

NORTH CAROLINA COURT OF APPEALS

STATE OF NORTH CAROLINA)

v.)

PAUL GREGORY PERRY)

From Wake County

12 CRS 227771

13 CRS 3178

RECORD ON APPEAL

INDEX

Organization of Trial Court	1
Arrest Warrant	2
Indictment (12 CRS 227771)	4
Indictment (13 CRS 3178)	5
Order - Arraignment	6
Motion to Suppress - Telephone Records and Location	7
Affidavit re Motion to Suppress Telephone Records and Location	9
Motion to Suppress Defendant's Statements	12
Affidavit re Motion to Suppress Defendant's Statements ..	14
Motion to Suppress Evidence	16
Affidavit re Motion to Suppress Evidence	18
Order re Motions to Suppress	21
Court Exhibit "A"	31
Notice of Intent re Chain of Custody Witnesses	34
Objection re Chain of Custody Witnesses	36
Jury Instructions	38
Court's Exhibit "A"	52

Court's Exhibit "B"	53
Instruction in Response to Jury Question	54
Verdicts	55
Prior Record Level Worksheet	59
Judgment and Commitment (12 CRS 227771 Count 51) ...	61
Judgment and Commitment (12 CRS 227771 Count 52) ...	63
Judgment and Commitment (12 CRS 227771 Count 53) ...	65
Judgment and Commitment (13 CRS 3178 Count 51)	67
Judgment and Commitment (13 CRS 3178 Count 52)	69
Notice of Appeal (T Vol 4 pp 599-600)	71
Appellate Entries	73
Appointment of Appellate Counsel	75
Order Extending Time to Deliver Transcript (Trial Court) .	76
Order Extending Time to Deliver Transcript (COA First) ..	77
Order Extending Time to Deliver Transcript (COA Second)	78
Order Extending Time to Deliver Transcript (COA Third) .	79
Certificates of Delivery of Transcripts	80
Order Deeming Transcript Timely Delivered	83
Order Extending Time to Serve Proposed Record	84
Certificate of Service - Proposed Record on Appeal	85
Designation of Transcript of Proceedings	86
Stipulation Concerning Trial Exhibits	86
Appearances of Trial Counsel	86
Certificate of Settlement	87
Certificate of Filing and Service of Settled Record	88
Appellant's Proposed Issues on Appeal	89
Names of Appellate Counsel	91

No. _____

DISTRICT 17

NORTH CAROLINA COURT OF APPEALS

STATE OF NORTH CAROLINA)	
)	
v.)	From Wake County
)	12 CRS 227771
PAUL GREGORY PERRY)	13 CRS 3178
)	

ORGANIZATION OF TRIAL TRIBUNAL

This case came on to be heard at the 3 February 2014 Criminal Session of Wake County Superior Court before The Honorable Henry W. Hight, Jr., Judge of Superior Court. Defendant was convicted by a jury of trafficking in heroin by possession, selling heroin, trafficking in heroin by transportation, conspiracy to traffic in heroin, and intentionally keeping and maintaining a dwelling used for the purpose of unlawfully keeping or selling controlled substances. Judge Hight sentenced Defendant to imprisonment for a minimum of 225 months and a maximum of 282 months upon each count of trafficking in heroin and to a minimum of 14 and maximum of 26 months for selling heroin. All of the foregoing sentences were imposed to run consecutively. Judge Hight imposed a concurrent sentence of a minimum of six months and maximum of eight months upon the conviction for intentionally maintaining a dwelling for keeping or selling controlled substances. Defendant gave oral notice of appeal in open court on 6 February 2014. (T Vol 4 pp 599-600).

(Appeal filed C.A. 12-11-14 and docketed C.A. 12-16-14.)

File No. 12CR 227771	Law Enforcement Case No. P12-147854	LID No.	FBI No.
RALIGH POLICE DEPARTMENT			
STATE OF NORTH CAROLINA			
WAKE		County	
In The General Court Of Justice District Court Division			
To any officer with authority and jurisdiction to execute a warrant for arrest for the offense(s) charged below:			
I, the undersigned, find that there is probable cause to believe that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did possess MORE THAN 28 GRAMS of heroin.			
I, the undersigned, find that there is probable cause to believe that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did sell to KENNETH WHEELER 24 OR MORE GRAMS of heroin.			
I, the undersigned, find that there is probable cause to believe that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did knowingly and intentionally keep and maintain a dwelling house, ROOM 433 RED ROOF INN that was used for keeping and selling controlled substance, HEROIN, in violation of the North Carolina Controlled Substances Act.			
This act(s) was in violation of the law(s) referred to in this Warrant. This Warrant is issued upon information furnished under oath by the complainant listed. You are DIRECTED to arrest the defendant and bring the defendant before a judicial official without unnecessary delay to answer the charge(s) above.			
Signature S JACKSON		Location Of Court Wake County Courthouse; 004D 316 FAYETTEVILLE STREET RALEIGH, NC 27601	
<input checked="" type="checkbox"/> Magistrate <input type="checkbox"/> Assistant CSC		Court Date 12/12/2012 Court Time 09:00 <input checked="" type="checkbox"/> AM <input type="checkbox"/> PM	

WARRANT FOR ARREST			
Offense I TRAFFICKING, OPIUM OR HEROIN II TRAFFICKING, OPIUM OR HEROIN III MAINTN VEH/DWEL/PLACE CS (F)			
THE STATE OF NORTH CAROLINA VS. Name And Address Of Defendant PAUL GREGORY PERRY 9525 PUDDLE DUCK RD APT 305 CHARLOTTE MECKLENBURG NC 28262			
Race B	Sex M	Date Of Birth 04/02/1983	Age
Social Security No./Tax ID No.		Drivers License No. & State 33064274 NC	
Name Of Defendant's Employer			
Offense Code(s) I 3531 II 3531 III 9968	Offense In Violation Of G.S. I 90-95(H)(4) II 90-95(H)(4) III 90-108(A)(7)		
Date Of Offense 12/11/2012 through 12/11/2012		Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card)	
Complainant (Name, Address Or Department) MITCHELL, M K RALEIGH POLICE DEPARTMENT 6716 SIX FORKS ROAD RALEIGH NC 27615 WAKE COUNTY			
Names & Addresses Of Witnesses (Including Counties & Telephone Nos.) CRUTHOFF, M S RALEIGH POLICE DEPARTMENT 6716 SIX FORKS ROAD RALEIGH NC 27615 WAKE COUNTY			
<input checked="" type="checkbox"/> Misdemeanor Offense Which Requires Fingerprinting Per Fingerprint Plan		Date Issued 12/12/2012	

ORIGINAL COPY

Form with multiple sections: RETURN OF SERVICE, REDELIVERY/REISSUANCE, RETURN FOLLOWING REDELIVERY/REISSUANCE, WAIVER OF PROBABLE CAUSE HEARING, and CERTIFICATION. Includes fields for dates, times, signatures, and checkboxes for various legal actions.

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 12CRS 227771

STATE OF NORTH CAROLINA

vs.

INDICTMENT:
I. TRAFFIC HEROIN BY POSSESSION
II. TRAFFIC HEROIN BY SALE
III. MAINTAIN A DWELLING

PAUL GREGORY PERRY

I. The jurors for the State upon their oath present that on or about December 11, 2012, in Wake County, the defendant named above unlawfully, willfully and feloniously did traffic by possession, 28 grams or more of heroin, a controlled substance which is included in Schedule I of the North Carolina Controlled Substances Act. This act was done in violation of N.C.G.S. 90-95(h)(4).


II. And, the jurors for the State upon their oath present that on or about December 11, 2012, in Wake County, the defendant named above unlawfully, willfully and feloniously did traffic by selling to Kenneth Wheeler, 28 grams or more of heroin, a controlled substance which is included in Schedule I of the North Carolina Controlled Substances Act. This act was done in violation of N.C.G.S. 90-95(h)(4).

III. And, the jurors for the State upon their oath present that on or about December 11, 2012, in Wake County, the defendant named above unlawfully, willfully and feloniously did intentionally keep and maintain a dwelling, Room 433, Red Roof Inn, Raleigh, North Carolina that was used for keeping or selling controlled substances. This act was done in violation of NC.G.S. 90-108(a)(7).


James M. Wilson
Assistant District Attorney


M. K. Mitchell, RPD
Witness

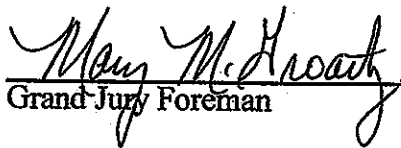
The witnesses marked "X" were sworn by the undersigned Foreman of the Grand Jury and, after hearing testimony, this bill was found to be:

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

NOT A TRUE BILL.

MAR 11 2013

Date


Grand Jury Foreman

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 13CRS 003178

STATE OF NORTH CAROLINA

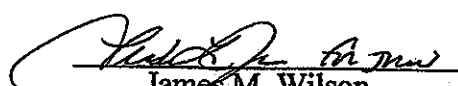
vs.

INDICTMENT:
I. TRAFFIC HEROIN BY TRANSPORTATION
II. CONSPIRACY TO TRAFFIC HEROIN BY
POSSESSION, TRANSPORTATION AND SALE

PAUL GREGORY PERRY

I. The jurors for the State upon their oath present that on or about December 11, 2012, in Wake County, the defendant named above unlawfully, willfully and feloniously did traffic by transportation 28 grams or more of heroin, a controlled substance which is included in Schedule I of the North Carolina Controlled Substances Act. This act was done in violation of N.C.G.S. 90-95(h)(4).

II. And, the jurors for the State upon their oath present that on or about December 11, 2012, in Wake County, the defendant named above unlawfully, willfully and feloniously did conspire with Kiara Ledbetter, Paul Shell and Keyondre Owens and others, to commit the felony of trafficking by possession, transportation and sale, 28 grams or more of heroin, a controlled substance that is included in Schedule I of the North Carolina Controlled Substances Act. This act was done in violation of N.C.G.S. 90-95.


James M. Wilson
Assistant District Attorney


✓ M. K. Mitchell, RPD
Witness

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

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

 NOT A TRUE BILL.

 JUL 08 2013
Date


Grand Jury Foreman

STATE OF NORTH CAROLINA

File No.

12CRS227771

51

WAKE

County

In The General Court Of Justice
☐ District ☒ Superior Court Division

STATE VERSUS

Name Of Defendant

PERRY, PAUL, GREGORY

JUDGMENT/ORDER OR
OTHER DISPOSITION

Race

B

Sex

M

Date Of Birth

4/2/1983

Social Security No.

118-68-9173

Attorney For State

WILSON, JIMMY M

☐ Def. Found
Not Indigent

☐ Def. Waived
Attorney

Attorney For Defendant

CUTLER, JEFFREY

☒ Appointed ☐ Retained

Offense

TRAFFICKING HEROIN BY POSSESSION

NOTE: (For use in recording
Misdemeanor conviction levels under
S.S.A.)

PLEA

VERDICT

PRIOR CONVICTIONS:

No./Level ☐ I (0) ☐ II (1-4) ☐ III (5+)

☐ Guilty/Responsible ☐ No Contest

☐ Guilty/Responsible

MISD. CLASS: ☐ 1 ☐ 2 ☐ 3

☐ Guilty/Responsible ☐ No Contest

☐ Guilty/Responsible

MISD. CLASS: ☐ 1 ☐ 2 ☐ 3

☐ Not Guilty/Not Responsible

☐ Not Guilty/Not Responsible

13CRS3178

DEFENDANT IN OPEN COURT REJECTS STATE'S PLEA OFFERS.

DEFENDANT ARRAIGNED IN OPEN COURT AND ENTERS PLEAS OF NOT GUILTY TO ALL CHARGES.

COURT REPORTER: JACKIE SULLIVAN

Date

10/9/2013

Name Of Presiding Judge (Type Or Print)

WILLIAM R. PITTMAN

Signature Of Presiding Judge

APPEAL ENTRIES

- ☐ The defendant gives notice of appeal from the judgment of the District Court to the Superior Court.
☐ The current pretrial release order is modified as follows:

- ☐ The defendant gives notice of appeal from the judgment of the Superior Court to the Appellate Division. Appeal entries and any conditions of post conviction release are set forth on form AOC-CR-350.

Date

Name Of Presiding Judge (Type Or Print)

Signature Of Presiding Judge

NORTH CAROLINA

WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
13 CRS 3178

STATE OF NORTH CAROLINA,
Plaintiff,

v.

PAUL PERRY,
Defendant.

**MOTION TO SUPPRESS SEARCH
OF TELEPHONE RECORDS
AND DETERMINATION OF
LOCATION OF TELEPHONE**

NOW COMES the Defendant, by and through his attorney, Jeffrey M. Cutler, and moves the Court for an order suppressing the searches that were made pursuant to a Court Order signed by the Honorable Lucy N. Inman on December 11, 2012, for records, including the determination of the location of the telephone assigned number (919) 985-6647.

The defendant respectfully shows unto the court that officers of the Raleigh Police Department conducted searches of the defendant's above referenced telephones on the above referenced date and thereafter by installing a pen register, trap and trace device, obtaining historical call detail records, subscriber information, cell site information and location, and mobile locate results/GPS/precision location information ("pinging") in the AT&T and CALEA Delivery Systems for the time period from November 13, 2012, through December 12, 2012, for telephone number assigned (919) 985-6647.

These searches were conducted without his permission; these searches were conducted pursuant to a Court Order that was entered based upon an Application made by the Raleigh Police Department that appears to fail to establish probable cause to conduct these searches for both records and location; and, further, it appears that these searches were conducted without probable cause to believe that evidence of a crime or contraband would

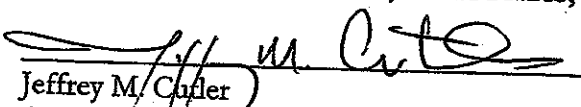
be found by obtaining information about the telephone described above, including its location.

These searches, and the subsequent seizure of evidence concerning the telephones records identified above, as well as a determination of its location, were conducted in violation of the provisions of both the United States Constitution and the North Carolina Constitution, and in violation of the defendant's constitutional rights that are protected by the both the United States Constitution and the North Carolina Constitution, and the case law that has since interpreted both the United States Constitution and the North Carolina Constitution, including *United States v. Jones*, 565 U.S. ___, 132 S. Ct. 945 (2012).

The defendant respectfully moves, therefore, for an order suppressing the search of the records of this telephone and the information concerning it, as well as the location of this telephone, and the seizure of evidence during these searches, which would be fruit of the poisonous tree. The defendant further requests the Court to enter an order prohibiting the State of North Carolina from offering any such evidence at the trial of this matter.

This 13th day of November, 2013.

KIRK, KIRK, HOWELL, CUTLER, & THOMAS, L.L.P.


Jeffrey M. Cutler
Attorney for the Defendant
NCSB# 16604
Post Office Box 729
Wendell, NC 27591
Telephone: (919) 365-6000

NORTH CAROLINA

WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
13 CRS 3178

STATE OF NORTH CAROLINA,)
Plaintiff,)

v.)

PAUL PERRY,)
Defendant.)

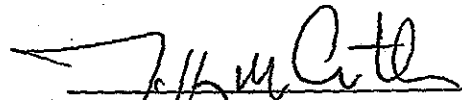
AFFIDAVIT IN SUPPORT OF
MOTION TO SUPPRESS SEARCH OF
TELEPHONE RECORDS AND
DETERMINATION OF LOCATION
OF TELEPHONE

Affiant, having been first duly sworn, alleges and says as follows:

1. I am the attorney for the defendant in the above referenced matters.
2. The information contained in this affidavit was received from the defendant and from discovery materials that were provided to the defendant's attorney by the State of North Carolina.
3. Officers of the Raleigh Police Department conducted a search of the telephone and its records for telephone number 919-985-6647, beginning November 13, 2013, pursuant to a court order signed December 11, 2012. This court order was issued upon application of the Raleigh Police Department. The defendant was not present at the time that this search was conducted. The officers had a court order authorizing them to seize the records and determine the location for this telephone. The officers were looking for the defendant and/or evidence and/or contraband during the course of a drug trafficking investigation.
4. The application for the court order that the officers obtained and executed contained appears to contain insufficient probable cause to justify the issuance and execution of this court order.
5. The officers seized evidence during the course of the search of this telephone number, including "pinging" it to determine its location. The search of the records and location for this telephone number does not seem to be justified since it does not appear that the officers had (a) a

valid court order; (b) did not have probable cause to conduct a search of the records and location for this telephone number; and (3) did not seem to possess evidence that indicated that the defendant was involved in any drug trafficking scheme.

6. Affiant is of the opinion that the search that the officers of the Raleigh Police Department conducted pursuant to the court order dated December 11, 2012, of the of the records and location for this telephone number was illegal and that the seizure of evidence and the location of this telephone cannot be justified based on any known exceptions to the United States Constitution or the North Carolina Constitution or any relevant case law that has subsequently developed. The affiant is of the opinion that the seizure of the evidence and the determination of the location of this telephone should be suppressed.

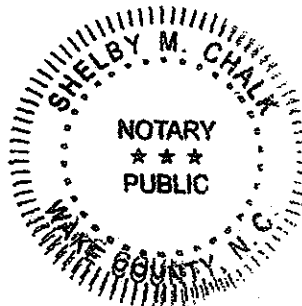

Jeffrey M. Cutler
Affiant

Sworn to this 13th day of
November, 2013.


Notary Public Signature

Shelby M. Chalk
Notary Public Printed Name

My Commission Expires: 9-11-18

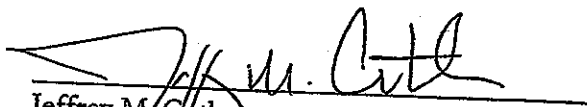


CERTIFICATE OF SERVICE

I hereby certify that the foregoing documents were served on Assistant District Attorney Jimmy Wilson by hand delivering a copy to them at the Office of the Wake County District Attorney, Wake County Justice Center, Raleigh, NC.

This 14th day of August, 2013.

KIRK, KIRK, HOWELL, CUTLER, & THOMAS, L.L.P.



Jeffrey M. Cutler
Attorney for the Defendant
NCSB# 16604
Post Office Box 729
Wendell, NC 27591
Telephone: (919) 365-6000

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

WAKE COUNTY

SUPERIOR COURT DIVISION

13 CRS 3178

STATE OF NORTH CAROLINA,

Plaintiff,

v.

PAUL PERRY,

Defendant.

MOTION TO SUPPRESS
DEFENDANT'S STATEMENTS

NOW COMES the Defendant, Paul Perry, by and through his attorney, Jeffrey M. Cutler and moves this Court for an order suppressing any and all evidence of statements made by Defendant on or about December 11th and December 12th of 2012, and all evidence derived or obtained by the State through said statements. Defendant moves for this Order on the following grounds:

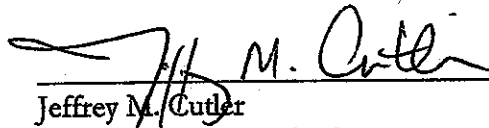
1. That said statements were obtained in violation of Defendant's right to counsel prior to and during interrogation.
2. That said statements were obtained as a result of an illegal, unlawful, and unconstitutional detention and arrest of the Defendant, and therefore are not admissible.
3. That said statements are not admissible for the reason that they were obtained by confronting Defendant with unconstitutionally obtained evidence.
4. That said statements are not admissible for the reason that the interrogating officers failed to properly advise the Defendant of his Miranda rights.
5. That in support of said motion, counsel cites unto the court the following:
 - (a) Amendments V and XIV to the United States Constitution;
 - (b) Article I, §23, 35, and 36 of the North Carolina Constitution;
 - (c) *Miranda v. Arizona*, 384 U.S. 486 (1966);

(d) The offered affidavit of counsel.

The defendant respectfully moves, therefore, for an order suppressing any and all statements made by Defendant and any evidence derived or obtained through said statements. The defendant further requests the Court to enter an order prohibiting the State of North Carolina from offering any such evidence at the trial of this matter.

This 13th day of November, 2013.

KIRK, KIRK, HOWELL, CUTLER, & THOMAS, L.L.P.



Jeffrey M. Cutler
Attorney for the Defendant
NCSB# 16604
Post Office Box 729
Wendell, NC 27591
Telephone: (919) 365-6000

NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
13 CRS 3178

STATE OF NORTH CAROLINA,
Plaintiff,

v.

PAUL PERRY,
Defendant.

AFFIDAVIT IN SUPPORT OF
MOTION TO SUPPRESS
DEFENDANT'S STATEMENTS

Affiant, having been first duly sworn, alleges and says as follows:

1. I am the attorney for the defendant in the above referenced matters.
2. That the information contained in this affidavit was received from the defendant and from discovery materials that were provided to the defendant's attorney by the State of North Carolina.
3. That Defendant is charged with 4 counts of trafficking heroin and 1 count of conspiracy to traffick heroin.
4. That on or about December 11, 2012, the defendant was detained, strip searched and arrested by officers of the Raleigh Police Department.
5. That defendant was interrogated and was not given his Miranda rights and did not sign a Miranda waiver.
6. That as a result, affiant believes that all oral and written statements of the defendant should be suppressed.

