

No. 22-899

In the Supreme Court of the United States

JASON SMITH,

Petitioner,

v.

STATE OF ARIZONA,

Respondent

On Writ of Certiorari to the
Court of Appeals of the State of Arizona, Division One

JOINT APPENDIX

Hari Santhanam
PERKINS COIE LLP
110 North Wacker Dr
Suite 3400
Chicago, IL 60606
(312) 324-8447
HSanthanam@perkinscoie.com

Alexander W. Samuels
OFFICE OF THE ARIZONA
ATTORNEY GENERAL
2005 North Central Ave
Phoenix, AZ 85004
(602) 542-4686
alexander.samuels@azag.gov

*Counsel of Record
for Petitioner*

*Counsel of Record
for Respondent*

Petition for Writ of Certiorari Filed March 14, 2023
Certiorari Granted September 29, 2023

APPENDIX CONTENTS

Relevant Docket Entries:

Arizona Supreme Court Docket Entries
(No. CR-22-0202-PR).....1

Court of Appeals, Division One Docket Entries
(No. 1 CA-CR 21-0451)2

Arizona Superior Court (Yuma County) Docket
Entries (No. S1400CR201901251)5

Arizona Superior Court (Yuma County)
(No. S1400CR201901251):

Appendix A: Exhibit List (Aug. 31, 2021).....10

Appendix B: Exhibits 40, 42, 72, 73, 74, 79, 8218

Appendix C: Excerpt, Trial Transcript,
Testimony of Matthew Oxendine
(Sept. 1, 2021).....25

Appendix D: Excerpt, Trial Transcript,
Testimony of Gary Hamilton (Sept. 2, 2021).....66

Appendix E: Excerpt, Trial Transcript, Jury
Instructions (Sept. 2, 2021)85

The following documents have been omitted from
the Joint Appendix and may be found in the
Appendix to the Petition for Writ of Certiorari:

Appendix A: Arizona Supreme Court’s
Order Denying Discretionary Review
(Jan. 6, 2023)1a

Appendix B: Court of Appeals of Arizona,
Division One, Memorandum Decision
Affirming Conviction (July 14, 2022)2a

Appendix C: Excerpt of Trial Court Judgment (Oct. 8, 2021)	17a
Appendix D: Trial Court Order Denying Motion for New Trial on Confrontation Clause Grounds (Sept. 22, 2021)	24a
Appendix E: Excerpt of Motion for New Trial Based on Confrontation Clause Grounds (Sept. 10, 2021)	25a
Appendix F: State’s Amendment to Final Pre- Trial Conference Statement (Aug. 11, 2021) ...	26a
Appendix G: Excerpt of Transcript of Proceedings Before Trial Court	27a
Appendix H: Scientific Examination Report of Arizona Department of Public Safety (DPS) Analyst Elizabeth Rast (Feb. 11, 2021)	85a
Appendix I: Laboratory Notes of DPS Analyst Elizabeth Rast (Feb. 11, 2021)	88a
Appendix J: Non-DPS Agency Request for Scientific Examination (Feb. 1, 2021)	127a

ARIZONA SUPREME COURT

No. CR-22-0202-PR

JASON SMITH,
Petitioner,

v.

STATE OF ARIZONA,
Respondent

RELEVANT DOCKET ENTRIES

Docket Number	Date	Description
1	8/12/2022	Motion to Extend Time for Filing Petition for Review
2	8/15/2022	Order Granting Motion to Extend Time for Filing
3	9/19/2022	Petition for Review
5	9/19/2022	Unopposed Motion to Supplement the Record on Appeal
7	10/19/2022	State of Arizona's Response to Petition for Review
10	1/6/2023	Order Granting Motion to Supplement the Record on Appeal and Denying Petition for Review

ARIZONA COURT OF APPEALS, DIVISION ONE

 No. 1 CA-CR 21-0451

STATE OF ARIZONA,

*Appellee,**v.*

JASON SMITH,

Appellant

RELEVANT DOCKET ENTRIES

Docket Number	Date	Description
1	10/22/2021	FILED: Notice of Appeal from Yuma County Superior Court filed 10/13/21

14	2/10/2022	FILED: Motion to Extend Time for Opening Brief; Certificate of Service (Appellant)
15	2/14/2022	ORDERED: Motion to Extend Time for Opening Brief (Appellant) = GRANTED. Due date EXTENDED from Monday, 02-14-2022 to Wednesday, 03-16-2022. Benjamin A Armstrong ProTem Judge - Author

Docket Number	Date	Description
16	3/16/2022	FILED: Appellant's Opening Brief; Certificate of Compliance; Certificate of Service; APPENDIX (Appellant)

18	4/25/2022	FILED: Appellee's Answering Brief; Certificate of Compliance; Certificate of Service (Appellee)

21	5/16/2022	FILED: Appellant's Reply Brief; Certificate of Compliance; Certificate of Service (Appellant)
22	5/26/2022	CLNDR: CONFERENCE, Department B, 7-6-22, CONFERENCE ROOM.
23	7/14/2022	MEMORANDUM DECISION (Affirmed) Hon Paul J McMurdie - Author; Hon Brian Y Furuya - Concur; Hon Jennifer B Campbell - Concur
24	7/14/2022	FILED: Memorandum Decision Distribution List
25	8/15/2022	FILED: ASC Order filed 08/15/2022 re: Extending time for filing Petition for Review to 09/19/2022.

Docket Number	Date	Description
29	01/06/2023	FILED: Letter from ASC, 01/06/2023, re: Petition for Review DENIED on 01/06/2023.
30	2/9/2023	FILED: Mandate, Physical record to clerk, Yuma County Superior Court.

32	2/9/2023	FILED: Motion to Recall and Stay Issuance of Mandate; (Certificate of Service) Notice of Appearance (Appellant)

34	2/13/2023	ORDERED: Motion to Recall and Stay Issuance of Mandate (Appellant) = GRANTING Appellant's motion to recall the mandate and stay the issuance of the mandate through 04/06/2023. Hon Paul J McMurdie - Author

YUMA COUNTY SUPERIOR COURT

 No. S1400CR201901251

STATE OF ARIZONA,

*Plaintiff,**v.*

JASON SMITH,

Defendant

RELEVANT DOCKET ENTRIES

Docket Number	Date	Description
1	12/19/2019	Indictment
2	12/19/2019	Notice of Supervening Indictment

6	12/30/2019	Minute Entry: Arraignment {12/30/2019}

12	1/7/2020	Minute Entry: Conditions of Release Hearing {01/07/2020}

17	1/28/2020	Minute Entry: Issuance of Bench Warrant; Case Management Conference Continued (01/28/20)

20	2/4/2020	Minute Entry: Case Management Conference {02/04/20}

Docket Number	Date	Description
21	2/10/2020	Notice of Posting Surety Bond and Release From Custody
22	2/10/2020	Surety Bond
23	3/3/2020	Minute Entry: Final Management Conference {03/03/20}

26	3/31/2020	Minute Entry: Trial Setting; Change of Plea Hearing {03/31/20}

31	6/2/2020	Preliminary and Final Jury Instructions
32	6/2/2020	Order Set for Jury Trial

41	1/8/2021	Minute Entry: Final Pretrial Conference, Status Conference and Order to Show Cause Hearing {01/08/21}
42	1/15/2021	Order Preliminary and Final Jury Instructions (A)
43	1/15/2021	Order Preliminary and Final Jury Instructions (B)
44	1/15/2021	Jury Trial Order

46	7/27/2021	States Final Pre Trial Conference Statement
47	8/11/2021	States Amendment to Final Pre Trial Conference Statement
48	8/11/2021	Notice of Defenses

Docket Number	Date	Description
49	8/11/2021	Motion in Limine Disclosure of Confidential Reliable Informant
50	8/13/2021	Minute Entry: Final Pretrial Conference Continued {08/13/2021}
51	8/20/2021	Minute Entry: Final Pretrial Conference {08/20/2021}
52	8/26/2021	Certification
53	8/31/2021	List of Exhibits Plaintiff
54	9/1/2021	Preliminary Criminal Instructions

56	9/1/2021	Minute Entry: Jury Trial Day 1 {09/01/2021}
57	9/1/2021	Juror Questions Submitted to Judge

59	9/2/2021	Minute Entry: Jury Trial Day 2 (09/02/2021)
60	9/2/2021	Standard Criminal Instructions
61	9/3/2021	Juror Questions Submitted to Judge
62	9/3/2021	Verdict Count One Possession of a Dangerous Drug For Sale As Not Guilty
63	9/3/2021	Verdict on the Lesser Included Offense of Possession of a Dangerous Drug As Guilty

Docket Number	Date	Description
64	9/3/2021	Verdict Count Two Possession of Marijuana For Sale As Guilty
65	9/3/2021	Verdict Count Three Possession of a Narcotic Drug For Sale As Not Guilty
66	9/3/2021	Verdict on the Lesser Included Offense of Possession of a Narcotic Drug As Guilty
67	9/3/2021	Verdict County Four Possession of Drug Paraphernalia Involving Methamphetamine As Guilty
68	9/3/2021	Verdict County Five Possession of Drug Paraphernalia As Guilty
69	9/3/2021	Verdict Possession of Marijuana For Sale Not Signed
70	9/3/2021	Notice of Release/Detain Order/Order to Detain Defendant Under No Bond, No Release Status
71	9/3/2021	Minute Entry: Jury Trial Day 3 (09/03/2021)
72	9/10/2021	Motion For New Trial: Rule 24.1
73	9/14/2021	States Response to Motion for New Trial

Docket Number	Date	Description
74	9/20/2021	Response to States Reply to Defendants Motion for New Trial
75	9/21/2021	Presentence Report
76	9/21/2021	***SEALED*** Confidential Criminal History
77	9/22/2021	Order Denying Motion for New Trial
78	9/27/2021	States Sentencing Memorandum

80	10/4/2021	Minute Entry: Mitigation Hearing {10/04/2021}
81	10/8/2021	Sentence of Imprisonment

84	10/8/2021	Minute Entry: Imposition of Sentence Prison {10/08/2021}
85	10/8/2021	***SEALED*** Disposition Report
86	10/13/2021	Notice of Appeal

99	11/9/2021	Transcript Jury Trial Day Two September 2, 2021
100	11/9/2021	Transcript Jury Trial Day Three Juror Question and Verdict September 3, 2021

103	11/16/2021	Transcript Jury Trial Day 1 September 1, 2021

**APPENDIX A
EXHIBIT LIST**

[Barcode]

