the delivery involved the use of a grey 2005 Ford
12	Ranger. That the defendant met the alleged deliveree at his residence as opposed to a public
13	place. That transaction was consummated after the use of a cell phone. That the transaction
14	was consummated after the defendant picked up the deliveree and went on a ride with him.
15	And that the transaction was not for money. And that the defendant had a prescription for
16	morphine that was delivered.
17	I don't recall if there was a prescription in the 2010 case. Any information?
18	MR. HOLMES: Our medical records only go back to March of 2010, Your
19	Honor, so we don't have medical records going back to that time.
20	THE COURT: The Court would find that the purposes for which the State is
21	offering the evidence to prove that the defendant has been over a long period of time for
22	about a year maintaining a vehicle for the sale and delivery of controlled substances. And
23	that these activities constitute a common scheme or plan over the duration of about a year.
24	Further, that the State is offering the evidence to show malice, which is an essential
25	element of the charge of second degree murder.

- Based upon the foregoing findings of fact; the Court will conclude that the 2010
- 2 activities and circumstances are sufficiently similar for evidence of those activities to be
- 3 admitted under 404-B.
- 4 And further that the evidence related to his prior drug activities and conviction for
- 5 those activities is admissible to show malice in a second degree murder case based on
- 6 distribution of a controlled substance.
- 7 Court will further find and conclude that under a Rule 403, admission of this
- 8 evidence is not unfairly and prejudicial to the defendant. And that the prejudice to him by
- 9 admission of this evidence does not outweigh the probative value as to purposes seeking for.
- Based upon those findings of fact and conclusions of law; It will be the Court's
- order that the testimony of the State as to the activities and the conviction back in 2010 will
- be admitted in this case.
- 13 Anything further you feel needs to be in that order?
- MR. HOCKADAY: If the Court will note our objection and exception.
- THE COURT: Objection is noted. Let's bring the jurors back in.
- 16 (ALL JURORS ENTER THE COURTROOM AT APPROXIMATELY 11:45 A.M.)
- 17 (CONTINUED WITH DIRECT EXAMINATION OF MR. RANDALL SHUFFORD BY
- 18 MR. HOLMES)
- THE COURT: Mr. Holmes go ahead.
- Q. Sir, I don't remember where we stopped when the jury left. So, I will ask you again,
- 21 where were you who were you employed with when you saw the Defendant?
- 22 A. I was employed with the Town of Burnsville Police Department.
- Q. In the course of your duties, did you have an occasion to see the Defendant, is that
- 24 correct?
- 25 A. Yes, on January 26, 2010.

- 1 Q. Please describe what occurred on that day?
- 2 A. On this date the chief of police and myself conducted what we call a controlled drug
- 3 buy where we used a confidential informant who made contact with Mr. Pritchard by cell
- 4 phone and asked him if he would sell any drugs. Mr. Pritchard agreed to sell drugs on this
- 5 occasion, set up a meeting where the CI met Mr. Pritchard at Fred's Department Store
- 6 parking lot and sold the CI drugs on this occasion.
- 7 Q. How did Mr. Pritchard arrive at Fred's parking lot you just described?
- 8 A. Mr. Pritchard was observed by myself as driving a 2005 Ford Ranger Pickup grey in
- 9 color. It had a tool box on the back and a handicapped placard hanging on the morrow.
- 10 Q. Did you observe the sale take place?
- 11 A. The chief of police and myself were in another vehicle, observed what took place.
- 12 Observed Mr. Pritchard drive up again in his Ford Ranger Pickup. He got out of his vehicle,
- got in the passenger area of the vehicle that the CI was driving. Prior to our CI going to this
- location, she was searched. The vehicle she was driving was searched, so we were quite
- 15 confident there was no other pills on the CI or in the vehicle. After Mr. Pritchard exited the
- 16 CI's vehicle and returned back to his vehicle and drove off, we followed the CI back to the
- town hall where she turned over two 15 milligram morphine pills, and four oxycodone pills.
- 18 Q. Were charges taken out as a result of this?
- 19 A. Yes, they were.
- Q. What charges were those?
- A. Mr. Pritchard was charged with maintaining a vehicle to sell controlled substance.
- He was charged with possession with intent to manufacture, sale, and deliver two counts,
- because there were two separate types of pills. He was charged with sale and deliver, again
- 24 twice, because there were two separate kinds of pills.
- Q. Was he convicted of any of those charges?

- 1 A. He pled guilty in court.
- 2 Q. Do you know what he pled guilty to?
- 3 A. He pled guilty to maintaining a vehicle to sell controlled substance. He pled guilty
- 4 to both counts of possession with intent to manufacture, sell, and deliver a controlled
- 5 substance. And he pled guilty to one sale of controlled substance, the first count of
- 6 morphine.
- 7 MR. HOLMES: No further questions.
- 8 THE COURT: Mr. Hockaday.
- 9 CROSS EXAMINATION BY MR. HOCKADAY:
- 10 Q. As a result of your investigation in this case once Mr. Pritchard was charged, you
- said that he came to court and he entered a plea of guilty, correct?
- 12 A. That is correct.
- 13 Q. He came in and accepted responsibility in that particular case?
- 14 A. That is correct.
- 15 Q. As to his involvement in it, right?
- 16 A. That is correct.
- 17 Q. And you are saying that the date of that offense was back in January of 2010, I
- believe is that right?
- 19 A. It was January 26, 2010.
- 20 Q. You have not had any involvement in the investigation of this particular case
- 21 regarding Jonathan Whitson, have you?
- A. No, none at all.
- Q. So you don't have any knowledge personally about the events that occurred in the
- 24 home of Christine Angel on March 5, or 6 of 2011?
- 25 A. That is correct.

- 1 Q. And you haven't had any conversations as a result of an investigation with any of
- 2 those individuals?
- 3 A. I have not.
- 4 Q. Do you know who CR Hensley is?
- 5 A. I do know CR Hensley.
- 6 Q. Is his full name Charles Robert?
- 7 A. Yes.
- 8 Q. Is he Thelma Massey's son?
- 9 A. I am not sure if he is a son or a nephew, but he was always with Thelma for the most
- part of his life.
- 11 Q. How were you familiar with him?
- 12 A. I have been involved in investigations where we have made controlled buys from CR
- Hensley as well.
- 14 Q. And have you been involved and have you been a charging officer were you a
- charging officer in 2011for felony charges involving his sale of controlled substances here in
- 16 Yancey County during that year?
- 17 A. I would have to look at the file, but as I remember probably in 2011 or 2012 yes.
- 18 Q. And as a result of that investigation did he come in and plead guilty to felony sale?
- 19 A. That sounds correct, again, without looking at the file I don't know exactly.
- Q. (Approaches witness) If I can show you a file, if you will look at it. Are you one of
- 21 the officers listed on that warrant?
- 22 A. I am listed as a witness on this case, yes.
- Q. Is that 2011 case that involved Mr. Hensley? Does it have a 2011 file number?
- 24 A. Yes, it does, 2011 case.
- 25 Q. Does it have a date of offense on it?

- 1 A. 6/29/2011.
- 2 Q. Okay, and are these drug charges that Mr. Hensley was charged with in that same
- 3 year?
- 4 A. These were drug charges from trafficking in Opium, or heroin, sale and delivery of
- 5 Schedule II controlled substance, Possession with Intent to Manufacture a controlled
- 6 substance. In this case the pills were Hydrocodone.
- 7 Q. And the individual that was your confidential informant was Tammy Ayers, is that
- 8 right?
- 9 A. That is correct.
- 10 Q. And is it your understanding that Mr. Hensley entered a plea of guilty to the sale and
- 11 maintaining a vehicle?
- 12 A. That looks correct.
- MR. HOCKADAY: Those will be my questions.
- MR. HOLMES: Nothing further Your Honor.
- THE COURT: You may step down.
- MR HOLMES: Call Xylian McBee.
- 17 XYLINA MCBEE, being first duly sworn testified as follows during DIRECT
- 18 EXAMINATION BY MR. HOLMES:
- 19 Q. State your name?
- A. Xylina McBee.
- 21 Q. Where are you employed?
- THE COURT: What was your name?
- 23 A. X-Y-L-I-N-A.
- 24 Q. I'm sorry, say again where are you employed?
- 25 A. VA Hospital.

- 1 Q. How long have you been employed there?
- 2 A. Been employed there since July of 2013.
- 3 Q. What is your job there?
- 4 A. I am a medical records administrator.
- 5 Q. What are you duties?
- 6 A. We maintain the privacy and security of the medical record.
- 7 Q. Has that been your job the entire time you have been employed there?
- 8 A. No. I am originally a medical coder.
- 9 Q. And then you began your current job.
- 10 A. In December.
- 11 Q. Do you have let me ask you this. How are document records stored?
- 12 A. Electronically.
- 13 Q. How are they retrieved?
- 14 A. We can retrieve them on paper.
- 15 Q. And is it a regular part of the day to day business of the VA, your job to maintain
- those records?
- 17 A. That is correct.
- 18 Q. And they are under your control and custody?
- 19 A. They are.
- 20 Q. And did you bring a copy of John Herbert Pritchard's medical records?
- 21 A. I did.
- MR. HOLMES: May I approach the witness.
- THE COURT: Yes.
- Q. (Approaches witness) Did you place what is in this envelope into the envelope?
- 25 A. I did not, one of my associates did.

- 1 Q. Okay. Your Honor with the Court's permission I am going to open this package.
- 2 (Opens package) Do you recognize these documents ma'am?
- 3 A. Yes, I do.
- 4 Q. What are these?
- 5 A. That would be the complete medical record that we have on file.
- 6 MR. HOLMES: Your Honor at this time I would move to introduce the
- 7 records.
- 8 MR. HOCKADAY: We are objecting to these.
- 9 MR. HOLMES: I will place this sticker onto the package.
- THE COURT: Do you wish to be heard as to your grounds for the objection?
- MR. HOCKADAY: Your Honor, the documentation I have the certification
- that goes with it is not the individual that is testifying as to these as true and accurate record,
- unless there is some other certification.
- THE COURT: So the authenticity is what you are objecting to?
- MR. HOCKADAY: Yes sir.
- MR. HOLMES: Your Honor, I don't believe I have to have a certification to
- introduce the records.
- THE COURT: I think I agree with you. The Court will admit the records.
- MR. HOCKADAY: If the Court will note our objection and exception.
- THE COURT: Yes sir.
- Q. (pause while attorney looks at records) Ma'am, I am going to bring your attention to
- 22 Page 22 of the documents you have provided, and previously provided documents, medical
- 23 records that would be Page 1. On that page if I can have you please read what the local
- 24 title is at the top there?
- 25 A. Medical primary care telephone contact note.

- 1 Q. And the date of the note there?
- 2 A. Date of this entry was March 3, 2011.
- 3 Q. And under phone contact, would you read the highlighted portions there?
- 4 A. Renew morphine LF 2-11.
- 5 Q. Do you know what LF means?
- 6 A. I am not aware, I will have to research that.
- 7 Q. And 3, the date down here at the bottom, can you read that?
- 8 A. 3/10, called in regarding above meds will forward to PCP, that is primary care
- 9 physician.
- 10 Q. Directing your attention to this would be Page 24 and 25 of the documents that you
- provided, and would be Page 4 of document if you could read again the title there at the
- 12 top.
- 13 A. Outpatient notes.
- 14 Q. The date.
- 15 A. February 28, 2011.
- 16 Q. What is this section down here labeled?
- 17 A. Medication Active Combined.
- 18 Q. And the line below that what does that read?
- 19 A. Active Outpatient Medication.
- Q. Okay, and what does that medication there that is highlighted?
- 21 A. That would be Morphine Sulfate 30 milligram. SR tab, take one tablet by mouth
- every eight hours for pain and it is active.
- 23 Q. Those are all the questions I have.
- 24 THE COURT: Cross.
- MR. HOCKADAY: Yes sir.

1 CROSS EXAMINATION BY MR. HOCKADAY:

- 2 Q. Ma'am, you are simply here as the custodian of these records, right?
- 3 A. That is correct.
- 4 Q. You don't know anything about this case at all, do you?
- 5 A. That is correct.
- 6 Q. You have not been involved in any of the investigation concerning this young man's
- 7 death on March 6, or any of the events from March 5th?
- 8 A. No, sir.
- 9 Q. And you have never had any kind of conversation with my client at all, have you?
- 10 A. No sir.
- 11 Q. You don't know him at all, do you?
- 12 A. No sir.
- 13 Q. You have had not interaction with him at all at the VA have you?
- 14 A. No sir.
- 15 Q. And you didn't start working there until 2013?
- 16 A. That is correct.
- 17 Q. And you weren't even keeping the records in 2011?
- 18 A. That is right.
- 19 Q. You just know what his record has been, as he has been treated there?
- 20 A. That is correct.
- Q. And basically you know that he has been prescribed medications, a number of them
- but in particular he had a prescription for morphine sulfate, 30 milligram SR TABS, right?
- A. That is right.
- Q. Do you know what SR means?
- 25 A. I believe it is sustained release, meaning it is released over a period of time.

- 1 Q. I think you said when you read the rest of it, take one tablet by mouth every eight
- 2 hours for pain?
- 3 A. That is right.
- 4 Q. So that is the medication that one would take, is that your understanding, that is the
- 5 medication that one would take and it would provide a slow release to address the pain, and
- 6 one certainly wouldn't take a number of them at one time?
- 7 A. I am not a medical professional.
- 8 Q. That is your understanding of what a slow release tab is.
- 9 A. I understand it as a layman.
- 10 Q. And as time went on and released the effects of the medication to assist in the pain
- one would have, right?
- 12 A. I would accept that.
- 13 Q. The specific instructions for this medications were to take one by mouth every eight
- 14 hours, right?
- 15 A. Yes.
- 16 Q. In no way was the use recommended to be take four at a time crush them, melt them,
- and inject them in ones arm, was there?
- 18 A. No.
- MR. HOCKADAY: Those would be my questions.
- MR. HOLMES: Nothing further.
- 21 THE COURT: You may step down. Are you ready to call your next
- 22 witness?
- MR. HOLMES: Yes sir, call Doctor Brent Hall.
- 24 THE COURT: Brent or Brent?
- MR. HOLMES: Brent.

- 1 BRENT DWAIN HALL, being first duly sworn testified as follows during DIRECT
- 2 EXAMINATION BY MR. HOLMES:
- 3 Q. Please state your name sir?
- 4 A. Brent Dwain Hall.
- 5 Q. Where do you work?
- 6 A. I am employed by the Pathology Associates of Boone.
- 7 Q. How long have you worked there?
- 8 A. Since 1993.
- 9 Q. What do you do there?
- 10 A. I am a pathologist, forensic pathology, meaning that I look at tissue that is removed
- from a patient in the operating room, or a doctor's office and attempt to render a diagnosis
- as to what pathological process has taken place in that tissue. I also oversee the day to day
- running of the local labs at Watauga, Blowing Rock, Linville, Cannon Memorial Hospital in
- 14 Linville, Blue Ridge in Spruce Pine and Clinic Care in Burnsville.
- 15 Q. Are you a physician duly licensed to practice medicine in North Carolina?
- 16 A. Yes sir.
- 17 Q. When were you so licensed?
- 18 A. 1988.
- 19 Q. And can you briefly describe your educational background?
- 20 A. I went to medical school at East Carolina, did my internship and residency at Duke.
- 21 While at Duke I did a Fellowship in Humana Pathology, which is a study of ----- and I did a
- 22 fellowship in Forensic Pathology at UNC Chapel Hill.
- 23 Q. Is there a medical board in North Carolina?
- 24 A. Yes sir.
- 25 Q. Are you board certified?

- 1 A. I am board certified, yes sir.
- 2 Q. Are all doctors board certified, what is the significance in that?
- 3 A. Not all doctors are board certified, board certification requires taking and passing a
- 4 test.
- 5 Q. How long have you had that certification?
- 6 A. Since '93.
- 7 Q. Have you ever testified in court before?
- 8 A. Yes sir.
- 9 Q. How many times, approximately?
- 10 A. In excess of 50 times.
- 11 Q. And were you tendered as an expert witness in those times you previously testified?
- 12 A. Yes sir.
- 13 Q. And what areas of expertise were you qualified as an expert in?
- 14 A. In the areas of pathology and forensic pathology.
- MR. HOLMES: Your Honor I would tender Doctor Hall as an expert at this
- 16 time.
- MR. HOCKADAY: I would object, don't wish to be heard.
- THE COURT: Members of the Jury I am going to excuse you while I deal
- with this objection. I think we will have you come back at 1:30 let this be your lunch recess,
- 20 come back at 1:30 rather than having you come back and then be recessed immediately.
- Before you do that I want to go back and instruct you that evidence has been
- 22 received by the Court that the Defendant was involved with a criminal activity back in
- January of 2010, as you have heard testimony of that. And I want to instruct you that this
- 24 evidence was received solely for the purpose of showing evidence that the defendant was
- 25 maintaining a vehicle for the sale and delivery of controlled substances. That it was part of

1	a common scheme or plan and for the purposes of showing his state of mind and for no other
2	purposes. If you believe that evidence you may consider it, but only for the limited purpose
3	for which it was received. Anything further on that?
4	MR. HOCKADAY: No.
5	MR. HOLMES: No.
6	THE COURT: That was for state of mind. For second degree murder
7	one element that you will hear about this is malice. And it was offered for the purpose of
8	showing that state of mind. Again, if you believe the evidence you are to consider it for
9	those limited purposes only and for no other purpose.
10	You will be excused for lunch. Please remember, don't talk to anybody else about
11	this case. Don't do any internet research about this case. Don't goggle anybody or anything
12	in this case. Don't allow anybody to talk to you about this case or talk about the case in
13	your presence. If somebody does talk to you about the case, you need to report that to the
14	Court immediately. Keep an open mind. Leave your notepads there in our chair. We will
15	see you back here at 1:30.
16	(ALL JURORS LEAVE THE COURTROOM AT APPROXIMATELY 12:15 P.M. FOR
17	THE LUNCH RECESS)
18	(THE FOLLOWING IS OUT OF THE PRESENCE OF THE JURY)
19	THE COURT: Mr. Hockaday, do you want to ask questions of Doctor Hall?
20	MR. HOCKADAY: Your Honor, I had indicated I objected to him being
21	qualified as an expert, but I said I did not wish to be heard. We are prepared for our cross
22	examination of Mr. Hall at the appropriate time.
23	THE COURT: I thought you indicated that you wanted to be heard on the
24	objection.
25	MR. HOCKADAY: I said I did not wish to be heard.

