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IN THE
SUPREME COURT OF THE UNITED STATES

MONTRESE SNUGGS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

APPENDIX TO THE PETITION FOR WRIT OF CERTIORARI

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APPENDIX

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UNPUBLISHEDUNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-4430

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MONTRESE ANTOINE SNUGGS,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Catherine C. Eagles, Chief District Judge. (1:22-cr-00229-CCE-1)

Submitted: September 30, 2024

Decided: October 16, 2024

Before KING and GREGORY, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

ON BRIEF: Louis C. Allen, Federal Public Defender, Stacey D. Rubain, Assistant Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Greensboro, North Carolina, for Appellant. Sandra J. Hairston, United States Attorney, Margaret M. Reece, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Montrese Antoine Snuggs pleaded guilty to possession of a firearm by a felon, in violation of 18 U.S.C. § 922(g)(1), pursuant to a plea agreement in which he retained the right to appeal the district court's denial of his suppression motion. The district court sentenced Snuggs to 120 months of imprisonment, and he now appeals. On appeal, Snuggs challenges the district court's denial of his motion to suppress the evidence seized at his residence when probation officers and police conducted a warrantless search. Snuggs, who was on probation in North Carolina at the time of the search, argues that authorities failed to comply with the warrantless search requirements listed in N.C. Gen. Stat. § 15A-1343(b)(13) (2023). Snuggs also maintains that the officers did not have reasonable suspicion necessary to justify the search. Finding no error, we affirm.

“In considering the district court's denial of [a] motion to suppress, we review that court's legal conclusions de novo and its factual findings for clear error, considering the evidence in the light most favorable to the government.” *United States v. Kolsuz*, 890 F.3d 133, 141-42 (4th Cir. 2018). Ordinarily, authorities must have a warrant before searching a person's home. *Griffin v. Wisconsin*, 483 U.S. 868, 873 (1987). However, the Fourth Amendment allows for warrantless searches “when special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable.” *Id.* (internal quotation marks omitted). Special needs include a state's operation of its probation system. *Id.* at 873-74; *see United States v. Midgette*, 478 F.3d 616, 622-24 (4th Cir. 2007). The standard conditions of Snuggs' probation and § 15A-1343(b)(13) authorized law enforcement to search his home without a warrant, so long as the search

occurred (1) at a reasonable time, (2) when he was present, and (3) for a purpose “directly related to [his] supervision.” N.C. Gen. Stat. § 15A-1343(b)(13).

Snuggs first argues that the officers did not comply with these requirements because he was not present for the search. As Snuggs raises this argument for the first time on appeal, we review it for plain error. *United States v. Caldwell*, 7 F.4th 191, 211 (4th Cir. 2021). “To succeed in obtaining plain-error relief, a defendant must show (1) an error, (2) that is plain, (3) and that affects substantial rights, which generally means that there must be a reasonable probability that, but for the error, the outcome of the proceeding would have been different.” *Id.* (internal quotation marks omitted). If the defendant satisfies these requirements, we will grant relief only if the error “had a serious effect on the fairness, integrity[,] or public reputation of judicial proceedings.” *Id.* (internal quotation marks omitted). We have reviewed the record and conclude that Snuggs has failed to demonstrate that the district court plainly erred.

Snuggs also maintains that the search was part of a broader investigation unrelated to his probation supervision. However, the record demonstrates that the probation officers initiated the search because Snuggs, in violation of his probation, had tested positive for a controlled substance at least three times in the preceding 6 to 12 months. The search was initiated, therefore, “in direct response to [Snuggs’] actions, which not only violated [his] probation conditions but were also unlawful.” *State v. Lucas*, 880 S.E.2d 418, 430 (N.C. Ct. App. 2021) (finding search directly related to probation purposes where defendant’s positive drug tests prompted warrantless search to ensure she was complying with probation conditions). The district court correctly concluded that the search was directly

related to Snuggs’ supervision and thus complied with the statutory requirements for a probationer search. Therefore, “no Fourth Amendment violation occurred,” and we need not determine whether the officers had reasonable suspicion to conduct the search. *United States v. Scott*, 941 F.3d 677, 686 (4th Cir. 2019); *see id.* at 686 n.5 (noting that where warrantless search did not violate the Fourth Amendment under special needs exception established in *Griffin*, courts do not have to analyze constitutionality of search under Fourth Amendment balancing test).

Accordingly, we affirm the judgment of the district court. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA, Criminal Action
No. 1:22CR229-1
Plaintiff,
vs. Greensboro, North Carolina
February 10, 2023
MONTRESE ANTWAN SNUGGS,
Defendant.

TRANSCRIPT OF MOTION TO SUPPRESS PROCEEDINGS
BEFORE THE HONORABLE CATHERINE C. EAGLES
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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For the Defendant: AARON WELLMAN, ESQ.
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Proceedings reported by stenotype reporter.
Transcript produced by computer-aided transcription.

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I N D E X

GOVERNMENT'S WITNESSES:

DIRECT

CROSS

REDIRECT

Christopher Bittner

4

16

Donzel Spencer

23

30

Haley Kearns

38

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59

GOVERNMENT'S EXHIBITS

ADMITTED

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P R O C E E D I N G S

(Defendant was present.)

(Court in session at 9:34 a.m.)

THE COURT: Good morning. Go ahead.

MS. COURTNEY: The first matter for the Court is Mr. Montrese Antwan Snuggs, 1:22CR229-1, on for suppression motion. Mr. Snuggs is here present, represented by his attorney, Mr. Wellman.

THE COURT: I see a witness list here. I did read the motion and the response yesterday, and took a look at some of the cases, so I'm ready.

You may call your first witness.

MR. WELLMAN: Your Honor, very quickly before we start, I want to introduce my resident intern in our office, Nicollete Variolo (ph), and get Your Honor's permission for her to sit at the table.

THE COURT: Yes. Is she at Elon?

MR. WELLMAN: Yes.

THE COURT: Welcome. We are glad to have you here. Good morning, Mr. Wellman, and, Mr. Snuggs, I didn't speak to you all.

If all of the witnesses, when you step into the witness box if you feel comfortable, you can remove your mask, so every one can hear you better, and I can see your face.

(CHRISTOPHER BITTNER, GOVERNMENT WITNESS, WAS

1 **AFFIRMED.)**

2 **DIRECT EXAMINATION**

3 **BY MS. COURTNEY:**

4 **Q.** Please state your name for the Court.

5 **A.** Christopher Bittner.

6 **Q.** What is your occupation?

7 **A.** Probation parole officer for the State of North Carolina.

8 **Q.** Was Montrese Snuggs one of the probationers under your
9 supervision?

10 **A.** Yes.

11 **Q.** When was he placed on probation?

12 **A.** He was placed on probation April 5th of 2021.

13 **Q.** And what was his underlying conviction?

14 **A.** He was on probation for two cases. The first case, case
15 three, attempted trafficking of heroin by possession of four to
16 14 grams.

17 The second case, possession with intent to
18 manufacture, sell, deliver heroin and possession with intent to
19 manufacture, sell, deliver a schedule II controlled substance.

20 **Q.** What sentence did he receive?

21 **A.** On the first case, he received a 21 to 35 month sentence.
22 The second case, a 10 to 21 month sentence to be served
23 consecutive to the first case.

24 **THE COURT:** Both of those were suspended, I take it?

25 **THE WITNESS:** Yes, Ma'am.

1 **MS. COURTNEY:** How long were those suspended for?

2 **THE WITNESS:** Twenty-four months.

3

4 **BY MS. COURTNEY:**

5 **Q.** When a probationer is placed on supervision, do they have
6 an opportunity to review the conditions?

7 **A.** Yes.

8 **Q.** Would you please describe that process.

9 **A.** Essentially, once a probationer is placed on probation, we
10 will have the first appointment in the office with them. In
11 this case, it was on April 6th of '21, and that first
12 appointment is when we normally go over the conditions of
13 probation.

14 **Q.** Did you do that in Mr. Snuggs's case?

15 **A.** Yes, Ma'am.

16 **MS. COURTNEY:** Your Honor, may I approach?

17 **THE COURT:** You may.

18 **BY MS. COURTNEY:**

19 **Q.** I'm handing you what has been marked as Government's
20 Exhibits 1 through 4.

21 **A.** Okay.

22 **Q.** I would like to draw your attention to what has been marked
23 as Government's Exhibit 1.

24 **A.** Okay.

25 **Q.** Could you describe what that is?

1 **A.** Yes. That's our regular conditions of probation, also
2 known as DCC 117 form that we go over with offenders on that
3 first appointment.

4 **Q.** Had Mr. Snuggs initialed and signed that document?

5 **A.** Yes, Ma'am. He has initialed the entirety of the document.
6 He also signed on the back page, and these were all gone over
7 with him at that first appointment thoroughly in depth like
8 normal.

9 **Q.** Was one of the conditions of his probation that he submit
10 to warrantless searches of his premises?

11 **A.** Yes, Ma'am.

12 **Q.** And another condition of his probation that he not use,
13 possess or control any illegal drugs or controlled substances?

14 **A.** Yes, Ma'am.

15 **Q.** And he initialed both of those conditions?

16 **A.** Yes, he did. Yes, Ma'am.

17 **Q.** That's his signature on the bottom of that document?

18 **A.** Yes, Ma'am.

19 **MS. COURTNEY:** Government moves to admit Exhibit 1
20 into evidence.

21 **THE COURT:** It will be admitted.

22 **BY MS. COURTNEY:**

23 **Q.** Turning to May of 2021, did you file a probation violation
24 with the Court on May 26th of 2021, on Mr. Snuggs?

25 **A.** I did.

1 Q. And in that violation, you reported -- was it three
2 violations?

3 A. Just one second. Yes, Ma'am. There is three violations.

4 Q. And would you please describe those violations?

5 A. Yes, Ma'am. First violation in that defendant tested
6 positive for THC at a random drug screen at the office
7 appointment on April 27, '21. The defendant admitted to using
8 marijuana.

9 Second violation, not knowingly --

10 **THE COURT:** I'm sorry, slow down.

11 **THE WITNESS:** Not knowingly be present at or frequent
12 any place where illegal drugs are sold, kept or used, and that
13 from a police report filed on May 12th, '21, defendant was
14 present at the C Store, 401 East Salisbury Street, Asheboro, a
15 known location where illegal controlled substances have been
16 known sold, kept and used. Defendant was not at this location
17 for any legitimate purpose, instead, he was communicating
18 threats to two victim persons.

19 The third violation, the defendant has been charged
20 with new criminal offenses; assault on a female and
21 communicating threats in Randolph County case 21CR051462, on
22 May 5th of 2021.

23 Further, there is probable cause to believe that the
24 offender has continued this behavior from a report filed by the
25 Asheboro Police Department on May 12th, 2021, indicating that

1 on May 12th of 2021, at approximately 10:31 hours, Officer A.
2 Ayers responded to a residence in reference to communicating
3 threats. The complainant said they had went to the C Store at
4 401 East Salisbury Street in Asheboro, North Carolina and
5 Mr. Montrese Antwan Snuggs threatened him and another
6 individual at the store.

7 The complainant stated that Snuggs and another man
8 that goes by the nickname Squirrel, are going to try to kill
9 the original complainant and the complainant's spouse. The
10 male subject that goes by the nickname Squirrel, is believed to
11 be Mr. Trenton Leach.

12 Complainant stated that the second individual who was
13 threatened had been selling drugs for Mr. Snuggs and something
14 happened to make Mr. Snuggs very angry. The original
15 complainant stated that the second threatened individual told
16 them that they were scared for their life and were worried that
17 they were going to be killed.

18 **Q.** And if I could draw your attention to what has been marked
19 as Government's Exhibit 2. Is that the probation violation that
20 you filed against Mr. Snuggs on May 26th of 2021?

21 **A.** Yes, it is.

22 **Q.** Is that your signature on the probation violation?

23 **A.** Yes, it is.

24 **Q.** Is that Mr. Snuggs's signature on the probation violation?

25 **A.** Yes.

1 **MS. COURTNEY:** Government moves to admit what has
2 been marked as Government's Exhibit 2 into evidence.

3 **THE COURT:** It will be admitted.