**SUPERIOR COURT OF ARIZONA
YUMA COUNTY**

*Lynn Fazz, Clerk of
the Superior Court*

*Bobbie Jo Daily,
Chief Deputy Clerk*

<p>STATE OF ARIZONA, Plaintiff,</p> <p>vs.</p> <p>JASON SMITH, Defendant.</p>	<p>CASE NO.: S1400CR201901251</p> <p>DATE MARKED: August 31, 2021</p> <p>HEARING DATE: September 1, 2021</p> <p>HEARING TYPE: Jury Trial</p>
--	--

LIST OF EXHIBITS

PARTY: Plaintiff / State of Arizona
ATTORNEY: Joshua Davis-Salsbury

MARKED FOR IDENTIFI- CATION	ADMITTED INTO EVIDENCE	EXHIBIT NUMBER AND DESCRIPTION	DISPO- SITION
08-31-2021	09-02-2021	#1 (Item 26 – box containing bulk green leafy sub- stance – SECURED)	
08-31-2021	09-02-2021	#2 (Item 20 – plas- tic package contain- ing white crystalline	

MARKED FOR IDENTIFICATION	ADMITTED INTO EVIDENCE	EXHIBIT NUMBER AND DESCRIPTION	DISPOSITION
		substance – <i>SECURED</i>	
08-31-2021	09-02-2021	#3 (Item 28 – plastic package containing suspected cannabis – <i>SECURED</i>)	
08-31-2021	09-01-2021	#4 (Photograph of Scene 1)	
08-31-2021	09-01-2021	#5 (Photograph of Scene 1)	
08-31-2021	09-01-2021	#6 (Photograph of Scene 1)	
08-31-2021	09-01-2021	#7 (Photograph of Scene 1)	
08-31-2021	09-01-2021	#8 (Photograph of Scene 1)	
08-31-2021	09-01-2021	#9 (Photograph of Scene 1)	
08-31-2021	09-01-2021	#10 (Photograph of Scene 1)	
08-31-2021	09-01-2021	#11 (Photograph of Scene 1)	
08-31-2021	09-01-2021	#12 (Photograph of Room G)	
08-31-2021	09-01-2021	#13 (Photograph of Room G)	
08-31-2021	09-01-2021	#14 (Photograph of Room G)	
08-31-2021	09-01-2021	#15 (Photograph of Item 14)	

MARKED FOR IDENTIFICATION	ADMITTED INTO EVIDENCE	EXHIBIT NUMBER AND DESCRIPTION	DISPOSITION
08-31-2021	09-01-2021	#16 (Photograph of Item 14)	
08-31-2021	09-01-2021	#17 (Photograph of Item 14)	
08-31-2021	09-01-2021	#19 (Photograph of Item 14)	
08-31-2021	09-01-2021	#20 (Photograph of Item 14)	
08-31-2021	09-01-2021	#21 (Photograph of Item 14)	
08-31-2021	09-01-2021	#22 (Photograph of Item 15)	
08-31-2021	09-01-2021	#23 (Photograph of Item 15)	
08-31-2021	09-01-2021	#24 (Photograph of Item 15)	
08-31-2021	09-01-2021	#25 (Photograph of Item 15)	
08-31-2021	09-01-2021	#26 (Photograph of Item 15)	
08-31-2021	09-01-2021	#27 (Photograph of Item 15)	
08-31-2021	09-01-2021	#28 (Photograph of Item 15)	
08-31-2021	09-01-2021	#29 (Photograph of Item 16)	
08-31-2021	09-01-2021	#30 (Photograph of Item 16)	
08-31-2021	09-01-2021	#31 (Photograph of Item 16)	

MARKED FOR IDENTIFICATION	ADMITTED INTO EVIDENCE	EXHIBIT NUMBER AND DESCRIPTION	DISPOSITION
08-31-2021	09-01-2021	#32 (Photograph of Item 16)	
08-31-2021	09-01-2021	#33 (Photograph of Item 16)	
08-31-2021	09-01-2021	#34 (Photograph of Item 16)	
08-31-2021	09-01-2021	#35 (Photograph of Item 16)	
08-31-2021	09-01-2021	#36 (Photograph of Item 17)	
08-31-2021	09-01-2021	#37 (Photograph of Item 17)	
08-31-2021	09-01-2021	#38 (Photograph of Item 20)	
08-31-2021	09-01-2021	#39 (Photograph of Item 20)	
08-31-2021	09-01-2021	#40 (Photograph of Item 20)	
08-31-2021	09-01-2021	#41 (Photograph of Item 20)	
08-31-2021	09-01-2021	#42 (Photograph of Item 20)	
08-31-2021	09-01-2021	#43 (Photograph of Item 22)	
08-31-2021	09-01-2021	#44 (Photograph of Item 22)	
08-31-2021	09-01-2021	#45 (Photograph of Item 22)	
08-31-2021	09-01-2021	#46 (Photograph of Item 22)	

MARKED FOR IDENTIFICATION	ADMITTED INTO EVIDENCE	EXHIBIT NUMBER AND DESCRIPTION	DISPOSITION
08-31-2021	09-01-2021	#47 (Photograph of Item 22)	
08-31-2021	09-01-2021	#48 (Photograph of Item 22)	
08-31-2021	09-01-2021	#49 (Photograph of Item 23)	
08-31-2021	09-01-2021	#50 (Photograph of Item 23)	
08-31-2021	09-01-2021	#51 (Photograph of Item 23)	
08-31-2021	09-01-2021	#52 (Photograph of Item 23)	
08-31-2021	09-01-2021	#53 (Photograph of Item 23)	
08-31-2021	09-01-2021	#54 (Photograph of Item 23)	
08-31-2021	09-01-2021	#55 (Photograph of Item 23)	
08-31-2021	09-01-2021	#56 (Photograph of Item 24)	
08-31-2021	09-01-2021	#57 (Photograph of Item 24)	
08-31-2021	09-01-2021	#58 (Photograph of Item 24)	
08-31-2021	09-01-2021	#59 (Photograph of Item 24)	
08-31-2021	09-01-2021	#60 (Photograph of Item 24)	
08-31-2021	09-01-2021	#61 (Photograph of Item 24)	

MARKED FOR IDENTIFICATION	ADMITTED INTO EVIDENCE	EXHIBIT NUMBER AND DESCRIPTION	DISPOSITION
08-31-2021	09-01-2021	#62 (Photograph of Item 25)	
08-31-2021	09-01-2021	#63 (Photograph of Item 25)	
08-31-2021	09-01-2021	#64 (Photograph of Item 25)	
08-31-2021	09-01-2021	#65 (Photograph of Item 25)	
08-31-2021	09-01-2021	#66 (Photograph of Item 25)	
08-31-2021	09-01-2021	#67 (Photograph of Item 25)	
08-31-2021	09-01-2021	#68 (Photograph of Item 26)	
08-31-2021	09-01-2021	#69 (Photograph of Item 26)	
08-31-2021	09-01-2021	#70 (Photograph of Item 26)	
08-31-2021	09-01-2021	#71 (Photograph of Item 26)	
08-31-2021	09-01-2021	#72 (Photograph of Item 26)	
08-31-2021	09-01-2021	#73 (Photograph of Item 26)	
08-31-2021	09-01-2021	#74 (Photograph of Item 26)	
08-31-2021	09-01-2021	#75 (Photograph of Item 27)	
08-31-2021	09-01-2021	#76 (Photograph of Item 27)	

MARKED FOR IDENTIFICATION	ADMITTED INTO EVIDENCE	EXHIBIT NUMBER AND DESCRIPTION	DISPOSITION
08-31-2021	09-01-2021	#77 (Photograph of Item 27)	
08-31-2021	09-01-2021	#78 (Photograph of Item 28)	
08-31-2021	09-01-2021	#79 (Photograph of Item 28)	
08-31-2021	09-01-2021	#80 (Photograph of Item 28)	
08-31-2021	09-01-2021	#81 (Photograph of Item 28)	
08-31-2021	09-01-2021	#82 (Photograph of Item 28)	
08-31-2021	09-01-2021	#83 (Photograph of Item 31)	
08-31-2021	09-01-2021	#84 (Photograph of Item 31)	
08-31-2021	09-01-2021	#85 (Photograph of Item 31)	
08-31-2021	09-01-2021	#86 (Photograph of Item 31)	
08-31-2021	09-01-2021	#87 (Photograph of Tote Bag)	
08-31-2021	09-01-2021	#88 (Photograph of Tote Bag)	
08-31-2021	09-01-2021	#89 (Photograph of Tote Bag)	
08-31-2021	09-01-2021	#90 (Photograph of Miscellaneous)	
08-31-2021	09-01-2021	#91 (Photograph of Miscellaneous)	

MARKED FOR IDENTIFI- CATION	ADMITTED INTO EVIDENCE	EXHIBIT NUMBER AND DESCRIPTION	DISPO- SITION
08-31-2021	09-01-2021	#92 (Photograph of Miscellaneous)	
08-31-2021		#93 (Police Report – Sgt. Hemstreet)	
08-31-2021		#94 (Police Report – Investigator Callahan)	
08-31-2021		#95 (Police Report – Special Agent Oxendine)	
08-31-2021		#96 (Police Report – Investigator Jaimez)	
08-31-2021		#97 (Laboratory Report)	
08-31-2021		#98 (Laboratory Notes)	