- 1 THE COURT: Well I am sorry, as Judge Downs might have said, you need
- 2 to speak up. I apologize, at least you get to eat early today. We will come back at
- 3 1:30.
- 4 (COURT RECESSED FOR LUNCH AT APPROXIMATELY 12:15 P.M.)
- 5 (COURT RECONVENED AT 1:30 P.M. ALL PARTIES AND THE JURY ARE
- 6 PRESENT IN THE COURTROOM)
- 7 THE COURT: Mr. Hall was tendered as an expert in the field of –
- 8 MR. HOLMES: Forensic Pathology.
- 9 THE COURT: Just to clarify, Mr. Hockaday do you have an objection to
- 10 that?
- MR. HOCKADAY: We do for the record.
- 12 THE COURT: The Court will note that and will receive Doctor Hall as an
- expert in the field of forensic pathology. Please come around sir.
- 14 (WITNESS BRENT HALL RETURNED TO THE STAND TO CONTINUE WITH
- 15 DIRECT EXAMINATION BY MR. HOLMES:)
- 16 Q. Doctor Hall, were you contacted about the death of Jonathan Russell Whitson?
- 17 A. Yes sir.
- 18 Q. What is the procedure when you are contacted?
- 19 A. I was called by Sergeant Bryan Higgins, on 3/6/11 at 12:30 and informed that he had
- a 29 year old male decedent.
- 21 Q. At what point did you get to see the body of Jonathan Russell Whitson?
- 22 A. I saw the body the next morning at 11:30.
- 23 Q. Is that when you performed the autopsy?
- 24 A. Yes sir.
- 25 Q. And will you briefly describe what an autopsy is?

- 1 A. Yes sir, an autopsy is a complete examination of the body. We start with an external
- 2 exam, noting any clothing that the decedent may be wearing, any injuries to the clothing.
- 3 We then remove the clothing, proceed with the external exam, noting any injuries or
- 4 abnormalities to the external surface of the body. We then proceed to collect samples from
- 5 either the femoral vessels or the subclavian vessels, blood samples. Also collect a sample of
- 6 fluid inside the eye. We then do a start with the internal exam in which we form a Y
- 7 shaped incision of the chest and of the abdomen.
- 8 We remove all the organs in the chest and in the abdomen as well as the pelvis,
- 9 examine those organs both grossly, just by looking at the organs, and microscopically, under
- 10 the scope. While we are obtaining those organs we also get a second blood sample from the
- Aorta to be used for toxicology, and a piece of liver that can be used for toxicology if
- 12 needed. We then proceed to the head, we remove the scalp, remove the brain and examine
- the brain.
- Q. Was that the procedure you followed in conducting this autopsy?
- 15 A. Yes sir.
- 16 Q. And how many autopsies have you performed in your career?
- 17 A. Over three thousand.
- 18 Q. And in conducting an autopsy, do you take notes while you are doing it?
- 19 A. Yes sir.
- 20 Q. And do you prepare reports what you concluded?
- 21 A. Ye sir.
- Q. In this autopsy, what did you determine to be the cause of death?
- 23 A. The cause of death was morphine toxicity or morphine overdose.
- Q. What was it that you found that led you to come to that conclusion?

- 1 A. Well indirect findings were severe pulmonary edema and congestion, along with a
- 2 marked degree of acute bronchial phenomena. When a person dies from opiate toxicity it is
- 3 common to have pulmonary edema and congestion as well as with phenomena. Opiates are
- 4 a respiratory depressant. They act on the area of the brain that controls respiration. And
- 5 they tend to slow respiration, which makes the body starve for oxygen. And in order to try
- 6 to achieve oxygenation of the tissues, the lungs will open up the air sacs or the alveolar
- 7 spaces, as well as the capillaries, the small blood vessels inside the lung to try to kind of
- 8 facilitate that exchange of oxygen. And in doing so capillaries often become leaky and
- 9 protein fluid will leak from inside the blood vessels to the alveolar spaces or the air sacs in
- the lung. That leads to pulmonary edema or the heavy lungs. And that protein fluid serves
- as a ----- media for growth of organisms which leads to phenomena.
- 12 Q. So you found pulmonary edema and acute bronchial phenomena in the lungs?
- 13 A. Yes, those were findings related to the morphine toxicity. In addition morphine was
- measured in the blood as well as the urine.
- 15 Q. What were the findings there?
- 16 A. The test that is done on the aortic blood is a screening test to find out what drugs are
- present in the decedent. That screening test was positive for morphine. Then the blood –
- there is an attempt to quantitate how much of certain drugs are present. That is typically
- 19 performed in blood that is removed from peripheral blood vessel, either the femoral vessels
- or the subclavian vessel. And there was a trace of morphine found there.
- In the urine however there was 15 milligrams per liter of morphine there. Morphine
- is a drug that is metabolized in the liver and excreted through the kidneys into the urine.
- 23 The cut off point for toxicity resulting in death is 14 milligrams per liter. As I said Mr.
- 24 Whitson had a level of 15 milligrams per liter in his urine.

- 1 Q. Sir, can you tell us the side effects of morphine how dangerous it is, what -- as
- 2 compared to other drugs?
- 3 A. Well Morphine is a Scheduled II controlled substance. It is a drug that is typically
- 4 used to treat pain. It is quite effective in treating pain. It does in some people, probably in
- 5 most people create also a feeling of euphoria and that is why morphine is often abused is for
- 6 the euphoric feeling.
- 7 Q. We have heard evidence that the deceased, Jonathan Whitson ingested morphine
- 8 along with someone else. Would ingestion into anyone the same amount of morphine would
- 9 it necessarily have the same effect on them?
- 10 A. Well there are a lot of variables to consider there. Each person has a individual
- reaction and tolerance to almost any drug, including morphine. They can act differently on
- different people. Also, you would have to consider how much morphine each individual
- took, and the route of administration.
- 14 Q. What do you mean by route of administration?
- 15 A. Whether it was taken orally, or whether if it were injected. Prior to injection was it
- diluted with some substance? Was that dilution factor the same for each individual when
- they injected the drug? Did it go directly into the vein? Did it go through the vein and into
- the surrounding soft tissue? There are a lot of variables there.
- 19 Q. When you were conducting the external exam of Jonathan Whitson's body, what did
- 20 you note?
- 21 A. On the external exam there was a tattoo of the right arm with a Rebel flag and
- 22 lightening. There were abrasions on both upper legs, measuring up to 2.8 centimeters in
- 23 greatest diameter. There was a 0.5 centimeter abrasion of the right thumb. There was a 2.0
- 24 centimeter ulcer of the left heal. And there were needle marks in the left hand cubital fossa,
- 25 which is this area of the arm and the left forearm.

- 1 Q. Now the abrasion that you saw on his heal, is that consistent with what someone
- 2 would receive if they were walking for an extended period of time?
- 3 A. Well, if they had shoes that were rubbing in that area, that would be consistent with.
- 4 Q. Sir, at the time you conducted this autopsy, what was your job title?
- 5 A. As previously described, I was pathologist at the various hospitals, and I also served
- 6 as medical examiner and regional forensic pathologist for five counties in Western North
- 7 Carolina.
- 8 Q. Are you still the medical examiner?
- 9 A. No.
- 10 Q. How long had you served as medical examiner?
- 11 A. For 20 years there in Boone, prior to that and for three years in Durham County.
- 12 Q. Do you still perform autopsies as part of your job?
- 13 A. Yes.
- 14 Q. In conducting the autopsy in your report you also noted that there was an alcohol
- level that was detected?
- 16 A. Yes, sir that is correct.
- 17 Q. What was that?
- 18 A. There was 40 milligrams per deciliter, which would be equivalent to 0.04 percent on
- the breathalyzer scale.
- Q. What is that called?
- 21 A. Alcohol.
- Q. And you did not rule that as a cause of death, is that correct?
- 23 A. That is correct.
- MR. HOLMES: No other questions at this time.
- THE COURT: Mr. Hockaday.

- 1 CROSS EXAMINATION BY MR. HOCKADAY:
- 2 Q. You had been a medical examiner in Boone, prior to that in Durham, you said in
- 3 Boone for about 20 years, is that right?
- 4 A. Yes sir.
- 5 Q. And what specific counties are we talking about in addition to Watauga that you
- 6 cover as medical examiner?
- 7 A. Ashe, Avery, Mitchell, and Yancey.
- 8 Q. Now that position has now changed, you are no longer the medical examiner for any
- 9 of those counties, is that right?
- 10 A. Correct.
- 11 Q. And you resigned from that post in June of 2013, is that correct?
- 12 A. Yes sir.
- 13 Q. Now on the 6th of March 2011 you were contacted you say at around 12:30 p.m.?
- 14 A. Yes sir.
- 15 Q. Who contacted you?
- 16 A. Sergeant Bryan Higgins.
- 17 Q. What did he tell you?
- 18 A. He told me that he had a 29 year old male deceased. That the decedent had recently
- been released from a local jail, and that he had a history of drug use, slash, abuse.
- Q. This would have been even before you had even seen the body, which you saw the
- 21 next day, you are saying Mr. Higgins talked to you and he kind of gave you a background
- about the decedent having a history of drug abuse?
- 23 A. Correct, yes sir.
- Q. So you were aware of that before the body go to you and you looked at it on March
- 25 7th, correct?

- 1 A. Yes sir.
- 2 Q. Did you at any point come to Yancey County and go to the Angel home to look at
- 3 the scene at any point before or after the body was removed from Christine Angel's house?
- 4 A. No, I did not.
- 5 Q. At any point have you been to her house to view her home?
- 6 A. No sir.
- 7 Q. At any point well, when the body was moved do you know where it was first taken
- 8 before it got to you?
- 9 A. Yancey Funeral Service transported the body. I am not sure if they took it to their
- facility and then to Boone, or if they brought it directly to Boone. You would have to ask
- 11 them that question.
- 12 Q. You are not real sure of the number of places that it was transported to and from
- once it left the Angel home and got to you, you just know it eventually got to you?
- 14 A. Correct.
- 15 Q. When did the body get to you?
- 16 A. It got to me the morning of the 7th.
- 17 Q. The following day?
- 18 A. The following day.
- 19 Q. Roughly the time you looked at it was roughly 24 hours after the time –
- 20 A. Roughly, yes sir.
- Q. At any point prior to the time that the body, the autopsy was conducted did you talk
- 22 to any of the family?
- 23 A. No sir.
- Q. Did you talk with anyone other than Mr. Higgins?
- 25 A. I may have had discussion with Lieutenant Farmer, I am not sure about that.

- 1 Q. Well, if the Sheriff's Departments' notes that have been provided in discovery
- 2 indicate that you did, would you believe that you had a conversation with him?
- 3 A. I would say it is highly likely, yes sir.
- 4 Q. Do you remember what he told you?
- 5 A. No sir.
- 6 Q. You are familiar with Mr. Farmer?
- 7 A. Yes sir.
- 8 Q. You worked with him in the past, right?
- 9 A. Correct.
- 10 Q. Did he relay to you, or do you recall whether he relayed to you basically a similar
- summary as Mr. Higgins did that this young man had a history of drug use?
- 12 A. I don't recall that conversation.
- 13 Q. So if he did you wouldn't have any reason to dispute that?
- 14 A. Correct.
- 15 Q. At the time you performed the autopsy, or before did you have an opportunity to
- inspect or view any of the needles that were used, as it has been testified to, the morphine
- into this deceased body?
- 18 A. I never saw any of the needles.
- 19 Q. Are you aware that those have been tested by the lab now, and are you aware of what
- 20 the results of those tests are?
- 21 A. Not prior to this morning, I was not aware.
- Q. Are you aware now that the lab results are that there was simply a residue amount,
- but there was no finding of any controlled substance in those syringes, are you aware of that
- 24 now?
- 25 A. Yes sir.

- 1 Q. Is it your understanding that that is how at least the deceased girlfriend has described
- 2 these substances were introduced into Mr. Whitson's body?
- 3 A. Yes sir.
- 4 Q. Did you have an opportunity to inspect the spoon that was used to crush and melt the
- 5 morphine, draw out the liquid, to inject the morphine into the deceased body? Did you ever
- 6 have a chance to look at that?
- 7 A. No sir.
- 8 Q. And you have no personal knowledge of your own how these drugs were ingested
- 9 into Jonathan Whitson's body, do you?
- 10 A. No sir, there was a finding of needle marks on the left arm, but the morphine could
- have got there by injection or it could have been taken orally. I have no way of knowing.
- 12 Q. So it could have been as Ms. Whitson described, or it could have happened another
- way, you could have taken it orally and it would have been in his system just as if he would
- have injected it, right?
- 15 A. Yes sir.
- 16 Q. Then again, you don't know of your own personal knowledge when these were
- introduced into his body, whether they were crushed or not crushed or melted, put in a
- syringe, or taken in any other way, do you?
- 19 A. That is correct.
- 20 Q. So nothing about your autopsy would allow you to determine the method or manner
- in which these drugs were taken?
- A. Again, other than the fact that there were track marks on the arm, and I noted no
- residual pills in the gastric contents.
- Q. And therefore you wouldn't know what time they were taken, would you?
- 25 A. That is correct.

- 1 Q. You wouldn't know if that is something you did, whether it be earlier in the day on
- 2 March 5th, or something he did much later in the day of March 5th. You have no way of
- 3 knowing the time and the manner in which those pills were taken?
- 4 A. That is correct.
- 5 Q. Who are Irene Coffee and Katelyn Mack?
- 6 A. Irene Coffee is my PA, she assists me with the autopsies, and Katelyn Mack was a
- 7 student from ASU, they commonly rotate through to observe autopsies.
- 8 Q. Did they perform the autopsy in this case?
- 9 A. No sir.
- 10 Q. Now, you do not know since you were not present, precisely the time that Mr.
- 11 Whitson died, do you?
- 12 A. No sir.
- 13 Q. You did prepare the death certificate, or at least signed off on the death certificate for
- 14 Mr. Whitson, is that correct?
- 15 A. That is correct.
- 16 Q. Do you remember when you did that the first time?
- 17 A. Let me look at the death certificate. It was signed 3/16/11.
- Q. (Approaches witness) I am going to ask you to look at Defendant's 2, is that a copy
- of the death certificate that you signed on March 6 of 2011?
- 20 A. Yes sir.
- 21 Q. And I think on the back at some point you signed it at a later time, is that right?
- 22 A. That is a supplemental death certificate.
- Q. This is a two page document for the complete death certificate for this young man, is
- 24 that right?
- 25 A. Actually it is two separate documents.

- 1 Q. I just copied it on one page, it is two documents?
- 2 A. Yes sir.
- 3 Q. But you did sign on March 16 this death certificate. And do you agree that in any
- 4 case that you determined that the time of death was at 11:00?
- 5 A. Eleven o'clock yes, on the death certificate. And that determination is typically made
- 6 by or from information provided to me from the investigating agencies.
- 7 Q. And that information would have come, I am assuming, from either Mr. Higgins or
- 8 Mr. Farmer?
- 9 A. Correct.
- 10 Q. There is nobody else that you talked to in Yancey County about this case as far as
- details of this man's death, is that right?
- 12 A. Not to my recollection.
- Q. Since you have certified and signed Defendant's 2, to say it was 11:00, would it be
- 14 your recollection then that is based on the information you were given when you signed it?
- 15 A. That is correct, however the supplemental death certificate the time was changed to
- 16 a.m.
- 17 Q. Now, you had been asked about your report. You performed the autopsy on March
- 18 7, is that right?
- 19 A. Yes sir.
- Q. When did you you made a report on May 31, 2011, is that correct?
- 21 A. I am not sure I understand what you mean by making a report.
- Q. When did you make your final report? When did you determine strike that. When
- 23 did you determine it was your opinion Jonathan Whitson had died of morphine toxicity?
- 24 A. Yes sir, you are correct. The report was signed out May 31.