4 **BY MS. COURTNEY:**

5 **Q.** With respect to violations two and three, the incident on
6 May 12th where Mr. Snuggs was alleged to have --

7 **THE COURT:** When you looked down, I lost your voice.

8 **BY MS. COURTNEY:**

9 **Q.** I'm sorry. Where Mr. Snuggs was alleged to have been at
10 the C Store, did you see a police report from the Asheboro PD
11 with respect to that incident?

12 **A.** I did.

13 **Q.** Would you please describe the C Store in Asheboro?

14 **A.** C Store is essentially -- it is a local grocery mart,
15 convenience store, also commonly known as a known drug area in
16 Asheboro.

17 **Q.** Are you aware of any shootings in the vicinity of C Store?

18 **A.** I have been made aware of numerous shootings in the area.

19 **Q.** And with respect to the police report that you received,
20 officers with Asheboro Police Department spoke to a Ms. Hattea
21 Johnson?

22 **A.** Yes, Ma'am.

23 **Q.** And when was Ms. Johnson -- what year was she born in?

24 **A.** 1946.

25 **Q.** And what did she say? What did she report to the police

1 officers?

2 **A.** Ms. Johnson stated she went to the C Store and Mr. Montrese
3 Antwan Snuggs threatened her and Mr. Colby Slade Johnson.

4 Ms. Johnson stated that Mr. Snuggs --

5 **THE COURT:** Read slow.

6 **THE WITNESS:** And another man that goes by the
7 nickname Squirrel are going to try to kill her and Mr. Johnson.
8 The male subject that goes by Squirrel, is believed to be
9 Mr. Trenton Leach.

10 **THE COURT:** This just repeats what's in the probation
11 violation. Can we --

12 **MS. COURTNEY:** Yes, Your Honor.

13 **BY MS. COURTNEY:**

14 **Q.** Do you know of Mr. Leach's previous convictions?

15 **A.** Yes, Ma'am. He's had numerous convictions for very serious
16 felony offenses.

17 **Q.** Would those include drug convictions?

18 **A.** Yes.

19 **Q.** And voluntary manslaughter?

20 **A.** I believe so, yes.

21 **Q.** And Mr. Colby Johnson, who Ms. Hattea Johnson said had been
22 selling drugs for Mr. Snuggs, what year was Mr. Colby Johnson
23 born in?

24 **A.** I believe that was 2001.

25 **Q.** And do you -- if you would take a moment to review what has

1 been marked as Government's Exhibit 3 for identification
2 purposes. Is that the police report that you received regarding
3 the incident at the C Store?

4 **A.** Yes.

5 **MS. COURTNEY:** Your Honor, Government would move to
6 admit Government's Exhibit 3 into evidence.

7 **THE COURT:** It will be admitted.

8 **BY MS. COURTNEY:**

9 **Q.** On August 11th of 2021, was there a hearing in Randolph
10 County Superior Court regarding these alleged violations?

11 **A.** Yes, Ma'am.

12 **Q.** And did the Court find Mr. Snuggs in violation of those
13 alleged in counts -- violations one and two?

14 **A.** Yes, they did.

15 **Q.** And then did the Court find that Mr. Snuggs was in
16 violation of that alleged in paragraph three, but it was
17 excused?

18 **A.** Yes, Ma'am.

19 **Q.** And those would be the ones alleging the misdemeanor
20 convictions of the assault on a female and communicating threats
21 from May 5th?

22 **A.** Yes.

23 **Q.** And what did the Court do with respect to these violations?

24 **A.** So on that date, they continued the offender on probation
25 and they added the condition that he not go on or about the

1 property of the C Store and Kylco (ph) Grocery Store located on
2 Salisbury Street in Asheboro, North Carolina.

3 **Q.** What is Kylco Store?

4 **A.** Another grocery store, convenience mart that is right
5 across the street.

6 **Q.** I draw your attention to what has been marked as
7 Government's Exhibit 4. Is that the order modifying
8 Mr. Snuggs's probation due to his violations?

9 **A.** Yes, Ma'am.

10 **MS. COURTNEY:** Government would move the probation
11 violation and modification order.

12 **THE COURT:** Can you hand me that?

13 **THE WITNESS:** Yes, Ma'am. Do you want all four?

14 **THE COURT:** Hold on just a second. Out of curiosity,
15 they had the nerve to change things in superior court since I
16 left in 2010, and this validly excused language, if it was
17 there, I would remember it, which isn't to say it wasn't there.
18 What does that mean? Do you all know, "validly excused?" Is
19 it a legal term or is it some factual term? I mean, if you all
20 don't know, you can ask the witness.

21 **THE WITNESS:** Your Honor, I think --

22 **THE COURT:** She'll ask. I thought it might have some
23 statutory definition, but otherwise -- okay, go ahead.

24 **BY MS. COURTNEY:**

25 **Q.** What was your understanding of the finding that the

1 violation alleged in paragraph three was validly excused?

2 **A.** I'm not aware of any statutory finding as far as that goes,
3 but I believe because the pending charge was dismissed
4 beforehand, and also the police report, there was no actual
5 charge filed on the police report, so they decided to excuse
6 that violation.

7 **Q.** And so for clarification, the assault on a female and the
8 communicating threats from May 5th had been dismissed, is that
9 right?

10 **A.** Yes, Ma'am.

11 **Q.** And then the incident that happened at the C Store, no
12 charges were ever taken out in that incident?

13 **A.** No charges, correct.

14 **THE COURT:** And the violation, there is new crimes,
15 is that what the violation was?

16 **THE WITNESS:** Yes, Ma'am. That was the third
17 violation.

18 **THE COURT:** What two? What year are we in?

19 **MS. COURTNEY:** August of 2021.

20 **THE COURT:** Thank you. Go ahead.

21 **BY MS. COURTNEY:**

22 **Q.** Once Mr. Snuggs tested positive at the random drug
23 screening on April 27 of 2021, did you do anything in response
24 to that positive drug test?

25 **A.** Yes, Ma'am. I referred him to our drug treatment program

1 called TASK, Treatment Accountability For Safer Communities.

2 **Q.** Would you please describe Mr. Snuggs's -- whether he was
3 able to successfully complete his TASK classes.

4 **A.** He did not successfully complete. He was discharged from
5 TASK.

6 **Q.** And do you know why he was discharged from TASK?

7 **A.** For drug use, just noncompliance with the program.
8 Continued drug use.

9 **Q.** Did you -- were other drug tests administered to Mr. Snuggs
10 besides that April 27th one?

11 **A.** Yes, Ma'am.

12 **Q.** Can you please describe the dates that Mr. Snuggs tested
13 positive for controlled substances?

14 **A.** Yes, Ma'am. He tested positive for marijuana on all of the
15 following dates: July 30th, 2021, October 20th, 2021,
16 November 3rd, 2021, December 3rd, 2021, February 2nd of 2022,
17 March 4th of 2022, and April 5th of 2022.

18 **Q.** Did you or any one ever talk to Mr. Snuggs about his
19 continued drug use?

20 **A.** Yes.

21 **Q.** When did that occur?

22 **A.** Normally it would occur right after he had tested positive
23 in the probation office. We discouraged him to continue use
24 approximately eight times, after each and every positive.

25 **Q.** Was anything else done to address the continued positive

1 drug tests?

2 **A.** I mean, he was violated on probation for those as well.

3 **Q.** Were any other classes recommended or ordered?

4 **A.** Yes. We actually referred -- we did a delegated authority
5 and sent him to CBI class, which is a behavior and goals class
6 called Cognitive Behavior Intervention.

7 **Q.** When was he ordered to take those?

8 **A.** December -- just one second. December 17, 2021.

9 **Q.** Did he successfully complete his cognitive behavioral
10 intervention classes?

11 **A.** No, Ma'am. He was discharged on May 5th of 2022.

12 **Q.** Why was he discharged?

13 **A.** For continued substance abuse with marijuana. I believe
14 lack of progress in completing the program.

15 **Q.** Turning your attention to May 13th of 2022, could you
16 please describe your knowledge of the probation office's attempt
17 to search Mr. Snuggs's residence on that day?

18 **A.** Yes, Ma'am. I was leaving court that day and I received a
19 call from Officer Haley Kearns. She stated that her and other
20 probation officers were going to complete a compliance check on
21 the offender Mr. Montrese Snuggs on that date.

22 **Q.** And did she state why they were having the compliance check
23 done at his residence?

24 **A.** Yes, Ma'am. On that day it was for positive drug screens,
25 general noncompliance, and for what he is on probation for

1 currently.

2 **Q.** And did you have any further communication with her that
3 day regarding either attempting to search or what had occurred
4 after the search?

5 **A.** Yes, Ma'am. She generally kept me up-to-date with
6 everything that was going on that day.

7 **THE COURT:** When you called her "officer," she's
8 another probation officer?

9 **THE WITNESS:** Yes, Ma'am.

10 **THE COURT:** Go ahead.

11 **MS. COURTNEY:** Your Honor, those would be the
12 Government's questions. Tender the witness.

13 **THE COURT:** Mr. Wellman.

14 **MR. WELLMAN:** Thank you, Your Honor.

15 **CROSS-EXAMINATION**

16 **BY MR. WELLMAN:**

17 **Q.** Officer Bittner, have you been the only supervising officer
18 for Mr. Snuggs?

19 **A.** For this probation sentence, yes.

20 **Q.** So you initially saw him on April 6, 2021?

21 **A.** Yes, sir.

22 **Q.** And at that time, it was made clear to him that he
23 would -- that a condition of probation was to submit to
24 warrantless searches?

25 **A.** Yes, sir.

1 Q. Was there -- were there any, I suppose details given to him
2 as to how those searches may be conducted?

3 A. Yes. When I go over the conditions of probation, like I
4 said, I go over them thoroughly. I especially point out the
5 warrantless searches in that he is subject to warrantless
6 searches while he is on probation, and also that any probation
7 officer in the State of North Carolina is allowed to conduct a
8 compliance check at his residence.

9 Q. Okay. I heard that towards the end there, that this was a
10 compliance check. Is that a term that is used within the
11 probation office?

12 A. Yes, sir.

13 Q. What does that mean?

14 A. Compliance check is basically -- it is the warrantless
15 search that we do to make sure a probationer or somebody on
16 post-release or parole is in compliance with their conditions of
17 probation.

18 Q. So the compliance check specifically means that this will
19 be a warrantless search?

20 A. Yes, sir.

21 Q. Is that something that is unannounced?

22 A. Yes, sir.

23 Q. So each time there is a compliance check, it is always
24 unannounced?

25 A. Yes, sir.

1 **Q.** Is there a procedure for officers who contact probationers
2 to perform a compliance check? Is there a procedure insofar as
3 that the probationer is contacted at the time of the check?

4 **THE COURT:** What?

5 **BY MR. WELLMAN:**

6 **Q.** Understanding that it is unannounced, at the time of
7 arrival when contact is made, is there a procedure -- is there
8 paperwork or anything like that that is discussed with the
9 probationer?

10 **A.** As for paperwork to conduct the warrantless search, no. On
11 that paperwork is the condition of probation where they are
12 subject to the searches.

13 As far as the procedure for initiating the search, go
14 to the residence, tell the offender that we are there to
15 conduct a compliance check, warrantless search of the
16 residence.

17 **Q.** Okay. And the condition of probation is that they must
18 submit at that time?

19 **A.** Yes, sir.

20 **Q.** In the circumstance where the offender does not submit,
21 what is the procedure?

22 **A.** The procedure, if they deny the warrantless search, they
23 are placed under arrest and violated for failure to allow
24 warrantless searches at the residence.

25 **Q.** Are the searches conducted any way, absent a warrant?

1 **A.** Yes, sir. I mean, he's subject to warrantless searches, so
2 no warrant from a probation officer is necessary.

3 **Q.** So when a probationer does not submit, they are arrested
4 for violating and the premises is searched?

5 **A.** No, sir.

6 **Q.** Okay.

7 **A.** No, sir. If they deny the warrantless search, they are
8 arrested on that probation violation and we do not conduct the
9 search.

10 **Q.** All right. Had there been any previous compliance checks
11 for Mr. Snuggs before May 13th?

12 **A.** Not in this period of probation, no.