**APPENDIX B
EXHIBITS**

Exhibit 40

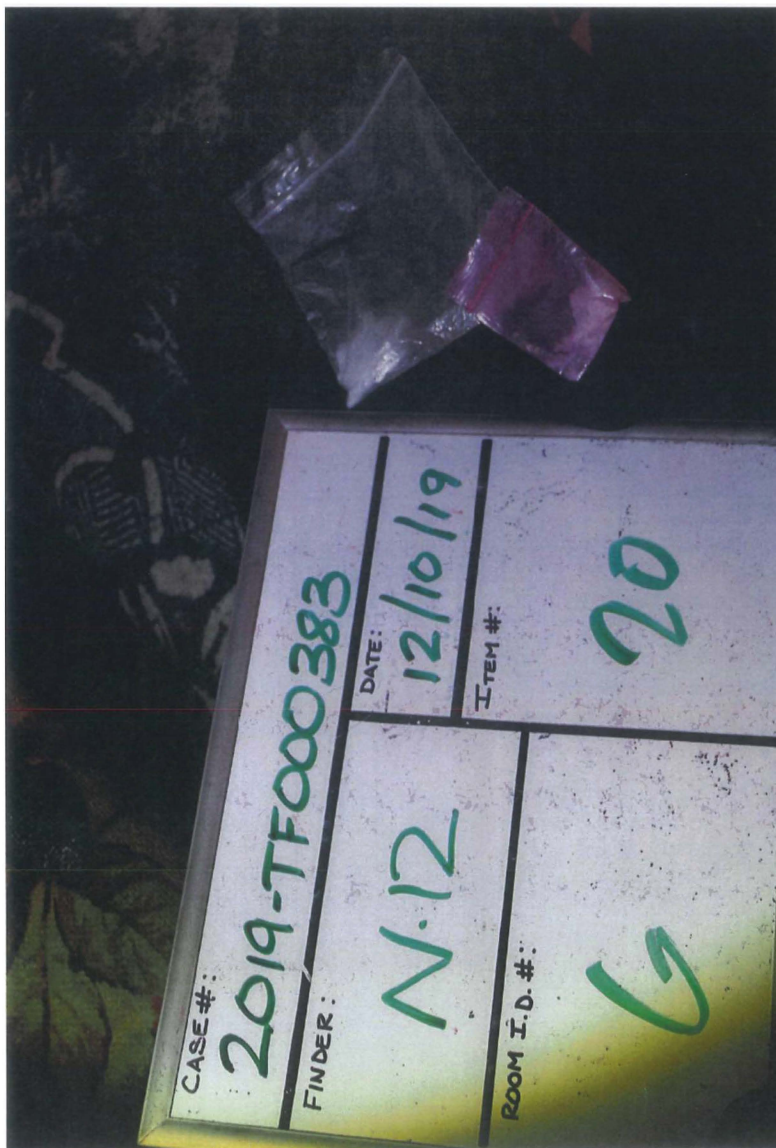


Exhibit 42



Exhibit 72



Exhibit 73



Exhibit 74

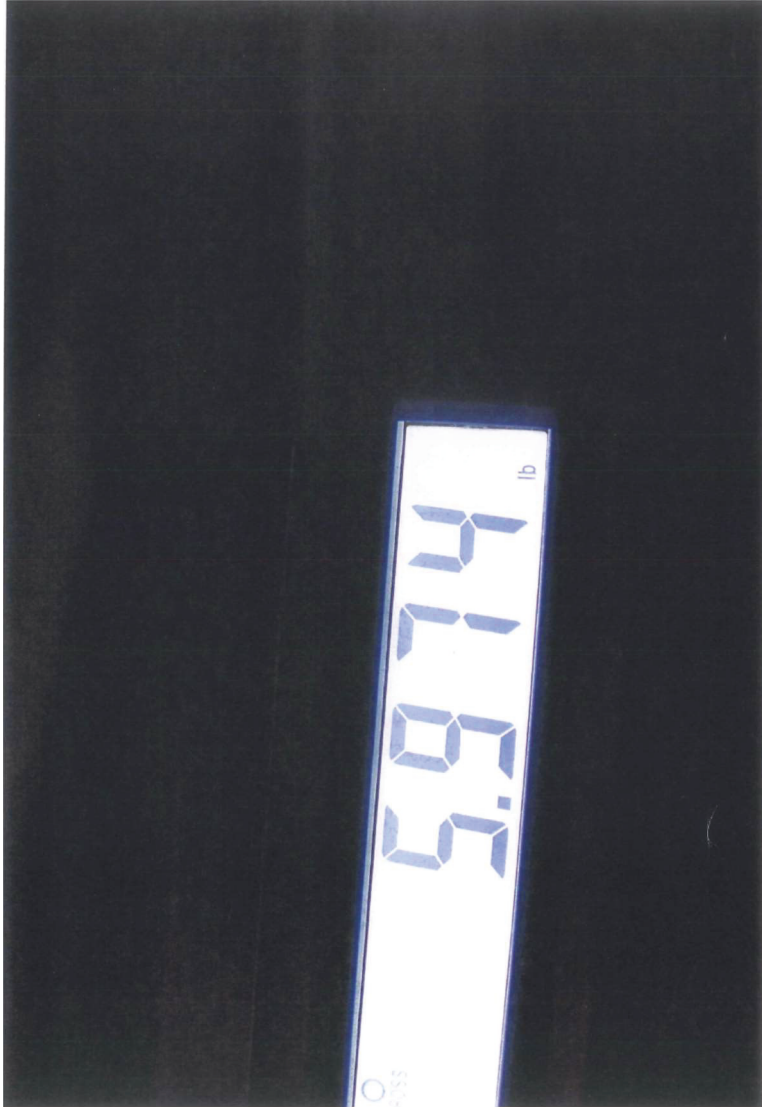


Exhibit 79



Exhibit 82



**APPENDIX C
EXCERPT, TRIAL TRANSCRIPT
TESTIMONY OF MATTHEW OXENDINE
(SEPT. 1, 2021)**

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YUMA

STATE OF ARIZONA,)
)
 Plaintiff,)
)
 vs.) No. S1400CR2019-01251
) **1 CA-CR 21-0451**
JASON SMITH,)
)
 Defendant.)

)

BEFORE THE HONORABLE BRANDON S. KINSEY
JUDGE OF THE SUPERIOR COURT
DIVISION 6
YUMA, ARIZONA

REPORTER'S TRANSCRIPT OF PROCEEDINGS

JURY TRIAL - DAY 1

WEDNESDAY, SEPTEMBER 1, 2021

(8:50 a.m. – 4:24 p.m.)

* * *

[*2] APPEARANCES

JOSHUA DAVIS-SALSBURY
Attorney for the State

RAYMOND A. HANNA
Attorney for the Defendant

* * *

[*172] THE COURT: The state may call its next witness.

MR. DAVIS-SALSBURY: The state will call Special Agent Oxendine.

THE CLERK: Good afternoon. Will you state and spell your first and last name?

THE WITNESS: Matthew Oxendine, M-A-T-T-H-E-W; last name O-X-E-D, as in David, I-N.E.

* * *

MATHEW OXENDINE, having been duly sworn, was examined and testified as follows:

THE COURT: You may proceed, Mr. Davis-Salsbury.

MR. DAVIS-SALSBURY: Thank you, Your Honor.

* * *

[*175]

DIRECT EXAMINATION

BY MR. DAVIS-SALSBURY:

Q Good afternoon, Special Agent Oxendine. Could you introduce yourself to the jury?

A Hi. My name is Special Agent Matthew Oxendine. I work for Homeland Security Investigations.

Q Back in 2019, where did you work?

A At the Yuma County Narcotics Task Force.

Q And for how long were you there?

A About two years.

Q Do you have experience in narcotics investigations?

A Yes.

Q How much would you say?

A About 13 years of narcotics investigation. [*176]

Q What did you do before working for the task force?

A Well, I was a Homeland Security Investigations special agent dealing with both cash smuggling, drug smuggling, and then prior to that, I was a street cop for about eight and a half years dealing with narcotics and gang investigations.

Q Did you assist in a search warrant at 13184 East 41st Street?

A Yes.

Q And do you know that to be within Yuma County?

A Yes.

Q What was your initial role for the search warrant?

A As a breacher and entry -- part of the entry team.

Q When you say "entry team," can you describe that for me?

A Yes. The entry team is the team that is going to enter the house after you breach it or somebody comes out of the house when you're serving a search warrant and you're just clearing the house to make sure there's no

other bodies or anything that is of danger to law enforcement or anybody else.

Q Do you guys knock first? [*177]

A Yes.

Q And then someone either opens or you guys will enter?

A Yes.

Q All right. How many people would typically do that?

A It depends on the house and the size of everything. Typically you have at least, maybe five, six people to enter a normal size house; but if it's bigger and it's more complex, more people; or if it's a small trailer, then maybe two, three.

Q When you got to this residence, where did you go first?

A We went to the east side of the structure where there's a -- like a little back shed area and a trailer located on the east side of the property.

Q Did you guys knock on that door?

A Yes.

Q And Mr. Smith answered?

A I wasn't involved completely with that section, but, yes, Mr. Smith answered.

Q Were you present when he was asked to leave?

A Yes.

Q Did he obey that command?

A No. [*178]

Q Were you -- what did you see happen?

A They knocked on the door. The door was open -- I don't know how it got open -- but Mr. Smith was at the door. They tried to get him to come out. He refused to come. Eventually he was grabbed and brought out.

Q Did you enter the shed at that point?

A No.

Q What did you do next?

A I went over and we had a locked trailer just to the southeast of the shed, and since I was part of a breacher team, myself and Investigator Rice breached the trailer to get the trailer door open to do that while they -- while other investigators were handling the shed where Mr. Smith was.

Q Did you find anybody?

A No.

Q Not in that trailer?

A No.

Q All right. Where did you go after that?

A Investigators were already in the house. I entered into the main part of the residence which is located to the west of the trailer and west of the shed, and I started helping them clear the -- it would be the north part of the residence, the back of the house.

Q Who was present with you at this time? [*179]

A I just remember Investigator Hemstreet and Investigator Bermudez.

Q Did you guys have to make contact with an individual that needed to be tased and then hit with a beanbag round?

A Yes.

MR. HANNA: Objection. I'm gonna object on leading nature of that and he said he needed to be tased, which is really leading.

THE COURT: Sustained. The witness's response is stricken from the record.

MR. DAVIS-SALSBURY: Rephrase the question.

BY MR. DAVIS-SALSBURY:

Q Did you go into the master bedroom?

A Yes, I did.

Q Did you -- who did you see there?

A It was a female subject and a male subject that were lying in bed. I don't know their -- both of their names.

Q What did you see happen?

A We told the subject put his hands up and he refused to comply, and sorry my language, he said, "Fuck you," and he kept on telling us to get out and kept cursing at us.

Q What happened next? [*180]

A I believe at that time he started trying to backtrack into the bathroom. Investigator Bermudez used his taser, which had no effect on the subject, the male subject, and he goes into the bathroom, shuts the door on Investigator Hemstreet and me as we're trying to get hands on. We end up breaching the door again, kicking it open. He closes it again and we finally get it open. Investigator Hemstreet uses a Super-Sock -- I don't know the actual name of the gun, but -- and kinda grazes the guy and the guy's like, okay, I'll comply, then I try to grab his hands.

He doesn't want me to get hands on him, so he pulls back as I'm trying to get him secured, and then we keep struggling and then finally we have to pull him out of the bathroom, get to the bed where then he starts trying to

kinda kick officers off of him and try to move his hands around, and then he was on his left arm, it was underneath his abdomen, and I was trying to get it around to get handcuffed, and then eventually after the struggle with him refusing to listen to our commands, we finally got him handcuffed and brought him out to a police car 'cause he was combative.