- 1 Q. Now when you sent the initial death certificate, or signed it on March 16, as a result
- 2 of your autopsy you had initially marked that the cause of death was pending, is that right?
- 3 A. Yes sir.
- 4 Q. So, as of the day that you signed this in March after having conducted your autopsy
- 5 you had made any type of conclusion at that point as to cause of Mr. Whitson's death?
- 6 A. That is correct.
- 7 Q. Then you amended it and signed that on July 15, is that right?
- 8 A. Yes sir.
- 9 Q. That is when you made that conclusion, is that right, on the death certificate, correct?
- 10 A. That is when the death certificate was signed, yes sir.
- 11 Q. That would have been after you had received the toxicology report, right?
- 12 A. Yes sir.
- 13 Q. Now, the toxicology report, which is included in the paperwork Mr. Holmes asked
- 14 you about, indicates the 15 milligrams per liter in the urine of morphine, right?
- 15 A. Yes sir.
- Q. It also indicates, does it not in this report, or in your findings that the deceased had a
- 17 .04 alcohol or ethanol level, is that right?
- 18 A. By the breathalyzer scale, yes sir, that correct.
- 19 Q. What do you mean by the breathalyzer scale?
- 20 A. Well it is 40 milligrams per deciliter and if you equate that to the breathalyzer scale,
- 21 it is 0.04 percent.
- Q. That would be that is a scale that is used when one has been charged with a DWI,
- 23 that is a similar scale use right?
- 24 A. Yes sir.

- 1 Q. Same scale. Now you do not know do you sir, just as you would not know the
- 2 manner in which the morphine was taken or introduced into Jonathan's body. You do not
- 3 know when or how much actually the deceased how much alcohol he consumed, do you?
- 4 A. That is correct.
- 5 Q. But roughly 24 hours after his death you determined that there was a .04 alcohol
- 6 level, right?
- 7 A. Correct, yes sir.
- 8 Q. Alcohol is a drug that once one stops drinking, the level at some point recently soon
- 9 after the drinking would begin to dissipate down, right?
- 10 A. Well, there is no metabolism after death.
- 11 Q. Sure, but at some point if one drinks, after a few hours their alcohol level begins to
- go down, correct?
- 13 A. If they stop drinking.
- 14 Q. If they stop drinking, and obviously if they stay alive.
- 15 A. Yes sir.
- 16 Q. We agree on that. And generally how long would it take ones level at a .04 to
- 17 dissipate down to 0, in your experience?
- 18 A. Well that depends on –
- 19 Q. If they stop drinking.
- 20 A. Well that depends on where they were on the metabolism scale. If you were to plot
- 21 the concentration of alcohol on a Y axis of a graph and time on the X axis of a graph, you
- 22 would get a bell curve distribution of the blood alcohol level. It would go up, it would
- plateau, and it would come back down. This 40 milligrams could be anywhere along that
- bell curve. I have no way of knowing, if you also have a urine alcohol level to compare
- 25 with, you can tell which side of the curve the metabolism rate was on, whether it was going

- 1 up, whether it plateau ore whether it was going down. Because a urine alcohol was not done
- 2 in this case, I have no idea where it is on the curve.
- 3 Q. So that was a test that was not done?
- 4 A. Correct.
- 5 Q. So you are saying there is no way to know what level of metabolism Jonathan was in
- 6 at the time of his death?
- 7 A. Correct.
- 8 Q. I don't know if you were here for any of yesterday's testimony, but there was
- 9 testimony presented that Jonathan had been asleep since around nine or ten o'clock the night
- before his death. We have already established that he died at around 11:00 a.m., is that right
- on the 6^{th} .
- 12 A. Somewhere around eleven.
- 13 Q. There has been no evidence that he drank anything the morning of the 6th, based on
- the evidence that has been presented so far. Let me ask it this way. The standard for a
- drunk driving charge in North Carolina is .08, which is about double what the level was in
- 16 Jonathan's system at the time of his death, right?
- 17 A. Correct.
- 18 Q. In your experience, based on normal metabolism factors, how long would it
- 19 generally take one at a .08 for that to dissipate down to a 0, once they stopped drinking.
- 20 A. Well, again, that would be highly individualistic. You know, depending on, you
- 21 know, how well the person's liver was, how well they are able to metabolize the alcohol.
- 22 And you know, how well the heart was working to actually pump the blood through the
- 23 liver. There are a lot of variables there.
- Q. (Approaches witness) I want to ask you about some information that I had obtained
- in preparing for this case. If I could ask you to look at this document, it is a study about

- 1 alcohol in the system and dissipation rates. Look at at least the first page of that. I want to
- 2 ask you your opinion about it. (Pause) Have you had a chance to look at it?
- 3 A. Yes sir.
- 4 Q. Did you have an opportunity to look at the blood alcohol level and metabolism time,
- 5 understanding that each person is an individual and different? Would you have any reason
- 6 to disagree with the statement from this study that alcohol is metabolized at a rate of .015,
- 7 which is a little less than .02 of blood alcohol every hour? Would you have any reason to
- 8 disagree with that?
- 9 A. That is a general statement, that is close.
- 10 Q. It is a little less than a .02 every hour, right? So, if it is a .015 every hour, in two
- 11 hours at that same rate about .03, right?
- 12 A. Correct.
- 13 Q. Three hours that would be .045, right?
- 14 A. Right.
- 15 Q. Four hours that would be .06, right? Let's just say in eight hours, that would be at
- 16 roughly at about .12, right, we double that.
- 17 A. Yes sir.
- 18 Q. That would be getting over the legal limit to even drive a vehicle, time and a half that
- 19 at .12, right.
- A. Getting close.
- 21 Q. .08, right?
- A. Right.
- 23 Q. And then if we increase that another four hours, we got to twelve hours that I am
- 24 asking you about, another 6, that would be about a .18. We are talking .015 every hour, try
- 25 to make it as simple as I can, if we were at 12 hours that would be a .18 under normal

- 1 circumstances based on, if this is the average dissipation rate of alcohol from one's system,
- 2 right?
- 3 A. Yes sir.
- 4 Q. You wouldn't have any reason to I mean you agree that is a fair metabolism rate of
- 5 alcohol in a given hour, based on your experience as a doctor, right?
- 6 A. Yeah, I would say that is close.
- 7 Q. So, if the evidence in this case is that Jonathan Whitson did not drink for at least
- 8 twelve hours before his death, and his rate at death was a .04, he could have been a .18 or
- 9 higher alcohol, could he not have, if he did not drink anymore at the time he went to sleep
- that night, correct?
- 11 A. At the time he went to sleep, I would say that is possible.
- 12 Q. So if that is correct, he could have been more than two times the legal limit even to
- drive a vehicle at the time that he went to bed on March 5th of 2011, correct?
- 14 A. If your assumptions are correct, yes sir.
- 15 Q. If my numbers are right, and I am bad at math.
- 16 A. Yes sir.
- 17 Q. And you have no way of knowing when he last drank, what he drank, how much he
- drank, and the manner in which he drunk any alcohol that day prior to when he passed,
- 19 right?
- 20 A. That is correct.
- 21 Q. Let me ask you this, morphine, what is the significance first of all of time release
- capsules, explain how that works. What is a 30 milligram time release, or slow release?
- A. Well it is released over an extended period of time, so the absorption is over a longer
- 24 period of time than your typical tablet.

- 1 Q. So the manner in which those are to be taken, in your experience they are taken
- 2 orally and it gives you relief over a period of time, right?
- 3 A. Yes sir.
- 4 Q. In your experience as a doctor, and that has been a number of years, nobody would
- 5 recommend that one take such a pill in a manner of crushing and turning it into fluid and
- 6 injecting it in ones arm, would they?
- 7 A. I don't know if no one, but I would say a responsible medical professional would not
- 8 recommend that.
- 9 Q. And the purpose of the time released capsule is to give extended relief, right?
- 10 A. Yes sir.
- 11 Q. And what would be the significance of one crushing the pill, melting it, getting it in
- liquid form and injecting it intravenously, what would the difference be in the impact of that
- drug if one elected to make that individual decision?
- 14 A. It would be released much quicker, all at one time rather than over an extended
- period of time.
- 16 Q. A vastly different result of the medication, right?
- 17 A. Yes sir.
- 18 Q. Now let's talk about the combination of that, well just in general, taking it normal
- morphine pills and drinking alcohol, how smart is that?
- 20 A. Not very.
- 21 Q. Why?
- 22 A. Because alcohol is also a central nervous system respiratory depressant.
- Q. Mixing the two can kill you can't it?
- A. Mixing the two can kill you and one by itself can kill you.

- 1 Q. And certainly if ones alcohol level is to the extent that potentially Jonathan
- 2 Whitson's was, mixing that with morphine could be fatal, correct?
- 3 A. Any amount of alcohol mixed with morphine could potentially be fatal, yes.
- 4 Q. So even much lower than even the numbers I am talking about?
- 5 A. Yes sir.
- 6 Q. And the literature would support that, that mixing alcohol with this type of drug
- 7 could cause that result, right?
- 8 A. Sure.
- 9 Q. Now, let's talk about the impact of mixing alcohol with morphine with the method of
- introduction of morphine could have been crushing it, melting it, and injecting it, would the
- risk of the impact be even greater?
- 12 A. In my opinion, yes.
- Q. Were you aware of the level of drinking that Mr. Whitson were you made aware of
- anything before you did this autopsy, any type of alcohol drinking by Jonathan Whitson
- 15 before March 7, 2011?
- 16 A. No sir.
- 17 Q. You didn't know anything about that until you got that toxicology report back at
- some point after March 7th, right?
- 19 A. That is correct.
- Q. So you knew nothing about the background or the length of time that Jonathan might
- 21 have been drinking over, or how long it had been since he had stopped drinking, or how long
- 22 he had slept before he died. You didn't know any of that information when you received
- 23 that report back, did you?
- 24 A. That is correct.

- 1 Q. And since you got it back, you did not then go and follow up in anyway, did you, to
- 2 determine how much Jonathan Whitson maybe had been drinking on the day before he died?
- 3 A. No, I make my determination based upon the levels in the system at the time of
- 4 death?
- 5 Q. Yes, sir, I understand. But my question is, you didn't go outside of the documents
- 6 you then had and try to make any determination of how much Jonathan had been drinking
- 7 on March 5th?
- 8 A. That is correct.
- 9 Q. And were you aware that every witness that has gotten up in this case has testified,
- 10 not a single one of them had given any evidence about Jonathan Whitson drinking a thing
- 11 the day before he died. Were you aware of that?
- 12 A. No sir.
- 13 Q. The words have never even been mentioned. You didn't know about that, did you?
- 14 A. No.
- Obviously he was drinking something for it to be in his system, correct?
- 16 A. It got there somehow.
- 17 Q. Is it a normal practice for you to go to the scene?
- 18 A. I go to the scene occasionally.
- 19 Q. When is the last time you did that sir?
- 20 A. I don't recall.
- 21 Q. Been awhile?
- 22 A. No.
- 23 Q. Have you been to a death scene in the last three years?
- 24 A. Yes sir.

- 1 Q. You didn't go to this one, right?
- 2 A. Did not go to this scene.
- 3 Q. Can you approximate let's say in the last 100 autopsies that you did, how many
- 4 times you went to the scene?
- 5 A. No sir, I would just be guessing.
- 6 Q. Say more than ten?
- 7 A. Once again I would just be guessing.
- 8 Q. It has been very few, hasn't it?
- 9 A. It has been a few.
- 10 Q. Generally people who do this kind of work as you have done, don't do that, right?
- 11 A. Don't do what?
- 12 Q. Go to the scene.
- 13 A. No, and I am not required to go to the scene.
- 14 Q. Why are you not required to go to the scene?
- 15 A. Ask the general assembly who wrote the –
- 16 Q. The State of North Carolina don't require you to go?
- 17 A. That is correct.
- 18 Q. And that is because of budget reasons, right?
- 19 A. I am not sure about that.
- 20 Q. They don't pay you to go, so you don't go, right?
- 21 A. You are paid for the report investigation.
- 22 Q. You get paid though to do the autopsy right?
- A. I get paid to do the report and investigation and I get paid to do the autopsy, yes sir.
- Q. How much did you get paid in this case?

- 1 A. Seventy five dollars for the report and investigation and I believe it was a thousand
- 2 dollars for the autopsy.
- 3 Q. So around eleven hundred dollars, a little under eleven hundred dollars all together?
- 4 A. Yes, sir, out of which I reimburse the hospital \$500.00 for the use of their facilities.
- 5 Q. Was there any particular reason that you did not come to this is there any other
- 6 reason that you did not come to the scene at this particular case, was there some reason you
- 7 were unable to drive to that scene?
- 8 A. No sir.
- 9 Q. It wouldn't have been because your licenses were suspended at the time, would it?
- 10 A. No sir.
- 11 Q. You had been charged with DWI at that time, correct?
- 12 A. Yes sir.
- 13 Q. Why did you resign as medical examiner in June of 2013?
- 14 A. I didn't come prepared to discuss that today sir.
- 15 Q. So you don't want to talk about it?
- 16 A. I didn't come prepared to discuss that today.
- 17 Q. I am asking you, why did you resign?
- MR. HOLMES: Object to relevance.
- THE COURT: Sustained.
- 20 Q. Sir, have you you have testified that you have conducted more than three thousand
- 21 autopsies, right?
- 22 A. Yes sir.
- 23 Q. Ever been wrong before?
- 24 A. In what regard?

- 1 Q. You ever made a conclusion in an autopsy of an overdose or toxicity and been
- 2 corrected at a later time?
- 3 A. Not that I am aware of.
- 4 Q. That didn't happen in the case in Boone at the hotel?
- 5 MR. HOLMES: Objection, relevance.
- 6 MR. HOCKADAY: Cross examination.
- 7 THE COURT: Sustained.
- 8 Q. Did you not as a result of an autopsy that you conducted in 2012, did you not make
- 9 an error in a cause of death determination that you made in that case?
- 10 A. I am not sure what you are referring to.
- 11 Q. Didn't specifically did you not determine in a case in Boone in 2012 that a couple
- died from an overdose when in fact it was carbon monoxide poisoning. Did you not do that?
- MR. HOLMES: Objection, relevance.
- 14 THE COURT: Objection sustained.
- 15 Q. And you are asking this Court to accept your opinion in this case, or asking this jury
- 16 to that this young man died of morphine toxicity even though you have done no
- investigation as to Jonathan's alcohol level at any point prior to his death, correct?
- 18 A. My opinion is that he died of morphine toxicity.
- 19 Q. But you acknowledge that he had alcohol in his system and depending on what the
- Jury finds as to the length of time he had stopped drinking before his death, he could have
- 21 had a high level of alcohol at some point before his death, correct?
- MR. HOLMES: Objection, speculation.
- THE COURT: Overruled.
- 24 Q. True?
- 25 A. His alcohol level could have been higher, yes sir.

- 1 MR. HOCKADAY: Those would be my questions.
- 2 RE DIRECT EXAMINATION BY MR. HOLMES:
- 3 Q. Sir, was there any reason for you to go to the scene?
- 4 A. Not in my opinion.
- 5 Q. And with regard to the alcohol level and metabolism, you referred to a bell curve and
- 6 with respect to the bell curve that you mentioned, would it be correct to say that the first half
- of that bell curve would be blood alcohol level rising, and the top is a plateau, and the last
- 8 half of it is the blood alcohol being metabolized and going down?
- 9 A. That is correct, yes sir.
- 10 Q. And you would say that without a measure of blood alcohol level, you can't tell if it
- 11 was going up or going down.
- 12 A. That is correct.
- 13 Q. Without knowing whether or not it is going up or going down, there is no way for
- 14 you to determine what this blood alcohol level would have been ten hours earlier or twelve
- 15 hours earlier, is that correct?
- 16 A. Yes sir.
- 17 Q. And is it correct to say that your blood alcohol level does not peak, or your blood
- alcohol level does not plateau as soon as you stop drinking, is that correct?
- 19 A. That is correct.
- 20 Q. So someone could drink, stop drinking, and their blood alcohol level would continue
- 21 to rise for some period of time, is that correct?
- 22 A. That is correct, yes sir.
- Q. Is but for the morphine in Jonathan Whitson's system, is there any other explanation
- 24 for why he would have died?
- 25 A. Not in my opinion.