13 **Q.** You indicated that Officer Kearns notified you that there
14 was a compliance check and it was for positive screens,
15 generally noncompliance, and the nature of the charges?

16 **A.** Yes, sir.

17 **Q.** General noncompliance, had Mr. Snuggs -- had he been
18 missing office visits with you?

19 **A.** Up to that point, no.

20 **Q.** Had he at any time -- was there a concern that he was
21 changing his address or trying to leave the area?

22 **A.** No, sir.

23 **Q.** Was he subject to any curfew or anything of that nature?

24 **A.** He was originally ordered to electronic monitoring for a
25 small period of time, which he completed.

1 Q. So he had successfully completed the electronic monitoring?

2 A. Yes.

3 Q. Now Mr. -- you relayed the positive tests, but Mr. Snuggs
4 had managed to submit a couple of negative tests, correct?

5 A. Yes, sir.

6 Q. And the previous positive test prior to May 13th, was on
7 April 5th, 2022?

8 A. I believe so. I don't have those dates in front of me.

9 THE COURT: You don't have the dates of the negative
10 tests?

11 MR. WELLMAN: Of the negative tests.

12 THE COURT: You asked him about the positives?

13 BY MR. WELLMAN:

14 Q. Just the previous tests period.

15 Prior to the May 13th, the last test of any type
16 would have been on April 5th of 2021, 2022?

17 A. Yes, sir, it was positive.

18 Q. But he was not tested, or I should say was he tested -- you
19 saw him after that, though, correct?

20 A. I believe so.

21 Q. There was a violation report from May 6, 2022.

22 A. Yes.

23 Q. And did you see him that day?

24 A. I did, yes.

25 Q. He was served with a violation report that day?

1 **A.** Yes, sir.

2 **Q.** And the violations were for being discharged from CBI and
3 for positive tests, correct?

4 **A.** Yes, sir.

5 **Q.** So no other violations at that time were for any type of
6 general noncompliance as you've described it?

7 **A.** No, sir, not on that date.

8 **Q.** And is that the -- that's the only paper that was filed
9 between the August 2021 hearing and the May 13th compliance
10 check?

11 **A.** Yes.

12 **Q.** So you received a call from Officer Kearns on May 13th.

13 **A.** I did, yes.

14 **Q.** And before then, you were unaware of any plan to search
15 Mr. Snuggs's residence?

16 **A.** Correct.

17 **Q.** Have you attended those types of searches?

18 **A.** Yes.

19 **Q.** We heard a bit about the C Store and the other store across
20 the street -- strike that, Your Honor. I have no need to
21 discuss that. One moment.

22 Regarding marijuana tests, what is your understanding
23 as to how long THC will stay in a subject's system or blood or
24 so forth following the use of marijuana?

25 **A.** It is normally about 30 days.

1 Q. So the positive tests from April 5th, 2022, it was over 30
2 days before that compliance check was completed on May 13th,
3 isn't that right?

4 A. Can you say that question one more time, sir?

5 Q. Between April 5th of 2022 and May 13th of 2022, that was
6 more than 30 days?

7 A. Yes, sir.

8 Q. And you did not test Mr. Snuggs when you saw him on -- and
9 served him with the violation on May 6th?

10 A. I did not.

11 Q. Just to clarify, the charges that were the subject of the
12 2021 violation report, no convictions resulted from those
13 charges, did they?

14 A. Correct.

15 Q. We heard about the additional condition of going on or
16 about those two stores. Was there a belief that following
17 August -- did you all think he was going to those stores?

18 A. I wasn't aware that he had gone there after that date.

19 MR. WELLMAN: Nothing further, Your Honor.

20 THE COURT: Anything else for the Government?

21 MS. COURTNEY: No, Your Honor. Thank you.

22 THE COURT: Thank you. You may step down. You can
23 call your next witness.

24 MS. COURTNEY: Government calls Denzel Spencer.

25 (DENZEL SPENCER, GOVERNMENT WITNESS, WAS AFFIRMED.)

1 **THE COURT:** You can put your mask -- Mr. Spencer, you
2 can take your's off so we can hear you better during your
3 testimony. Go ahead.

4 **DIRECT EXAMINATION+**

5 **BY MS. COURTNEY:**

6 **Q.** Please state your name.

7 **A.** Denzel Spencer.

8 **Q.** What is your occupation?

9 **A.** Probation parole, State of North Carolina.

10 **Q.** And were you involved in the attempted search of
11 Mr. Snuggs's residence on May 13th of 2022 or the subsequent
12 search of his residence?

13 **A.** Yes.

14 **Q.** What was your role in that?

15 **A.** I was the lead of that search.

16 **Q.** And has Mr. Snuggs ever been under your supervision?

17 **A.** Yes.

18 **Q.** Would you please describe that term of supervision.

19 **A.** He was on probation with me in April 2016, and he was
20 revoked from probation in August of 2016.

21 **Q.** And was he with you originally from the time of his
22 conviction or was he transferred to you?

23 **A.** He was transferred to me because I just transferred in from
24 another county.

25 **Q.** And why was he revoked in August of 2016?

1 **A.** He had a violation of absconding. He failed to be
2 installed on the EM monitor. There was some curfew violations,
3 and he was supposed to do TASK and he never did TASK and failed
4 to report.

5 **Q.** Do you recall -- and then was he also supervised during
6 that term of imprisonment after his probation violation in
7 August?

8 **A.** He was. He was on post-release.

9 **Q.** Are you aware of any violations on post-release
10 supervision?

11 **A.** He had Officer Gloshetz (ph), I believe, that started in
12 April of 2017. He was revoked from that post-release June of
13 2017, and he had some EM violations.

14 **THE COURT:** EM being electronic monitoring?

15 **THE WITNESS:** Yes, Ma'am.

16 **THE COURT:** Okay.

17 **THE WITNESS:** I know EM violations, and going to the
18 C Store where he was tracked, and I believe some fail to report
19 at that time.

20 **BY MS. COURTNEY:**

21 **Q.** Do you recall if he had any positive drug screens then?

22 **A.** To my knowledge, I believe he did have some positive drug
23 screens on that violation report as well.

24 **Q.** Turning to May 13th of '22, who decided that Mr. Snuggs's
25 house would be searched that day?

1 **A.** I did.

2 **Q.** What was your search criteria?

3 **A.** I went to our database that's in our system, and I put into
4 the database anyone that's on supervised probation or
5 post-release that had tested positive three or more times within
6 the past six to 12 months.

7 **Q.** And why did you choose that as your criteria?

8 **A.** In that time, that was one of the big things in our office,
9 was a lot of people coming in testing positive for various
10 substances.

11 **Q.** Could you please describe what occurred when you went to
12 821 Brewer Street on that day?

13 **THE COURT:** So you did a global review of all
14 probationers, is that what you said?

15 **THE WITNESS:** Yes, Ma'am, in Randolph County.

16 **THE COURT:** And I take it the defendant's name showed
17 up?

18 **THE WITNESS:** Yes, Ma'am.

19 **THE COURT:** Okay. Go ahead.

20 **BY MS. COURTNEY:**

21 **Q.** Would you please describe when you went to the residence
22 that day.

23 **A.** Whenever we approached, I went to the front door. There
24 was a glass screen door there that was locked. The door into
25 the home was open, so we could see inside of the residence. I

1 continued to knock, announcing as being with probation. No one
2 ever came to the door. I could look through the glass.

3 On the table we did see what at that time before
4 entering was a green vegetable matter that was in bags, so I
5 looked at the other officer --

6 **THE COURT:** Slow down. You saw a green vegetable
7 matter on the coffee table. You looked at the other officer
8 and then what?

9 **THE WITNESS:** I stated to him, I said, It looks as if
10 there is some marijuana sitting on the table. I continued to
11 knock on the door. I continued to call his name, Montrese,
12 open the door. No one came to the door.

13 After a few minutes later, I heard Officer Kearns
14 come around from the corner of the residence saying, hey, there
15 is someone out the back window with a long stick pushing a bag
16 down. I left from the front porch. I walked to the back of
17 the residence myself, where I seen a black arm out the window
18 with a brown-handled stick, pushing a bag down the side of the
19 home in between the home and a metal object.

20 After that, the bag was not closed so you could see
21 inside the bag, but he couldn't get it all the way down because
22 I yelled out, I said, Montrese, just come to the door. Then
23 the stick and arm went in and the window was shut and a blind
24 was shut. Couldn't nobody see inside.

25 I looked in the bag where it was open on the top.

1 There was another small bag with the same green vegetable-like
2 matter. I then went back to the front. I told the other
3 officer there, I said, there appears to be some marijuana in
4 the bag in back in the bag that was being smashed down.

5 As I came back onto the front porch, Mr. Snuggs was
6 standing right there in the living room. I opened the screen
7 door and he said, you all come on, come on, come on, I'm
8 embarrassed.

9 I immediately put him in handcuffs at that time. I
10 told him at that time we were here to do a warrantless search.
11 He said, okay. I asked him, you know, is there anything we
12 need to know about? He said, look, I just want to talk to the
13 VICE, just call VICE, I want to talk to VICE.

14 At that time I stayed in the residence with
15 Mr. Snuggs and me and him had a conversation.

16 **Q.** When you arrived at the residence, were there any vehicles
17 parked out front?

18 **A.** Yes.

19 **Q.** What were those two vehicles?

20 **A.** There was a silver in color Mercedes, I believe it was, and
21 then there was a white in color SUV.

22 **Q.** Were you familiar with either one or both of those cars?

23 **A.** Yes.

24 **Q.** How were you familiar with them?

25 **A.** Those are the two vehicles that Mr. Snuggs had been seen

1 and known to drive.

2 **THE COURT:** What time was this, roughly?

3 **THE WITNESS:** It was in the afternoon, I would say
4 around about 1530 hours, about 3:30.

5 **BY MS. COURTNEY:**

6 **Q.** And did you make any observation with respect to odors in
7 the area of the front porch?

8 **A.** Yes. As we walked up to the home, you could smell the odor
9 of marijuana, just as you walked up to the door.

10 **Q.** Could you determine roughly about how many bags of
11 marijuana you observed through the front door?

12 **A.** It was about three or four small bags sitting on the table.

13 **Q.** Were you familiar with a dog that was chained in the back?

14 **A.** Yes.

15 **Q.** How so?

16 **A.** Typically every time that I have known or seen Mr. Snuggs,
17 if the dog was around, he was around, or if the dog is there, he
18 is in that facility somewhere.

19 **Q.** And did you relay to Ms. Kearns what you had seen on the
20 coffee table?

21 **A.** I did.

22 **Q.** Did you have any information from the Asheboro PD with
23 regard to any criminal activities that Mr. Snuggs may have been
24 involved in?

25 **A.** Yes. There was a conversation that it was believed that he

1 had been selling but, you know, they just -- you know, just been
2 seeing different things happening, traffic come in and out of
3 the area of his home.

4 **MR. WELLMAN:** I'll object to this.

5 **THE COURT:** I mean, I'm not going to consider it for
6 the truth of this, but for the truth of whether he was told it.
7 I mean, that seems to be relevant and material, so go ahead,
8 you can answer.

9 **THE WITNESS:** It is just the fact that they said
10 there was a lot of traffic in and out of his residence and that
11 it appeared that he had been selling.

12 **BY MS. COURTNEY:**

13 **Q.** Do you remember if you told that to Ms. Kearns as well?

14 **A.** Yes.

15 **THE COURT:** Do you remember if who told it?

16 **BY MS. COURTNEY:**

17 **Q.** If you told Ms. Kearns that information?

18 **A.** Yes.

19 **MS. COURTNEY:** Your Honor, may I approach?

20 **THE COURT:** Yes.

21 **BY MS. COURTNEY:**

22 **Q.** Mr. Spencer, I handed up what has been marked as
23 Government's Exhibit 5. Can you describe what is in that
24 photograph?

25 **A.** It is the clear bags that I seen or observed while looking

1 through the glass door.

2 **Q.** And that would be of the green vegetable matter that you
3 observed?

4 **A.** Yes.

5 **Q.** And in your training and experience, what do you believe
6 that to be?

7 **A.** Marijuana.

