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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Kristi F. Curtis, Circuit Court Judge

GERALD JARROD ANCRUM,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001730

APPENDIX

JESSICA M. SAXON
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

TRACY A. MEYERS
Assistant Deputy Attorney General
PO Box 11549
Rembert C. Dennis Building
Columbia, SC 29211
(803)734-3970

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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2 STATE OF SOUTH CAROLINA)
3 COUNTY OF CHARLESTON) Court of General Sessions
4) Case No. 2015-GS-10-2965
5) and 2015-GS--10-2966
6)
7 STATE OF SOUTH CAROLINA)
8)
9 VS.) Transcript of Record
10)
11 GERALD JARROD ANCRUM,)
12)
13 Defendant.)
14)
15) DATE: May 23 - 24, 2017
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B E F O R E:

THE HONORABLE WILLIAM PAUL KEESLEY

A P P E A R A N C E:

STEPHANIE B. LINDER and WHITT SOWARDS
Attorneys for the State

MELISSA GAY
Attorney for the Defendant

Karen V. Andersen, RMR, CRR
Circuit Court Reporter

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1 THE COURT: This is the matter of State of South
2 Carolina v. Gerald Ancrum. The matter is set for a jury
3 trial this morning. I received a number of motions by e-mail
4 from the Defense. Are you all ready to argue those?

5 MS. LINDER: Yes, Judge.

6 MS. GAY: They are standard motions. She and I
7 discussed them a number of times. She's actually complied
8 with the motion to reveal the informant's information. I
9 just was filing them to have them recorded. So we've
10 received that information.

11 There's a few other things that are just kind of
12 housekeeping matters. And she and I were just discussing
13 them this morning. The motion to sequester, I believe she's
14 going to agree to.

15 The motion regarding a statement, there's a witness
16 that is maybe not available this morning, she tells me, but
17 we were talking about discussing that motion right before he
18 testifies. That's the only statement she intended to use.

19 And then we have prior bad acts, which we've had
20 some discussion on prior to this, and prior convictions,
21 which we also had some discussion on. We just need to put it
22 on the record

23 THE COURT: All right. Go ahead.

24 MS. LINDER: Okay. Judge, as far as the prior bad
25 acts, Your Honor, we don't intend to go into anything on the

1 defendant unless and until he testifies and opens the door.
2 In fact, Ms. Gay and myself had gotten together. There is a
3 video of a drug purchase in this case, a drug buy. And we
4 have gone through, given her transcription, and we have
5 agreed upon what parts need to be muted, because they
6 potentially reference prior buy or any plans for a future
7 buy. So we have already come to an agreement on what those
8 items are and where those need to be muted on the video
9 itself.

10 As far as prior convictions, we agree that we don't
11 intend to use anything and nothing is admissible unless and
12 until the defendant gets on the stand and chooses to testify
13 to something that would open the door for that.

14 As far as the CI identity, I believe Ms. Gay covered
15 it, saying that a couple weeks ago, we gave her all the
16 information, and have actually answered a couple follow-up
17 questions about things. So she has everything with the
18 informant's identity.

19 I'm trying to think what else. The statement, it's
20 a brief *Jackson v. Denno* statement. It's about two weeks
21 later, when this defendant was arrested, he was interviewed.
22 And it was on audio and video. And during that interview,
23 the one part that we would be looking to admit would be they
24 ask him his phone number and he gives his phone number. That
25 is the extent of what we would be looking to admit, because

1 this drug buy was set up calling the same phone number that
2 he acknowledged was his about two weeks later at the time of
3 warrant service.

4 So, Judge, that's the very limited part. And that
5 witness is around. He is working today. I just didn't know
6 what time you wanted to do that hearing, so I haven't ordered
7 him in. I can bring him in. It's about a 15-minute video.
8 So I think that, accompanying five minutes worth of
9 testimony, will be plenty to get that in as far as the *Denno*
10 hearing.

11 As far as sequestration, Judge, we absolutely agree
12 with the sequestration. And one thing I mentioned to Ms. Gay
13 and will mention to the Court, I have ATF Agent Frank Preston
14 here. He is sitting at the table with us. And I would ask
15 that he be allowed to sit with us throughout the duration of
16 the trial. And I already mentioned all of this to Ms. Gay.

17 THE COURT: Do you need to put anything on the
18 record?

19 MS. GAY: Your Honor, the only thing I want to be
20 clear is that when she does the *Jackson v. Denno*, she says
21 there's a 15-minute video. But all she really wants to show
22 the jury is the part where he's talking about his phone
23 number and not the rest of it.

24 MS. LINDER: And, Judge, to respond to that, as far
25 as trial itself, we don't plan to play the video at all. We

1 are just going to have that officer testify that there was an
2 interview that was recorded and he gave his phone number. We
3 intend to use zero part of the actual interview during the
4 trial of the case in chief. We are just going to have that
5 for a Court's exhibit for the *Denno* hearing.

6 MS. GAY: I understand.

7 THE COURT: Anything else?

8 MS. GAY: No.

9 THE COURT: All right. I'm kind of at your mercy as
10 far as scheduling the *Denno* hearing, because I don't know
11 anything about the case. So I don't know how long it's going
12 to take other than they told me two days. I don't know. I
13 don't know what to tell you.

14 MS. LINDER: Judge, what I would propose, and what
15 I've spoken to Ms. Gay about, is before that witness
16 testifies, to have about a 20-minute break for the jury. And
17 we can get that done right before he testifies. And then I
18 will make no reference of any sort of statement or anything
19 like that in my opening or anywhere up to that witness, if
20 the Court is okay with that. Otherwise, I can call him and
21 he can be here in 20 or 30 minutes, if you would like to do
22 that before we start the trial itself.

23 THE COURT: That's fine with me.

24 MS. LINDER: As far as scheduling, we have -- I
25 think that we will get through probably all of our witnesses

1 today. And I think we will probably need to argue and charge
2 tomorrow, but I believe that our witnesses will most likely
3 get through today.

4 MS. GAY: I don't anticipate witnesses, so I also
5 agree that we can get through all of it today.

6 THE COURT: Okay. So the chief investigating
7 officer can stay in the courtroom throughout the trial.

8 There's no intent to go into any prior bad acts.

9 There's no intent to go into any convictions unless
10 the defendant takes the stand.

11 The prior bad acts would only come in if the
12 defendant in some way opened the door to that.

13 I'm a little bit confused about the muting sections
14 of the video if you are not going to use the video.

15 MS. LINDER: I am going to use -- there are a
16 total -- there's one disk. Two phone calls were placed to
17 set up the buy. That, we would lay the foundation and enter
18 that as regular evidence.

19 There is a video of the hand-to-hand purchase of
20 drugs. That we would intend to enter as part of this. And
21 that's where there's some portions that the undercover
22 officer who is with the informant, for example, has
23 conversations saying, does he usually want to you park next
24 to him. All of those kind of comments we are going to mute,
25 so there's actually no reference to prior or post dealings

1 with him.

2 The video that I've talked about as far as not
3 playing during trial, that is an interview that law
4 enforcement did with the defendant at the time of the arrest.

5 THE COURT: I understand now. Let me ask you this.
6 You intend to offer the video into evidence that you are
7 going to mute?

8 MS. LINDER: Yes. And then we were going back and
9 forth as far as what parts needed to be muted. And we have
10 the times written down. We had a transcript and the lines
11 highlighted that were going to be muted. We don't have the
12 software to mute certain sections. So, Judge, what I would
13 propose and what I've done in previous trials is, when we
14 play it, we admit it as evidence and we play it. We mute it.
15 And if, for some reason, the jury would like to watch it
16 again, they come back into the courtroom. And we will again
17 abide by the agreeable times to mute the video.

18 THE COURT: Do you have anything on that?

19 MS. GAY: No. Factually, Your Honor, this
20 confidential informant allegedly bought drugs from my client
21 on several occasions. So that's the whole -- that's the
22 white elephant in the room that we are trying to figure out.
23 So she is making reference to different occasions where she's
24 met him to buy drugs before. So that's what we agreed would
25 have been prior bad acts information. And we agreed that

1 should not go before the jury. So we came up with the
2 solution of muting the words, because once they -- if the
3 words aren't heard, you won't know -- you know, it's just
4 silence, and then it comes back on again.

5 THE COURT: Okay. Well, I will tell you, I don't
6 particularly like having the jury come back in the courtroom.
7 But if y'all agree, I will go along with it. I understand
8 why you do it. There's two things about it bother me. One
9 is, they can't talk about the video. They can only watch it.

10 The other thing is, I've heard of situations where
11 they play the video and people left the courtroom. Everybody
12 else left the courtroom. Well, I don't like that because
13 there are security cameras in courtrooms.

14 So I'm assuming you are talking about us staying in
15 here while it's being played. And I will just have to tell
16 them they can come and hear that if they wish to, but they
17 have to leave. Like I said, I will go along with it if both
18 sides are in agreement. And you've got some way to preserve
19 the record to show what you did not let the jury hear. And
20 you said you had a transcript.

21 MS. LINDER: Yes.

22 THE COURT: So you need to mark that as a Court's
23 exhibit at the appropriate time.

24 MS. LINDER: Yes, Judge.

25 THE COURT: Anything else?

1 MS. GAY: No, Your Honor. I think that settles it
2 all.

3 THE COURT: So, Ms. Gay, your client has been
4 arraigned or waived his arraignment?

5 MS. GAY: Your Honor, I would like him to be
6 arraigned in front of the jury.

7 THE COURT: In front of the jury?

8 MS. GAY: That's usually what we do around here. If
9 you don't do it that way -- just depends. Everybody has
10 different ways they do things.

11 THE COURT: What do you all usually do.

12 THE CLERK: You can do it, Judge, if you want to do
13 it, or I can do it.

14 THE COURT: I'm a visitor in a foreign land. I
15 don't want to rock the boat. No, we don't ever do that in
16 11th Circuit. I've never seen it or heard of it. They
17 usually waive it, but that's fine. You want it in front of
18 all 45 jurors?

19 MS. GAY: No -- yes, before they call, as we are
20 introducing it, yes, sir.

21 We are ready when you are, Your Honor. I just want
22 to look at this for just a second.

23 THE COURT: The State ready?

24 MS. LINDER: Yes, Your Honor, the State is ready.

25 THE COURT: Bring them up.

1 (Venire enters.)

2 THE COURT: Members of the jury, my name is Billy
3 Keesley. I live in Edgefield. I'm a resident judge of the
4 11th Judicial Circuit. So my home circuit consists of
5 Lexington, McCormick, Saluda and Edgefield Counties. I've
6 been assigned by the chief justice to preside over general
7 sessions court here in Charleston this week. And it's my
8 pleasure to be here.

9 You've been brought here this morning potentially to
10 serve as jurors in a case that involves two separate and
11 distinct indictments. Both of these are captioned as the
12 State of South Carolina vs. Gerald Jarrod Ancrum.

13 Now, Ms. Gay, your client wishes to be arraigned on
14 these charges?

15 MS. GAY: Yes.

16 THE CLERK: Please stand and face me, Mr. Ancrum.
17 Case 2015-GS-10-2965, the State of South Carolina vs. Gerald
18 Jarrod Ancrum, Indictment 4, distribution of crack cocaine.
19 If you answer to that name, please raise your right hand.
20 You may put it down. You stand indicted by the name of
21 Gerald Jarrod Ancrum?

22 THE DEFENDANT: Yes, sir.

23 THE CLERK: The defendant Gerald Jarrod Ancrum did
24 on or about February 25th, 2015, in Charleston County, South
25 Carolina, manufacture, distribute, dispense, deliver,

1 purchase, or otherwise aid, abet, attempt or conspire to
2 manufacture, distribute, dispense, deliver or purchase or
3 possess with the intent to manufacture, distribute, dispense,
4 deliver or purchase crack cocaine or cocaine base, in
5 violations of the provisions of Section 44-53-370, all in
6 violation of 44-53-0375(B)(3) of the South Carolina Code of
7 Laws, 1976 as amended.

8 How say, are you guilty or not guilty?

9 THE DEFENDANT: Not guilty.

10 THE COURT: As to Indictment No. 2015-GS-10-2966,
11 State of South Carolina v. Gerald Jarrod Ancrum, indictment
12 for distribution of heroin, the defendant Gerald Jarrod
13 Ancrum did on or about February 5th, 2015, in Charleston
14 County, South Carolina, manufacture, distribute, dispense,
15 deliver, purchase, aid, abet, attempt or conspire to
16 manufacture, distribute, dispense, deliver or purchase or
17 possess with the intent to manufacture, distribute, dispense,
18 deliver or purchase heroin, a Schedule I controlled substance
19 narcotic, all in violation of 44-53-0370(B)(1), of the South
20 Carolina Code of Laws, 1976 as amended. How say, are you
21 guilty or not guilty?

22 THE DEFENDANT: Not guilty.

23 THE CLERK: How will you be tried?

24 THE DEFENDANT: By God or my country.

25 THE COURT: May they send you a true deliverance.

1 Are you ready for trial?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Thank you.

4 All right. So, ladies and gentlemen, as you've
5 heard, Mr. Ancrum has been charged under two separate and
6 distinct indictments, one is for distribution of crack
7 cocaine, and the other is for distribution of heroin, both of
8 which are alleged to have occurred on or about February 5,
9 2015, in Charleston County, South Carolina.

10 Upon his arraignment on these charges, Mr. Ancrum
11 has entered pleas of not guilty. He is presumed to be
12 innocent. It is incumbent upon the State of South Carolina,
13 having brought these charges, to prove every essential
14 element of each offense charged beyond a reasonable doubt.

15 Now, we are going to go through a process of
16 selecting a jury to hear this case. I was not present when I
17 believe Judge Jefferson did the general qualifications of
18 you, so I am not privy to all that information that you gave
19 there. And I don't know what they told you. So let me just
20 cover some things to make sure that they are covered. And if
21 I'm repeating things you already know, please forgive me.

22 First, you are under oath. You have an obligation
23 to be completely truthful and honest with the Court. If I
24 ask you anything and you have doubt about whether it applies
25 to you, please discuss it with me and let me resolve the

1 doubt. If I ever ask you anything that you prefer to discuss
2 more privately, just let me know you want to talk about it
3 down front and we will talk about it over here on the side.

4 You need to understand that this is a court of
5 record. And basically what that means is that we have a
6 court reporter seated over here who is taking down everything
7 we say. Part of my job is to make sure that she's able to
8 put down an accurate record. So if somebody is speaking in
9 the courtroom, I have to make sure that she knows who is
10 talking. So if you are going to speak, first thing I'm going
11 to have you do, no matter how many times you speak, I'm going
12 to have you state your name and your juror number, so that we
13 make sure we have a proper record.

14 Now, with those logistical matters taken care of, I
15 think we are ready to proceed. There may be times when I
16 limit your responses. If I ever say to you, for example,
17 just answer a question yes or no, and you feel that you
18 cannot adequately answer the question within the limitation,
19 come down front and give me the full explanation. Don't just
20 blurt out the whole answer because you defeat the purpose of
21 the limitation. So the point of that is that if there's
22 something about your situation that might affect your ability
23 to be fair and impartial as a juror in this case, that's
24 fine, we can set you aside on this case and move on. That's
25 why we don't just bring in 12 people. We bring in more

1 people than that because we understand that some folks may
2 have issues with certain types of cases, either because of
3 something in their own background, something related to an
4 event that may have happened to them or somebody very close
5 to them.

6 'If you keep in mind throughout this process that the
7 goal is that we have a jury serving that is fair and
8 impartial, I think the questions will make more sense to you.

9 Now, Mr. Ancrum, I need you to stand once again and
10 face the jury panel for me. You are Jarrod Ancrum, sir?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Face the jury for me, please. Thank you
13 very much, sir. You may be seated.

14 Is there any member of the jury panel who is related
15 by blood or marriage or connected by employment with the
16 defendant, Gerald Jarrod Ancrum? If so, please stand.

17 (No response from the jury.)

18 THE COURT: Now, the following persons have been
19 identified as potential witnesses in the case. Folks, like I
20 said there's two indictments. They are separate and
21 distinct. Each has to be evaluated on its own merit or lack
22 ever merit. If I say the word "case" in singular, don't be
23 confused. There are two separate and distinct indictments
24 and the jury has to evaluate each one separately.

25 The potential witnesses in the case include the

1 following persons. If any of them are present, I need for
2 that person to stand as his or her name is called and face
3 the jury. I have Detective Marc Brown of the Charleston
4 Police Department; Detective Sylvester Williams of the
5 Charleston Police Department and the Alcohol, Tobacco and
6 Firearms Task Force; Tessa, T-e-s-s-a, Morris; Detective
7 Stephanie Lisa Branham, Charleston County Sheriff's Office;
8 Frank Preston of Alcohol, Tobacco and Firearms; Karen Ford;
9 Ashley Earl; Susan Payne of the Charleston Police Department;
10 Brian Hinton of the Charleston Police Department; and Linda
11 Wilson of the Charleston Police Department.

12 Now, I've read out a good many names there. And if
13 you know somebody by that name or you need more identifying
14 information because it's a common name, you are not sure if
15 it's the same person, let me know and I will get more
16 identifying information from the attorneys. But what I need
17 to ask you at this point is, are any of you related by blood
18 or marriage or connected by employment with any of the
19 potential witnesses in the case? If so, please stand.

20 (No response from the jury.)

21 THE COURT: Do any of you have any connection of any
22 kind with the Charleston Police Department, or does anybody
23 very close to you have any connection with this Charleston
24 Police Department?

25 What's your name, please?

1 JUROR 378: Stephanie Wilkins, Juror No. 378.

2 THE COURT: Ms. Wilkins, 378, and what's your
3 situation?

4 JUROR 378: One of my best friends works for the
5 Charleston Police Department.

6 THE COURT: I didn't read the best friend's name?

7 JUROR 378: No, you did not.

8 THE COURT: Is there anything at all about your
9 relationship with that individual or your experiences,
10 anything he may have told you or anything at all about your
11 connection with that person that might affect your ability to
12 be a fair and impartial juror in the case?

13 JUROR 378: No, sir.

14 THE COURT: You can decide the case without regard
15 to what he may think of your decision?

16 JUROR 378: Yes.

17 THE COURT: It's a he's?

18 JUROR 378: Yes.

19 THE COURT: And do you have any doubt at all about
20 any of these things?

21 JUROR 378: No, sir.

22 THE COURT: Thank you, Ms. Wilkins.

23 378 is eligible to serve.

24 JUROR 226: 226, Joseph Lenihan.

25 THE COURT: Mr. Lenihan, 226, what's your situation?

1 JUROR 226: I've worked for the Charleston Fire
2 Department for three years, sir, and the Charleston Police
3 Department works out of our station in West Ashley.

4 THE COURT: Do you know any of those individuals
5 whose name I called?

6 JUROR 226: No, sir.

7 THE COURT: Is there anything at all about your
8 experiences as a firefighter or with the Columbia -- I knew I
9 was going to say Columbia. When you put CPD up my way, it's
10 Columbia Police Department.

11 Anything at all about your relationship with the
12 Charleston Police Department or anything about any
13 experiences that might affect your ability to be fair and
14 impartial in this case?

15 JUROR 226: No, sir.

16 THE COURT: Do you have any doubt in your mind?

17 JUROR 226: No, sir.

18 THE COURT: Thank you. Mr. Lenihan, 226, he's
19 eligible to serve.

20 Do any of you or anyone close to you have any
21 connection of any kind with the Charleston County Sheriff's
22 Office? If so, please stand.

23 (No response from the jury.)

24 THE COURT: What about Alcohol, Tobacco and
25 Firearms, ATF, any of you have any connection or anybody

1 close to you have any connection with ATF?

2 (No response from the jury.)

3 THE COURT: All right. Now, ladies and gentlemen,
4 I'm going to have the attorneys stand up and introduce
5 themselves, tell you who is with them. And then I will ask
6 you some questions related to the attorneys. We will start
7 with the State. Solicitor.

8 MS. LINDER: Thank you, Your Honor. My name is
9 Stephanie Linder. And I work with the Ninth Circuit
10 Solicitor's Office here in Charleston County. And sitting
11 with me assisting with the trial is Whitt Sowards. He's also
12 an assistant solicitor here in Charleston. And as you saw
13 earlier, this ATF Special Agent Frank Preston, who is the
14 lead detective on this case.

15 THE COURT: Thank you, ma'am.

16 Ms. Gay.

17 MS. GAY: My name is Melissa Gay. I'm an attorney
18 in the community. I work in Mount Pleasant. This is Robert
19 Blanchard who works with me. And we represent Mr. Ancrum.

20 THE COURT: Thank you very much.

21 Ladies and gentlemen, have any of you ever been
22 involved in any type of case which was represented by one of
23 those attorneys or anyone with whom they are affiliated, or
24 have you ever been on the opposite side of a case in which
25 one of those attorneys or anyone whom they are affiliated

1 handled the case? If so, please stand.

2 (No response from the jury.)

3 THE COURT: Have any of you ever been involved in a
4 general sessions trial in any capacity, as a witness, as a --

5 MS. GAY: Your Honor, may I approach?

6 (Whereupon, a bench conference takes place off the
7 record.)

8 THE COURT: If any of you have ever been involved in
9 any type general sessions case, general sessions is commonly
10 called criminal court, either as being a defendant, a
11 witness, some family member involved, you were there as a
12 victim or to assist a victim, anything like that, you need to
13 let us know.

14 Yes, ma'am.

15 JUROR 58: Laura Carpenter, Juror No. 58. Are you
16 including federal cases?

17 THE COURT: Well, we will go ahead and cover it now.
18 You were involved in a federal case?

19 JUROR 58: Yes, as an expert witness.

20 THE COURT: Okay. What's your expertise? What
21 field is it?

22 JUROR 58: Psychology, autism.

23 THE COURT: Were you a witness for the State or the
24 Defense?

25 JUROR 58: Defense.

1 THE COURT: Anything at all about that experience
2 that might affect your ability to be fair and impartial in
3 this case?

4 JUROR 58: No, sir.

5 THE COURT: Have any doubt in your mind?

6 JUROR 58: No.

7 THE COURT: Thank you. Ms. Carpenter is Juror No.
8 58, is eligible to serve.

9 JUROR 23: Carol Belser, 23. My brother was
10 arrested with the jackpot thing 30 years ago.

11 THE COURT: Were you a witness in that?

12 JUROR 23: No.

13 THE COURT: Just attended the trial?

14 JUROR 23: Uh-huh.

15 THE COURT: Okay. Anything at all about that
16 experience that affects your ability to be a fair and
17 impartial juror in this case?

18 JUROR 23: No.

19 THE COURT: Any doubt in your mind?

20 JUROR 23: No.

21 THE COURT: 23, Ms. Belser, is eligible to serve.

22 JUROR 137: No. 137, Melissa Fried. I'm not sure if
23 this applies, but I'm a private practice attorney. And I am
24 representing on appeal a general sessions case.

25 THE COURT: Okay.

1 JUROR 137: Pro bono.

2 THE COURT: All right. Is there anything at all
3 about that situation or any of your experiences that might
4 affect your ability to be fair and impartial as a juror in
5 this case?

6 JUROR 137: No, sir.

7 THE COURT: Do you have any doubt in your mind?

8 JUROR 137: No, Your Honor.

9 THE COURT: 137 is eligible to serve.

10 JUROR 354: Debra Turner, 354. My mother's brother
11 was a victim many years ago. He was murdered in a liquor
12 store robbery.

13 THE COURT: Did you participate in the trial in any
14 way?

15 JUROR 354: Only attending.

16 THE COURT: Okay. Was that here in Charleston
17 County?

18 JUROR 354: It was.

19 THE COURT: Anything at all about that experience or
20 your relationship with those individuals that might affect
21 your ability to be fair and impartial?

22 JUROR 354: No, sir.

23 THE COURT: Any doubt in your mind?

24 JUROR 354: No, sir.

25 THE COURT: Ms. Turner is eligible to serve.

1 JUROR 258: My name is Cathy Miller, 258. I have a
2 niece that was murdered a year and a half ago. And we are
3 awaiting on the trial in Orangeburg County.

4 THE COURT: You said a niece?

5 JUROR 258: Yes.

6 THE COURT: All right. That is a different circuit.
7 Is there anything at all about that experience or your
8 relationship with those folks that might affect your ability
9 to be fair and impartial in this case?

10 JUROR 258: I wouldn't think so.

11 THE COURT: Do you have any doubt?

12 JUROR 258: Well, maybe. I never went through
13 this.

14 THE COURT: I'm sorry. I was talking over you,
15 what?

16 JUROR 258: Pardon?

17 THE COURT: I was talking over to you because I was
18 concerned, I didn't know what you were going to say. I just
19 need a yes-or-no. If you need to explain it, come down
20 front.

21 JUROR 258: No, I don't think it will affect me in
22 that respect.

23 THE COURT: I can't have you thinking. I need to
24 know, would it affect your ability?

25 JUROR 258: No, no.

1 THE COURT: All right. Thank you, ma'am. Ms.
2 Miller is 258 eligible to serve.

3 JUROR 321: Could I please come up there?

4 THE COURT: Sure.

5 THE CLERK: 321?

6 JUROR 321: Denise Schimek. I have two incidents.
7 One is that I was -- my home was robbed and my car was
8 stolen. And the other one was, my son was charged with a
9 CSC.

10 THE COURT: The incident where you were burglarized
11 and robbery, was that in Charleston?

12 JUROR 321: It was in Charleston.

13 THE COURT: Did they arrest anybody?

14 JUROR 321: Yes.

15 THE COURT: Did they go to trial?

16 JUROR 321: I showed up a lot, but they kept getting
17 it delayed. So, no, eventually it settled.

18 THE COURT: He pled guilty or what?

19 JUROR 321: They pled to a lesser charge.

20 THE COURT: You weren't in court when that happened?

21 JUROR 321: No.

22 THE COURT: And is there anything at all about that
23 experience that might affect your ability to be fair and
24 impartial in this case?

25 JUROR 321: No, there isn't.

1 THE COURT: Sure about that?

2 JUROR 321: Yeah, I'm positive.

3 THE COURT: Now, your situation with your son, that
4 charge, is it over?

5 JUROR 321: It's over.

6 THE COURT: Okay. And was that in Charleston
7 County?

8 JUROR 321: It was.

9 THE COURT: And did he have a trial or did he plead?

10 JUROR 321: He had a trial, but he ended up pleading
11 to a lesser charge.

12 THE COURT: Were you a witness or did you attend?

13 JUROR 321: I attended.

14 THE COURT: And what kind of sentence did he get?

15 JUROR 321: Probation.

16 THE COURT: Is there anything about that experience
17 that might affect your ability to be fair and impartial in
18 this case?