- 1 Q. And again, the levels of morphine that you found in his system were fatal levels, is
- 2 that correct?
- 3 A. That is correct.
- 4 MR. HOLMES: No further questions.
- 5 THE COURT: Further cross?
- 6 RE CROSS EXAMINATION BY MR. HOCKADAY:
- 7 Q. The curve you are talking about, the alcohol, and the increase and plateau and then
- 8 down, understanding that if one stops at some point shortly thereafter they would reach that
- 9 plateau, right?
- 10 A. Correct.
- 11 Q. You would not expect it to still be increasing to that plateau some twelve or fourteen
- hours later, would you, if they had stopped drinking?
- 13 A. Highly unlikely.
- 14 Q. Likely it would be on the way down, right?
- 15 A. That would be.
- 16 Q. But more likely it would be on the way down?
- 17 A. That is correct.
- MR. HOCKADAY: Those would be my questions.
- MR. HOLMES: Nothing further.
- 20 (Witness excused)
- 21 THE COURT: Call your next witness.
- MR. HOLMES: Your Honor I believe that is the evidence for the State.
- 23 THE COURT: Okay. Members of the Jury I need you to step back into the
- 24 jury room for a few minutes. Again, I want to remind you to keep an open mind, leave your

- 1 notebooks in your chairs. Don't talk about the case yet. Don't allow anybody to talk to you
- 2 about the case. We will let you know just as soon as we are ready for you.
- 3 (AT APPROXIMATELY 2:30 P.M. JURY IS OUT OF THE COURTROOM)
- 4 MR. HOCKADAY: Your Honor at this point at the close of the State's case
- 5 we would move to dismiss the charges against my client. Specifically as to the second
- 6 degree murder charge, we would ask that the Court look at State V. Davis, 304 nc 400 and
- 7 State V. Lion, 98 nc ap 600, these are two cases –

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

- 8 THE COURT: If you could speak up a little bit.
 - MR. HOCKADAY: I will. 98 nc ap 600, State V. Lion. These are two cases that talk specifically about the issue of malice. And we contend and say there has been no evidence before the Court that would rise to the level that these courts find that is necessary to even get over that burden. These cases are much more distinctive than the case at bar. They talk about requirement. We say the State has failed to show that my client had some knowledge of what these medications would do, or what the effects of medication would be, even if you believe there is evidence to support the delivery. But there has been no showing by the State in this case of any knowledge, intent, on behalf of the Defendant, Mr. Pritchard, to show that he had any understanding of the effects of what these medications would do. And then there has been no showing at all that he would have had any knowledge of how Jonathan Whitson was going to use the morphine pills in the manner in which they were used. Or that he had any knowledge that Jonathan Whitson would partake of alcohol to the extent that the evidence has shown that he had, which has been denied by everybody, or certainly not mentioned. All of that in the room that nobody ever talked about the last ones, because he had to because of the report. But there has been no evidence. Please look at those cases, they are specific about the issue of malice, and that has not been met in this case. The State has got to show delivery. The State has got to show that

- 1 it was this controlled substance. The State has got to show the death. We say the cause of
- 2 death is an issue. We believe that they have not met that prong either, particularly in light of
- 3 the testimony on cross examination of the doctor.
- But even with that, the issue of malice has not been met in this case. Everything else
- 5 hinges on the delivery issue. There is no direct evidence presented in this case at all at any
- 6 point of anybody that has observed any type of delivery of morphine from my client to the
- 7 deceased, I think we can all agree on that. There was some evidence out of one of their
- 8 witnesses that a third person might have been in the vehicle, and we never heard from him.
- 9 He would have been a great witness to have called.
- 10 The only evidence is circumstantial evidence that after in the light most favorable
- to the State, after having been in my client's vehicle with no evidence or whatever that
- 12 Jonathan Whitson has these pills. There is evidence that CR was there, we have a
- conviction for him, we know what he was doing at that time. We know that he had
- delivered drugs to Jonathan in the past and he was there on the 5th. And that doesn't appear
- to be disputed at all by the one person that was there all day, Christine Angel.
- At best it is circumstantial on the issue of delivery. We say and contend it is not
- even sufficient enough to survive a motion to dismiss. We are asking that the Court dismiss
- 18 the charges. All the murder cases specifically, we are asking that you find there was not a
- delivery. Motion to dismiss order to dismiss based on the fact that there wasn't a delivery,
- 20 no evidence of delivery, and the fact and the failure to show the issue of malice, as well as
- 21 we challenge the issue of the cause of death.
- Really the strongest stuff they brought in is the prior bad acts. That is the only
- delivery we have really head about in this case. It has nothing to do with what happened on
- 24 the 5th, because they haven't proven anything. And we know he was convicted of that.
- 25 That evidence has come in, that is already a resolved matter. But it does not support, does

1 not support a finding by the Court to survive the motion to dismiss simply on what happened 2 in 2010 when they have not met the burden at all for 2011 as we see. 3 I have copies of those cases, I am sure you have already got them pulled up. 4 THE COURT: I have got the first one pulled up. The second one, looking at 5 that our courts have long held that malice necessary to support a conviction for second 6 degree murder does not necessarily mean an actual intent to take a human life. However, 7 while and intent to kill is not a necessary element of second degree murder, the crime does 8 not exist in the absence of some intentional act sufficient to show malice which proximately 9 causes death. Recently this Court held that malice is a wrongful act intentionally done 10 without just cause or excuse, which demonstrates a willful disregard for the rights of others. 11 Furthermore malice may be implied, which imports danger to another is done so recklessly 12 or wantonly as to manifest depravity of mind and disregard of human life. 13 MR. HOCKADAY: I think the distinction is in that next paragraph why that 14 case was – the defendant had knowledge about the drugs, none in this case. 15 THE COURT: In that case the evidence showed that the defendant supplied 16 the drugs to the victim with knowledge that the drugs were inherently dangerous. This was 17 sufficient to establish a wrongful act intentionally done without just cause or excuse 18 illustrating a willful disregard for the rights of others. I know I skipped over the part about 19 the victims having become violently ill after using the drugs in the defendant's presence, but 20 I think that may be a difference that doesn't mean much. I think everybody would know 21 that 30 milligrams of morphine is terribly dangerous 22 Looking at it in the light most favorable to the State in that case the jury could at 23 least infer that he acted in malice in supplying the drugs. 24 MR. HOCKADAY: If I can make one comment on that.

THE COURT: Yes sir, go ahead.

1	MR. HOCKADAY: I respect the Court's comment on, everyone may
2	know, but I would contend that there has been no showing. They have shown he had a
3	prescription for it. But there has been no showing that Mr. Pritchard had any knowledge
4	about the medication or its effects or any danger or inherent danger. That is what they have
5	to do.
6	THE COURT: But it is a Schedule II controlled substance, that kind of alerts
7	you to the fact that it is probably not aspirin.
8	MR. HOCKADAY: But then if that is the case. If a doctor prescribed a
9	Schedule II and someone died we would be charging doctors is my point. You have got to
10	show more than just the fact one gives some – every delivery we had potentially would be in
11	that position. There has to be a showing of more than that, there has to be knowledge of the
12	defendant, that based on these cases.
13	THE COURT: When was this law enacted about second degree murder
14	caused by controlled substance? Well in any event, I think I am going to give the State the
15	benefit of every doubt and I have got to construe all inferences in the State's favor. We all
16	know what the standard is at a motion to dismiss stage, so I am going to deny the motion.
17	Are you ready to put on evidence?
18	MR. HOCKADAY: Three documents have been identified through their
19	witnesses Your Honor. I would now call the handwritten note from Ms. Brown, I didn't
20	identify it when I asked her about it. I asked about the next one. So if I could identify that
21	as Exhibit 1, and then the death certificate being Number 2, and the syringe analysis from
22	State lab being Number 3. We would open for the purpose of introducing those three
23	exhibits.
24	THE COURT: So you will put on evidence, if you are going to introduce
25	exhibits. I wondered at the time when you were going to identify these documents which

- 1 you could not do while the State was presenting evidence. Now the State is resting, so it
- 2 would be I think the time for you to put on evidence and that would be exhibits as evidence.
- 3 If you are looking to not put on evidence and get the last argument, I don't think you get
- 4 there by putting on exhibits without putting on witnesses.
- 5 MR. HOCKADAY: I understand that.
- THE COURT: Are you saying you want to put in these exhibits and rest?
- 7 MR. HOCKADAY: Yes sir, I am.
- 8 THE COURT: Let me see please D-1 and D-3. Mr. Holmes, have you had a
- 9 chance to look at these?
- MR. HOLMES: If I might look at it again, I glanced at it quickly.
- THE COURT: I think you perhaps have a chance to put on rebuttal evidence
- especially in light of haven't seen these.
- MR. HOCKADAY: I tendered them to the witness as well, so I showed them
- 14 to him.
- THE COURT: Before I admit these exhibits I need to ask the State if they
- 16 have objections.
- MR. HOCKADAY: I have discussed it with my client Your Honor and we
- have elected not to introduce the exhibits and will not be offering any evidence.
- MR. HOLMES: Your Honor I think I would have to object to the admission
- of the lab report.
- 21 THE COURT: He is saying he doesn't want to offer. He is withdrawing his
- offer of those exhibits and he is not putting on any evidence. Which means that all the
- 23 evidence has been presented.
- MR. HOCKADAY: We would again renew the motions to dismiss.

1 THE COURT: That is denied. I have some instructions I have been working 2 on. And it will probably take about an hour to iron those out, that will put us at 4:00. Are 3 you ready to argue today, or would you like to do that in the morning. Tomorrow is our last 4 day, it is a holiday. So we probably ought to press on if you are up to arguing today. 5 MR. HOCKADAY: Selfishly I would prefer to do it in the morning, but 6 have our charge conference today and be ready, to give the jury a day to make a decision. 7 MR. HOLMES: I don't object to that. I do have some question as to – I 8 know he gets the last argument because he didn't put on evidence. Does that – does the state 9 just get one argument then, is that how that works? 10 THE COURT: He can open and close I believe. 11 MR. HOLMES: The statute says the State is entitled to two arguments. So 12 we were going to have two arguments Your Honor. I am not quite sure. 13 THE COURT: I am looking forward to it Justice Orr. He gets the last word 14 so I guess it will be you two, maybe he gets to open and then you two and he will close. 15 However you all want to do it. Which statute are you looking at? 16 MR. ORR: Statute 15(a) 130 - 7a - 97. It says in all trials in superior court 17 will be allowed two addresses to the jury the State or plaintiff, and two for the defendant 18 except in capital felonies. 7a-97. You can limit our time though Your Honor. 19 THE COURT: Let's let this jury go home and we will do the charge 20 conference and sort out the arguments today. Let's bring the jury back and let them go. 21 (JURY WAS BROUGHT BACK INTO THE COURTROOM AT APPROXIMATELY 3:05 22 P.M.) 23 (THE FOLLOWING TAKES PLACE IN FRONT OF THE JURY) 24 THE COURT: All the evidence has been presented members of the jury. Is

25

that correct counsel?

1	MR. HOCKADAY: YES SIR.
2	MR. HOLMES: YES.
3	THE COURT: Both sides have rested. It will soon be your duty to decide
4	from the evidence what the facts are and to apply the law that I am going to give you
5	tomorrow as to these facts in arriving at your verdict in this case. Prior to the arguments of
6	the lawyers and the final instructions of the Court on the law that will follow the lawyer's
7	speeches, I am required to confer with the lawyers about the law that is involved in this case
8	For this purpose we are going to excuse you for the day. It will take us the rest of the day to
9	work through this and some other things that we need to talk about. I will instruct you to
0	please don't allow your mind to be made up yet because even though you have heard all the
1	evidence, you haven't heard the arguments of the lawyers, and you haven't heard the
12	instructions as to the law to be applied to that evidence. And I will caution you one more
13	time to please not discuss this case among yourselves or with anybody else. Don't allow
4	anybody else to discuss it with you or in your presence. I hope you all understand why that
15	is so important to our system of justice and you would want the same treatment if this was
16	your case being heard here today. With that we will excuse you for the remainder of the
17	day. Please be back in your chair, or be back in the jury room at 9:30 in the morning and
18	leave your notes there in the chair. Thank you very much we will see you in the morning.
9	(ALL JURORS LEAVE THE COURTROOM FOR THE OVERNIGHT RECESS AT
20	APPROXIMATELY 3:06 P.M. ON April 15, 2014)
21	(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY)
22	THE COURT: I am going to print copies of the instructions for us all to reac
23	together so we will literally be on the same page. Everybody take a look at the jury
24	instructions. My intention is to put three of these in an envelope along with the verdict
25	sheet. This is a draft that is 75 percent of the way there. However the 101.05. Function of

- 1 the Jury, on the other headings like that should be deleted from the instructions. The jury
- 2 does not need to see those headings that is for your reference. That is straight from the
- 3 patter.
- 4 Next one is 101.1, straight from the patter. I will give you a chance to sort of read
- 5 through it. I will also be eliminating the footnotes they are for your convenience. I will take
- 6 those out as we go through. 101.3 is straight from the patter and something that I changed
- 7 the tense to the past tense, we have allowed them to take notes.
- 8 101.15, creditability of witnesses, it is straight from the pattern. Weight of the
- 9 evidence is straight from the pattern. Circumstantial evidence, straight from the pattern.
- 10 Effect of the Defendant's decision not to testify is straight from the pattern. Photographs
- and other as illustrative evidence. The only photos we have is State's Exhibit 1, the
- photographs taken at Christine Angel's house. I did not limit the introduction of those
- photographs for illustrative evidence. I am not sure I needed to, no one asked me to. So my
- 14 question to you gentlemen as to what should we do with that instruction. My suggestion
- would be that we run it as it reads, striking diagram, model out, or say photographs, or seven
- photographs were introduced. These photographs are not being considered by you for any
- 17 other purpose.
- 18 There was nothing as substantive evidence. The next one you didn't do the syringe
- analysis or the death certificate. What about the medical records.
- I am going to start with 104.50-A. Evidence of similar acts or crimes. I did this last
- 21 night before the evidence came in, so it is 'evidence has been received tending to show
- that on a previous occasion the defendant sold morphine'.
- MR. HOLMES: Maybe distributed morphine. I know certainly on the one
- 24 prior conviction there was a sale, the other I don't know that we got into details where
- 25 money changed hands. I think it was received on those occasions.

1	THE COURT: Are you okay with that Mr. Hockaday?
2	MR. HOCKADAY: Well in the sense this evidence was received solely for
3	the purpose of showing that the Defendant had malice. I know that one of the charges is
4	certainly that he used the vehicle, and he is charged with driving the vehicle, so I don't know
5	that is necessarily addresses everything that is pending in the matter.
6	THE COURT: Received for the purposes of – add that on that order that was
7	entered. What I had was to prove the defendant's maintaining the vehicle for the sale or
8	delivery of controlled substances over an extended period of time to show a common
9	scheme or plan and to show the Defendant's state of mind and particular malice as an
10	element of the crime of second degree murder.
11	MR. HOCKADAY: How about the second one.
12	THE COURT: I just pulled that from an order I was working on. Received
13	for the purposes of – that takes care of the showing that the defendant had malice which is a
14	necessary element of the crime charged. Knowledge would be gone, that takes care of plan,
15	scheme, design, opportunity is gone. So 'if you believe this evidence you can consider it for
16	the limited purpose for which it was received, you may not consider it for any other
17	purpose'.
18	MR. HOCKADAY: So the top of that page is going to read, 'on previous
19	occasion the defendant distributed morphine'. Is that the wording, and then the evidence
20	was received for the purpose of, and you have included.
21	THE COURT: Let me print it for you.
22	MR. HOCKADAY: Your Honor I am satisfied with this.
23	THE COURT: Let me just read that paragraph to you and see how it sounds.
24	"Evidence has been received tending to show that on a previous occasion the Defendant
25	distribute morphine. This evidence was received as evidence of the Defendant's

- 1 maintaining a vehicle for the sale or delivery of controlled substances over an extended 2 period of time to show a common scheme or plan and to show the Defendant's state of mind 3 in particular malice is a necessary element of the crime of second degree murder. If you 4 believe this evidence, you may consider it, but only for the limited purposes for which it was 5 received. You may not consider it for any other purpose" 6 I will give you another chance to look at it and voice any suggestions, if that is okay 7 we will move on. 8 Testimony of expert witnesses is where I am at now. 'In this case you have heard 9 evidence from a witness who has' – that is straight from the pattern instructions. 10 Now we get into second degree murder caused by controlled substance felony. This 11 is for the most part pattern. The first element, the footnote describes what ingesting is 12 suppose to be about – ingesting is eating. Instruct them that injecting is a form of ingesting. 13 Maybe that is just argument. I hate to hang them up on that. I think they would be wrong if 14 they hung up on that. 15 MR. HOLMES: Can you say that the victim's death was caused by ingesting 16 morphine in this case, the ingestion took the form of injection. 17 MR. HOCKADAY: We don't know. 18 THE COURT: You could say, ingestion can include oral or by injection. 19 MR. HOLMES: Okay. 20 THE COURT: Ingestion can include orally taking morphine or injecting it.
 - Second, that the defendant intentionally distributed morphine. Third that the Defendant's unlawful distribution of that morphine was a proximate cause of the victim's death. I am just reading, this is all from the pattern. I am just glossing over, I am not reading it fully.
- MR. ORR: Your Honor I am following along, I heard proximate cause I wanted to raise a point on that. The language in the case is State V. Parlee, 209 nc ap 144.

21

22

1 January 2011. The language that we would like included in essence in some form says the 2 act of being used need not be the immediate cause of death, is legally accountable if the 3 direct cause is the natural result of a criminal act. There may be more than one proximate 4 cause and criminal responsibility arises when the act complained of caused or directly 5 contributed to the death. 6 THE COURT: I think that would be appropriate to put in there, this is the 7 quotation from State Vs. – 8 MR. HOCKADAY: What all are you including? 9 MR. ORR: The act of the accused need not be the immediate cause of death. 10 He is legally accountable if the direct cause is the natural result of the criminal act. There 11 may be more than one proximate cause, criminal responsibility arises when the act 12 complained of caused or directly contributed to the death. 13 THE COURT: Okay, now we go to what was not charged, which might 14 arise on the evidence here, and that is involuntary manslaughter. I would say that is a lesser 15 included offense. 16 MR. ORR: Yes we just add this other language, proximate cause to this 17 instruction. 18 MR. HOCKADAY: I realize the Court may include it if you determine it 19 should be part of the instruction. We would not consent to it being included. 20 THE COURT: There is a pattern there some language that says pretty much 21 the same thing, it says, 'the defendant's act need not have been the only cause or the last or 22 nearest cause, it is sufficient if it concurred with some other cause acting at the same time, 23 which in combination with it caused the death of the victim. That is stated about the same. 24 The other thing I wondered about involuntary manslaughter is – I wish I had my

crimes book here, but isn't involuntary manslaughter a non felonious.