Q You run him out of the house and right into a patrol car?

A Yes. [*181]

Q What was your role after this point?

A To set up placards -- to help the photographer set up placards around the house after they took initial photographs.

Q Let me back up a little bit. What's the Yuma County Narcotics Task Force's general procedure for starting the search of a house?

A Before we start the search of a house, everybody will exit the house, all parts of the house, make sure everything's secure, and a photographer will go in and take general photos of going through the house and the entire property, and after that is done, then we'll set up placards and then take photographs again.

Q Why do you people -- why do you guys set up placards?

A To identify the rooms that we're searching, like, for instance, courtroom, courtroom B, courtroom A, that room over there would be room B, just to identify the rooms.

Q All right. Does that make it easier when you're looking at photographs later?

A Yes.

Q You said you set up the placards in this case?

A. Yes.

Q What happened next? [*182]

A Began the search of the residence.

Q Did you participate in the search of the main house?

A In some rooms.

Q Did you take part in the search of the shed?

A Yes.

Q Do you remember what -- what letter was associated with the shed?

A I believe it was room G.

MR. DAVIS-SALSBURY: State will move to admit photos 4 through 11.

MR. HANNA: Without objection, Your Honor.

THE COURT: Okay. State's Exhibits 4 through 11 are admitted into evidence.

* * *

(Whereupon, State's Exhibit Nos. 4 through 11 were admitted into evidence.)

MR. DAVIS-SALSBURY: And then can we turn the television on?

BY MR. DAVIS-SALSBURY:

Q I'm showing you what's been marked as State's Exhibit 4. What are we looking at in this picture?

A That is the shed where Jason Smith came out of.

Q Is this the entryway?

A Yes. [*183]

Q What's this here?

A Looks like a beer pong table.

Q All right. Showing you what's marked as State's 5. And what are we looking at here?

A This is inside that shed that we were just looking at the picture before.

Q State's 6?

A This is to the right of the doorway.

Q So you're entering the shed now --

A Yeah, so if I were entering the shed, if we're looking at that first picture, and then just to the right, so it would have been the east side.

Q State's 7, what about here?

A Just another picture -- overall picture of that area.

Q State's 8?

A Just another picture, kinda panning now back towards the north part of the room.

Q When you guys entered the shed, what kind of furniture was there?

A You had this couch right here and then the bed there in the back and then there's like a bench off to the left, like a big workbench.

Q Showing you what's been marked as State's Exhibit 9. What are we looking at here? [*184]

A This is that workbench I was telling you about.

Q Stereo on top?

A Yup.

Q There's a shelf here too, right?

A Yeah, it's kinda like a cabinet, like little space with a little mini fridge on top.

Q Showing you State's 10.

A Just another picture of the north part of the room and then the bed.

THE COURT: Mr. Davis-Salsbury, we're gonna take a brief 10- to 15-minute break. All rise for the jury.

* * *

(Whereupon, the jury left the courtroom.)

THE COURT: I was informed one of the jurors had requested a break. I don't know the reason for her or not, so that is the reason for the break, and we'll reconvene when they're ready to reconvene. Okay?

MR. DAVIS-SALSBURY: Yes, sir.

THE COURT: Court's in recess.

* * *

(Whereupon, a recess was taken.)

* * *

(Whereupon, the jury entered the courtroom.)

THE COURT: We are back on the record in case [*185] number SI400CR20191251, State of Arizona v. Jason Smith. Court notes the presence of the defendant, counsel for the parties, and the jury. Mr. Davis-Salsbury, you may resume your examination.

MR. DAVIS-SALSBURY: Thank you, Your Honor.

BY MR. DAVIS-SALSBURY:

Q I'm showing you what's been marked as State's Exhibit 11. And what are we looking at here?

A This is a south-end picture to the right of the picture that's the outside.

Q So now we're in the back looking towards the entrance here?

A Yes.

Q This is that same couch you were talking about?

A Yes, sir.

Q And that workbench?

A Yes, sir.

Q And what's this here?

A That's part of the little dartboard, and then there's, like, a little monkey to the left of that.

Q This monkey here?

A Yes, sir.

Q All right. Going back to State's Exhibit 5, is this an accurate picture of what everything looked like when you entered the shed that day? [*186]

A From when I entered to search it, yes.

Q Do you see any marijuana in this picture?

A Not that I see right now.

MR. DAVIS-SALSBURY: I believe, without objection, the state's gonna move to admit State's 12 through 92.

MR. HANNA: No objection, Your Honor.

THE COURT: Okay. State's Exhibits 12 through 92 are admitted without objection.

* * *

(Whereupon, State's Exhibit Nos. 12 through 92 were admitted into evidence.)

BY MR. DAVIS-SALSBURY:

Q You mentioned that, as part of the task force protocol, you guys place placards around?

A Yes.

Q Showing you State's 12. Is that one of those placards?

A Yes, stating room G.

Q There's a case number that's attached to it?

A Yes, sir.

Q A date?

A Yes, sir.

Q And a description of the room?

A Yes. [*187]

Q And we have room G there, right?

A Yes.

Q After the placards are set up, you indicated that you would then start searching these areas, right?

A Yes.

Q And you indicated that that included room G?

A Yes.

Q I'm showing you what's been marked as State's 16. What is this?

A This is that kinda dartboard and monkey area just to the right of the front door just to the east.

Q Showing State's 17. That's a closer picture?

A Yes.

Q And then State's 18. Did you search this area?

A Yes, I did.

Q What did you find by the dresser and the monkey statue?

A Green leafy substance that later field tested positive for marijuana.

Q Showing you what's been marked as State's 19. What's the purpose of this whiteboard?

A The whiteboard indicates the case number, the finder, but the finder number's off, the date of the incident, the room number, and then which item number it is for our evidence log. [*188]

Q The green leafy substance that was found in the monkey statue, what item was that given?

A Item No. 14.

Q Is the general process to weigh these items after you seize them?

A Yes.

Q Showing you State's 20. Do you know what the approximate weight of No. 14 was?

A It says 9.6 grams.

Q And State's 21. You searched other areas of the shed as well?

A Yes.

Q Showing what's been marked as State's Exhibit 22. Where is this inside the shed?

A That's on the west side of the shed. It's that tool bench I was talking about earlier.

Q And what did you find in this area?

A There's marijuana in those red jars.

Q A green leafy substance?

A Yes.

Q Showing you State's 23. You did the placard again and gave it an item number?

A Yes, Item No. 15.

Q State's 24. That's a zoomed-in picture of one of those jars? [*189]

A Yes.

Q And then would you -- what's the process when you take these things, like, do you leave it in the jar or do you -- what happens to it?

A No, we'll take a picture of the overall evidence if it's in a jar like that, and then we will pour -- for instance, this green leafy substance, we'll pour it out onto or into, like, a bag and then weigh it that way, because we weigh it in the jar, then the weight's gonna be off.

Q Showing you marked State's 27. We have the placard there again showing the same item number, right?

A Yes.

Q And you mentioned it'd be put in a bag. What would the weight of that be?

A Looks like maybe -- can't read it --approximately, maybe, 155 grams.

Q You're not sure though?

A Yeah, I can't.

Q All right. Fair enough. Did you search other areas of the shed?

A I did.

Q Did you look at the couch?

A I did.

Q Did you see anything particular about the [*190] couch?

A Yes, there were some items of evidentiary value on the couch.

Q Showing State's 29. What did you find on the couch?

A We found the green leafy substance and then later there's a drug paraphernalia, a meth pipe on the couch.

Q Showing State's 30. That's the green leafy substance we're talking about?

A Yes.

Q That was given Item No. 16?

A No. 16.

Q State's 32. And that would have been weighed as well, right?

A Sorry. What'd you say?

Q That would have been weighed as well?

A Yes.

Q And that would have been documented and photographed?

A Yes.

Q Showing State's 35. Is this still Item 16?

A Yes, it is.

Q And what would the weight have been?

A 172 grams. [*191]

Q You mentioned other items that were on the couch. I'm showing you State's 36. Is that what you're talking about there?

A Yes.

Q And State's 37. Same thing?

A Yes, sir.

Q Did you have to move anything to find those items?

A No, I did not.

Q Did you have to move anything to find the green leafy substance that was on the couch?

A No, I did not.

Q You mentioned searching the work benches there, right?

A I did.

Q Do you know what you found on the workbench?

A Green leafy substance and some other items.

Q Showing State's 44. Is that what we're talking about there?

A Yes, sir.

Q State's 45, and then State's 46, giving it the No. 22?

A Yes, sir.

Q And then State's 48. 6.9 grams?

A Yes, sir. [*192]

Q Did you search the bed?

A I did.

Q What did you notice about the bed?

A There was some plates over there on the bed in the north corner with green leafy residue and then green leafy substance and a -- what we say is a rolled cigarette, it's a joint, it's the nickname for it.

Q Did you have to move anything to find those items?

A No, I did not.

Q Showing State's 49. Is this the bed and the plate we're talking about?

A Yes.

Q State's 50. What is this item here?

A That's a marijuana cigarette, a joint, slang.

Q State's 51, State's 52, 53, and 55. Did you search the area that was right next to the bed?

A Yeah, just north of the bed where the refrigerator was and the counter -- or the cabinet area.

Q What about by the fan?

A Yes.

Q What'd you find there?

A I believe it was some wax.

Q State's 35. Is this what we're talking about here?
[*193]

A Yes.

Q State's 76. Sorry. State's Exhibit 76.

A Yes, Item No. 27.

Q And then State's 77. In this photograph, we have it still in the jars. Why is that?

A Because wax is hard to take out of the jar and it would just get all over the place. And there's no safe procedure to take it out, so we have to weigh it in the jar as it is.

Q So whatever was in these containers, this weight that we have here on State's 77, that would include those jars?

A Yes.

Q Did you search the fridge as well?

A I did.

Q What did you find inside the fridge?

A There was more wax, marijuana wax.

Q State's 78. This is that fridge?

A Yes.

Q 79, Item 28. And then where's the -- where is Item 28 in this photo?

A I don't recall exactly where it's at in that photo.

Q Can you describe what it looks like?

A It was in a little glass thing. [*194]

Q Showing State's 82. Is that what we're talking about?

A Yes, sir.

Q And do we know what's in the back of the fridge here?

A It appears it could be the same object.

Q All right. The weight for that one again, it still contains the same --

A Yeah --

Q -- container; is that fair to say?

A Yes, it's in its original container as we found it.