19 JUROR 321: No, sir.

20 THE COURT: Any doubt in your mind?

21 JUROR 321: No.

22 THE COURT: Thank you very much. Sorry to ask you
23 all personal questions.

24 Juror 321 is eligible to serve.

25 Do any of you have any connection of any kind with

1 the solicitor's office in the 9th Judicial Circuit? If so,
2 please stand.

3 All right. Ms. Fried, 137, what's your situation?

4 JUROR 137: I have personal relationships with
5 several of the assistant solicitors in the 9th Judicial
6 Circuit.

7 THE COURT: Anything about that that might affect
8 your ability to be fair and impartial in this case?

9 JUROR 137: No, Your Honor.

10 THE COURT: You can decide the case without regard
11 to what your friends may think of the decision?

12 JUROR 137: Yes, Your Honor.

13 THE COURT: Any doubt in your mind?

14 JUROR 137: No, Your Honor.

15 THE COURT: Thank you.

16 137 is eligible to serve.

17 All right. Now, I've asked you about being related
18 by blood or marriage to certain people. I've asked you about
19 relationships with various people and various entities. What
20 I want to do now is broaden this out as much as I can so that
21 you tell us if you have any connection of any kind with
22 anybody in this case or any entity in this case that you know
23 of. That includes being a neighbor, a friend, attending the
24 same church or civic clubs, ever been involved in any case
25 involving the attorneys, anything like that. Even though I

1 may have already covered some of this, if you haven't already
2 told me about it, I need to know any relationship you may
3 have with anybody or any entity in the case.

4 JUROR 185: 185, Cindy Hope.

5 THE COURT: Okay. Ms. Hope, I was advised that one
6 of those attorneys is a patient of yours; is that correct?

7 JUROR 185: That's correct.

8 THE COURT: I'm going to need to set you aside on
9 this trial. Okay?

10 185 is set aside.

11 Anybody else?

12 (No response from the jury.)

13 THE COURT: Any of you know anything at all about
14 this matter? Have you overheard anybody talking about it?
15 Have you heard, seen or read anything through any media
16 source? Do you have any knowledge whatsoever about the
17 underlying allegations in the case, anything related to this
18 case? If so, please stand.

19 (No response from the jury.)

20 THE COURT: All right. If you haven't already told
21 me about it, has anybody ever served as a witness in a court
22 proceeding, civil or criminal, not domestic, not if you went
23 to family court, but if you were a witness in any type of
24 civil or criminal case, court case, please let us know.

25 JUROR 9: James Andrews, Juror No. 9. I was a

1 witness when I was a claims manager for an insurance company
2 for a civil case involving an insurance company brought by a
3 plaintiff.

4 THE COURT: Anything about that --

5 JUROR 9: That was 15 or 20 years ago.

6 THE COURT: Anything about that experience that
7 might affect your ability to be fair and impartial?

8 JUROR 9: No.

9 THE COURT: Any doubt in your mind?

10 JUROR 9: No, sir.

11 THE COURT: Thank you, sir. Juror No. 9 is eligible
12 to serve.

13 Are any of you members of or financial contributors
14 to any organization that has as its primary purpose the
15 support of law enforcement or victims' rights? That includes
16 such things as Mothers Against Drunk Driving, Citizens
17 Against Violent Crime, working in any type of shelter for any
18 abused persons. If you've got any connection of any kind as
19 a financial contributor or member of any such organization or
20 volunteer, please let us know by standing.

21 JUROR 237: My name is Richard Mabe. My number is
22 237. And I contribute to the American Civil Liberties
23 Union.

24 THE COURT: Okay.

25 JUROR 237: Does not affect my opinion in this

1 case.

2 THE COURT: Anything about your relationship with
3 that organization that might affect your ability to be a fair
4 and impartial juror in this case?

5 JUROR 237: No, sir.

6 THE COURT: Any doubt in your mind?

7 JUROR 237: No.

8 THE COURT: Thank you, sir.

9 237 is eligible to serve.

10 Anybody else?

11 (No response from the jury.)

12 THE COURT: I'm hesitating because I'm trying to
13 merge the questions together so I don't have so many
14 questions to ask you. Let me see if I can start out this
15 way.

16 As you heard, ladies and gentlemen, the allegations
17 here relate to distribution of drugs which have been declared
18 to be illegal, specifically, the allegations relate to crack
19 cocaine and heroin. And what I really need to know, and we
20 will talk about this down front if it applies to you, I need
21 to know if there's anything about the use of drugs, any type
22 of drug, addiction, abuse of the drug, if there's anything
23 that's happened in your life or in the life of somebody very
24 close to you that causes you to have strong feelings related
25 to illegal drugs or misuse of drugs -- does that make any

1 sense? If so, please stand. And, again, we are going to
2 talk about this in front of everybody. We are going to talk
3 about it down here.

4 All right. So that would include such things as if
5 you've got a real close friend who may be addicted, if you've
6 got somebody who's close to you who has ever been accused of
7 dealing in illegal drugs, if anybody has ever had somebody
8 close to them who has been injured in any type of event that
9 was alleged to involve illegal drugs at some point.

10 All right. What I would like to do is form a line
11 and bring them up one by one. So if y'all will go to the
12 center and if you come down front.

13 THE CLERK: 348.

14 THE COURT: What's your situation?

15 JUROR 348: My son has been convicted and pardoned
16 for controlled substances and actually has a case that's
17 potentially pending right now. And I work for internal audit
18 whenever we deal with controlled substances.

19 THE COURT: Now, when your son was convicted and
20 later got pardoned, what drug was that?

21 JUROR 348: Marijuana.

22 THE COURT: And --

23 JUROR 348: Currently, has a Schedule I. One was
24 OxyContin.

25 THE COURT: And that's pending in Charleston County?

1 JUROR 348: I believe he has a lawyer. I'm not
2 sure. I have not kept up with it to the outcome.

3 THE COURT: Is there anything at all about your
4 experiences with your son, your relationship with him or
5 through your work that would prevent you from being fair and
6 impartial in this case?

7 JUROR 348: No, Your Honor.

8 THE COURT: When you say "internal audit", let me
9 make sure I know what you are talking about. You keep track
10 of the drugs in the hospital?

11 JUROR 348: We have -- M.U.S.C.'s internal audit
12 houses the controlled substance investigator. He
13 investigates anyone who is diverting narcotics from the
14 hospital.

15 THE COURT: Okay. Now, if your son is being
16 prosecuted by the same solicitor's office, would that affect
17 your ability to be fair and impartial in the case?

18 JUROR 348: No.

19 THE COURT: Any doubt in your mind about that?

20 JUROR 348: No, sir.

21 THE COURT: So you are confident you can be a fair
22 and impartial juror?

23 JUROR 348: Yes. Yes, sir.

24 THE COURT: Thank you so much.

25 Ms. Thompson, 348, is eligible to serve.

1 THE CLERK: 167.

2 THE COURT: Mr. Hart, what's your situation?

3 JUROR 167: About 16 years ago, my 28-year-old
4 brother, unfortunately, got addicted with crack cocaine and
5 battled it three to five years. I'm not sure how he ever got
6 involved, until he ended up dying in a police chase. And
7 from that day on, I just don't -- I have anger towards that
8 situation.

9 THE COURT: Do you think it might affect your
10 ability to be fair and impartial?

11 JUROR 167: Absolutely.

12 THE COURT: I'm going to excuse you for this jury,
13 but I need you to have a seat back there. But don't discuss
14 anything with your fellow jurors. Thank you, sir.

15 MS. GAY: What was his number?

16 THE COURT: 167. Mr. Hart is excused from the trial
17 of this case.

18 THE CLERK: 378.

19 THE COURT: Ms. Wilkens, what's your situation?

20 JUROR 378: When I was -- my husband was in college
21 at the time, was arrested for possession and intent to sell
22 marijuana.

23 THE COURT: Do you know if he got convicted?

24 JUROR 378: He reached a deal where he went to
25 rehab.

1 THE COURT: Okay. Is there anything about that
2 experience that affects your ability to be fair and
3 impartial?

4 JUROR 378: No.

5 THE COURT: Any doubt in your mind?

6 JUROR 378: No, sir.

7 THE COURT: Thank you, ma'am. 378, Ms. Wilkens, is
8 eligible to serve.

9 THE CLERK: 191.

10 THE COURT: Mr. Hutto. What's your situation?

11 JUROR 191: Two years ago, my brother was found dead
12 on a boat in Wilmington and drugs were in his system. I
13 can't stand for this.

14 THE COURT: So you believe it might affect your
15 ability to be fair and impartial?

16 JUROR 191: Uh-huh.

17 THE COURT: Mr. Hutto, I'm going to set you aside on
18 the case. Don't discuss that with your fellow jurors,
19 please. Thank you so much.

20 191, Mr. Hutto, is set aside on the trial of the
21 case.

22 THE CLERK: 117.

23 JUROR 117: My father, same name, was convicted over
24 25 years ago in federal court.

25 THE COURT: What drug?

1 JUROR 117: Meth, I believe.

2 THE COURT: Meth? Anything about that experience or
3 your relationship with your father that might affect your
4 ability to be fair and impartial?

5 JUROR 117: No, sir.

6 THE COURT: Any doubt in your mind?

7 JUROR 117: No, sir.

8 THE COURT: Mr. Einert, 117, is eligible to serve.

9 THE CLERK: 180.

10 THE COURT: Ms. Hilton. What's your situation?

11 JUROR 180: I'm an anesthesiologist at M.U.S.C. and
12 had a task force of opioid addiction and the epidemic that we
13 have now, and so I'm not sure if that is included in this or
14 not.

15 THE COURT: All right. Obviously, heroin is one of
16 the charges. Is there anything at all about your situation,
17 your experience, that might affect your ability to be fair
18 and impartial in this case?

19 JUROR 180: No.

20 THE COURT: Any doubt in your mind?

21 JUROR 180: No.

22 THE COURT: Thank you very much.

23 Ms. Hilton, Juror No. 180, is eligible to serve.

24 THE CLERK: 215.

25 THE COURT: What's your situation, ma'am?

1 JUROR 215: My son was using for several years,
2 difficult situation. I don't think I can be fair.

3 THE COURT: Okay. That's understandable. I'm going
4 to set you aside on the case. I'm going to have you sit back
5 here, but don't talk about it with your fellow jurors. Thank
6 you, ma'am.

7 215 is set aside on the trial of this case.

8 THE CLERK: 240.

9 JUROR 240: Probably about 30 years ago now, it's
10 been a long time, my aunt was murdered by a distributor.
11 She, I guess, hoping to make some fast money and changed her
12 mind. He didn't want to give her her money back. So he just
13 murdered her.

14 THE COURT: Who?

15 JUROR 240: My aunt, my mother's sister.

16 THE COURT: And is there anything about that
17 experience that might affect your ability to be fair and
18 impartial in this case?

19 JUROR 240: No, sir.

20 THE COURT: Do you have any doubt in your mind?

21 JUROR 240: No, sir.

22 THE COURT: Thank you, ma'am.

23 MS. Manigault, 240, is eligible to serve.

24 THE CLERK: 23.

25 THE COURT: Ms. Belser, how are you?

1 JUROR 23: Fine.

2 THE COURT: I need for you to tell me what.

3 JUROR 23: My brother was addicted to alcohol and
4 drugs. That's why he was involved in the jackpot thing.
5 Going to prison is the best thing that ever happened to him
6 because he's been clean and sober for 30 years.

7 THE COURT: Anything at all about your experience or
8 that might affect your ability to be fair and impartial in
9 this case?

10 JUROR 23: No, sir.

11 THE COURT: Do you have any doubt in your mind?

12 JUROR 23: No doubt in my mind.

13 THE COURT: Thank you.

14 23, Ms. Belser, is eligible to serve.

15 THE CLERK: 179.

16 THE COURT: Ms. Hill, what's your situation?

17 JUROR 179: My sister is currently serving at Leeds
18 Detention Center. The charges are drugs and also burglary.

19 THE COURT: All right. Did the charges come from
20 Charleston County?

21 JUROR 179: Yep.

22 THE COURT: Anything about your relationship with
23 her or your experiences with her that might affect your
24 ability to be fair and impartial in this case?

25 JUROR 179: Yes, absolutely.

1 THE COURT: I will set you aside on the case. But
2 don't discuss anything with your fellow jurors.

3 179, Ms. Hill, is set aside on the trial of this
4 case.

5 THE CLERK: 260.

6 JUROR 260: My parents had trouble with abuse of
7 crack cocaine.

8 THE COURT: Were they arrested?

9 JUROR 260: Hm-mm.

10 THE COURT: Not arrested?

11 JUROR 260: No.

12 THE COURT: And was this throughout the time you
13 were growing up, or what?

14 JUROR 260: Yes.

15 THE COURT: Is there anything about that experience
16 or your relationship with them that might affect your ability
17 to be fair and impartial in this case?

18 JUROR 260: Uh-huh.

19 THE COURT: What I'm going to do, Mr. Mizzell, I'm
20 going to set you aside. But don't discuss that with your
21 fellow jurors.

22 260 is set aside in the trial of the case.

23 THE CLERK: 321.

24 THE COURT: Ms. Schimek, what's your situation?

25 JUROR 321: Again, I have two things. One was a --

1 a long time ago, before I met him, my husband was treated for
2 cocaine addiction. And the only thing is that I do have a
3 daughter who was charged with possession of marijuana with
4 intent to sell.

5 THE COURT: Okay. Let's take the long time ago
6 first. Anything about that that affects your ability to be
7 fair and impartial in this case?

8 JUROR 321: No, Your Honor.

9 THE COURT: Any doubt in your mind?

10 JUROR 321: No, Your Honor.

11 THE COURT: Your daughter is currently charged?

12 JUROR 321: No, that's past. It's been, whatever,
13 wiped.

14 THE COURT: Expunged?

15 JUROR 321: Yes, that's the word.

16 THE COURT: Okay. What did she do, PTI, or
17 first-time drug offender?

18 JUROR 321: She had to, basically, turn on her
19 friend, one or two of them, and then it was first time.

20 THE COURT: All right. So is there anything about
21 that experience or your relationship with her that would
22 affect your ability --

23 JUROR 321: Definitely.

24 THE COURT: I will set you aside on the case. Don't
25 discuss any of that with the fellow jurors.

1 Ms. Schimek, Juror No. 321, is set aside.

2 THE CLERK: 258.

3 THE COURT: Ms. Miller.

4 JUROR 258: Well, marijuana, and I know people in my
5 family had drug issues. I replied to your question.

6 THE COURT: Yes, ma'am. So your understanding --

7 JUROR 258: It was a domestic case, yeah.

8 THE COURT: Domestic?

9 JUROR 258: Yeah, boyfriend, sad situation.

10 THE COURT: And let me ask you about that first. Is
11 there anything about the fact that drugs were involved in
12 your niece's murder that might affect your ability to be fair
13 and impartial in the case?

14 JUROR 258: You want -- will you read that question
15 one more time?

16 THE COURT: Okay. I am not reading it, so let me
17 see if I can say it the same. Anything about the fact that
18 drugs were involved in your niece's murder that might affect
19 your ability to be fair and impartial?

20 JUROR 258: No, no.

21 THE COURT: What about your family members?

22 JUROR 258: No. I don't know what to say to that
23 one. No, I don't think; shouldn't.

24 THE COURT: You have family members? How close
25 relation are we talking about?

1 JUROR 258: One is my sister and niece. And I don't
2 think she's doing anything right now, but she's had drug
3 issues through the years.

4 THE COURT: Do you know if they have ever been
5 charged with criminal acts, or you just know they use drugs?

6 JUROR 258: I think Holly has been in jail. I don't
7 think she's ever been, like, overnight, something like that.
8 I don't think she's ever been in.

9 THE COURT: Anything about any of those experiences
10 that might affect your ability to be fair and impartial?

11 JUROR 258: Let's go with yes, because I don't know.
12 I can't give you a clear answer, so I guess we will say
13 yes.

14 THE COURT: If you've got a doubt, it's better to
15 set it aside. I appreciate your honesty. I'm sorry to have
16 to ask you personal questions like that.

17 258, Ms. Miller, is set -- don't discuss anything
18 with your fellow jurors while you are out here.

19 258 is set aside on this trial.

20 THE CLERK: 315.

21 THE COURT: 315, Ms. Sallisnelson, go ahead.

22 JUROR 315: I have a first cousin who was just
23 released from federal prison for violation of probation for a
24 methadone clinic sting. I'm not sure.

25 My brother has a first cousin who has been in and

1 out of the prison system for crack cocaine.

2 THE COURT: Is there anything at all about your
3 cousin's situation or that experience that might affect your
4 ability to be fair and impartial in this case?

5 JUROR 315: No, Your Honor.

6 THE COURT: Any doubt in your mind?

7 JUROR 315: No.

8 THE COURT: What about your husband's brother and
9 cousin, anything about that?

10 JUROR 315: No, Your Honor.

11 THE COURT: And do you have any doubt about your
12 ability to be a fair and impartial juror?

13 JUROR 315: No, Your Honor.

14 THE COURT: 315, Ms. Sallisnelson is eligible to
15 serve.

16 THE CLERK: 226.

17 THE COURT: Lenihan?

18 JUROR 226: Yes, sir.

19 THE COURT: 226, go ahead, please.

20 JUROR 226: Working for Charleston Fire Department,
21 you know, large number of our calls are to crack cocaine
22 homes and meth labs and drug labs throughout the city.

23 THE COURT: Is there anything about those
24 experiences that affect your ability to be fair and impartial
25 in the case?

1 JUROR 226: I mean, I've been in those houses so
2 frequently, I would have a hard time with somebody who
3 resides there over a Charleston police officer.

4 THE COURT: I'm going to set you aside. Don't
5 discuss that with the other jurors.

6 226, Mr. Lenihan, is set aside on the trial of this
7 case.

8 THE CLERK: 270.

9 THE COURT: Ms. Nethercot, what's your situation?

10 JUROR 270: About three years ago, I lived at a
11 retirement place. I was involved with a sting operation to
12 catch an employee who was abusing drugs, stealing.

13 THE COURT: Okay. So --

14 JUROR 270: I called them.

15 THE COURT: Man or woman?

16 JUROR 270: Man.

17 THE COURT: Okay. Was that in Charleston?

18 JUROR 270: It was in Mount Pleasant.

19 THE COURT: Mount Pleasant. So the Mount Pleasant
20 Police Department approached y'all about it?

21 JUROR 270: Yes.

22 THE COURT: Not a Charleston County Sheriff's
23 Office?

24 JUROR 270: I don't believe so, no. I think it was
25 Mount Pleasant.

1 THE COURT: So you don't think ATF was in it or
2 Charleston County or Alcohol, Tobacco and Firearms or the
3 feds, they weren't in it?

4 JUROR 270: Whoever it was set up the operation, it
5 worked.

6 THE COURT: Okay.

7 JUROR 270: Besides that, I'm going to have an 86th
8 birthday and I might be a little opinionated about this.

9 THE COURT: You feel that it might affect your
10 ability to be fair and impartial?

11 JUROR 270: I do, yeah, when loss is involved.

12 THE COURT: I understand that. I just had a civil
13 case where the lady was taking drugs and not giving it to
14 cancer patients and they got a million dollar settlement on
15 it because it was diverted, somebody was stealing the drugs.

16 JUROR 270: Good news is he recovered.

17 THE COURT: I'm going to set you aside. Don't
18 discuss any of that with your fellow jurors.

19 270 is set aside.

20 THE CLERK: 137. You are Ms. Fried?

21 JUROR 137: I am.

22 THE COURT: What's your situation?

23 JUROR 137: Well, it's a long time ago, like 20
24 years ago, my older brother, when we were in high school, was
25 involved in a lot of different drugs and ended up in rehab

1 for a little bit, but it was a very long time ago. So I
2 thought I should just bring it up.

3 THE COURT: Anything about that experience with him
4 that might affect your ability to be fair and impartial?

5 JUROR 137: No.

6 THE COURT: Any doubt in your mind?

7 JUROR 137: No.

8 THE COURT: 137, Ms. Fried is eligible to serve.

9 THE CLERK: 164.

10 THE COURT: Mr. Harrington, what's your situation?

11 JUROR 164: This pertains to a question asked
12 earlier. I didn't think it was pertinent at the time, but I
13 wanted to mention it. I served as a juror on a cocaine
14 trafficking trial when I lived in Georgia probably back in
15 2010, 2011.

16 THE COURT: Anything about that experience that
17 might affect your ability to be fair and impartial?

18 JUROR 164: No, Your Honor.

19 THE COURT: Any doubt in your mind?

20 JUROR 164: No, sir.

21 THE COURT: What was the verdict?

22 JUROR 164: Based on the evidence, they found the
23 defendant guilty.

24 THE COURT: Thank you, sir.

25 Mr. Harrington, 164, is eligible to serve.

1 THE CLERK: 210.

2 THE COURT: Ms. Kilpatrick.

3 JUROR 210: I'm not sure if you even care about
4 this, but I have a family member with Mount Pleasant Police
5 Department and I know at one point, she did work undercover
6 in narcotics.

7 THE COURT: Anything about that situation, the fact
8 that your relative is involved in narcotics --

9 JUROR 210: She was. I don't believe she is now.

10 THE COURT: Yeah. Anything about her experiences
11 that you know about, anything that might affect your ability
12 to be fair and impartial?

13 JUROR 210: No, sir.

14 THE COURT: Any doubt in your mind?

15 JUROR 210: No, sir.

16 THE COURT: Thank you very much. Ms. Kilpatrick is
17 eligible to serve.

18 THE CLERK: 61.

19 THE COURT: Mr. Cellars.

20 JUROR 61: Yes, sir.

21 THE COURT: What's your situation?

22 JUROR 61: I'm a Dorchester County paramedic, so I
23 see overdoses at different stages very frequently at work.
24 My aunt is addicted to pills. But that doesn't affect me.

25 THE COURT: Anything about your work, your

1 experiences at work, that might affect your ability to be
2 fair and impartial?

3 JUROR 61: No, sir.

4 THE COURT: Any doubt in your mind?

5 JUROR 61: No. One other, with the broad question,
6 my father was a Charleston County or City of Charleston
7 police officer before I was born, like '78 to '82. That was
8 before my time.

9 THE COURT: Before I forget about your aunt,
10 anything about your aunt, your relationship with her, that
11 might affect your ability to be fair and impartial?

12 JUROR 61: No, sir.

13 THE COURT: And your father being connected with
14 Charleston Police Department years ago, anything about that
15 affect your ability to be fair and impartial?

16 JUROR 61: No, sir.

17 THE COURT: So you are seeing people overdose from
18 heroin?

19 JUROR 61: Yes, several different drugs, yes.

20 THE COURT: What about crack cocaine?

21 JUROR 61: I've seen people on crack, but not what I
22 would consider an overdose, but users, yes.

23 THE COURT: And you've treated people who have died
24 from overdoses?

25 JUROR 61: Uh-huh.

1 THE COURT: And do you have any doubt at all about
2 your ability to be fair and impartial in this case?

3 JUROR 61: No, sir.

4 THE COURT: Okay. Thank you, sir.

5 Mr. Cellars, 61, is eligible to serve.

6 Strikes are five and five. Any of you, any of your
7 immediate family members, any of your very close personal
8 friends employed in any capacity in the field of law
9 enforcement that you haven't already told me about? If you
10 already told me, you don't have to tell me again. If so,
11 please stand.

12 (No response from the jury.)

13 THE COURT: Do any of you live in the vicinity of
14 1843 Savannah Highway, Charleston, South Carolina? If so,
15 please stand.

16 What's your name, sir?

17 JUROR 66: David Childress, 66.

18 THE COURT: All right. Mr. Childress, roughly how
19 close to that would you be?

20 JUROR 66: Probably within a half mile.

21 THE COURT: Again, I don't know anything about this
22 case, and I'm just guessing for the reason of this question,
23 if the evidence in this case is that, if presented, related
24 to an incident that's alleged to have occurred at 1843
25 Savannah Highway in Charleston, would that in any way affect

1 your ability to be fair and impartial in the case?

2 JUROR 66: No.

3 THE COURT: Any doubt in your mind?

4 JUROR 66: No.

5 THE COURT: Thank you, sir.

6 Yes, ma'am.

7 JUROR 319: Juror 319, Janet Scarborough. Can you
8 be more definitive about the vicinity?

9 THE COURT: Well, I could if I knew where it was,
10 but it's not close to Edgefield. I will get them to tell us.

11 MS. GAY: It's the Dunkin' Donuts area on 17.
12 That's the location.

13 THE COURT: Does that help you any?

14 JUROR 319: Thank you.

15 THE COURT: Does the question apply to you then?

16 JUROR 319: No.

17 THE COURT: 319 is eligible to serve.

18 JUROR 170: Ashley Hawkins, 170. I live probably a
19 couple miles away from there.

20 THE COURT: Is there anything about that that
21 affects your ability to be a fair and impartial juror in this
22 case?

23 JUROR 170: No, sir.

24 THE COURT: Any doubt in your mind?

25 JUROR 170: No, sir.

1 THE COURT: Thank you. 170 is eligible to serve.

2 All right. I've asked you a very broad question. I
3 was trying to merge together several of these things that
4 have been proposed to me. And I think I probably covered it,
5 but just to make sure, do any of you have strong feelings
6 related to the legalization of drugs that might affect your
7 ability to be a fair and impartial juror in in any way in
8 this case? Anyone have strong feelings for or against
9 legalization of certain drugs that might affect your ability
10 to be fair and impartial in a case in which it's alleged that
11 the defendant distributed a drug which has been declared
12 illegal by the state legislature?

13 Is there anything at all about your personal beliefs
14 that might affect your ability to be fair and impartial in
15 the case? If so, please stand.

16 (No response from the jury.)

17 THE COURT: Have any of you or any of your immediate
18 family members or any of your very close personal friends --
19 when I use the term "anybody close to you", I learned a long
20 time ago that your second cousin twice removed might be
21 closer to you than somebody that by blood would seem to be
22 closer. So I'm leaving it in your discretion to define what
23 it means that somebody very close to you. But what I
24 basically want to know is if any of you have ever been the
25 victim of any type of crime or anybody close to you has ever

1 been the victim of any type of crime, or have you ever or
2 anybody very close to you ever been arrested for any type of
3 crime that you haven't already told me about? If so, please
4 stand.