8 **MS. COURTNEY:** Your Honor, Government would move to
9 admit Government's Exhibit 5.

10 **THE COURT:** It is admitted.

11 **THE WITNESS:** Your Honor, those would be the
12 Government's questions. Tender the witness.

13 **THE COURT:** Questions.

14 **MR. WELLMAN:** Thank you, Your Honor.

15 **CROSS-EXAMINATION**

16 **BY MR. WELLMAN:**

17 **Q.** Officer Spencer, so you said you were the lead of this
18 search, of this compliance check?

19 **A.** Yes.

20 **Q.** So did you put together the plan that law enforcement would
21 sort of abide by in executing this search?

22 **A.** In every search that we do, we always request assistance
23 from the local agency or the sheriff's department to come and
24 assist us with the search.

25 **Q.** So there is no plan, it is just call Asheboro Police and

1 they are going to be there?

2 **A.** Yes.

3 **Q.** So the -- is there an -- understanding there is not a plan
4 for that one, but are there any sort of rules as to how a home
5 search is to be completed?

6 **A.** Yes. Any time there is a warrantless search that is done
7 by probation, we are the ones that take the lead of that search.
8 We will make contact with the individual that is on probation or
9 post-release. We'll advise them of our reason for being at the
10 residence.

11 At that time when we do our search of the residence,
12 local law enforcement is allowed to search with us, doing that
13 initial search.

14 **Q.** It is a part of the procedure that local law enforcement
15 will begin the search prior to making contact with the
16 probationer?

17 **A.** No. If they're on supervision, we will be the ones to take
18 the lead of that search first, and we will make the contact. We
19 will go into the residence and we will advise the individual of
20 our purpose in being there.

21 **Q.** The local law enforcement, so they are there for support,
22 is what you are telling me?

23 **A.** Yes.

24 **Q.** Mr. Snuggs lived in a house, correct?

25 **A.** Yes.

1 Q. So a house that is all his own on a piece -- with a yard
2 and property around it, correct?

3 A. Yes.

4 Q. Is it part of probation's procedures for the assist
5 officers, the support officers to surround that home from every
6 angle?

7 A. Yes.

8 Q. So even going into the probationer's backyard?

9 A. Yes.

10 Q. And that's although going into the backyard is a search in
11 and of itself, is that right?

12 THE COURT: Well, sustained. I mean, that's a
13 legal -- are you asking him -- I don't know that that's
14 helpful, but go ahead, you can answer.

15 THE WITNESS: Repeat the question, please.

16 THE COURT: I mean, Mr. Wellman, I'm not sure where
17 you're going with this. We all know people run. People throw
18 things out windows. I mean, what is --

19 BY MR. WELLMAN:

20 Q. So this search actually begins upon your arrival at the
21 location, correct?

22 A. Yes.

23 Q. By surrounding the home?

24 A. That is what we do to secure the residence, all exits and
25 entrances of the home, even in the back, just because some

1 properties may have buildings on the property, so what we do is,
2 make sure that every one is safe first, make sure no one has
3 weapons or anything like that as we approach before we enter
4 into the residence, and then when we enter the residence, as I
5 stated, we will inform the individual of our purpose for being
6 there and then we always go through the residence. We will
7 clear the residence, making sure that there is no one in the
8 home that may be hiding, trying to harm us or hurt us, and once
9 every one is secured, then we begin to do our search of the
10 residence.

11 **Q.** In this particular case, there were -- to your knowledge,
12 there were officers in the backyard prior to Officer Kearns
13 notifying you of what she saw?

14 **A.** Officer Kearns was in the back side, on this side. The
15 Asheboro PD officer was standing beside me. There was an
16 officer on this side of the residence. Officer Kearns came from
17 this side of the residence and she said, I see someone out the
18 window pushing something down the side of the home, and that's
19 when I went around to the back to basically see myself.

20 **Q.** This side, that side, just to clarify, Officer Kearns is to
21 the right of you as you face the house?

22 **A.** Yes.

23 **Q.** And there was an officer on the front corner to your left?

24 **A.** Yes.

25 **Q.** And there was also an officer around the back to your left.

1 **A.** . I can't say who was around back. All I know is, there
2 was an officer standing right here besides me toward my back.
3 There was one standing right over here. Now if there was an
4 officer in the very back -- Officer Kearns was on the back side
5 where the dog was, on the right side of the residence.

6 **Q.** The dog is tied up to the back porch?

7 **A.** Yes.

8 **Q.** All right. So when you walked up to the porch, you've
9 testified that the -- you said screen door. Was it sort of like
10 a glass storm door, correct?

11 **A.** Yes.

12 **Q.** So it wasn't -- I mean, was it actually screened or was it
13 a glass barrier?

14 **A.** It was glass.

15 **THE COURT:** Like a storm door, I guess they call
16 those?

17 **THE WITNESS:** Yes, Ma'am.

18 **BY MR. WELLMAN:**

19 **Q.** And that door was locked?

20 **A.** Yes.

21 **Q.** And you said it was about 3:30 in the afternoon. What was
22 the weather like?

23 **A.** Sunny.

24 **Q.** And this was in May?

25 **A.** Yes.

1 Q. And to your knowledge, at that time was Mr. Snuggs under
2 any obligation to be present at his home?

3 A. Other than the vehicles being there, that was the only
4 thing that we knew he may be there, plus that dog was there and
5 the dog was outside.

6 Q. What I'm asking you, was he under an obligation to be home?

7 A. Oh, no.

8 Q. So there would have been absolutely nothing wrong or no
9 violation whatsoever, had he been walking around the
10 neighborhood or anything like that?

11 A. No.

12 Q. Or if someone had come and picked him up and driven him
13 somewhere?

14 A. No.

15 Q. And the storm door was locked?

16 A. Yes.

17 Q. All right. We saw a little bit from that photograph that
18 was submitted. The table that you've testified you were able to
19 observe, that was the one that is kind of behind the front door,
20 correct?

21 A. It sits beside the front door, yes.

22 Q. Can you describe sort of the -- I guess the manner in which
23 the actual front door, not the storm door, but the front door,
24 how that door was ajar?

25 A. It opened up to my left in.

1 Q. Okay.

2 A. Which is where the wall is, and right beside it as you open
3 the door was the table that had the TV straight in front as you
4 looked in the glass there was a small table, glass table there.
5 To the right here, there was a couch and to the right against
6 that wall was a loveseat and there was a coffee table that sat
7 right in the middle of the floor.

8 Q. Okay. And you could see all of that through the door that
9 was ajar?

10 A. Yes.

11 THE COURT: Can we move along.

12 BY MR. WELLMAN:

13 Q. So as far as putting in the database, you said you just did
14 a general search for any one with three positive tests, three or
15 more positive tests, you said within the last six to 12 months.
16 Which one was it?

17 A. Six to 12 months, yes.

18 Q. So any one with three positive tests within 12 months would
19 have been subject to that compliance check?

20 A. Yes.

21 Q. All right. And that was the basis for your decision to go
22 search Mr. Snuggs's home?

23 A. Yes.

24 Q. You described, I guess some talk about traffic in and out
25 of his home, of Mr. Snuggs's home, correct?

1 **A.** Yes.

2 **Q.** Were you supervising or staking out his home during that
3 time period?

4 **A.** No.

5 **Q.** Was Mr. Snuggs under any condition of probation that
6 restricted visitors to his home?

7 **A.** Other than what the conditions say, not to frequent with
8 known possessors or selling of illegal substances, that's it.

9 **Q.** But certainly no condition saying he's not allowed to have
10 visitors to his home?

11 **A.** No.

12 **Q.** So as far as what you can tell us today, there was
13 suspicion based on traffic in and out of the home, but you can't
14 tell us the frequency or the nature of that traffic?

15 **A.** No.

16 **MR. WELLMAN:** One moment, Your Honor.

17 Nothing further, Your Honor.

18 **THE COURT:** Redirect?

19 **MS. COURTNEY:** No redirect, Your Honor.

20 **THE COURT:** Any further evidence for the Government?

21 **MS. COURTNEY:** Government calls Ms. Haley Kearns.

22 **THE COURT:** Go ahead.

23 **(HALEY KEARNS, GOVERNMENT WITNESS, WAS AFFIRMED.)**

24 **DIRECT EXAMINATION**

25

1 **BY MS. COURTNEY:**

2 **Q.** Please state your name.

3 **A.** Officer Haley Kearns.

4 **Q.** What is your occupation?

5 **A.** Probation parole officer for State of North Carolina.

6 **Q.** You were involved in the attempted search and subsequent
7 search of Mr. Snuggs's residence back on May 13th of 2022?

8 **A.** Yes, Ma'am.

9 **Q.** Did you have any knowledge of Mr. Snuggs prior to May 13th
10 of 2022?

11 **A.** I had had a few interactions with him, yes, Ma'am.

12 **Q.** Could you just please briefly describe those interactions?

13 **A.** Yes. One of his child's mothers, Allison McNeil, she was
14 on probation in 2020, and -- excuse me, 2021, and we had done a
15 search of the residence then.

16 **THE COURT:** His residence?

17 **THE WITNESS:** Yes, Ma'am.

18 **THE COURT:** Okay.

19 **THE WITNESS:** Sorry. And I had -- I worked on a call
20 for electronic monitoring, and I had a couple of interactions
21 with him while he was on electronic monitoring.

22 **BY MS. COURTNEY:**

23 **Q.** During that search, you said -- did you say in April of
24 2020?

25 **A.** January of 2021 -- excuse me, maybe January of 2020.

1 Q. Was anything uncovered during that search?

2 A. We did find some kind of like freezer seal bags that did
3 have a green leafy substance residue inside of those.

4 Q. From your training and experience, what did you believe
5 that green leafy residue or substance to be?

6 A. Marijuana.

7 Q. Turning back to May 13th of 2022, had you received any
8 information regarding the possibility of Mr. Snuggs selling
9 drugs from his house?

10 A. I had been informed -- or at the same time as Officer
11 Spencer from APD that, again, there was traffic at his house and
12 the possibility, yes.

13 Q. Probation Officer Bittner had --

14 THE COURT: So APD means?

15 THE WITNESS: Asheboro Police Department.

16 THE COURT: Okay.

17 BY MS. COURTNEY:

18 Q. And Probation Officer Bittner had testified previously,
19 that you had reached out to him earlier in the day regarding the
20 search.

21 A. Yes, Ma'am.

22 Q. Would you please describe that conversation.

23 A. I had just notified him what Officer Spencer had put
24 together and that he was on the list, wasn't sure if we would
25 get to him, just because there was other people that were

1 searched that day as well. But I wanted to give him a head's up
2 that we would be searching.

3 Q. And Mr. Bittner was in court?

4 A. Yes, Ma'am.

5 Q. And did you have any further communications with Probation
6 Officer Bittner that day?

7 A. Yes. Once we got to the house and we were knocking, I
8 called to let him know that we were there, and the door was
9 open, that we had tried to call him and maybe if he called him,
10 just to have him come to the door.

11 Q. And then once the items were found in the backyard, did you
12 update Mr. Bittner at any point?

13 A. Yes, Ma'am.

14 Q. Could you please describe what occurred when you arrived at
15 the residence?

16 A. When we arrived, Officer Spencer took the front door. I
17 went to the right corner where the dog was on the side, and
18 that's pretty much where I stayed, until we executed the search
19 inside, just kind of like my side, that was the parameter there.

20 Q. Were you familiar with either of the cars that were out
21 front?

22 A. The Escalade, yes, Ma'am.

23 Q. How were you familiar with it?

24 A. Just from previous knowledge of going to his residence and
25 seeing it around him.

1 Q. Did you know Mr. Snuggs to drive that Cadillac Escalade?

2 A. Yes, Ma'am.

3 Q. And what was your knowledge about what was observed at the
4 front door?

5 A. Officer Spencer did make us aware that he did smell
6 marijuana and that he had observed the Baggies on the table.

7 Q. Were you familiar with the dog that was chained in the
8 back?

9 A. I knew that he had a dog. I did know that much.

10 Q. And how did you know that he had dogs?

11 A. Previous searches and the electronic monitoring incident.

12 Q. And what was the dog initially doing when you were at the
13 side of the house?

14 A. The dog was chained up to the porch, barking a lot.

15 Q. And what did you see the dog do?

16 A. The dog had ran up the back steps after standing there
17 barking at the house, kind of watching us for the time we were
18 out there. All of a sudden the dog ran up the back steps, so I
19 went over to see what the dog was running to.