Q Did you also search a little closer to the bed by the window?

A Yes.

Q What did you find there?

A I do not recall what I found there.

Q Did you search by the stereo?

A I did.

Q What did you find by the stereo?

A More marijuana, or green leafy substance, and some other paraphernalia, drug paraphernalia.

Q I'm showing you State's 62. Is this what we're talking about here?

A Yes, there's a bag right here next to the [*195] stereo, and there's more -- you want me to kinda point out the other items too?

Q I'll get to that one later.

A Okay.

Q State's 63. That's that same bag?

A Yes, sir.

Q State's 64. And then State's 67. Weighing it, again, in a paper bag, right?

A Yes.

Q What other items did you see in the workbench area by the stereo?

A There was kinda, like, a flower marijuana that was in the bases up above and it kinda looked like a marijuana flower base thing.

Q Showing you State's 83.

A That'll be right there.

Q You'd have to use your touch screen if you wanna show the jury, I think, but is this what you're talking about?

A Yes.

Q State's 84, 85, and then weighing it in 86, right?

A Yes, sir.

Q Did you find any larger quantities of the green leafy substance in the shed? [*196]

A Yes.

Q Where did you find that?

A It was in a kinda like a -- the storage racks that you might have in a garage, it was kind of like above on the

ceiling, right above there, there was, like, a drying shelf per se.

Q Showing you State's 5 again. Can you see that shelf in this picture?

A Yes.

Q Let's try the touch screen. Is your screen on?

A Yeah, I didn't know this is touch screen.

Q Can you circle it for me?

A Yeah, right there.

Q And then I think it's the bottom right corner to delete it.

A Bottom right what?

Q The bottom right corner if you tap it, it'll get rid of it.

A Oh.

Q Maybe it's the bottom left corner.

A There we go.

Q Showing State's 68. Is that that same shelf?

A Yes.

Q And it was given Item No. 26?

A Yes, sir. [*197]

Q What did you guys do to get that off the roof?

A We had to move some items and then we had to get one person on each side in order to get the screen that it was on, to get it down, and then once it finally came down, we had to get somebody on the back side to grab it.

Q When you entered the shed, did you have to do anything to see this substance or to notice it was there?

A No. One of the investigators, I don't remember which, just looked up and saw it.

Q Showing State's 69. That's that same screen that we're talking about?

A Yes.

Q 70?

A Same screen.

Q And then 72 and 73.

A Yes.

Q Do you know what the weight of that substance was, approximately?

A According to this, it was twenty-seven -- 2,710 grams.

Q 74.

A And then converted would be the 5.974 pounds.

Q Did you find any scales?

A Yes.

Q Where did you find those? [*198]

A Those are the north side of the shed near the bed.

Q Showing State's 56. Is this where you found them?

A Yes, they're in that brown box.

Q This one here?

A Yes, sir.

Q State's 57. Can you point them out for me?

A Yes. Right here and then right here.

Q State's 58. Was there anything unique about this scale here?

A Yes. It's -- it looks like a marble --Marlboro cigarette pack once you fold it -- fold it over and close it.

Q State's 59. What are we looking at here?

A The same digital scale.

Q That's the back?

A Yes.

Q And then State's 60?

A The other digital scale.

Q And then State's 61, giving it a number of 24?

A Yes.

Q Were there any clothes in the shed?

A There was. There was a -- I remember -- well, there was clothes everywhere, but there was a jacket that [*199] was on the -- I believe it was the couch.

Q You search that too?

A I did.

Q And what did you find inside?

A It was a bag of white crystal substance.

Q Showing State's 38, 39. Is this a piece of clothing we're talking about?

A Yes.

Q 40. And is that the white crystal substance you're talking about?

A Yes.

Q And then 42.

A Yes, sir.

Q Did you look under or around the bed as well?

A I did.

Q Did you find any bags?

A Yes.

Q What'd you find?

A There was a duffle bag that had a green leafy substance.

Q 87. Is that what we're talking about?

A Yes.

Q 88?

A Yes.

Q And 89? [*200]

A Yes, sir.

Q These shavings here, is that what you're talking about the green leafy substance?

A The green leafy substance, yes.

Q All right. So you guys find these items. What happens after you find them and weigh them?

A After we find them and weigh them, we have one subject that's assigned -- or one investigator that's assigned to bagging up the evidence and placing it into our -- our evidence system, and once that's all done and all the evidence is collected, we will gather that evidence and bring it back to the sheriff's office evidence facility evidence room and we will rebag everything properly as we're required to do.

Q When you say "rebag," what do you mean?

A Put it in plastic bags or put it into a paper bag, depending what kind of item it is, yeah, just depends on what type of item.

Q When you say "put it in a plastic bag," is it just a Ziploc bag?

A No, it's a heat-sealed bag. Basically we will -- we have a bunch of plastic in the evidence area, we will roll it out, we'll seal one end of the bag, and then, for instance,

we would put the green leafy substance into that bag, seal the other end, sign our names, the dates, to [*201] make sure that it shows that this was the date it was sealed and it wasn't reopened for evidence purposes.

Q Did you participate in sealing any of the evidence?

A Yes.

Q Do you know which ones?

A I do not recall. It's a group effort.

Q Do you guys do it together?

A Yes.

Q Who was present when the evidence was sealed?

A Investigator Jaimez, I know he was there. I don't recall anybody else. I know there was other people there, but I can't give you their names.

Q You mentioned that they would be sealed in a plastic bag, they would be heat-sealed?

A Heat-sealed.

Q And you mentioned initials would be placed?

A Yes.

Q What would your initials be?

A M.O.

Q Would there be any other markings that would be placed on the items?

A Yes, the case number, the item number, the date it was seized, and then if it's a narcotic or any type of drug, then we put what it is and the approximate weight. [*202]

Q Let me go back. When you first got to the shed, did you smell anything?

A Yes.

Q What did you smell?

A The overwhelming odor of fresh marijuana and burnt marijuana.

Q How do you know what that smells like?

A Just from my training and experience and just the years -- how many years I've been doing this narcotics investigations.

Q Do you know the approximate value of a gram of marijuana?

A When I was working street-level stuff, it was about \$20. I don't know what it is now though.

Q Back in 2019 --

A Yes.

Q -- about \$20? Yes?

A Yes.

Q About how many drug investigations have you done?

A Over a hundred.

Q Is it common to collect DNA?

A No.

MR. HANNA: Objection -- well, I'll withdraw the objection. [*203]

THE COURT: Okay.

THE WITNESS: No.

BY MR. DAVIS-SALSBURY:

Q Is it common to find ledgers or records of sales?

A Yes.

Q Do you find them in every case?

A No, we do not.

Q Do you ever have video of, say, a hand-to-hand transaction, somebody, like, is actually in the process of selling?

A No, that would be pretty hard to get unless we're right there when it happens.

Q In your experience working on the task force, has that ever happened?

A That we got video, no, that I know of.

MR. DAVIS-SALSBURY: I have no further questions.

THE COURT: If I could have counsel approach?

* * *

(Whereupon, the following discussion took place at sidebar:)

MR. DAVIS-SALSBURY: No objection.

MR. HANNA: No objection.

THE COURT: I'll allow you to ask that [*204] question.

* * *

(Whereupon, the discussion at sidebar concluded.)

THE COURT: We have another juror question. Mr. Davis-Salsbury's going to ask that.

BY MR. DAVIS-SALSBURY:

Q Did you see or discover any baggies or Ziplocs?

A Yes.

Q Did you find any in the shed?

A Yes.

Q How many did you find?

A I don't recall how many it was. It was multiple. It was more than one, at least.

Q Did these -- were they empty?

A Not that I remember. I mean as we saw earlier, we had the big giant bag of marijuana, then we also had -- or, sorry, green leafy substance, and then we had the small bindles of -- or small baggies of the crystalline substance, so there was multiple baggies throughout the --

Q Do you recall finding any empty baggies in the shed?

A Not that I recall.

Q All right.

THE COURT: I think we have another question, [*205] so.

* * *

(Whereupon, the following discussion took place at sidebar:)

MR. DAVIS-SALSBURY: The state objects to question 3, but, otherwise, I'm okay with the rest.

THE COURT: Mr. Hanna, any objections?

MR. HANNA: No objection to one. No objection to -- or objection to 3, of course, and I don't know that this witness is competent to testify to the last two.

THE COURT: Okay. We can find out if he is or not just by asking him the question, so, okay. So question 3 will not be asked, but you can ask the other questions and the witness can either testify as to whether he's competent.

* * *

(Whereupon, the discussion at sidebar concluded.)

THE COURT: We've received some additional questions from the jury. Most of the questions will be allowed; one will not be allowed. You may proceed, Mr. Davis-Salsbury.

BY MR. DAVIS-SALSBURY:

Q Do you know if there was any lump sum of money or cash found in the shed? [*206]

A Not that I recall.

Q Do you know if Mr. Smith was drug tested at any time?

A No, not that I recall.

Q I wanna ask a follow-up to that. Is it common for the members of the task force to drug test people at search warrants?

A No.

Q Was Mr. Smith dressed or looked like he was sleeping and suddenly woken up?

A I don't recall how he was actually dressed. I just know that he was up when we knocked on the door.

Q Did you have to put clothes on him?

A No.

Q Do you know if he had a medical marijuana card?

A Not that I know of.

Q Do you know if anyone at the residence had a medical marijuana card?

A Not that I know of.

Q Do you know if anyone there was a dispensary owner or grower?

A Not that I know of.

MR. DAVIS-SALSBURY: Now I have no further questions.

THE COURT: All right. Mr. Hanna? [*207]

MR. HANNA: Thank you, Your Honor.

* * *

CROSS-EXAMINATION

BY MR. HANNA:

Q So, Agent, what use of force was used to execute the search warrant?

A We walked into the house -- or we conducted the search warrant, and, yeah, I don't understand your question.

Q Sure. Use of force. The uniform is a use of force clearly --

A That's called presence, yes.

Q Okay. I'll try not to overspeak. Use of force might just be the uniform, right?

A Yes.

Q And weapons?

A Yes.

Q Deployed?

A Yes.

Q And your team and the team that made entry into the double-wide had weapons drawn?

A Yes.

Q Now, my little drawing there, I tried to illustrate a double-wide trailer, and north up here, does that look about the direction of the mobile home? [*208]

A Yeah, approximately.

Q So west would be on this side; couple trees on that side, right?

A Yes, sir.

Q And the makeshift room is here and a travel trailer may be here and on the side of the -- east side of the building, right?

A Yes.

Q What were the three people that were in the makeshift room?