5 Do you want to come down front or stay?

6 JUROR 237: I will tell you right here.

7 THE COURT: What's your name?

8 JUROR 237: Richard Mabe, 237.

9 THE COURT: Yes, sir.

10 JUROR 237: I was arrested for possession of
11 marijuana at the age of 17.

12 THE COURT: Okay. When you were 17 years old?

13 JUROR 237: Yes, sir.

14 THE COURT: Simple possession?

15 JUROR 237: Simple possession.

16 THE COURT: Anything about that experience that
17 affects your ability to be a fair and impartial in this case?

18 JUROR 237: No, Your Honor.

19 THE COURT: Any doubt in your mind?

20 JUROR 237: None.

21 THE COURT: Thank you. 237 is eligible to serve.

22 JUROR 137: 137, Melissa Fried. About 10 years ago,
23 my car was broken into in downtown Charleston.

24 THE COURT: Anybody arrested?

25 JUROR 137: Yes.

1 THE COURT: Anything about that experience that
2 would affect your ability to be fair and impartial in the
3 trial?

4 JUROR 137: No, Your Honor.

5 THE COURT: Any doubt in your mind?

6 JUROR 137: No.

7 THE COURT: 137 is eligible to serve.

8 JUROR 164: Juror 164, Paul Harrington. In 2002, I
9 was a victim in an armed robbery case.

10 THE COURT: In Charleston?

11 JUROR 164: No, that was in Myrtle Beach.

12 THE COURT: Anything about that experience that
13 affects your ability to be fair and impartial in this case?

14 JUROR 164: No, sir.

15 THE COURT: Any doubt in your mind?

16 JUROR 164: No, sir.

17 THE COURT: Thank you. Mr. Harrington, 164, is
18 eligible to serve.

19 JUROR 9: James Andrews, Juror No. 9. Probably 15
20 years ago, my brother was arrested for DUI, manslaughter.

21 THE COURT: Okay. In another state?

22 JUROR 9: Yes, sir.

23 THE COURT: Anything about that relationship or
24 experience that affects your ability in any way to be a fair
25 and impartial juror in the case?

1 JUROR 9: No, sir.

2 THE COURT: Any doubt in your mind?

3 JUROR 9: No, sir.

4 THE COURT: Thank you.

5 Juror No. 9 is eligible to certain.

6 Anybody else?

7 JUROR 210: Number 210, earlier this year, my car
8 was broken into and some items were stolen.

9 THE COURT: Anybody arrested?

10 JUROR 210: Not that I know of.

11 THE COURT: Anything about that experience that
12 affects your ability to be fair and impartial in this case?

13 JUROR 210: No.

14 THE COURT: Any doubt in your mind?

15 JUROR 210: No.

16 THE COURT: 210 is eligible to serve.

17 Anybody else need to tell me?

18 Okay. Have any of you formed or expressed any
19 opinions about these cases? If so, please stand.

20 Anyone aware of any interests, bias, or prejudice
21 that you might have to for or against the State; for or
22 against the defendant, Mr. Ancrum; or for or against anyone
23 or any entity involved in the case? If so, please stand.

24 What's your name?

25 JUROR 319: Juror No. 319, Janet Scarborough. May I

1 come forward?

2 THE COURT: Can you answer this question for me just
3 yes or no?

4 JUROR 319: Do I have -- yes.

5 THE COURT: Okay. That's all I need to know. If
6 you want to put something on the record, I'm happy to let you
7 do it.

8 JUROR 319: I don't have to.

9 THE COURT: All right. 319 has expressed an
10 inability to be indifferent to cause. She's set aside on the
11 case. 319.

12 Anybody else?

13 THE CLERK: She's excused?

14 THE COURT: She's excused, yes.

15 All right. Where was I?

16 Can each of you give both the State of South
17 Carolina and the defendant Mr. Ancrum a fair and impartial
18 trial? If you know of any reason why you cannot, please
19 stand now.

20 Further questions from the State?

21 MS. LINDER: Nothing further from the State.

22 THE COURT: Further questions from the Defense?

23 MS. GAY: No, Your Honor.

24 THE COURT: Thank you very much. The jury panel is
25 qualified. Do you all make them come down front?

1 THE CLERK: I will call them and they will come to
2 the podium.

3 THE COURT: They face back where they came from?

4 THE CLERK: Yes, sir.

5 THE COURT: All right. Ladies and gentlemen, the
6 way that we draw juries in general sessions court is
7 different than civil court, if you've been in civil cases
8 before. In general sessions court, which is what you are in
9 now, the computer is going to randomly select a list of names
10 from those of you who were not set aside. And what I need
11 for you to do, if your name is called, gather your personal
12 belongings, come down front to this podium, come around to
13 the opposite side of it, and face back in the direction from
14 which you came. Once you get down here, the clerk is going
15 to ask questions of the State's attorney and the defense
16 attorney. And based on their responses, you will be told
17 either to have a seat in the jury box or return to your seat
18 in the courtroom. That's why you need to bring your personal
19 belongings, because your next stop may be over here.

20 Strikes are five for the State and five for the
21 defense.

22 Mr. Clerk, are you ready? Give us the jury.

23 THE CLERK: Ladies and gentlemen of the jury panel,
24 as the judge said, if your name is called, gather your
25 belongings, come up to this podium, turn and just face like

1 this. I will then ask questions of the parties. And then I
2 will either ask you to have a seat back in the audience, or I
3 will ask you to have a seat in the jury box.

4 Juror No. 395, Kevin Wright, 395.

5 What say you for the State?

6 MS. LINDER: Beg the Court's indulgence.

7 THE COURT: Yes, ma'am.

8 MS. LINDER: Please excuse the juror.

9 THE CLERK: Mr. Wright, please have a seat back in
10 the audience. You've been excused from the trial of this
11 case.

12 Juror No. 240, Lynette Manigault, 240.

13 What say you for the State?

14 MS. LINDER: Please present this juror.

15 THE CLERK: What says the Defense?

16 MS. GAY: Please excuse the juror from the trial of
17 this case.

18 THE CLERK: Please have a seat in the audience.
19 You've been excused as a juror in this case.

20 Juror No. 9, James Andrews, No. 9.

21 What say you for the State?

22 MS. LINDER: Please present this juror.

23 THE CLERK: What says the Defense?

24 MS. GAY: One moment, please. Please seat the
25 juror.

1 THE CLERK: Please have a seat in the jury box.
2 You've been selected as a juror in this case.

3 Juror No. 252, Hawkins McElveen, what say you for
4 the State?

5 MS. LINDER: Beg the Court's indulgence.

6 THE COURT: Yes, ma'am.

7 MS. LINDER: Please excuse the juror.

8 THE CLERK: Please have a seat in the audience.
9 You've been excused as a juror in this case.

10 Juror No. 211, Patrick King, 211.

11 What say you for the State?

12 MS. LINDER: Please present this juror.

13 THE CLERK: What says the Defense?

14 MS. GAY: Please seat the juror for the trial of
15 this case.

16 THE CLERK: Please have a seat in the jury box.
17 You've been selected as a juror in this case.

18 Juror No. 137, Melissa Fried, what say you for the
19 State?

20 MS. LINDER: Beg the Court's indulgence. Please
21 excuse the juror.

22 THE CLERK: Please have a seat in the audience.
23 You've been excused as a juror in this case.

24 Three strikes for the State.

25 Juror No. 339, Stacy Smith.

1 What say you for the State?

2 MS. LINDER: Please present this juror.

3 THE CLERK: What says the Defense?

4 MS. GAY: One moment, please. Please excuse the
5 juror from the trial of this case.

6 THE CLERK: Please have a seat in the audience.
7 You've been excused as a juror in this case.

8 Juror No. 357, Delsia Vintinner. What say you for
9 the State?

10 MS. LINDER: Please present this juror.

11 THE CLERK: What says the Defense?

12 MS. GAY: Please excuse the juror from the trial of
13 this case.

14 THE CLERK: Please have a seat in the audience.
15 You've been excused as a juror in this case.

16 That's three strikes for the defendant.

17 Juror No. 170, Ashley Hawkins, 170.

18 What say you for the State?

19 MS. LINDER: Please present this juror.

20 THE CLERK: What says the Defense?

21 MS. GAY: One second, please. Give me her number
22 one more time please.

23 THE CLERK: 170, Ashley Hawkins.

24 MS. GAY: Please seat the juror.

25 THE CLERK: Please have a seat in the jury box.

1 You've been selected as a juror in this case.

2 Juror No. 262, Elizabeth Morgan, 262. What say you
3 for the State?

4 MS. LINDER: Please excuse the juror.

5 THE CLERK: Please have a seat in the audience.
6 You've been excused as a juror in this case.

7 That's four strikes for the State.

8 Juror No. 58, Laura Carpenter, 58. What say you for
9 the State?

10 MS. LINDER: Please present this juror.

11 THE CLERK: What says the Defense?

12 MS. GAY: Please seat the juror.

13 THE CLERK: Please have a seat in the jury box.

14 You've been selected as a juror in this case.

15 Juror No. 138, Kanika Frost, 138.

16 What say you for the State?

17 MS. LINDER: Please present this juror.

18 THE CLERK: What says the Defense?

19 MS. GAY: Please seat the juror.

20 THE CLERK: Please have a seat in the jury box.

21 You've been selected as a juror in this case.

22 Juror No. 210, Carol Kilpatrick, 210. What say you
23 for the State?

24 MS. LINDER: Please present this juror.

25 THE CLERK: What says the Defense?

1 MS. GAY: One moment, please. Please excuse the
2 juror from the trial of this case.

3 THE CLERK: Please have a seat in the audience.
4 You've been excused as a juror in this case.

5 Four strikes for the defendant.

6 Juror No. 180, Ebony Hilton, 180. What say you for
7 the State?

8 MS. LINDER: Please present this juror.

9 THE CLERK: What says the Defense?

10 MS. GAY: One moment, please. Please seat the juror
11 for the trial of this case.

12 THE CLERK: Please have a seat in the jury box.
13 You've been selected as a juror in this case.

14 Juror number 39, Amanda Brown, 39. What say you for
15 the State?

16 MS. LINDER: Please present this juror.

17 THE CLERK: What says the Defense?

18 MS. GAY: Please seat the juror for the trial of
19 this case.

20 THE CLERK: Please have a seat in the jury box.
21 You've been selected as a juror in this case.

22 Juror No. 359, Lyndsey Walker, 359. What say you
23 for the State?

24 MS. LINDER: Beg the Court's indulgence.

25 THE COURT: Yes, ma'am.

1 MS. LINDER: Please excuse the juror.

2 THE CLERK: Please have a seat in the audience.

3 You've been excused as a juror in this case.

4 That's five strikes for the State.

5 Juror No. 66, David Childress, 66. Any challenge
6 from the State?

7 MS. LINDER: None.

8 THE COURT: What says the Defense?

9 MS. GAY: One moment, please. Please seat the juror
10 for the trial of this case.

11 THE CLERK: Please have a seat in the jury box.

12 You've been selected as a juror in this case.

13 Juror No. 263, Garrett Morgan, 263.

14 Any challenge from the State?

15 MS. LINDER: None from the State.

16 THE COURT: What says the Defense?

17 MS. GAY: Please seat the juror for trial of this
18 case.

19 THE CLERK: Please have a seat in the jury box.

20 You've been selected as a juror in this case.

21 Juror No. 378, Stefani Wilkins, 378. Any challenge
22 from the State?

23 MS. LINDER: None from the State.

24 THE COURT: What says the Defense?

25 MS. GAY: One moment, please. Hold on. Please seat

1 the juror for the trial of this case.

2 THE CLERK: Please have a seat in the jury box.
3 You've been selected as a juror in this case.

4 Juror No. 354, Debra Turner, 354.

5 Any challenge from the State?

6 MS. LINDER: None from the State.

7 THE CLERK: What says the Defense?

8 MS. GAY: One moment, please. Please excuse the
9 juror from the trial of this case.

10 THE CLERK: Thank you, Ms. Turner. Please have a
11 seat back in the audience. You've been excused from the
12 trial of this case.

13 That's five strikes for the defendant.

14 Juror No. 23, Isaiah Lowman, 233. Are any challenge
15 from the State?

16 MS. LINDER: None from the State.

17 THE CLERK: Any challenge from the defendant?

18 MS. GAY: No. Please seat the juror.

19 THE CLERK: Please have a seat in the jury box.
20 You've been selected as a juror in this case.

21 Juror No. 70, Tachalla Christian, 70. Any challenge
22 from the State?

23 MS. LINDER: None from the State.

24 THE COURT: Any challenge from the defendant?

25 MS. GAY: No. Please seat the juror.

1 THE CLERK: Please have a seat in the jury box.
2 You've been selected as a juror in this case.

3 THE COURT: Alternates. Strikes are one for the
4 State. Two for the Defense.

5 THE CLERK: Now picking for the alternate. Juror
6 No. 315, Monica Sallisnelson, 315.

7 What say you for the State?

8 MS. LINDER: Please present this juror.

9 THE CLERK: What says the Defense?

10 MS. GAY: One second, please. Please seat the juror
11 for the trial of this case.

12 THE CLERK: Ms. Sallisnelson, please have a seat in
13 the jury box. You've been selected as a juror in this
14 case.

15 THE COURT: Y'all need another alternate?

16 MS. LINDER: I think one is sufficient, Judge.

17 THE COURT: Do you want another alternate?

18 MS. GAY: No, Your Honor. I believe one is
19 sufficient.

20 THE COURT: Thank you. All right.

21 Are there any matters to take up, including
22 composition of the panel, prior to the jury being sworn, from
23 the State?

24 MS. LINDER: None from the State.

25 THE COURT: From the Defense?

1 MS. GAY: One moment, Your Honor. Let me confer
2 with my client.

3 THE COURT: Yes, ma'am.

4 MS. GAY: No, Your Honor. We do not have any
5 issues.

6 THE COURT: All right. Ladies and gentlemen, I'm
7 going to have the bailiff take you back into the jury room in
8 just a moment and get my bearings from the attorney as to how
9 we are going to proceed, whether we are going to break for
10 lunch now or what we are going to do.

11 While you are back there, you are not permitted to
12 discuss this case among yourselves in any way. Don't talk
13 about the case at all. Don't talk about the people involved
14 in the case, the type of case that's alleged to be. Don't
15 talk about the case at all.

16 Do you all take out cell phones here?

17 THE CLERK: Yes, we do.

18 THE COURT: We will take them up before they go into
19 the jury room?

20 THE CLERK: Yes, sir.

21 THE COURT: Then I won't have to tell you about the
22 next thing right now. I will tell you later.

23 While you are back there, without discussing the
24 case, I need you to pick the person that you want to serve as
25 the foreperson of your jury. You are all perfectly equipped

1 to do the job you are going to be asked to do. But I need
2 for you to select who you want to be the foreperson. It can
3 be any of the original 12 jurors. It cannot be Ms.
4 Sallisnelson. She's the alternate now. So from among the
5 12, pick your foreperson. Write the name and the juror
6 number of the person you choose on a piece of paper. The
7 bailiff will give that to you. And then give that to me so I
8 will know who you have chosen to be your foreperson.

9 If you would follow the bailiffs, I will get you out
10 here as quickly as I can.

11 (Whereupon, the jury leaves open court at 11:49
12 a.m.)

13 THE COURT: All right. Ladies and gentlemen, if you
14 were not selected on this case, you are excused for the rest
15 of the day. Just a moment. They need you to call the number
16 that you were provided after six o'clock tonight and follow
17 the instructions that are given to you there.

18 Folks, I don't know if I will see you again. We've
19 got two judges doing criminal court trials. I haven't heard
20 about the other judge. I had one yesterday and then we had
21 six back-up trials behind the two that were set for Monday.
22 And it just depends on the length of the trials and whether
23 they will fit in as to whether -- how long they will keep
24 you. I don't know how many civil juries they got.

25 THE CLERK: They got one going now and that's it for

1 their docket.

2 THE COURT: If I don't see you again, I want to
3 thank you very much for your service. I'm not going to sit
4 up here and repeatedly thank jurors, because I think that
5 cheapens it. I know you've got other places to be and other
6 things to do. Most people describe their jury service as a
7 learning experience. I don't know if that's a compliment or
8 not, but they say it's a learning experience. I do
9 appreciate very much you coming in.

10 It's easy to find yourself in a dispute. If you are
11 ever in there, you would be grateful folks like you came away
12 from everything they have in their lives so we can resolve
13 these disputes and move forward. So thank you.

14 Everybody clear about calling in? Okay. You are
15 free to go.

16 (Whereupon, the venire leaves.)

17 THE COURT: Do you want to do opening statements
18 before lunch or break for lunch now, or how would you prefer
19 to handle it?

20 MS. LINDER: Your Honor, we are prepared to go
21 forward. We also have witnesses here. So we can do whatever
22 the Court would like.

23 THE COURT: Any preference?

24 MS. GAY: My issue is, I need to use the restroom.
25 Instead of going that way, I just have to find a restroom, I

1 have to change floors. And I don't have -- I'm okay with
2 taking her first two witnesses. I think it's short. May put
3 us about one o'clock or so. He has to do his openings too.
4 So maybe just do his remarks.

5 THE COURT: Y'all want to go ahead until about one
6 o'clock? That suits you? We will keep going until one
7 o'clock?

8 MS. GAY: Yes, but I need to use the restroom.

9 THE COURT: We are at ease for ten minutes.

10 (Whereupon, a recess transpired.)

11 THE COURT: State ready for the jury?

12 MS. LINDER: Yes, Judge.

13 THE COURT: Defense?

14 MS. GAY: Yes.

15 THE COURT: Bring the jury, please.

16 (State's Exh. 1, CD, was marked for
17 identification.)

18 (State's Exh. 2, Google map, was marked for
19 identification.)

20 (Whereupon, the jury returns to open court at 12:08
21 p.m.)

22 THE COURT: Did you select a foreperson?

23 THE BAILIFF: Yes, sir. James Andrew.

24 THE COURT: Keep that seat throughout the trial for
25 me. Alternate, keep the seat behind you throughout the

1 trial. The rest of you folks may sit anywhere you would like
2 in the jury box with the exception of those two seats.

3 Now, it makes me kind of nervous when I see jurors
4 walking across each other. That's because we had an incident
5 in Lexington where a lady broke her ankle. So I'm just kind
6 of nervous about that. So if you are like everybody who
7 develops a favorite chair, that is fine with me. But,
8 please, space yourselves out over here and try not to walk
9 across each other and slip in in order to get your favorite
10 chair.

11 What we are going to do is continue on until about
12 one o'clock, and then we are going to break for lunch. And
13 the first order of business is, I have to have the clerk
14 place you under the oath of a trial jury. So if you would
15 please stand and raise your right hand.

16 (Whereupon, the jury is sworn.)

17 THE CLERK: If you accepted this oath, please have a
18 seat.

19 Please let the record reflect that all 13 jurors
20 took their seat.

21 THE COURT: Thank you very much. All right. I'm
22 going to give you some opening instructions and tell you how
23 we usually proceed with court. And then I'm going tell you
24 some things that you have to follow throughout the trial.

25 Now, the first thing that you are going to hear will

1 be the opening statements from the attorneys. In these
2 opening statements, the attorneys are not permitted to engage
3 in argument. An opening statement can be an introduction, an
4 outline, an overview of what each side feels the evidence
5 will show.

6 Once the opening statements are finished, then I
7 will call upon the State to present its evidence. The State
8 brought these charges against Mr. Ancrum. And as I told you
9 earlier, he is presumed innocent. The State has the entire
10 burden of proof and has to prove every essential element of
11 both offenses to you beyond a reasonable doubt. So I will
12 recognize the solicitor to present evidence in an attempt to
13 meet that burden.

14 When the State finishes presenting its case in
15 chief, the solicitor will advise me that the State rests. At
16 that point, I have to send you out of the courtroom and
17 discuss some legal issues with the attorneys. When you come
18 back into after that break, I will tell you where we go from
19 there. But that's kind of the landmark you can look for as
20 we get started.

21 Now, it's really important that you understand some
22 things. First, that oath that you just took is one in which
23 you promised us that you are going to decide these cases
24 based on the evidence and the law. So you need to know where
25 those things come from. The evidence comes from the sworn

1 testimony of the witnesses. Evidence can also come in the
2 form of exhibits. An exhibit can be anything tangible that's
3 marked in the record. It can be something like a map, a
4 photograph, a chart, anything tangible that's marked in the
5 record. So the witnesses and the exhibits give you the
6 evidence. That is the evidence.

7 What the lawyers say is not evidence. Now, I want
8 you to pay attention to them because they facilitate the
9 introduction of the evidence, but just realize that what
10 comes out of their mouths is not evidence. The evidence
11 comes from the witnesses and the exhibits. There is one
12 exception to that rule about what the lawyers say not being
13 evidence. If it happens in this case, I will tell you about
14 it. Otherwise, I won't burden you with it.

15 Now, you know where the evidence comes from. The
16 law comes from me. It's my job to decide what law applies to
17 the case and to tell it to the jury at the end of the trial.
18 So the evidence comes from the witnesses and exhibits. The
19 law comes from me.

20 It's also really important that you understand that
21 there are two judges in the courtroom. I'm the judge of the
22 law. As I just told you, I will instruct you on the law at
23 the end of the trial. I will preside over the trial. I will
24 rule on legal issues as they arise. That's my job. You are
25 the other judge. And it's really critical that you

1 understand that you are the only judge of the facts. Only
2 you are going to get to decide such things as whether
3 evidence is believable or not. Only you get to decide what
4 weight, if any, to put on evidence. Those things are
5 entirely your prerogative. And I am not going to invade your
6 province.

7 Now, to gave you an example of what typically comes
8 up in court that kind of illustrates our different roles,
9 there may be times during the trial where one side or the
10 other feels that the other side is trying to put something
11 before the jury that that doesn't fit within the rules of the
12 jury to consider. And if that happens, these attorneys, they
13 had to take an oath, and I had to take an oath, just like you
14 just took an oath, to do our respective jobs. So if one side
15 feels the other side is trying to put something before the
16 jury that doesn't fit within the rules, the attorney who
17 feels that way has an obligation to stand up and raise an
18 objection.

19 Now, when that happens, he calls upon me to make a
20 ruling. If I sustain the objection, that means that I agree
21 that that thing does not fit within the rules for the jury to
22 consider. And you should disregard it entirely, because it's
23 not proper for you to consider. But if I overrule the
24 objection and let it come before you, I want to make sure you
25 understand that it will not have crossed my mind to think

1 about whether that thing is believable or not. Because
2 that's not my job. I won't give one second of thought as to
3 whether that thing should be given any weight if it is
4 believable. It's not my job.

5 What I do when I rule on an objection is, I look
6 very narrowly with tunnel vision and I decide whether I think
7 that thing fits within the rules for the jury to consider.
8 And if I do, I let it go to the jury. And the jury decides
9 whether to believe it. And the jury decides what weight, if
10 any, to place on it. So that kind of illustrates our
11 different roles. You are the only judge of the facts. And
12 I'm the judge of the law.

13 Now, while you've promised us that you are going to
14 decide the case based on the evidence and the law, and you
15 must do that, I'm not telling you to leave your common sense
16 at home. We want you to use your common sense. We want you
17 to use your sense of logic and reason and your good judgment.
18 It just makes good common sense that you keep an open mind
19 about the cases. And you don't make up your mind until you
20 know all of the evidence and you know what law applies to the
21 case.

22 So there's a rule that we have that's very hard to
23 follow, but we insist that you follow it. And I've already
24 mentioned the rule to you once. And that rule is, you are
25 not to discuss this case in any way among yourselves until I

1 tell you to. Don't discuss the people involved. Don't talk
2 about the type of case it's alleged to be. Don't talk about
3 what just happened in the courtroom. Don't discuss the case
4 in any way until the very end of the trial when I tell you
5 you may, and then we wait on you.

6 Now, that rule is hard to follow because you 13
7 folks may feel you have little in common except y'all lived
8 in Charleston County and y'all got picked on the case. So
9 the logical thing you are going to want to talk about is what
10 you just saw, what you just heard. Resist that temptation,
11 folks, please, because it can be misconstrued if you make
12 comments along. And positions can kind of get entrenched that
13 otherwise wouldn't. Wait until you've got the full picture.
14 And then, like I said, we wait on you to decide the case.

15 Now, do not discuss this case in any way with
16 anybody else until the week is completely over and you've
17 been discharged from any jury you might be picked on. Now,
18 it's okay if you tell your spouse or friend or an employer
19 that you got picked on a jury. You have to be able to do
20 that. But don't tell them the name of the case, what the
21 case is about, anything related to it until the week is over.
22 Then you can talk about anything you would like, within
23 reason.

24 Now, if anybody attempts to contact you and discuss
25 the case with you, you must report that to me so I can deal

1 with it. Please give me the best description you can of who
2 it was and how it occurred. I do not anticipate media
3 coverage of this trial, but if there is any, get away from
4 it. Don't let yourself be exposed to it any further. And
5 report to me at the first opportunity what you may have seen,
6 heard or read through the media.

7 Now, what I try to do, ladies and gentlemen, is I
8 try to talk to folks like we talk on the street in Edgefield,
9 South Carolina. I don't try to use big words. I try to keep
10 it simple, because that's the way I like people to
11 communicate with me. So I've tried to do that in what I've
12 told you so far.

13 The chief justice, the former chief justice, has
14 given us a written instruction that we are supposed to read
15 to the jury once in every case. And I'm going to read it to
16 you in a minute. But before I do, I'm going tell you, it's
17 going to be repetitious from what I already told you.

18 Secondly, I haven't covered one thing that I need to
19 cover with you. You are not to do any independent
20 investigation of the case or related to the case. Now in the
21 old days, I used to tell me, don't go to the law library and
22 look up law. In a civil case, if it's a dispute about who
23 ran the red light, don't go out and look at the intersection.
24 There's procedures for the jury to be taken to the
25 intersection if need to or taken to a scene if it needs to be

1 done. But they have protections built around it, so if they
2 change the intersection between the time of the wreck and
3 time you went out there, you wouldn't know that. But the
4 protections would cover all of that sort of thing. So don't
5 do independent investigations. It's very dangerous and it
6 can be very misleading.

7 You may look up a principle of law if you did
8 independent investigation, which is a perfectly valid
9 principle of law. The problem is, so many of them have
10 conditions, caveats. You have to understand the context in
11 which the law, principle applies. And that's why I'm here.
12 I'm supposed to be able to cut through all of that and
13 explain to you what the law is. So don't do any independent
14 investigation.

15 When I was in law school, it probably took me over a
16 month to look up what I can look up now in a few seconds.
17 And you've got -- probably all of you, have got a little
18 device like I got in my pocket that allows you to do a Google
19 search and find out something really quickly. Don't do that.
20 Don't look up law. Don't do word searches about the people
21 in the case. Don't try to look up any past reports of
22 anything. Don't look up anything. Don't do any independent
23 investigation.

24 Also, when I tell you not to talk about the case
25 with anybody, don't communicate anything, well, you may have

1 social media. You can't go on Facebook or Instagram or
2 anything else until the week is over and talk about the
3 things I told you not to talk about here. So don't
4 communicate with anybody anything at all related to your jury
5 service until the week is completely over.

6 All right. Now, I'm going to read this to you and
7 then I will give you my closing remarks and that will be it.
8 I will turn it over to the attorneys.