1	MR. HOLMES: The crimes book says, 'A, by unlawful act that doesn't
2	amount to a felony, or B, by culpably negligent act or admission.
3	THE COURT: Well not amounting to a felony sort of knocks it out of what
4	we are trying to do here, cause everything that was done was a felony. So it would just be
5	that he acted in a criminally negligent way is what the pattern says.
6	MR. HOCKADAY: You are looking under the first paragraph.
7	MR. HOLMES: Truthfully Your Honor, since we are sort of at this point, the
8	thought I had had about this whole issue was that voluntary manslaughter would seem to be
9	more on point because of the language of a culpably negligent act, because what he is
10	neglecting to do in this case is unlawful, intentional distribution. Voluntary manslaughter
11	would just be kills another without malice. So we would essentially just be saying – I had
12	struggled with the culpable negligence.
13	THE COURT: The – to that instruction says, 'the crime of involuntary
14	manslaughter involves the commission of an act, whether intentional or not, which in itself
15	is not a felony, more likely to result in death or great bodily harm'. Once we move out of
16	misdemeanors you go to voluntary.
17	MR. HOCKADAY: Voluntary is typically that he had intent Your Honor.
18	My research has always been involuntary if the Court includes it in the instruction would be
19	one that would be more appropriate under that second degree as a lesser included.
20	Voluntary is more in passion or lack of self defense argument, some of those cases.
21	MR. HOLMES: If you looked at it base on the language of the elements in
22	the crimes book it would seem to directly make sense, because they define in the crimes
23	book second degree murder. Second degree murder is element one, kills, two, another living
24	human being, three, with malice. And then you go to voluntary manslaughter is element

1 one, kills, two, another living human being, three without malice. So from that point of view 2 it would seem the next logical step down would be voluntary manslaughter. 3 MR. HOCKADAY: The difference here though is the second degree chare in 4 this case. It is all based on the controlled substance issue which is in a different from the – it 5 is just a different prong. I don't think that voluntary fits it. Your instruction on 206.31B 6 here is outlining the four things that have to be shown and none of them really, talk about 7 the death being caused by an intentional act, distribution and whether with malice. That is 8 not following the pattern as we read down the elements in the crime book of what second 9 degree is. We are in a different area of second degree in this case. 10 MR. HOLMES:: I am not trying to make his argument for him, but if I 11 understand Your Honor the crimes book -12 MR. HOCKADAY: What I am saying is in this second degree case, we are 13 under that division of second degree at the bottom the prong where we are talking about 14 being a result of the ingestion of the morphine, potentially distributing it proximately caused 15 and it was with malice. And it is not killing of another with malice prong as defined in that 16 crimes book because we are in a different section with this allegation, second degree 17 occurred as a result of a distribution of a schedule II controlled substance. 18 THE COURT: I believe it is a lesser included offense. It doesn't – the 19 second degree controlled substance statute, just add the proximate cause and the controlled 20 substance. Other than that those three elements there, one, two, three of the voluntary 21 manslaughter are in controlled substance second degree, are they not? 22 MR. HOCKADAY: I think what your pattern instruction is. 23 THE COURT: Well without malice, that is the problem.

MR. HOCKADAY: I guess the closer one is the involuntary, but.

1	MR. HOLMES: There actually is a case in the supplement here to this
2	section of second degree murder. It is State V. Barnes, nc – it has a se 2 nd site. It is 741 se
3	2 nd . 457. That is 2013. The title is, death resulting from distribution in ingestion of a
4	controlled substance. It reads, 'where there was no evidence the defendant to kill the victim
5	by selling him methadone, the trial court did no err by instructing the jury on second degree
6	murder, and involuntary manslaughter'. So I guess my point is that in that case the court did
7	instruct in a involuntary manslaughter.
8	THE COURT: You are not insisting on a instruction of voluntary?
9	MR. HOLMES: Well, what concerns me and the reason I hand that up about
10	voluntary is that element III in there where they are discussing that without malice. It says
11	the law recognizes two different forms of voluntary manslaughter and that the two examples
12	it gives are very different than the kind of situation we have here.
13	MR. HOCKADAY: Based on the case he just cited it does appear that the
14	appropriate one would be involuntary. It certainly is not an error to include involuntary, this
15	being a controlled substance.
16	THE COURT: So we are back to involuntary manslaughter. And the
17	instructions say that he acted in a unlawfully or criminally negligent way. The crimes book
18	says – unlawful act that does not amount to a felony and is not ordinarily dangerous by
19	culpably negligent act or – I don't think we have evidence of an unlawful act that does not
20	amount to a felony here. It was unlawful and it was a felony. So the question is whether it
21	was in the disjunctive, a culpable negligent act.
22	MR. HOCKADAY: I think that is the only prong you can go under Your
23	Honor.
24	THE COURT: That is the only prong we can go under. Strike the
25	Defendant's act was unlawful – that will be stricken. But then we go on to define criminal

- 1 negligence. According to the pattern it is more than mere carelessness. Defendant's act was 2 criminally negligent if judging by reasonable foresight it was done with such gross 3 recklessness or carelessness as to amount to a heedless and indifference to the safety and the 4 rights of others. Is that were we are? 5 MR. HOCKADAY: I think so. 6 THE COURT: And second, the proximate cause. Final mandate on that 7 charge, the Defendant acted in a criminal negligent way thereby proximately causing the 8 death. Moving on 260.15 pattern, the charge of possessing morphine with intent to sell and 9 delivery. This is all pattern, I have substituted morphine with a controlled substance. Taken 10 out the brackets of delivery, there is no evidence of a sale. 11 All right, all that is pattern until we get down to the next one which is Vehicle. He 12 has been charged with intentionally – is this keeping and maintaining, or maintaining – 13 somebody explain to me. He owned it and used it, what is keeping and maintaining add to 14 or take away from owning and using. The statute says keeping and maintaining, right? 15 MR. HOLMES: Do you have the crimes book. 16 THE COURT: I don't believe there was evidence that there was any using of
- 17 the controlled substance either before or after, is my memory correct on that. Mr. Holmes.
- 18 MR. HOCKADAY: I'm sorry Your Honor.
- MR. HOLMES: Your Honor in our indictment we did allege that he was keeping and maintaining a vehicle.
- THE COURT: Keeping and maintaining which is used for the purpose of
 unlawfully keeping controlled substances. Must prove two things beyond a reasonable
 doubt, that kept and maintained a vehicle for the use and purpose of unlawfully the pattern
 says keeping or selling, what does the statute say.
- 25 MR. HOLMES: Same thing Your Honor..

1	THE COURT: It doesn't say keeping and selling, so if it was kept there,
2	there is no evidence of selling. So it would be, first that the defendant kept and maintained a
3	vehicle which was used for the purpose of unlawfully keeping morphine. Morphine is a
4	controlled substance. Keeping of which is unlawful. I put in here, unless the connection
5	with the lawful prescription as prescribed by a doctor. Then you get into he is driving around
6	in his truck with medicine that has been lawfully prescribed to him.
7	MR. HOLMES: I think keeping is definitely the appropriate language. In the
8	crimes book it indicates that keeping is not just possession but possession that occurs over
9	time. And while you know, we don't have him storing it there in the car, he is possessing it
10	in the vehicle over time.
11	THE COURT: He had a prescription to do that. What is the statute number?
12	MR. HOLMES: Well I know what you are getting at, but I think the answer
13	to that would be the fact that for instance, I have this exact case where you have someone
14	who has a prescription but they are possessing it with intent to sell or distribute. So they can
15	have it lawfully, and that lawful possession can become unlawful because they are now have
16	intention to sell or deliver it. So if he is possessing while he is driving to a place where he is
17	going to give it away, he has clearly converted a lawful possession to an unlawful
18	possession because he is again possessing it at that time with the intent to distribute.
19	MR. HOCKADAY: That prior sentence says to use for the purpose of
20	unlawfully –
21	MR. HOLMES: So in this case on all these occasions where he is using this
22	drug have been – I mean for example the maintaining the vehicle on that occasion he is
23	transporting to the place where he is meeting the person, and that is the same allegation here.
24	So for the period of time that he is in the truck he is possessing it unlawfully.

1	THE COURT: So the first sentence throws in there unlawfully keeping. If
2	you are keeping even though you have a prescription for it, you are keeping it for the
3	purpose of giving it away, that is unlawfully keeping. So that explains the first sentence.
4	Morphine is a controlled substance the keeping of which is unlawful – that gets us back into
5	the – if you add for the purpose of distribution. For the purpose of distributing to another
6	person.
7	So the first – first that the defendant kept and maintained a vehicle which was used
8	for the purpose of unlawfully keeping morphine. Morphine is a controlled substance the
9	keeping of which is unlawful if kept for the purpose of distributing to another person.
10	Second, that the Defendant did this intentionally. That is all pattern from there on out.
11	Now this is where I got a little confused. This intentional keeping.
12	MR. HOLMES: It would be intentionally Your Honor. The indictment –
13	THE COURT: The indictment says unlawfully, willfully and feloniously and
14	knowingly keep and maintain. Does the statute say intentionally or knowingly?
15	MR. HOLMES: The crimes book indicates – the statute just says knowingly.
16	Okay, here it is Your Honor under 90.108 statue does define the offense in 90.108, Page 7,
17	as knowingly, however that is all – that is (a) 7, subsection (b), states that a person who
18	violates this section is a Class 1 misdemeanor provided that if pleading – alleged violation is
19	committed intentionally. If it is found it was committed intentionally then it would be found
20	to be a Class I Felony. Which would mean that our indictment is only alleging a Class 1
21	misdemeanor.
22	THE COURT: Well, I don't know if I have jurisdiction to try a
23	misdemeanor.
24	MR. HOLMES: You would because we indicted it and it is a related

misdemeanor Your Honor.

1	MR. HOCKADAY: We would agree that you would not be able to charge to
2	the jury that it was a felony.
3	THE COURT: So we are taking out intentionally, and we are leaving the
4	instruction about knowingly, everybody recognizes it is a Class 1 misdemeanor.
5	Let's start in on the second element, knowledge is seldom provable by direct
6	evidence. The third paragraph –
7	MR. HOCKADAY: As long as that very first paragraph under 260.90 gets
8	rid of the word intentionally. Before you can get to the first thing that has to be shown.
9	MR. HOLMES: Your Honor if you take the fourth paragraph and reorganize
10	it. It says if you find that it was done knowingly.
11	THE COURT: Except for the paragraph you probably need to – a person
12	knows of an activity if he is aware or high probability of its existence.
13	MR. HOCKADAY: Take that out?
14	THE COURT: No, leave that in. Next is delivering a controlled substance,
15	260.21, pattern. The concluding instructions is all pattern. I will take out the note will
16	excuse the alternate juror, somebody remind me to do that.
17	MR. HOLMES: Your Honor, Page 4, the very last paragraph on Page 4, it
18	says if you find from the evidence beyond a reasonable doubt that on or about the alleged
19	date the Defendant unlawfully with malice killed the victim by intentional unlawful
20	distribution of morphine. You will not return a verdict of guilty of second degree murder.
21	THE COURT: You need to have one that says, if you do find you will return
22	a verdict of guilty, and we will have another that says if you don't then you go on to
23	involuntary manslaughter.
24	MR. HOLMES: Exactly.

1	MR. HOCKADAY: Your Honor Page 7, at top, and second, and then the
2	next paragraph, if you find beyond a reasonable doubt guilty, and if you do not so find -
3	there is a sentence there about knowing of activity, and again the next paragraph is about if
4	you find. It is under this same charge, twice we have got the language about duty to return a
5	verdict of guilty or not guilty.
6	Your intent may have been simply to move one paragraph or one sentence up and
7	then eliminate the one.
8	THE COURT: I will take that one sentence out and add at the end of
9	consequences of his act. Put it right there. And strike one of those paragraphs.
10	MR. HOCKADAY: The second one has for the purpose of lawfully keeping
11	and then just restates the charge again.
12	MR. HOLMES: It tracks – says knowingly kept and maintained. The second
13	one uses knowingly kept and maintained.
14	MR. HOCKADAY: I am fine with either one.
15	THE COURT: I will take out the second one. I think it would be helpful for
16	the jury to separate the various charges, like Number 1 in the middle. Roman Numeral II
17	rather than just starting a new paragraph.
18	MR. HOLMES: That is fine.
19	MR. HOCKADAY: I don't object.
20	THE COURT: So right before, now I charge that for you to find guilty of
21	involuntary manslaughter, I will put a Roman Numeral II. And a page break and start
22	Roman Numeral III. Before I send this there will be a final printing and get four copies.
23	MR. HOLMES: Your Honor, I think on the second one, has the three
24	charges on it. It would make more sense on the possession with intent to just say, he has

- been charged with possession with intent to deliver, instead of intent to manufacture, sell
- 2 and deliver.
- 3 THE COURT: Just write there what you want. If the defendant does not put
- 4 on evidence defendant may waive and then the State and then the defendant.
- 5 MR. ORR: I believe that looking at the supreme court case we can both
- 6 argue but in order perspective if Mr. Hockaday wants to open he has that option, but he gets
- 7 the last argument under any circumstance.
- 8 MR. HOLMES: We are planning to both argue.
- 9 (End of charge conference) COURT ADJOURNED AT APPROXIMATELY 4:30 P.M.)
- 10 (COURT RECONVENED AT APPROXIMATLEY 9:30 A.M. ON APRIL 16, 2014)
- 11 (ALL PARTIES ARE PRESENT JURY IS NOT IN THE COURTROOM)
- 12 THE COURT: We probably need to put a couple of things on the record on
- the charge conference as soon as Danny gets back with the revised copies of the instructions.
- 14 I understand that we all agree that the law is that Mr. Hockaday can open and then the two
- defense counsel argue in whatever order they want to go, and then Mr. Hockaday closes.
- Madam Clerk has handed out copies of the instructions as revised. This summarizes
- where victim appears in the instructions I have inserted alleged victim. Roman Numeral III
- instruction stated, either alone or together with other persons has been stricken, either alone
- or together with others has been stricken. And the included offense of simple possession of
- 20 morphine has been deleted. Roman Number IV, the Defendant has been charged with felon
- as opposed to intentionally. And there are two verdict forms, I have added (s) after forms
- where it appears in the final paragraph. My plan is to read these as they are typed and give
- 23 the jury three copies along with the verdict sheets. Anything else before we bring in the
- 24 jury?
- MR. HOCKADAY: Not from the Defendant.

1	MR. HOLMES: No sir.
2	THE COURT: Please bring them in.
3	(ALL JURORS ENTER THE COURTROOM AT 9:34 A.M.)
4	THE COURT: Ladies and gentlemen, as I stated before. All the evidence
5	has been presented, it is now time for the final arguments of the lawyers. At the conclusion
6	of these arguments I will instruct you on the law in this case and then you will be taken to
7	the jury room to begin your deliberations.
8	Final arguments of the lawyers are not evidence but are given to assist you in
9	evaluating the evidence. The lawyers are permitted in their final statements to argue, to
10	characterize the evidence, and to attempt to persuade you to a particular verdict. It is
11	improper for a lawyer in a final argument to become abusive, to inject personal experiences,
12	to express a personal belief as to the truth or the falsity of the evidence, or to make
13	arguments on the basis of matters outside of the record. A lawyer may however on the basis
14	of the lawyers analysis of the evidence argue any position or conclusion with respect to the
15	matter at issue.
16	If in the course of making a final argument a lawyer attempts to restate a portion of
17	the evidence, and your recollection of the evidence differs from that of the lawyer, you are
18	in recalling and remembering the evidence to be guided exclusively by your own
19	recollection of the evidence. The jury is with Mr. Hockaday.
20	(CLOSING ARGUMENTS BEGAN AT APPROXIMATELY 9:35 A.M.)
21	(CLOSING ARGUMENTS BY MR. BOB ORR AT 9:50 A.M.)
22	(CLOSING ARGUMENTS BY MR. HOLMES AT 10:20 A.M.)
23	(CLOSING ARGUMENTS BY MR. HOCKADAY AT 10:50 A.M.)
24	

(JURY CHARGE AT 11:45 A.M.)

they needed a break)

1

3

10

11

12

13

14

15

16

17

18

19

- THE COURT: Does anybody on the jury need a break? (No one indicated
- 4 As I stated to you members of the jury, all the evidence has been presented, it is now
- 5 your duty to decide upon this evidence what the facts are. You must then apply the law
- 6 which I am about to give you to those facts. It is absolutely necessary that you understand
- 7 and apply the law as I give it to you, not as you think it is or as you might like it to be. This
- 8 is important because Justice requires that everyone tried for the same crime be treated in the
- 9 same way and have the same law apply to their cases.
 - Members of the Jury I see some of you taking notes as I am speaking. I appreciate that but every word that I say is on a typed page and you are going to get a copy of it.
 - The defendant has entered pleas of not guilty, the fact that the defendant has been indicted is no evidence of guilt. Under our system of justice, when a defendant pleads not guilty, the defendant is not required to prove the defendant's innocence. The defendant is presumed to be innocent. The State must prove to you that the defendant is guilty beyond a reasonable doubt.
 - A reasonable doubt is a doubt based on reason and common sense arising out of some or all of the evidence that has been presented or lack or insufficiency of the evidence as the case may be. Proof beyond a reasonable doubt is proof that fully satisfies or entirely convinces you of the defendant's guilt.
- In this case you have been allowed to take notes. When you begin your deliberations
- you may use your notes to help refresh your memory as to what was said in court. I caution
- you however not to give your notes, or the notes of any of the other jurors undue
- 24 significance. While taking notes a juror may fail to hear important portions of testimony.
- 25 Any notes you have taken are not to be considered evidence in this case. Your notes are not

an official transcript of the trial. For that reason you must remember that in your jury

2 deliberations notes are not entitled to any greater weight than the individual recollections of

3 the other jurors.