20 Q. Could you describe and possibly use a landmark where you
21 went to stand when you observed what was occurring outside the
22 back of Mr. Snuggs's house?

23 A. I stood on the opposite side -- I call it a grapevine that
24 is right there in the back yard, and I went to the -- on the
25 side of his property because the dog could get so close so I

1 went to the opposite side.

2 **Q.** How tall is this vine, roughly?

3 **A.** Maybe three foot.

4 **MS. COURTNEY:** Your Honor, may I approach?

5 **THE COURT:** You may.

6 **BY MS. COURTNEY:**

7 **Q.** I'm going a little built out of order. I'm showing you
8 what is marked as Government's Exhibit 15. For identification
9 purposes, this is a DVD disk. Do you recognize this?

10 **A.** Yes, Ma'am.

11 **Q.** How do you recognize it?

12 **A.** I reviewed it this morning.

13 **THE COURT:** I'm sorry, I can't hear you.

14 **THE WITNESS:** Reviewed the details with my initials.

15 **BY MS. COURTNEY:**

16 **Q.** Your initials is on the packet containing the DVD?

17 **A.** Yes, Ma'am.

18 **Q.** Does it fairly and accurately represent what you observed
19 on May 13th at Mr. Snuggs's residence?

20 **A.** Yes.

21 **MS. COURTNEY:** Your Honor, Government would move to
22 admit and play Government's Exhibit 15.

23 **THE COURT:** It will be admitted. How long is it?

24 **MS. COURTNEY:** A little over ten minutes, Your Honor.

25 **THE COURT:** Okay.

1 (DVD was played.)

2 **BY MS. COURTNEY:**

3 **Q.** Pause this for a second. Do you know who that is on the
4 left-hand side of the screen?

5 **A.** On the left-hand side?

6 **Q.** Yes.

7 **A.** That would be Officer Kiser.

8 **Q.** Officer Kiser sitting to my right here?

9 **A.** Yes, Ma'am.

10 **Q.** And then who is that there on the front porch by the door?

11 **A.** Officer Spencer.

12 **MR. WELLMAN:** I apologize for interrupting. It might
13 be best for the record if we noted the times, you know, the
14 identification of Officer Kiser on the left of the screen,
15 timestamp for that, and also for that occasion of Officer
16 Spencer.

17 **THE COURT:** Well, we're at half a minute in, so both
18 of these things have already happened. If you want to do that
19 going forward, it's okay. I mean, go ahead.

20 So he's been standing there knocking and calling for
21 over a minute, right? Everybody is nodding yes. "He" being
22 Officer Spencer.

23 We're at the three minute mark and people are
24 continuing to say probation, knocking, nobody is coming to the
25 door.

1 **BY MS. COURTNEY:**

2 **Q.** Who is this person here walking over on the left-hand side
3 of the screen?

4 **A.** Officer Coleman.

5 **THE COURT:** And there is some neighbor saying he is
6 not there, he is not there, right?

7 **THE WITNESS:** But his kids are there.

8 **THE COURT:** We're at seven minutes. Nobody has come
9 to the door, the neighbor is cussing at you. Right?

10 **THE WITNESS:** Yes, Ma'am.

11 **BY MS. COURTNEY:**

12 **Q.** And this whole time where are you standing?

13 **A.** On the right-hand side of the house by the Escalade.

14 **THE COURT:** So whoever this officer is wearing the
15 body-worn camera is walking towards you?

16 **THE WITNESS:** Yes, Ma'am. Right there I am.

17 **THE COURT:** Somebody is knocking on the door from the
18 carport into the house now, now eight and a half minutes, eight
19 minutes.

20 **THE WITNESS:** At that point I was yelling to notify
21 everybody else that there was somebody in the house.

22 **BY MS. COURTNEY:**

23 **Q.** And what did you see to make you believe somebody was in
24 the house?

25 **A.** What made me go over there was the dog ran up the back

1 steps, and as soon as I got over there, I seen a black bag being
2 dropped out and a stick being used to put it down by a metal
3 structure.

4 **THE COURT:** This is about eight minutes 40 seconds or
5 so in?

6 **THE WITNESS:** Yes, Ma'am.

7 **THE COURT:** That is you?

8 **THE WITNESS:** Yes, Ma'am.

9 **THE COURT:** So that was the body-worn camera from one
10 of the police officers?

11 **THE WITNESS:** Yes, Ma'am.

12 **MS. COURTNEY:** Your Honor, may I approach?

13 **THE COURT:** Yes.

14 **BY MS. COURTNEY:**

15 **Q.** I'm showing you what I marked as Government's Exhibits 6
16 through 14. Would you take a moment to review those
17 photographs.

18 Do those photographs depict Mr. Snuggs's residence as
19 well as views from Mr. Snuggs's residence?

20 **A.** Yes, Ma'am.

21 **Q.** Are those fair and accurate depictions?

22 **A.** Yes, Ma'am.

23 **MS. COURTNEY:** Government would move to admit
24 Exhibits 6 through 14 into evidence.

25 **THE COURT:** They'll be admitted.

1 **MS. COURTNEY:** Permission to publish.

2 **THE COURT:** Yes. You can just hand them to me.

3 **BY MS. COURTNEY:**

4 **Q.** Turning to Government's Exhibit 6, is this a view of
5 Mr. Snuggs's residence from Brewer Street?

6 **A.** Yes, Ma'am.

7 **Q.** And can you describe the back stairs from that angle?

8 **A.** Yes, Ma'am. There is a vine somewhat in between the red
9 car and back stairs.

10 **Q.** Was that the vine that you were referring to that you stood
11 behind?

12 **A.** Yes, Ma'am.

13 **Q.** Turning to Government's Exhibit 7, is this a view from
14 Loach Street?

15 **A.** Yes, Ma'am.

16 **Q.** And that's around the corner from Mr. Snuggs's residence?

17 **A.** Yes, Ma'am.

18 **Q.** Can you observe Mr. Snuggs's back steps and his back door
19 in that photograph?

20 **A.** Yes, Ma'am.

21 **Q.** As well as the vine that you were standing behind?

22 **A.** Yes, Ma'am.

23 **THE COURT:** In seven?

24 **MS. COURTNEY:** Yes.

25 **THE COURT:** Where is the vine?

1 **THE WITNESS:** Right there.

2 **BY MS. COURTNEY:**

3 **Q.** Would that be next to the red car?

4 **THE COURT:** I think my seven is not the same as your
5 seven.

6 **MS. COURTNEY:** I am very sorry, Your Honor.

7 **THE COURT:** Do you need to match yours up to mine?

8 **MS. COURTNEY:** Yes, Your Honor. I apologize.

9 **BY MS. COURTNEY:**

10 **Q.** Referring to Government's Exhibit 7, is that another view
11 of Mr. Snuggs's house from Brewer Street?

12 **A.** Yes, Ma'am.

13 **Q.** And you can see his backstairs from that view down the
14 street?

15 **A.** Yes, Ma'am.

16 **Q.** And then Exhibit 8 was the photo I was referring to before
17 where you can see his back steps and his back door from a view
18 from Loach Street?

19 **A.** Yes, Ma'am.

20 **THE COURT:** Go ahead.

21 **BY MS. COURTNEY:**

22 **Q.** Government's Exhibit 9 is just another angle from Loach
23 Street where you observed his back porch and back door?

24 **A.** Yes, Ma'am.

25 **Q.** Government's Exhibit 10 is a view from the bottom of the

1 stairs where you can observe the dog chain as well as the side
2 of his house?

3 **A.** Yes, Ma'am. Mr. Snuggs there standing on the back deck?

4 **THE COURT:** Okay.

5 **BY MS. COURTNEY:**

6 **Q.** Government's Exhibit 11, you can observe the stair's side
7 of the house, the vine and the Escalade, is that correct?

8 **A.** Yes, Ma'am.

9 **Q.** There is kind of a bare patch of dirt. What was that area?

10 **A.** That's where the dog could run. The dog could reach out
11 there.

12 **THE COURT:** Go ahead.

13 **BY MS. COURTNEY:**

14 **Q.** Government's Exhibit 12 is another view of the vine. You
15 can observe Brewer Street from the bottom of the stairs?

16 **A.** Yes, Ma'am.

17 **Q.** And then Government's Exhibit 13, a view of Brewer Street
18 from the side of the house, the one with the -- along with the
19 Escalade?

20 **A.** Yes, Ma'am.

21 **Q.** And then lastly, Government's Exhibit 14, are just another
22 view from the side of the house where two stretches of Brewer
23 Street can be observed toward the intersection with Loach
24 Street?

25 **A.** Yes, Ma'am.

1 **MS. COURTNEY:** Your Honor, those would be the
2 Government's questions.

3 **THE COURT:** Questions for the defendant?
4 Actually, let's take a 15 minute recess.
5 (Recess taken from 10:58 to 11:13 a.m.)

6 **THE COURT:** The witness can come back up to the
7 witness stand. Before we turn to cross-examination, if I can
8 just ask the officer, I did not see on the video that was
9 played, or perhaps it was there, could you see on that video
10 the window where you saw the hands reach out with the stick?

11 **THE WITNESS:** Not on that video, Ma'am.

12 **THE COURT:** In any of these pictures could you see
13 that window?

14 **THE WITNESS:** Maybe on -- yes, Ma'am.

15 **THE COURT:** Which one?

16 **THE WITNESS:** The window would be on eight, right at
17 where the stairs end there is a window right there. It is kind
18 of hard to see, but you can kind of see the white patch on the
19 house.

20 **THE COURT:** You have to go up the stairs and there is
21 a door to the left?

22 **THE WITNESS:** Where the railings end in back of the
23 house, right there at the top there is like a white spot. It
24 is hard to see, but that's there.

25 **THE COURT:** That's the area?

1 **THE WITNESS:** That is the vicinity. And in one of
2 the pictures you can kind of see the metal structure.

3 **THE COURT:** I see it now. Where can you see the
4 metal structure?

5 **THE WITNESS:** Just kind of like the shelving in
6 Government's Exhibit 10, standing right behind his leg you can
7 see where it is standing out.

8 **THE COURT:** Did you want to see, Mr. Wellman, or
9 you've seen these?

10 **MR. WELLMAN:** I have, but just --

11 **THE COURT:** Ms. Winchester, you can hand them back to
12 counsel and let them look. I'm not saying this is important, I
13 just was trying to be sure I had not unintentionally missed
14 anything.

15 Eight and 10, I think is what she said. Yes, eight.

16 **MR. WELLMAN:** Yes, Your Honor.

17 **THE COURT:** You can't really see it. You can just
18 see a white line.

19 **MR. WELLMAN:** Thank you.

20 **THE COURT:** Questions, Mr. Wellman?

21 **MR. WELLMAN:** Thank you, Your Honor.

22 **CROSS-EXAMINATION**

23 **BY MR. WELLMAN:**

24 **Q.** Officer Kearns, were you involved in the process with
25 Officer Spencer as far as planning the compliance check?

1 **A.** No, sir. I knew about it, but he put together the stuff
2 and notified the officers that were there who we were looking at
3 and the reasons why.

4 **Q.** And was there some type of planning session prior to the
5 operation as to how you would approach it?

6 **A.** No, sir.

7 **THE COURT:** Did you do it like you always do it?

8 **THE WITNESS:** Yes, Ma'am.

9 **BY MR. WELLMAN:**

10 **Q.** So to your knowledge, how many probation officers were out
11 there?

12 **A.** Three.

13 **Q.** And do you know how many Asheboro Police Officers were out
14 there?

15 **A.** Two. At the time of us getting there, two.

16 **Q.** There were other officers that later became involved?

17 **A.** Yeah, once they called over.

18 **Q.** Had you -- we all saw the video footage that was
19 introduced. Had you observed that prior to today?

20 **A.** Yeah. I had this morning, when I initialed.

21 **Q.** At the very beginning of that video, did you notice on the
22 tree to the left of the house the sort of no trespassing notice,
23 or I think it said something about a dog, the notice that was
24 posted to the tree.