9 Until your jury service is concluded, you are not to
10 discuss this case with others, including other jurors, except
11 as otherwise authorized by the Court. You are not to read or
12 listen to any news reports about the case. You are not to
13 use a computer, a cell phone, or any other electronic device
14 with communication capabilities while attending the trial or
15 during your deliberations. You may use such devices during
16 extended breaks, such as lunch breaks, but you may not use
17 them to obtain or disclose prohibited information. You are
18 not to use a computer, a cell phone, or any other electronic
19 device with communication capabilities or any other method to
20 obtain or disclose information about the case when you are
21 not in court.

22 Information about the case includes, but is not
23 limited to, the following types of things: Any information
24 about a party, a witness, an attorney, a court officer, any
25 news accounts of the case, any information collected through

1 juror research on any topics raised or testimony offered by
2 any witness, any information collected through juror research
3 on any other topic that the juror might think would be
4 helpful in deciding the case.

5 Now I've read it to you. I will tell you that I
6 have the utmost respect for the person who wrote that. As a
7 matter of fact, when they decided she was going to be a
8 circuit judge, she trained with me. But I don't understand
9 why she wrote those last thing. I told you don't do
10 independent investigation, so telling you not to share it
11 seems to be not necessary. Don't do independent
12 investigation. Don't be thrown off by those last two
13 sentences that say don't share it. Don't do it. Okay.

14 Last thing, I want to thank you. And as I told the
15 whole panel that was out here earlier, it's not my practice
16 to repeatedly say thank you to the jury, because it just
17 seems like it cheapens it when I do that. If I sit there and
18 mouth it, say it so many times, it really cheapens it, in my
19 estimation. So I want to say particularly this one time,
20 very sincerely, I'm very mindful that you have other places
21 to be and other things to do. And I will tell you that one
22 of my pet peeves is I cannot stand to have a jury waiting on
23 me.

24 If this case is like every other case I've ever
25 tried, there probably is going to be hurry up and wait for

1 you. You are probably going to be told to be here a certain
2 time, and you are going to be here, and you sit back there in
3 the jury room. All I can promise you is this: If you are
4 waiting on us, we are working. There's never going to be a
5 time when we are out here goofing off and y'all are out here
6 waiting on us. That's not going to happen. And I thank you
7 for your service.

8 Now, I said that was the last thing but I forgot
9 about you taking notes. It's perfectly fine with me if you
10 want to take notes. It's up to you. The judges who do not
11 take notes, the typical reason they give is that they are
12 concerned that when you go back to deliberate, that where one
13 witness has -- excuse me, where one juror has written down
14 something and another juror has not, that the one that has
15 written it down will be given an undue amount of deference by
16 the other jurors. I don't buy into that. You know what
17 recall. You know what you feel strongly about, what you
18 don't. And so it's perfectly fine with me if you take notes.

19 They do tell us if you take notes that we are to
20 have three rules. So here they are. First, anytime you
21 leave the courtroom, you have to leave your notes in the
22 courtroom. So write your name or some identifying thing on
23 there so that we will know whose pad belongs to who.

24 When you go back to the jury room to deliberate, you
25 will have your notes with you. You are not allowed to

1 physically show them to another juror. You may look at them
2 and you may say whatever you would like, but you can't show
3 them to the other jurors.

4 And the third rule is, at the end of the trial, the
5 notes have to be destroyed. So most places shred them,
6 obliterate them with a black magic marker if they are written
7 on something the jury needs to keep. With those three rules,
8 you are welcome to take notes. If we take up your notes
9 during extended breaks, we don't ever read them. We won't
10 read your notes. Don't worry about that.

11 All right. To keep my promise to you, I'm going to
12 be quiet now. I'm going to invite your close attention for
13 the opening statements. We will try to get these openings in
14 and then we will see if we've got a witness or break for
15 lunch.

16 MS. LINDER: Thank you, Your Honor. May it please
17 the Court.

18 Good afternoon, ladies and gentlemen. I'm Stephanie
19 Linder, as I have told you earlier, and I'm with the Ninth
20 Circuit Solicitor's Office here prosecuting this case.

21 What we are here for today and what the judge told
22 you about is we are here for the trial against Gerald Ancrum.
23 Gerald Ancrum in this case is charged with two things. He's
24 charged with distribution of heroin and he is charged with
25 distribution of cocaine base or cocaine base crack or crack

1 cocaine. All of those are the same name for different
2 things.

3 Ladies and gentlemen, we are here for something
4 that's pretty simple. Drugs are illegal. Drugs are illegal
5 in the state of South Carolina. It's illegal to possess
6 drugs and it's illegal to distribute drugs. Heroin is a drug
7 in this state and so is cocaine base crack.

8 Back on February the 5th of 2015, on Savannah
9 Highway, kind of near the Dunkin' Donuts area in West Ashley
10 here in Charleston County, this defendant sold heroin and
11 sold crack cocaine to an informant. All of that happened
12 under the direction of Special Agent Frank Preston. There
13 was an informant who placed a phone call to the defendant to
14 set up how much drugs and how much it was going to cost. The
15 location was set up.

16 Then it took about 20 to 30 minutes or so to get
17 everybody into place. An operation, as you probably will be
18 hearing a lot, began. There was an undercover police officer
19 who drove the informant to the location, and multiple other
20 vehicles of plain clothes law enforcement all around the
21 parking lot in the area to observe everything. The
22 informant, who you will hear from in this case, is Tessa
23 Morris. She was wired up so law enforcement could hear and
24 see things that were happening. And she went and she met
25 with this defendant, with Gerald Ancrum in his car, in his

1 white BMW in the parking lot of that Dunkin' Donuts.

2 She got in that vehicle. And there was literally a
3 hand-to-hand, an exchange. The defendant handed her heroin,
4 handed her crack cocaine. She handed him cash. It happened
5 fairly quickly. And then she gets up and goes back into the
6 undercover police car with the undercover police officer.

7 And then after that, labs go to the evidence. It
8 gets tested by a chemist. And we find out, indeed, these
9 substances are heroin and crack cocaine.

10 You are going to hear from all of these witnesses
11 that we will put up for you. And you will have the ability
12 to listen to them. We also anticipate having video for you
13 to watch and other things like that in the prosecution of
14 this case.

15 Again, like I said, it's fairly simple. It all goes
16 back to the defendant's actions back on February the 5th of
17 2015. I ask that you pay attention to this case. And at the
18 end of it, I will be back in front of you talking to all of
19 you, and I submit you should find him guilty of distribution
20 of heroin and guilty of distribution of crack cocaine.

21 THE COURT: Thank you.

22 Ms. Gay, you are recognized for your opening
23 statement.

24 MS. GAY: Thank you, Your Honor. May it please the
25 Court.

1 THE COURT: Yes, ma'am.

2 MS. GAY: As I said, my name is Melissa Gay. I
3 represent Gerald Ancrum. As the judge said -- much of what I
4 would like to have said, he already said. As the judge said,
5 I want to thank you for being a part of this process today.
6 One of the things that you should understand by now is how
7 difficult it is to pick a jury. And there's a reason for
8 that. You know, the defendant is picking -- Mr. Ancrum is
9 picking a juror of his peers. So we get to know a lot about
10 all of the jurors to find out different things going on in
11 their own life. As you saw, lots of people were excused from
12 this jury because it's about drugs.

13 And so y'all are the special jury that was picked,
14 the jury that is the jury of his peers. And today, right
15 now, today, May 23rd, 2017, is the most important day of his
16 life, because he's putting his future in your hands. And he
17 is -- as the judge said, you are the fact finders, you are
18 the people that make the decision about what you believe, how
19 you believe the facts played out on February 5th, 2015, which
20 is quite a while ago. It's been two years. And the judge is
21 the finder of the law. And the things that, as he said, the
22 things we will do during the trial, possibly objections or
23 whatever, he will make those decisions. But your decision
24 about the facts will always remain.

25 Even if there's something I do wrong or there's

1 something -- please don't let the way I look or whatever is
2 happening in my mannerisms distract from you the process
3 here. This process is about finding justice for Mr. Ancrum
4 and finding justice in this case. I believe that you will
5 find he's not guilty.

6 I always tell people when the solicitor stands up
7 and says, this is a very simple situation we have, one, two,
8 three, four, conviction. Well, that is never the reason that
9 you have trials. One, two, three, four conviction is not a
10 trial. It's not even a situation where a defendant would
11 choose to have a trial. And as you know, my client says he's
12 not guilty. And he is here because he believes that facts
13 and circumstances that are surrounding that day are not as
14 the solicitor perceived. And they are not as even maybe the
15 ATF officer perceived.

16 There was a good bit of other things going on behind
17 the scenes. And whatever situation he had going on with Ms.
18 Morris is not necessarily what the officers believed, that
19 there was other information going on, other stuff, other
20 conversations, other contacts.

21 And, you know, in the TV shows, they call it the
22 dirty CI. Is the dirty CI somebody in a situation that
23 happened in those circumstances the same as somebody who is
24 not the dirty CI? Somebody said, you know, if you put
25 lipstick on a pig, you still have pig, those types of things.

1 And what you will find as we move through this case
2 is there are other circumstances and facts that can make you
3 have doubt as to what happened that day and how it happened
4 and why it happened. And I believe as you listen to evidence
5 in this case, at the end I will be standing back up here and
6 telling you that Mr. Ancrum is not guilty and for you to go
7 back.

8 The most important thing about this case is that
9 Mr. Ancrum is an innocent man right this minute. They call
10 it cloaked in innocence, as if the cloak of innocence is on
11 him. And the only way that you can take off or the system
12 can take off the cloak of innocence is for the State to
13 find -- to prove to you beyond a reasonable doubt that he's
14 guilty of this offense. They say he's just as innocent as
15 everybody else around until such time as the State of South
16 Carolina can prove it to you, the jury. And I believe at the
17 end of this case, they won't be able to do that.

18 Thank you.

19 THE COURT: Thank you, Ms. Gay.

20 Call your witness.

21 MS. LINDER: The State calls Special Agent Frank
22 Preston.

23 FRANK PRESTON,

24 having been duly sworn, testifies as follows:

25 THE CLERK: State your name and spell your last name

1 for the record.

2 THE WITNESS: Frank John Preston, P-r-e-s-t-o-n.

3 DIRECT EXAMINATION

4 BY MS. LINDER:

5 Q. Good afternoon. Can you please tell the jury,
6 what's your occupation?

7 A. I'm a criminal investigator with the Bureau of
8 Alcohol, Tobacco and Firearms, also known as ATF. It's a
9 branch of Department of Justice United States Government.

10 Q. What are your duties with ATF?

11 A. Currently, I'm assigned to the ATF Charleston, got
12 an office here in Charleston, South Carolina. I'm assigned
13 to a violent crime group called Charleston Achilles Group.
14 My duties are investigating violent crime, crimes against
15 persons, crimes against property, drug trafficking, pharma
16 trafficking, home vegetation, stuff of that nature.

17 Q. And how long have you been employed with ATF and law
18 enforcement in general?

19 A. 27 years.

20 Q. And can you tell the jury just a little bit about
21 your training and education and all your background?

22 A. Yes, ma'am. I have a bachelor's degree which I
23 acquired from the Ashland in Ohio in computer information
24 science and marketing. Shortly afterwards, I was employed by
25 the ATF, moved here to Charleston, then went off to criminal

1 investigator school in Brentwood, Georgia, for six months.
2 And a few months after that, was back for a new agent
3 training, which I graduated successfully. I then got into
4 crimes of violence, investigating crimes of violence,
5 advanced interviewing techniques, advanced narcotics,
6 advanced undercover, profiling, things of that nature.

7 Q. And is it fair to say that you have also continuous
8 training and education that goes throughout your
9 20-something, 27 years with ATF?

10 A. Yes, ma'am. I believe I have probably 20 hours of
11 training per month required.

12 Q. And were you working back on February the 5th of
13 2015?

14 A. Yes, ma'am, I was.

15 Q. And did you have the occasion to become involved in
16 this case, the State vs. Gerald Ancrum, back on that date?

17 A. Yes, ma'am.

18 Q. And was a drug buy done that day?

19 A. Yes, ma'am, it was.

20 Q. Can you explain to the jury kind of a little bit of
21 background. What is a controlled buy?

22 A. A controlled buy is a purchase of evidence, meaning
23 that either a confidential informant or undercover agent or
24 undercover officer or the combination participate in a
25 purchase of evidence, whether that be drugs, information,

1 explosives, firearms. And with it being controlled, the
2 undercover or the confidential informant is monitored, either
3 by video, audio or both. They also may have -- what we would
4 call an over-watch personnel or a person that has eyes on or
5 in this case, surveillance. That environment is controlled.

6 In the event it goes okay, we may do a buy-walk. If
7 it goes bad, then we can rescue the CI or the undercover. So
8 we are actually controlling the event from start to finish.

9 Q. And the controlled buy back on February the 5th,
10 where did that take place?

11 A. I believe it took place at Dunkin' Donuts here in
12 Savannah Highway. The address is going to be 1843 Savannah
13 Highway.

14 Q. Is that here in Charleston County?

15 A. Yes, ma'am, it is.

16 Q. As the case agent for this case, what type of
17 planning did you do in preparation for this buy?

18 A. On this particular day, I made contact with the CI,
19 Ms. Tessa Morris, made sure she was available. Then I
20 contacted other agencies to participate, one being the
21 Charleston County Sheriff's Office, which is going to be Lisa
22 Branham. I needed her to participate, because she was an
23 undercover. She's practiced undercover. They need an
24 undercover driver. That was similar to some of the practice
25 the CI's done before. I needed agents to help control the

1 environment, which is going to be members of the Charleston
2 County Sheriff's Office, as a react team just in case
3 something went wrong. I need members to participate in the
4 surveillance. And that was another group from Charleston PD,
5 and then as the on-scene commander and I guess the manager of
6 the operation, myself.

7 Q. All right. And back on this day, on February 5th,
8 earlier you said that word "buy-walk". Did you do a buy-walk
9 in this case?

10 A. Yes, ma'am, we did.

11 Q. What is a buy-walk?

12 A. A buy-walk is when we purchase evidence. We take
13 control of evidence. And we release the individual who sold
14 the evidence to the undercover or confidential informant.
15 So, essentially, the target of the investigation is allowed
16 to walk away without being arrested.

17 Q. And you mentioned an informant, Tessa Morris, in
18 this case.

19 A. Yes, ma'am.

20 Q. Can you explain to the jury why you use informants
21 and a little bit about how you first got to know Ms. Morris?

22 A. Yes. We use confidential informants because they
23 are the way into the target. I don't know all the targets.
24 I can't go in and say, I want to buy drugs from you if they
25 don't know me. They won't do that. But the informant has

1 had a history with the targets. They've been there before,
2 done it before. And they know the pattern, whether the CI's
3 pattern or drug dealer's pattern. We have two types of
4 informants. We have an informant that's a career informant,
5 meaning that's all they do. That is their job. They have no
6 pending charges. They are under no obligation other than
7 their own to be an informant, work for the government.

8 Then there's other types of informants who have
9 prior arrest histories. And they are working off their
10 charges. And this is one way they can work off their
11 charges, to provide information, provide intel, participate
12 in controlled purchases.

13 In this particular case, Ms. Morris was brought to
14 me by Marc Brown, who was an officer with the Charleston City
15 Police Department. Ms. Morris had information about her past
16 dealings, about her past drug uses and drug purchases. She
17 identified several individuals who she's gone to before, who
18 she's purchased drugs before. That was pretty much the
19 background of it.

20 Q. And when she was brought to you, so to speak, did
21 you end up signing her up, so to speak?

22 A. Yeah, ma'am.

23 Q. And what does that mean that you sign her up?

24 A. Well, there's -- I don't want to say a contract, but
25 Ms. Morris was debriefed or interviewed. We asked her

1 specific questions about her history, who she bought before,
2 who she's dealt with, her history, her criminal history, her
3 family, her drug use, her past drug use, her current drug
4 use, whether she's on probation, stuff that could potentially
5 interfere with our investigation.

6 I wrote that up. It was satisfactory to myself and
7 my supervisor. I got her approved to use her. And that's
8 technically being signed up by myself, by managers, that
9 she's okay to participate.

10 Q. And in this case Ms. Morris, did she at any time
11 throughout her being an informant have charges?

12 A. I believe there was some charges pending on her.

13 Q. And at any point throughout your relationship with
14 the informant, Ms. Morris, was she ever on probation?

15 A. Yeah, ma'am. I believe specifically she was on
16 probation. I had to get permission from her PO, or probation
17 officer, to use her.

18 Q. And you also talk about pay. Did you ever pay Ms.
19 Morris for her work as an informant?

20 A. Yes, ma'am.

21 Q. Is that based on whether she was successful or not
22 doing a buy?

23 A. No, ma'am. I paid her based on her participation,
24 her following directions, her honesty and her work. There
25 were certain times that if she set up a controlled purchase

1 and it didn't go through, I wasn't going to take her away
2 from her day, her work, to work for me without getting paid.
3 So I would pay her.

4 Q. This buy that happened February 5th, 2015, did you
5 pay Ms. Morris?

6 A. Yes, I did.

7 Q. How much did you pay her for that day?

8 A. 400 bucks.

9 Q. And as far as setting up this buy, what did you and
10 Ms. Morris do to kind of set up the details of the purchase
11 back on February the 5th?

12 A. On February 5th, I contacted Ms. Morris and gave her
13 instruction to be in my office probably about one o'clock.
14 From there, myself and another agent took her to a staging
15 area, which is going to be the narcotics office of Charleston
16 County Sheriff's Office. We met there. She went into an
17 interview room, which was secured. Myself and Detective Lisa
18 Branham went in there and interviewed her, setting up the
19 controlled purchase.

20 At that time there was a cursory search of her
21 person. I then stepped out and Detective or Deputy Branham
22 completed, in so much a search. I won't say strip search,
23 but search of her person.

24 Q. Why did you step out?

25 A. Because she's a woman and I'm a man.

1 Q. Go ahead.

2 A. There were no drugs found. There was no contraband
3 found, no weapons found. We did went into our briefing. And
4 in that briefing, the members of the Charleston County
5 Sheriff's Office, ATF agents and CPD agents, basically set up
6 the plan that in a few minutes we are going to make a
7 controlled call or monitored call to the target setting up a
8 purchase for later that day or purchase of evidence. This is
9 the plan. This is the location. This is the time, vehicle
10 assignments setting up electronic equipment, monitor
11 equipment, vehicle assignments, so on and so forth.

12 Q. All right. Did you end up -- did you and the
13 informant, Ms. Morris, did you end up making phone calls to
14 the defendant that day?

15 A. Yes, ma'am, we did.

16 Q. Do you happen to recall what phone number was
17 called?

18 A. Yeah. Under my control, Ms. Morris used her
19 personal cell phone and she contacted Mr. Gerald Ancrum.
20 Telephone number I have is (843) 609-2391.

21 Q. Did you record the calls?

22 A. Yes, ma'am, I did.

23 MS. LINDER: May I approach the witness?

24 THE COURT: Sure.

25 BY MS. LINDER:

1 Q. At this time, I show you what's been marked State's
2 Exhibit 1. Do you recognize this?

3 A. Yes, ma'am.

4 Q. How do you recognize that?

5 A. My initial is on there, or initials.

6 Q. Does that disk contain a fair and accurate
7 representation of the phone calls made to set up the drug buy
8 back on February 5th, 2015?

9 A. Yes, ma'am.

10 MS. LINDER: Your Honor, at this time, I would ask
11 to admit State's Exhibit No. 1, the disk of phone calls to
12 set up the drug buy back on February 5th, 2015.

13 THE COURT: Is there any objection?

14 MS. GAY: No, Your Honor.

15 THE COURT: Marked in evidence, Madam Court
16 Reporter.

17 (State's Exh. 1, CD, is moved into evidence.)

18 (Video playing.)

19 BY MS. LINDER:.

20 Q. And can you explain to the jury through your
21 training and experience what was that on the phone call?

22 A. I'm sorry?

23 Q. Can you explain to the jury what was covered on that
24 phone call from your training and experience?

25 A. From my training and experience, what was covered

1 was the time, the location, what was being purchased.

2 Q. What's "turkey"?

3 A. "Turkey" is going to be cocaine, cocaine base or
4 crack cocaine.

5 Q. And what's a "yard"?

6 A. A "yard" is \$100. So, in essence, they were asking
7 for \$100 worth of cocaine or cocaine base.

8 Q. So after the phone calls were made and details were
9 set up, can you explain a little bit about what happened at
10 your briefing before you went out to the location?

11 A. Before we went out to location, I went back to the
12 group. We are good for the buy, should be there in 30
13 minutes. So surveillance went out and set up at the Dunkin'
14 Donuts. I then, what I would call wired up Ms. Morris. I
15 gave her an electronic monitoring device to wear I could hear
16 what she was saying, what she was doing. And a recorder, a
17 video and audio on recorder, that was placed on her, on or
18 about her person.

19 She was put in an UC vehicle. Made sure the
20 location -- I gave her \$260 in what I would call agent
21 cashier funds or marked money or government money for the
22 purpose of the drugs.

23 Q. What type of instructions do you give -- did you
24 give Ms. Morris that day? What type of instructions do you
25 give a CI before they go out and do this?

1 A. What I do is make sure, one, that they are not
2 robbed. And I give them instructions, specifically where to
3 put the money. In this case, I told her to put the money in
4 her right pocket and put money in her left pocket. So if she
5 was robbed, she would only give half the money. In a sense,
6 I'm responsible for the money, just like I'm responsible for
7 the confidential informant.

8 I give her specific instructions on what to say, how
9 to say it, and ask questions to, I guess, spark other
10 questions. And sometimes if we only have what we would call
11 his street name, if the confidential informant knows his or
12 her real name or the target's real name, I will ask them to
13 call them by name on the wire.

14 Q. And everyone has their duties. The location is
15 known. The informant has already been searched and already
16 been wired, as you said. And then what happens once all of
17 that is done, all of that prep work is done?

18 A. The information is given to the undercover, who is
19 the driver. The confidential informant is the front
20 passenger. And they drive to the location followed by
21 surveillance units.

22 Q. And can you just kind of briefly tell them a little
23 bit about your operational plan in this, as far as the
24 location itself and the security and surveillance that was
25 going to take place?

1 A. Dunkin' Donuts was actually picked up by us. We
2 wanted a public area. In the past, if we go to an secluded
3 area, we are more than likely to be robbed because targets
4 are not afraid of being robbed, because there's no witnesses.
5 We picked Dunkin' Donuts. It's a very popular location. I
6 believe there's some history there with the CI. It's easy to
7 surveil. There's many cars, many cars in the parking lot.
8 We can be secreted and not be observed.

9 MS. LINDER: Your Honor, may I approach the witness
10 again?

11 THE COURT: Sure.

12 BY MS. LINDER:

13 Q. Special Agent Preston, I show you what's been marked
14 State's Exhibit 2. Do you recognize this?

15 A. Yes, ma'am.

16 Q. How do you recognize it?

17 A. I'm familiar with this location, with the Dunkin'
18 Donuts and the tire warehouse right next to it.

19 Q. Does Exhibit No. 2 fairly and accurately represent
20 the location that was used back on February the 5th of 2015?

21 A. Yes, ma'am.

22 MS. LINDER: Your Honor, at this time, the State
23 would seek to admit State's Exhibit 2 into evidence.

24 THE COURT: Any objection?

25 MS. GAY: No, sir.

1 THE COURT: Is it marked?

2 MS. LINDER: Yes.

3 THE COURT: Marked in evidence.

4 (State's 2 is moved into evidence.)

5 BY MS. LINDER:

6 Q. Well, this isn't zooming in, so I will try to use my
7 finger and point for you. Can you explain to the jury -- and
8 for the jury, they will have this back there with them, so
9 they will be able to have it close up if they need it later
10 on. Can you explain what does this show right here?

11 A. This is an aerial map of Dunkin' Donuts, Savannah
12 highway. There is a marker. I can't make it out, but
13 there's a marker sitting on top of the Dunkin' Donuts you are
14 pointing to right now.

15 Q. This building with this marker?

16 A. Yes, ma'am.

17 Q. What road is this?

18 A. Savannah Highway.

19 Q. And what is this big building right here?

20 A. That is an auto repair place that also sells tires.
21 I believe it's NTW.

22 Q. And where did the informant go with the undercover
23 police officer?

24 A. Initially, if you are looking at the map, the
25 undercover drove in from -- drove in an easterly direction

1 coming from left to right, making a right turn into the
2 Dunkin' Donuts. They then parked right next to Dunkin'
3 Donuts facing the building. I believe right there in that
4 parking space you are pointing to, and made contact, made
5 several contacts or attempted contacts with Mr. Ancrum.
6 Surveillance units were secreted on the backside of the NTW.

7 Q. Back here?

8 A. Yes, ma'am. And surveillance units were in the
9 front on Savannah Highway in front of the building.

10 Q. Right here?

11 A. Yes, ma'am.

12 Q. And where were you located?

13 A. I believe I was one of the units in the front.

14 Q. So you were up here?

15 A. Yes, ma'am. We initially parked there because we
16 had an eye on the undercover. Ms. Lisa, Lisa Branham and the
17 CI, they were in a silver-colored Jeep and we could look over
18 our shoulders and see the car. Eventually, they moved to
19 another location and the eyeball was transferred to another
20 unit.

21 Q. Okay. Back on February 5th, was the CI able to
22 purchase drugs that day?

23 A. Yes, ma'am.

24 Q. From the defendant?

25 A. Yes, ma'am.

1 Q. And was she able to purchase heroin from the
2 defendant?

3 A. Yes, ma'am.

4 Q. Was she able to purchase cocaine base crack from the
5 defendant?

6 A. Yes, ma'am.

7 Q. At the conclusion, after the buy was done, what
8 happened to all of the team that was all out there? Where
9 does everybody go?

10 A. At the briefing, we decided there was not -- we were
11 not going to follow the defendant. There was no need to. So
12 all the units followed the undercover and the CI back to the
13 staging location. During the drive back and just before we
14 left, we could hear over the wire, through Stephanie's voice,
15 that the deal was good, everything was okay and we were
16 heading back.

17 Q. And once you are at the debriefing location, what
18 happens with the drugs?

19 A. Well, the CI is instructed to stay in the car until
20 I get to her. At that time, I go to her and turn off the
21 monitoring recording device. I make an eyeball for the
22 evidence, purchased evidence, which is maintained in the
23 center console, but still in possession of the informant.
24 She's then escorted back into the building. The recording
25 devices and the monitors go into my possession. Marc Brown

1 is then given instructions to take control of the drug
2 evidence.

3 Ms. Morris is placed into an interview room where
4 she is then searched again, sort of a strip search. I step
5 out of the room. There was no evidence found. No contraband
6 found on her person. I then went back in the room and
7 briefed her what happened, what Mr. Black was wearing, what
8 transpired other than what I could hear or see, and she wrote
9 a written statement for me.