4 Now members of the jury, you are the sole judges of the believability of witnesses.

5 You must decide for yourselves whether to believe the testimony of any witness. You may

believe all, any part, or none of a witnesses' testimony. In deciding whether to believe a

witness, you should use the same test of truthfulness that you use in your everyday lives.

8 Among those things, these tests may include the opportunity of the witness to see, hear,

know, or remember the facts or occurrences about which the witness testified; The manner

and appearance of the witness; Any interest, bias, prejudice or partiality the witness may

have; The apparent understanding and fairness of the witness; Whether the testimony is

reasonable, and whether the testimony is consistent with other believable evidence in the

13 case.

6

7

9

10

11

12

14

15

16

17

18

19

20

21

22

23

You are the sole judges of the weight to be given to any evidence. If you decide that certain evidence is believable, you must then determine the importance of that evidence in the light of all other believable evidence in the case.

Now there are two types of evidence from which you may find the truth as to the facts of the case, direct and circumstantial evidence. Direct evidence is the testimony of one who has actual knowledge of a fact, such as an eye witness. Circumstantial evidence is proof of a chain, or a group of facts and circumstances indicating the guilt or innocence of a defendant. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence.

You should weigh all of the evidence in this case. After weighing all of the evidence if you are not convinced of the guilty of the defendant beyond a reasonable doubt, you must find the Defendant Not Guilty.

The Defendant in this case has not testified. The law gives the Defendant this privilege. This same law also assures the Defendant that his decision not to testify creates no presumption against the Defendant; Therefore, the silence of the defendant is not to influence your decision in any way.

A set of photographs were introduced into evidence in this case for the purpose of illustrating and explaining the testimony of a witness. These photographs may not be considered by you for any other purpose.

Evidence has been received tending to show that on a previous occasion the Defendant distributed morphine. This evidence was received as evidence of the Defendant's maintaining a vehicle for the sale or delivery of controlled substances over an extended period of time to show a common scheme or plan, and to show the Defendant's state of mind and particular malice as a necessary element of the crime Second Degree Murder. If you believe this evidence you may consider it but only for the limited purpose for which it was received. You may not consider it for any other purpose.

In this case you have heard evidence from a witness who testified as an expert witness. An expert witness is permitted to testify in the form of an opinion in a field where the witness purports to have specialized skill or knowledge. As I have instructed you, you are the sole judges of the creditability of each witness and the weight to be given to the testimony of each witness. In making this determination as to the testimony of an expert witness, you should consider in addition to the other tests of creditability and weight the witnesses training, qualifications, and experience or lack thereof; The reasons if any, given for the opinion; Whether the opinion is supported by facts that you find from the evidence;

- 1 Whether the opinion is reasonable: And whether it is consistent with other believable
- 2 evidence in this case.
- 3 You should consider the opinion of an expert witness but you are not bound by it. In
- 4 other words, you are not required to accept an expert witnesses' opinion to the exclusion of
- 5 the facts and circumstances disclosed by their testimony.
- The defendant has been charged with second degree murder. For you to find the
- 7 Defendant guilty of this offense the State must prove four things beyond a reasonable doubt.
- 8 First, that the alleged victim's death was caused by ingesting morphine. Ingesting
- 9 can include orally taking the morphine or injecting it.
- Second, that the Defendant intentionally and unlawfully distributed that morphine.
- Third, that the Defendant's unlawful distribution of that morphine was a proximate
- cause of the alleged victim's death. A proximate cause is a real cause, a cause without
- which the alleged victim's death would not have occurred. The act of the accused need not
- be the immediate cause of death. He is legally accountable if the direct cause is the natural
- result of the criminal act. There may be more than one proximate cause. Criminal
- responsibility arises when the act complained of caused or directly contributed to the death.
- Fourth, that the Defendant unlawfully and with malice killed the alleged victim.
- Malice arises when an act that is inherently dangerous to human life is done so recklessly
- and wantonly as to manifest a mind utterly without regard for human life and social duty,
- and deliberately bent on a mission.
- 21 If you find from the evidence beyond a reasonable doubt that on or about the alleged
- date the Defendant unlawfully and with malice killed the alleged victim by the intentional
- and unlawful distribution of morphine, you will return a verdict of guilty of second degree
- 24 murder. However, if you do not so find, or have a reasonable doubt as to one or more of
- 25 these four things, it would be your duty to return a verdict of not guilty.

1 You must then determine if the Defendant is guilty of involuntary manslaughter. 2 Now I charge you that for you to find the Defendant guilty of involuntary manslaughter, the 3 State must prove two things beyond a reasonable doubt. 4 First, that the Defendant acted in a criminally negligent way. Criminal negligence is 5 more than mere carelessness. The Defendant's act was criminally negligent if judging by 6 reasonable foresight it was done with such gross recklessness or carelessness as to amount to 7 a heedless indifference to the safety and rights of others. 8 Second, the State must prove that the Defendant's act proximately caused the alleged 9 victim's death. A proximate cause is a real cause, a cause without which the alleged 10 victim's death would not have occurred. The Defendant's act need not have been the only 11 cause, nor the last or nearest cause. It is sufficient if it occurred with some other cause 12 acting at the same time which in combination with it caused the death of the alleged victim. 13 So, I charge that if you find from the evidence beyond a reasonable doubt that on or 14 about the alleged date, the Defendant acted in a criminally negligent way, thereby 15 proximately causing the death of the alleged victim, it would be your duty to return a verdict 16 of guilty of involuntary manslaughter. However, if you do not so find or have reasonable 17 doubt as to one or both of these things, it would be your duty to return a verdict of not 18 guilty. 19 The Defendant has been charged with possessing morphine with the intent to sell or 20 deliver it. For you to find the Defendant guilty of this offense the State must prove two 21 things beyond a reasonable doubt. 22 First, that the Defendant knowingly possessed morphine. Morphine is a controlled 23 substance. A person possesses morphine when he is aware of its presence, and has both the 24 power and intent to control the disposition or use of that substance.

1	Second, that the Defendant intended to deliver the morphine. Intent is seldom if ever
2	provable by direct evidence. It must ordinarily be proven by circumstances from which it
3	may be inferred. If you find the evidence beyond a reasonable doubt shows that on or about
4	the alleged date the Defendant knowingly possessed morphine, and intended to deliver it, it
5	would be your duty to return a verdict of guilty of possession of morphine with an intent to
6	deliver it. If you do not so find or if you have a reasonable doubt as to one or both of these
7	things, you would return a verdict of not guilty of possessing morphine with the intent to
8	deliver it.
9	The Defendant has been charged with knowingly keeping and maintaining a vehicle,
10	which was used for the purpose of unlawfully keeping controlled substances. For you to
11	find the Defendant guilty of this offense, the State must prove two things beyond a
12	reasonable doubt.
13	First, that the Defendant kept and maintained a vehicle which was used for the
14	purpose of unlawfully keeping morphine. Morphine is a controlled substance the keeping of
15	which is unlawful if kept for the purpose of distributing to another person.
16	Second, that the Defendant did this knowingly. Knowledge is seldom provable by
17	direct evidence. It must ordinarily be proved by circumstances from which it may be
18	inferred. You arrive at the knowledge of a person by such just and reasonable deductions
19	from the circumstances proven as a reasonably prudent person would ordinarily draw there
20	from. A person acts knowledgably if he desires to cause the consequences of his act. A
21	persons knows of an activity if he is aware of a high probability of its existence.
22	If you find from the evidence beyond a reasonable doubt that on or about the alleged
23	date the Defendant knowingly kept and maintained a vehicle, which was used for the
24	unlawful keeping of controlled substances, then it would be your duty to return a verdict of
25	guilty of this offense.

1	If you do not so find, or have a reasonable doubt as to one or both of these things,
2	you would not find the Defendant guilty of this offense.
3	The Defendant has been charged with delivery of morphine, a controlled substance
4	For you to find the Defendant guilty of this offense, the State must prove beyond a
5	reasonable doubt that the Defendant knowingly delivered morphine to Jonathan Whitson.
6	If you find from the evidence beyond a reasonable doubt that on or about the allege
7	date the Defendant knowingly delivered morphine to Jonathan Whitson, it would be your
8	duty to return a verdict of guilty.
9	If you do not so find, or if you have a reasonable doubt it would be your duty to
10	return a verdict of not guilty.
11	Now members of the Jury, you have heard the evidence and the arguments of the
12	attorneys. If your recollection of the evidence differs from that of the attorneys, you are to
13	rely solely upon your recollection. Your duty is to remember the evidence, whether called
14	to your attention or not. You should consider all the evidence, the arguments, the
15	contentions, and the positions urged by the attorneys and any other contention that arises
16	from the evidence.
17	The law requires the presiding judge to be impartial. You should not infer from
18	anything I have done or said that the evidence is to be believed or disbelieved; That a fact
19	has been proved, or what your findings ought to be. It is your duty to find the facts and to
20	render a verdict reflecting the truth.
21	All twelve of you must agree to your verdict. You cannot reach a verdict by a
22	majority vote. When you have agreed upon a unanimous verdict as to each charge, your
23	foreperson should so indicate on the verdict form.
24	Now for the benefit of Ms. Peterson, is anyone here other than Ms. Peterson feeling

the sudden onset of some illness, or is there some reason why you would not be able to enter

1	upon deliberations at this time and go forth with those deliberations as long as it takes to
2	reach a verdict. Anybody feel anything like that? (No indications from jury)
3	Ms. Peterson with our thanks at this time we are going to excuse you. You are free
4	to remain in the courtroom if you want. Your duties as an alternate juror at this time are
5	ended. If you will step down please and again, thank you.
6	For those of you remaining after reaching the jury room your first order of business
7	is to select your foreperson. You may begin your deliberations when the bailiff delivers the
8	verdict forms to you. Your foreperson should lead the deliberations. When you have
9	unanimously agreed upon a verdict as to each charge, and are ready to announce it your
10	foreperson should record your verdicts, sign and date the verdict forms and notify the bailiff
11	by knocking on the jury room door or otherwise summoning the bailiff. You will be
12	returned to the courtroom and our verdicts will be announced.
13	Thanks to all of you, you may now retire to the jury room and select your foreperson.
14	(ALL JURORS RETIRE TO THE JURY ROOM AT APPROXIMAELY 12:05 P.M.)
15	THE COURT: Before the jury begins deliberation, the Court will consider
16	requests for corrections and additions to the instructions and to other mattes you deem
17	appropriate. Are there any objections or specific requests or corrections or additions to the
18	instructions?
19	MR. HOCKADAY: No.
20	MR. HOLMES: No.
21	THE COURT: Mr. Braswell, if you would please deliver the verdict sheets
22	and three copies of the instructions, which I have marked as Court's Exhibit 2, to the jury.
23	And the time is 12:06. We will be at ease while they deliberate.
24	(AT APPROXIMATELY 12:30 THE JURY WAS REQUESTED TO COME BACK INTO
25	THE COURTROOM)

1	THE COURT: Members of the jury, it is the lunch hour about 12:30, and I
2	wondered if you would be interested in continuing with your deliberations and our sending
3	out for lunch to deliver to you, so you don't have to go out for an hour and a half and come
4	back and have not much time left in the day. Tomorrow is Good Friday, and the courthouse
5	is closed. So we have until 5:00 today if necessary. I am not saying it has to be done by
6	5:00 today, but that is the hours of business at the courthouse. So are you interested in that
7	idea? (Jurors indicated yes)
8	JUROR: Will we be allowed to go out and take a smoke.
9	THE COURT: How many cigarettes are you going to need today?
10	JUROR: I just need one right now.
11	THE COURT: Okay, let's take a fifteen minute recess. I will let you go
12	outside now for a fifteen minute recess. You all come back to the jury room in fifteen
13	minutes and resume your deliberations and we will bring food to you in about a half hour or
14	so.
15	(JURORS LEAVE COURTROOM FOR FIFTEEN MINUTE RECESS – AND LUNCH
16	IS BROUGHT TO THE JURORS AT 12:35 P.M. – JURORS RESUME
17	DELIBERATIONS)
18	(AT APPROXIMATELY 2:00 P.M. JURORS INFORM BAILIFF THEY HAVE
19	REACHED A VERDICT)
20	THE COURT: Anything before we bring the jury back in?
21	MR. HOCKADAY: No sir.
22	MR. HOLMES: No sir.
23	THE COURT: Sheriff, if you will bring the jury in.
24	(ALL JURORS BROUGH IN TO THE COURTROOM AT 2:00 P.M.)

1	THE COURT: Will the foreperson for the jury please stand. State your name
2	for the record please.
3	FOREPERSON: Niles Howell.
4	THE COURT: Mr. Howell, has the jury reached a unanimous verdict on
5	each question?
6	FOREPERSON: Yes sir.
7	THE COURT: Would you hand it to the bailiff please.
8	(Verdict sheet handed to Bailiff and then to the Court)
9	THE COURT: Madam Clerk, take the verdict please.
10	THE CLERK: Ladies and Gentlemen of the Jury in the Case of the State of
11	North Carolina versus John Herbert Pritchard, we the jury as our unanimous verdict as to the
12	charge of Second Degree Murder, the Defendant is Guilty. Is this your verdict?
13	FOREPERSON: Yes it is.
14	THE CLERK: Is this still your verdict?
15	FOREPERSON: Yes.
16	THE CLERK: So say all of you?
17	JURORS: Yes. (All jurors indicated, yes)
18	THE CLERK: In the case of the State of North Carolina versus John
19	Herbert Pritchard, File Number 11 CRS 305. We the Jury find as our unanimous verdict
20	that as to the charge of Felony Delivery of Morphine, a Schedule II controlled substance, the
21	Defendant is Guilty. Is this your verdict?
22	FOREPERSON: Yes.
23	JURORS: Yes.
24	THE CLERK: Is this still your verdict?
25	JURORS: Yes.

1 THE CLERK: And as to the charge of Possession with Intent to Deliver 2 Morphine, a Schedule II controlled substance, the Defendant is Guilty. Is this your verdict? 3 JURORS: Yes. 4 THE CLERK: As to the charge of Knowingly Maintaining a Motor Vehicle, 5 the Defendant is Guilty. 6 JURORS: YES. 7 THE CLERK: Thank you. 8 THE COURT: Members of the Jury, thank you for your work in this case. 9 Your work here is now concluded as a juror, or former juror you are now permitted to 10 discuss the evidence an any aspects of the case, including your verdict and your deliberations with other persons, but you are not required to do so. It is in the public interest 11 12 that there be utmost freedom of debate in the jury room, that each juror be permitted to 13 express his or her views without the fear of incurring both scorn or anger of any of the 14 parties. You should be careful what you say. You should make no statement or answer any 15 question or say anything unless you are sure that what you say is complete and accurate. It 16 is only fair that you should make no statement unless you would make that statement under 17 oath in the presence of the Court, your fellow jurors, witnesses, the parties, and their 18 counsel. And it is my habit to discuss the case a little bit with the jurors in private at the end 19 of a jury trial, and you are not required to stay. I know you probably have other things that 20 you might need to attend to. If you would any of you that can or would if you will step back 21 to the jury room I will be there in about two minutes and answer any questions you may 22 have about the process or anything else you want to know about it. If you all will step back. 23 (All jurors leave the courtroom) 24 THE COURT: Counsel anything further?