25 **A.** Yes. And I was aware before this day that he had dogs.

1 Q. You were aware that he had posted notices to warn folks
2 from entering into his property?

3 A. I mean, yeah, it was there.

4 Q. So when -- when you approached the home, did you park on
5 Brewer Street?

6 A. Yes, sir.

7 Q. And when you walked, did you walk up the driveway?

8 A. I believe so, yes.

9 Q. Okay. And I think as you -- at sort of the top of the
10 driveway we saw some on the video there is kind of a carport
11 area on the right side of the main house.

12 A. Yes, sir.

13 Q. And there is a side door there?

14 A. Yes, sir.

15 Q. And then to the right of that carport area is the side of
16 the home leading into the backyard?

17 A. Yes, sir.

18 Q. At the back right corner there is a stairway leading up to
19 the back porch.

20 A. Yes, sir.

21 Q. And where was the dog tied on that back porch?

22 A. The bottom of the stairs.

23 Q. At the bottom of the stairs?

24 A. Yes, sir.

25 Q. And so where did you walk? You walked up the driveway past

1 the carport. Where did you locate yourself to observe the home?

2 **A.** On the right-hand side to observe the home or --

3 **Q.** While Officer Spencer was knocking on the door?

4 **A.** On the right-hand side, kind of at that corner of the
5 house.

6 **Q.** You said by the Escalade, the Cadillac?

7 **A.** Yes. In that vicinity right there.

8 **Q.** Okay. From that location could you see into the back yard?

9 **A.** I could see a portion of the back yard, yes.

10 **Q.** Could you see the window where later you saw Mr. Snuggs
11 reaching out? Could you see that window from where you were
12 located?

13 **A.** Not at that time. Not at the front, no, sir.

14 **Q.** How long did you remain at that post where you were
15 standing?

16 **A.** In that area the entire time that we were there until the
17 dog ran up the steps. I walked over once to the window right by
18 the carport, but then I went back over.

19 **Q.** In the -- you probably already testified to this, who was
20 the officer that was actually wearing the body-worn camera?

21 **A.** Officer Shore.

22 **Q.** At the beginning or towards the beginning of that video,
23 probably within the first minute, certainly, you identified
24 Officer Kiser on the video.

25 **A.** Yes, sir.

1 Q. Where was Officer Kiser going?

2 A. On the left backhand side, back corner.

3 Q. Did you notice in the video or did you observe in the video
4 when he walked entirely into the backyard and disappeared from
5 the view of Officer Shore?

6 A. Yes. There was another officer back there as well.

7 Q. There was another officer there?

8 A. Officer Coleman.

9 THE COURT: So there were three people there from the
10 Asheboro Police?

11 THE WITNESS: No, she's probation.

12 THE COURT: Okay.

13 BY MR. WELLMAN:

14 Q. So Asheboro Police Officer Kiser and Probation Officer
15 Coleman were both in the backyard?

16 A. Everybody had corners of the house, so Officer Spencer was
17 up front. I was at the right-hand side up front. Shore was on
18 the front left and Kiser was at the back left, and Coleman was
19 to cover all areas of the residence.

20 Q. How were you -- what was the mode of communication? Did
21 you all have the probation officers -- I mean, did you all have
22 radios that you were speaking with each other on?

23 A. We do have radios, yes, sir, but we're both on different
24 channels with APD, and probation, we have different channels to
25 communicate.

1 Q. As far as your communication with Officer Spencer, how were
2 you --

3 A. I was within close proximity to be able to speak to him.

4 Q. So the probation officers that were present were yourself,
5 Officer Spencer, and Officer Coleman?

6 A. Yes, sir.

7 Q. And all three of you -- were there any communications on
8 the radio between the three of you?

9 A. I honestly can't remember.

10 Q. In that video, did you observe anyone during the first two
11 minutes -- did you observe anyone on the front porch with
12 Officer Spencer?

13 A. Yes.

14 Q. Who was that?

15 A. You said during the first part of the video?

16 Q. Yes.

17 A. Eventually Kiser had walked up on the porch.

18 **THE COURT:** That was kind of toward the latter part,
19 wasn't it, in the video?

20 **THE WITNESS:** It would have to be towards the
21 beginning, because Officer Kiser got called to the probation
22 office because they located something else on another
23 individual that was previously searched. So he had to leave
24 prior to us even getting to speak to Mr. Snuggs.

25

1 **BY MS. COURTNEY:**

2 **Q.** From what we observed today, and the Court was sort of
3 noting some of the time frames, there was at least a significant
4 period of time when Officer Spencer was by himself knocking on
5 the front door; isn't that correct?

6 **A.** Yes, sir.

7 **Q.** During that time period, did you hear or observe him make
8 any observations regarding the odor or observation of marijuana?

9 **A.** Yes. The closer you got to the house, you could smell it,
10 and I do recall him saying that he could smell the odor of
11 marijuana and that he did see it on the table.

12 **Q.** You recall that. When did that occur in terms of -- as far
13 as you hearing him say that, when did that occur, approximately,
14 following his approach to the house?

15 **A.** Within the first little part of him being there up on the
16 porch, as far as the odor.

17 **Q.** You didn't hear that on the video, did you?

18 **A.** What?

19 **Q.** Him saying about that, you didn't hear that on the video,
20 did you?

21 **A.** That's when I was closer. I was by the window. Whenever I
22 walked over to the window, you could smell it. I was at the
23 living room window.

24 **Q.** Did you -- and what we saw of the video, did you hear
25 Officer Spencer make any comment about the smell of marijuana?

1 **THE COURT:** On the video you are asking?

2 **MR. WELLMAN:** On the video, yes.

3 **THE WITNESS:** No, not that I recall, but I was
4 watching.

5 **BY MR. WELLMAN:**

6 **Q.** You just testified that you, too, smelled the odor of
7 marijuana?

8 **A.** Yes, sir.

9 **Q.** And that was from your post?

10 **A.** From like at the corner.

11 **Q.** From that front corner?

12 **A.** Like on the front part, yes, sir.

13 **Q.** Can you describe whether it was unburned or burned
14 marijuana?

15 **A.** No, sir.

16 **Q.** You just don't recall or you can't tell the difference?

17 **A.** I'm not sure of the difference.

18 **Q.** You're not sure of the difference?

19 **A.** No.

20 **Q.** So you've had no training in the identification of the odor
21 of marijuana?

22 **A.** I know what marijuana smells like, and as far as it being
23 burned and not burned, I don't particularly know the difference.
24 I mean, it smells the same to me.

25 **Q.** Does it also smell the same as --

1 **THE COURT:** What are we doing? I can't figure out
2 why we're going into this.

3 **MR. WELLMAN:** Well, Your Honor, if I may ask the next
4 question.

5 **THE COURT:** Okay.

6 **BY MR. WELLMAN:**

7 **Q.** Do you have the ability to distinguish the odor of
8 marijuana from the odor of industrial hemp?

9 **A.** Of industrial what?

10 **Q.** Industrial hemp.

11 **THE COURT:** Are you telling me Mr. Snuggs had an
12 industrial hemp license? Why --

13 **MR. WELLMAN:** Your Honor --

14 **THE COURT:** It really is kind of -- I apologize, but
15 you all are taking forever. I'm not talking to you,
16 Mr. Wellman. It does not seem complicated. So we got to
17 finish. I had other things to do today and, you know, we got
18 to move along, so focus on what is important.

19 Ask your next question.

20 **BY MR. WELLMAN:**

21 **Q.** Do you have any familiarity with the legal product of hemp
22 flower?

23 **A.** I know of it, yes.

24 **Q.** You've never seen it or smelled it?

25 **A.** I'm sure I have. We had people say that that's what it is

1 all the time when we find marijuana. It's possible that I've
2 come across it, yes, sir.

3 **MR. WELLMAN:** One moment, Your Honor.

4 Nothing further, Your Honor.

5 **THE COURT:** Redirect?

6 **REDIRECT EXAMINATION**

7 **BY MS. COURTNEY:**

8 **Q.** Just very briefly. You can hear Officer Kiser say on the
9 video that there is marijuana on the table, is that correct?

10 **A.** Yes, Ma'am.

11 **Q.** That would be my only question, Your Honor.

12 **THE COURT:** You can step down. Did the Government
13 have additional evidence?

14 **MS. COURTNEY:** Your Honor, that would be the evidence
15 for the Government.

16 **THE COURT:** Evidence for the defendant?

17 **MR. WELLMAN:** No, Your Honor.

18 **THE COURT:** Okay. I'm not sure I really need to hear
19 from the Government very much. I read the cases and heard your
20 evidence, but you have -- if you want to make a brief argument,
21 Ms. Courtney, go ahead.

22 **MS. COURTNEY:** Your Honor, very briefly. With the
23 touchstone of the Fourth Amendment being reasonableness,
24 probation's actions were well within the bounds of reason in
25 this case.

1 **THE COURT:** Pardon me, can I have the exhibits,
2 Ms. Winchester? I'm afraid you might refer to them and I might
3 need to look at them.

4 Go ahead. I apologize.

5 **MS. COURTNEY:** Yes, Your Honor. With the standard
6 being reasonableness here, probation was well within the bounds
7 of reason in their actions on this day. Mr. Snuggs is on
8 probation for attempted trafficking of heroin, possession with
9 intent to sell and deliver heroin. They have information that
10 he's possibly selling drugs from his house. He has tested
11 positive numerous times.

12 Based on this information, they -- I'm sorry, based
13 on the positive tests, they conduct a search or attempt to
14 conduct a search at his house, and when they get there, I think
15 what is very important for the Court's analysis is, that there
16 are multiple indications that Mr. Snuggs -- we have multiple
17 probation officers that are familiar with Mr. Snuggs. They
18 know the car he drives. They know he has a dog.

19 They come up there, his front door is wide-open. The
20 glass door is locked, which suggests it is locked from the
21 inside. They smell marijuana. There is marijuana sitting on
22 the table, not just a bag of marijuana, but the testimony was
23 three to four bags of marijuana, which would be consistent with
24 selling, not even just simple possession.

25 Ms. Kearns, she's familiar enough that she knows that

1 Mr. Snuggs drives an Escalade. She knows he has a dog. She
2 knows that the officers had seen marijuana through the door and
3 she sees this dog run up the back steps, indicating somebody is
4 at that back door.

5 Mr. Snuggs has a diminished expectation of privacy as
6 a convicted person on probation. He has thoroughly reviewed
7 his conditions of probation. He is subject to warrantless
8 searches of his premises, and also the condition he not use,
9 possess, control any illegal drugs or controlled substances.

10 The side of the house which Mr. Snuggs suggests he
11 has an expectation of privacy in, where which Ms. Kearns was
12 standing, is visible from multiple locations along Brewer
13 Street. It is visible from Loach street. It is not a secluded
14 private area where she was standing.

15 The back stairs are visible, at least from some
16 angles from Brewer Street where it is clear that there is the
17 driveway, and then there are the stairs right there leading up
18 to the back door.

19 Ms. Kearns testified she was standing on the opposite
20 side of the vine. She's not even on Mr. Snuggs's property when
21 she observes him leaning out the window trying to dispose of
22 the evidence.

23 With respect to defendant's argument that the search
24 was not directly related to his supervision, this case is very
25 distinguishable from Powell. Again, both of the officers

1 involved have previous interactions with Snuggs. The Probation
2 Officer Spencer actually had previously supervised him, so he's
3 aware of how Mr. Snuggs conducts himself on probation and
4 selected him for his multiple positive drug tests.

5 In this case, his supervising officer, Probation
6 Officer Bittner was informed before the search and he was kept
7 up-to-date as the search progressed.

8 Just in sum, the officers are on his front porch,
9 door is wide-open, they see marijuana. There are multiple
10 Baggies. They have more than reasonable suspicion at that
11 point, along with the multiple indications and the fact that
12 Ms. Kearns was not even on his curtilage, we would ask that the
13 motion be denied.

14 **THE COURT:** All right.