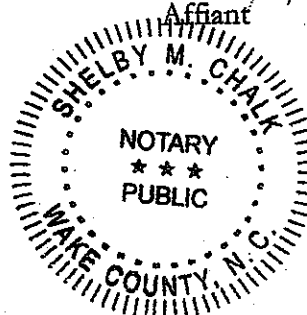
Sworn to this 13th day of
November, 2013.

Shelby M. Chalk
Notary Public Signature

Shelby M. Chalk
Notary Public Printed Name

My Commission Expires: 9-12-18

Jeffrey M. Cutler
JEFFREY M. CUTLER
Affiant

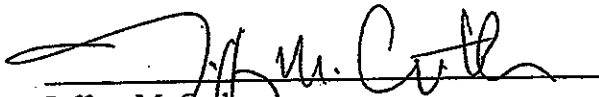


CERTIFICATE OF SERVICE

I hereby certify that the foregoing documents wer served on Assistant District Attorney Jimmy Wilson, by hand delivering a copy to them at the Office of the Wake County District Attorney, Wake County Justice Center, Raleigh, NC.

This 14th day of November, 2013.

KIRK, KIRK, HOWELL, CUTLER, & THOMAS, L.L.P.



Jeffrey M. Cutler
Attorney for the Defendant
NCSB# 16604
Post Office Box 729
Wendell, NC 27591
Telephone: (919) 365-6000

NORTH CAROLINA

WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
13 CRS 3178

STATE OF NORTH CAROLINA,
Plaintiff,

v.

PAUL PERRY,
Defendant.

MOTION TO SUPPRESS
EVIDENCE

NOW COMES the Defendant, Paul Perry, by and through his attorney, Jeffrey M. Cutler and moves this Court pursuant to NCGS §15A-974, Article I, §19 of the North Carolina Constitution, and the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution, to suppress any and all evidence seized by virtue of an invalid search and seizure of the defendant. In support of said motion, defendant shows unto the court as follows:

1. That defendant is charged with 4 counts of trafficking in heroin and 1 count of conspiracy to traffick in heroin.
2. That upon information and belief, Lt. Quick and Detective Marbrey located the defendant at a Red Roof Inn and began surveillance in an adjoining room.
3. That upon information and belief, that defendant's location was obtained without a warrant and without probable cause and in violation of the Fourth, Fifth and Fourteenth Amendments to the United States Constitution and the parallel provisions of the North Carolina Constitution.
4. That upon information and belief, the defendant and his co-defendants exited the room and were unlawfully detained without a reasonable and articulable suspicion that criminal activity was afoot.

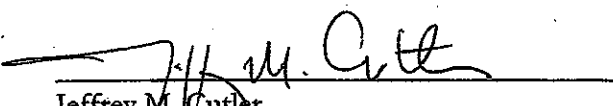
5. That upon information and belief, the defendant and his co-defendants were detained in the hallway of the Red Roof Inn for approximately 15 minutes; that each defendant, including the above-named defendant, was strip searched without a warrant, probable cause, or consent by defendant.

6. That based upon the foregoing reasons, the evidence taken from the defendant was in violation of the defendant's constitutional rights as afforded to him in the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution and the parallel provisions of the North Carolina Constitution.

WHEREFORE, defendant respectfully prays that an order be entered suppressing any and all evidence obtained as a result of the aforesaid unconstitutional and invalid search and seizure of the defendant by the officers of the Raleigh Police Department.

This 13th day of November, 2013.

KIRK, KIRK, HOWELL, CUTLER, & THOMAS, L.L.P.


Jeffrey M. Cutler
Attorney for the Defendant
NCSB# 16604
Post Office Box 729
Wendell, NC 27591
Telephone: (919) 365-6000

NORTH CAROLINA

WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
13 CRS 3178

STATE OF NORTH CAROLINA,
Plaintiff,

v.

PAUL PERRY,

Defendant.

)
)
) AFFIDAVIT IN SUPPORT OF
) MOTION TO SUPPRESS
) EVIDENCE
)
)

Affiant, having been first duly sworn, alleges and says as follows:

1. I am the attorney for the defendant in the above referenced matters.
2. That the information contained in this affidavit was received from the defendant and from discovery materials that were provided to the defendant's attorney by the State of North Carolina.
3. That Defendant is charged with 4 counts of trafficking heroin and 1 count of conspiracy to traffick heroin.
4. That on or about December 11, 2012, the defendant was located at a Red Roof Inn and was put under surveillance by officers of the Raleigh Police Department in an adjoining room.
5. That when defendant and his co-defendant and his co-defendants exited their room, they were unlawfully detained without a reasonable and articulable suspicion that criminal activity was afoot.
6. That defendant and his co-defendants were detained in the hallway for about 15 minutes and that they were then strip searched without a warrant, probable cause or consent by defendant.
7. That the surveillance, detainment and search of defendant was done in violation of the defendant's constitutional rights as afforded to him in the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution and the parallel provisions of the North Carolina Constitution.

8. That as a result, affiant believes that all evidence obtained following the surveillance, detainment, and subsequent search of defendant be suppressed.

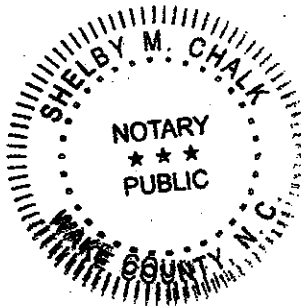
Jeff M. Cutler
JEFFREY M. CUTLER
Affiant

Sworn to this 13th day of
November, 2013.

Shelby M. Chalk
Notary Public Signature

Shelby M. Chalk
Notary Public Printed Name

My Commission Expires: 9-17-18

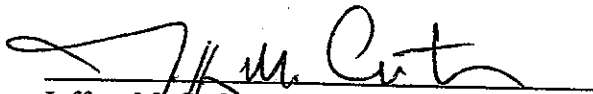


CERTIFICATE OF SERVICE

I hereby certify that the foregoing documents were served on Assistant District Attorney Jimmy Wilson, by hand delivering a copy to them at the Office of the Wake County District Attorney, Wake County Justice Center, Raleigh, NC.

This 14th day of November, 2013.

KIRK, KIRK, HOWELL, CUTLER, & THOMAS, L.L.P.



Jeffrey M. Cutler
Attorney for the Defendant
NCSB# 16604
Post Office Box 729
Wendell, NC 27591
Telephone: (919) 365-6000

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
COUNTY OF WAKE SUPERIOR COURT DIVISION
12-CRS-227771
13-CRS-3178

STATE OF NORTH CAROLINA _____

VS

ORDER

PAUL GREGORY PERRY

THIS CAUSE coming on to be heard and being heard before the undersigned Superior Court Judge presiding at the February 3, 2014 Criminal Session of Wake County Superior Court; that the defendant has filed three written motions entitled "MOTION TO SUPPRESS SEARCH OF TELEPHONE RECORDS AND DETERMINATION OF LOCATION OF TELEPHONE", "MOTION TO SUPPRESS EVIDENCE" and "MOTION TO SUPPRESS DEFENDANT'S STATEMENT"; that based upon the motions filed herein, the affidavits accompanying said motions, the evidence presented and the arguments of counsel, this Court makes the following:

FINDINGS OF FACT

1. That the defendant is present in Court with his attorney, Jeffrey M. Cutler.
2. That the State of North Carolina is represented in this matter by Assistant District Attorney James M. Wilson.
3. That the defendant is charged under Bills of Indictment which appear regular on their face with the felonies of trafficking in heroin by possession, trafficking in heroin by sale, trafficking in heroin by transportation, conspiracy to traffic in heroin and maintaining a dwelling for the purposes of keeping or selling controlled substances.
4. That jury selection has not begun and no potential juror is present in the courtroom.
5. That all of these **FINDINGS OF FACT** are found by a preponderance of the evidence.
6. That this Court has had the opportunity to see and observe each witness and to determine what weight and credibility to give to each witness's testimony.
7. That the defendant testified.

8. That the State of North Carolina presented evidence and called Detective M.K. Mitchell with the Raleigh Police Department Criminal Enterprise Drug Unit, Lt. Norris Quick, Supervisor with the five (5) drug units within the Raleigh Police Department, and Detective Dan Jones with the Raleigh Police Department and a Task Force Officer with the United States Drug Enforcement Agency (DEA) as witnesses for the State of North Carolina.

**MOTION TO SUPPRESS SEARCH OF TELEPHONE RECORDS AND
DETERMINATION OF LOCATION OF TELEPHONE**

9. That the defendant moves to suppress all evidence from "the search of the defendant's telephone records and information concerning it, as well as location of the defendant's telephone, and the seizure of evidence during these searches, which would be fruit of the poisonous tree".
10. That the defendant claims in his motion that the searches were done without probable cause to believe that evidence of a crime or contraband would be found by obtaining the information about the defendant's telephone, including its location.
11. That on December 11, 2012, M. K. Mitchell appeared before the Honorable Lucy N. Inman, Superior Court Judge, and presented to her an Application For Phone Records together with a proposed Order concerning cell phone number (919) 985-6647.
12. That M. K. Mitchell was sworn by Judge Inman and signed the Application.
13. That Judge Inman signed the tendered Order which provided for precision location/GPS for (919) 985-6647 from December 11, 2012 through December 12, 2012.
14. That the Application For Phone Records and Order are marked as Court Exhibit A and are incorporated herein by reference as if fully set forth herein.
15. That on December 10, 2012, Detective M. K. Mitchell arrested a person on related drug trafficking charges.
16. That during the investigation of drug trafficking charges against this person, Detective Mitchell became aware that the possessor of the phone with number (919) 985-6647 was a source of heroin for the person arrested.
17. That the person arrested indicated that this source typically brought heroin into Raleigh from elsewhere and that another shipment was expected the next day, December 11, 2012.
18. That based upon this information, Detective Mitchell made the Application For Phone Records for the phone with number (919) 985-6647.

19. That Detective Mitchell was in possession of sufficient facts which allowed him to swear to the information contained within the Application.
20. That Detective Mitchell was possessed of sufficient facts to conclude that violations of the North Carolina controlled substances laws were being committed and were about to be committed by the person possessing the cell phone with number (919) 985-6647 at the time he made the Application.
21. That the Application contained a sufficient factual basis from which a neutral magistrate could conclude that the issuance of the Order was appropriate in order to assist in the investigation of violation of drug trafficking laws.
22. That the contents of the Application contained the identity of the law enforcement officer making the application (Detective M. K. Mitchell of the Raleigh Police Department) and the identity of the Law Enforcement Agency conducting the investigation (The Raleigh Police Department).
23. That the contents of the Application also contained a certification that the information sought in the Phone Records Production Order will assist with the investigation of this drug trafficking case.
24. That the contents of the Application in the Order tendered to Judge Inman complies with NCGS 15A-262 and 263 and with 18 U.S.C. 2703
25. That Judge Inman issued the Order directing and authorizing ATT to release the phone records and the use of technology to locate the phone.
26. That Judge Inman had jurisdiction and authority to issue the Order.
27. That the defendant's motion entitled MOTION TO SUPPRESS SEARCH OF TELEPHONE RECORDS AND DETERMINATION OF LOCATION OF TELEPHONE should be denied.

MOTION TO SUPPRESS

28. That pursuant to this Order ATT provided to Detective Mitchell, periodic emails giving coordinates from cell towers the subject phone accessed.
29. That based upon this information, Detective Mitchell was able to locate the telephone in the vicinity of the Red Roof Inn, South Saunders Street, Raleigh, North Carolina.
30. That Detective Mitchell and other Law Enforcement Officers had developed the name of the defendant, Paul Perry, as the person in possession of the cell phone with assigned number (919) 985-6647.

31. That Lt. Lawrence Quick talked with the Desk Clerk at this Red Roof Inn and confirmed that Paul Perry was in possession of Room 433.
32. That the Desk Clerk provided to Lt. Quick a room key for the room adjacent to Room 433.
33. That Detective Marbrey with the Raleigh Police Department accompanied Lt. Quick to this adjacent room where they conducted surveillance of Room 433.
34. That other law enforcement officers were located outside of the Red Roof Inn conducting surveillance from various positions.
35. That Lt. Quick and Detective Mabrey maintained radio communications with the officers in the parking lot outside of the Red Roof Inn.
36. That at separate times, two males were observed entering the Red Roof Inn.
37. That each of these men came to Room 433, knocked and gained entrance into Room 433.
38. That both men departed after being in the room for only a few minutes.
39. That one of these men was a white male who stayed in the room about 5 minutes and left.
40. That this white male was identified as Kenneth Wheeler.
41. That Wheeler was observed by officers getting into his car and leaving.
42. That Lt. Quick and Detective Marbery were advised by police radio that Wheeler was stopped and that what officers believed were 10 bundles of heroin were found on the person of Wheeler and that Wheeler admitted that he obtained the heroin from Red Roof Inn and identified his source as "Sincere", later identified as the defendant.
43. That based upon this information, Detective Mitchell began preparation of a search warrant for Room 433.
44. That before this search warrant could be prepared, the occupants (three males and one female) of Room 433 exited the room with duffle bags and other materials as if leaving or fleeing the Red Roof Inn.
45. That Lt. Quick notified the other officers that the occupants of Room 433 were leaving and requested that they respond immediately.
46. That Lt. Quick and Detective Marbery then met the departing occupants and detained them in the hallway.
47. That Detective Quick identified himself as a Raleigh Police Officer and had his badge in one hand and his gun in the other hand.
48. That the detained occupants were patted down for weapons and requested to sit on the hall floor.
49. That because the female appeared to be pregnant, she was not requested to sit down on the floor.

50. That none of the four gave any resistance and complied with the request of the Officers.
51. That the female who was later identified to be Kiara Ledbetter motioned to Lt. Quick as if to speak with him.
52. That Lt. Quick and Ms. Ledbetter went into the open door of one of the rooms where Ms. Ledbetter told Lt. Quick "I am not going down for this."
53. That the door to this room was never closed during the conversation between Lt. Quick and Ms. Ledbetter.
54. That Ms. Ledbetter pulled out from the front of her pants a bag which was later found to contain approximately 70 grams of heroin and handed it to Lt. Quick.
55. That Ms. Ledbetter said that the heroin was Paul's, indicating the defendant.
56. That the substance appeared to be a large quantity of heroin and the four occupants were then placed under arrest.
57. That the defendant moves in this Motion to Suppress that all evidence seized from the point of the detention as he was unlawfully arrested without reasonable suspicion or probable cause.
58. That the information known to Lt. Quick and Detective Marbery at the time of the detention was that a suspected source of heroin was present in Room 433, that a white male who came to Room 433, enter the room and left after 5 minutes, had been arrested shortly after leaving Room 433 for possessing heroin claiming that he had obtained the heroin from "Sincere" in Room 433, and that the occupants of Room 433 were departing the room with duffle bags and other materials.
59. That from the totality of the circumstances, the Officers who detained the four individuals exiting Room 433 had reasonable grounds of suspicion to detain them in order to investigate violations of the controlled substances laws.
60. That this information together with Ms. Ledbetter pulling a large amount of heroin from the front of her pants, giving it to Lt. Quick and indicating that it belonged to the defendant, provided sufficient probable cause for the officers to arrest all four of the departing occupants of Room 433.
61. That the defendant's motion entitled MOTION TO SUPPRESS EVIDENCE should be denied.

MOTION TO SUPPRESS DEFENDANT'S STATEMENT

62. That after being told he was under arrest the defendant told Lt. Quick that he did not want to talk to local police but wanted to talk to a DEA officer.
63. That the defendant was transported to the Raleigh Police Department Six Forks Road Station and placed in an interview room.
64. That law enforcement officers honored the defendant's request that he did not want to talk to local police but wanted to talk to a DEA officer.
65. That Detective David Jones with the Raleigh Police Department and an officer with the DEA Task Force was called at his home by Detective Marbery.
66. That Detective Jones was requested to respond to the Six Forks Station to talk to the defendant who had refused to talk to local law enforcement officers but requested to speak to a DEA agent.
67. That Detective Jones came to the Six Forks Station.
68. That Detective Jones was advised by Detective Mabrey that he had read the defendant his Miranda rights.
69. That Detective Jones and Detective Mabrey joined the defendant in the interview room.
70. That the defendant asked to see Detective Jones credentials (DEA) and was shown Detective Jones' credentials.
71. That Detective Jones advised the defendant of his Miranda rights using a form in the middle of the table in the interview room.
72. That Detective Jones read the rights form to the defendant line by line.
73. That these rights included the right to remain silent and the right to have an attorney present.
74. That Detective Jones went over with the defendant the mandatory minimum sentence for level III trafficking in heroin.
75. That Detective Jones did so because the Detective wanted the defendant to understand what he was facing before he waived his rights and talk to him.
76. That the defendant said that he understood his rights and waived them.
77. That defendant was not asked to sign a waiver form or a form stating that he understood his rights.
78. That the defendant never requested to have an attorney present.

79. That the defendant was in control in determining whether to talk to law enforcement and he initiated and requested the contact with Detective Jones by specifically requesting to talk with a DEA officer.
80. That the defendant was looking for concessions from Detective Jones.
81. That Detective Jones advised the defendant that he was not able to give the defendant any concessions.
82. That Detective Jones told the defendant that he either wanted to talk to him or not and that he was willing to listen to anything that he had to say.
83. That no threats, offers of reward or reward were made to the defendant in order to get him to make any statement.
84. That the defendant made a voluntary statement to Detective Jones.
85. That Detective Jones was with the defendant for approximately 30 minutes.
86. That the defendant testified that he had been in this situation before.
87. That the defendant testified that he told Detective Jones that he would not make any statement if he was going to jail.
88. That the defendant testified that he would have made no statement if he not to get out that night.
89. That the defendant testified that he told the two officers that he would not talk to anyone but a DEA agent.
90. That the defendant denied that he was advised of any rights and denied that he knew that he was under arrest.
91. That the defendant was advised of his constitutional rights to remain silent and the right to an attorney before he made any statement to Detective Jones.
92. That the defendant voluntarily waived his rights and made a statement to Detective Jones.
93. That the statement was the defendant's product and was not prompted by anything that Detective Jones or any other law enforcement did.
94. That the statement was not coerced and was not prompted by any offer or reward.
95. That none of the constitutional or statutory rights of the defendant, either Federal or State, were violated by the defendant making the statement to Detective Jones.
96. That the defendant was a mature person and labored under no physical or mental disability at the time he made statement to Detective Jones.
97. That the defendant understood and recognized his situation and wanted to speak with a DEA officer.

98. That the defendant's MOTION TO SUPPRESS DEFENDANT'S STATEMENT should be denied.

CONCLUSIONS OF LAW

Upon the foregoing findings, all found at least a preponderance of the evidence, the Court concludes as a matter of law that:

1. None of the defendant's constitutional rights, either State or Federal, was violated by his arrest, detention, interrogation, or statement.
2. No promises, offers of reward, or inducement for defendant to make a statement were made.
3. No threat or suggested violence or show of violence to persuade defendant to make a statement were made.
4. That the statement made to Detective Jones on December 11, 2012 were made freely, voluntarily, and understandingly.
5. That the defendant fully understood his constitutional right to remain silent and his constitutional right to counsel and all other rights.
6. That the defendant freely, knowingly, intelligently, and voluntarily waived these rights and thereupon made the statement to Detective Jones.
7. That the defendant's MOTION TO SUPPRESS DEFENDANT'S STATEMENT should be denied.
8. That Detective Mitchell was in possession of sufficient facts which allowed him to swear to the information contained within the Application presented to Judge Inman.
9. That Detective Mitchell was possessed of sufficient facts to conclude that violations of the North Carolina controlled substances laws were being committed and were about to be committed by the person possessing the cell phone with number (919) 985-6647 at the time he made the Application to Judge Inman.
10. That the Application to Judge Inman contained a sufficient factual basis from which a neutral magistrate could conclude that the issuance of the Order was appropriate in order to assist in the investigation of violation of drug trafficking laws.
11. That the contents of the Application to Judge Inman contained the identity of the law enforcement officer making the application (Detective M. K. Mitchell of the Raleigh Police

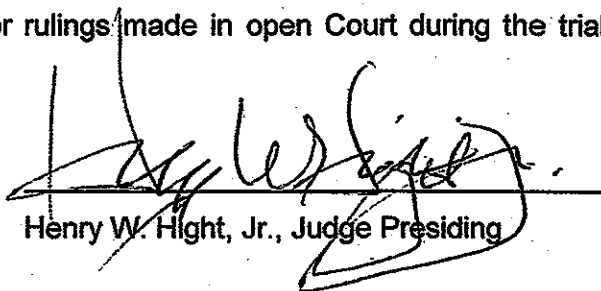
- Department) and the identity of the Law Enforcement Agency conducting the investigation (The Raleigh Police Department).
12. That the contents of the Application also contained a certification that the information sought in the Phone Records Production Order will assist with the investigation of this drug trafficking case.
 13. That the contents of the Application in the Order tendered to Judge Inman complies with NCGS 15A-262 and 263 and with 18 U.S.C. 2703
 14. That Judge Inman issued the Order directing and authorizing ATT to release the phone records and the use of technology to locate the phone.
 15. That Judge Inman had jurisdiction and authority to issue the Order.
 16. That the defendant's motion entitled MOTION TO SUPPRESS SEARCH OF TELEPHONE RECORDS AND DETERMINATION OF LOCATION OF TELEPHONE should be denied.
 17. That the information known to Lt. Quick and Detective Marbery at the time of the detention of the four individual exiting Room 433 of the Red Roof Inn was that a suspected source of heroin was present in Room 433, that a white male who came to Room 433, enter the room and left after 5 minutes, had been arrested shortly after leaving Room 433 for possessing heroin claiming that he had obtained the heroin from "Sincere" in Room 433, and that the occupants of Room 433 were departing the room with duffle bags and other materials.
 18. That from the totality of the circumstances, the Officers who detained the four individuals exiting Room 433 had reasonable grounds of suspicion to detain them in order to investigate violations of the controlled substances laws.
 19. That this information together with Ms. Ledbetter pulling a large amount of heroin from the front of her pants, giving it to Lt. Quick and indicating that it belonged to the defendant, provided sufficient probable cause for the officers to arrest all four of the departing occupants of Room 433.
 20. That the defendant's motion entitled MOTION TO SUPPRESS EVIDENCE should be denied.