A I just know Jason Smith, sir.

Q But there were two others, right?

A I -- I do not know anybody else that was inside that room.

Q Okay. But you -- were you one of the officers that breached that room?

A No.

Q Okay. What room did you take part in in breaching?

A The east shed over there and then the back bedroom.

Q Okay. Is this the east shed?

A No.

Q Okay. Where's the east shed?

A No, not the east shed, the east trailer, the [*209] trailer you have over, yeah, to the east of --

Q You went to that trailer on the east side?

A Yes.

Q And you went into the --

A The main part of the house to go to the back bedroom.

Q Thank you. You've been in law enforcement for 20 plus years though, right?

A No, 14 years now.

Q And Mr. Salsbury anticipated my question and he asked you whether it was common to take DNA evidence. Have you ever been involved in a case where DNA was drawn?

A Yes.

Q How many times?

A Probably over 20.

Q Okay. And you would agree with me that it's a valuable piece of evidence when used properly?

A Depending on the type of investigation.

Q And with regard to the jars, I believe they're in photos well before 69, but the photos of the jars that held the green leafy substances, would you agree -- are you a fingerprint analysis?

A No.

Q Are you qualified to draw fingerprints?

A Probably not anymore. I'm not a local cop. [*210]

Q But you have done it in the past?

A Yes.

Q When you were a street cop you were probably qualified to draw samples, weren't you?

A Latent prints, yes.

Q Latent prints. That's the correct terminology, I guess, latent prints. You were a latent print, if not examiner, but somebody who could draw latent prints?

A Process, yes.

Q Process. And how many times have you processed fingerprints in 14 years? Couple dozen?

A About.

Q Would you agree with me that the jars and the Marlboro object would be capable of holding latent prints?

A It's possible.

Q Is not more likely than probable?

MR. DAVIS-SALSBURY: Objection. Calls for speculation.

THE COURT: Overruled.

BY MR. HANNA:

Q You've done this for 14 plus years. You've done it, I presume, a couple dozen times, so the question is, In your experience, is a glass subject or the Marlboro object something that is capable of drawing prints?

A Yes. [*211]

Q And, in fact, probable, correct?

A It depends. It's not just, like, a simple answer; but, yes, a glass thing can hold prints.

Q And in this case, there are no fingerprint --latent prints taken?

A I have no idea if latent prints were taken.

Q And you didn't observe any ledgers or pay/owe sheets in the makeshift room, did you?

A Not that I know of.

Q And please tell the jury what a pay/owe sheet is.

A I don't know what that is.

Q Okay. You worked narcotics?

A Yes.

Q And are you familiar that -- with the concept that drug dealers will keep records of what people owe them and what they owe them?

A Yeah, but I've never heard that term, whatever you said.

Q What would you call it?

A A ledger.

Q Ledger. Just different way of calling it, but we're talking about the same thing, aren't we?

A Yeah, if that's what that is, then yes.

Q You didn't see any of those in the room at all? [*212]

A Not that I recall.

Q And if you did, you would've seized it or identified it or tagged or something like that, wouldn't you?

A Yes.

Q When we speak of hand-to-hand sales, as a street cop, you've observed hand-to-hand sales, haven't you?

A Yes.

Q And I'll give you an example. Two people meet in a Circle K at two o'clock every evening, that might be an example of suspicious circumstances, correct?

A It could be, yes.

Q So if somebody went there, didn't get gas but waited 15 minutes by the pump, somebody showed up at two o'clock every evening and they talked for a few minutes and left, that would be suspicious, wouldn't it?

A That would be suspicious.

Q And you would agree with me that you saw no such conduct from Mr. Smith that morning?

A No.

Q And would you agree with me that when Mr. Salsbury -- Davis-Salsbury asked you about the empty baggies or baggies, the baggies you're referring to is the one holding the crystalline substance and the one holding [*213] the bags -- or the green substance?

A Yes.

Q You didn't see a bag of -- a box of empty baggies, did you?

A Not that I recall.

Q Other than the volume, what indicia of sales did you have in this case?

A It wasn't my case investigation, sir.

Q Knowing what you know about the case, other than the volume of marijuana, are there any indicia of sales?

A Yes, the totality of the circumstances.

Q Tell us the totality of the circumstances.

A The bulk quantity of narcotics that was inside the shed, the scale, and I think -- believe there was a witness too, I don't -- so.

Q You can't testify to that though, can you?

A No, I cannot.

Q You're just shooting from the hip?

A No, I'm not shooting from the hip.

Q Well, with -- other than the volume and the scale, there's nothing else that you can testify to that would reflect an indicia of sales, is there?

A No.

Q Same thing -- we're saying the same thing, I [*214] think, and --

A Okay.

Q -- I thank you for your testimony. Tell me about the screen that was on the overhead. Was that -- in your opinion, was that there to cure the marijuana or to hide it?

A Up above -- it was hidden because you couldn't see it right offhand, but the screen looked like it was also, like, a drying.

Q And it took several people to bring that down?

A Yes.

Q Is it your opinion that it would take several people to put it up there?

A It could, yes.

Q There were no fingerprints taken of that surface either, was there?

A Not that I know of, sir.

Q And your experience as a street cop and as a narcotics officer and with the task force, are fingerprints used routinely in burglary cases?

A The gathering of latent prints, yes.

Q Latent prints. And is that a timely and cost-prohibitive process?

A Yes, very.

Q And you don't have an opinion as to why it [*215] wasn't done here, do you?

A No, I do not.

Q If I understand correctly, you had no communications with Chris Mendoza that day?

A I don't recall who Chris Mendoza is.

Q Ms. Stevens?

A I do not know, sir.

Q Ms. Reynard or Ms. Brekke ring a bell?

A No.

Q Stacie Whitman or Donna Olin-Fox?

A No.

Q And did you speak with the defendant's father?

A I received a cell phone from him.

Q No communications with him though?

A No.

Q What time did you arrive December 10th of 1999 -- or 2019?

A It was about just before 6:30.

Q And what time did you leave the scene on December 10th?

A I do not recall.

Q You're the second witness who told me that. Do you keep a log as to when you arrive and leave the scene of a crime?

A I don't keep a log. The evidence person would [*216] keep the log or the case -- initial case investigator.

Q Was there a briefing, before the entry on the scene, by the task force or the group?

A Yes, there was a briefing.

Q And when was that briefing?

A I do not recall.

Q Was it the morning or the day before?

A I do not recall.

Q Who would have that information?

A The lead case investigator.

Q And do you know who that is in this case?

A Well, the backup is Adrian Jaimez, but Gary Hamilton.

Q Thank you, sir.

A Yup.

THE COURT: Mr. Davis-Salsbury?

* * *

REDIRECT EXAMINATION

BY MR. DAVIS-SALSBURY:

Q Let me clear up one spot of confusion. On December 10th, 2019 when the search warrant was executed, there's no witnesses that saw Mr. Smith doing a drug transaction, right?

A No.

Q You didn't talk to anybody that day that [*217] indicated that, right?

A No.

Q All right. You were asked if there was suspicious conduct of Mr. Smith that morning. He was arrested pretty quickly, wasn't he?

A Yes.

Q As far as fingerprints go, do you know what difficulties there are in getting prints from different surfaces?

A Yes.

Q Can you describe those for me?

A It's kinda -- at the police department, we joke around about it's kinda like the CSI mentality where people think we can get latent prints off of everything. So like a rock, you can't get latent prints off a rock because of the texture, but as the defense counsel was saying, there could be potential where you can get latent prints

off a piece of glass, but it just depends how the person touched it, how long ago it was. They're just a lot of different factors that factor into getting an actual latent print.

Q You mentioned 20 cases where you drew DNA?

A Yes, about.

Q Were those drug cases?

A No.

Q What kinds of cases were those? [*218]

A It was sexual assault, child molestation, or homicide cases.

Q You've not had to draw DNA for a drug case; is that right?

A DUI drugs, I've done that.

Q For a DUI investigation?

A Yeah, for DUI for, like, yeah, drugs related, but that was only thing related to drugs.

Q Okay.

MR. DAVIS-SALSBURY: I have no further questions.

THE COURT: Okay. Agent, you may step down.

JUROR: May I request a quick break, Your Honor?

THE COURT: Give me just a second. If I could have counsel approach?

* * *

(Whereupon, the following discussion took place at sidebar:)

THE COURT: Do you have any other witnesses this afternoon?

MR. DAVIS-SALSBURY: I could call Jaimez. I would prefer to rest for the day, but I leave it to the Court. I anticipate -- I need to contact the criminalist to get them here for the morning instead of the afternoon, [*219] but I anticipate ending by noon tomorrow.

THE COURT: If the criminalist can get here?

MR. DAVIS-SALSBURY: Yeah.

THE COURT: Okay. Any objection to us recessing?

MR. HANNA: I think we should, Your Honor. We're moving pretty quickly and if he can get a criminalist here early and on time, we'll --

MR. DAVIS-SALSBURY: If I can't, then we're gonna have to pause tomorrow anyway, so.

* * *

(Whereupon, the discussion at sidebar concluded.)

THE COURT: All right. Okay. We're actually going to recess for the evening, so please remember the admonition. Don't talk about this case with anyone. Don't do any research for this case.

Tomorrow morning we'll begin at nine o'clock a.m., so if you could be here at 8:45 down in the jury assembly room downstairs and then Ms. McDowell will bring you upstairs. Keep your badges with you. Take them and then wear them back when you come back tomorrow. Okay.

JUROR: Leave these?

THE COURT: Leave your notes on your chairs. Okay. Thank you very much. All rise for the jury. [*220]

* * *

(Whereupon, the jury left the courtroom.)

THE COURT: Okay. I anticipate we'll start right about nine o'clock in the morning. Mr. Hanna, do you have any cases in Division 5 tomorrow?

MR. HANNA: I have one, Your Honor, and I'll ask them to call it first.

THE COURT: Okay. I'll speak with Judge Nelson and see if he can call you as close to 8:30 as possible.

MR. HANNA: Thank you, sir.

THE COURT: Okay. Anything that needs to be put on the record at this time?

MR. DAVIS-SALSBURY: I did not tell the jury that I would be calling Gary Hamilton. Based on the defense presentation, I think I'm forced to.

THE COURT: Okay.

MR. DAVIS-SALSBURY: He's currently on no duty because of an injury, but I intend on calling him tomorrow morning.

THE COURT: Okay. Do you want me to do any sort of voir dire as to that?

MR. DAVIS-SALSBURY: I think, to be safe, just a brief question, but I don't think they have any ties with the sheriff's office. I don't think they're gonna [*221] know him.