15 For the defendant.

16 **MR. WELLMAN:** Your Honor, the condition of probation
17 that Mr. Snuggs is subject to, he will submit at reasonable
18 times to warrantless searches, it is that he submit, and if he
19 doesn't submit, it is a violation. The condition is not just
20 that officers can go wherever they want any time they want, and
21 obviously this is not an unusual -- I'm not comparing this to
22 something that is happening in the middle of the night. It is
23 in broad daylight, but there is still this aspect of the
24 Government's argument and the probation officer's sort of sense
25 of things and the way they always do this, as they testified,

1 because someone is on probation and because they've had a
2 positive drug test, that they can just go wherever they want,
3 and we saw that in the video from the very beginning.

4 **THE COURT:** Are you saying -- it sounds to me like
5 you're saying that when probation has a very -- hard to say
6 they didn't have reasonable grounds to go to his house and do a
7 search or ask him to submit to a search, require him to submit
8 to a search. If you disagree with that, you can tell me, but
9 that aside -- so when they go there, here you've got a known
10 person with at least two groups of criminal convictions,
11 including one attempted drug trafficking, and you are saying
12 that officers cannot ensure that there is nobody in the
13 backyard who might have a gun or try to do something unsafe for
14 them and the neighbors? They can't go to the backyard to be
15 sure nobody runs from the backdoor? I mean, that's what you
16 seem to be saying, that they can't do that, and that that's
17 unreasonable.

18 Where is your case that says that, if that's your
19 argument?

20 **MR. WELLMAN:** Your Honor, what I am saying is, first
21 of all, it's a search.

22 **THE COURT:** What is a search?

23 **MR. WELLMAN:** The intrusive into the curtilage. As a
24 preliminary first matter, it is a search for them to intrude
25 into the curtilage, and that's been something that the Supreme

1 Court has reiterated in Florida versus Jardines (ph) and in, I
2 believe, Collins versus Virginia.

3 In Collins, they didn't go to the backyard, they just
4 walked -- to my mind, somewhere similar to this carport area
5 from the side door. Florida versus Jardines, they didn't even
6 go in the backyard.

7 **THE COURT:** Okay. Say it is a search. Couldn't they
8 have walked up to the back door to that deck area? I mean,
9 they didn't. I mean, couldn't they have walked up to the
10 backdoor and knocked on the backdoor, just to see if he would
11 come to the door and do what he was supposed to do, which is
12 submit to a search? Is there any reason they couldn't have
13 done that? I mean, if they can do that, why can't they -- I
14 mean, I'm really having a lot of trouble with this.

15 **MR. WELLMAN:** Your Honor, again, going up to the
16 backdoor, I would submit that's a search.

17 **THE COURT:** What's wrong with that? If I am giving
18 you -- just assume it is a search. So.

19 **MR. WELLMAN:** Your Honor, our position would be that
20 this is a suspicionless search and we understand the evidence
21 that Your Honor has heard. We would dispute the idea that
22 whether it is North Carolina Statute or the Case of Knights,
23 that Supreme Court case of Knights --

24 **THE COURT:** The statute says, and the things he
25 signed, shows that he knows this is the rule. He has got to

1 submit to warrantless searches while he is present for purposes
2 directly related to supervision.

3 **MR. WELLMAN:** It also says, "but the probationer may
4 not be required to submit to any other search that would
5 otherwise be unlawful."

6 **THE COURT:** Okay. But that doesn't mean that they
7 can't search -- do the search for purposes directly related to
8 his supervision. It means they can search him for purposes
9 related to supervision and not any other -- not some unlawful
10 purpose, but that's a lawful purpose, right? Isn't that what
11 the statute says?

12 **MR. WELLMAN:** Your Honor, I would suggest that a
13 suspicionless search would be an unlawful search, and is not
14 directly related to the purpose of supervision.

15 **THE COURT:** So you think that however many drug
16 tests -- this was six or seven or eight, and his failure to
17 complete drug treatment is an unreasonable search, a
18 suspicionless search for somebody who is on probation for a
19 history of drug crimes?

20 **MR. WELLMAN:** I would dispute that the actual case
21 for which he is on probation should be a part of the analysis
22 as to whether the sequence of his supervision could lead to a
23 suspicion that he was in possession of marijuana. I believe
24 that policy test from April 5th is too far attenuated from May
25 13th.

1 **THE COURT:** It is not a probable cause standard.

2 **MR. WELLMAN:** I agree, Your Honor. I understand what
3 Your Honor has heard regarding the testimony to support -- that
4 could be determined to support that there is an individualized
5 suspicion.

6 Your Honor, I would submit that the search happened
7 independently and irrespective of that, because, I mean, what
8 you have is simply a surrounding of the house.

9 **THE COURT:** You are saying -- we get back to my
10 original question, which you never answered. You think that is
11 not okay, basically unconstitutional, that's what we are
12 talking about, you think it is unconstitutional for probation
13 officers who have a right to require a search of the
14 defendant's premises, if it is related to his supervision,
15 let's just assume that that's so, if that's so, you think that
16 they cannot take reasonable steps to insure their safety by
17 walking around the building to be sure there is nobody in the
18 backyard with a gun, and to be sure nobody flees out of the
19 backyard? Is what you are saying, they cannot do that because
20 your argument is they cannot walk into the backyard?

21 **MR. WELLMAN:** Absent suspicion and what we saw on the
22 video that was occurring prior to Officer Spencer reaching the
23 front door.

24 **THE COURT:** So you are saying they cannot do it?

25 **MR. WELLMAN:** Absent individualized suspicion.

1 And, Your Honor --

2 **THE COURT:** Okay. By the time Officer Kearns walked
3 back there, she had been hearing this neighbor yell that the
4 defendant wasn't there, but his children were, and the children
5 were two and an infant, and it was either she, or perhaps
6 Officer Coleman is saying, "Are you telling me those kids are
7 in there by themselves?" And you are saying at that point it
8 is not okay for her to walk around and look in the back yard to
9 see if there were unattended toddlers? I mean, that's not what
10 happened here. Nobody believed the neighbor. You could tell
11 that from their attitude, and you could tell that from what the
12 neighbor was saying. She was cussing at them and stuff.

13 I just don't understand why they can't walk around
14 the backyard and look and be sure that it is safe.

15 **MR. WELLMAN:** Your Honor, under -- I would just
16 simply submit that for them to walk into the backyard -- I
17 mean, there are other things. We've seen -- we saw pictures
18 from the state where they are not -- from the Government, where
19 they are not in the backyard that they are talking about
20 showing the backyard and the back porch.

21 So, you know, to me, we're talking about the
22 intrusion into the backyard, it is an intrusion into the
23 curtilage of the home, and that makes it a search.

24 Once we are at -- whether it is a search, our
25 proposition to the Court would be that it was a suspicionless

1 search, and that neither the constitution or the North Carolina
2 Statutes permit a suspicionless search.

3 As to whether Your Honor has heard the facts, if Your
4 Honor is determining that there is some type of suspicion, I
5 don't have any response to that side of the things. Our
6 proposition is there is a search and it is a suspicionless
7 search, and we saw that on the video, and a suspicionless
8 search even for a probationer, he hasn't given up all of his
9 rights under the Fourth Amendment.

10 **THE COURT:** Any rebuttal for the Government?

11 **MS. COURTNEY:** No, Your Honor.

12 **THE COURT:** Excuse me. I momentarily thought I was
13 in civil court.

14 The Court will find as a fact that on May 13th, '22
15 the defendant was on state probation. As a condition of his
16 probation, he was required to submit at reasonable times to
17 warrantless searches by a probation officer of his person and
18 premises while he is present for purposes directly related to
19 probation supervision. He is not required to submit to any
20 other unlawful search, but he is required to submit to searches
21 directly related to his supervision.

22 Over the course of his supervision, approximately one
23 year, he had already been found in violation once and he had
24 continued to test positive for marijuana use. He had failed to
25 complete his drug treatment and cognitive behavioral therapy as

1 ordered by the Court and directed by the probation officer.

2 He had signed the conditions of probation, so he was
3 aware of the warrantless searches and he had been present in
4 his own home some years earlier when the mother of his children
5 was on probation and a warrantless search had been conducted
6 pursuant to her supervision.

7 So he well knew that he could be searched. The
8 search was planned and he was selected for a search as part of
9 the regular ordinary business of probation.

10 Officer Spencer testified that he looked at a list of
11 every probationer and post-release supervisees who had a
12 certain number of positive drug tests over a period of time.
13 They had done other searches that day. They always had law
14 enforcement support.

15 They handled this one just like anything else. When
16 they came up to the house, Officer Spencer knocked on the door.
17 The defendant did not come to the door.

18 There were quite a number of signs that he was
19 present, two vehicles in the yard, driveway, that he was known
20 to drive. His dog was there. The front door was open. The
21 storm door was closed and locked. Any number of signs
22 indicating that he was present.

23 He didn't come. It is certainly the case that
24 officers walk around and could see into the backyard. Exactly
25 where they were standing, I don't know, but they certainly

1 could see and it seems fairly likely they were on the property
2 associated with the house, but they did that in the ordinary
3 course of things to protect themselves and others to be sure
4 there was no one back there, just to be sure the defendant
5 wasn't back there and that's why he's not answering the door,
6 perfectly innocent.

7 There is safety reasons as well, and also to be sure
8 if somebody tries to run out the back door that they see and
9 observe that. So there is -- I see no problem with that at all
10 as part of -- it seems related to his supervision and
11 appropriate to be sure these probation officers are safe and to
12 also insure that people like the defendant comply with the
13 conditions which requires them to submit.

14 So they knocked on the door. The defendant didn't
15 come to the door. They knocked. They called. They asked --
16 you know quite awhile the officers are looking around. They
17 get harassed by a neighbor, you know, as I've indicated.

18 Officer Kearns walks down the side of the house.
19 She's quite a distance from the house because of the dog. She
20 sees the dog run up the back steps, which to her, indicated
21 that maybe someone was at the back door or at the back of the
22 house. That certainly seems reasonable.

23 She goes back to look and see if someone has come out
24 of the backdoor, and she sees an arm reaching out poking
25 something down, obviously attempting to hide it.

1 The officers smell marijuana, several of them do.
2 Officer Spencer sees it from the front door. They obviously
3 have probable cause at that point to -- you know, certainly to
4 get a search warrant, and to walk around and be sure nobody
5 escapes from the house at that point.

6 It just seems like there is about a million reasons
7 that there is nothing wrong with this search.

8 So let me just check the language of the cases to be
9 sure that I've made all of the relevant findings. You all can
10 tell me if I have missed anything. There is nothing to
11 indicate that when they walked around to the backyard that they
12 were poking into trash cans or that their presence in the
13 backyard exceeded what they reasonably needed to do for
14 protection, and to be sure that, no, that the defendant was not
15 fleeing and trying to avoid complying with the conditions of
16 his supervised release.

17 You could tell from the pictures of that house, that
18 really the back of the house was visible from all kinds of
19 places around. Neighbors could certainly see into it. I don't
20 know that you could actually see this particular window from
21 the street, but it certainly wasn't hidden.

22 Give me just a second. The search complied with the
23 statutory condition in that it was conducted by probation
24 officers for purposes reasonably related to his probation.

25 The statutory condition here is certainly

1 constitutional under the Supreme Court decision in Griffin, and
2 that was confirmed by the Fourth Circuit in Scott, in the
3 Fourth Circuit case they were talking about post-release
4 supervision search, but I think the provision is the same, and
5 I can't think of any reason the rule would be different for
6 probation than post-release supervision.

7 The Powell court's definition of being reasonably
8 related just talks about some being reasonable, within the
9 bounds of reason, so certainly going into some probationer's
10 backyard in the lead-up to a search of his premises, which they
11 clearly were allowed to do if he was present, but based on his
12 ongoing violations, seems quite reasonably related, and
13 individualized suspicion is not required. The Scott court says
14 that.

15 To the extent -- you know, to the extent it was
16 required, I would certainly say it was present here based on
17 the likelihood that he was present, the number of drug
18 violations, the visibility of marijuana from the front door,
19 the fact that he's not coming to the door. The behavior of the
20 dog. All of those things certainly give rise to some
21 individualized suspicion, so I find no violation of his
22 constitutional rights and would deny the motion to suppress.