ORDER

It is now therefore Ordered that the Defendant's three written motions entitled "MOTION TO SUPPRESS SEARCH OF TELEPHONE RECORDS AND DETERMINATION OF

LOCATION OF TELEPHONE", "MOTION TO SUPPRESS EVIDENCE" and "MOTION TO SUPPRESS DEFENDANT'S STATEMENT" are **DENIED**.

This the 20th day of February, 2014 for rulings made in open Court during the trial proper.



Henry W. Hight, Jr., Judge Presiding

STATE OF NORTH CAROLINA
COUNTY OF WAKE

FILE - 31-
DEERY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

Court Exhibit A

IN RE: (919) 985-6647

CRIMINAL INVESTIGATION

ORDER

THIS CAUSE HAVING COME ON TO BE HEARD before the undersigned Judge presiding and for good cause being pursuant to an application under U.S.C. Title 18, Section 2703 (d), N.C.G.S. 15A-261, 15A-262 and 15A-263, it is ordered that At&T, or any other phone provider found to hold the requested account information and/or requested call detail records, provide to the Wake County District Attorney's Office, Law Enforcement Agency or Officer listed the requested records. It is also ordered that any other phone provider found to hold subscriber/account information for any number(s) identified as having contact with the target number provide subscriber/account information for the identified number(s).

Detective M.K. Mitchell, being a duly sworn Law Enforcement Officer, has offered specific and articulable facts showing that there is probable cause to believe that the subscriber information and complete call detail records are relevant and material to an ongoing criminal investigation being conducted by the Raleigh Police Department.

***Requesting complete subscriber/account and billing information (see below),**

***Requesting complete call detail records (see below), with cell site information including latitude, longitude, sector azimuth and orientation information for the target telephone number(s) (919) 985-6647.**

***Requesting precision location/GPS, E911 locate or Mobile Locate Service if applicable from December 11, 2012 through December 12, 2012 for the phone number(s) listed below and additionally upon request, precision location/GPS for an additional thirty (30) days from the end date of this order for any new number(s) identified/associated with the account or account holder(s) as a result of account modifications; (919) 985-6647**

Records are requested for the date of November 13, 2012 through December 12, 2012.

***(Subscriber identification is any/all billing information, including the name and address of the account holder as well as any other person(s) and telephone number(s) listed with said account. All handset/equipment identifiers such as ESN/MEID and MIN/MSID for the target number and/or all telephone numbers associated with the account), AND upon oral or written request any account modifications, changed telephone numbers and/or new equipment identifiers.**

***(Complete call detail records include a verbatim search of any/all incoming and outgoing calls and SMS (text) message activity made to or from the target. Complete cell site information including Latitude, Longitude, Sector azimuth and orientation for all cellular site locations that the calls or texts were routed or switched to during each inbound/outbound call and inbound/outbound SMS. Also include Per Call Measurement Data or RTT reports or any other report that will provide historical cell site location information for the target while the target is making or receiving calls and/or SMS (texts), during the date range requested.**

- 32 -
APPLICATION FOR PHONE RECORDS

I, *Detective M.K. Mitchell*, of the *Raleigh Police Department*, being duly sworn, request that the court issue an order to produce and provide the phone records described in this application. The Raleigh Police Department is conducting an investigation of a Drug Trafficking case that occurred in Raleigh. There is probable cause to believe that records for (919) 985-6647 constitute evidence of a crime and/or the identity of a person participating in this crime, to wit:

This cellular telephone number was obtained from a cooperating defendant who was arrested as a result of drug trafficking. The possessor of the phone with the number of (919) 985-6647 is being investigated as a major drug trafficker in the Raleigh area. This information has been corroborated by this Detective. It is believed that information received in the records requested in this court order will be crucial in the progression of this investigation.

The applicant swears to the aforementioned facts to establish probable cause for the issuance of a Phone Records Production Order: It is believed that information obtained from the phone records will assist with this investigation by confirming or refuting the information that has been developed to this point in the investigation.

AT&T Wireless

SWORN AND SUBSCRIBED TO
BEFORE ME

 (signature)

12-11-12 (date) My Notary Expires 5-1-15 (date)

- | | |
|---|-------------------------------------|
| <input type="checkbox"/> Deputy CSC | <input type="checkbox"/> Asst. CSC |
| <input type="checkbox"/> Clerk of Court | <input type="checkbox"/> Magistrate |
| <input checked="" type="checkbox"/> Judge | <input type="checkbox"/> Notary |


(Applicant's Signature)

COMPENSATION: Applicant's agency shall compensate Provider for reasonable expenses in complying with this order.

NON-DISCLOSURE ORDER: Provider shall not notify Subscriber or any other person of the existence or content of this order as follows: ☐ until 90 days from the date of this order. ☒ until further order of this court.

FINDINGS

- (1) Provider is an electronic communication service company as defined in 18 USC § 2510(15) and is doing business in North Carolina.
- (2) Pursuant to 18 USC §§ 2703(c)(1)(B), 2703(c), and 2703(d), this court may order a provider of an electronic communication service doing business in North Carolina to disclose the records listed above to an officer who has established reasonable grounds to believe said records are relevant and material to an ongoing criminal investigation.
- (3) Applicant has filed with this court a declaration containing specific and articulable facts establishing reasonable grounds to believe the listed records are relevant and material to an ongoing criminal investigation.
- (4) Applicant's declaration has established grounds for a non-disclosure order pursuant to 18 USC § 2705(b). Grounds for nondisclosure are based on the following: [check one or more]
☐ Danger to life or safety ☒ Flight from prosecution ☒ Jeopardize an investigation
☒ Evidence destruction or tampering ☒ Intimidation of potential witnesses

* **Electronic Reply Requested.** Please forward the requested records in electronic format to michael.mitchell@raleighnc.gov.

RETURN TO:

Detective M.K. Mitchell
Raleigh Police Department- Criminal Enterprise Drug Unit
6716 Six Forks Rd.
Raleigh North Carolina 27615
Office: (919) 996-1606
Cell: (919) 524-6285
Fax (919) 996-7408

This the 11th day of December, 2012.

Lucy N. Tamen

Superior Court Judge
(Printed Name)

Lucy N. Tamen
Superior Court Judge
(Signature)

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE 13CRS3178, 12CRS227771

STATE OF NORTH CAROLINA

v.

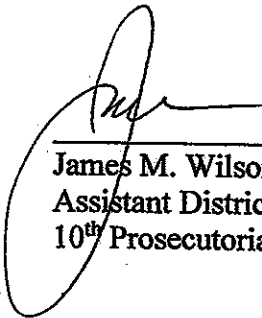
PAUL GREGORY PERRY

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NOTICE OF STATE'S INTENT TO
ESTABLISH CHAIN OF CUSTODY
WITHOUT CALLING UNNECESSARY
WITNESSES

NOW COMES THE STATE OF NORTH CAROLINA by and through the Assistant District Attorney James M. Wilson and gives notice to the Defendant pursuant to N.C.G.S. § 90-95 (g1) of the State's intent to establish chain of custody of evidence in these matters by means of written record rather than by calling otherwise unnecessary evidence custodians to establish chain of custody at trial. A copy of the written chain of custody record(s) for the evidence in this case has been provided to counsel for the Defendant.

This, the ^{6th} ~~10th~~ day of ^{December} ~~November~~ 2013.

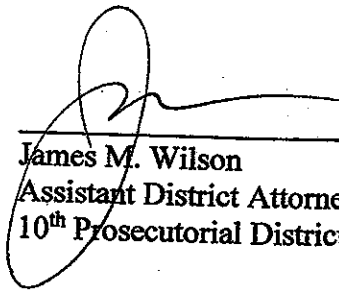

James M. Wilson
Assistant District Attorney
10th Prosecutorial District

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served a copy of the foregoing Motion upon the parties listed below by delivering a copy of the same to the below listed attorney's courthouse mailbox:

Mr. Jeff Cutler
Attorney for Defendant
Courthouse Mailbox #: E-70

This, the ^{6th} ~~1st~~ day of ^{December} ~~November~~ 2013.



James M. Wilson
Assistant District Attorney
10th Prosecutorial District

STATE OF NORTH CAROLINA

WAKE COUNTY

STATE OF NORTH CAROLINA,
Plaintiff,

v.

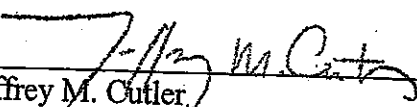
PAUL GREGORY PERRY,
Defendant.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
13 CRS 3178, 12 CRS 22771

)
)
) OBJECTION TO STATE'S INTENT TO
) ESTABLISH CHAIN OF CUSTODY WITHOUT
) CALLING UNNECESSARY WITNESSES
)
)
)

NOW COMES DEFENDANT, by and through undersigned counsel, and in response to
the State's Notice of Intent to Establish Chain of Custody Without Calling Unnecessary
Witnesses, Defendant hereby objects, pursuant to N.C. Gen. Stat. §90-95(g1).

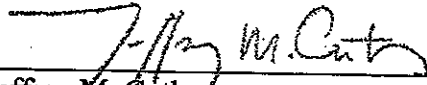
This the 22nd day of January, 2014.


Jeffrey M. Cutler
Attorney for Defendant
NCSB# 16604
PO Box 729
Wendell, NC 27591
(919) 365-6000

CERTIFICATE OF SERVICE

This to certify that I have served a copy of the foregoing **OBJECTION TO STATE'S INTENT TO ESTABLISH CHAIN OF CUSTODY WITHOUT CALLING UNNECESSARY WITNESSES** on James Wilson, Assistant District Attorney for the Tenth Judicial District, by personal delivery to the Office of the District Attorney, Wake County Justice Center, Raleigh, North Carolina.

This 22nd day of January, 2014.



Jeffrey M. Cutler
Attorney for Defendant

1 you can return a verdict of guilty. If you have to convince
2 yourself, look at the evidence, think it through, and I think
3 you'll still arrive at the same conclusion.

4 The State of North Carolina thanks you for your
5 time, and we're asking you to go back and deliberate on each of
6 these five charges and return verdicts of guilty.

7 THE COURT: Ladies and gentlemen, this is a
8 criminal action entitled the State of North Carolina versus is
9 Paul Gregory Perry. Mr. Perry is being tried on charges of
10 trafficking in heroin by possession, selling heroin,
11 trafficking in heroin by transportation, conspiracy to traffic
12 in heroin, and intentionally keeping and maintaining a dwelling
13 which is used for the purpose of unlawfully keeping or selling
14 controlled substances.

15 All of the evidence has been presented. It is
16 now your duty as jurors to decide from this evidence what the
17 facts are, and nothing is a fact until you, the jury, find it
18 to be so. You must then apply the law which I'm about to give
19 to you to those facts.

20 It is absolutely necessary that you understand
21 and apply the law as I give it to you and not as you might have
22 thought it was or as you might like it to be. This is
23 important because justice requires that everyone tried for the
24 same crime be treated in the same way and have the same law
25 applied to their lawsuit in each of North Carolina's one

1 hundred counties.

2 The defendant has entered a plea of not guilty.
3 The fact that he has been charged is no evidence of guilt.
4 Under our system of justice, when a defendant pleads not
5 guilty, he is not required to prove his innocence. He is
6 presumed to be innocent. The State must prove to you that the
7 defendant is guilty beyond a reasonable doubt.

8 What is a reasonable doubt? A reasonable doubt
9 is a doubt which is based on reason and common sense arising
10 out of some or all of the evidence or the lack or the
11 insufficiency of the evidence, as the case may be. Proof
12 beyond a reasonable doubt means that you must be fully
13 satisfied or entirely convinced of the guilt of the defendant
14 as to the matter you're considering. The term beyond a
15 reasonable doubt does not mean beyond all doubt or beyond all
16 possible doubt. It means beyond a reasonable doubt.

17 You are the sole judges of the credibility or
18 the believability of each and every witness, that is, their
19 worthiness of belief. You must decide for yourselves whether
20 to believe the testimony of any witness, or you may believe all
21 or any part or none of what a witness has said on the witness
22 stand.

23 In determining whether to believe any witness,
24 you should apply the same tests of truthfulness which you do
25 apply in your own everyday affairs. As applied to this trial,

1 these tests may include the opportunity of the witness to see,
2 hear, know, or remember the facts or occurrences about which
3 the witness testified; the manner and the appearance of the
4 witness; any interest, bias, or prejudice the witness may have;
5 the apparent understanding and the fairness of the witness;
6 whether the witness's testimony is reasonable; and whether such
7 testimony is consistent with other believable evidence in the
8 case.

9 You are the sole judges of the weight to be
10 given to any evidence. By this I mean, if you decide that
11 certain evidence is believable, then you must determine the
12 importance of that evidence in light of all other believable
13 evidence in the case.

14 There is evidence which tends to show that a
15 witness testified under an agreement with the prosecution for a
16 charge reduction in exchange for their testimony at this trial.
17 If you find that the witness testified for this reason, in
18 whole or in part, you should examine this testimony with great
19 care and caution. If after doing so you believe the testimony
20 in whole or in part, you should treat what you believe the same
21 as you do treat other believable evidence in this case.

22 Now, there are two types of evidence from which
23 you may find the truth as to the facts of the case, direct
24 evidence and circumstantial evidence. Direct evidence is the
25 testimony of one who asserts actual -- who asserts actual

1 knowledge of a fact, such as an eyewitness. Circumstantial
2 evidence is proof of a chain or group of facts and
3 circumstances indicating the guilt or the innocence of a
4 defendant.

5 The law makes no distinction between the weight
6 to be given to either direct evidence or circumstantial
7 evidence, nor is a greater degree of certainty required of
8 circumstantial evidence than of direct evidence. You should
9 weigh all the evidence in this case, and after weighing all the
10 evidence, if you're not convinced of the guilt of the defendant
11 beyond a reasonable doubt, then you must find him not guilty.

12 Now, ladies and gentlemen, I'm going to have the
13 sheriff pass among you a copy of my instructions to you on the
14 five counts which are going to be submitted to you. Do not
15 read ahead on these instructions. I want you to follow along
16 with me as I read these instructions to you.

17 There's seven here so that would be the back
18 row, and this would be the front row. Thank you, sir.

19 (Brief pause.)

20 Count No. 1. Under Count No. 1, the defendant
21 has been charged with trafficking in heroin by possession,
22 which is an unlawful possession of 28 or more grams of heroin.
23 For you to find the defendant guilty of this offense, the State
24 must prove two things beyond a reasonable doubt:

25 First, that the defendant knowingly possessed

1 heroin. Possession of heroin may be either actual or
2 constructive. A person has actual possession of heroin if the
3 person has it on the person; is aware of its presence; and,
4 either alone or together with others, has both the power and
5 intent to control its disposition or use. A person has
6 constructive possession of heroin if he does not have it in his
7 person but is aware of its presence and has, either alone or
8 together with others, both the power and intent to control its
9 disposition or use. A person is awareness of the presence of
10 heroin and the person's power and intent to control its
11 disposition or use may be shown by direct evidence or may be
12 inferred from the circumstances.

13 And, second, that the amount of heroin which the
14 defendant possessed was 28 or more grams.

15 So I charge that if you find from the evidence
16 beyond a reasonable doubt that on or about the alleged date the
17 defendant knowingly possessed heroin and that the amount which
18 he possessed was 28 or more grams of heroin, it would be your
19 duty to return a verdict of guilty. If you do not so find or
20 have a reasonable doubt as to one or more of these things, it
21 would be your duty to return a verdict of not guilty.

22 Count No. 2. Under Count No. 2, the defendant
23 has been charged with selling heroin. For you to find the
24 defendant guilty of this offense, the State must prove beyond a
25 reasonable doubt that the defendant knowingly sold heroin to

1 Kenneth Wheeler. The transfer of heroin for money or the
2 promise to pay money is the sale of heroin.

3 So I charge that if you find from the evidence
4 beyond a reasonable doubt that on or about the alleged date the
5 defendant knowingly sold heroin to Kenneth Wheeler, it would be
6 your duty to return a verdict of guilty. If you do not so find
7 or have a reasonable doubt as to one or more of these things,
8 it would be your duty to return a verdict of not guilty.

9 Count No. 3. Under Count No. 3, the defendant
10 has been charged with trafficking in heroin by transportation,
11 which is the unlawful transportation of 28 or more grams of
12 heroin. For you to find the defendant guilty of this offense,
13 the State must prove two things beyond a reasonable doubt:

14 That the defendant knowingly transported heroin
15 from one place to another;

16 And, second, that the amount of heroin which
17 the defendant transported was 28 or more grams.

18 So I charge that if you find from the evidence
19 beyond a reasonable doubt that on or about the alleged date the
20 defendant knowingly transported heroin from one place to
21 another and that the amount which he transported was 28 or more
22 grams of heroin, it would be your duty to return a verdict of
23 guilty. If you do not so find or have a reasonable doubt as to
24 one or more of these things, it would be your duty to return a
25 verdict of not guilty.

1 Count No. 4. The defendant has been charged
2 with felonously conspiring to commit trafficking in heroin.
3 For you to find the defendant guilty of this offense, the State
4 must prove three things beyond a reasonable doubt:

5 First, that the defendant and Kiara Ledbetter
6 entered into an agreement;

7 Second, that the agreement was to commit
8 trafficking in heroin by transportation, which is movement of
9 28 or more grams of heroin from one place to another;

10 And, third, that the defendant and Kiara
11 Ledbetter intended that the agreement be carried out at the
12 time that it was made.

13 So I charge that if you find from the evidence
14 beyond a reasonable doubt that on or about the alleged date the
15 defendant agreed with Kiara Ledbetter to commit trafficking in
16 heroin by transportation and that the defendant and Kiara
17 Ledbetter intended at the time the agreement was made that it
18 would be carried out, it would be your duty to return a verdict
19 of guilty. If you do not so find or have a reasonable doubt as
20 to one or more of these things, it would be your duty to return
21 a verdict of not guilty.

22 Count No. 5. Under Count No. 5, the defendant
23 has been charged with intentionally maintaining a dwelling
24 which is used for the purpose of unlawfully keeping or selling
25 controlled substances. For you to find the defendant guilty of

1 this offense, the State must prove two things beyond a
2 reasonable doubt:

3 First, that the defendant maintained a hotel
4 room which was used for the purpose of unlawfully keeping or
5 selling heroin. A person maintains a hotel room when they pay
6 for the room, get the key to that room, and go into that room.
7 Heroin is a controlled substance the keeping or selling of
8 which is unlawful.

9 And, second, that the defendant did this
10 intentionally. Intent is a mental attitude seldom provable by
11 direct evidence. It must ordinarily be proved by circumstances
12 from which it may be inferred. You arrive at the intent of a
13 person by such just and reasonable deductions from the
14 circumstances proven as a reasonably prudent person would
15 ordinarily draw therefrom. A person acts intentionally if he
16 desires to cause the consequences of his act.

17 So I charge that if you find from the evidence
18 beyond a reasonable doubt that on or about the alleged date the
19 defendant intentionally maintained room 433, Red Roof Inn on
20 South Saunders Street, Raleigh, North Carolina, which was used
21 for the unlawful keeping or selling of controlled substances,
22 then it would be your duty to return a verdict of guilty of
23 this offense. If you do not so find or have a reasonable doubt
24 as to one or both of these things, you would not find the
25 defendant guilty of this offense, but you must consider whether

1 the defendant is guilty of the offense of knowingly maintaining
2 a dwelling which is used for the purpose of unlawfully keeping
3 or selling controlled substances.

4 The offense of knowingly maintaining a dwelling
5 which was used for the purpose of unlawfully keeping or selling
6 controlled substances differs from the offense of intentionally
7 keeping in that the State is not required to prove beyond a
8 reasonable doubt that the defendant acted intentionally but
9 that he did so knowingly. A person knows of an activity if he
10 is aware of a high probability of its existence.