1	MR. HOLMES: If Your Honor is going to go back there I would request that
2	you tell the jury that the State will – if they want to speak with us.
3	THE COURT: There was no request for the poling of the jury. Anything
4	further from anybody? Are your ready for sentencing?
5	MR. HOCKADAY: Yes.
6	THE COURT: I will give you a couple of minutes to gather your thoughts
7	on that.
8	(COURT WAS IN RECESS FOR THE JUDGE TO TALK TO THE JURY)
9	THE COURT: Are you ready for sentencing?
10	MR. HOLCKADAY: Yes sir.
11	MR. HOLMES: Yes sir. I am handing up a prior record level worksheet
12	along with judgment and statutes from the South Carolina conviction that is listed on that.
13	Here is a restitution work sheet. This is an expert witness fee worksheet.
14	THE COURT: The parties stipulate this is a prior record level III with seven
15	points?
16	MR. HOCKADAY: We would.
17	MR. HOLMES: Yes sir.
18	THE COURT: Do the parties stipulate as to the restitution? Mr. Hockaday
19	have you see the restitution work sheet?
20	MR. HOCKADAY: I have seen it, we would not stipulate to it.
21	THE COURT: The worksheet itself is not enough for me to make findings.
22	MR. HOLMES: Attached to the worksheet is a bill from the funeral home
23	and Mr. Wilson testified to the fee on that.
24	THE COURT: Let me look at this bill. I have got –

- 1 MR. HOLMES: The restitution amount asked for is more than the amount
- 2 reflected on the bill.
- 3 THE COURT: All right, come around sir.
- 4 ROY WILSON, BEING FIRST DULY SWORN TESTIFIED AS FOLLOWS DURING
- 5 DIRECT EXAMINATION BY MR. HOLMES:
- 6 Q. Sir, was there a bill that was received by you.
- 7 THE COURT: Ask him to state his name first.
- 8 Q. Will you state your name sir?
- 9 A. Roy Russell Wilson.
- 10 Q. And what is your relation to Jonathan Russell Whitson?
- 11 A. I am Jonathan's dad.
- 12 Q. And was there a bill that was received by you from Yancey Funeral Services?
- 13 A. Yes sir.
- 14 Q. And was that bill in the amount of \$ 5,803.88?
- 15 A. Yes sir.
- 16 Q. And sir did you pay half of that, is that correct?
- 17 A. Yes sir, I agreed to pay half and John's mamma was suppose to pay the other half
- 18 but she didn't.
- 19 Q. So is there approximately Twenty nine hundred dollars still owed to Yancey Funeral
- Home?
- 21 A. Somewhere in that amount, somewhere in there, yeah.
- Q. And then did you incur expenses in addition to the funeral home expenses?
- A. I had got Johnny a tombstone.
- 24 Q. Was that –

- 1 A. It is not set yet. I got a price range from down here across from funeral home the
- 2 tombstone place there. It is running around between twenty sixteen, about two hundred
- 3 dollars.
- 4 Q. So if my calculator here so if I understand correctly you have paid approximately
- 5 Twenty Nine Hundred Dollars yourself to Yancey Funeral Home?
- 6 A. Yes sir.
- 7 Q. And you said it was between fifteen and sixteen hundred dollars, is that correct?
- 8 A. To the stone –
- 9 Q, Yes.
- 10 A. I have a copy of the bill it is around twenty, sixteen, nineteen hundred, right in that
- somewhere.
- 12 Q. The amount that we have listed on the restitution worksheet was \$4,480.00, which
- would be \$2,900.00 for the amount you paid against the funeral home service and then that
- would be the remaining \$1,580.00 for the tombstone, would that be correct?
- 15 A. Yeah.
- MR. HOLMES: That would be the evidence Your Honor.
- 17 THE COURT: So, the \$5,803.88 that is the total amount of the funeral home
- and then the tombstone is \$1,580.00?
- MR. HOLMES: That is my understanding Your Honor.
- THE COURT: Sir, is that the way you understand it?
- A. Yes sir.
- 22 THE COURT: So the total is \$7,383.88?
- 23 MR. HOLMES: That sounds like it would be correct. I think we rounded off
- 24 our numbers. \$7,380.
- 25 THE COURT: Mr. Hockaday, do you have any questions?

1	MR. HOCKADAY: No questions.
2	THE COURT: You may step down.
3	(Witness excused)
4	THE COURT: Anything further on this. It looks like there is restitution to
5	Mr. Wilson of \$4,480 for the half that he paid to the funeral home, and \$1,580 for the
6	tombstone. And then there is \$ 2,900 yet to be paid to the Yancey Funeral Home which is
7	less than the amount that is actually owned, by \$ 3.88.
8	MR. HOLMES: Yes sir.
9	THE COURT: Mr. Hockaday, have you seen this order for expert witness
10	fee?
11	MR. HOCKADAY: YES.
12	THE COURT: Anything you want to say about it?
13	MR. HOCKADAY: We would object to it.
14	THE COURT: Was Mr. Hall under subpoena?
15	MR. HOLMES: I believe so Your Honor, I would have to check the court
16	file. Yes.
17	THE COURT: All right, I am going to enter this order. Anything else you
18	want to say about sentencing Mr. Holmes?
19	MR. HOLMES: Your Honor I would just want to point out that I did notice
20	in reading some of the notes in the crimes book about second degree murder that it would
21	appear as though the delivery would be not – Your Honor would not be able to judgment on
22	the delivery as well as the manslaughter because of the fact that the delivery is part of the
23	crime of second degree murder.
24	Where I am getting that is in the notes in the crimes book it states that a second
25	degree murder conviction based on unlawful distribution of the ingestion of a controlled

1	substance they say is not the same offense as the sale or delivery of a controlled substance to
2	a juvenile. So the State in State V. Parlee is 703 se. 2 nd 866, the fact that in that case it was
3	sale and delivery to a juvenile, which I believe would be – in that case it was an additional
4	element. They do say it is not the same event as the sale and delivery of a controlled
5	substance to a juvenile, or possession with intent to sell or deliver a controlled substance. So
6	they seem to be saying you could in the but possibly not in the sale and delivery. I bring
7	that up so we can make sure that we get a straight answer. That seems to be what it is
8	saying. I do have a copy of the case. It is the case we were talking about earlier this
9	morning.
10	THE COURT: I am inclined, given the severity of the sentence in the murder
11	II case to arrest judgment on both of those if there is any question about whether we should.
12	MR. HOLMES: It does speak to the fact in this case, it is the fact that it has
13	the facts of the sale to a juvenile, the elements that are different. And with respect to
14	possession with intent to sell or deliver and they actually do say it is settled, that they are
15	separate crimes. So I don't know if Your Honor would want to arrest judgment if that is
16	what you intend to do, maybe it would be better to run them concurrent.
17	THE COURT: One of the elements of what is second degree murder charge
18	is intentionally distributing morphine. Why would possession with intent to sell or deliver
19	not be consumed by the second degree murder that we are talking about here.
20	MR. HOLMES: I am not arguing that he should receive additional
21	punishment.
22	THE COURT: I think given the severity of the sentence on the main charge
23	here, it is almost pointless to go through it, the danger might be if I were reversed on the
24	Murder II, but not on the Possession with Intent to Sell and Deliver what happens now if the

1 judgment has been arrested. Does this actually answer that question? The possession with 2 intent to sell and deliver. 3 MR. HOLMES: It starts by saying, Defendant also pled guilty to possession 4 with intent to sell and delivery a scheduled II controlled substance. Defendant failed to 5 assert his conviction and the murder conviction constituted double jeopardy, further it is 6 well settled that possession of a controlled substance and distribution of the same controlled 7 substance are separate and distinct crimes. Each – as provided by law, even where the 8 possession and distribution in point of time for the same. That is what it says. 9 THE COURT: What is that cite again, please? 10 MR. HOCKADAY: It is 703 se 2. 866. 11 MR. HOLMES: And it is 209 nc ap. 144. 12 THE COURT: It looks like on the second degree murder that it is a Prior 13 Record Level III, Class B-1, the range in the presumptive block is 254 and 317, is that right? 14 MR. HOLMES: It would be a B-2 Your Honor. 15 THE COURT: All right you are correct, B-2. 16 MR. HOCKADAY: 207 to 258. 17 THE COURT: The Delivery is a Class H, Prior Record Level III, range of 8 18 to 10. Possession with Intent to Sell and Deliver is a Class H, range 8 to 10. And the 19 maintaining a vehicle is a M-1, level 1 misdemeanor with a maximum of 120. 20 MR. HOLMES: Yes sir, I don't think we filled in on the sentencing work 21 sheet what he would be for a prior record level on a misdemeanor now that you mention 22 that. 23 THE COURT: Prior conviction Level III. I think I have heard all I need to 24 hear about the facts and circumstances of the crime. But as far as sentencing especially as to

the Murder II. Is there anything you want to tell me Mr. Hockaday?

1	MR. HOCKADA I. Brieffy a fittle about my chem. I have known John to
2	a couple of years, he is 62 years old. Obviously was living here in Yancey County before
3	this offense. He had been living in Yancey County since about 2009, prior to that lived in
4	the Asheville area for about 25 years, before that lived in South Carolina. He has two
5	children, one of which has been here through the majority of the trial. He has two
6	grandchildren, he is a veteran. I am not aware of any aggravating factors that are being
7	contended. We will be asking the Court to consider within the presumptive range. He has
8	credit I believe there was a calculation of how many days – 868 days in custody since
9	December 1 of 2011 when he was arrested after the indictment in late November of that
10	year. We would ask the Court to – whether in your determination we would agree that the
11	judgments in the other two felony drug cases should be arrested, if not we would ask that
12	they run concurrently with the Murder II. And again ask the Court with its discretion to
13	sentence within that presumptive range.
14	THE COURT: In the presumptive range, 165 to 207.
15	MR. HOLMES: Your Honor the State would be requesting the top of the
16	presumptive range.
17	MR. HOCKADAY: Obviously we are requesting the far left of that
18	presumptive range, if that is the range within which you are going to sentence.
19	THE COURT: I am inclined to go to the lower end of the range,
20	circumstances could have been a lot worse than what they were, even though this is a tragic
21	situation. I recall one of the other cases under this statute where the person who delivered
22	the drugs actually witnessed his customer having adverse reaction, saw that and knew it and
23	continued to supply the substances. Here the elements of the crime obviously have been
24	found by the jury. But I don't recall any evidence that the Defendant had any experiences

- 1 with the victim having any adverse reactions. One other thing, what about the probation 2 violation that was on the calendar. 3 MR. HOLMES: I didn't know if Your Honor wanted to do this first. 4 THE COURT: Let's do this first and then we will do the probation violation. 5 In 11 CRS 304, upon the jury's verdict that the Defendant is Guilty of Second Degree 6 Murder, It will be the Court's judgment that the Defendant be imprisoned in the Department 7 of Adult Corrections for a minimum term of 170 months and a maximum of 213. That his 8 pretrial credit of 868 days be applied to that active sentence. That he pay the cost of this 9 action including the expert witness fee of \$1,660.00. That will be docketed as a civil 10 judgment. That he pay restitution in the sum of \$7,380.00. Is that the amount? 11 MR. HOLMES: Seven Thousand Three Hundred and Eighty Three and 88 12 cents. (\$7,383.88). 13 THE COURT: I am going to round it down to \$7,380.00 and that will be 14 docketed as a civil judgment 15 In the other file, 11 CRS 305, on the charge of Possession with Intent to Sell and 16 Deliver, a Class H Felony, Prior Record Level III. It will be the judgment of the Court that 17 he be imprisoned in the Department of Adult Corrections for a minimum of ten (10) months 18 and a maximum of twelve (12) months. This sentence shall run concurrently with the 19 previous sentence. 20 The charge of Maintaining a Vehicle for controlled substances, Class 1, 21 misdemeanor, prior conviction level III. Judgment of the Court be that the Defendant be 22 imprisoned for 120 days, no more than no less than. This will run concurrently with the 23 other sentences.
- I believe on the conviction of delivery 11 CRS 305, the Court is going to arrest judgment on that.

1	I think that is it, anything else counsel or madam clerk?	
2	MR. HOCKADAY: No sir.	
3	MR. HOLMES: No sir.	
4	THE COURT: On the probation violation.	
5	MR. HOLMES: That will be Margin 58 on the calendar, 10 CRS	
6	50162, in that file has Mr. Pritchard received a copy of his probation violation?	
7	MR. HOCKADAY: HE HAS.	
8	THE COURT: Does he admit or deny the violations contained	
9	therein?	
10	MR. HOCKADAY: As to the extent of the allegation of new charges,	
11	now those being convictions, we admit.	
12	MR. HOLMES: We tender the probation officer Your Honor.	
13	PROBATION OFFICER: Your Honor Mr. Pritchard was convicted	
14	of Sell and Delivery of Schedule II Controlled Substance on February 31, 2011. He was	
15	sentenced to a minimum term of 12 months maximum of 15 months, credit for 23 days.	
16	Prior pretrial confinement. (Violations set forth in report)	
17	THE COURT: All right in File Number 10 CRS 50162, anything you	
18	want to say Mr. Hockaday?	
19	MR. HOCKADAY: How much credit did he have.	
20	PROBATION OFFICER: 23 DAYS.	
21	THE COURT: That is not a part of the 800.	
22	MR. HOCKADAY: No.	
23	THE COURT: Anything else you want to say. It looks like Judge	
24	Pope sentenced him to a minimum of 12 and a maximum of 15 months. The court will find	
25	that the defendant has violated the conditions set forth in the probation violation report. That	

- 1 would be that he commit no criminal offense in any jurisdiction. That condition is valid.
- 2 That the Defendant violated that condition willfully, intentionally and without valid excuse
- 3 prior to expiration of the probationary period. And that the violation is in itself sufficient
- 4 basis to justify revocation, and activation of the suspended sentence. Court's judgment that
- 5 the suspended sentence be activated, his probation is revoked. Give him credit for 23 days
- 6 pretrial confinement. This sentence will run consecutive to the other sentences entered
- 7 today. Anything else?

8

9 (END OF TRANSCRIPT)

APPENDIX H: NORTH CAROLINA COURT OF APPEALS OPINION

State v. Pritchard

Court of Appeals of North Carolina

May 25, 2016, Heard in the Court of Appeals; August 2, 2016, Filed

No. COA16-8

Reporter

2016 N.C. App. LEXIS 783 *; 248 N.C. App. 837; 791 S.E.2d 284

STATE OF NORTH CAROLINA v. JOHN HERBERT PRITCHARD

Notice: THIS IS AN UNPUBLISHED OPINION. PLEASE REFER TO THE NORTH CAROLINA RULES OF APPELLATE PROCEDURE FOR CITATION OF UNPUBLISHED OPINIONS.

PUBLISHED IN TABLE FORMAT IN THE SOUTH EASTERN REPORTER.

PUBLISHED IN TABLE FORMAT IN THE NORTH CAROLINA COURT OF APPEALS REPORTS.

Prior History: [*1] Yancey County, Nos. 11CRS304, 11CRS305.

Disposition: NO ERROR IN PART; NO PREJUDICIAL ERROR IN PART.

Core Terms

morphine, pills, trial court, argues, malice, convictions, second degree murder, prior conviction, admit evidence, motion to dismiss, admissible, controlled substance, underlying fact

Counsel: Attorney General Roy Cooper, by Assistant Attorney General Alvin W. Keller, Jr., for the State.

John Herbert Pritchard, Pro se.

Judges: DIETZ, Judge. Judges ELMORE and DAVIS concur.

Opinion by: DIETZ

Opinion

Appeal by defendant from judgments entered 17 April 2014 by Judge William H. Coward in Yancey County

Superior Court. Heard in the Court of Appeals 25 May 2016.

DIETZ, Judge.

Defendant John Pritchard appeals his conviction for second degree murder. Pritchard delivered ten morphine pills to the victim, who later overdosed and died. The State prosecuted Pritchard on the theory that he was familiar with the dangerous nature of morphine pills and providing so many pills to the victim demonstrated the sort of depravity of mind and reckless disregard for human life necessary to prove second degree murder.

As explained below, the State's evidence, although weak and circumstantial, was sufficient to send the case to the jury. The State showed that Pritchard had been prescribed morphine pills in bottles with a label warning not to consume more than one pill every eight hours. Pritchard also had experience with morphine and had provided morphine [*2] to the victim and others on previous occasions. This evidence is sufficient for a reasonable mind to find the necessary mens rea for second degree murder, and thus to survive a motion to dismiss.

We also reject Pritchard's evidentiary challenge to evidence of his past delivery of morphine to the victim and to a police informant. This evidence was permissible under Rule 404(b) to establish Pritchard's familiarity with the drug and its effects, which was necessary to satisfy the mens rea element of second degree murder. Accordingly, we find no error in the trial court's judgment.

Facts and Procedural History

On 6 March 2011, Jonathan Whitson's family discovered him dead on his step-grandmother's couch. An autopsy the following day concluded he died of a morphine overdose.

Two days earlier, Whitson had been released from jail after serving a 60-day sentence for driving without a license. Whitson had a history of drug abuse and struggled with addiction, although he told friends and family that he was "clean" and "wanted to stay that way." After his release from jail, Whitson went to his step-grandmother's home. Whitson did not live there, but he stayed there occasionally.

Whitson spent the night. The [*3] next day, Whitson's girlfriend, Stephanie Randolph, came to see him. According to Randolph, about thirty minutes after she arrived, Defendant John Pritchard arrived. Whitson told Randolph that he had talked to Pritchard on the phone at some earlier point that day and "that he was going to get some medicine" from Pritchard. Whitson and Pritchard then departed in Pritchard's truck. The two men returned fifteen minutes later. Whitson showed Randolph what she believed to be ten 30-milligram morphine tablets. Whitson gave one tablet to his stepfather and kept the other nine.

Throughout the day, Whitson and Randolph used the morphine pills by crushing them into a powder, melting them in a spoon, and injecting the liquid using syringes. Sometime between 9:00 p.m. and 11:00 p.m., Randolph left. Whitson went to bed on a couch, and his family members heard him go to the bathroom, and heard him snoring, at various points during the night and early the following morning. At some point later that morning, Whitson died of a morphine overdose.

The State charged Pritchard with second degree murder; delivery of a Schedule II controlled substance; possession with intent to manufacture, sell, or distribute [*4] a Schedule II controlled substance; and maintaining a vehicle or dwelling for the keeping or selling of a controlled substance.

At trial, the State presented evidence that Pritchard previously had provided morphine illegally both to Whitson and to a police informant in an unrelated transaction, and that Pritchard had been prescribed morphine pills in bottles with a label warning patients not to take more than one pill every eight hours.

Pritchard moved to dismiss all charges against him, and the trial court denied the motion and sent the case to the jury. The jury convicted Pritchard on all four charges and, following sentencing, Pritchard timely appealed.