THE COURT: All right. Any objection to that?

MR. HANNA: I'm glad he acknowledges I'm doing my job. His case is not going well.

THE COURT: All right. So I will -- I'll need you to remind me tomorrow to voir dire the jury when they first come in and then we'll go forward. Okay? All right. Court's in recess.

* * *

(Proceedings Concluded.) [*222]

C E R T I F I C A T E

I, Katherine R. Pitotti, RMR, CRR, CR, a Certified Reporter in the State of Arizona, do hereby certify that the foregoing pages 1 - 221, constitute a full, true, and accurate transcript of the proceedings had in the foregoing matter, all done to the best of my skill and ability.

SIGNED and dated this 16th day of November, 2021.

_____/s/_____
KATHERINE R. PITOTTI, RMR, CRR, CR
Certified Reporter
Certificate No. 50776

**APPENDIX D
EXCERPT, TRIAL TRANSCRIPT
TESTIMONY OF GARY HAMILTON
(SEPT. 2, 2021)**

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YUMA

STATE OF ARIZONA,)
)
 Plaintiff,)
)
 vs.) No. S1400-CR-2019-
) 01251
 JASON SMITH A/K/A JASON)
 R. SMITH (true name),) 1 CA-CR 21-0451
)
 Defendant.)

BEFORE THE HONORABLE BRANDON KINSEY
JUDGE OF THE SUPERIOR COURT
DIVISION 6
YUMA, ARIZONA

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Jury Trial, Day Two

September 2, 2021

* * *

* * *

[*2] APPEARANCES

JOSHUA DAVIS-SALSBURY
Attorney for the State

RAYMOND A. HANNA
Attorney for the Defendant

* * *

PROCEEDINGS

(Proceedings in the presence of the jury panel.)

THE COURT: The Court calls S1400-CR-2019-1251,
State of Arizona versus Jason Smith.

The Court notes the presence of the defendant,
counsel for the parties, and the jury.

Good morning.

PANEL: Good morning.

THE COURT: The name of your additional witness?

MR. DAVIS-SALSBURY: Gary Hamilton

THE COURT: So we neglected to give you one of the
names yesterday when we were asking you if you knew
anybody involved in this case. The name of an additional
witness is Gary Hamilton. He works for the Yuma County
Sheriff's Office. Do any of you know Mr. Hamilton? No
response.

You may call your next witness.

MR. DAVIS-SALSBURY: The state calls Gary
Hamilton.

GARY HAMILTON,

having been duly sworn, testified as follows:

THE BAILIFF: Have a seat in the brown chair. [*6]

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MR. DAVIS-SALSBURY:

Q Good morning, Gary. Could you introduce yourself to the jury?

A My name is Gary Hamilton. I am a U.S. Border Patrol agent, and I was assigned to the Yuma County Narcotics Task Force.

Q And can you tell me a little bit about your training and experience?

A I went through approximately five and a half months of training in the Border Patrol Academy just after being hired. I also had approximately three years of previous Narcotics Task Force experience in California, and served almost two years at the Yuma County Narcotics Task Force.

Q And prior to about a few days ago, what was your role as far as this case goes?

A The case agent.

Q And what is a case agent?

A It's the agent in charge of the case making sure that everything that needs to get done gets done.

Q As part of your duties, would you record things like witness birthdays? [*7]

A Witness birthdays?

Q Yes.

A Yes, sir.

Q What's your current duty status?

A I was on light duty as of a week ago. They took me off, and I'm pretty much -- I'm supposed to be at home off my foot.

Q Because of an injury?

A Yes, sir.

Q All right. So as far as this case goes with Mr. Jason Smith, when you got to the residence, what was your initial responsibility?

A My initial responsibility was to make sure that everybody who was involved was going to be assigned to do something, whether it be searching, documenting any evidence found, and just making sure everything ran smoothly to the best of our ability.

Q We had some other people talk about being on the entry team or the arrest team. Is that kind of what you're talking about?

A Yes, sir.

Q When you first got to the residence, what were you doing?

A I was --

Q What role did you have at that point? [*8]

A My role was third in the stack to approach the house.

Q And what part of the house did you approach?

A The east -- we ended up going to the northeast side of the house to almost like a bedroom or a studio, maybe a shed is what it appeared to be.

Q This shed area, did you notice anything when you first approached it?

A The door was closed, and as we got closer, you could smell burnt marijuana.

Q Now, in your experience with working at the task force, border patrol, and the three years' prior experience before that, are you able to tell the difference between fresh marijuana and burning marijuana?

A Yes, sir.

Q Who knocked on the door?

A That would have been special Agent Amari Wilson.

Q And what was the purpose of knocking?

A To announce our presence and give somebody time to answer the door.

Q Did anyone answer the first time?

A After the first knock, no, sir.

Q Who answered the second time?

A That would have been Mr. Smith.

Q Did you see anything happen to Mr. Smith? [*9]

A He was eventually taken to the ground and detained.

Q After he was removed, did you see anyone else in the room?

A Yes, sir.

Q Who else was in the room?

A Sorry. That's loud.

Q I made that same mistake.

A Also in the room was Chris Mendoza and Lassie Stevens.

Q Were they detained?

A They were.

Q Did they refuse --

A I'm sorry?

Q Did they refuse commands?

A No.

Q Did they give you guys any issue in getting out of the shed?

A No.

Q What did you do next?

A After clearing that makeshift room, we also cleared an RV that was parked next to the driveway, and after we did that, we moved to the main residence.

Q Was that residence also cleared?

A Yes, it was. [*10]

Q And do you know who was found inside that residence?

A Yes.

Q Who was that?

A There were a male and female in the back, back master bedroom, Mr. Owens and Ms. Brekke, Jason's father, Mr. Smith, was sitting in the living room, and there were Ms. Olin-Fox, and I believe Ms. Whitman came out of the first bedroom.

Q What about someone by the name of Reynard?

A She was also in the living room, I believe.

Q Now, as you and the other members of the task force were clearing the residence, did you ever see Frank Owens go into the shed that Jason Smith was found in?

A No.

Q Did you ever see anyone go into that shed besides Jason Smith, Lassie Stevens, and Chris Mendoza, other than law enforcement?

A No.

Q As the case agent, would you keep track of things like the total amount of drugs seized from the residence and the total amount of drug paraphernalia?

A Yes.

Q And would you know what time about Jason Smith [*11] was arrested?

A It would be an estimate, yes, sir.

Q What's your estimate?

A He was probably placed under arrest at around 7:30ish, I would think, if I remember correctly.

Q And do you know when he was booked?

A It would have been after 11:00. I believe we left there at about 11:30, 11:40, so . . .

Q What's the general process when drugs are taken from a house?

A They are photographed, evidence numbers assigned to them, along with the photograph, and bagged, we write on the bag where it was located, what it was, and who found it, and then it's taken to whoever's going to be assigned to entering that information into our evidence log.

Q Would they then be taken to a second location where they could be properly sealed?

A Yes.

Q Were you present for that?

A Yes.

Q Would you be able to identify some of those items?

A Yes.

MR. DAVIS-SALSBURY: Can I have State's 1, 2, and [*12] 3?

I'm approaching the witness with State's Exhibits 1, 2, and 3.

THE COURT: Do you have gloves for the witness?

MR. DAVIS-SALSBURY: we do.

BY MR. DAVIS-SALSBURY:

Q When items are taken, you said they would get an evidence number assigned. Is anything placed on these items to demonstrate that?

A They're -- after we seal them, we mark on that package the item number, case number, and by whom it was done, along with the date.

Q Okay.

A And if there's any weights.

Q Can we start with State's Exhibit 3? It's one of the smaller bags on the top. which item is State's Exhibit 3?

A I'm looking for it. This would be here. This is Item Number 28.

Q And how do you know that?

A It's written on here.

Q Who would have written that on there?

A Whoever sealed this bag.

Q Are there any initials that you can spot?

A There are initials, and there's my -- well, [*13] whoever would seal it would put their badge number on there as well.

Q Do you see a badge number?

A Yes, sir.

Q And do you recognize that badge number?

A I do.

Q Whose is it?

A Mine.

Q Without telling me the name of what you think that is, can you describe it for me?

A It's a brown wax -- it looks like a wax-like substance.

Q And kind of a glass jar kind of thing, right?

A Yes, sir.

Q All right. Could you move on to State's Exhibit 2? Is there also a case number that's attached to it?

A There is.

Q Could you read that for me?

A 2019-TF-000383.

Q All right. Now you can move to Item 2.

A All right.

Q State's Exhibit 2. Do you recognize what that is?

A I do.

Q What item number is that? [*14]

A Our item number is Item Number 20.

Q And how do you know that?

A It's marked on the packaging.

Q Is there also a badge number?

A Yes, there is.

Q And whose badge number is it?

A That would be mine.

Q And is there also a case number?

A There is.

Q And is that the same one that's on State's Exhibit 3, Item Number 28?

A Yes, it is.

Q And can you describe what the contents of State's Exhibit 2 is, Item 20?

A White crystalline-like substance and plastic baggies.

Q Could you move on to state's Exhibit 1? For this one, I know that's not your box. You're going to have to open that to see what's inside. I haven't admitted them yet, so do your best to just show yourself.

Do you recognize what State's Exhibit 1 is?

A Yes, I do.

Q What item number is that from the house?

A It's kind of tucked away. It's hard to see. It's actually folded underneath. [*15]

Q There's one on the other side.

A Item Number 26.

Q And that's written on the back?

A Yes, sir.

Q And there's the case number on there too?

A There is.

Q And badge number?

A There is.

Q And whose badge number is that?

A That one is Nora 30, which would be Sergeant Hixon.

Q What is Sergeant Hixon's relationship to the task force?

A He's the supervisor of the task force.

Q Was he present when the items from Jason Smith's house were -- sorry. was he present when items from that residence were taken? It's not Jason Smith's house.

A Not at the house. He was present during evidence, when we were booking evidence.

Q All right.

MR. DAVIS-SALSBURY: The State moves to admit Items 1, 2, and 3.

MR. HANNA: No objection, Your Honor.

THE COURT: Exhibits 1, 2, and 3 are admitted without objection. [*16]

(State's Exhibits 1 - 3, Drugs, were received into evidence.)

BY MR. DAVIS-SALSBURY:

Q Items 2 and 3 are a little difficult to see even in the bags, but could you remove Item Number 1 and show the jury, please, State's Exhibit 1, Item 26? Can you describe the contents of that bag, please?