11 So I charge that if you find from the evidence
12 beyond a reasonable doubt that on or about the alleged date the
13 defendant knowingly maintained room 433, Red Roof Inn, Raleigh,
14 North Carolina, which was used for the unlawful keeping or
15 selling controlled substances, then it would be your duty to
16 return a verdict of guilty of -- I want the take out that --
17 guilty of knowingly maintaining a dwelling which was used for
18 the purpose of keeping or selling controlled substances. If
19 you do not so find or have a reasonable doubt as to one or both
20 of these things, it would be your duty to return a verdict of
21 not guilty.

22 Now, members of the jury, you yourselves have
23 heard the evidence, and you've heard the arguments of counsel
24 for the State and for the defendant. I have not reviewed all
25 the contentions raised by the State and the defendant, that

1 being one of the responsibilities of these good lawyers in
2 their closing speeches to you. It is now your duty to consider
3 all the evidence and also all the arguments, contentions, and
4 positions urged upon you by the lawyers of each side in their
5 closing speeches to you, and then you are to weigh them all in
6 light of your common sense and as best you can to determine the
7 truth of this matter.

8 The law, as indeed it should, requires that the
9 presiding judge be impartial. You are not to draw any
10 inference from any ruling that I have made or any inflection in
11 my voice or any expression on my face or any question I may
12 have asked a witness or from anything else that I may have said
13 or done during this trial. You should not infer that I even
14 have an opinion or have intimated an opinion as to whether any
15 part of the evidence should be believed or disbelieved or as to
16 whether any fact has or has not been proved or as to what your
17 verdict or findings ought to be. It is your exclusive province
18 to find the true facts of this case and to render a verdict
19 reflecting the truth as you find the truth to be.

20 I instruct you that a verdict is not a verdict
21 until all twelve jurors agree unanimously as to what your
22 decision shall be. You may not return a verdict by majority
23 vote.

24 Counsel, anything further for the Court under
25 General Rules of Practice Section 21 or under General Statute

1 15A-1231? Anything on above of the State of North Carolina?

2 MR. WILSON: No, Your Honor. Thank you.

3 THE COURT: Anything on behalf of Mr. Perry?

4 MR. CUTLER: No, Your Honor. Thank you.

5 THE COURT: Mr. Cross, it appears to this Court
6 we have twelve jurors who are ready and able to do their duty
7 in the trial of this particular matter and we are not going to
8 have need to call upon your time any further.

9 Do you have anything in the jury room?

10 THE ALTERNATE JUROR: Yes.

11 THE COURT: How about going and get your stuff?

12 (Brief pause.)

13 THE COURT: The record should reflect that Mr.
14 Cross returned from the jury room after collecting his sweater.

15 Mr. Cross I'm going to ask you to remove
16 yourself from the jury box and have a seat in the audience,
17 please.

18 The record should reflect that Mr. Cross has
19 done so and we have twelve jurors remaining in the jury box.

20 Ladies and gentlemen, your first order of
21 business when you retire to the jury room should be to select a
22 foreperson to lead you in your legal deliberations. After
23 you've done that, you should deliberate.

24 I'm going to provide for you in the jury room
25 this manila envelope your verdict sheet, which contains your

1 possible verdicts as to the five counts to be submitted to you.
2 When you have reached a unanimous verdict as to a count, then
3 your foreperson should place a check or an X mark in the space
4 next to the appropriate verdict on the verdict sheet.

5 When you've done that to Count 1, Count 2, Count
6 3, Count 4, and Count 5, then your foreperson should date the
7 verdict sheet. If you get a verdict today, today is the 6th
8 day of February, 2014. Then your foreperson will print his or
9 her name in the space provided, sign the verdict sheet, return
10 it to this manila envelope, knock on the door, and tell the
11 sheriff that you have reached a unanimous verdict. Then when
12 you're called to come into the courtroom, your foreperson would
13 bring the manila envelope with the signed verdict sheet in with
14 you.

15 Now, if during the course of your deliberations
16 you need to communicate with this Court, you should do so only
17 in writing. I'm going to provide this pad and this pen for
18 that purpose. If you have a question or request, write it down
19 on the paper, rip the page off, fold it over, give it to the
20 sheriff. He'll bring it to me. I'll talk about it with the
21 lawyers, and I'll bring you here in the courtroom and respond
22 to you here on the record.

23 Mr. Sheriff, if you will place the verdict sheet
24 which is in the manila envelope and the legal pad and pen in
25 the middle of the table in the jury room, please, sir.

1 (Brief pause.)

2 THE COURT: The record should reflect the
3 sheriff has returned from the jury room and that there is no
4 one in the jury room.

5 Length of deliberations. It's however long it
6 takes. However short or however long. If you don't get a
7 verdict before about 1:00, then we'll take our luncheon recess.
8 If you get a verdict before 1:00, then I'll accept it and
9 you're free. If you don't have one by 1:00, that's fine.
10 We'll go to lunch, come back, and you deliberate. If you get a
11 verdict before 5:00, that's fine. If you don't, that's okay.

12 I'm not going to sequester you. So you'll be
13 able to come home tonight, and we'll come back tomorrow
14 morning, and you can continue your deliberations.

15 Again, length of deliberations is whatever it
16 takes, however short or however long. If you don't get a
17 verdict by about 1:00 and I call you to come in, your
18 foreperson should bring with them into the courtroom all of the
19 pages I've given you together with the verdict sheet and manila
20 envelope, and I'll take possession of that over the luncheon
21 recess period.

22 Now, some of you have been taking notes. You
23 may take your notes with you for your deliberations. So,
24 again, that's an aid to your memory, and it does not prove any
25 fact for anyone else on the jury, and you should not give

1 anyone's notes any greater credibility than you do your own
2 memory or another juror's memory in this case.

3 Anything further for the State?

4 MR. WILSON: No, Your Honor.

5 THE COURT: Anything further for the defendant?

6 MR. CUTLER: No, Your Honor.

7 THE COURT: Ladies and gentlemen, you may
8 retire. First select one of your members as foreperson to lead
9 you in your legal deliberations. When you have reached a
10 unanimous verdict, you may return to the courtroom to pronounce
11 it. With that, you are excused.

12 (Jurors not present.)

13 THE COURT: The record should reflect that the
14 jury is absent from the courtroom. Anything for the record for
15 the State?

16 MR. WILSON: No, thank you, Your Honor.

17 THE COURT: Anything for the record for
18 Defendant?

19 MR. CUTLER: No, Your Honor.

20 THE COURT: Fine. We're at ease.

21 (Court at ease from 12:22 p.m. to 12:57 p.m.)

22 THE COURT: Mr. Sheriff, if you would invite the
23 jury in and tell them it's the luncheon period and that the
24 foreperson needs to bring with them the verdict sheet and the
25 sheets I've given them.

Define transportation by trafficking in Count 3. Do you have to be the driver or can you simply be a passenger?

Count Exhibit A

(State's evidence)

Under Count 2, we request the statement from Paul Perry + Detective Jones.

Correct Exhibit B

1 certainly object if it's not.

2 THE COURT: This is basically a modification of
3 acting in concert, which would apply to most of what we've got
4 here, which I frankly thought I'd given at the time. But the
5 evidence was the defendant transported the heroin from the
6 parking lot at least into the room, but in any event, it
7 doesn't make any difference. I'm going to give this. I'm
8 going to give this instruction. Note the defendant's
9 objection.

10 You can bring in the jury.

11 THE BAILIFF: Yes, Your Honor.

12 (Jurors present.)

13 THE COURT: Ladies and gentlemen, I've received
14 your note which reads, "Define transportation by trafficking in
15 Count 3. Do you have to be the driver, or can you simply be a
16 passenger?"

17 Ladies and gentlemen, I respond to your request
18 in the following manner: Transportation of heroin is the
19 movement of heroin from one place to another. If two or more
20 persons join together in a common purpose to move heroin from
21 one place to another and each of them is present when the
22 heroin is moved from one place to another, each of them is
23 guilty of the transportation of the heroin.

24 With that, ladies and gentlemen, you may retire
25 and continue your deliberations.

NOTE RE VERDICTS

The Wake County Clerk of Superior Court advised counsel that the Verdict Sheet containing the jury's written verdict was lost. The verdicts were taken in open court and appear in the following pages from T Vol 4 pp 590-592.

1 THE COURT: Anything for the record for the
2 defendant?

3 MR. CUTLER: No, Your Honor.

4 THE COURT: Thank you. You may stand aside.

5 (Court at ease from 4:22 p.m. to 4:40 p.m.)

6 THE COURT: Mr. Sheriff, you may bring the jury
7 in.

8 THE BAILIFF: Yes, Your Honor.

9 (Jurors present.)

10 THE COURT: If you'll stand, please, ma'am.

11 Ms. Green, I'm going to ask you some questions,
12 and the appropriate response to each question is a yes or no.
13 If you don't understand a question, ask me to repeat it, and
14 I'll be glad to do so.

15 THE FOREPERSON: Yes, sir.

16 THE COURT: Has the jury reached a unanimous
17 verdict in accordance with my instruction?

18 THE FOREPERSON: Yes.

19 THE COURT: Have you indicated a unanimous
20 verdict in each of the places by placing an X or check in the
21 appropriate place?

22 THE FOREPERSON: Yes.

23 THE COURT: Have you dated the verdict sheet?

24 THE FOREPERSON: Yes.

25 THE COURT: Have you signed it?

1 THE FOREPERSON: Yes.

2 THE COURT: Is it in the manila envelope you
3 hold in your hand?

4 THE FOREPERSON: Yes.

5 THE COURT: If you give that to the sheriff, you
6 may be seated.

7 Madam clerk, take the verdict, please.

8 Defendant stand.

9 THE CLERK: Ladies and gentlemen of the jury,
10 the foreperson has returned a verdict in cases 12 CRS 227771
11 and 13 CRS 3178, the State of North Carolina versus Paul
12 Gregory Perry. We the jury unanimously find the defendant,
13 Paul Gregory Perry, to be: In Count 1, guilty of trafficking
14 in heroin by possession; in Count 2, guilty of selling heroin;
15 in Count 3, guilty of trafficking in heroin by transportation;
16 Count No. 4, guilty of conspiracy to traffic in heroin; and
17 Count No. 5, guilty of intentionally keeping and maintaining a
18 dwelling which is used for the purpose of unlawfully keeping or
19 selling controlled substances. This the 6th day of February,
20 2014.

21 Is this your verdict so say you all?

22 THE JURORS: Yes.

23 THE COURT: Ladies and gentlemen, if that was
24 each of your verdicts, if you'll raise your hand.

25 The record should reflect that all twelve jurors

1 raised their hand.

2 Anything further for this jury for the State of
3 North Carolina?

4 MR. WILSON: No, Your Honor.

5 THE COURT: Anything for this jury for the
6 defendant?

7 MR. CUTLER: No, Your Honor.

8 THE COURT: The verdict of the jury is hereby
9 accepted by this Court and is ordered recorded.

10 Is the State ready to proceed to sentencing?

11 MR. WILSON: Yes, Your Honor. The State prays
12 judgment.

13 THE COURT: Defendant ready to proceed?

14 MR. CUTLER: Your Honor, I would like to make a
15 motion to set aside.

16 THE COURT: I'll let you do that out of the --
17 at the end of the judgment.

18 MR. CUTLER: Okay.

19 THE COURT: Yes, sir?

20 MR. WILSON: Your Honor, obviously, as
21 trafficking counts, they're mandatory minimum sentences the
22 defendant is exposed to. I would indicate or argue to the
23 Court that there's no evidence the defendant has rendered any
24 sort of substantial assistance, and therefore the Court would
25 be bound by the mandatory minimums in this these cases.

STATE OF NORTH CAROLINA

File No.

13CR53178 12CR522771

WAKE

County

In The General Court Of Justice

☐ District ☒ Superior Court Division

STATE VERSUS

Name And Address Of Defendant

Paul Gregory Perry

Social Security No.

SD No.

NC1641699A

Race

B

Sex

M

DOB

4/2/1983

WORKSHEET PRIOR RECORD
LEVEL FOR FELONY SENTENCING
AND PRIOR CONVICTION LEVEL
FOR MISDEMEANOR SENTENCING
(STRUCTURED SENTENCING)

(For Offenses Committed On Or After Dec. 1, 2009)

G.S. 15A-1340.14, 15A-1340.21

I. SCORING PRIOR RECORD/FELONY SENTENCING

NUMBER	TYPE	FACTORS	POINTS
	Prior Felony Class A Conviction	X 10	
	Prior Felony Class B1 Conviction	X 9	
	Prior Felony Class B2 or C or D Conviction	X 6	
	Prior Felony Class E or F or G Conviction	X 4	
1	Prior Felony Class H or I Conviction	X 2	2
1	Prior Class A1 or 1 Misdemeanor Conviction (see note on reverse)	X 1	1
SUBTOTAL			3

Defendant's Current Charge(s):

If all the elements of the present offense are included in any prior offense whether or not the prior offenses were used in determining prior record level.

If the offense was committed while the offender was:

☒ on supervised or unsupervised probation, parole, or post-release supervision;
☐ serving a sentence of imprisonment; or ☐ on escape from a correctional institution.

County

Fed (Charlotte)

File No.

38784083

State (if other than NC)

See back

+1

+1

+1

TOTAL

4

II. CLASSIFYING PRIOR RECORD/CONVICTION LEVEL

MISDEMEANOR

NOTE: If sentencing for a misdemeanor, total the number of prior conviction(s) listed on the reverse and select the corresponding prior conviction level.

No. Of Prior Convictions	Level
0	I
1 - 4	II
5+	III

PRIOR
CONVICTION
LEVEL



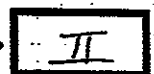
- ☐ The Court has determined the number of prior convictions to be _____ and the level to be as shown above.
- ☐ In making this determination, the Court has relied upon the State's evidence of the defendant's prior convictions from a computer printout of DCI-CCH.

FELONY

NOTE: If sentencing for a felony, locate the prior record level which corresponds to the total points determined in Section I above.

Points	Level
0 - 1	I
2 - 5	II
6 - 9	III
10 - 13	IV
14 - 17	V
18+	VI

PRIOR
RECORD
LEVEL



- ☐ The Court finds the prior convictions, prior record points and the prior record level of the defendant to be as shown herein.
- ☐ In making this determination, the Court has relied upon the State's evidence of the defendant's prior convictions from a computer printout of DCI-CCH.
- ☐ In finding a prior record level point under G.S. 15A-1340.14(b)(7), the Court has relied on the jury's determination of this issue beyond a reasonable doubt or the defendant's admission to this issue.

- ☐ The Court finds that all of the elements of the present offense are included in a prior offense.
- ☐ For each out-of-state conviction listed in Section V on the reverse, the Court finds by a preponderance of the evidence that the offense is substantially similar to a North Carolina offense and that the North Carolina classification assigned to this offense in Section V is correct.
- ☐ The Court finds that the State and the defendant have stipulated in open court to the prior convictions, points and record level.

Date

Name Of Presiding Judge (Type Or Print)

Signature Of Presiding Judge

III. STIPULATION


The prosecutor and defense counsel, or the defendant, if not represented by counsel, stipulate to the information set out in Sections I and V of this form, and agree with the defendant's prior record level or prior conviction level as set out in Section II based on the information herein.

Date	2/6/14	Signature Of Prosecutor	[Signature]	Date		Signature Of Defense Counsel Or Defendant	
------	--------	-------------------------	-------------	------	--	---	--

IV. DNA CERTIFICATION
(For Offenses Committed On Or After Feb. 1, 2011)

A review of the case record (the form required by G.S. 15A-266.3A(c)) and the records of the State Bureau of Investigation (the DCI-CCH rap sheet) indicates that (check one):

- ☐ 1. The defendant is NOT required to provide a DNA sample for this conviction because (i) the offense is not covered by G.S. 15A-266.4 or (ii) a sample of the defendant's DNA has previously been obtained and the defendant's DNA record is currently stored in the State DNA database.
- ☒ 2. The defendant IS required to provide a DNA sample for this conviction because (i) the offense is covered by G.S. 15A-266.4 and (ii) a sample of the defendant's DNA has not previously been obtained and the defendant's DNA record has not previously been stored in the State DNA Database, or if previously obtained and stored, the defendant's DNA sample and record have been expunged.

Date 2/6/14	Name Of Prosecutor (Type Or Print) James M. Wilson	Signature Of Prosecutor 
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V. PRIOR CONVICTION

NOTE: Federal law precludes making computer printout of DCI-CCH (rap sheets) part of permanent public court record.

NOTE: The only misdemeanor offenses under Chapter 20 that are assigned points for determining prior record level for felony sentencing are misdemeanor death by vehicle [G.S. 20-141.4(a2)] and, for sentencing for felony offenses committed on or after December 1, 1997, impaired driving [G.S. 20-138.1] and commercial impaired driving [G.S. 20-138.2]. First Degree Rape and First Degree Sexual Offense convictions prior to October 1, 1994, are Class B1 convictions.

[illegible]

☐ See AOC-CR-600 Continuation for additional prior convictions.

Source Code: 1 - DCI 3 - AOC/Local 5 - ID Bureau
2 - NCIC 4 - AOC/Statewide 6 - Other

Date Prepared:

Prepared By:

STATE OF NORTH CAROLINA				File No. 12CRS227771		51	
WAKE		County		RALEIGH		Seat of Court	
NOTE: (This form is to be used for (1) felony offense(s) and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-342 for DWI offense(s).)							
STATE VERSUS				JUDGMENT AND COMMITMENT ACTIVE PUNISHMENT - FELONY (STRUCTURED SENTENCING) (For Convictions On Or After Jan. 1, 2012)			
Name Of Defendant PERRY, PAUL, GREGORY				G.S. 15A-1301, 15A-1340.13 <input checked="" type="checkbox"/> Appointed <input type="checkbox"/> Retained <input type="checkbox"/> SG Crt Rptr Initials			
Race B		Sex M					
Attorney For State WILSON, JIMMY M				Def. Found Not Indigent <input type="checkbox"/> Def. Waived Attorney <input type="checkbox"/> Attorney For Defendant CUTLER, JEFFREY			
The defendant <input type="checkbox"/> pled guilty <input type="checkbox"/> pursuant to Alford to <input checked="" type="checkbox"/> was found guilty by a jury of <input type="checkbox"/> pled no contest to							
File No.(s)	Off.	Offense Description		Offense Date	G.S. No.	F/M	CL
12CRS227771	51	TRAFFICKING HEROIN BY POSSESSION		12/11/2012	90-95(H)(4)	F	C
NOTE: Enter punishment class if different from underlying offense class (punishment class represents a status or enhancement).							
The Court:				PRIOR RECORD LEVEL: <input type="checkbox"/> I <input type="checkbox"/> III <input type="checkbox"/> V <input type="checkbox"/> II <input type="checkbox"/> IV <input type="checkbox"/> VI			
<input type="checkbox"/> 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be _____. Any prior record level point under G.S. 15A-1340.14(b)(7) is based on the jury's determination of this issue beyond a reasonable doubt or the defendant's admission to this issue.							
<input checked="" type="checkbox"/> 2. makes no prior record level finding because none is required for Class A felony, violent habitual felon, or drug trafficking offenses.							
The Court: (NOTE: Block 1 or 2 MUST be checked):							
<input checked="" type="checkbox"/> 1. makes no written findings because the term imposed is: <input type="checkbox"/> (a) in the presumptive range. <input type="checkbox"/> (b) for a Class A felony. <input type="checkbox"/> (c) for adjudication as a violent habitual felon, G.S. 14-7.12. <input checked="" type="checkbox"/> (d) for drug trafficking. <input type="checkbox"/> for which the Court finds the defendant provided substantial assistance, G.S. 90-95(h)(5). <input type="checkbox"/> (e) in the aggravated range, pursuant to G.S. 20-141.4(b)(1a).							
<input type="checkbox"/> 2. finds the Determination of aggravating and mitigating factors on the attached AOC-CR-605. <input type="checkbox"/> egregious aggravation under G.S. 14-27.2A or G.S. 14-27.4A, on the attached AOC-CR-618, which requires a sentence in excess of that authorized by G.S. 15A-1340.17.							
<input type="checkbox"/> 3. adjudges the defendant to be an habitual felon to be sentenced. <input type="checkbox"/> (offenses committed before Dec. 1, 2011) as a Class C felon. <input type="checkbox"/> (offenses committed on or after Dec. 1, 2011) four classes higher than the principal felony (no higher than Class C).							
<input type="checkbox"/> 4. adjudges the defendant to be an habitual breaking and entering status offender, to be sentenced as a Class E felon.							
<input type="checkbox"/> 5. adjudges the defendant to be an armed habitual felon to be sentenced as a Class C felon (unless sentenced herein as a Class A, B1, or B2 felon) and with a minimum term of imprisonment of no less than 120 months.							
<input type="checkbox"/> 6. finds enhancement pursuant to: <input type="checkbox"/> G.S. 90-95(e)(3) (drugs). <input type="checkbox"/> G.S. 14-3(e) (hate crime). <input type="checkbox"/> G.S. 50B-4.1 (domestic violence). <input type="checkbox"/> G.S. 14-50.22 (gang). <input type="checkbox"/> Other: _____. This finding is based on the jury's determination of this issue beyond a reasonable doubt or on the defendant's admission.							
<input type="checkbox"/> 7. finds that the defendant committed the felony by using, displaying, or threatening the use or display of a firearm or deadly weapon and actually possessed the firearm or weapon about his or her person. This finding is based on the jury's determination of this issue beyond a reasonable doubt or on the defendant's admission. Pursuant to G.S. 15A-1340.16A, the Court has increased the minimum sentence by (check only one)							
<input type="checkbox"/> (Class A-E felony committed prior to Oct. 1, 2013) 60 months. <input type="checkbox"/> (Class A-E felony committed on or after Oct. 1, 2013) 72 months.							
<input type="checkbox"/> (Class F or G felony committed on or after Oct. 1, 2013) 36 months. <input type="checkbox"/> (Class H or I felony committed on or after Oct. 1, 2013) 12 months.							
<input type="checkbox"/> 8. finds the above designated offense(s) is a reportable conviction under G.S. 14-208.6 (check only one)							
<input type="checkbox"/> a. and therefore makes the additional findings and orders on the attached AOC-CR-615, Side One.							
<input type="checkbox"/> b. but makes no finding or order concerning registration or satellite-based monitoring due to a sentence of life imprisonment without parole.							
<input type="checkbox"/> 9. finds the above designated offense(s) involved the <input type="checkbox"/> physical or mental <input type="checkbox"/> sexual abuse of a minor. (NOTE: If offense(s) is not also a reportable conviction in No. 8 above, this finding requires no further action by the court.)							
<input type="checkbox"/> 10. finds that a <input type="checkbox"/> motor vehicle <input type="checkbox"/> commercial motor vehicle was used in the commission of the offense and that it shall be reported to DMV.							
<input type="checkbox"/> 11. finds this is an offense involving assault, communicating a threat, or an act defined by G.S. 50B-1(a), and the defendant had a personal relationship as defined by G.S. 50B-1(b) with the victim.							
<input type="checkbox"/> 12. (offenses committed on or after Dec. 1, 2008, only) finds the above designated offense(s) involved criminal street gang activity. G.S. 14-50.25.							
<input type="checkbox"/> 13. did not grant a conditional discharge under G.S. 90-96(a) because (check all that apply) <input type="checkbox"/> the defendant refused to consent. <input type="checkbox"/> (offenses committed on or after Dec. 1, 2013, only) the Court finds, with the agreement of the District Attorney, that the offender is inappropriate for a conditional discharge for factors related to the offense.							
<input type="checkbox"/> 14. finds that the defendant used or displayed a firearm while committing the felony. G.S. 15A-1382.2.							
<input type="checkbox"/> 15. (for judgments entered on or after Dec. 1, 2013, only) finds that this was an offense involving child abuse or an offense involving assault or any of the acts as defined in G.S. 50B-1(a) committed against a minor. G.S. 15A-1382.1(a1).							
The Court, having considered evidence, arguments of counsel and statement of defendant, Orders that the above offenses, if more than one, be consolidated for judgment and the defendant be sentenced (check only one)							
<input type="checkbox"/> to Life Imprisonment Without Parole for <input type="checkbox"/> Class A Felony. <input type="checkbox"/> Class B1 Felony.				in the custody of:			
<input type="checkbox"/> Violent Habitual Felon. <input type="checkbox"/> G.S. 14-27.2A or G.S. 14-27.4A with egregious aggravation.				<input checked="" type="checkbox"/> N.C. DAC.			
<input type="checkbox"/> to Life Imprisonment With Parole, pursuant to G.S. Chapter 15A, Article 81B, Part 2A.				<input type="checkbox"/> Other: _____			
for a minimum term of:		and a maximum term of:		ASR term (Order No. 4, Side Two)		to Death (see attached Death Warrant and Certificates)	
225 months		282 months		months			
The defendant shall be given credit for <u>422</u> days spent in confinement prior to the date of this Judgment as a result of this charge(s).							
<input type="checkbox"/> The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.							
<input type="checkbox"/> The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below:							
File No.	Offense	County	Court	Date			
AOC-CR-601, Rev. 10/13 © 2013 Administrative Office of the Courts							

-62-

The Court further Orders: (check all that apply)

1. The defendant shall pay to the Clerk of Superior Court the "Total Amount Due" shown below:

Costs	Fine	Restitution*	Attorney's Fees	SBM Fee	Appt Fee/Misc	Total Amount Due
\$ 5,774.50	\$ 500,000.00	\$	\$	\$	\$	\$ 505,774.50

*See attached "Restitution Worksheet, Notice and Order (Initial Sentencing)," AOC-CR-611, which is incorporated by reference.

- ☐ 2. The Court finds that restitution was recommended as part of the defendant's plea arrangement.
- ☐ 3. The Court finds just cause to waive costs, as ordered on the attached ☐ AOC-CR-618. ☐ Other: _____
- ☐ 4. Without objection by the State, the defendant shall be admitted to the Advanced Supervised Release (ASR) program. If the defendant completes the risk reduction incentives as identified by the Division of Adult Correction, then he or she will be released at the end of the ASR term specified on Side One, G.S. 15A-1340.18.
- ☐ 5. Other: _____

The Court recommends:

- ☐ 1. Substance abuse treatment. ☐ 2. Psychiatric and/or psychological counseling. ☐ 3. Work release ☐ should ☐ should not be granted.
- ☐ 4. Payment as a condition of post-release supervision or from work release earnings, if applicable, of the "Total Amount Due" set out above.
☐ but the Court does not recommend restitution be paid ☐ as a condition of post-release supervision. ☐ from work release earnings.

The Court further recommends:

ORDER OF COMMITMENT/APPEAL ENTRIES

- ☒ It is ORDERED that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.
- ☒ The defendant gives notice of appeal from the judgment of the trial court to the appellate division. Appeal entries and any conditions of post conviction release are set forth on form AOC-CR-350.

SIGNATURE OF JUDGE

Date 2/6/2014	Name Of Presiding Judge (Type Or Print) HENRY W. HIGHT, JR	Signature Of Presiding Judge
------------------	---	----------------------------------

ORDER OF COMMITMENT AFTER APPEAL

Date Appeal Dismissed	Date Withdrawal Of Appeal Filed	Date Appellate Opinion Certified

It is ORDERED that this Judgment be executed. It is FURTHER ORDERED that the sheriff arrest the defendant, if necessary, and recommit the defendant to the custody of the agency named in this Judgment on the reverse and furnish that agency two certified copies of this Judgment and Commitment as authority for the commitment and detention of the defendant.

Date	Signature Of Clerk	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court

CERTIFICATION

I certify that this Judgment and Commitment with the attachment(s) marked below is a true and complete copy of the original which is on file in this case.

- | | |
|--|---|
| <input type="checkbox"/> Appeal Entries (AOC-CR-350) | <input type="checkbox"/> Restitution Worksheet, Notice And Order (Initial Sentencing) (AOC-CR-611) |
| <input type="checkbox"/> Felony Judgment Findings Of Aggravating And Mitigating Factors (AOC-CR-605) | <input type="checkbox"/> Judicial Findings And Order For Sex Offenders - Active Punishment (AOC-CR-615, Side One) |
| <input type="checkbox"/> Judicial Findings As To Forfeiture Of Licensing Privileges (AOC-CR-317) | <input type="checkbox"/> Additional Findings (AOC-CR-618) |
| <input type="checkbox"/> Victim Notification Tracking Form | <input type="checkbox"/> Convicted Sex Offender Permanent No Contact Order (AOC-CR-620) |
| <input type="checkbox"/> Additional File No.(s) And Offense(s) (AOC-CR-626) | <input type="checkbox"/> Other: _____ |

Date 2/6/2014	Date Certified Copies Delivered To Sheriff 2/6/2014	Signature Of Clerk	<input type="checkbox"/> Deputy CSC <input checked="" type="checkbox"/> Assistant CSC <input type="checkbox"/> CSC SEAL

Material opposite unmarked squares is to be disregarded as surplusage.

STATE OF NORTH CAROLINA				File No. 12CRS227771		52	
WAKE		County		RALEIGH		Seat of Court	
NOTE: (This form is to be used for (1) felony offense(s) and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-342 for DMV offense(s).)							
STATE VERSUS				JUDGMENT AND COMMITMENT			
Name Of Defendant PERRY, PAUL GREGORY				ACTIVE PUNISHMENT - FELONY (STRUCTURED SENTENCING) (For Convictions On Or After Jan. 1, 2012)			
Race B		Sex M					
Attorney For State WILSON, JIMMY M				<input type="checkbox"/> Def. Found Not Indigent <input type="checkbox"/> Def. Waived Attorney		Attorney For Defendant CUTLER, JEFFREY	
						<input checked="" type="checkbox"/> Appointed <input type="checkbox"/> Retained <input type="checkbox"/> Crt Rptr Initials SG	
The defendant <input type="checkbox"/> pled guilty (<input type="checkbox"/> pursuant to <i>Alford</i>) to <input checked="" type="checkbox"/> was found guilty by a jury of <input type="checkbox"/> pled no contest to							
File No.(s)	Off.	Offense Description		Offense Date	G.S. No.	F/M	CL.
12CRS227771	52	SELL HEROIN		12/11/2012	90-95(A)(1)	F	G
*NOTE: Enter punishment class if different from underlying offense class (punishment class represents a status or enhancement).							
The Court:				PRIOR RECORD LEVEL: <input checked="" type="checkbox"/> I <input type="checkbox"/> II <input type="checkbox"/> III <input type="checkbox"/> IV <input type="checkbox"/> V <input type="checkbox"/> VI			
<input checked="" type="checkbox"/> 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be <u>4</u> . Any prior record level point under G.S. 15A-1340.14(b)(7) is based on the jury's determination of this issue beyond a reasonable doubt or the defendant's admission to this issue.							
<input type="checkbox"/> 2. makes no prior record level finding because none is required for Class A felony, violent habitual felon, or drug trafficking offenses.							
The Court: (NOTE: Block 1 or 2 MUST be checked):							
<input checked="" type="checkbox"/> 1. makes no written findings because the term imposed is: <input checked="" type="checkbox"/> (a) in the presumptive range. <input type="checkbox"/> (b) for a Class A felony. <input type="checkbox"/> (c) for adjudication as a violent habitual felon, G.S. 14-7.12. <input type="checkbox"/> (d) for drug trafficking. <input type="checkbox"/> for which the Court finds the defendant provided substantial assistance, G.S. 90-95(h)(5). <input type="checkbox"/> (e) in the aggravated range, pursuant to G.S. 20-141.4(b)(1a).							
<input type="checkbox"/> 2. finds <input type="checkbox"/> the Determination of aggravating and mitigating factors on the attached AOC-CR-605. <input type="checkbox"/> egregious aggravation under G.S. 14-27.2A or G.S. 14-27.4A, on the attached AOC-CR-618, which requires a sentence in excess of that authorized by G.S. 15A-1340.17.							
<input type="checkbox"/> 3. adjudges the defendant to be an habitual felon to be sentenced. <input type="checkbox"/> (offenses committed before Dec. 1, 2011) as a Class C felon. <input type="checkbox"/> (offenses committed on or after Dec. 1, 2011) four classes higher than the principal felony (no higher than Class C).							
<input type="checkbox"/> 4. adjudges the defendant to be an habitual breaking and entering status offender, to be sentenced as a Class E felon.							
<input type="checkbox"/> 5. adjudges the defendant to be an armed habitual felon to be sentenced as a Class C felon (unless sentenced herein as a Class A, B1, or B2 felon) and with a minimum term of imprisonment of no less than 120 months.							
<input type="checkbox"/> 6. finds enhancement pursuant to: <input type="checkbox"/> G.S. 90-95(e)(3) (drugs). <input type="checkbox"/> G.S. 14-3(c) (hate crime). <input type="checkbox"/> G.S. 50B-4.1 (domestic violence). <input type="checkbox"/> G.S. 14-50.22 (gang). <input type="checkbox"/> Other: _____ This finding is based on the jury's determination of this issue beyond a reasonable doubt or on the defendant's admission.							
<input type="checkbox"/> 7. finds that the defendant committed the felony by using, displaying, or threatening the use or display of a firearm or deadly weapon and actually possessed the firearm or weapon about his or her person. This finding is based on the jury's determination of this issue beyond a reasonable doubt or on the defendant's admission. Pursuant to G.S. 15A-1340.16A, the Court has increased the minimum sentence by (check only one) <input type="checkbox"/> (Class A-E felony committed prior to Oct. 1, 2013) 60 months. <input type="checkbox"/> (Class A-E felony committed on or after Oct. 1, 2013) 72 months. <input type="checkbox"/> (Class F or G felony committed on or after Oct. 1, 2013) 36 months. <input type="checkbox"/> (Class H or I felony committed on or after Oct. 1, 2013) 12 months.							
<input type="checkbox"/> 8. finds the above designated offense(s) is a reportable conviction under G.S. 14-208.6 (check only one) <input type="checkbox"/> a. and therefore makes the additional findings and orders on the attached AOC-CR-615, Side One. <input type="checkbox"/> b. but makes no finding or order concerning registration or satellite-based monitoring due to a sentence of life imprisonment without parole.							
<input type="checkbox"/> 9. finds the above designated offense(s) involved the <input type="checkbox"/> physical or mental <input type="checkbox"/> sexual abuse of a minor. (NOTE: If offense(s) is not also a reportable conviction in No. 8 above, this finding requires no further action by the court.)							
<input type="checkbox"/> 10. finds that a <input type="checkbox"/> motor vehicle <input type="checkbox"/> commercial motor vehicle was used in the commission of the offense and that it shall be reported to DMV.							
<input type="checkbox"/> 11. finds that this is an offense involving assault, communicating a threat, or an act defined by G.S. 50B-1(a), and the defendant had a personal relationship as defined by G.S. 50B-1(b) with the victim.							
<input type="checkbox"/> 12. (offenses committed on or after Dec. 1, 2008, only) finds the above designated offense(s) involved criminal street gang activity, G.S. 14-50.25.							
<input type="checkbox"/> 13. did not grant a conditional discharge under G.S. 90-96(a) because (check all that apply) <input type="checkbox"/> the defendant refused to consent. <input type="checkbox"/> (offenses committed on or after Dec. 1, 2013, only) the Court finds, with the agreement of the District Attorney, that the offender is inappropriate for a conditional discharge for factors related to the offense.							
<input type="checkbox"/> 14. finds that the defendant used or displayed a firearm while committing the felony, G.S. 15A-1382.2.							
<input type="checkbox"/> 15. (for judgments entered on or after Dec. 1, 2013, only) finds that this was an offense involving child abuse or an offense involving assault or any of the acts as defined in G.S. 50B-1(a) committed against a minor, G.S. 15A-1382.1(a1).							
The Court, having considered evidence, arguments of counsel and statement of defendant, Orders that the above offenses, if more than one, be consolidated for judgment and the defendant be sentenced (check only one)							
<input type="checkbox"/> to Life Imprisonment Without Parole for <input type="checkbox"/> Class A Felony. <input type="checkbox"/> Class B1 Felony.				In the custody of:			
<input type="checkbox"/> Violent Habitual Felon. <input type="checkbox"/> G.S. 14-27.2A or G.S. 14-27.4A with egregious aggravation.				<input checked="" type="checkbox"/> N.C. DAC.			
<input type="checkbox"/> to Life Imprisonment With Parole, pursuant to G.S. Chapter 15A, Article 81B, Part 2A.				<input type="checkbox"/> Other: _____			
for a minimum term of:		and a maximum term of:		<input type="checkbox"/> ASR term (Order No. 4, Side Two)		<input type="checkbox"/> to Death (see attached Death Warrant and Certificates)	
14 months		26 months		months			
The defendant shall be given credit for <u>0</u> days spent in confinement prior to the date of this Judgment as a result of this charge(s).							
<input type="checkbox"/> The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.							
<input checked="" type="checkbox"/> The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below:							
File No.	Offense	County	Court	Date			
12CRS227771	51	WAKE	SUPERIOR	2/6/2014			

The Court further Orders: (check all that apply)

1. The defendant shall pay to the Clerk of Superior Court the "Total Amount Due" shown below.

Costs	Fine	Restitution*	Attorney's Fees	SBM Fee	Appt Fee/Misc	Total Amount Due
\$	\$	\$	\$	\$	\$	\$

*See attached "Restitution Worksheet, Notice and Order (Initial Sentencing)," AOC-CR-611, which is incorporated by reference.

- ☐ 2. The Court finds that restitution was recommended as part of the defendant's plea arrangement.
- ☐ 3. The Court finds just cause to waive costs, as ordered on the attached ☐ AOC-CR-618. ☐ Other: _____
- ☐ 4. Without objection by the State, the defendant shall be admitted to the Advanced Supervised Release (ASR) program. If the defendant completes the risk reduction incentives as identified by the Division of Adult Correction, then he or she will be released at the end of the ASR term specified on Side One, G.S. 15A-1340.18.
- ☐ 5. Other: _____

The Court recommends:

- ☐ 1. Substance abuse treatment. ☐ 2. Psychiatric and/or psychological counseling. ☐ 3. Work release ☐ should ☐ should not be granted.
- ☐ 4. Payment as a condition of post-release supervision or from work release earnings, if applicable, of the "Total Amount Due" set out above.
☐ but the Court does not recommend restitution be paid ☐ as a condition of post-release supervision. ☐ from work release earnings.

The Court further recommends:

ORDER OF COMMITMENT/APPEAL ENTRIES

- ☒ It is ORDERED that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.
- ☒ The defendant gives notice of appeal from the judgment of the trial court to the appellate division. Appeal entries and any conditions of post conviction release are set forth on form AOC-CR-350.

SIGNATURE OF JUDGE

Date	Name Of Presiding Judge (Type Or Print)	Signature Of Presiding Judge
2/6/2014	HENRY W. HIGHT, JR.	

ORDER OF COMMITMENT AFTER APPEAL

Date Appeal Dismissed	Date Withdrawal Of Appeal Filed	Date Appellate Opinion Entered

It is ORDERED that this Judgment be executed. It is FURTHER ORDERED that the sheriff arrest the defendant, if necessary, and recommit the defendant to the custody of the agency named in this Judgment on the reverse and furnish that agency two certified copies of this Judgment and Commitment as authority for the commitment and detention of the defendant.

Date	Signature Of Clerk	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court

CERTIFICATION

I certify that this Judgment and Commitment with the attachment(s) marked below is a true and complete copy of the original which is on file in this case.

- | | |
|--|---|
| <input type="checkbox"/> Appeal Entries (AOC-CR-350) | <input type="checkbox"/> Restitution Worksheet, Notice And Order (Initial Sentencing) (AOC-CR-611) |
| <input type="checkbox"/> Felony Judgment Findings Of Aggravating And Mitigating Factors (AOC-CR-605) | <input type="checkbox"/> Judicial Findings And Order For Sex Offenders - Active Punishment (AOC-CR-615, Side One) |
| <input type="checkbox"/> Judicial Findings As To Forfeiture Of Licensing Privileges (AOC-CR-317) | <input type="checkbox"/> Additional Findings (AOC-CR-618) |
| <input type="checkbox"/> Victim Notification Tracking Form | <input type="checkbox"/> Convicted Sex Offender Permanent No Contact Order (AOC-CR-620) |
| <input type="checkbox"/> Additional File No.(s) And Offense(s) (AOC-CR-626) | <input type="checkbox"/> Other: _____ |

Date	Date Certified Copies Delivered To Sheriff	Signature Of Clerk	<input type="checkbox"/> Deputy CSC <input checked="" type="checkbox"/> Assistant CSC <input type="checkbox"/> CSC
2/6/2014	2/6/2014		SEAL

Material opposite unmarked squares is to be disregarded as surplusage.