10 Q. You said the console, they opened up something and
11 tossed the drugs in there?

12 A. No, ma'am. There's actually in the center console.
13 There is two cupholders and she drops it right there.

14 Q. And then Marc Brown, he's from Charleston City
15 Police Department?

16 A. Yes, ma'am.

17 Q. And he took custody of those drugs?

18 A. Yes, ma'am.

19 MS. LINDER: Beg the Court's indulgence.

20 I have no further questions. Please answer anything
21 the defense may have.

22 THE COURT: How long do you anticipate?

23 MS. GAY: It won't be long, Your Honor. Thank you.

24 CROSS-EXAMINATION

25 BY MS. GAY:

1 Q. Agent Preston, I just wanted to take you back in
2 your testimony to sort of the beginning where you talked
3 about your relationship with the CI-9112. CI-9112 was signed
4 up as an informant on 7/10/2014. I have a document you can
5 refresh your recollection with, if you would like.

6 A. I don't -- if you want to show me a document, I will
7 look at it.

8 (Dft. Exh. 1, Informant Agreement, was marked for
9 identification.)

10 Q. I would like to show you Defense Exhibit for
11 identification 1. Can you identify this document, sir?

12 A. It's an informant agreement.

13 Q. And is your name on there?

14 A. Yes, ma'am.

15 Q. It's blacked out because of the identity of the
16 informant?

17 A. Yes, ma'am.

18 Q. However, that is Tessa Morris's agreement?

19 A. Without seeing her original signature, it was an
20 agreement that I would have her sign, yes, ma'am.

21 Q. Similar -- if it's not the exact one, it would be
22 similar?

23 A. Yes, ma'am, it would be almost identical.

24 Q. And it was provided to me in this case?

25 A. Yes.

1 Q. Would it be fair to establish it was probably the
2 one?

3 A. Yes, yes, it was.

4 Q. And as I said, it's 7/10/2014 up on this document?

5 A. Yes, ma'am.

6 Q. So when Tessa Morris, CI-9112, started working with
7 you all, it was quite a while before 2/5/2015?

8 A. Yes, ma'am.

9 Q. You said, as you were describing all of this, that
10 you interviewed her, talked to her about things. And she
11 identified people that would be people she could call?

12 A. Yes, ma'am.

13 Q. It wasn't as if you gave her a name and said, hey,
14 can you call this man for us? She's the one day who said, I
15 can call Mr. Ancrum?

16 A. Yes, ma'am.

17 Q. And that's kind of how it went with her on
18 transactions that might have occurred in '14? She would be
19 the one identifying the people that she would call?

20 A. Yes, ma'am.

21 Q. And so you said that as she was talking -- and we
22 heard the recorded phone call. You called her up one day and
23 said, hey, I need you to come in at 1, or was there some
24 predetermined plan when she was going to come in?

25 A. With Ms. Morris, she was signed up in 2014. She was

1 an active informant. This is not the only case --

2 Q. I understand.

3 A. -- that she's participated in. Ms. Morris and I had
4 daily contact with each other. She was required to call me
5 every day to tell me she was okay, required to call me every
6 day to see if there was work for her to do. So the day prior
7 to, I believe we talked about working on the 5th, February
8 5th. And when I gave her instructions that day -- excuse me,
9 let me back up. I probably gave her instruction on the 4th,
10 said, I think we are going to work tomorrow. So I called her
11 that day and instructed her to make a way to my office.

12 Q. And the work would have meant we are going to make a
13 buy tomorrow?

14 A. That's correct.

15 Q. So be in the office or come in?

16 A. Yes, ma'am.

17 Q. You said she was required to communicate with you,
18 almost like an employee of the ATF as the signed up CI-9112?

19 A. Yes, ma'am. It's actually -- I forget what line
20 number it is, but -- and I explained it to her specifically,
21 that she had to call me every day to tell me, I'm okay.

22 Q. So the question, in this relationship that you have
23 with her, this relationship that started out July 10th of
24 2014, part of that expectation on your part is that she would
25 buy drugs from somebody?

1 A. Yes, ma'am.

2 Q. That's why you contacted her or she contacted you?

3 I was unclear.

4 A. Well, she understood in our agreement, in order for
5 her, for us -- for me to report to Ms. Linder that she was
6 working, she had to call me every day.

7 Q. I understand. And so is it true that she contacted
8 Ms. Linder or some other person, and that's how it ended up
9 with you, because she was on probation, had some issues?

10 A. Yes, ma'am. Mr. -- excuse me, Officer Marc Brown
11 is the officer who brought her to me.

12 Q. And in her record, which we are not there yet, but
13 she has an extensive criminal record?

14 A. Yes.

15 Q. Or has record?

16 A. Yes, ma'am.

17 Q. And the probation that she was on, you said that you
18 had to go through her probation agent to get permission even
19 for her to go out in the community and buy drugs?

20 A. Yes, ma'am.

21 Q. Or be around drugs?

22 A. Yes, ma'am.

23 Q. And as she told you during that day, she felt like
24 she could communicate with people that had contacts or
25 connections with the drug trade?

1 A. Yes, ma'am.

2 Q. While she was on probation?

3 A. Yes, ma'am.

4 Q. And so I believe that you said that she had come in
5 that day, been completely searched, and went out with -- you
6 referred to it as the undercover officer. Who was the
7 undercover officer that day?

8 A. It's a Charleston County Sheriff's Office Deputy
9 Stephanie -- excuse me, Lisa Branham.

10 Q. Is Lisa Branham also the person who searched her?

11 A. Yes, ma'am.

12 Q. And then after the transaction, they came back, and
13 Ms. Branham is also the one that searched her when they came
14 back?

15 A. Yes, ma'am.

16 Q. And when you said that she had been paid money to do
17 this, you answered the question for Ms. Linder that she had
18 been \$400?

19 A. Yes.

20 Q. Obviously, she made money on different transactions,
21 different people throughout the course that started on
22 7/10/2014. But on this stuff, she had been paid \$400?

23 A. On this particular buy.

24 Q. It wasn't on this day that she got the \$400, it was
25 a day or so before, some time early --

1 A. No, I pay her when her work is completed.

2 Q. So it was after the fact that she had been paid
3 \$400?

4 A. I paid her after this deal, yes, ma'am.

5 Q. Was it the same day --

6 A. Yes, ma'am.

7 Q. -- or next day? So she comes in. She gets
8 cleansed, if you want to call it. She gets looked at by
9 Officer Branham, and then she's handed \$400?

10 A. No, ma'am. She participated in the controlled
11 purchase.

12 Q. After it's over, she comes back. She's told not to
13 even get out of the car until you come back. So, right,
14 correct? That's what you said?

15 A. Yes, ma'am.

16 Q. You come up. You say that the drugs are left in the
17 console area?

18 A. Yes, ma'am.

19 Q. So that you can get them?

20 A. Yes, ma'am.

21 Q. And that she's then taken to be searched to make
22 sure there's nothing strange that she obtained while she was
23 in the car with Mr. Ancrum?

24 A. That's correct.

25 Q. And then after that, you give her cash, \$400 or a

1 check?

2 A. Cash.

3 Q. So she gets \$400 in cash for making a phone call to
4 Mr. Ancrum to set him up that day?

5 A. And making the purchase.

6 Q. Right. I understand. That day, she gets the money
7 that day?

8 A. Yes, ma'am.

9 MS. GAY: Your Honor, one moment, please.

10 THE COURT: Yes, ma'am.

11 BY MS. GAY:

12 Q. The search that she had before and after the
13 encounter with Mr. Ancrum, does she take her clothes off
14 during that search, for the most part?

15 A. I wasn't in there.

16 Q. Okay. Protocol, would protocol say that she gets
17 basically down to skivvies?

18 A. I would let Deputy Branham go into detail on that.
19 I wasn't there. If I was going to conduct a search of a CI,
20 I would go from head, starting at the head and go down. If
21 it was a male, I would pull the shirts up, collars, sleeves,
22 beltline, underwear, inside the pants leg, crotch area, both
23 legs, shoes off, socks off, move your toes, everything but
24 complete clothes off.

25 MS. GAY: I understand. I have no further

1 questions, Your Honor.

2 THE COURT: Redirect?

3 MS. LINDER: No redirect, Your Honor.

4 THE COURT: Thank you, sir. You may step down.

5 Ladies and gentlemen, you are on your own for lunch.

6 When you come back, I need you to come to the jury room. So
7 the bailiff is going to show you how to do that. Don't come
8 through the courtroom this time. I hope you have a pleasant
9 lunch. Remember all the admonitions.

10 Now, I can't start until I account for all of you.
11 So please understand that if you have some true emergency
12 that arises that prevents you from being here on time, have
13 somebody call the clerk's office and let us know what's going
14 on. Because at about five minutes after the time you are
15 supposed to be here, I start having people call and try to
16 find you and look for you. So please let us know if
17 something goes on.

18 It's 10 after 1, basically. So what will that be?
19 20 to 3? An hour would be 2:10 and another half hour would
20 be 2:40; is that right? I don't have a Mickey Mouse watch.
21 I'm trying to -- I am sometimes bad about saying the wrong
22 time to the jury. My normal court reporter has to correct
23 me.

24 2:40. Make sure you know how to get back in here.
25 Leave your notes wherever the bailiffs tells you to leave

1 them. Thank you.

2 (Whereupon, the jury leaves open court at 1:10 p.m.)

3 THE COURT: I don't know exactly who is in the
4 courtroom. I usually give an instruction to make sure people
5 understand. It's really important you don't have contact
6 with jurors during the break. If you go to the restaurant,
7 please check around. Make sure there are no jurors within
8 earshot. I don't know how the jury leaves here, but in most
9 court houses, they funnel back around into common areas.
10 Make sure you don't have a conversation with any jurors that
11 is related in any way to the case. I need you back here at
12 2:40. Thank you.

13 (Whereupon, a recess transpired.)

14 (Whereupon, the defendant is present.)

15 THE COURT: The State ready?

16 MS. LINDER: Yes, Your Honor. For planning
17 purposes, I wanted to let the Court know, and I already
18 indicated to Ms. Gay, we are able to figure out how to mute
19 the disk. So, hopefully, the jury will not have to come back
20 out if they wish to review it. The informant has already
21 initialed and watched the unmuted one. She is doing that
22 right now and should be done probably within the next ten
23 minutes. But we have another witness before her, so it
24 shouldn't delay proceedings at all. I just wanted to let
25 Your Honor know that. And we do have a copy of the

1 transcript with times and highlighted areas that would be
2 muted to make it a court's exhibit

3 THE COURT: Okay. Defense ready for the jury?

4 MS. GAY: Yes, Your Honor.

5 THE COURT: Bring them in, please.

6 (Whereupon, the jury returns to open court at 2:50
7 p.m.)

8 THE COURT: Continue with the State's case. Call
9 your next witness.

10 MR. SOWARDS: Thank you, Your Honor. The State
11 calls Detective Lisa Branham.

12 LISA BRANHAM,

13 having been duly sworn, testifies as follows:

14 THE CLERK: State your first and last name, spelling
15 your last name for the record.

16 THE WITNESS: My name is Lisa Brandon,
17 B-r-a-n-h-a-m.

18 DIRECT EXAMINATION

19 BY MR. SOWARDS:

20 Q. Thank you. Detective, where do you currently work?

21 A. For the Charleston County Sheriff's Office.

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

23 A. For approximately 16 years.

24 Q. And could you please describe for the jury your
25 training and experience as it relates to your job in law

1 enforcement?

2 A. Yes, sir. I graduated the academy in 2001, located
3 in Charleston, South Carolina -- I apologize, Columbia, South
4 Carolina. I went to the City of Florence for five years, and
5 transferred to Charleston, South Carolina, been with them
6 ever since.

7 In regards to training and experience, at the
8 academy, we normally -- it's changed but it's normally a
9 nine-week process that we go through. When we get out of the
10 academy, we normally go back to wherever the department that
11 you have. And they also have another what they call either
12 FTI or FTO process where you go through another eight to nine
13 weeks of training, depending on your experience.

14 After that -- 16 years is a long time to go back for
15 a lot of classes. You have to maintain your certifications
16 every year. With that, there's all kinds of legal updates
17 and qualifications outside of your normal stuff. You have
18 other duties. Case in point, I went to training for what
19 they call field force operations, which would be, for
20 instance riot team. I also have been to protective services,
21 which was a two-week training course. I've been to an
22 extraction class, which was about a week-long as well.
23 Crisis negotiations, that was roughly a week-long.
24 Undercover narcotics and techniques, that was a week-long. I
25 mean, the classes are endless. So just shy of bringing in a

1 three-ring binder, some of these classes could go on and on
2 and on, depending what you are looking for.

3 Awards, commendations, again, 16 years is a long
4 time to have to go back and not bring that stuff in here with
5 me. But there was commendations for the DNC when they had
6 that, me and several other took part in that. Different
7 trials that we've assisted with that have been local to
8 Charleston that we've -- myself and a few others, have
9 received commendations for. I hate to say it, but some of
10 them are kind of endless.

11 Q. Were you working for the Charleston County Sheriff's
12 Department in February of 2015?

13 A. Yes, sir, I was.

14 Q. And did you have the occasion to become involved in
15 the investigation of this case, State vs. Gerald Ancrum, on
16 February 5th, 2015?

17 A. Yes, sir, I did.

18 Q. How did you become involved in this case?

19 A. I received a call from Agent Preston with ATF. He
20 advised me that they had an investigation regarding the
21 distribution of heroin in the Charleston County area and
22 asked if I would assist in becoming one of the undercover
23 detectives for one of the cases that he was working.

24 Q. On February 5th, 2015, what was your kind of first
25 task as a member of the investigation team in this case?

1 A. That day, I met with the ATF Agent Preston and the
2 informant, the confidential informant. I was initially asked
3 to go ahead and search the female. Normally, we try to make
4 it common practice for females to search females. With that,
5 I step aside for obvious reasons and begin my search. Given
6 that it's a narcotic, anything to do with narcotics, we
7 normally start from top to bottom. That way, if when I'm
8 doing the search, if there's narcotics to be found, it will
9 normal shake or fall to the ground, if that makes sense. So
10 we normally start with hair, ears, and shoulders, begin to
11 work down the arms, under the armpits, the bra line, inner
12 waistline of the pants, all the way down the legs, the
13 abdomen area, just to make sure there's nothing in a pocket
14 or anything like that.

15 Q. You said you normally do that. Is that what you did
16 in this case?

17 A. Yes, sir.

18 Q. Did you find anything, such as narcotics, on the
19 informant's person?

20 A. No, sir.

21 Q. Did you remain involved in this investigation after
22 you searched the informant?

23 A. I did, sir.

24 Q. How did you remain involved?

25 A. I was the undercover. I was going to be the driver

1 of the informant. We were driving a government-owned
2 vehicle. And I was to drive her to where the incident was to
3 took place, the deal was to take place.

4 Q. Did you choose the location of the deal?

5 A. No, sir.

6 Q. Who chose the location of the deal?

7 A. The informant did.

8 Q. As you are driving, did you remain silent on your
9 way to the location, or were you able to speak?

10 A. No, sir, I was able to speak. Normally, when
11 traveling, whether it be by cell phone or open wire, which is
12 a small microphone, a radio in this case, I did not have my
13 radio with me. I used my cell phone in the open wire. We
14 normally communicate as to location and where we are going
15 and keep at a constant update as to where we are going. If
16 we are going through an intersection we may say, for
17 instance, I'm driving down Meeting, passing such and such.
18 That way, it lets the surrounding units know where exactly
19 you are at or everyone who's involved in the case.

20 Q. When you arrived at the Dunkin' Donuts, the location
21 of the deal, was the defendant Gerald Ancrum present at that
22 time?

23 A. No, sir.

24 Q. When did he arrive?

25 A. I want to say roughly five to ten minutes later.

1 Q. Were you able to see the car he was driving when you
2 arrived?

3 A. Yes, sir.

4 Q. What was he driving?

5 A. It was going to be a white BMW, dark tinted windows.

6 Q. What happened after the defendant arrived at that
7 location?

8 A. He asked us to move from where we were sitting. So
9 all we did was just relocate towards the back of the Dunkin'
10 Donuts.

11 Q. What happened after you relocated to the rear of the
12 Dunkin' Donuts?

13 A. That's when the informant got out of the vehicle and
14 began walking towards the white BMW, the defendant's vehicle.

15 Q. And were you able to observe her as she walked
16 towards the white BMW?

17 A. Yes, sir. Where I was positioned, I could look over
18 my shoulder and see her approach the passenger side of the
19 white BMW and get into -- it was the passenger, but the front
20 passenger seat.

21 Q. And what happened after she got into the front
22 passenger seat?

23 A. The vehicle began to move. As it began to back out,
24 at this point, once she's out of the vehicle, I'm on my cell
25 phone and advising my guys as to what's going on and what I

1 can see from where I'm sitting. At that point, I'm telling
2 them that they are leaving and it looks like they are
3 beginning to circle around. There's a business of -- or a
4 building where they are getting ready to circle where I can't
5 see them.

6 Q. And what happened after she got in the car and they
7 kind of drove out of your sight? Did they ever return to
8 your vehicle?

9 A. Yes, sir. It wasn't long after. It was
10 literally -- they just drove -- it's hard to explain. If
11 there was a photo, I could show them a little bit better. If
12 you would just imagine this is a wood line. I'm looking over
13 my shoulder at the vehicle. The vehicle is parked facing the
14 Dunkin' Donuts. When they pull out, they circle around the
15 building to the left over here, which would have been my left
16 if I'm turned around. They circle around the building next
17 to the Dunkin' Donuts and pull up near my vehicle.

18 Q. I have something that may help you. I will show you
19 what's been previously admitted as State's Exhibit 2. This
20 might help. Do you recognize that?

21 A. Yes, sir.

22 Q. What is that?

23 A. Where you've got the tag or the flag, that's going
24 to be the Dunkin' Donuts.

25 Q. And you said you were parked along the wood line?

1 A. Yes, sir.

2 Q. Would that be right here?

3 A. Yes, sir.

4 Q. And the defendant's vehicle was located front --

5 A. No. Your finger is actually probably on it, in that
6 general vicinity right there, yes, sir.

7 Q. You said they drove around this business?

8 A. Towards the road, yes, sir, and came around.

9 Q. And back to your vehicle?

10 A. Yes, sir.

11 Q. And what happened after they returned to your
12 vehicle?

13 A. The informant got out of that vehicle and then got
14 into my vehicle.

15 Q. What did she do when she got in your vehicle?

16 A. She placed the narcotics that had just been
17 purchased into the cupholder or the center console of the
18 vehicle.

19 Q. Now, you said the defendant's vehicle pulled up next
20 to yours. Were you able to see inside the defendant's
21 vehicle?

22 A. No, sir, the windows were too dark.

23 Q. And so at this point, the informant is back in your
24 vehicle. She's placed the narcotics she purchased in the
25 cupholder. What happened next?

1 A. We ended up leaving that location. And then we
2 ended up going back to the staging area where we initially
3 started out from.

4 Q. And what happened at the staging area?

5 A. At the staging area, once we got out of the vehicle,
6 it was my job to pat the informant back down again. So,
7 again, I did the same thing. I started at the hair, made
8 sure I checked the hair, and worked the way again, same
9 routine, down to the shoulders, armpit, bra line, abdomen,
10 waistline, all the way down to the feet.

11 Q. After that search, did you find narcotics or
12 contraband on the person?

13 A. No, sir.

14 Q. Was that the end of your involvement in this
15 investigation?

16 A. Yes, sir.

17 MR. SOWARDS: Beg the Court's indulgence.

18 THE COURT: Yes.

19 MR. SOWARDS: No further questions at this time.
20 Please answer any questions Ms. Gay may have.

21 MS. GAY: Thank you, Your Honor. May it please the
22 Court.

23 CROSS-EXAMINATION

24 BY MS. GAY:

25 Q. I just have one area of questioning. It's kind of

1 been put out in this trial that it's standard procedure to
2 search informants before a transaction and after a
3 transaction?

4 A. Yes, ma'am.

5 Q. You said that -- your testimony was before the
6 transaction, you are head to toeing, doing everything you can
7 that could involve an orifice or ear or bra line or all the
8 way down through their panty, waistband, shoes everything.
9 And that's because sometimes people hide things in there,
10 don't they?

11 A. That would be correct.

12 Q. Right. And so, though this lady didn't on that day,
13 other times, when you have maybe in the course of your duty
14 have seen that people are trying to hide drugs that they are
15 going to try to say somebody sold to them; that's happened in
16 the past?

17 A. That would be correct. Yes, ma'am.

18 Q. So afterwards, when the sales are done and the
19 informants come out, and it's standard procedure again to go
20 through that same protocol, it's because there's sometimes
21 people get extra drugs, and they sort of stick them in their
22 personal places, and then that way, they give you all some,
23 but they keep some for themselves; that happens too, right?

24 A. Yes, ma'am.

25 Q. Didn't happen in this case, but it could happen?

1 A. Yes, ma'am.

2 Q. That's why you do all the searching of people that
3 are informants, to make sure they don't end up being able to
4 walk away during a supervised police operation with drugs
5 that they can go use?

6 A. Correct.

7 Q. That's why you do it, right? Okay. I have no
8 further questions?

9 THE COURT: Did you answer?

10 THE WITNESS: I did. I said correct. I'm sorry.

11 THE COURT: Redirect.

12 MR. SOWARDS: Just a few, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. SOWARDS:

15 Q. Detective Branham, you were asked about the search,
16 was it thorough?

17 A. Yes.

18 Q. What was the result of the search prior to the buy?

19 A. Negative, no contraband.

20 Q. What was the result of the search after the buy?

21 A. No contraband.

22 MR. SOWARDS: Thank you, Your Honor. No further
23 questions.

24 THE COURT: Recross?

25 MS. GAY: No, thank you.

1 THE COURT: Thank you. You may step down.

2 Ready to call your next witness?

3 MS. LINDER: Your Honor, she's on her way over.

4 Should be any minute.

5 MS. GAY: Can we excuse the witness?

6 MS. LINDER: Yes.

7 THE COURT: She's free to go.

8 MS. GAY: I have no objection to that, Your Honor.

9 THE COURT: She's free to go. Do you want me to
10 send the jury out or wait?

11 MS. LINDER: My investigator should be coming up
12 with her. He should be here in a moment.

13 THE COURT: Ladies and gentlemen, step in the jury
14 room. As soon as they have anybody in, we will begin. Don't
15 discuss the case.

16 (Whereupon, the jury leaves open court at 3:05 p.m.)

17 (Whereupon, recess transpired.)

18 THE COURT: Call your next witness, please.

19 MS. LINDER: The State calls Tessa Morris.

20 TESSA MORRIS,

21 having been duly sworn, testifies as follows:

22 THE CLERK: State your first and last name and spell
23 your last for the record?

24 THE WITNESS: Tessa Morris, M-o-r-r-i-s.

25 DIRECT EXAMINATION

1 BY MS. LINDER:

2 Q. Good afternoon, Tessa.

3 A. Hi.

4 Q. Where are you originally from?

5 A. I'm from North Carolina.

6 Q. And have you ever lived in Charleston?

7 A. Yes, I have.

8 Q. And did you live in Charleston back in 2015?

9 A. Yes.

10 Q. Do you live in Charleston now?

11 A. No, I do not.

12 Q. You live out of state?

13 A. Yes.

14 Q. And how far have you gotten in school?

15 A. I graduated high school, and I'm currently in school
16 right now.

17 Q. And that's for?

18 A. It's for phlebotomy and I'm going for medical
19 assistant.

20 Q. And do you understand why you are here today?

21 A. Yes, I do.

22 Q. Is this the first place you would like to be?

23 A. No, not exactly, no.

24 Q. And have you met with me before today?

25 A. Yes, I have.

1 Q. And what is your understanding and what have I
2 explained to you is the most important thing about today?

3 A. To tell the truth.

4 Q. All right. Let's just kind of jump into this. Have
5 you ever cooperated with law enforcement before as an
6 informant?

7 A. Yes.

8 Q. And were you signed up, so to speak, as an informant
9 with Special Agent Preston with ATF?

10 A. Yes.

11 Q. And was one of your purposes to purchase narcotics
12 for the government, for law enforcement?

13 A. Yes.

14 Q. Did you actually ever make a purchase of drugs while
15 working as an informant?

16 A. I did, yes.

17 Q. Did you make a purchase from this defendant, Gerald
18 Ancrum, back on February 5th of 2015?

19 A. Yes, I did.

20 Q. Do you see Gerald Ancrum in the courtroom today?

21 A. Yes, I do.

22 Q. What's he wearing and where is he sitting?

23 A. He's the gentleman over there in the white shirt.

24 MS. LINDER: Please let the record reflect the
25 correct identification of the defendant by this witness.

1 THE COURT: So noted.

2 BY MS. LINDER:

3 Q. Back in February of 2015, how did you and Agent
4 Preston go about planning this buy and setting up the details
5 of this purchase?

6 A. Well, we would call him and make a -- arrange for me
7 to make a buy from Mr. Ancrum.

8 Q. Before the deal itself actually happened, was there
9 a briefing where all kinds of the plans of everything were
10 set forth?

11 A. Yes.

12 Q. Were you searched before going to make this drug
13 purchase?

14 A. Yes, I was.

15 Q. Who were you searched by?

16 A. A female officer.

17 Q. Were you given money to make this drug purchase?

18 A. Yes, I was.

19 Q. Who gave you money?

20 A. Officer Frank Preston.

21 Q. Were you given instructions by Special Agent Preston
22 on what to do or not do?

23 A. Yes, I was.

24 Q. Where was the deal supposed to take place on
25 February 5th?

1 A. At Dunkin' Donuts.

2 Q. How did you get to the Dunkin' Donuts on that day?

3 A. I rode in a car with a female officer.

4 Q. And did you see the defendant Gerald Ancrum on that
5 day?

6 A. I did.

7 Q. What vehicle was he driving?

8 A. He was driving a white BMW.

9 Q. Did you make a purchase from him that day?

10 A. Yes, I did.

11 Q. Did you purchase crack cocaine?

12 A. Yes.

13 Q. Did you purchase heroin?

14 A. Yes, I did.

15 Q. And who did you buy from that day?

16 A. Mr. Ancrum, also known as -- I know him as Black.

17 Q. And did you do anything during the course of the
18 purchase to indicate to law enforcement that, in fact, it was
19 Gerald who did the buy, who did the sale?

20 A. Yes.

21 Q. What did you do?

22 A. I spoke his name.

23 Q. After the deal was done, what did you do?

24 A. I returned to the car that I arrived in and got in
25 with the female officer.

1 Q. What did you do with the heroin and the crack
2 cocaine that you purchased?

3 A. I put it in the console between the officer and
4 myself.

5 Q. And were you part of the debriefing after?

6 A. I was.

7 Q. Were you searched again?

8 A. I was.

9 Q. Was anything on you?

10 A. No, ma'am.

11 Q. Were you paid for your work with ATF on that day?

12 A. I was.

13 Q. Do you remember how much you were paid for that day?

14 A. \$400.

15 MS. LINDER: Your Honor, may I approach the witness?

16 THE COURT: Yes, ma'am.

17 BY MS. LINDER:

18 Q. At this time, I'm going to show you what's been
19 marked as State's Exhibit 6 for identification purposes. Do
20 you recognize this?