23 Did I neglect to address any factual or legal issues
24 that were raised in the motion by the Government?

25 **MS. COURTNEY:** Just very briefly. I know some of the

1 case law uses the term, "reasonably related to probation." The
2 North Carolina Statute was revised and states, "directly
3 related to."

4 **THE COURT:** Directly related. Pardon me. I did read
5 the revised one. In fact, I printed it out. I brought it in
6 here with me. Just a second. Okay. Thank you, very much.

7 For purposes directly related to the probation
8 supervision, is what the statute says, right?

9 **MS. COURTNEY:** Yes, Your Honor.

10 **THE COURT:** It said reasonably in the piece of paper
11 that he signed, right? Yes. Well, directly related. This is
12 clearly directly related. Thank you for pointing that out,
13 because of all of these positive drug tests and his failure to
14 complete drug treatment, it seems to me directly related.

15 Anything else I missed?

16 **MS. COURTNEY:** No, Your Honor.

17 **THE COURT:** Any other facts, Mr. Wellman, that you
18 might need he should challenge my findings on appeal?

19 **MR. WELLMAN:** No, Your Honor.

20 **THE COURT:** All right. The motion to suppress is
21 denied.

22 Shall we put this on next Thursday for pretrial
23 conference or such other resolution as is appropriate? Next
24 Thursday okay?

25 **MR. WELLMAN:** First of all, for the record, we would

1 note our exceptions to your findings and conclusions.

2 **THE COURT:** If there is anything specific --

3 **MR. WELLMAN:** Not at this time, Your Honor. We
4 do -- the Government has provided us with a plea agreement
5 pursuant to Rule 11.

6 **THE COURT:** I can do it this afternoon if he's going
7 to accept it, and you want to do it this afternoon. I'm not
8 trying to rush him.

9 **MR. WELLMAN:** Next Thursday is fine. I just wanted
10 to let Your Honor know that's what we would expect.

11 **THE COURT:** If he decides not to do that, certainly
12 it is his decision to plead guilty or not, I don't care. You
13 can tell me next Thursday and set it for trial. I'm glad to
14 try it if he wants a trial, preside over his trial, a jury will
15 decide.

16 Anything else?

17 **MS. COURTNEY:** Not for the government.

18 **THE COURT:** All right. I think my next matter is at
19 two o'clock.

20 You all want to do it on the 16th, right, rather than
21 this afternoon at two o'clock? Okay, two o'clock next
22 Thursday, the 16th.

23 (Matter was concluded at 11:55 a.m.)

24

25

C E R T I F I C A T E

I, J. ALLEN, RPR, United States District Court Reporter
for the Middle District of North Carolina, DO HEREBY CERTIFY:

That the foregoing is a true and correct transcript of
the proceedings had in the above-entitled matter.

August 28, 2023

J. Allen, RPR
United States Court Reporter
324 W. Market Street
Greensboro, NC 27401

FILED: October 16, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-4430
(1:22-cr-00229-CCE-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MONTRESE ANTOINE SNUGGS

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with [Fed. R. App. P. 41](#).

/s/ NWAMAKA ANOWI, CLERK

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV

§ 15A-1343. Conditions of probation.

(a) In General. - The court may impose conditions of probation reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so.

...

(b) Regular Conditions. - As regular conditions of probation, a defendant must:

...

(13) Submit at reasonable times to warrantless searches by a probation officer of the probationer's person and of the probationer's vehicle and premises while the probationer is present, for purposes directly related to the probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful.

...

N.C. Gen. Stat. § 15A-1343

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

| | | |
|--------------------------|---|-------------|
| UNITED STATES OF AMERICA | : | |
| | : | |
| v. | : | 1:22CR229-1 |
| | : | |
| MONTRESE ANTWAN SNUGGS | : | |

FACTUAL BASIS

NOW COMES the United States of America, by Sandra J. Hairston, United States Attorney for the Middle District of North Carolina, through the undersigned Special Assistant United States Attorney, and as a factual basis under Rule 11 of the Federal Rules of Criminal Procedure, states as follows:

On April 5, 2021, Montrese Antwan Snuggs (“SNUGGS”) pleaded guilty to state charges for attempted trafficking heroin, possession with intent to sell or deliver a schedule II controlled substance, felony possession with intent to sell or deliver cocaine and felony possession with intent to sell or deliver heroin. SNUGGS received a ten-month minimum, twenty-one-month maximum sentence suspended for twenty-four months and was placed on supervised probation.

On May 14, 2022, North Carolina probation officers along with Asheboro Police Department officers went to SNUGGS’ house located at 821 Brewer Street to conduct a home contact. SNUGGS had previously provided this

address to probation as his residence.

As one of the probation officers approached, he smelled the odor of marihuana. The front door was open with the glass storm door closed. The probation officer saw what he believed to be marihuana on the table in the living room. The probation officer knocked for several minutes and announced, "Probation."

Another probation officer went around to the back of the house. She saw SNUGGS leaning out of a window with broom or mop handle pushing a black garbage bag down behind a metal object. The probation officer relayed what she had seen to the officers at the front door.

A couple minutes later, the officers saw SNUGGS approaching the front door. They handcuffed SNUGGS. Inside the black garbage bag, was 6.2 pounds of marihuana, a digital scale, and a black camera bag. They opened the camera bag and saw a handgun and two magazines.

An officer applied for and was granted a search warrant for the residence and SNUGGS' car. In an armoire inside one of the bedrooms, were papers belonging to SNUGGS and a digital scale. Inside the Escalade belonging to SNUGGS in the driveway, was a clear bag of fired projectiles and spent shell casings.

On July 19, 2004, SNUGGS was convicted in the Superior Court of

Randolph County of felony robbery with a dangerous weapon and felony assault inflicting serious injury and sentenced to a term of imprisonment exceeding one year, that is, a minimum of 75 months and a maximum of 99 months. At the time of the instant offense, his prior convictions had not been expunged or set aside and he had not been pardoned or had his civil rights restored within the meaning of 18 U.S.C. § 921(a)(20). Therefore, SNUGGS knew he had previously been convicted of a crime punishable by a term of imprisonment exceeding one year.

On June 27, 2022, Special Agent Newsome, an interstate nexus expert with the Bureau of Alcohol, Tobacco, Firearms and Explosives reviewed a description and photographs the Glock 19 Gen 4, 9x19mm caliber handgun serial number PPK889 retrieved from the black garbage bag behind SNUGGS' house. Based on his review of the handgun, Special Agent Newsome determined that it was manufactured outside the State of North Carolina. Therefore, it passed in and affected interstate commerce prior to SNUGGS' possession of the same.

This the 15th day of February, 2023.

Respectfully submitted,

SANDRA J. HAIRSTON
United States Attorney

/S/ MARY ANN COURTNEY
Special Assistant United States Attorney
NCSB #: 38482
United States Attorney's Office
Middle District of North Carolina
101 S. Edgeworth Street, 4th Floor
Greensboro, North Carolina 27401
Phone: (336) 333-6371
E-mail: mary.ann.courtney@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on February 15, 2023, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Aaron B. Wellman, Esq.

/S/ MARY ANN COURTNEY
Special Assistant United States Attorney
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Greensboro, NC 27401
Phone: 336/333-6371
E-mail: mary.ann.courtney@usdoj.gov

Regular Conditions of Probation – G.S. 15A-1343

MS
defendant
initials

All defendants placed on supervised probation shall:

- Commit no criminal offense in any jurisdiction.
- Possess no firearm, explosive device or other deadly weapon listed in G.S. 14-269.
- Remain gainfully and suitable employed or faithfully pursue a course of study or vocational training that will equip the defendant for suitable employment, and abide by all rules of the institution.
- Satisfy child support and family obligations, as required by the Court.
- Remain within the jurisdiction of the Court unless granted written permission to leave by the Court or the probation officer.
- * • Report as directed by the Court or the probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment.
- Notify the probation officer if the defendant fails to obtain or retain satisfactory employment.
- Attend and complete an abuser treatment program if (i) the Court finds the defendant is responsible for acts of domestic violence and (ii) there is a program, approved by the Domestic Violence Commission, reasonably available to the defendant and abide by all rules of the program.
- Pay a supervision fee, costs of court, fine, restitution or costs of appointed counsel as ordered by the Court.

MS
defendant
initials

For offenses committed on or after December 1, 2009, the defendant shall also:

- Submit at reasonable times to warrantless searches by a probation officer of the defendant's person and of the defendant's vehicle and premises while the defendant is present, for purposes directly related to the probation supervision, but the defendant may not be required to submit to any other search that would otherwise be unlawful.
- Submit to warrantless searches by a law enforcement officer of the defendant's person and of the defendant's vehicle, upon a reasonable suspicion that the defendant is engaged in criminal activity or is in possession of a firearm, explosive device, or other deadly weapon listed in G.S. 14-269 without permission of the Court.
- Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for the defendant by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors, or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.

If sentenced to an Intermediate Punishment:

- Perform community service hours at the discretion of the probation officer and pay the fee.
- Not use, possess, or control alcohol.
- Remain within the county of residence unless granted permission to leave by the Court or probation officer.
- Participate in any evaluation, counseling, treatment or education program at the direction of the probation officer.

X 
defendant
initials**For offenses committed on or after December 1, 2011, the defendant shall also:**

- Not abscond by willfully avoiding supervision or by willfully making the defendant's whereabouts unknown to the supervising probation officer.
- Supply a breath, urine, or blood specimen for analysis of the possible presence of prohibited drugs or alcohol when instructed by the defendant's probation officer for purposes directly related to the probation supervision. If the results of the analysis are positive, the probationer may be required to reimburse the Division of Adult Correction and Juvenile Justice for the actual costs of drug or alcohol screening and testing.

X 
defendant
initials**If the defendant is to serve an active sentence as a condition of special probation, the defendant shall also:**

- Obey the rules and regulations of the Division of Adult Correction and Juvenile Justice governing the conduct of inmates while imprisoned.
- Report to a probation officer in the State of North Carolina within seventy-two (72) hours of the defendant's discharge from the active term of imprisonment.

X 
defendant
initials**For offenses committed on or after December 1, 2016, the defendant shall:**

- Submit to the taking of digitized photographs, including photographs of the probationer's face, scars, marks, and tattoos, to be included in the probationer's records.
- Waive all rights relating to extradition proceedings if taken into custody outside of this State for failing to comply with the conditions imposed by the court upon a **felony conviction**.

X 
defendant
initials

I do hereby waive extradition to the State of North Carolina from any state of the United States and also agree that I will not contest any effort by any state to return me to the State of North Carolina for any probation violation proceeding for the case(s) referenced below. (**felony convictions only**)

County: _____ File Number(s): _____

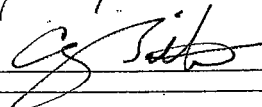
X 
defendant
initials

If you are convicted of a felony in North Carolina, you forfeit your citizenship rights, including the right to vote. If you had registered to vote prior to your conviction, the registration has been cancelled by the County Board of Elections pursuant to G.S. 163A-841(a)(2). However, upon completion of your sentence, your voting rights are restored. *It shall be unlawful for any person convicted of a crime which excludes the person from the right of suffrage, to vote at any primary or election without having been restored to the right of citizenship in due course and by the method provided by law.* G.S. 163A-1389(5)

Note: You may also be subject to other conditions of probation as ordered by the Court. The probation judgment is the official court record and you will be provided a copy by your probation officer.

Defendant's Printed Name: Montrese Snuggs Date: 4-6-21

Defendant's Signature: X 

Witness' Signature: 

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA :
 :
v. :
 :
MONTRESE ANTWAN SNUGGS :

1:22CR229-1



The Grand Jury charges:

On or about May 13, 2022, in the County of Randolph, in the Middle District of North Carolina, MONTRESE ANTWAN SNUGGS knowingly did possess in and affecting commerce a firearm, that is, a Glock 9x19mm caliber handgun, having been convicted of a crime punishable by imprisonment for a term exceeding one year, and with knowledge of that conviction; in violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2).

DATED: July 25, 2022

SANDRA J. HAIRSTON
United States Attorney

Mary Ann Courtney
BY: MARY ANN COURTNEY
Special Assistant United States Attorney

A TRUE BILL:

FOREPERSON

Appendix G

090a