-65-

STATE OF NORTH CAROLINA				File No. 12CRS227771 53	
WAKE		County		RALEIGH	
Seal of Court					
NOTE: (This form is to be used for (1) felony offenses and (2) misdemeanor offenses, which are consolidated for judgment with any felony offenses. Use AOC-CR-602 for DWI offense(s).)					
STATE VERSUS				JUDGMENT AND COMMITMENT	
Name Of Defendant PERRY, PAUL GREGORY				ACTIVE PUNISHMENT - FELONY (STRUCTURED SENTENCING) (For Convictions On Or After Jan. 1, 2012)	
Race B		Sex M		Date Of Birth 4/2/1983	
Attorney For State WILSON, JIMMY M		<input type="checkbox"/> Def. Found Not Indigent <input type="checkbox"/> Def. Waived Attorney		Attorney For Defendant CUTLER, JEFFREY	
				<input checked="" type="checkbox"/> Appointed <input type="checkbox"/> Retained G.S. 15A-1301, 15A-1340.13 Crt Rptr Initials SG	
The defendant <input type="checkbox"/> pled guilty (<input type="checkbox"/> pursuant to Alford) to <input checked="" type="checkbox"/> was found guilty by a jury of <input type="checkbox"/> pled no contest to					
File No(s)	Off.	Offense Description		Offense Date	G.S. No.
12CRS227771	53	MAINTN VEH/DWELL/PLACE CS (F)		12/11/2012	90-108(A)(7)
				F	I
*NOTE: Enter punishment class if different from underlying offense class (punishment class represents a status or enhancement). PRIOR RECORD LEVEL: <input type="checkbox"/> I <input type="checkbox"/> II <input type="checkbox"/> III <input type="checkbox"/> IV <input type="checkbox"/> V <input type="checkbox"/> VI					
The Court: <input checked="" type="checkbox"/> 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be <u>4</u> . Any prior record level point under G.S. 15A-1340.14(b)(7) is based on the jury's determination of this issue beyond a reasonable doubt or the defendant's admission to this issue. <input type="checkbox"/> 2. makes no prior record level finding because none is required for Class A felony, violent habitual felon, or drug trafficking offenses.					
The Court (NOTE: Block 1 or 2 MUST be checked): <input checked="" type="checkbox"/> 1. makes no written findings because the term imposed is: <input checked="" type="checkbox"/> (a) in the presumptive range. <input type="checkbox"/> (b) for a Class A felony. <input type="checkbox"/> (c) for adjudication as a violent habitual felon, G.S. 14-7.12. <input type="checkbox"/> (d) for drug trafficking. <input type="checkbox"/> for which the Court finds the defendant provided substantial assistance, G.S. 90-95(h)(5). <input type="checkbox"/> (e) in the aggravated range, pursuant to G.S. 20-141.4(b)(1a). <input type="checkbox"/> 2. finds <input type="checkbox"/> the Determination of aggravating and mitigating factors on the attached AOC-CR-605. <input type="checkbox"/> egregious aggravation under G.S. 14-27.2A or G.S. 14-27.4A, on the attached AOC-CR-618, which requires a sentence in excess of that authorized by G.S. 15A-1340.17. <input type="checkbox"/> 3. adjudges the defendant to be an habitual felon to be sentenced <input type="checkbox"/> (offenses committed before Dec. 1, 2011) as a Class C felon. <input type="checkbox"/> (offenses committed on or after Dec. 1, 2011) four classes higher than the principal felony (no higher than Class C). <input type="checkbox"/> 4. adjudges the defendant to be an habitual threatening and entering status offender, to be sentenced as a Class E felon. <input type="checkbox"/> 5. adjudges the defendant to be an armed habitual felon to be sentenced as a Class C felon (unless sentenced herein as a Class A, B1, or B2 felon) and with a minimum term of imprisonment of no less than 120 months. <input type="checkbox"/> 6. finds enhancement pursuant to: <input type="checkbox"/> G.S. 90-95(a)(3) (drugs). <input type="checkbox"/> G.S. 14-3(c) (hate crime). <input type="checkbox"/> G.S. 50B-4.1 (domestic violence). <input type="checkbox"/> G.S. 14-50.22 (gang). <input type="checkbox"/> Other: _____ This finding is based on the jury's determination of this issue beyond a reasonable doubt or on the defendant's admission. <input type="checkbox"/> 7. finds that the defendant committed the felony by using, displaying, or threatening the use or display of a firearm or deadly weapon and actually possessed the firearm or weapon about his or her person. This finding is based on the jury's determination of this issue beyond a reasonable doubt or on the defendant's admission. Pursuant to G.S. 15A-1340.16A, the Court has increased the minimum sentence by (check only one) <input type="checkbox"/> (Class A-E felony committed prior to Oct. 1, 2013) 60 months. <input type="checkbox"/> (Class A-E felony committed on or after Oct. 1, 2013) 72 months. <input type="checkbox"/> (Class F or G felony committed on or after Oct. 1, 2013) 36 months. <input type="checkbox"/> (Class H or I felony committed on or after Oct. 1, 2013) 12 months. <input type="checkbox"/> 8. finds the above designated offense(s) is a reportable conviction under G.S. 14-208.6 (check only one) <input type="checkbox"/> a. and therefore makes the additional findings and orders on the attached AOC-CR-615, Side One. <input type="checkbox"/> b. but makes no finding or order concerning registration or satellite-based monitoring due to a sentence of life imprisonment without parole. <input type="checkbox"/> 9. finds the above designated offense(s) involved the <input type="checkbox"/> physical or mental <input type="checkbox"/> sexual abuse of a minor. (NOTE: If offense(s) is not also a reportable conviction in No. 8 above, this finding requires no further action by the court.) <input type="checkbox"/> 10. finds that a <input type="checkbox"/> motor vehicle <input type="checkbox"/> commercial motor vehicle was used in the commission of the offense and that it shall be reported to DMV. <input type="checkbox"/> 11. finds this is an offense involving assault, communicating a threat, or an act defined by G.S. 50B-1(a), and the defendant had a personal relationship as defined by G.S. 50B-1(b) with the victim. <input type="checkbox"/> 12. (offenses committed on or after Dec. 1, 2008, only) finds the above designated offense(s) involved criminal street gang activity. G.S. 14-50.25. <input type="checkbox"/> 13. did not grant a conditional discharge under G.S. 90-96(a) because (check all that apply) <input type="checkbox"/> the defendant refused to consent. <input type="checkbox"/> (offenses committed on or after Dec. 1, 2013, only) the Court finds, with the agreement of the District Attorney, that the offender is inappropriate for a conditional discharge for factors related to the offense. <input type="checkbox"/> 14. finds that the defendant used or displayed a firearm while committing the felony. G.S. 15A-1382.2. <input type="checkbox"/> 15. (for judgments entered on or after Dec. 1, 2013, only) finds that this was an offense involving child abuse or an offense involving assault or any of the acts as defined in G.S. 50B-1(a) committed against a minor. G.S. 15A-1382.1(a1).					
The Court, having considered evidence, arguments of counsel and statement of defendant, Orders that the above offenses, if more than one, be consolidated for judgment and the defendant be sentenced (check only one) <input type="checkbox"/> to Life Imprisonment Without Parole for <input type="checkbox"/> Class A Felony. <input type="checkbox"/> Class B1 Felony. <input type="checkbox"/> Violent Habitual Felon. <input type="checkbox"/> G.S. 14-27.2A or G.S. 14-27.4A with egregious aggravation. <input checked="" type="checkbox"/> N.C. DAC. <input type="checkbox"/> to Life Imprisonment With Parole, pursuant to G.S. Chapter 15A, Article 81B, Part 2A. <input type="checkbox"/> Other: _____ for a minimum term of <u>6</u> months and a maximum term of <u>8</u> months <input type="checkbox"/> ASR term (Order No. 4, Side Two) months <input type="checkbox"/> to Death (see attached Death Warrant and Certificates)					
The defendant shall be given credit for <u>0</u> days spent in confinement prior to the date of this Judgment as a result of this charge(s). <input type="checkbox"/> The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve. <input type="checkbox"/> The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below:					
File No.	Offense	County	Court	Date	

AOC-CR-601, Rev. 10/13
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Material opposite unmarked squares is to be disregarded as surplusage.
(Over)

The Court further Orders: (check all that apply)

1. The defendant shall pay to the Clerk of Superior Court the "Total Amount Due" shown below.

Costs	Fine	Restitution*	Attorney's Fees	SEM Fee	Appt Fee/Misc	Total Amount Due
\$	\$	\$	\$	\$	\$	\$

*See attached "Restitution Worksheet, Notice and Order (Initial Sentencing)," AOC-CR-611, which is incorporated by reference.

- ☐ 2. The Court finds that restitution was recommended as part of the defendant's plea arrangement.
- ☐ 3. The Court finds just cause to waive costs, as ordered on the attached ☐ AOC-CR-618. ☐ Other: _____
- ☐ 4. Without objection by the State, the defendant shall be admitted to the Advanced Supervised Release (ASR) program. If the defendant completes the risk reduction incentives as identified by the Division of Adult Correction, then he or she will be released at the end of the ASR term specified on Side One. G.S. 15A-1340.18.
- ☐ 5. Other: _____

The Court recommends:

- ☐ 1. Substance abuse treatment. ☐ 2. Psychiatric and/or psychological counseling. ☐ 3. Work release ☐ should ☐ should not be granted.
- ☐ 4. Payment as a condition of post-release supervision or from work release earnings, if applicable, of the "Total Amount Due" set out above.
☐ but the Court does not recommend restitution be paid ☐ as a condition of post-release supervision. ☐ from work release earnings.

The Court further recommends:

ORDER OF COMMITMENT/APPEAL ENTRIES

- ☒ It is ORDERED that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.
- ☒ The defendant gives notice of appeal from the judgment of the trial court to the appellate division. Appeal entries and any conditions of post conviction release are set forth on form AOC-CR-350.

SIGNATURE OF JUDGE

Date	Name Of Presiding Judge (Type Or Print)	Signature Of Presiding Judge
2/6/2014	HENRY W. HIGHT, JR	

ORDER OF COMMITMENT AFTER APPEAL

Date Appeal Dismissed	Date Withdrawal Of Appeal Filed	Date Appellate Opinion Certified

It is ORDERED that this Judgment be executed. It is FURTHER ORDERED that the sheriff arrest the defendant, if necessary, and recommit the defendant to the custody of the agency named in this Judgment on the reverse and furnish that agency two certified copies of this Judgment and Commitment as authority for the commitment and detention of the defendant.

Date	Signature Of Clerk	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court

CERTIFICATION

I certify that this Judgment and Commitment with the attachment(s) marked below is a true and complete copy of the original which is on file in this case.

- | | |
|--|---|
| <input type="checkbox"/> Appeal Entries (AOC-CR-350) | <input type="checkbox"/> Restitution Worksheet, Notice And Order (Initial Sentencing) (AOC-CR-611) |
| <input type="checkbox"/> Felony Judgment Findings Of Aggravating And Mitigating Factors (AOC-CR-605) | <input type="checkbox"/> Judicial Findings And Order For Sex Offenders - Active Punishment (AOC-CR-615, Side One) |
| <input type="checkbox"/> Judicial Findings As To Forfeiture Of Licensing Privileges (AOC-CR-317) | <input type="checkbox"/> Additional Findings (AOC-CR-618) |
| <input type="checkbox"/> Victim Notification Tracking Form | <input type="checkbox"/> Convicted Sex Offender Permanent No Contact Order (AOC-CR-620) |
| <input type="checkbox"/> Additional File No.(s) And Offense(s) (AOC-CR-626) | <input type="checkbox"/> Other: _____ |

Date	Date Certified Copies Delivered To Sheriff	Signature Of Clerk	<input type="checkbox"/> Deputy CSC <input checked="" type="checkbox"/> Assistant CSC <input type="checkbox"/> CSC
2/6/2014	2/6/2014		SEAL

Material opposite unmarked squares is to be disregarded as surplusage.

-67-

STATE OF NORTH CAROLINA

File No.

13CRS003178

51

WAKE

County

RALEIGH

Seat of Court

NOTE: (This form is to be used for (1) felony offense(s) and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-342 for DWI offense(s).)

In The General Court Of Justice

☐ District ☒ Superior Court Division

STATE VERSUS

JUDGMENT AND COMMITMENT

ACTIVE PUNISHMENT - FELONY

(STRUCTURED SENTENCING)

(For Convictions On Or After Jan. 1, 2012)

G.S. 15A-1301, 15A-1340.13

Name Of Defendant

PERRY, PAUL GREGORY

Race

B

Sex

M

Date Of Birth

4/2/1983

Attorney For State

WILSON, JIMMY M

☐ Def. Found
Not Indigent

☐ Def. Waived
Attorney

Attorney For Defendant

CUTLER, JEFFREY

☒ Appointed

Crt. Rptr. Initials

☐ Retained

SG

The defendant ☐ pled guilty (☐ pursuant to Alford) to ☒ was found guilty by a jury of ☐ pled no contest to

File No.(s)	Off.	Offense Description	Offense Date	G.S. No.	F/M	CL	Pun. CL
13CRS003178	51	TRAFFIC HEROIN BY TRANSPORTATION	12/11/2012	90-95(H)(4)	F	C	

*NOTE: Enter punishment class if different from underlying offense class (punishment class represents a status or enhancement).

The Court:

PRIOR

RECORD LEVEL:

☐ I

☐ II

☐ III

☐ IV

☐ V

☐ VI

☐ 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be _____. Any prior record level point under G.S. 15A-1340.14(b)(7) is based on the jury's determination of this issue beyond a reasonable doubt or the defendant's admission to this issue.

☒ 2. makes no prior record level finding because none is required for Class A felony, violent habitual felon, or drug trafficking offenses.

The Court: (NOTE: Block 1 or 2 MUST be checked):

- ☒ 1. makes no written findings because the term imposed is: ☐ (a) in the presumptive range. ☐ (b) for a Class A felony. ☐ (c) for adjudication as a violent habitual felon, G.S. 14-7.12. ☒ (d) for drug trafficking. ☐ for which the Court finds the defendant provided substantial assistance, G.S. 90-95(h)(5). ☐ (e) in the aggravated range, pursuant to G.S. 20-141.4(b)(1a).
- ☐ 2. finds ☐ the Determination of aggravating and mitigating factors on the attached AOC-CR-605. ☐ egregious aggravation under G.S. 14-27.2A or G.S. 14-27.4A, on the attached AOC-CR-618, which requires a sentence in excess of that authorized by G.S. 15A-1340.17.
- ☐ 3. adjudges the defendant to be an habitual felon to be sentenced ☐ (offenses committed before Dec. 1, 2011) as a Class C felon. ☐ (offenses committed on or after Dec. 1, 2011) four classes higher than the prior felony (no higher than Class C).
- ☐ 4. adjudges the defendant to be an habitual breaking and entering status offender, to be sentenced as a Class E felon.
- ☐ 5. adjudges the defendant to be an armed habitual felon to be sentenced as a Class C felon (unless sentenced herein as a Class A, B1, or B2 felon) and with a minimum term of imprisonment of no less than 120 months.
- ☐ 6. finds enhancement pursuant to: ☐ G.S. 90-95(e)(3) (drugs); ☐ G.S. 14-3(c) (hate crime); ☐ G.S. 50B-4.1 (domestic violence); ☐ G.S. 14-50.22 (gang); ☐ Other: _____. This finding is based on the jury's determination of this issue beyond a reasonable doubt or on the defendant's admission.
- ☐ 7. finds that the defendant committed the felony by using, displaying, or threatening the use or display of a firearm or deadly weapon and actually possessed the firearm or weapon about his or her person. This finding is based on the jury's determination of this issue beyond a reasonable doubt or on the defendant's admission. Pursuant to G.S. 15A-1340.16A, the Court has increased the minimum sentence by (check only one) ☐ (Class A-E felony committed prior to Oct. 1, 2013) 60 months. ☐ (Class A-E felony committed on or after Oct. 1, 2013) 72 months. ☐ (Class F or G felony committed on or after Oct. 1, 2013) 36 months. ☐ (Class H or I felony committed on or after Oct. 1, 2013) 12 months.
- ☐ 8. finds the above designated offense(s) is a reportable conviction under G.S. 14-208.6 (check only one) ☐ a. and therefore makes the additional findings and orders on the attached AOC-CR-615, Side One. ☐ b. but makes no finding or order concerning registration or satellite-based monitoring due to a sentence of life imprisonment without parole.
- ☐ 9. finds the above designated offense(s) involved the ☐ physical or mental ☐ sexual abuse of a minor. (NOTE: If offense(s) is not also a reportable conviction in No. 8 above, this finding requires no further action by the court.)
- ☐ 10. finds that a ☐ motor vehicle ☐ commercial motor vehicle was used in the commission of the offense and that it shall be reported to DMV.
- ☐ 11. finds this is an offense involving assault, communicating a threat, or an act defined by G.S. 50B-1(a), and the defendant had a personal relationship as defined by G.S. 50B-1(b) with the victim.
- ☐ 12. (offenses committed on or after Dec. 1, 2008, only) finds the above designated offense(s) involved criminal street gang activity, G.S. 14-50.25.
- ☒ 13. did not grant a conditional discharge under G.S. 90-96(a) because (check all that apply) ☐ the defendant refused to consent. ☐ (offenses committed on or after Dec. 1, 2013, only) the Court finds, with the agreement of the District Attorney, that the offender is inappropriate for a conditional discharge for factors related to the offense.
- ☐ 14. finds that the defendant used or displayed a firearm while committing the felony, G.S. 15A-1382.2.
- ☐ 15. (for judgments entered on or after Dec. 1, 2013, only) finds that this was an offense involving child abuse or an offense involving assault or any of the acts as defined in G.S. 50B-1(a) committed against a minor, G.S. 15A-1382.1(a1).

The Court, having considered evidence, arguments of counsel and statement of defendant, Orders that the above offenses, if more than one, be consolidated for judgment and the defendant be sentenced. (check only one)

<input type="checkbox"/> to Life Imprisonment Without Parole for <input type="checkbox"/> Class A Felony. <input type="checkbox"/> Class B1 Felony.	in the custody of:
<input type="checkbox"/> Violent Habitual Felon. <input type="checkbox"/> G.S. 14-27.2A or G.S. 14-27.4A with egregious aggravation.	<input checked="" type="checkbox"/> N.C. DAC.
<input type="checkbox"/> to Life Imprisonment With Parole, pursuant to G.S. Chapter 15A, Article 81B, Part 2A.	<input type="checkbox"/> Other: _____
for a minimum term of: 225 months	and a maximum term of: 282 months
<input type="checkbox"/> ASR term (Order No. 4, Side Two)	<input type="checkbox"/> to Death (see attached Death Warrant and Certificates)

The defendant shall be given credit for 0 days spent in confinement prior to the date of this Judgment as a result of this charge(s).

☐ The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.

☒ The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below:

File No.	Offense	County	Court	Date
12CRS227771	52	WAKE	SUPERIOR	2/6/2014

The Court further Orders: (check all that apply)

1. The defendant shall pay to the Clerk of Superior Court the "Total Amount Due" shown below.

Costs	Fine	Restitution*	Attorney's Fees	SBM Fee	Appt Fee/Misc	Total Amount Due
\$	\$ 500,000.00	\$	\$	\$	\$	\$ 500,000.00

*See attached "Restitution Worksheet, Notice and Order (Initial Sentencing)," AOC-CR-611, which is incorporated by reference.

- ☐ 2. The Court finds that restitution was recommended as part of the defendant's plea arrangement.
- ☒ 3. The Court finds just cause to waive costs, as ordered on the attached ☐ AOC-CR-618. ☐ Other: _____
- ☐ 4. Without objection by the State, the defendant shall be admitted to the Advanced Supervised Release (ASR) program. If the defendant completes the risk reduction incentives as identified by the Division of Adult Correction, then he or she will be released at the end of the ASR term specified on Side One. G.S. 15A-1340.18.
- ☐ 5. Other: _____

The Court recommends:

- ☐ 1. Substance abuse treatment. ☐ 2. Psychiatric and/or psychological counseling. ☐ 3. Work release ☐ should ☐ should not be granted.
- ☐ 4. Payment as a condition of post-release supervision or from work release earnings, if applicable, of the "Total Amount Due" set out above.
- ☐ but the Court does not recommend restitution be paid ☐ as a condition of post-release supervision. ☐ from work release earnings.

The Court further recommends:

ORDER OF COMMITMENT/APPEAL ENTRIES

- ☒ It is ORDERED that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.
- ☒ The defendant gives notice of appeal from the judgment of the trial court to the appellate division. Appeal entries and any conditions of post conviction release are set forth on form AOC-CR-350.

SIGNATURE OF JUDGE

Date	Name Of Presiding Judge (Type Or Print)	Signature Of Presiding Judge
2/6/2014	HENRY W. HIGHT, JR.	

ORDER OF COMMITMENT AFTER APPEAL

Date Appeal Dismissed	Date Withdrawal Of Appeal Filed	Date Appellate Opinion Certified

It is ORDERED that this Judgment be executed. It is FURTHER ORDERED that the sheriff arrest the defendant, if necessary, and recommit the defendant to the custody of the agency named in this Judgment on the reverse and furnish that agency two certified copies of this Judgment and Commitment as authority for the commitment and detention of the defendant.

Date	Signature Of Clerk	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court

CERTIFICATION

I certify that this Judgment and Commitment with the attachment(s) marked below is a true and complete copy of the original which is on file in this case.

- | | |
|--|---|
| <input type="checkbox"/> Appeal Entries (AOC-CR-350) | <input type="checkbox"/> Restitution Worksheet, Notice And Order (Initial Sentencing) (AOC-CR-611) |
| <input type="checkbox"/> Felony Judgment Findings Of Aggravating And Mitigating Factors (AOC-CR-605) | <input type="checkbox"/> Judicial Findings And Order For Sex Offenders - Active Punishment (AOC-CR-615, Side One) |
| <input type="checkbox"/> Judicial Findings As To Forfeiture Of Licensing Privileges (AOC-CR-317) | <input type="checkbox"/> Additional Findings (AOC-CR-618) |
| <input type="checkbox"/> Victim Notification Tracking Form | <input type="checkbox"/> Convicted Sex Offender Permanent No Contact Order (AOC-CR-620) |
| <input type="checkbox"/> Additional File No.(s) And Offense(s) (AOC-CR-626) | <input type="checkbox"/> Other: _____ |

Date	Date Certified Copies Delivered To Sheriff	Signature Of Clerk	<input type="checkbox"/> Deputy CSC <input checked="" type="checkbox"/> Assistant CSC <input type="checkbox"/> CSC
2/6/2014	2/6/2014		SEAL

Material opposite unmarked squares is to be disregarded as surplusage.