21 A. I do.

22 Q. How do you recognize this?

23 A. I watched the video and my initials are on it.

24 Q. Does this disk contain a fair and accurate
25 representation of what happened back on February the 5th of

1 2015?

2 A. Yes.

3 MS. LINDER: Your Honor, at this time I would ask to
4 publish the disk for the jury.

5 THE COURT: Any objection to this being in evidence?

6 MS. GAY: No, Your Honor.

7 THE COURT: It's marked in evidence.

8 (State's Exh. 6 is moved into evidence.).

9 (Video playing.)

10 BY MS. LINDER:

11 Q. I just have a couple of questions for you. Okay?

12 A. Okay.

13 Q. We just watched that entire fairly lengthy video.
14 Have you watched the video in its entirety with all of the
15 sound?

16 A. Yes.

17 Q. And it's your understanding that, due to some legal
18 things, that the Defense and the State has agreed to mute
19 certain sections of that, right?

20 A. Yes.

21 Q. All right. For the vast majority of the beginning,
22 it almost looks like we are staring at something super blurry
23 when we are riding in the car. Do you know what that is?

24 A. That would be my lap.

25 Q. The camera is facing your lap?

1 A. Yes.

2 Q. And when you got out of the car, out of the
3 undercover police officer's car and walked over to the
4 defendant's white BMW, you stopped for a second before you
5 actually got into the car for the drug deal. Why did you
6 have to stop?

7 A. There was a lady getting out of the car or standing
8 beside the car, and she was blocking my way into the -- to
9 get into his car. And it had to do with him pulling too
10 close to her car.

11 Q. Okay. And did you give the defendant \$260 that day
12 to purchase drugs?

13 A. I did.

14 Q. Did he give you a bit -- a bag of heroin and a bag
15 of crack cocaine that day?

16 A. He did.

17 Q. Did you do as instructed and call the defendant by
18 his name Gerald on the video?

19 A. I did.

20 Q. Tessa, I just want to be frank with the jury. Have
21 you ever in trouble with the law before?

22 A. I have.

23 Q. And you've been convicted before of some crimes?

24 A. Correct.

25 Q. You've been convicted of drug possession?

1 A. I have.

2 Q. And you've been convicted of some shopliftings?

3 A. Yep.

4 Q. And you've been convicted of things with financial
5 transaction card, is what we call it, like credit cards or
6 debit cards?

7 A. Right.

8 Q. In fact, you've been prosecuted by my office before?

9 A. By you.

10 Q. By me before?

11 A. Right.

12 Q. And did you receive any sort of deal on your charges
13 that I had?

14 A. I did not.

15 Q. Did you end up pleading guilty to all of your
16 charges as charged?

17 A. Every single one of them.

18 Q. And did you actually get a prison sentence?

19 A. I did.

20 Q. And when did you get out?

21 A. About March 1st.

22 Q. Of this year?

23 A. Right.

24 Q. And since you've been out, that's when you're
25 starting fresh, out of state?

1 A. Correct.

2 Q. And in school again?

3 A. Right, no drugs.

4 Q. Yes. And but you are here today, as we discussed
5 earlier on, the most important thing about today is what?

6 A. To tell the truth.

7 Q. And did you buy crack cocaine and heroin from the
8 defendant Gerald Ancrum back on February 5th of 2015?

9 A. Yes, I did.

10 MS. LINDER: Thank you. I have nothing further for
11 you. If you can answers anything the Defense may have.

12 THE COURT: Cross-examination.

13 MS. GAY: Thank you, Your Honor. May it please the
14 Court.

15 CROSS-EXAMINATION

16 BY MS. GAY:

17 Q. How are you? I'm Melissa Gay.

18 A. Hi.

19 Q. Let me kind of go through the video we just watched
20 again. As Ms. Linder said, there were some things that were
21 quiet. We call that muted. And I would like to show you --
22 you have reviewed the transcript before. I would like to
23 show you a copy to refresh your recollection of the
24 transcript. We will mark this again for ID purposes.

25 (Court's Exh. 1, Transcript, was marked for

1 identification.)

2 BY MS. GAY:

3 Q. I'm going to show you what's been marked as Court's
4 Exhibit 1 and direct you to page -- well, it's where it's
5 17:37, this time period here at the top. Because this is all
6 kind of time periods. See this line right above 17:37, can
7 you read that line to the jury, please.

8 A. "Hello. I call you back. It's going to be awhile.
9 Probably I will call you. I don't know, Will."

10 Q. Will is your boyfriend?

11 A. Yes.

12 Q. He was your boyfriend at the time of this
13 incident?

14 A. Oh, he's not my boyfriend now, but, yes, he was.

15 Q. In 2015?

16 A. Correct.

17 Q. Next sentence, can you read that sentence to the
18 jury, please?

19 A. "No, I'm waiting on -- I will call you back.
20 Impatient boyfriend."

21 Q. That's you referring to your boyfriend Will as the
22 impatient boyfriend to Officer Branham, correct?

23 A. Yes. I was referring to him, yes, as my impatient
24 boyfriend.

25 Q. And then so Will -- and I think that Mr. Ancrum asks

1 you even later on in the video, where is Will, and you said,
2 this is my own thing?

3 A. I said -- no, I said, he's at the room.

4 Q. Okay. And during this period of time in 2015, it's
5 my understanding that you were on probation for property
6 crime enhancement charges?

7 A. I was.

8 Q. You were then and you are now?

9 A. Yes.

10 Q. Explain a little bit. Somewhere in the interim, you
11 had a probation violation, possibly some more charges, and
12 that's what put you in prison?

13 A. No.

14 Q. Did you go to prison after 2015? You went to prison
15 in 2016, correct?

16 A. Right.

17 Q. Wasn't that for some type of probation violation?

18 A. I believe it was for, yeah, the property crime
19 enhancement, yes.

20 Q. So going back before this incident, I think some
21 time in maybe '14 is when you were placed on probation for
22 the property crime enhancements. And for the purpose of
23 jury, that means shoplifting more than two or three times?

24 A. Yes.

25 Q. I believe your record had two or three shopliftings

1 that were the 30-day offenses, and then you ended up getting
2 convicted of the felony charges, which carries 10 years, for
3 property crime enhancement, multiple shopliftings?

4 A. Correct.

5 Q. And would it be fair to say that during that period
6 of time, because of all your shopliftings, that you had a
7 drug problem?

8 A. Right.

9 Q. And that your drug problem was contributing to your
10 criminal record with the shopliftings?

11 A. Yes.

12 Q. And the property crime enhancements?

13 A. Yes.

14 Q. And that all happened before 2015? I think your
15 first possession of cocaine charge was 2003.

16 A. No, no. I didn't plead guilty to that.

17 Q. Well, then in '13 is when you plead guilty to a
18 couple of shopliftings?

19 A. Right.

20 Q. And then in '14 is when you pled guilty to financial
21 transaction card fraud?

22 A. Right.

23 Q. And the property crime enhancement times three?

24 A. Okay.

25 Q. Do you remember that as being your record?

1 A. I remember it was all together, one.

2 Q. So then --

3 A. I don't remember exactly all of them.

4 Q. Excuse me?

5 A. I said I don't remember exactly all of them.

6 Q. During that period of time, your life was pretty
7 confusing, because you were using a lot of drugs at that
8 time? Right?

9 A. Okay.

10 Q. And it's my understanding that when you met with
11 Frank Preston from the ATF, that was in July of 2014? Do you
12 remember it being July of 2014?

13 A. I don't recall what date it was, no.

14 Q. I would like to show you Defendant's Exhibit for ID
15 purposes No. 1. And can you read -- do you recognize this
16 agreement, or, trust me, this was your name.

17 A. Yeah, I recognize it.

18 Q. What is it?

19 A. It's an agreement of what I have to do to be an
20 informant.

21 Q. So on the top of it, what does it say?

22 A. Informant agreement.

23 Q. And does it also say July 10, 2014?

24 A. Yeah.

25 Q. So --

1 A. But I don't see my name on it.

2 Q. I understand. So in July 14th of 2014, there were
3 things that you had to do as part of being a paid informant
4 for the ATF? Do you remember what some of these things were?
5 You had to call them and give the names of people who you
6 thought was connected to the drug trade?

7 A. Could you repeat the question?

8 Q. Well, as part of being an informant for them to get
9 money, which is what you got, we call that a paid informant,
10 you provided names to them of people that you believed you
11 could call to get drugs from?

12 A. Okay.

13 Q. They didn't provide the names to you. They didn't
14 say, you know, Ms. Morris, I want you to call this guy or
15 this guy and this guy and these are their telephone numbers.
16 You actually brought names and telephone numbers to them?

17 A. Correct.

18 Q. And so that was part of your understanding of what
19 your obligation was under this agreement?

20 A. Okay.

21 Q. And then as part of it also, people unrelated to
22 Mr. Ancrum from July 10th, 2014, were also people that you
23 called and arranged to buy drugs from?

24 A. I am not aware of anybody's relation or any -- I'm
25 not sure.

1 Q. Okay. So this happened -- this relationship that
2 started in 2014, we go all the way to February '15 when the
3 transaction that we are talking about today happened,
4 correct? It was February, I think 5th, 2015?

5 A. Correct.

6 Q. And during that period of time, this guy that you
7 were living with, Will, did he know that you had a
8 relationship with Mr. Ancrum?

9 A. Yeah.

10 Q. He did know that you had a relationship with him?

11 A. Sure he did.

12 Q. And that relationship included sex?

13 A. No.

14 Q. Okay. So when my client tells me that, that's not
15 true?

16 A. No, that is not true.

17 Q. And what about the fact that you had received money
18 that day that you were rushing off to go meet with your
19 boyfriend, that's who you were going to meet afterwards?

20 A. I was going to pick my friend up. I mean, what does
21 that have to do with it?

22 Q. Well, during this period of time in February of
23 2015, do you recall when your probation got violated?

24 A. I don't recall.

25 Q. Were you actively using drugs during this period of

1 time between this sale and the time you got violated on
2 probation?

3 A. Yes, I was.

4 Q. And so at times, money that you obtained from the
5 ATF might have been used for buying drugs at some point?

6 A. Could possibly be.

7 Q. And so when you knew Mr. Ancrum and you knew what
8 kind of car he had and you knew things like that about him,
9 you are telling this jury that you did not have any special
10 kind of relationship, personal relationship with him?

11 A. No, we did not.

12 Q. And it's my understanding that you had -- as I said,
13 in 2016, which was, you know, maybe eight or nine months
14 later, that's when you went to prison for some new charges?

15 A. It was for everything -- what I went to prison for,
16 it was a bundle of everything together.

17 Q. So it was things that had been pending since maybe
18 before this time in February and also after this time in
19 February?

20 A. No, because I was on probation. It was after what
21 happened in February.

22 Q. Right. And so while you were on probation, you
23 tested positive for drugs?

24 A. I did.

25 Q. Did you test positive for drugs more than one time?

1 A. I did.

2 MS. GAY: Your Honor, beg the Court's indulgence.

3 THE COURT: Yes, ma'am.

4 BY MS. GAY:

5 Q. This is the last group of questions I wanted to ask
6 you. Initially, you said that Ms. Linder was prosecuting
7 you. And she was prosecuting you, based on your testimony,
8 some time in '15, before you went to court in '16, correct?

9 A. I never met her. Someone else actually came to
10 court, so I just found out that she was the one prosecuting
11 me here.

12 Q. And at some point, you made contact with the police
13 officer, the original City of Charleston police officer, to
14 ask them whether or not you could be set up as an informant?

15 A. No.

16 Q. Is it your testimony that somebody came to you and
17 asked you, one of the members of law enforcement?

18 A. They didn't come to me, no.

19 Q. So it's either you came to them and presented it as,
20 I would like to be a paid informant --

21 A. Yeah, it happened, I asked to be one.

22 Q. And you asked to be one, and I believe -- was it
23 your understanding that Mr. Preston had to actually talk to
24 your probation agent to get permission for you to be able to
25 do that?

1 A. Right.

2 Q. So you were already on probation and had already
3 tested positive for drugs and had some problems with
4 probation?

5 A. Right.

6 Q. So you were -- was it your understanding -- I know
7 Ms. Linder asked you, did you get any benefits in your case
8 for doing any of this. But at the time that you signed up
9 with the ATF to become a paid informant, was it your
10 understanding that if you did that, you would get some
11 benefits because you were testing positive for drugs and in
12 violation of your probation?

13 A. No.

14 Q. You just did it out of the kindness of your heart?

15 A. I did -- I'm -- I don't understand what you are
16 asking me.

17 Q. I'm asking you what your intent was when you
18 contacted somebody --

19 A. It was to make money.

20 Q. It was to make money?

21 A. Right.

22 Q. Only to make money?

23 A. Right.

24 Q. Not to help yourself on any type of probation
25 violation?

1 A. No.

2 Q. Just because you needed money?

3 A. I didn't get any help whatsoever. And they told me
4 that they would not help me with any kind of help on my
5 sentencing.'

6 Q. So you already admitted that during the period of
7 time you were doing this, some of the ATF money they gave you
8 was probably going to some of the drugs that you were
9 doing?

10 A. Right. I also did pay restitution with the money
11 too.

12 MS. GAY: I have no further questions, Your Honor.

13 THE COURT: Redirect?

14 MS. LINDER: Your Honor, I think we need to have a
15 conversation outside the jury or at the bench before I do
16 redirect.

17 THE COURT: All right. Ladies and gentlemen, please
18 step in the jury room. Don't discuss the case.

19 (Whereupon, the jury leaves open court at 4:16 p.m.)

20 THE COURT: Yes, ma'am.

21 MS. LINDER: Your Honor, it is the State's position
22 that Ms. Gay, in her cross of the witness, got into some
23 items that opens the door to further explore the
24 "relationship" that this witness had with the defendant. Ms.
25 Gay asked about if she provided the phone number and then

1 kind of jumped straight into accusing of a sexual
2 relationship. And then later kept saying, so you had no
3 relationship with him, you had no relationship with him at
4 all, no personal relationship. And discussing how the
5 informant wouldn't have access without a sexual relationship;
6 whereas, I think that it takes things out of context. And I
7 think that I should be allowed to ask very limited questions.

8 For example, I know that the witness has known the
9 defendant for a couple of years prior to this. She and her
10 boyfriend Will used to purchase drugs on a regular basis from
11 the defendant. And, in fact, she purchased on two other
12 occasions from the defendant while working and wired up for
13 ATF. And I just believe that the questions asked on cross
14 opened the door to that.

15 THE COURT: Ms. Gay.

16 MS. GAY: Well, Your Honor, I think that I was
17 asking her about personal, like, did they have a physical
18 relationship. That's actually what my client told me, that
19 they did. And so I don't believe it opened the door for any
20 type of other sales of drugs. She knew him. She obviously
21 provided the name. She provided the telephone number. She
22 knew what type of car. I was very specific when I said, you
23 knew what type of car he drove, you knew his telephone
24 number. I didn't say, had you ever bought drugs from him
25 before or been partying with him, or anything like that that

1 would indicate there was some type of drug contact. My
2 client told me they had a relationship that was involved of
3 some sort. I asked her a question, which she denied. I
4 didn't ever say, oh, well, yes, you did. I just asked the
5 question and she answered it.

6 So I don't believe that it came -- it brings up the
7 fact that she has known him for two years and bought drugs
8 from him on a previous occasions. One of the things, we have
9 a transcript in the record, there's statements made by her
10 about getting money to him to buy more drugs. And we agreed
11 to take those out as bad acts. So he never once, I believe,
12 crossed into any type of communication about her having a
13 relationship with him that involves drugs.

14 She acknowledged that she knew him. She
15 acknowledged she had to give up the names to the ATF as
16 people she thought would be involved in the drug trade. And
17 his name was one of them as a part of this case.

18 THE COURT: Anything else?

19 MS. LINDER: Your Honor, I think I stated before,
20 yes, Ms. Gay asked directly, was there a sexual relationship,
21 or my client tells me you are in a sexual relationship with
22 him, I believe is how it was stated. Yes, the witness did
23 deny it. But later Ms. Gay went back to it, you are telling
24 me you know his car and all this, but you have no personal
25 relationship, no personal relationship. And she never said

1 sexual relationship again. And I think that is misleading to
2 the jury. And I would like the ability to clarify that to
3 them.

4 THE COURT: You can ask her about how long she had
5 known him and that sort of thing, but I am not going to let
6 you get into drug transactions.

7 MS. LINDER: Thank you, Judge.

8 THE COURT: Are you ready for the jury?

9 MS. LINDER: Yes, Your Honor.

10 THE COURT: How many more witnesses do you have
11 after her?

12 MS. LINDER: One. And it's the one that we need the
13 15-minute hearing for the statement beforehand.

14 THE COURT: So there's no chemical analysis?

15 MS. LINDER: We do, but we have about three chain
16 witness that we are not going to get to today. They are
17 going to go with the chemist.

18 THE COURT: How many witnesses do you have left,
19 period?

20 MS. LINDER: Period? There's one very quick
21 officer, three chain witnesses and the chemist.

22 THE COURT: Okay. Ma'am, during this break we are
23 going to take, you can step down, if you would like, but you
24 are not permitted to discuss your testimony with anybody. Do
25 you understand? When you come back, it will probably be very

1 brief, but these folks have been in here a long time, I need
2 to give everybody a break. Okay? Let's take about 5 minutes
3 or 10. All right.

4 (Whereupon, a recess transpired.)

5 (Whereupon, the defendant is present.)

6 THE COURT: Ready?

7 MS. LINDER: Yes, Judge.

8 THE COURT: Bring them in, please.

9 (Whereupon, the jury returns to open court at 4:30
10 p.m.)

11 THE COURT: Redirect.

12 MS. LINDER: Yes, Your Honor. May it please the
13 Court, just briefly.

14 REDIRECT EXAMINATION

15 BY MS. LINDER:

16 Q. Tessa, I wanted to clear up a few things. First of
17 all, when did you first get into using drugs?

18 A. My early or, say, late 20s, early 30s.

19 Q. And how did you first get into using drugs?

20 A. I was in a car accident and the doctor prescribed
21 the drugs to me for my back injury.

22 Q. So you got prescription pills?

23 A. Right.

24 Q. And you used those?

25 A. Yes.

1 Q. Did you abuse those?

2 A. I did.

3 Q. And did you then from there start making your way
4 into other things?

5 A. Right.

6 Q. And when was the last time you used drugs?

7 A. The last time I used drugs was in -- let's see. I
8 just got out of prison March 1st. And I went to jail July
9 25th of, I would say, like, 21 months ago.

10 Q. All right. When you signed up and signed that piece
11 of paper that you were shown earlier, your agreement to work
12 with ATF, which you freely signed, that was on July 10th of
13 2014; does that sound about right? And as part of that
14 agreement, as part of briefing with them, including with
15 Special Agent Preston, you gave names and phone numbers of
16 people who could be good targets for them?

17 A. Right.

18 Q. And one of the name and phone numbers you gave is
19 the defendant, correct?

20 A. Correct.

21 Q. How long overall had you known the defendant; a
22 week, a month, a year?

23 A. I've known him for several years.

24 Q. You've known him for several years before all of
25 this happened?

1 A. Correct.

2 Q. And you were not in a sexual relationship with him?

3 A. No, we were never.

4 Q. But you knew him for several years?

5 A. From purchasing drugs.

6 Q. And, in fact, you knew him through your boyfriend?

7 A. Correct.

8 MS. GAY: Your Honor, may we approach?

9 THE COURT: Ladies and gentlemen, step in the jury
10 room. Don't discuss the case.

11 (Whereupon, the jury leaves open court at 4:33 p.m.)

12 THE COURT: Yes, ma'am.

13 MS. GAY: I would like a motion for a mistrial, Your
14 Honor. She just said "for purchasing drugs". I believe
15 that's in violation of what you said in terms of how to keep
16 the testimony away from prior bad acts. And I would make a
17 motion for a mistrial on my client's behalf.

18 THE COURT: Solicitor.

19 MS. LINDER: Your Honor, I believe that any sort of
20 instruction could be curative as far as that's concerned.
21 That was not in specific response to what my question was. I
22 was very specific in saying, you knew him for a number of
23 years, you knew him through your boyfriend. It was not in
24 response to the type of relationship. It was not a sexual
25 relationship. She was just reiterating the response that was

1 given on cross to Ms. Gay. I think if it needs to be
2 addressed, I think anything curative would solve that issue.

3 MS. GAY: Your Honor, I don't think that's possible.
4 I think it's a bad act. It's something that we excised and
5 muted the tape to prevent the jury to know. I think it's
6 highly prejudicial. And there's -- I don't believe it can be
7 corrected by a curative statement at all.

8 THE COURT: Well, I understand your position. But
9 if the testimony has been offered several times now that she
10 provided the targets. What other logical conclusion is there
11 but that she is providing the target because he's involved in
12 the drug trade in some way?

13 MS. GAY: I think that's a logical conclusion that
14 the jury can make up on their own and discuss. The problem
15 is the testimony from the witness indicating that there had
16 been prior purchases was specifically excluded in this case
17 as a bad act that would be prejudicial and not appropriate.
18 And that's why I said we specifically went through the
19 transcripts to make sure that nothing was -- there are lots
20 of things in the transcripts that refer to prior contact,
21 prior deals, prior opportunities for her to have received
22 drugs from him. We specifically kept that out.

23 And I understand what Ms. Linder was trying to do.
24 She repeated the question a couple of times with emphasis.
25 And those are things she can argue as an inference. Why else

1 would he knew his man? But for the witness to specifically
2 say it and it to be in front of the jury as evidenced from
3 the witness that there had been prior purchases, is
4 completely inappropriate in this case. And I believe it is a
5 basis for a mistrial.

6 THE COURT: Anything else?

7 MS. LINDER: Your Honor, I would just state, again,
8 that as Your Honor pointed out, it has been said numerous
9 times that she's been using drugs, she purchased drugs, she
10 was still actively using drugs in 2015, that she's the one
11 who came up with the target, and the word "target" I believe
12 was used on both sides of this as far as the target she came
13 up with for ATF to be used into these.

14 As far as what she just said, she did say she knows
15 him from purchasing drugs. She did say that. She did not
16 say from purchasing drugs from him. I think that it is from
17 purchasing drugs, because as she's been just testifying to,
18 she was an active user and she was purchasing drugs. And, in
19 fact, Judge, she named multiple targets. And those multiple
20 targets are people she knew through her life of purchasing
21 drugs and through her life as a drug abuser and user.

22 THE COURT: Anything else, anything on the record?

23 MS. GAY: Well, Your Honor, this is like ping-pong
24 at a certain point. And I know you know the arguments. I'm
25 sorry I don't have any case law in front of me. If we take

1 an evening break, maybe I could bring back case law in the
2 morning. This may be a good point to stop. There's no doubt
3 that purchasing drugs in response to Ms. Linder's question
4 was how she knew him, not how she just knew other people that
5 would have been purchasing drugs. It was specifically
6 answered in response to a question about him. And it brings
7 up prejudicial issues that were excluded in this trial and
8 pretrial motions that we discussed and other evidence that we
9 protected the record from. And I don't believe there's any
10 way we can fix it.

11 THE COURT: All right. Give me a moment. Y'all
12 have a seat.

13 All right. Here's the difficulty that I'm wrestling
14 with. If I were to give what would be referred to as
15 limiting instruction, it seems to me that I would have to
16 tell the jury that the inquiry would be limited only to
17 certain thing or a certain thing. And in this instance, I
18 assumed it would be only to go to the issue of her giving law
19 enforcement this number, telephone number of this individual
20 as a target. And that doesn't really sit too well. It
21 doesn't show motive, opportunity, those things that are
22 traditionally in the rule.

23 So the other option is to tell the jury that they
24 have to exclude that testimony, the testimony about any other
25 activities involving in drugs, that would have to be excluded

1 and they are not to use it in any way against the defendant.

2 Were it a different situation, I certainly would be
3 feeling stronger than a mistrial needs to be declared, but
4 the difficulty I have goes back to what I said earlier.

5 Witnesses have testified, more than one witness, that she
6 identified targets for law enforcement to go after. And the
7 only reasonable conclusion that someone could draw from that
8 is that she believed that those people were involved in drug
9 transactions, and not just using drugs, but in providing
10 drugs to other people. Otherwise, there's no basis for her
11 to make that assertion. And so when I think about having a
12 mistrial over this issue, it really seems to be overreaction.

13 Having said that, don't talk about any other drug
14 deals with him.

15 THE WITNESS: Yes, sir.

16 THE COURT: I don't know where we are going with
17 this any further. I may revisit it. I will certainly
18 consider any law you have in the morning. But I think that
19 what I'm going to do is instruct the jury to disregard.

20 MS. GAY: Well, Your Honor, this is the difficulty.
21 As you said, even in your own sentence, you said that she
22 believed that people she gave the names to would have, would
23 have, maybe could have, had some involvement with drugs.

24 THE COURT: No, I didn't say would have, maybe could
25 have. I never used that term at all.

1 MS. GAY: What you said, she believed people would
2 have had involvement with drugs. But for her to testify
3 "made purchases from" --

4 THE COURT: She didn't say "made purchases from".

5 MS. GAY: She said "from drug purchases". That was
6 what the words were, from drug purchases. How do you know
7 him? How long have you known him? From drug purchases.

8 So her response to Ms. Linder was that she had
9 bought from him, from drug purchases. And that's completely
10 different than some belief that she may have had that he
11 might be involved in the trade of some sort or have some
12 involvement with drug activity. That is her testifying
13 directly, direct evidence on the stand saying that she, from
14 drug purchases, knew Mr. Ancrum. And that is definitely
15 something that we've excluded along the -- during the whole
16 course of this trial. We knew this would be an issue along
17 the way. We had rulings and decisions and agreements set up
18 to avoid having any of this be in front of the jury.

19 I believe that this is violating all those previous
20 decisions that had been made by you and agreements that Ms.
21 Linder and I have made to protect this record and give my
22 client a fair trial, Your Honor.

23 THE COURT: What decision did I make other than this
24 afternoon when I said you can't go into the drug transaction?

25 MS. GAY: Right. Well, the motion that I made about

1 his prior bad acts is, I wanted to know ahead of time how she
2 was going to be dealing with the prior bad acts that we knew
3 would be relevant in this case. And she and I discussed how
4 to avoid that. Because we both agreed that there could be
5 Lyle information in this trial that could be harmful and
6 prejudicial to my client. So we agreed to mute the tape in
7 certain places. We agreed to limit testimony in terms of,
8 you know, she argued that she thought that I had opened the
9 door because I asked whether or not they had a personal
10 sexual relationship, she denied that. That wasn't about
11 drugs.