Analysis

Pritchard raises three arguments on appeal. First, he argues the trial court erred by denying his motion to dismiss the second degree murder charge. Second, he argues the trial court erred by admitting evidence of his previous illegal drug activity involving morphine. Finally, he argues the trial court erred by admitting evidence that he had previously given Whitson morphine. We address each of Pritchard's arguments in turn.

I. Motion to Dismiss

Pritchard first argues the trial court erred by denying his motion to dismiss the [*5] charge of second degree murder. He contends that the State failed to present sufficient evidence to show malice and proximate cause. As explained below, we reject Pritchard's argument.

"This Court reviews the trial court's denial of a motion to dismiss de novo." State v. Smith, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007). "Upon defendant's motion for dismissal, the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant's being the perpetrator of such offense. If so, the motion is properly denied." State v. Fritsch, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (2000). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." State v. Smith, 300 N.C. 71, 78-79, 265 S.E.2d 164, 169 (1980). We review the evidence "in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor." State v. Rose, 339 N.C. 172, 192, 451 S.E.2d 211, 223 (1994).

Pritchard first challenges the sufficiency of the State's evidence with respect to the element of malice. Malice in the context of a drug overdose case like this one "denotes a wrongful act intentionally done without just cause or excuse" that demonstrates "a willful disregard of the rights of others." State v. Liner, 98 N.C. App. 600, 605, 391 S.E.2d 820, 822 (1990). "[M]alice may be inferential or implied, [*6] instead of positive, as when an act which imports danger to another is done so recklessly or wantonly as to manifest depravity of mind and disregard of human life." Id. This inference of a depraved mind and reckless disregard of human life can be proved with evidence that shows knowledge of the "inherently dangerous" nature of the drugs given to the victim. Id.

Here, Pritchard argues that the State failed to present

any evidence that he knew of the inherently dangerous properties of morphine. But the State presented evidence that Pritchard had been prescribed morphine before and that the label on his prescription warned him it was unsafe to take more than one tablet by mouth every eight hours. The State also presented evidence that Pritchard was familiar with morphine from his own use of the drug and from previous illegal sales of the drug to others. Finally, the State presented evidence that Pritchard knew the victim likely would abuse the morphine he provided because of his substance abuse issues. Although this evidence is quite weak, a reasonable juror hearing this evidence could infer that Pritchard knew how dangerous it was to give so many morphine pills to the victim but recklessly [*7] disregarded this substantial risk to the victim's life. Because a reasonable mind could reach this conclusion. the fact that the evidence is quite weak is of no consequence; the State presented sufficient evidence of malice to survive a motion to dismiss and let this issue be determined by a jury.

Pritchard next argues that the State failed to present sufficient evidence of proximate cause. He argues that the State failed to prove that he gave morphine to the victim, that the victim actually used the morphine Pritchard gave him, or that the victim died as a result of the use of that morphine.

Pritchard's arguments are more accurately characterized as criticisms of the weakness of the State's circumstantial or contradictory evidence, rather than arguments that insufficient evidence exists to send the case to the jury. For instance, Pritchard argues that the only evidence he gave morphine to the victim comes from the "wildly inconsistent" testimony of Stephanie Randolph, the victim's girlfriend. But Randolph's testimony, even if inconsistent, is evidence. It is for the jury to weigh the credibility of that evidence. Likewise. Pritchard argues that there is no direct evidence that the morphine [*8] the victim used was the morphine Pritchard gave him. But again, Randolph testified that the pills the victim used throughout the day before his death were the same ones he obtained from Pritchard. and there was no evidence that the victim obtained morphine pills from any other source.

In short, as our Supreme Court has observed, "[j]ust because the facts of a case are contested and the evidence is circumstantial does not mean that those facts are insufficient to be submitted to a jury, nor does it mean that, viewed in their totality, those facts cannot constitute substantial evidence." <u>State v. Nicholson</u>, 355

<u>N.C. 1, 38, 558 S.E.2d 109, 135 (2002)</u>. This case relied heavily on circumstantial evidence, but that evidence was sufficient to send the case to the jury.

Finally, Pritchard argues that the State failed to show that the pills he gave the victim were morphine pills. Pritchard relies on case law holding that, "[u]nless the State establishes before the trial court that another method of identification is sufficient to establish the identity of the controlled substance beyond a reasonable doubt, some form of scientifically valid chemical analysis is required." <u>State v. Ward, 364 N.C. 133. 147. 694 S.E.2d 738, 747 (2010)</u>.

The State's evidence satisfies this case law requirement. Randolph did not rely solely on visual [*9] identification to determine that the pills were morphine. She also relied on the fact that the victim told her he intended to obtain morphine; that she, too, has abused morphine in the past and is familiar with its effects; and that her use of the same pills used by the victim yielded effects consistent with her extensive prior experiences with morphine. That testimony is sufficient to send this issue to the jury. See State v. Yelton, 175 N.C. App. 349, 353-54, 623 S.E.2d 594, 596-97 (2006).

II. Evidence of Prior Convictions and Underlying Facts

Pritchard next argues that the trial court erred by admitting evidence of his prior drug-related convictions and the facts underlying those convictions under Rule 404(b). "We review *de novo* the legal conclusion that the evidence is, or is not, within the coverage of Rule 404(b)." <u>State v. Hembree, 368 N.C. 2, 9-10, 770 S.E.2d</u> 77, 83 (2015).

We first address the trial court's decision to admit evidence of the facts underlying Pritchard's prior drug convictions. The trial court entered a written order finding that Pritchard sold morphine pills to an undercover informant, resulting in his arrest and conviction for sale and delivery of a controlled substance. Based on those findings, the trial court concluded that the facts underlying Pritchard's conviction were admissible under Rule 404(b) because, among other [*10] grounds, that evidence showed "the defendant's state of mind, in particular, malice, as a necessary element of the crime of second degree murder."

Pritchard does not challenge the trial court's

determination that the facts underlying this drug conviction—which demonstrate his familiarity with morphine pills—qualify as 404(b) evidence to show malice. Instead, he argues that the underlying facts of that morphine sale are so dissimilar to the manner in which he provided morphine to the victim that the evidence should have been excluded.

Ordinarily, Rule 404(b) evidence is admissible only if the prior act is sufficiently similar to the charged offense. State v. Martin, 191 N.C. App. 462, 467-68, 665 S.E.2d 471, 475 (2008). But this Court has held that the similarity requirement does not apply to Rule 404(b) evidence introduced to show a particular mens rea, such as malice. State v. Golden. 224 N.C. App. 136. 143-44, 735 S.E.2d 425, 431 (2012). This makes logical sense. For example, suppose Pritchard previously had been convicted of giving a lethal dose of morphine to a patient while working as a nurse. That evidence unquestionably would be admissible to show malice under Rule 404(b), and it would be nonsensical to exclude it because it is dissimilar to the manner in which Pritchard illegally provided drugs to the victim here. Simply put, the trial court did [*11] not err in allowing evidence of the facts underlying Pritchard's previous drug convictions involving morphine pills to establish his familiarity with morphine and its dangerousness, despite some differences between the facts of those previous convictions and the facts in this case.

We turn next to the trial court's decision to admit evidence of Pritchard's prior convictions themselves and his argument that such evidence was admissible only under Rule 609, not Rule 404(b). Admittedly, there is case precedent from our Supreme Court supporting Pritchard's argument. Compare State v. Badgett, 361 N.C. 234, 247, 644 S.E.2d 206, 214 (2007) (holding evidence of prior conviction inadmissible under Rule 404(b) despite being accompanied by evidence of underlying facts of conviction), with State v. Renfro, 174 N.C. App. 402, 405, 621 S.E.2d 221, 223 (2005) (holding evidence of prior convictions admissible under Rule 404 when accompanied by "some offer of evidence regarding the facts and circumstances underlying the prior convictions"), aff'd by an equally divided court, 360 N.C. 395, 627 S.E.2d 463 (2006).

But we need not reach the merits of this issue because, even assuming introduction of the prior convictions was erroneous, any error was harmless. As explained above, the trial court properly admitted all of the underlying facts concerning Pritchard's illegal sale of morphine pills to a police [*12] informant. There is no

reasonable possibility that, but for admission of the fact that Pritchard was convicted for this illegal activity, the jury would have reached a different result in this case. See Badgett, 361 N.C. at 247-48, 644 S.E.2d at 214.

III. Evidence of Prior Drug Transactions with the Victim

Finally, Pritchard argues that the trial court admitted evidence of his prior drug transactions with Whitson in violation of Rule 404(b). The trial court permitted Randolph to testify that she previously saw Pritchard give the victim morphine pills at the home of Pritchard's former fiancé, and that those pills were identical to the ones that she and Whitson used the day before his death.

As with Pritchard's other 404(b) argument, his sole ground to challenge admission of this evidence is that the facts surrounding this earlier morphine delivery were too dissimilar to the manner in which Pritchard delivered the morphine in this case. But, again, this testimony is admissible to show malice, i.e., that Pritchard was familiar with this type of morphine pill and thus knew how inherently dangerous it was in the dosage likely to be taken by the victim. As explained above, the similarity requirement does not apply to Rule 404(b) evidence admitted to prove a [*13] mens rea element like malice. See <u>Golden, 224 N.C. App. at 143-44, 735 S.E.2d at 431</u>. Accordingly, we reject Pritchard's argument.

Conclusion

We find no error in the denial of Defendant's motion to dismiss; no error in the admission of the underlying facts of Defendant's prior morphine transactions under Rule 404(b); and no prejudicial error in the admission of Defendant's prior convictions.

NO ERROR IN PART; NO PREJUDICIAL ERROR IN PART.

Judges ELMORE and DAVIS concur.

Report per Rule 30(e).

End of Document

APPENDIX J: UNSIGNED DRAFT AFFIDAVIT OF DR. CHRISTENA ROBERTS

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 11 CRS 304, 305 STATE OF NORTH CAROLINA Vs. AFFIDAVIT OF CHRISTENA ROBERTS, M.D. JOHN PRITCHARD, Defendant.

NOW COMES the Affiant, Christena L. Roberts, M.D., who being duly sworn, states as follows:

- 1. I am more than eighteen years of age and competent in all respects to make this affidavit.
- 2. I am a physician licensed to practice medicine in the State of Florida and the Commonwealth of Virginia. From 2007-10, I worked as an assistant chief medical examiner for the Virginia Office of the Chief Medical Examiner. From 2005-2007, I worked as an associate medical examiner in Florida. Since 2010, I have been engaged in forensic pathology consulting and in conducting private autopsies. Attached hereto is a copy of my Curriculum Vitae.
- 3. In my capacity as a forensic pathologist, I have consulted on hundreds of civil and criminal cases and have conducted hundreds of autopsies. I have testified in federal and state courts in numerous jurisdictions in Florida, Virginia and North Carolina.
- 4. The attorneys with the Wake Forest Innocence & Justice Clinic (the Clinic), who are representing the Defendant, John Pritchard, have asked me to review records concerning the death of Jonathan Russell Whitson (date of death 3-6-2011), the alleged homicide victim in this case, and to give opinions as to the accuracy of the determination of the cause and manner of his death as reflected in the autopsy report and testimony of Brent D. Hall, M.D.
- 5. I have reviewed the following records, attached as Exhibits hereto, in order to arrive at my opinions:
 - a. Report of Autopsy Examination for Jonathan Russell Whitson (date of autopsy 3-7-2011), Autopsy No. AP-11-5, Yancey County, by Brent D. Hall, M.D.
 - b. Report of Investigation by Medical Examiner for Jonathan Russell Whitson, OCME Case No. 11-2509 (received by OCME on 3-9-2011), prepared by Brent D. Hall, M.D.
 - c. OCME Toxicology Report on specimens taken from Jonathan Russell Junior Whitson (OCME Toxicology Folder No. T201101851 and Case Folder No. F201102509)
 - d. Transcript of Trial, State v. John Pritchard, April 14, 2014 Session of Yancey County Superior Court

- e. Letter from Defendant John Pritchard
- 6. Dr. Hall testified at trial that the cause of Mr. Whitson's death was morphine toxicity. In my opinion, the death of Mr. Whitson cannot be attributed to acute morphine toxicity because there is no evidence, from the autopsy report, toxicology reports from the OCME, or clinical presentation to support that conclusion.
- 7. It appears that although only a trace level of morphine was found in the blood, the death was called morphine toxicity by Dr. Hall because there was morphine in the urine. Dr. Hall testified that the cut off level for toxicity in the urine was 14 mg/L and since there was 15 mg/L in the urine that was a toxic level. Dr. Hall did not apply the correct methodology in arriving at his conclusions. A value in urine cannot be interpreted in isolation. For the cause of death to be called a death by acute toxicity of morphine, there must be an appreciable level of morphine in the blood, which is not the case here.
- 8. Morphine levels in the blood must be interpreted using literature to determine what represents in general: therapeutic, supratherapeutic and toxic levels. That level then is interpreted with the clinical information such as the person's tolerance and the decedent's clinical presentation in the time preceding their death.
- 9. As shown by the toxicology report, no opiates (morphine is an opiate) were detected by the LCMS screen of the aorta blood. A quantification was performed the on femoral blood that showed "trace" amounts of morphine.
- 10. As morphine is a respiratory and central nervous system depressant the clinical presentation of acute toxicity would include somnolence, unable to be awakened, snoring and labored breathing, comatose, followed by death.
 - a. Mr. Whitson allegedly crushed, melted and injected three (3) pills into two (2) syringes and injected himself with one (1) of them and injected his friend with the other.
 - b. Over the next approximately 5.5 hours six (6) more pills were crushed and injected between them.
 - c. No is no evidence that Mr. Whitson was stuporous during this timeframe. In fact, they were "hanging out" and driving in a vehicle. His grandmother reported to police that once he went to bed that night around 10:00 pm he got up three (3) times to go to the bathroom and each time he popped his head in her bedroom door and told her he loved her.
 - d. Clearly, he was not comatose if he was up walking and talking.
- 11. It may be possible that Dr. Hall opined enough time had passed to metabolize the morphine out of the blood. Liquid morphine used for surgical patients is designed to have a very short half-life, approximately 2-3 hours. The half life of a drug is the amount of time that it takes for the body to eliminate half of the concentration in the blood.
 - a. In this case the morphine pills that were allegedly crushed, melted and injected were sustained release morphine pills. The half life of sustained release morphine pills the when ingested is approximately 16-18 hours. This reviewer is not aware of literature studying the half life of a sustained release pill when it is crushed, melted and injected.
- 12. At autopsy one can find a situation where low levels of an opiate like morphine or heroin can cause acute toxicity by direct cardiotoxicity. In this situation a person who lost their tolerance to a drug tries to inject the same amount as they had built up to prior to a drug

absence. In these cases, the decedent is often found with the syringe still in their arm or nearby. The victim is often slumped over or witnessed by others to be "passed out", unarousable and snoring loudly.

- a. This scenario clearly doesn't match the clinical presentation of Mr. Whitson that evening.
- 13. In my opinion, Dr. Hall also did not completely explore competing causes of death. No blood, lung or viral cultures were performed at the time of autopsy to rule out a bacterial or viral underlying medical condition. This would be especially important as Mr. Pritchard reported that when Mr. Whitson was released from jail, he had a fever and he had a large abscess of his left arm. There is no documentation in the autopsy of an abscess. To independently evaluate this possible mechanism of death I would need to review the autopsy photographs and Mr. Whitson's jail medical records.
- 14. The autopsy did document an ulceration of the left heel. There is no description provided of the stage of the ulceration (depth, presence of purulent exudate). No culture swab was performed on the heel ulceration to rule out infection. As noted above no blood cultures were performed to rule out sepsis as a cause of death.
- 15. Autopsy did find that Mr. Whitson had "moderate" acute bronchial pneumonia. The extent of the pneumonia was not documented further. I would need to review the original or recut microscopic slides from the lungs to independently evaluate the extent of the pneumonia. Acute bronchial pneumonia can be a primary cause of death. The presence of chronic lung disease could be a contributing factor. Changes consistent with pulmonary emphysema were described in the autopsy report.
- 16. Based on the information available to me at this time with the limitations of the autopsy performed, the cause of death would be better listed as acute bronchial pneumonia with pulmonary emphysema as a contributing factor. The manner of death would therefore be listed as "Natural".
- 17. In order to arrive at a more definitive opinion as to Mr. Whitson's cause of death, I would need copies of or access to the following information:
 - a. All jail records, including medical, psychiatric, psychological and prescription records for Mr. Whitson during his incarceration in the months before he died from the jails in Madison and Buncombe counties.
 - b. All autopsy photographs of Mr. Whitson.
 - c. Any and all other law enforcement or medical examiner photographs of Mr. Whitson after his death.
 - d. The original file for the medical examiner, Dr. Hall, in this case, including any notes, documents, correspondence or reports relating to the death investigation of Mr. Whitson.
 - e. All law enforcement reports concerning the death investigation of Mr. Whitson.
 - f. Access to either the original microscope slides from autopsy or recuts of those slides.
- 18. If I had been called as a witness to testify at the trial of this case, I would have testified to the opinions given in this affidavit. Alternatively, if I were not called as a trial witness, I would have provided the information discussed above to the trial attorney for use during cross-examination of Dr. Hall or other State's witnesses.

penalties for perjury, that the foregoing representations are true.		
This the 11 th day of January, 2021.		
	Christena L. Roberts, M.D.	

19. I affirm (per the 4/2/20 and continuing Orders of the Chief Justice), under the