STATE OF NORTH CAROLINA				File No. 13CRS003178		52
WAKE		County		RALEIGH		Seat of Court
<div style="display: flex; justify-content: space-between;"><div>NOTE: (This form is to be used for (1) felony offense(s) and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-342 for DWI offense(s).)</div><div style="text-align: right;">In The General Court Of Justice <input type="checkbox"/> District <input checked="" type="checkbox"/> Superior Court Division</div></div>						
STATE VERSUS				JUDGMENT AND COMMITMENT		
Name Of Defendant PERRY, PAUL GREGORY				ACTIVE PUNISHMENT - FELONY (STRUCTURED SENTENCING) (For Convictions On Or After Jan. 1, 2012)		
Race B	Sex M	Date Of Birth 4/2/1983		G.S. 15A-1301, 15A-1340.13		
Attorney For State WILSON, JIMMY M		<input type="checkbox"/> Def. Found Not Indigent <input type="checkbox"/> Def. Waived Attorney		Attorney For Defendant CUTLER, JEFFREY		<input checked="" type="checkbox"/> Appointed <input type="checkbox"/> Retained SG
The defendant <input type="checkbox"/> pled guilty (<input type="checkbox"/> pursuant to Alford) to <input checked="" type="checkbox"/> was found guilty by a jury of <input type="checkbox"/> pled no contest to						
File No.(s)	Off.	Offense Description		Offense Date	G.S. No.	F/M CL. *Pun. CL.
13CRS003178	52	CONSP TO TRAFFIC HEROIN BY POSS, TRANS & SALE		12/11/2012	90-95	F C
*NOTE: Enter punishment class if different from underlying offense class (punishment class represents a status or enhancement).						
The Court:				PRIOR RECORD LEVEL: <input type="checkbox"/> I <input type="checkbox"/> II <input type="checkbox"/> III <input type="checkbox"/> IV <input type="checkbox"/> V <input type="checkbox"/> VI		
<input type="checkbox"/> 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be _____. Any prior record level point under G.S. 15A-1340.14(b)(7) is based on the jury's determination of this issue beyond a reasonable doubt or the defendant's admission to this issue.						
<input checked="" type="checkbox"/> 2. makes no prior record level finding because none is required for Class A felony, violent habitual felon, or drug trafficking offenses.						
The Court: (NOTE: Block 1 or 2 MUST be checked):						
<input checked="" type="checkbox"/> 1. makes no written findings because the term imposed is: <input type="checkbox"/> (a) in the presumptive range. <input type="checkbox"/> (b) for a Class A felony. <input type="checkbox"/> (c) for adjudication as a violent habitual felon, G.S. 14-7.12. <input checked="" type="checkbox"/> (d) for drug trafficking. <input type="checkbox"/> for which the Court finds the defendant provided substantial assistance, G.S. 90-95(h)(5). <input type="checkbox"/> (e) in the aggravated range, pursuant to G.S. 20-141.4(b)(1a).						
<input type="checkbox"/> 2. finds <input type="checkbox"/> the Determination of aggravating and mitigating factors on the attached AOC-CR-605. <input type="checkbox"/> egregious aggravation under G.S. 14-27.2A or G.S. 14-27.4A, on the attached AOC-CR-618, which requires a sentence in excess of that authorized by G.S. 15A-1340.17.						
<input type="checkbox"/> 3. adjudges the defendant to be an habitual felon to be sentenced <input type="checkbox"/> (offenses committed before Dec. 1, 2011) as a Class C felon. <input type="checkbox"/> (offenses committed on or after Dec. 1, 2011) four classes higher than the principal felony (no higher than Class C).						
<input type="checkbox"/> 4. adjudges the defendant to be an habitual breaking and entering status offender, to be sentenced as a Class E felon.						
<input type="checkbox"/> 5. adjudges the defendant to be an armed habitual felon to be sentenced as a Class C felon (unless sentenced herein as a Class A, B1, or B2 felon) and with a minimum term of imprisonment of no less than 120 months.						
<input type="checkbox"/> 6. finds enhancement pursuant to: <input type="checkbox"/> G.S. 90-95(e)(3) (drugs); <input type="checkbox"/> G.S. 14-3(c) (hate crime); <input type="checkbox"/> G.S. 50B-4.1 (domestic violence); <input type="checkbox"/> G.S. 14-50.22 (gang). <input type="checkbox"/> Other: _____. This finding is based on the jury's determination of this issue beyond a reasonable doubt or on the defendant's admission.						
<input type="checkbox"/> 7. finds that the defendant committed the felony by using, displaying, or threatening the use or display of a firearm or deadly weapon and actually possessed the firearm or weapon about his or her person. This finding is based on the jury's determination of this issue beyond a reasonable doubt or on the defendant's admission. Pursuant to G.S. 15A-1340.16A, the Court has increased the minimum sentence by (check only one) <input type="checkbox"/> (Class A-E felony committed prior to Oct. 1, 2013) 60 months. <input type="checkbox"/> (Class A-E felony committed on or after Oct. 1, 2013) 72 months. <input type="checkbox"/> (Class F or G felony committed on or after Oct. 1, 2013) 36 months. <input type="checkbox"/> (Class H or I felony committed on or after Oct. 1, 2013) 12 months.						
<input type="checkbox"/> 8. finds the above designated offense(s) is a reportable conviction under G.S. 14-208.6 (check only one) <input type="checkbox"/> a. and therefore makes the additional findings and orders on the attached AOC-CR-615, Side One. <input type="checkbox"/> b. but makes no finding or order concerning registration or satellite-based monitoring due to a sentence of life imprisonment without parole.						
<input type="checkbox"/> 9. finds the above designated offense(s) involved the <input type="checkbox"/> physical or mental <input type="checkbox"/> sexual abuse of a minor. (NOTE: If offense(s) is not also a reportable conviction in No. 8 above, this finding requires no further action by the court.)						
<input type="checkbox"/> 10. finds that a <input type="checkbox"/> motor vehicle <input type="checkbox"/> commercial motor vehicle was used in the commission of the offense and that it shall be reported to DMV.						
<input type="checkbox"/> 11. finds this is an offense involving assault, communicating a threat, or an act defined by G.S. 50B-1(a), and the defendant had a personal relationship as defined by G.S. 50B-1(b) with the victim.						
<input type="checkbox"/> 12. (offenses committed on or after Dec. 1, 2008, only) finds the above designated offense(s) involved criminal street gang activity. G.S. 14-50.25.						
<input type="checkbox"/> 13. did not grant a conditional discharge under G.S. 90-96(a) because (check all that apply) <input type="checkbox"/> the defendant refused to consent; <input type="checkbox"/> (offenses committed on or after Dec. 1, 2013, only) the Court finds, with the agreement of the District Attorney, that the offender is inappropriate for a conditional discharge for factors related to the offense.						
<input type="checkbox"/> 14. finds that the defendant used or displayed a firearm while committing the felony. G.S. 15A-1382.2.						
<input type="checkbox"/> 15. (for judgments entered on or after Dec. 1, 2013, only) finds that this was an offense involving child abuse or an offense involving assault or any of the acts as defined in G.S. 50B-1(a) committed against a minor. G.S. 15A-1382.1(a1).						
The Court, having considered evidence, arguments of counsel and statement of defendant, Orders that the above offenses, if more than one, be consolidated for judgment and the defendant be sentenced (check only one)						
<input type="checkbox"/> to Life Imprisonment Without Parole for <input type="checkbox"/> Class A Felony. <input type="checkbox"/> Class B1 Felony. <input type="checkbox"/> Violent Habitual Felon. <input type="checkbox"/> G.S. 14-27.2A or G.S. 14-27.4A with egregious aggravation.				In the custody of: <input checked="" type="checkbox"/> N.C. DAC.		
<input type="checkbox"/> to Life Imprisonment With Parole, pursuant to G.S. Chapter 15A, Article 61B, Part 2A.				<input type="checkbox"/> Other: _____		
for a minimum term of: 225 months		and a maximum term of: 282 months		<input type="checkbox"/> ASR term (Order No. 4, Side Two) _____ months		<input type="checkbox"/> to Death (see attached Death Warrant and Certificates)
The defendant shall be given credit for 0 days spent in confinement prior to the date of this Judgment as a result of this charge(s).						
<input type="checkbox"/> The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.						
<input checked="" type="checkbox"/> The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below:						
File No. 13CRS003178	Offense 51	County WAKE	Court SUPERIOR	Date 2/6/2014		

The Court further Orders: (check all that apply)

1. The defendant shall pay to the Clerk of Superior Court the "Total Amount Due" shown below.

Costs	Fine	Restitution*	Attorney's Fees	SBM Fee	Appt Fee/Misc	Total Amount Due
\$	\$ 500,000.00	\$	\$	\$	\$	\$ 500,000.00

*See attached "Restitution Worksheet, Notice and Order (Initial Sentencing)," AOC-CR-611, which is incorporated by reference.

- ☐ 2. The Court finds that restitution was recommended as part of the defendant's plea arrangement.
- ☒ 3. The Court finds just cause to waive costs, as ordered on the attached ☐ AOC-CR-618. ☐ Other: _____
- ☐ 4. Without objection by the State, the defendant shall be admitted to the Advanced Supervised Release (ASR) program. If the defendant completes the risk reduction incentives as identified by the Division of Adult Correction, then he or she will be released at the end of the ASR term specified on Side One, G.S. 15A-1340.18.
- ☐ 5. Other: _____

The Court recommends:

- ☐ 1. Substance abuse treatment. ☐ 2. Psychiatric and/or psychological counseling. ☐ 3. Work release ☐ should ☐ should not be granted.
- ☐ 4. Payment as a condition of post-release supervision or from work release earnings, if applicable, of the "Total Amount Due" set out above.
- ☐ but the Court does not recommend restitution be paid ☐ as a condition of post-release supervision. ☐ from work release earnings.

The Court further recommends:

ORDER OF COMMITMENT/APPEAL ENTRIES

- ☒ It is ORDERED that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.
- ☒ The defendant gives notice of appeal from the judgment of the trial court to the appellate division. Appeal entries and any conditions of post conviction release are set forth on form AOC-CR-350.

SIGNATURE OF JUDGE

Date: 2/6/2014 Name Of Presiding Judge (Type Or Print): HENRY W. HIGH, JR. Signature Of Presiding Judge: [Signature]

ORDER OF COMMITMENT AFTER APPEAL

Date Appeal Dismissed: _____ Date Withdrawal Of Appeal Filed: _____ Date Appellate Opinion Certified: _____

It is ORDERED that this Judgment be executed. It is FURTHER ORDERED that the sheriff arrest the defendant, if necessary, and recommit the defendant to the custody of the agency named in this Judgment on the reverse and furnish that agency two certified copies of this Judgment and Commitment as authority for the commitment and detention of the defendant.

Date: _____ Signature Of Clerk: _____ ☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

CERTIFICATION

I certify that this Judgment and Commitment with the attachment(s) marked below is a true and complete copy of the original which is on file in this case.

- | | |
|--|---|
| <input type="checkbox"/> Appeal Entries (AOC-CR-350) | <input type="checkbox"/> Restitution Worksheet, Notice And Order (Initial Sentencing) (AOC-CR-611) |
| <input type="checkbox"/> Felony Judgment Findings Of Aggravating And Mitigating Factors (AOC-CR-605) | <input type="checkbox"/> Judicial Findings And Order For Sex Offenders - Active Punishment (AOC-CR-615, Side One) |
| <input type="checkbox"/> Judicial Findings As To Forfeiture Of Licensing Privileges (AOC-CR-317) | <input type="checkbox"/> Additional Findings (AOC-CR-618) |
| <input type="checkbox"/> Victim Notification Tracking Form | <input type="checkbox"/> Convicted Sex Offender Permanent No Contact Order (AOC-CR-620) |
| <input type="checkbox"/> Additional File No.(s) And Offense(s) (AOC-CR-626) | <input type="checkbox"/> Other: _____ |

Date: 2/6/2014 Date Certified Copies Delivered To Sheriff: 2/6/2014 Signature Of Clerk: _____ ☐ Deputy CSC ☒ Assistant CSC ☐ CSC SEAL

Material opposite unmarked squares is to be disregarded as surplusage.

- 71 -

1 argue to you that the instruction that was given was -- was an
2 instruction that for a different -- for under a theory of
3 acting in concert, which the defendant was not charged with.
4 The jury was not instructed.

5 In the charge conference, we did not discuss
6 acting in concert, and as a result, my defense, my argument did
7 not deal with acting in concert, and I would suggest that that
8 has -- that has violated his constitutional rights concerning
9 the right to prepare a defense, the right to have counsel, and
10 on that -- for that reason, I would ask you to consider setting
11 Count 3 aside.

12 THE COURT: Denied.

13 MR. CUTLER: Also, I would make the same
14 argument with regards to Count 4, the conspiracy, since it also
15 had to do with transportation and the instruction on
16 transportation, again, I would suggest may be an error and
17 changing the elements of the offense that they were not -- that
18 he was not charged with and the jury was not instructed on. He
19 was instructed as -- charged as a principal, and changing the
20 elements to allow it to be an acting in concert without notice,
21 without a charge conference I suggest would be grounds to set
22 those aside, and I'd ask you to do that.

23 THE COURT: Denied. Anything further?

24 MR. CUTLER: Give notice of appeal.

25 THE COURT: Notice of appeal to the North

- 72 -

1 Carolina Court of Appeals is allowed.

2 Yes, sir?

3 MR. WILSON: The date of offense is 12/11 of
4 '12, and I believe the mandatory minimum sentences might have
5 been amended by the legislature to reflect post release. I
6 think it may be 225 to 282 per count.

7 THE COURT: It may have.

8 MR. WILSON: My understanding is that took
9 effect for trafficking offences after December 21 of 2011.
10 Thank you, Your Honor.

11 THE COURT: You're correct by ten days.

12 MR. WILSON: Yes, sir.

13 THE COURT: The mandatory minimum sentences need
14 to be -- maximum sentence of 282 rather than 279.

15 Notice of appeal to the Court of Appeals is
16 noted in open court. Bond pending appeal is denied.

17 Request I appoint the Appellate Defender?

18 MR. CUTLER: Yes, Your Honor.

19 THE COURT: He's so appointed.

20 He's in the custody of the sheriff.

21 THE COURT: Ladies and gentlemen, this concludes
22 your jury services for this session of Superior Court here in
23 Wake County and for the next two years. For your services,
24 you're going to be paid the grand sum of \$12 for the first day
25 you were here and \$20 for each day thereafter. I recognize

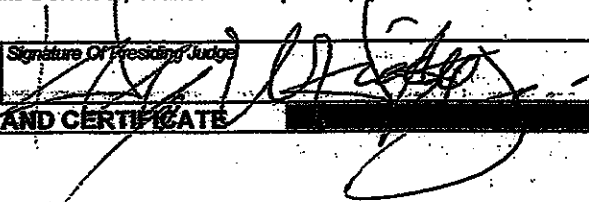
STATE OF NORTH CAROLINA		File No. 12CRS227771 51	
WAKE County		Additional File No.(s) 13CRS 3170	
		In The General Court Of Justice <input type="checkbox"/> District <input checked="" type="checkbox"/> Superior Court Division	
STATE VERSUS		APPELLATE ENTRIES	
Name Of Defendant PERRY, PAUL, GREGORY		Name And Address Of Defendant's Trial Counsel JEFF CUTLER PO BOX 729 200 N. PINE STREET WENDELL, NC 27591	
Date(s) Of Trial FEBRUARY 3-6, 2014		Rules 7, 9, 11, 27; N.C. Rules Of App. Proc.	
Codefendant(s) If Tied Jointly		Telephone No. 919365-6000 Email Address	
Name And Address Of Trial Prosecutor JIMMY WILSON WAKE COUNTY JUSTICE CENTER PO BOX 31 RALEIGH, NC 27602		Name And Address Of Defendant's Trial Counsel	
Telephone No. 919-792-5000 Email Address		Telephone No. Email Address	
Name And Address Of Trial Transcriptionist SUSAN GUGG WAKE COUNTY JUSTICE CENTER PO BOX 351 RALEIGH, NC 27602		Name And Address Of Defendant's Appellate Counsel <input checked="" type="checkbox"/> The Appellate Defender (919) 354-7210 123 W. Main St., Suite 500, Durham, NC 27701 NOTE: All indigent appeals are assigned to the Appellate Defender. <input type="checkbox"/> Retained Appellate Counsel	
Telephone No. 919-792-5204 Email Address		Telephone No. Email Address	
Name And Address Of Trial Transcriptionist		Name And Address Of Transcriptionist Of Other Proceedings On The Following Date(s) JACKIE SULLIVAN WAKE COUNTY JUSTICE CENTER PO BOX 351 RALEIGH, NC 27602	
Telephone No. Email Address		Date(s) 10-09-13 Telephone No. 919-792-5203	
Name And Address Of Transcriptionist Of Other Proceedings On The Following Date(s) CARRIE RICE WAKE COUNTY JUSTICE CENTER PO BOX 351 RALEIGH, NC 27602		Date(s) 12-06-13 Telephone No. 919-792-5207	
Date(s) 12-06-13 Telephone No. 919-792-5207		Email Address	
Email Address		Email Address	

JUDGE'S INITIAL APPEAL ENTRIES	
1. <input checked="" type="checkbox"/> a. The defendant has given Notice of Appeal to the N.C. Court of Appeals, or <input type="checkbox"/> b. This is a capital case appealable as of right to the N.C. Supreme Court.	
2. Release of the defendant pursuant to G.S. 15A-536 is <input checked="" type="checkbox"/> denied. <input type="checkbox"/> allowed upon execution of a secured bond in the amount of \$ _____ and compliance with the following additional conditions:	
3. Unless indigent, the defendant shall arrange for the transcription of the proceedings as provided in the Rules of Appellate Procedure.	
<input checked="" type="checkbox"/> 4. (NOTE: Check in all cases where defendant is indigent.) The defendant is indigent and has requested a transcript and the appointment of counsel. It is ORDERED that the defendant is allowed to appeal as an indigent and: a. The Office of Indigent Defense Services shall pay the costs of producing a transcript, and of reproducing the record and the defendant's brief. b. The Appellate Defender is appointed to perfect the defendant's appeal or assign other appellate counsel pursuant to rules issued by the Office of Indigent Defense Services. c. Upon request, the Clerk shall furnish to the Appellate Defender, or to alternate counsel designated by the Appellate Defender, a copy of the complete trial division file in the case and, upon request, any documentary exhibits. d. Unless the parties stipulate that parts of the proceedings shall not be transcribed, the Clerk shall order from the transcriptionist(s) a transcript of all parts of the proceedings except:	

JUDGE'S INITIAL APPEAL ENTRIES (continued)

5. If a transcript has been ordered, the defendant in a non-capital case shall serve a proposed record on appeal on the State within 35 days after the reporter's or transcriptionist's certification of delivery of the transcript. If a transcript has been ordered, the defendant in a capital case shall serve a proposed record on appeal on the State within 70 days after the reporter's or transcriptionist's certification of delivery of the transcript. If no transcript has been ordered, the defendant shall serve a proposed record on appeal on the State within 35 days after filing notice of appeal.
6. The State shall serve its amendments, objections or proposed alternative record on appeal on the defendant within 30 days if this is a non-capital case or 35 days if this is a capital case, after service upon it of the defendant's proposed record on appeal.
7. The indigent defendant does not read or speak the English language, but reads and/or speaks his or her native language of _____ The Court therefore authorizes the services of a language translator or interpreter during the pendency of the appeal for the purposes of (1) written translation of attorney-client correspondence, assignments of error in the settled record on appeal, appellate briefs filed by the defendant and the State, and appellate opinion(s), and/or (2) verbal interpretation of attorney-client communication at each critical stage of the appellate proceedings.

The Court further Orders that a language translator or interpreter with the necessary knowledge, skill, experience, training and education to perform the above services shall be selected and paid by the Administrative Office of the Courts.
8. The Clerk shall deliver a copy of these Appellate Entries to the Appellate Defender, counsel for all parties, or the defendant, if not represented by counsel.

Date 02/06/2014	Name Of Presiding Judge (Type Or Print) HENRY W. HIGHT, JR	Signature Of Presiding Judge 
--------------------	---	--

CLERK'S TRANSCRIPT ORDER AND CERTIFICATE

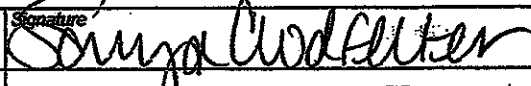
(NOTE: To be completed ONLY when defendant is indigent.)