12 And then you told her what to ask. And then in the
13 course of her questioning, the witness said "from drug
14 purchases".

15 THE COURT: Okay. I understand. I understand your
16 position. And I may be wrong. My question was, what ruling
17 did I make? And I don't think I made any rulings. I think
18 y'all stood up and said, we agreed to all those things, which
19 the prosecution should be held to. But I guess I want to
20 make sure there wasn't a ruling I made other than the one a
21 short awhile ago that was violated.

22 MS. GAY: Well, I mean --

23 THE COURT: If you are going to tell me the same
24 thing over again, you don't need to tell me a third time.

25 MS. GAY: No. Prosecutorial misconduct is something

1 that gets discussed about the prosecutor going beyond the
2 scope of her agreement with me. And I would make that as a
3 reason for the mistrial as well. She's asking, very
4 pointedly, asking questions. And the witness responded based
5 on her questions. And I just wanted to make the record
6 clear, Your Honor, I think we should have a mistrial. And if
7 it's not because of a Lyle violation. I think it should be
8 because of prosecutorial misconduct, for asking questions
9 that made her witness say things that we had agreed would be
10 Lyle matters.

11 THE COURT: Anything else?

12 MS. LINDER: Judge, to address the misconduct, I
13 feel that's a very strong allegation to make. I had my
14 questions up there. And based on your ruling, that's when I
15 asked how long had you known him, which was acceptable. And
16 then I was going through saying it's not a sexual
17 relationship. My next question was asking, actually knew him
18 through her boyfriend, the two of them knew him. And so,
19 Judge, I do not believe that I asked a question or led down a
20 path to purposely try to do anything against Your Honor's
21 ruling.

22 THE COURT: I don't find any prosecutorial
23 misconduct. I find that the witness responded in a fashion
24 that creates this problem. And the witness is not an
25 attorney. And it all arose because of the questions related

1 to the question about how she knew this defendant.

2 Bring the jury back in. I'm going to make a call.

3 And if I'm wrong, I'm wrong. If I'm right, I'm right.

4 Again, if you all have anything you want to present in the
5 morning, I will be happy to consider it and I may change the
6 ruling.

7 (Whereupon, the jury returns to open court at 4:58
8 p.m.)

9 THE COURT: Ladies and gentlemen, I told you at the
10 outset of the trial, I have to decide the legal issues that
11 arise in a case. I gave you the example about if there was
12 something that was to be presented to the jury and the other
13 side felt that that was improper.

14 I need now at this point to give you an instruction
15 that you must follow. If you are unable to follow the
16 instruction or you have doubt about whether you can follow
17 the instruction, then you you must let me know that by
18 writing me a note and giving it to the bailiff. Do not
19 discuss this in any way with your fellow jurors. If you have
20 any issue or any concern with following the instruction I'm
21 about to give you, simply write me a note telling me about
22 that, and I will make further inquire, if necessary.

23 Now, the instruction is this, ladies and gentlemen.
24 The law does not allow evidence of other crimes, wrongs or
25 acts to be admitted to prove the character of an accused in

1 order to show action in conformity with that character. In
2 other words, if an accused was involved in a prior wrongful
3 or bad act, that cannot be used as evidence that he committed
4 either/or both of the crimes for which he is now on trial.
5 You must disregard the statement that this witness made that
6 in any way implied or suggested that she knew this defendant
7 from other activities involving drugs. That portion of her
8 testimony is stricken from your consideration. It must not
9 be used in any way whatsoever against the defendant.

10 Now, if you have any problem following that, you
11 can't put that out of your mind, the last portion of her
12 testimony, then you need to let me know by writing me a note.
13 You can do that at the end of the day or first thing in the
14 morning, if you would like.

15 All right. You may continue, Solicitor.

16 THE COURT: I note the defense's objection.

17 MS. GAY: Thank you, Your Honor.

18 BY MS. LINDER:

19 Q. You were signed up with the ATF July 10th of from
20 the 14; is that right?

21 A. Yes, ma'am.

22 Q. When you got signed up -- I'm going to throw some
23 dates out here, so I just looked up some stuff, so if they
24 sound right, or if you think they are really wrong, just let
25 me know. When you signed up with ATF, you were already on

1 probation; is that right?

2 A. Yes.

3 Q. And then you signed up in July of 2014. This buy
4 occurred February 5th of 2015; is that right?

5 A. Correct.

6 Q. And then from what I can tell, you were next
7 arrested on June the 2nd of 2015, correct?

8 A. Maybe. I'm not sure of the exact date.

9 Q. Okay. Does it sound like it could be right that you
10 were served then with a probation violation warrant August
11 14th of 2015?

12 A. Yes.

13 Q. And then you were convicted July 22nd of 2016; does
14 that sound about right?

15 A. Uh-huh, yes.

16 Q. So you sat in jail for almost a year?

17 A. Correct.

18 Q. Right? Before you pled guilty and then you went to
19 prison for a little bit?

20 A. Right.

21 Q. Okay. But the new arrest, which was June of '15,
22 the probation warrant August of '15, all of that, is that
23 before or after this buy on February 5th of 15th? Is June
24 after February in the course of a year?

25 A. It's after.

1 Q. Okay. In July, after February?

2 A. Yeah.

3 Q. And July 2016, is that after February of 2015?

4 A. Correct.

5 Q. And does any of that change what you testified as
6 far as purchasing drugs from this defendant back on February
7 the 5th 2015?

8 A. No.

9 MS. LINDER: I have no further questions. Thank
10 you.

11 THE COURT: Recross?

12 MS. GAY: No, Your Honor.

13 THE COURT: Thank you. Thank you, ma'am. You may
14 step down.

15 Do you have another witness we need to do today?

16 MS. LINDER: We can do tomorrow, Judge. We have one
17 available, but we can do it tomorrow.

18 THE COURT: Do you all want to keep going or do you
19 want to stop today? Personally, I don't like to get out at
20 five o'clock in the big city because you will just sit in
21 traffic, but call your witness.

22 MS. LINDER: Judge, this is the one we will need
23 about ten minutes with Your Honor before he takes the stand
24 in front of the jury.

25 MS. GAY: May I approach, Your Honor?

1 THE COURT: Sure.

2 (Whereupon, a bench conference takes place off the
3 record.)

4 THE COURT: Let me work with them on what I've got
5 to do, and you folks can fight traffic. I need you back here
6 tomorrow at ten o'clock. Now, you should get the case
7 tomorrow. That's my understanding. I can't say if it will
8 be in the morning or the afternoon, but you should get the
9 case tomorrow to decide. I hope you have a pleasant evening.
10 Remember all the admonitions.

11 (Whereupon, the jury leaves open court at 5:04 p.m.)

12 THE COURT: Just so the record is clear, the
13 mistrial motion was denied. I think that's obvious. And I
14 noted the exception to the limiting instruction. Do you need
15 to put anything else on the record, Ms. Gay, you would like
16 to add?

17 MS. GAY: No, Your Honor. As you've done, you've
18 preserved my objection. You've ruled against me on my motion
19 for mistrial and my motion for mistrial based on Lyle and
20 also based on prosecutorial misconduct. I still take the
21 position, Your Honor, that in addressing my motions, I had
22 the understanding that you would have been part of the ruling
23 or decision for there not to be any type of Lyle material
24 brought up. Maybe that's my fault, Your Honor, for not
25 clarifying and having that decision, we had this information,

1 Your Honor, would you like to make a ruling. I thought I had
2 protected my client's interest by working this out with the
3 solicitor. But you said you didn't make the ruling. I hope
4 that doesn't prejudice him in any way, because we really did
5 agree together there wouldn't be any Lyle information used in
6 this trial.

7 THE COURT: My ruling on the mistrial would be the
8 same anyway. If it's interpreted that I rubber stamp what
9 y'all agreed to, which is fine with me, the ruling on
10 mistrial would be the same. It goes back to that one key
11 factor.

12 All right. Who is this other witness and what do I
13 need to decide?

14 MS. LINDER: This is Detective Marc Brown. When the
15 defendant was arrested about a week and a half later, there's
16 an audio and video recorded interview. And during the course
17 of that interview, the defendant is asked what his phone
18 number is. And he gives the same phone number as used to set
19 up this buy. So the point of this is, we would ask that
20 Detective Brown be able to testify very briefly about he was
21 involved with the warrant service. He was involved with the
22 Miranda. And this information was given and it was audio
23 video recorded. And then there is a three-and-a-half minute
24 clip that shows the Miranda and the defendant giving his
25 phone number. And the whole purpose of this is, during the

1 trial, we would ask that Detective Brown be able to testify
2 to -- not play any video -- that he was part of a
3 post-Miranda interview with the defendant and he gave the
4 phone number XYZ in that interview.

5 THE COURT: So you need a Denno hearing?

6 MS. LINDER: Yes, Judge.

7 THE COURT: Call your witness.

8 MS. LINDER: Marc Brown.

9 MARC BROWN,
10 having been duly sworn, testifies as follows:

11 THE CLERK: State your first and last name, spelling
12 your last name for the record.

13 THE WITNESS: Marc Brown, B-r-o-w-n.

14 (State's Exh. 7, CD, was marked for
15 identification.)

16 DIRECT EXAMINATION

17 BY MS. LINDER:

18 Q. Good afternoon, Detective Brown. Are you currently
19 employed with the City of Charleston Police Department?

20 A. Yes, ma'am.

21 Q. You've been in law enforcement a number of years?

22 A. Almost 12 years, yes, ma'am.

23 Q. Were you involved in this case, State vs. Gerald
24 Ancrum?

25 A. Yes, ma'am.

1 Q. Were you involved with an interview done of the
2 defendant, Gerald Ancrum?

3 A. Yes, ma'am.

4 Q. Was that interview done at the City of Charleston
5 Police Department headquarters in the interview room?

6 A. Yes, ma'am.

7 Q. And is it audio and video recorded?

8 A. Yes, ma'am.

9 Q. Do you remember the date of that interview?

10 A. I believe it was February 19th.

11 Q. And during the course of that interview, was the
12 defendant given his Miranda rights?

13 A. Yes, ma'am.

14 Q. And was he advised of those verbally or off of a
15 card or both?

16 A. Off of a card and he also -- they gave him a card to
17 sign.

18 Q. Did he indicate that he understood those rights?

19 A. Yes, ma'am.

20 Q. Did he indicate that he wished to waive those
21 rights?

22 A. Yes, ma'am.

23 Q. And did his waiver appear to you to be knowing and
24 voluntary?

25 A. Yes, ma'am.

1 Q. And were you aware during the course of this
2 interview with him or prior to the Miranda before the
3 interview began the age of the defendant?

4 A. I believe so, yes, ma'am.

5 THE COURT: I didn't understand what he said. What
6 did you say?

7 THE WITNESS: I said I believe so.

8 THE COURT: Go ahead.

9 BY MS. LINDER:

10 Q. Were you aware of the education level of the
11 defendant?

12 A. No, ma'am.

13 Q. Did you ask him in the course of this interview how
14 far he went in school?

15 A. Detective Williams did, yes, ma'am.

16 Q. You were in the room, however?

17 A. Yes, ma'am.

18 Q. And just to explain that, there are two people in
19 the room interviewing the defendant?

20 A. Yes, ma'am.

21 Q. You were not the lead person interviewing, however,
22 you were present?

23 A. Yes, ma'am.

24 Q. And did the defendant appear to have any mental
25 defects?

1 A. No.

2 Q. Did he appear to be intoxicated during this?

3 A. No, ma'am.

4 Q. Did the defendant appear to have any physical
5 defects during this?

6 A. No, ma'am.

7 Q. Did the defendant sign a Miranda card?

8 A. Yes, ma'am.

9 Q. Did you sign a Miranda card?

10 A. Yes, ma'am.

11 Q. Was that the same card?

12 A. Yes, ma'am.

13 Q. And did he make -- did the defendant make a
14 statement?

15 A. Yes, ma'am.

16 Q. Did that statement he gave, did it include his
17 current phone number?

18 A. Yes, ma'am.

19 Q. And do you recall what that phone call was?

20 A. 609-2391, 843 area code.

21 Q. And at this time, I show you what's been marked for
22 the limited purposes of this hearing as State's Exhibit 7.
23 Do you recognize this?

24 A. Yes, ma'am.

25 Q. How do you recognize this?

1 A. It's the recording from the interview.

2 Q. And these initials on here, whose initials were
3 these?

4 A. Mine.

5 Q. And does this disk contain a fair and accurate
6 representation of what happened during that interview back on
7 February 19th of 2015?

8 A. Yes, ma'am.

9 MS. LINDER: Your Honor, I would like to publish
10 about a three-and-a-half, four-minute clip that shows the
11 Miranda rights that were given and when the defendant gives
12 his phone number.

13 THE COURT: Yes, ma'am.

14 (Video playing.)

15 BY MS. LINDER:

16 Q. Detective Brown, is that you half off the screen on
17 the far left?

18 A. Yes, that's me.

19 Q. Is that the defendant leaning against the wall in
20 the black shirt?

21 A. Yes, ma'am.

22 Q. Is that the same as the individual who is sitting at
23 the defendant's table?

24 A. Yes, ma'am.

25 (Video playing.)

1 MS. LINDER: That's all the questions I have for
2 you. If you can answer any questions the defense may have.

3 MS. GAY: I have no questions for this witness, Your
4 Honor, or in this motion.

5 THE COURT: All right. Can you play that again? I
6 don't need the whole thing, but I will tell you when to
7 stop.

8 THE COURT: Is that card in evidence?

9 MS. LINDER: It's not in the courtroom. I have a
10 copy of it.

11 (Video playing.)

12 THE COURT: All right. So is the card in the
13 record?

14 MS. LINDER: Your Honor, I have a copy of the card
15 that I'm happy to do -- I can get the one out of evidence and
16 I can have it here later today or first thing tomorrow.

17 THE COURT: Well, do you have any issues about the
18 *Denno* hearing?

19 MS. GAY: Your Honor, I think that he read him his
20 Miranda warnings. My client signed it knowingly and
21 intelligently. So I wasn't planning on raising any issues.
22 I have seen the copy. And it does have my client's name on
23 it.

24 THE COURT: All right. If there's nothing further,
25 the Court finds beyond a reasonable doubt, I know that is not

1 standard, but I find beyond a reasonable doubt that the
2 defendant was properly advised of his rights under the United
3 States Constitution, and specifically under Miranda vs.
4 Arizona. He was properly advised he had a right to remain
5 silent, that any statement he made could and would be used
6 against him in court, that he had the right to have an
7 attorney present and had a right to consult with an attorney,
8 that if he could not afford an attorney, one would be
9 appointed for him at no charge. Basically, he had the right
10 to have the attorney present at all interrogations and
11 interviews.

12 And the Court finds that the State has proven that
13 the defendant voluntarily relinquished his rights and gave a
14 statement of his own free will and accord. The waiver was
15 knowingly and intelligently. The Court further finds that
16 the statement was not a product of duress, undue influence,
17 promise or hope of a reward.

18 Now, watching the video and listening to the audio
19 on it, the setting is appropriate. There does not appear to
20 be anything improper in the way that the interrogation was
21 discussed or presented.

22 So the ruling of the Court is that proper foundation
23 is established. It's admissible in the trial of the case.

24 (State's Exh. 7 is received in evidence.)

25 THE COURT: Anything else?

1 MS. GAY: Your Honor, I just wanted to revisit. I
2 found a case, that's *State v Bostic*. And in that case, which
3 I think is where you got the curative instructions format
4 from for the issue with the mistrial motions and such, says
5 in that case that either they should have granted mistrial or
6 given a curative instruction. And I just wanted to reiterate
7 on the record that I don't think the curative instruction was
8 adequate to cover the situation. And this is the Lyle case
9 that talks about prior bad acts in a drug sale case. And I
10 think that that's probably what you were looking up.

11 I will bring it in the morning, a hard copy of it,
12 or I will e-mail it to you. But I would like to put on the
13 record that I don't believe the curative instruction was
14 enough to cure the problem and to remove the prejudice to my
15 client.

16 THE COURT: Yes, ma'am. I was not looking at any
17 case. I was making it off the top of my head.

18 MS. GAY: I will bring the case to put it into the
19 record, Your Honor. I can bring you the cite tomorrow. I
20 will e-mail it to you tonight, sir.

21 THE COURT: All right. I need you folks here at 10
22 a.m. then. Thank you.

23 (Whereupon, the proceedings adjourn for the day.)

24 (Whereupon, the trial continues on May 24, 2017.)

25 THE COURT: I received the case last night, case

1 from the defense. And this morning I received a brief from
2 the State regarding the issue raised on mistrial.

3 Before I go into those things, yesterday we were
4 talking about rulings and things of that nature. And it was
5 never my intention to indicate that I had allowed the State
6 to go into any prior bad acts. I had, in the in-camera
7 hearing immediately before the witness bringing that out, I
8 had stated the State could not go into prior drug
9 transactions.

10 I also did not mean to suggest in any way that the
11 defense attorney was not allowed to rely upon the
12 representation of the State as to what they would or would
13 not go into. I would have done the same thing. It helps
14 move trials along. So I don't want to put any kind of
15 chilling effect on attorneys reaching agreements on motions
16 that are filed pretrial.

17 Now, having said that, it goes back to the issue
18 that I discussed yesterday. And the mistrial motion, I told
19 you I would revisit it today if you wanted me to. I thought
20 about it overnight. Obviously, it's not an ideal situation,
21 but I haven't come up with anything changing my mind. The
22 *Bostick* case I think is distinguishable.

23 In this instance, you have someone who, based on
24 testimony thus far, had some prior relationship with the
25 defendant, knew the defendant. It was unlike the *Bostick*

1 case.

2 Moreover, you have a video in this case. I don't
3 know about that other case. The videos that I've seen in
4 trial over the years have typically been grainy and often
5 they were black and white. This one is about as clear a
6 quality of video as one could hope for. And it appeared to
7 show the defendant. It appeared to show him holding a bag of
8 some white-looking substance.

9 So as far as the second part of the inquiry the
10 Court of Appeals engaged in in the case cited by the defense,
11 I would think they would come to a different conclusion, but
12 that's not my job. That's their job, if they review this
13 case. So if you want me to put anything else on the record,
14 I would be happy to let you do it. I find no basis to change
15 my ruling.

16 The State need to put anything on the record?

17 MS. LINDER: Nothing further from the State, Your
18 Honor.

19 THE COURT: Defense need to put anything on the
20 record?

21 MS. GAY: Your Honor, I was given a motion from the
22 State -- or response from the State this morning. And I
23 would just like to state a few things. Though *Bostick* is
24 distinguishable in some facts, they are talking about a
25 pre-existing friendship -- and all of this is about whether

1 or not it's prejudicial or cumulative, kind of what all these
2 cases are talking about. And having any type of relationship
3 or friendship or knowledge of a person is completely
4 different than testifying in front of the jury in such a way
5 that you would acknowledge and admit and put direct evidence
6 in front of the jury that this person, my client, has sold
7 drugs to the person who is the witness in the past. That's
8 not cumulative. That's, you know, completely prejudicial.
9 It's inadmissible under Lyle. And I believe it does rise to
10 the level of mistrial.

11 In *Bostick* it states that: The inevitable tendency
12 of such evidence is to raise a legally spurious presumption
13 of guilt in the minds of the jury. I understand, and I said
14 this yesterday, you have given a curative instruction. I
15 just don't think that is sufficient to take that out of the
16 minds of the jurors. And that comment that is often said,
17 once the bell is rung, you hear the bell, you can't unhear
18 it.

19 So, initially, with *Bostick*, I don't believe that
20 the types of things that she knew about him, that she had
21 previously testified to, would show that he would have any
22 ability to make an inference of guilt in this case. It was
23 just ways that she knew him.

24 And then I believe that she uses the next case, that
25 *State v. Smith*. And she, once again, is referring to

1 cumulative evidence and is making this argument that this is
2 all cumulative because of the other things, similar to what
3 you are saying. Your Honor, again, this is not cumulative.
4 This is inadmissible, constitutionally inadmissible evidence
5 which creates an unfair trial now for my client.

6 This is not -- there's different things that
7 witnesses had said, that the witness had said about her
8 benign, if you want to call it, vanilla, if you want to call
9 it, things about how she knew that he may be willing to buy
10 drugs from her. But she never said in any other occasion, he
11 has -- I have bought drugs from him in the past, therefore, I
12 was calling him for that reason.

13 If she had not answered the question and we had sat
14 down, obviously, Ms. Linder would have argued to the jury at
15 closing argument, let's just make the assumption and
16 inference that, yeah, you know, knew him, what is "knew him"
17 to y'all. I understand all of that. But having the witness
18 state that evidence in front of the jury, that she had had
19 previous contact with him in terms of prior drug deals,
20 crosses the lines. And it's not just cumulative. It's
21 constitutionally damaging.

22 And then the last matter that she says is that -- it
23 says there was no other evidence of any type of similar
24 criminal act. I think she states a case *State v. Edwards*
25 having something to do with somebody's state of mind that

1 said that, not offered to establish that Edwards actually
2 ever hit her mother, as it being a state of mind. This
3 comment went directly to guilt or innocence, selling drugs to
4 her, not just in this case, but in other cases. And there's
5 absolutely no way to unring that bell. There's absolutely no
6 way that it does not create an influence on the jury to
7 decide guilt in this case as well.

8 And I would just -- I went through her motion. And
9 I just am distinguishing the things that her motion stated.
10 And I just -- I don't believe that there's any way that we
11 could just call this cumulative, because it is -- it goes to
12 the heart of the matter of guilt. She's testifying, I bought
13 from him before; I bought from him today. Directly the same
14 conduct.

15 THE COURT: Once again, it's not an ideal situation.
16 I have to make a ruling in the context of a mistrial motion,
17 which is a rather drastic thing to do. I have to look at it
18 overall as to whether I believe that the defendant is
19 receiving a fair trial, allowing that evidence not to form
20 the basis of a mistrial. I have instructed the jury. I've
21 given them a curative instruction.

22 I mentioned yesterday, and probably inartfully, said
23 that I wasn't going to give a limiting instruction under Rule
24 404(b), that I thought that the more proper procedure in this
25 instance was to give a curative instruction, which I did.

1 It may have been possible to find the evidence to be
2 admissible under one of those Rule 404(b) aspects, but,
3 again, having re-thought that, I still believe that the
4 proper thing to do was to not allow a motion for a mistrial
5 and give a curative instruction. And I can see that others
6 may think differently. And I can see that I may be wrong,
7 but I'm not purposely being wrong. I'm doing what I think is
8 appropriate under the circumstances.

9 All right. You have how many more witnesses, did
10 you say?

11 MS. LINDER: We have four or five. They are all
12 extremely short with chain and one officer. I think we will
13 have less than an hour testimony.

14 THE COURT: Are you ready for the jury?

15 MS. LINDER: Yes, Judge.

16 THE COURT: Is the Defense?

17 MS. GAY: Yes, I'm ready. I have -- I am not going
18 to ask any questions. I know who her witnesses are. So it
19 will be very quick.

20 THE COURT: Thank you. Bring the jury.

21 (Whereupon, the jury returns to open court at 10:29
22 a.m.)

23 THE COURT: Members of the jury, before you left
24 yesterday, I gave you a curative instruction, an instruction
25 to disregard a portion of the testimony of Tessa Morris. And

1 I told you that if you had any doubt about your ability to
2 disregard that, you would write me a note.

3 Anybody need to give me anything?

4 (No response from the jury.)

5 THE COURT: All right. We will proceed with the
6 State's case. Call your witness.

7 MS. LINDER: The State would call Detective Marc
8 Brown.

9 MARC BROWN,
10 having been duly sworn, testifies as follows:

11 THE CLERK: State your full name and spell your last
12 for the record.

13 THE WITNESS: Marc Brown, B-r-o-w-n.

14 DIRECT EXAMINATION

15 BY MS. LINDER:

16 Q. Good morning.

17 A. Good morning.

18 Q. Where are you employed?

19 A. Charleston Police Department.

20 Q. And what is your position with Charleston Police
21 Department?

22 A. Team One patrol, Community Action Team.

23 Q. What was your position and your duties back in
24 February of 2015?

25 A. I was an intelligence investigator with the field

1 Charleston unit at Charleston Police Department.

2 Q. And what items did you investigate with the
3 intelligence unit?

4 A. Wide range of crimes, anything from counterfeit
5 money, illegal firearm sales, illegal drug sales, shoplifting
6 rings, that sort of.

7 Q. And how long have you been in law enforcement?

8 A. 12 years.

9 Q. Can you tell the jury a little bit about your
10 education and training experience?

11 A. I've been in law enforcement for 12 years. Six of
12 those I spent at the Hanahan Police Department. I was --
13 while I was there, I was a narcotics detective for three
14 years with the Charleston County Sheriff's Office, metro
15 major case unit. I was also a patrol supervisor. I've been
16 at the Charleston Police Department for about six years. And
17 I spent over three and a half years as a field intelligence
18 investigator.

19 Education-wise, I have a bachelor's degree in
20 political science. I have a Master's from Charleston
21 Southern University in criminal justice. And I'm currently
22 pursuing a doctorate in organizational leadership from Grand
23 Canyon University.

24 Q. And were you working back in February of 2015?

25 A. Yes, ma'am.

1 Q. And were you involved with this case, the State vs.
2 Gerald Ancrum, back in that time frame in February?

3 A. Yes, ma'am.

4 Q. And can you tell us about your involvement on the
5 day of February 5th of 2015 with Gerald Ancrum?

6 A. We conducted a controlled purchase of narcotics. I
7 was -- my involvement, I was assigned to surveillance and
8 also evidence collection and storage.

9 Q. As part of your surveillance, where did you end up
10 going to do that surveillance?

11 A. We went to Norton Car Stereo, which is the adjacent
12 parking lot to Dunkin' Donuts.

13 Q. Is that here in Charleston County?

14 A. Yes, ma'am.

15 Q. In West Ashley?

16 A. Yes, ma'am.

17 Q. And when you were in the vehicle, which direction
18 were you facing? How were you parked?

19 A. Norton Car Stereo would be behind me, and in front
20 of me was Highway 17. So I was faced out towards Highway
21 17.

22 Q. And were you part of a briefing that took place
23 prior to going out there and starting surveillance?

24 A. Yes, ma'am.

25 Q. And so were you aware of the details of the

1 informant and of the undercover officer and everything?

2 A. Yes, ma'am.

3 Q. I'm going to show you what's already been entered as
4 State's Exhibit 2. If you can do your best, can you explain
5 again where you were? And I will try to point it out for
6 you.

7 A. Yes, ma'am.

8 Q. First of all, what's this?

9 A. This is Highway 17.

10 Q. Okay. And then what is this?

11 A. That's Dunkin' Donuts.

12 Q. And this?

13 A. That is one of the buildings adjacent to Norton Car
14 Stereo.

15 Q. And so if you can kind of describe to me, and I will
16 use my finger to try to point out where you were.

17 A. Okay. If you get those cars closer to Highway 17, I
18 was about four or five spaces in faced out, facing out
19 towards 17.