A Green, leafy substance.

Q Thank you, Agent. Could you put that back in? And if you could retape the box.

A It's not working.

Q Let's try it later. We'll ask a few questions and see if we can't do that maybe at a break or something. Do you know whose residence it was?

A My understanding, it was Jason Smith's father's house.

Q His dad's house?

A Yes, sir.

Q What happens to the drugs after they are seized from the residence after they're boxed up?

A They're stored in the secured evidence location, the sheriff's department.

Q And is that a place that only law enforcement have access to?

A Yes. [*17]

Q And were these drugs that were removed from that location to go somewhere else?

A Not to my knowledge, no.

Q Were they ever submitted for testing?

A Yes.

Q Would they have to be removed from the vault to go for testing?

A Yes.

Q Who was responsible for sending them to the crime lab?

A The evidence clerk working at the evidence location.

Q And did you ask them to do that?

A We did request it, yes.

MR. DAVIS-SALSBURY: I have no further questions.

THE COURT: Mr. Hanna.

CROSS-EXAMINATION

BY MR. HANNA:

Q Agent, you weren't lying when you said they had never been removed, were you?

A I'm sorry?

Q You weren't lying when you said they'd never been removed when you testified?

A No, sir. [*18]

Q You were mistaken?

A Yes.

Q And -- and then the state's attorney had to correct you and ask that they were tested?

A Yes, sir.

Q And you corrected your testimony?

A Correct.

Q And he asked you what I consider to be a very leading question -- "Did you ask them to be tested?" -- and the answer was yes, isn't it?

A Yes.

Q I have a diagram on the podium to your side that shows a rectangular box, which I believe looks sort of like the trailer from an overhead view with a room on the northeast corner that I believe you and your DR described as a makeshift room. Is that approximately the -- not to scale, but is that kind of what the trailer looked like?

A Yes, sir.

Q Double-wide trailer with a makeshift room and a travel trailer somewhere to the east and maybe another domicile north. Is that kind of like what it was?

A Yes.

Q Did you -- in addition to going into the makeshift room, did you go into the double-wide trailer?

A I did. [*19]

Q And did you observe any articles of drug paraphernalia in the double-wide trailer?

A I didn't search in there myself, but I do recall seeing a straw on one of the -- I believe it was an end table in the living room.

Q For those of us that don't know about how drugs are ingested, is a straw used for any particular drug?

A It could be used for snorting a drug through the nose or inhaling a drug.

Q Not marijuana, though, I presume?

A No, sir.

Q And it would be used for any other crystalline substance, like methamphetamine or cocaine?

A Yes, sir.

Q And you authored a DR in connection with this report, and do you remember -- did you have an opportunity to read your report?

A I did.

Q And when did you read it last?

A This morning I looked over it.

Q Have you had the opportunity to speak to either of the three officers between yesterday and today?

A I received a phone call from Investigator Jaimez.

Q And I'm not going to ask you about what conversations you may have had with the state, but did you [*20] speak to officer Jaimez about the case?

A Briefly.

Q And did that include anything related to his testimony?

A He was asking me if I needed my report or not.

Q Okay. And he asked you to be present today?

A He did.

Q Who would know what time the other officers present arrived and left the scene?

A We all pretty much arrived at the same time. We were in a line of vehicles.

Q And is it true that you all arrived around 6:30 in the morning?

A Yes, sir.

Q And do you know what time you left the residence?

A It would -- it would be an approximate time, 11:40, give or take.

Q And how many officers arrived in the morning around 6:30?

A I don't recall the exact number. There were probably ten or 12 of us.

Q And there were about ten or 12 people detained at the residence that morning, weren't there?

A Probably about eight or nine.

Q Okay. You wouldn't disagree if somebody told you [*21] there were 11 people at the residence, though, would you?

A I wouldn't disagree, no, sir.

Q Were there any of the occupants of the residence that were particularly mouthy or obstinate?

A At first, Mr. Smith.

Q Anybody else?

A Mr. Owens.

Q And anyone else?

A No, sir, not that I remember.

Q Were there any videos or audio recordings of the execution of the search?

A No, sir.

Q And before you were an agent, you were connected with the police agency, weren't you?

A A long time ago.

Q During your training as a law enforcement -- now as a federal agent or I presume as a state agent before, did you receive training in fingerprint analysis?

A As an agent?

Q Or as a sworn officer in a state capacity.

A In -- in about 2000, I was for California.

Q Did that involve dusting for prints, latent prints?

A Yes, sir.

Q And is that an expensive process? [*22]

A Expensive?

Q Yes.

A I'm not sure what the cost would be, but . . .

Q What's the purpose of the gloves in examining the evidence that we've seen today?

A To preserve the evidence.

Q Okay. And what are we trying to preserve, fingerprints or contact tracing of -- that shouldn't be connected with this evidence?

A Yes.

Q And in this case, these items were never submitted -- and none of the items ever seized on December 10th were ever submitted for fingerprinting, right?

A No.

Q And nobody bothered to take latent prints off of the big jars in the makeshift room?

A No.

Q In the makeshift room, the jury has had the opportunity to see a big tray of what looks like green leafy substance. Did you see that tray removed from the makeshift room?

A I did not see it removed from there.

Q Did you have an opportunity to see that tray of green leafy substance? [*23]

A I don't believe I did see that.

Q What were the name of the two occupants that came out of the makeshift room with Mr. Smith?

A Cassie Stevens and Chris Mendoza.

Q When the individuals were detained after the search began, would you describe them as being cooperative or uncooperative?

A They were cooperative.

Q Did anybody give any of the -- like Investigator Callahan problems or mouth off to her?

A I didn't see anything, but I wasn't out there with Ms. Callahan.

Q Was medical called for witness -- or Investigative Lead Anderson?

A For who? I'm sorry.

Q Anderson, did somebody complain of chest pain?

A I don't recall, sir.

MR. HANNA: Thank you, sir.

THE WITNESS: Yes.

THE COURT: Mr. Davis-Salsbury.

REDIRECT EXAMINATION

BY MR. DAVIS-SALSBURY:

Q In your experience as a law enforcement officer, you were asked questions about glove use. Have you ever [*24] known an officer to become accidentally exposed to a drug?

A Yes.

Q Is there a risk of accidental exposure when handling drugs?

A There is.

Q Do gloves protect against that in some way?

A Yes.

MR. DAVIS-SALSBURY: I have no other questions.

THE COURT: Okay. You should be able to use this tape.

THE WITNESS: Thank you, sir.

THE COURT: Yes.

MR. DAVIS-SALSBURY: Can we approach?

THE COURT: Yes.

(Proceedings held at the bench out of the hearing of the jury.)

MR. DAVIS-SALSBURY: I no longer need to call Investigator Jaimez. My next witness will be the forensic examiner. He'll be my last witness. I managed to get him here at 10:30. we went a little faster than I thought with this witness. I would ask for a recess until then.

THE COURT: Any objection to that?

MR. HANNA: No, sir.

THE COURT: All right.

(Proceedings in the presence of the jury panel.)

[*25]

THE COURT: Okay. Our next witness is traveling to Yuma and is not quite here yet. We expect the witness to be here in about an hour. I hesitate to leave you to your own devices --

PANEL MEMBER: Smart.

THE COURT: -- but I think what we'll do is we'll have you go back to the jury deliberation room. Remember the admonition. You can use the restroom, you can use your phones so long as you're not doing any research or anything. We are going to take a lengthy break in this matter.

If you do need to exit the building for any reason, please talk to Ms. McDowell about that first, and then she'll talk to me about it before I allow you to leave the building. But it is going to be a bit of a lengthy break because that witness is not yet here from out of town. And this happens all the time in trials with scheduling with witnesses. Please don't blame one side or the other for this. usually in longer trials, we have a lot more delays than we do in shorter trials like this. And my instruction to you is that if there is any resentment towards the delay, direct that towards me, okay, because ultimately I'm the one that controls what goes on in my courtroom, and so if there is any resentment, please keep that on me in your own minds, but don't place that on either of the parties. okay?

**APPENDIX E
EXCERPT, TRIAL TRANSCRIPT
JURY INSTRUCTIONS
(SEPT. 2, 2021)**

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YUMA

STATE OF ARIZONA,)
)
 Plaintiff,)
)
 vs.) No. S1400-CR-2019-
) 01251
 JASON SMITH A/K/A JASON)
 R. SMITH (true name),) 1 CA-CR 21-0451
)
 Defendant.)

BEFORE THE HONORABLE BRANDON KINSEY
JUDGE OF THE SUPERIOR COURT
DIVISION 6
YUMA, ARIZONA

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Jury Trial, Day Two

September 2, 2021

* * *

* * *

[*2] APPEARANCES

JOSHUA DAVIS-SALSBURY
Attorney for the State

RAYMOND A. HANNA
Attorney for the Defendant

* * *

[*75] * * *

THE COURT: We are back on the record in case number S1400-CR-2019-1251, State of Arizona versus Jason Smith.

The Court notes the presence of the defendant, counsel for the parties, and the jury.

Good afternoon. [*76]

The State has rested. Mr. Hanna, do you have a witness that you'd like to call?

MR. HANNA: No, Your Honor. We rest.

THE COURT: The defense has now rested.

All right. So we will now give you what are the closing jury instructions. I'm not going to read them all. I'll read most of the them, and then we'll have the closing arguments, and then I'll give you the last couple of instructions after the closing arguments.

So as with the preliminary instructions, please follow along as I read them to you.

*** [*80] ***

"Standard Criminal 15, Credibility of witnesses."

In deciding the facts of this case, you should consider what testimony to accept and what to reject. You may accept everything a witness says or part of it or none of it. In evaluating testimony, you should use the tests for truthfulness that people use in determining matters of importance in everyday life, including such factors as the witness' ability to see or hear or know the things the witness testified to; the quality of the witness' memory; the witness' manner while testifying; whether the witness had any motive, bias, or prejudice; whether the witness was contradicted by anything the witness said or wrote before trial or by other evidence; and the reasonableness of the witness' testimony when considered in the light of the other evidence.

Consider all of the evidence in the light of reason, common sense, and experience.

*** [*81] ***

"Standard Criminal 17, expert witness."

A witness qualified as an expert by education or experience may state opinions on matters in that witness' field of expertise and may also state reasons for those opinions. Expert opinion testimony should be judged just as any other testimony. You are not bound by it. You may accept it or reject it in whole or in part, and you should give it as much credibility and weight as you think it deserves considering the witness' qualifications and experience, the reasons given for the opinions, and all the other evidence in the case.