To The Transcriptionist(s) Named On The Reverse:

Prepare and deliver to the parties a transcript of all portions of the proceedings in the above-captioned case except (Specify any portions of the proceedings which need not be transcribed pursuant to a stipulation filed by the parties under Rule 7(e)(2), or pursuant to No. 4.d. on reverse side.)

I certify that I delivered a copy of this Transcript Order to the transcriptionist(s) on the date shown below:

- ☒ personally.
☐ by mailing it to the transcriptionist(s) at the address(es) shown on the reverse.

Date Clerk's Transcript Order Entered And Filed 02/06/2014	Signature 
Date Order Delivered To Transcriptionist(s), If Different 2-10-14	<input type="checkbox"/> Deputy CSC <input checked="" type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court

EXTENSION OF TIME TO PREPARE TRANSCRIPT OR SERVE RECORD

- ☐ 1. Extension of time to file transcript: Pursuant to Rule 7, N.C. Rules of Appellate Procedure, upon motion of the appellant and for good cause shown, the court finds that this is a criminal case that did not result in a sentence of death and it is ORDERED that the time for preparation of the transcript is extended for 30 days.
- ☐ 2. Extension of time to serve proposed record on appeal: Pursuant to Rules 11 and 27, N.C. Rules of Appellate Procedure, upon motion of the appellant and for good cause shown, it is ORDERED that the time for service of the proposed record on appeal is extended for 30 days.

NOTE: The trial court may grant only one extension of time to serve the proposed record on appeal. Any additional motion for an extension of time to serve the proposed record on appeal must be made to the appellate court where the appeal is to be heard. In a case in which a sentence of death was not entered, the trial court may grant one motion for an extension of time to prepare the transcript. Any subsequent motions for an extension of time to prepare the transcript must be made to the appellate court where the appeal is to be heard. In capital cases that resulted in the imposition of the death penalty, motions for an extension of time to prepare the transcript must be made directly to the Supreme Court. Rules 7 and 27, N.C. Rules of Appellate Procedure.

Date	Name Of Judge (Type Or Print)	Signature Of Judge
------	-------------------------------	--------------------

CERTIFICATION

I certify this Appellate Entries form is a true and complete copy of the original on file in this case.

Date	Signature And Seal	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> Assistant CSC
------	--------------------	--

Material opposite unmarked squares is to be disregarded as surplusage.

copy

**APPOINTMENT OF APPELLATE COUNSEL
BY THE APPELLATE DEFENDER.**

STATE OF NORTH CAROLINA

v.

PAUL GREGORY PERRY
12 CRS 227771, 13 CRS 3178
Wake County

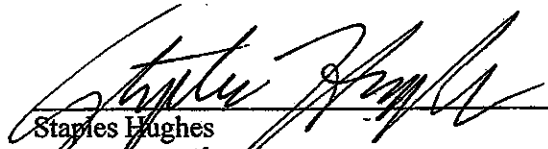
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)

Defendant having been convicted of a criminal offense in this action and having given notice of appeal to the North Carolina Court of Appeals, and the Trial Court having appointed the Appellate Defender as appellate counsel for the defendant, the Appellate Defender appoints the attorney named below as appellate counsel to perfect defendant's appeal, pursuant to IDS Rule Part 3. A copy of the Court's Appellate Entries is attached to the copy of this Appointment Notice that has been transmitted to the appointed appellate counsel. The original of this Appointment Notice has been mailed to the Clerk of Superior Court for filing.

Appointed Appellate Counsel:

William Michael Spivey
Post Office Box 1159
Rocky Mount, North Carolina 27802
Telephone 252 972 2711
Facsimile 252 972 2777
Email mspivey@earthlink.net

This is the 24th day of February 2014.


Staples Hughes
Appellate Defender

In addition to the appointed appellate counsel named above, the Office of the Appellate Defender has provided a copy of this Appointment Notice to all parties as listed on the Appellate Entries, the defendant and the court reporters.

**ATTENTION CLERK OF COURT. File this Appointment Notice in your office.
Please mail a photocopy of the complete court files directly to Mr. Spivey.**

North Carolina
Wake County

General Court of Justice
Superior Court Division
File No.: 12 CRS 227771
13 CRS 3178

State of North Carolina

vs.

Paul Gregory Perry

**ORDER EXTENDING TIME TO
DELIVER TRANSCRIPT**

Upon motion of the defendant, and for good cause shown:

IT IS HEREBY ORDERED pursuant to Rule 7, N.C. Rules of Appellate Procedure, that the time for preparation and delivery of the transcripts in this matter is extended 30 days to and including 16 May 2014.

IT IS FURTHER ORDERED that counsel for the defendant promptly serve a copy of this Order on all other parties to this action.

This the 16 day of April 2014.


Henry W. Hight, Jr.
Judge of Superior Court



-77-

North Carolina Court of Appeals

JOHN H. CONNELL, Clerk

Court of Appeals Building
One West Morgan Street
Raleigh, NC 27601
(919) 831-3600

From Wake
(12CRS227771 12CRS3178)

Fax: (919) 831-3615
Web: <http://www.nccourts.org>

Mailing Address:
P. O. Box 2779
Raleigh, NC 27602

No. P14-325

STATE OF NORTH CAROLINA

V.

PAUL GREGORY PERRY

ORDER

The following order was entered:

The motion filed in this cause on the 6th of May 2014 and designated 'Motion for Extension of Time for Delivery of Transcript' is allowed. Transcript shall be produced and delivered on or before 16 June 2014.

By order of the Court this the 7th of May 2014.

WITNESS my hand and official seal this the 7th day of May 2014.

A handwritten signature in black ink, appearing to read "John H. Connell".

John H. Connell
Clerk, North Carolina Court of Appeals

Copy to:
Mr. W. Michael Spivey, Attorney at Law, For Paul Gregory Perry
Mr. James Wilson, Attorney at Law
Attorney General, For State of North Carolina
Hon. Nancy L. Freeman, Clerk of Superior Court



North Carolina Court of Appeals

JOHN H. CONNELL, Clerk

Court of Appeals Building
One West Morgan Street
Raleigh, NC 27601
(919) 831-3600

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Mailing Address:
P. O. Box 2779
Raleigh, NC 27602

No. P14-325

STATE OF NORTH CAROLINA

V.

PAUL GREGORY PERRY

ORDER

The following order was entered:

The motion filed in this cause on the 13th of June 2014 and designated 'Second Motion for Extension of Time for Delivery of Transcript' is allowed. Transcript shall be produced and delivered on or before 16 July 2014.

By order of the Court this the 16th of June 2014.

WITNESS my hand and official seal this the 16th day of June 2014.

John H. Connell
Clerk, North Carolina Court of Appeals

Copy to:
Mr. W. Michael Spivey, Attorney at Law, For Paul Gregory Perry
Mr. James Wilson, Attorney at Law
Attorney General, For State of North Carolina
Hon. Nancy L. Freeman, Clerk of Superior Court



- 79 -

North Carolina Court of Appeals

JOHN H. CONNELL, Clerk

Court of Appeals Building
One West Morgan Street
Raleigh, NC 27601
(919) 831-3600

From Wake
(12CRS227771 12CRS3178)

Fax: (919) 831-3615
Web: <http://www.nccourts.org>

Mailing Address:
P. O. Box 2779
Raleigh, NC 27602

No. P14-325

STATE OF NORTH CAROLINA

V.

PAUL GREGORY PERRY

ORDER

The following order was entered:

The motion filed in this cause on the 14th of July 2014 and designated 'Third Motion for Extension of Time for Delivery of Transcript' is allowed. Transcript shall be produced and delivered on or before 15 August 2014.

A copy of this order and the motion shall be mailed to the Honorable John W. Smith, Director of the Administrative Office of the Courts, David F. Hoke, Assistant Director of the Administrative Office of the Courts, and Court Reporting Manager David Jester.

By order of the Court this the 15th of July 2014.

WITNESS my hand and official seal this the 15th day of July 2014.

A handwritten signature in black ink, appearing to read "John H. Connell".

John H. Connell
Clerk, North Carolina Court of Appeals

Copy to:
Mr. W. Michael Spivey, Attorney at Law, For Paul Gregory Perry
Mr. James Wilson, Attorney at Law
Attorney General, For State of North Carolina
Hon. Nancy L. Freeman, Clerk of Superior Court

1 STATE OF NORTH CAROLINA
2 COUNTY OF WAKE

GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 12 CRS 227771,
13 CRS 3178

3

4

STATE OF NORTH CAROLINA,

5

6

v.

CERTIFICATE OF DELIVERY

7

PAUL GREGORY PERRY,

8

Defendant.

9

10

11 This is to certify that the transcript of the
12 above-captioned case, consisting of 6 pages was
13 delivered electronically to the district attorney's
office and the appellate attorney on the 6th day of
August, 2014.

14

This the 6th day of August, 2014.

15


Carrie E. Rice, RMR, CRR

16

17 *****

18 A copy of this form has been delivered to:

19

XX COURT OF APPEALS

20

PLAINTIFF'S ATTORNEY

21

XX DISTRICT ATTORNEY

22

XX APPELLATE ATTORNEY

23

COURT FILE

24

25

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
COUNTY OF WAKE
STATE OF NORTH CAROLINA,
SUPERIOR COURT DIVISION
12 CRS 227771
13 CRS 003178

versus
PAUL GREGORY PERRY,

Defendant.

CERTIFICATE
OF DELIVERY

.....

This is to certify that the transcript of
the proceedings at the October 9, 2013 Session of Wake
County Superior Court was ordered by William Michael
Spivey, on February 10, 2014, comprising 9 pages, and
was delivered electronically and by U.S. Mail, postage
pre-paid, to Jimmy Wilson and William Michael Spivey,
listed below, on the 6th day of August, 2014.

JIMMY WILSON, ESQ.
P.O. Box 51
Raleigh, North Carolina 27601

WILLIAM MICHAEL SPIVEY, ESQ.
P.O. Box 1159
Rocky Mount, NC 27802

Jacqueline M. Sullivan
Jacqueline M. Sullivan, RPR, CRR
P.O. Box 665
Raleigh, NC 27602
919-792-5203

BY

WAKE COUNTY, C.S.C.

20th AUG - 6 AM 8:31

FILED

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
12 CRS 227771

STATE OF NORTH CAROLINA,)
)
Plaintiff,)
vs.)
)
PAUL GREGOR PERRY,)
)
Defendant.)

CERTIFICATE OF DELIVERY

(Trial)

This is to certify that the Transcript of Trial at the February 3-6, 2014, Session of the Wake County Superior Court, before the Honorable Henry W. Hight, Jr., was ordered on February 3, 2014, and is 606 pages in four volumes, and was delivered electronically and by U.S. Mail, postage prepaid, to counsel listed below on the 19th day of August, 2014.

W. Michael Spivey, Attorney at Law
PO Box 1159
Rocky Mount, NC 27802
MSpivey@earthlink.net

James M. Wilson
Assistant District Attorney
P.O. Box 51
Raleigh, NC 27602
James.m.wilson@nccourts.org

North Carolina Department of Justice
Appellate Section
P.O. Box 629
Raleigh, NC 27602
Crimtranscripts@ncdoj.org

Susan K. Gugig, RPR
Official Court Reporter
P.O. Box 351
Raleigh, NC 27602



-83-

North Carolina Court of Appeals

Fax: (919) 831-3615
Web: <http://www.nccourts.org>

JOHN H. CONNELL, Clerk
Court of Appeals Building
One West Morgan Street
Raleigh, NC 27601
(919) 831-3600

Mailing Address:
P. O. Box 2779
Raleigh, NC 27602

From Wake
(12CRS227771 12CRS3178)

No. P14-325

STATE OF NORTH CAROLINA

V.

PAUL GREGORY PERRY

ORDER

The following order was entered:

The motion filed in this cause on the 20th of August 2014 and designated 'Motion to Deem Transcript Timely Delivered' is allowed. Transcript is deemed timely produced and delivered.

By order of the Court this the 20th of August 2014.

WITNESS my hand and official seal this the 20th day of August 2014.

A handwritten signature in black ink, appearing to read "John H. Connell".

John H. Connell
Clerk, North Carolina Court of Appeals

Copy to:

Mr. W. Michael Spivey, Attorney at Law, For Paul Gregory Perry
Mr. James Wilson, Attorney at Law
Attorney General, For State of North Carolina
Mr. David Hoke
Hon. John W. Smith, Director of the AOC
Mr. David Jester, Court Reporting Manager
Hon. Nancy L. Freeman, Clerk of Superior Court

North Carolina
Wake County

General Court of Justice
Superior Court Division
File No.: 12 CRS 227771
13 CRS 3178

State of North Carolina

vs.

Paul Gregory Perry

**ORDER EXTENDING TIME TO
SERVE PROPOSED RECORD ON
APPEAL**

Upon motion of the defendant, and for good cause shown:

IT IS HEREBY ORDERED pursuant to Rule 27(c)(1) N.C. Rules of Appellate Procedure, that the time for preparation and delivery of the transcripts in this matter is extended 30 days to and including 23 October 2014.

IT IS FURTHER ORDERED that counsel for the defendant promptly serve a copy of this Order on all other parties to this action.

This the 8 day of September 2014.


Henry W. Hight, Jr.
Judge of Superior Court

CERTIFICATE OF SERVICE
PROPOSED RECORD ON APPEAL

I hereby certify that a copy of Defendant-Appellant's Proposed Record on Appeal has been duly served on the date shown below by depositing it in a depository of the United States Postal Service, first-class mail, postage prepaid, addressed to Mr. James Wilson, Assistant District Attorney, PO Box 31, Raleigh, NC 27602-0031.

This the 23rd day of October 2014.

W. Michael Spivey

W. Michael Spivey
Attorney for Appellant
P.O. Box 1159
Rocky Mount, NC 27802
Telephone: (252) 972-2711
Fax: (252) 977-2777
N.C. State Bar No.: 8991
Email Address: mspivey@earthlink.net

TRANSCRIPT OF PROCEEDINGS

Pursuant to Appellate Rule 9(c) the following transcripts of proceedings in the trial court are part of the record on appeal:

Transcript of proceedings in Wake County Superior Court on October 9, 2013 consisting of eight consecutively numbered pages 1 through 8 bound in one volume as prepared by Jacqueline M. Sullivan, Official Court Reporter;

Transcript of proceedings in Wake County Superior Court on December 6, 2013 consisting of five consecutively numbered pages 1 through 5 bound in one volume as prepared by Carrie E. Rice, Official Court Reporter;

Transcript of proceedings in Wake County Superior Court on February 3 through 6, 2014 consisting of 606 consecutively numbered pages 1 through 606 bound in four volumes numbered 1 through 4 as prepared by Susan K. Gugig, Official Court Reporter.

STIPULATION CONCERNING TRIAL EXHIBITS

Pursuant to Rule 9(d), the exhibits which have been included in this record on appeal are those considered necessary for the understanding of all of the proposed issues. The parties stipulate that if it appears to any party during briefing that additional exhibits which have been filed, served, submitted for consideration, admitted, or made the subject of an offer of proof at the trial court are necessary for understanding of the proposed issues or any additional issues raised by the briefs, those exhibits may be filed with the Clerk of the Court of Appeals per Rule 9(d)(2) with service on all parties. Pursuant to Rule 9(d)(2) of the Rules of Appellate Procedure, the Wake County Clerk of Court shall forward exhibits or sealed documents to the Clerk of the North Carolina Court of Appeals upon request.

APPEARANCES OF TRIAL COUNSEL

James M. Wilson, Assistant District Attorney, District 10, represented the State.

Jeffrey M. Cutler, Wake County, North Carolina represented Defendant.

No. _____

TENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

STATE OF NORTH CAROLINA

v.

PAUL GREGORY PERRY

)
)
)
)
)
)
)

From Wake County

12 CRS 227771


13 CRS 3178

CERTIFICATE OF SETTLEMENT

Counsel for Defendant-Appellant certifies that Defendant-Appellant heretofore served the Proposed Record on Appeal by sending it to the State-Appellee on 23 October 2014. The Record on Appeal has been settled because the time has expired for the State-Appellee to serve upon the Defendant-Appellant a notice of approval of the Proposed Record on Appeal or objections, amendments or alternative Proposed Record on Appeal pursuant to Rule 11 of the Rules of Appellate Procedure. Based upon the foregoing, Defendant-Appellant's Proposed Record on Appeal constitutes the Record on Appeal in this case as a matter of law. Rule 11(b), Rules of Appellate Procedure.

A copy of this Certificate has been served this day by first class mail upon Mr. James Wilson, Assistant District Attorney, PO Box 31, Raleigh, NC 27602-0031.

This the 9th day of December 2014.


W. Michael Spivey
Attorney for Appellant

No. _____

TENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

STATE OF NORTH CAROLINA)

v.)

PAUL GREGORY PERRY)

From Wake County

12 CRS 227771

13 CRS 3178

CERTIFICATE OF FILING AND SERVICE

Pursuant to Rule 26(a)(1) of the North Carolina Rules of Appellate Procedure the signature below is a certification that the foregoing Record on Appeal has been filed with the Clerk of the Court of Appeals and served upon Appellee on the date shown below by depositing said document in an official depository of the United States Postal Service, first class postage prepaid and properly addressed to Mr. John H. Connell, Clerk, North Carolina Court of Appeals, PO Box 2779, Raleigh, NC 27602; and to Mr. James Wilson, Assistant District Attorney, PO Box 31, Raleigh, NC 27602-0031.

This the 9th day of December 2014.

W. Michael Spivey
W. Michael Spivey
Attorney for Appellant
N.C. State Bar No.: 8991
P.O. Box 1159
Rocky Mount, NC 27802
Telephone: (252) 972-2711

APPELLANT'S PROPOSED ISSUES ON APPEAL

- I. WHETHER THE TRIAL COURT ERRED BY DENYING MR. PERRY'S MOTION TO SUPPRESS EVIDENCE OBTAINED FROM AN UNCONSTITUTIONAL AND UNLAWFUL SEARCH AND SEIZURE OF HIS CELLULAR TELEPHONE RECORDS AND CELL SITE LOCATION?
- II. WHETHER THE TRIAL COURT ERRED BY DENYING MR. PERRY'S MOTION TO SUPPRESS STATEMENTS OBTAINED BY VIOLATION OF HIS CONSTITUTIONAL RIGHTS?
- III. WHETHER THE TRIAL COURT ERRED BY DENYING MR. PERRY'S MOTION TO SUPPRESS EVIDENCE SEIZED PURSUANT TO AN UNLAWFUL AND UNCONSTITUTIONAL DETENTION AND ARREST?
- IV. WHETHER THE TRIAL COURT ERRED BY ADMITTING EVIDENCE OF A TELEPHONE CONVERSATION BETWEEN UNIDENTIFIED PERSONS WITHOUT PROPER FOUNDATION THAT CONTAINED INADMISSIBLE HEARSAY? (T VOL 4 PP 522-524).
- V. WHETHER THE TRIAL COURT ERRED BY INSTRUCTING THE JURY THAT MR. PERRY COULD BE CONVICTED OF TRAFFICKING IN HEROIN BY TRANSPORTATION UPON THE THEORY OF ACTING IN CONCERT?
- VI. WHETHER THE TRIAL COURT ERRED BY SENTENCING MR. PERRY FOR BOTH CONSPIRACY TO TRAFFIC IN HEROIN BY TRANSPORTATION AND FOR TRAFFICKING BY TRANSPORTATION IN VIOLATION OF HIS CONSTITUTIONAL RIGHT NOT TO BE SUBJECTED TO DOUBLE JEOPARDY?
- VII. WHETHER THE TRIAL COURT ERRED BY DENYING MR. PERRY'S MOTION TO DISMISS FOR INSUFFICIENCY OF THE EVIDENCE?
- VIII. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION BY NOT FINDING THAT MR. PERRY PROVIDED SUBSTANTIAL ASSISTANCE.

- IX. WHETHER THE TRIAL COURT ERRED BY RECEIVING EVIDENCE AND NOT DISCLOSING THE EVIDENCE TO MR. PERRY.
- X. WHETHER THE TRIAL COURT ERRED BY PRONOUNCING A SENTENCE OF 15 MONTHS MINIMUM AND 16 MONTHS MAXIMUM IN CASE NUMBER 12 CRS 227771 COUNT 52 IN OPEN COURT AND SUBSEQUENTLY ENTERING A WRITTEN JUDGMENT IMPOSING A SENTENCE OF 14 MONTHS MINIMUM AND 26 MONTHS MAXIMUM?

NAMES OF COUNSEL

W. Michael Spivey
Attorney at Law
P.O. Box 1159
Rocky Mount, NC 27802
Telephone: (252) 972-2711
Fax: (252) 977-2777
N.C. State Bar No.: 8991
Email Address: mspivey@earthlink.net

ATTORNEY FOR DEFENDANT-APPELLANT

Roy Cooper
Attorney General
Department of Justice
PO Box 629
Raleigh, NC 27602
Telephone: 919-716-6400

ATTORNEY FOR APPELLEE