20 Q. Did four or five in facing out towards 17?

21 A. Yes, ma'am.

22 Q. Okay. So as you were doing the surveillance, were
23 you able to be in contact with anyone else who was involved
24 with this operation?

25 A. Yes, ma'am, via radio.

1 Q. And did you see the defendant or his vehicle that
2 day?

3 A. I saw his vehicle, yes, ma'am.

4 Q. What vehicle was that?

5 A. It was a white BMW with a King Mack paper tag on
6 it.

7 Q. When did you see his vehicle that day?

8 A. After the informant got in the vehicle, I saw -- the
9 defendant drove right behind me while I was parked out facing
10 towards 17.

11 Q. And you say drove right behind you; your vehicle is
12 still four or five spots in?

13 A. Yes, ma'am.

14 Q. Drove behind you, so drove this direction?

15 A. Yes, ma'am.

16 Q. Okay. To your knowledge, did a drug deal happen
17 that day?

18 A. Yes, ma'am.

19 Q. After the deal went down, did you ever handle or
20 were you ever involved with the drugs themselves?

21 A. Yes, ma'am. After the deal, when we met back at the
22 meeting location, I took the drugs from the vehicle.

23 Q. And where were the drugs in the vehicle?

24 A. In the cupholder.

25 Q. And how did you know they were going to be in the

1 cupholder?

2 A. I gave Branham instructions to leave them in the
3 cupholder.

4 Q. All right. And so did you handle the drugs that
5 day?

6 A. Yes, ma'am.

7 Q. And you retrieved them from the cupholder?

8 A. I did.

9 Q. And did you conduct any field test on those drugs?

10 A. Yes, ma'am. Once I had them in my possession, I
11 took them back to headquarters at the Charleston Police
12 Department. And conducted a field test for the tan powder
13 substance. And it tested presumptive to be heroin. And I
14 conducted a field test for the off-white rock-like substance
15 and it field tested presumptive to be cocaine.

16 Q. Can you just explain to the jury, what is a field
17 test?

18 A. What a field test is, it's a series of chemicals
19 that you put in contact with the substance that you believe
20 to be illegal substance. And it's supposed to have a instant
21 reaction to let you know presumptive that it's either going
22 to be heroin or cocaine, or whatever you believe it to be.

23 Q. And after conducting the field test at the city
24 police department in evidence, what did you do with the
25 evidence?

1 A. After I conducted the field test, I weighed the
2 evidence. I got an approximate weight of one gram for each
3 substance. After that, I packaged the evidence up according
4 to our procedures and put it into an evidence locker.

5 Q. When you weigh them, do you dump everything out and
6 weigh them? How do you weigh them?

7 A. No, I left everything in the package.

8 Q. So that one gram is package, everything?

9 A. Yes, ma'am.

10 Q. And did the drugs remain in your sole care, custody
11 and control from taking them out of the cupholder all the way
12 until you sealed them and dropped them off at city evidence?

13 A. Yes, ma'am.

14 MS. LINDER: Your Honor, may I approach the witness?

15 THE COURT: Yes, ma'am.

16 BY MS. LINDER:

17 Q. At this time, I show you what's been marked as
18 State's Exhibit 4. If you can please look at this. Do you
19 recognize it?

20 A. Yes, ma'am.

21 Q. How do you recognize it?

22 A. My initials are on each package.

23 Q. And does it appear in substantially the same
24 condition as it did back on February 5th, 2015?

25 A. Yes, ma'am.

1 Q. I would like to shift to about a week or so later
2 after February the 5th. I would like to move to February
3 19th. Were you involved with a warrant service --

4 A. Yes, ma'am.

5 Q. -- done on this defendant that day?

6 A. Yes, ma'am.

7 Q. And where did that warrant service occur?

8 A. It occurred at Ashley Oaks Apartments. That's 78
9 Ashley Hall Plantation Road.

10 Q. Is that in West Ashley also?

11 A. Yes, ma'am.

12 Q. And did you observe the defendant that day?

13 A. I did.

14 Q. And what was he in?

15 A. He was driving a white BMW.

16 Q. Is it the same white BMW --

17 A. Yes, ma'am.

18 Q. -- that he was in on February the 5th?

19 A. Yes, ma'am.

20 Q. At this time, I would like to show you what's been
21 marked for identification as State's Exhibit 5. Do you
22 recognize that?

23 A. Yes, ma'am.

24 Q. How do you recognize it?

25 A. That's the white BMW the defendant was driving.

1 Q. And he was driving it, and then right outside of it
2 when you assisted in effecting the warrant service a week or
3 so after this drug sale?

4 A. Yes, ma'am.

5 Q. And does that fairly and accurately represent the
6 vehicle that day?

7 A. Yes, ma'am.

8 MS. LINDER: Your Honor, at this time the State
9 would seek to admit State's Exhibit 5 into evidence.

10 THE COURT: Any objection?

11 MS. GAY: No, sir.

12 THE COURT: Mark it in evidence.

13 (State's Exh. 5, Photo of car, is received in
14 evidence.)

15 BY MS. LINDER:

16 Q. I'm going to put this picture up here. Can you
17 explain to the jury what this is, what State's Exhibit 5 is?

18 A. It's a picture of the defendant's vehicle after we
19 took him into custody at Ashley Hall Apartments.

20 Q. And this was what date?

21 A. This was February 19th.

22 Q. And this buy that we are here for today occurred
23 when?

24 A. February 5th.

25 Q. Is this the same vehicle that pulled up behind you

1 when you were doing surveillance in the front of that stereo
2 place on Highway 17 in West Ashley on February 5th?

3 A. Yes, ma'am.

4 Q. After the defendant was arrested on February the
5 19th, were you involved with any sort of interview that was
6 done with the defendant?

7 A. Yes, ma'am. We took the defendant down to
8 headquarters into an interview room. And myself and
9 Detective Williams conducted an interview.

10 Q. And was that statement and interview recorded?

11 A. Yes, ma'am.

12 Q. And was the defendant Mirandized or read his
13 rights?

14 A. Yes. He was read his Miranda rights from a card,
15 which he initialed and signed, and I also signed.

16 Q. And during the course of that interview, did the
17 defendant provide his current phone number?

18 A. Yes, ma'am, he did.

19 Q. What phone number did he give?

20 A. 609-2391.

21 MS. LINDER: I have no further questions for this
22 witness. If you can please answer anything that the Defense
23 may have.

24 THE WITNESS: Yes, ma'am.

25 THE COURT: Cross-examination.

1 MS. GAY: Thank you, Your Honor. May it please the
2 Court.

3 CROSS-EXAMINATION

4 BY MS. GAY:

5 Q. Detective Brown, I just have one issue. When you
6 were describing to the jury how the weigh process is done,
7 and that you take it out and you do all that, bottom line,
8 you are trying to get it out of the plastic bags; is that
9 correct?

10 A. No, ma'am.

11 Q. You weigh it with the plastic bags on?

12 A. Yes, ma'am.

13 Q. So you weigh it with the plastic bags on, and I
14 guess, a chemist will take it out of the plastic bags?

15 A. Yes, ma'am.

16 Q. Those little plastic bags, do you have any evidence
17 to present to this jury that there were any of my client's
18 fingerprints on that plastic bag?

19 A. No, ma'am.

20 MS. GAY: I have no further questions, Your Honor.

21 THE COURT: Thank you. Redirect?

22 MS. LINDER: No redirect, Your Honor.

23 THE COURT: Thank you, sir. You may step down.

24 Call your next witness.

25 MR. SOWARDS: The State calls Karen Ford.

1 MS. LINDER: Your Honor, I ask that Detective Brown
2 be excused.

3 THE COURT: Any objection?

4 MS. GAY: No, sir, without objection.

5 THE COURT: You are free to go. Thank you, sir.

6 KAREN FORD,

7 having been duly sworn, testifies as follows:

8 THE CLERK: Spell your last name, stating your full
9 name for the record.

10 THE WITNESS: F-o-r-d, Karen.

11 DIRECT EXAMINATION

12 BY MR. SOWARDS:

13 Q. Good morning, Ms. Ford. Where are you employed
14 right now?

15 A. Charleston County Sheriff's Office.

16 Q. Prior to your employment with the Sheriff's Office,
17 were you employed at the City of Charleston Police
18 Department?

19 A. Yes.

20 Q. Were you employed there in February of 2015?

21 A. Yes.

22 Q. And what capacity were you employed there?

23 A. I was the administrative clerk.

24 Q. And were you also employed in the evidence unit?

25 A. Yes.

1 Q. And what were your duties as it relates to the
2 evidence unit?

3 A. To retrieve evidence that was stored either in a
4 locker or mailbox and submit that evidence through our
5 evidence system.

6 Q. Can you please describe to the jury how the
7 submission of evidence works?

8 A. We log it in. After the officer submits it, we log
9 it into the CPD evidence per policy.

10 Q. And did you handle evidence or receive evidence in
11 this case, State v. Gerald Ancrum?

12 A. Yes.

13 Q. When did you handle that evidence?

14 A. It was February the 5th, 2015.

15 Q. From whom did you receive that evidence?

16 A. Officer Brown.

17 Q. And what evidence did you handle?

18 A. I handled the drugs in that case and also the --

19 Q. Do you recall which drugs you handled?

20 A. It was the powder substance which was cocaine.

21 Q. Did you handle any other drugs in that case?

22 A. Per chain of custody, no.

23 MR. SOWARDS: Beg the Court's indulgence. May I
24 approach the witness, Your Honor?

25 THE COURT: Yes.

1 BY MR. SOWARDS:

2 Q. As part of the evidence process, is there a log
3 created indicating which evidence was received, who received
4 it, where it was stored?

5 A. Yes.

6 Q. I'm going to hand you this.

7 (State's Exh. 8, Chain of evidence, was marked for
8 identification.)

9 BY MR. SOWARDS:

10 Q. I will hand you what's been marked for
11 identification purposes as State's Exhibit 8. Do you
12 recognize that?

13 A. Yes.

14 Q. And what does that indicate that you handled on
15 February the 5th?

16 A. It was the clear plastic bag containing tan powder
17 substance, and a clear plastic bag containing an off-white
18 rock-like substance.

19 Q. And did you handle that evidence again after that?

20 A. No.

21 MR. SOWARDS: Beg the Court's indulgence.

22 BY MR. SOWARDS:

23 Q. So just to be clear, you handled two different bags
24 of drugs in this case?

25 A. Yes, uh-huh.

1 MR. SOWARDS: No further questions, Your Honor.
2 Please answer any questions Ms. Gay might have.

3 THE COURT: Cross?

4 MS. GAY: I have no questions for this witness.

5 THE COURT: Thank you, ma'am. You may step down.

6 MR. SOWARDS: Your Honor, may Ms. Ford be excused?

7 THE COURT: Any objection?

8 MS. GAY: No, sir.

9 THE COURT: You are free to go. Thank you, ma'am.

10 MR. SOWARDS: The State calls Brian Hinton.

11 BRIAN HINTON,

12 having been duly sworn, testifies as follows:

13 THE CLERK: Say your first and last name, spelling
14 your last name for the record.

15 THE WITNESS: Brian Hinton, H-i-n-t-o-n.

16 DIRECT EXAMINATION

17 BY MR. SOWARDS

18 Q. Good morning, Mr. Hinton.

19 A. Good morning.

20 Q. Where are you employed?

21 A. Charleston Police Department.

22 Q. How long have you been with the Charleston Police
23 Department?

24 A. 17 years.

25 Q. And what is your position there?

1 A. I'm the evidence custodian.

2 Q. Could you please describe for the jury your duties
3 as evidence custodian?

4 A. We accept the items that are submitted into
5 evidence, validate the voucher that matches up with what's
6 submitted from the officers, assign it a storage location and
7 put it in the evidence room to store it until it comes to
8 court, maintain a chain of custody from there.

9 Q. Can you explain from the jury how items are actually
10 submitted into evidence?

11 A. The officer packages it, seals it, initials it.
12 They create a voucher for it to say what items they are
13 submitting. And then if we are there, they will give it to
14 us in a hand-to-hand transaction. If it's after hours, they
15 put it in a secured locker and we get it the following
16 morning. Once we receive it, we validate that the voucher
17 matches up with what they are submitting into us. And at
18 that point, validating mean sealed, initialed, says what they
19 turned in is what we are getting. Validate all that
20 information, assign a storage location, and then put it in
21 the bag.

22 Q. And once an item is submitted into evidence, is it
23 preserved within a room until someone removes it?

24 A. That's correct.

25 Q. And can anyone take evidence out?

1 A. No, sir.

2 Q. And I think you may have described this earlier, but
3 how is it tracked?

4 A. With a chain of custody. So if someone does come
5 and take it out, they have to sign an electronic signature
6 pad to show it went out. And same thing when they bring it
7 back in.

8 Q. Did you handle evidence in this case?

9 A. I did.

10 Q. State vs. Gerald Ancrum?

11 A. Yes, sir.

12 Q. What evidence did you handle?

13 A. It was bag one, item one, which is a clear plastic
14 bag containing an off-white rock-like substance; and bag two,
15 item one, which was a clear plastic bag containing a tan
16 powder substance; paper tag, which was bag three, item one;
17 search warrant for a BMW.

18 Q. Mr. Hinton, I want to draw your attention to the
19 clear plastic bag with off-white rock-like substance and the
20 tan powder substance. Does the chain of custody indicate
21 when those items were handled and who handled them?

22 A. It does.

23 Q. When were those items handled and who handled them?

24 A. On February 9th, 2015 at 8:56 in the morning, Ms.
25 Linda Wilson signed them out to Susan Payne to transport to

1 the lab for testing.

2 On 2/12/2015 at 9:45 in the morning, Susan Payne
3 brought them back to myself. And they were stored in our
4 locker until they came down to the courthouse on 5/19/2017.
5 That's for the off-white rock-like substance.

6 The tan powder substance, 2/9/2015, it was signed
7 out. Ms. Wilson signed it over to Ms. Payne to take it to
8 the lab for testing. On 2/12/2015, 9:45, Ms. Payne brought
9 them back to me, which were stored. I stored them in our
10 locker.

11 5/19/2017, they were signed back over to
12 Investigator Barfield to bring to court.

13 Q. And you mentioned Linda Wilson, is she employed at
14 the City of Charleston Police Department?"

15 A. She is.

16 Q. And she's currently employed there?

17 A. She is.

18 Q. Is she working today?

19 A. She's not. She's out on medical leave.

20 THE COURT: I didn't understand what he said.

21 THE WITNESS: She's out on family medical leave.

22 Her husband had surgery.

23 MR. SOWARDS: Beg the Court's indulgence. I have no
24 further questions at this time. Please answer any Ms. Gay
25 might have.

1 THE COURT: Any cross-examination?

2 MS. GAY: No, sir.

3 THE COURT: Thank you, sir. You may step down.

4 MR. SOWARDS: Your Honor, may Mr. Hinton be excused?

5 THE COURT: Any objection?

6 MS. GAY: No, sir.

7 THE COURT: You may be excused.

8 MR. SOWARDS: The State calls Susan Payne.

9 SUSAN PAYNE,

10 having been duly sworn, testifies as follows:

11 THE CLERK: State your first and last name, spelling
12 your last name for the record.

13 THE WITNESS: My name is Susan Payne, P-a-y-n-e.

14 DIRECT EXAMINATION

15 BY MR. SOWARDS:

16 Q. Good morning. Where are you employed?

17 A. City of Charleston Police Department.

18 Q. And how long have you been with the City of
19 Charleston Police Department?

20 A. Approximately 12 years.

21 Q. And what capacity are you employed with the City of
22 Charleston Police Department?

23 A. I'm the LIMS administrator and evidence custodian
24 for the forensic services division.

25 Q. And what are your duties as it relates to that?

1 A. I'm responsible for the database that we use to
2 store the information regarding the analysis of our cases.
3 And I'm also responsible for transporting evidence to and
4 from our different laboratories.

5 Q. And, Ms. Payne, did you handle any evidence in this
6 case, State v. Gerald Ancrum?

7 A. Yes, sir.

8 Q. And what evidence did you handle?

9 A. I handled items 1-1 and items 2-1.

10 Q. And what are those items?

11 A. I don't have the description in front of me. I just
12 have the item number.

13 Q. What did you do with the evidence after you received
14 it?

15 A. After I received it, I brought it to the lab where I
16 entered it into our database and then I placed it into our
17 safe.

18 Q. I guess I should ask, where did you receive it?

19 A. The evidence room at the police department.

20 Q. On what date did you --

21 A. I received it on February 9th, 2015.

22 Q. And did you handle that evidence again after
23 February 9th?

24 A. I did. I returned it on February 12th of 2015.

25 Q. And did you have the sole care, custody and control

1 of the evidence while it was in your possession?

2 A. I did, yes, sir.

3 Q. And according to the City of Charleston Police
4 Department policy, would you have accepted the evidence if it
5 appeared to have been tampered with?

6 A. No, sir.

7 MR. SOWARDS: Beg the Court's indulgence. No
8 further questions. Please answer any that Ms. Gay might
9 have.

10 THE COURT: Cross?

11 MS. GAY: I have no further questions, Your Honor.

12 THE COURT: Thank you, ma'am. You may step down.

13 MR. SOWARDS: Your Honor, may Ms. Payne be excused?

14 THE COURT: Any objection?

15 MS. GAY: No, Your Honor.

16 THE COURT: You are free to go. Thank you, ma'am.

17 Call your next witness.

18 MR. SOWARDS: The State calls Ashley Earl.

19 ASHLEY EARL,

20 having been duly sworn, testifies as follows:

21 THE CLERK: Please state your full name and spell
22 your last name.

23 THE WITNESS: Ashley Earl, E-a-r-l.

24 DIRECT EXAMINATION

25 BY MR. SOWARDS:

1 Q. Good morning. Were you employed at the City of
2 Charleston Police Department in February of 2015?

3 A. Yes, I was.

4 Q. And what capacity were you employed there?

5 A. I was a criminalist for them.

6 Q. Can you explain what a criminalist is?

7 A. Yes. We get in evidence, drugs, controlled
8 substances, fire and debris analysis and serology cases, and
9 we analyze them using different scientific methods to
10 determine what they are.

11 Q. What type of training and experience do you have?

12 A. I have a BS in biology. I also worked as a chemist
13 for an environmental lab about six years and then moved over
14 to forensics, and completed a training program through the
15 department in order to become certified.

16 Q. And have you had the occasion to chemically analyze
17 substances to determine whether the substances is or contains
18 a controlled substance?

19 A. Yes.

20 Q. And how many times would you say that you did that?

21 A. During my employment at City of Charleston, I
22 analyzed 2,696 cases.

23 Q. Was that just a regular part of your duties as a
24 criminalist?

25 A. Yes, it was daily duty.

1 Q. What kind of equipment do you use to test items for
2 controlled substances?

3 A. We use balances. We use control color test. We use
4 an FTIR, which is a Fourier transform infrared spectrometer
5 and a GCMS, which is gas chromatography-mass spectrometry and
6 then also the microscope for some materials.

7 Q. And is that equipment precise and accurate in its
8 testing ability?

9 A. Yes, it is.

10 Q. And after making these analyses, do you produce a
11 report?

12 A. Yes, I do.

13 Q. Have you previously been admitted as an expert on
14 drug analysis?

15 A. Yes, I have.

16 MR. SOWARDS: Your Honor, at this time, the State
17 would move to have Ms. Earl designated as an expert in the
18 area of drug analysis.

19 THE COURT: Any voir dire?

20 MS. GAY: No, Your Honor. I have no objection to
21 the qualifications.

22 THE COURT: So recognized. You may continue.

23 BY MR. SOWARDS:

24 Q. Ms. Earl, did you analyze any substances in this
25 case?

1 A. Yes, I did.

2 MR. SOWARDS: May I approach the witness, Your
3 Honor?

4 THE COURT: Yes, sir.

5 BY MR. SOWARDS:

6 Q. I will hand you what has been marked for
7 identification purposes as State's Exhibit 3. Do you
8 recognize that?

9 A. Yes. This is my lab report.

10 Q. And how do you recognize that as your lab report?

11 A. Has my signature down at the bottom.

12 Q. When was that report prepared?

13 A. It was prepared February 10th, 2005.

14 Q. Who is the subject of that report?

15 A. Gerald Jarrod Ancrum.

16 THE COURT: What date did you say?

17 MR. SOWARDS: What date?

18 THE WITNESS: The report was produced February 10th,
19 2005.

20 THE COURT: Go ahead.

21 MR. SOWARDS: 2005?

22 THE WITNESS: 2015. I'm so sorry.

23 MR. SOWARDS: Your Honor, at this time, the State
24 would seek to admit Exhibit 3 and publish it for the jury.

25 MS. GAY: No objection, Your Honor.

1 THE COURT: Mark it in evidence, please.

2 (State's Exhibit 3, Drug analysis, is moved into
3 evidence.)

4 BY MR. SOWARDS:

5 Q. Can you describe for the jury what we are looking at
6 here?

7 A. Yes. If you look under the evidence tab, it has two
8 items that were submitted with the case. The first one was a
9 plastic bag with rock-like substance. And the second one was
10 a plastic bag with tan powder.

11 Underneath that, you will see the item number, the
12 weight I obtained, the result, and the methods that I used to
13 determine.

14 Q. I will indicate, is that your signature right there?

15 A. Yes, yes.

16 Q. And what test did you perform on these drugs?

17 A. So I performed -- well, we always do a weight, which
18 is recorded in the beginning. I did a color test on both of
19 these. And I did an FTIR for the cocaine base. And a GC-MS
20 with the color test for the heroin.

21 Q. What were the results of those tests?

22 A. The results were that the first item contained
23 cocaine base and the second item contained heroin.

24 Q. I think I may have asked you, but just to clarify,
25 were you able to determine weights for the items that you

1 tested?

2 A. Yes. And they are presented up there, 0.57 grams
3 for item 1, and 0.80 grams for item 2.

4 Q. At this time, I will show you what has been marked
5 for ID as State's Exhibit 4. Do you recognize those items?

6 A. Yes. These are the items that were produced in the
7 case.

8 Q. And how do you recognize them as the items?

9 A. They have the lab number, the item number, the
10 weight and my initials.

11 Q. Do they appear to be in substantially the same or
12 substantially the same condition as they were when you tested
13 them?

14 A. Yes.

15 Q. And would you have accepted those items into the lab
16 if they appeared -- it appears they have been tampered with?

17 A. No.

18 MR. SOWARDS: Your Honor, at this time the State
19 would seek to admit Exhibit 4 into evidence.

20 THE COURT: Any objection?

21 MS. GAY: No, Your Honor.

22 THE COURT: Marked in evidence please, ma'am.

23 (State's Exhibit 4, Drugs, was received in
24 evidence.)

25 MR. SOWARDS: I have no further questions at this

1 time. Please answer any Ms. Gay might have.

2 THE COURT: Cross?

3 CROSS-EXAMINATION

4 BY MS. GAY:

5 Q. Hey, I'm Melissa Gay. How are you?

6 A. Good. How are you?

7 Q. When you had your stuff that was submitted to you,
8 item 1-1 and 2-1, they came in little plastic bags?

9 A. Yes.

10 Q. And when you weigh them, you actually take it out of
11 the little plastic bags?

12 A. We do.

13 Q. And so when you package everything up and send it
14 back, you send it right back to the evidence lady?

15 A. Yes. We place it in the safe in our lab, and then
16 she takes it from the safe and brings it back to the evidence
17 department.

18 Q. You don't have any testimony today that the plastic
19 bags were ever tested for fingerprints?

20 A. No, I do not.

21 MS. GAY: That's all I have, Your Honor.

22 THE COURT: Thank you.

23 Redirect?

24 MR. SOWARDS: None, Your Honor.

25 THE COURT: Thank you, ma'am. You may step down.

1 MR. SOWARDS: Your Honor, may Ms. Earl be excused?

2 THE COURT: Any objection?

3 MS. GAY: No, sir.

4 THE COURT: You are free to go. Thank you.

5 Any other witnesses.

6 MS. LINDER: At this time, the State rests.

7 THE COURT: Ladies and gentlemen of the jury, I told
8 you in my opening remarks to you that when the State rests, I
9 have to discuss legal issues with the attorneys. This
10 typically takes 10 to 20 minutes. As soon as I can, I will
11 get you back out here. But I have to do this while you are
12 back in the jury room. Don't discuss the case. I will send
13 for you as quickly as I can.

14 (Whereupon, the jury leaves open court at 11:02
15 a.m.)

16 THE COURT: Any motions?

17 MS. GAY: Yes, sir. At this time, I would make a
18 motion for a directed verdict on my client's behalf.
19 Particularly, in light of your rulings having to do with my
20 motions to -- for mistrial for, one, the Lyle problem and
21 prior bad acts issue, and two, the prosecutorial misconduct
22 issue, which you also ruled against, I think that this case
23 should have been dismissed, or, you know, grant should have
24 been granted my motion for mistrial.

25 And in the light most favorable, if you take away,

1 you know, I believe that there's not enough evidence to
2 establish the elements of the offense in this case, but,
3 primarily, Your Honor, my motion for directed verdict is
4 based on your prior rulings. And we preserve those for the
5 record. I understand that. But I want to reiterate all that
6 at this time.

7 THE COURT: Thank you, ma'am. They are jury issues.
8 And your motion is effectively denied.

9 MS. LINDER: Thank you, Your Honor. My client does
10 want to testify. I don't know if you want to do that now.

11 THE COURT: Yes, ma'am. I want to cover with him,
12 his rights.

13 Mr. Ancrum, I have to go over certain things with
14 the folks at this stage of the trial, regardless of what they
15 are on trial for. And I need your responses under oath.
16 Will you raise your right hand for me, please.

17 (Whereupon, the defendant is sworn.)

18 THE COURT: I just need you to speak up so this lady
19 can take down what we say. All right. Mr. Ancrum, we have
20 reached the stage of the trial where the State has rested.
21 And the next thing that would happen, if you want it to, is
22 that your side is given the opportunity to present evidence
23 for the jury to consider. Do you understand where we are in
24 the trial?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Now, that doesn't change any burden of
2 proof. The burden of proof remains with the State throughout
3 the trial, regardless of whether your side offers any
4 evidence or not. Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Now, in that regard, if you wanted to
7 testify, you certainly would be allowed to testify. If you
8 wanted other people to testify on your behalf or wanted to
9 offer other evidence through other folks, that is fine too.
10 You understand?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: But nobody can force you to testify. Do
13 you understand?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You have an absolute right to remain
16 silent. And if you choose not to testify, I'm going to tell
17 that jury that they cannot hold your silence against you in
18 any way at all. They can't discuss it in the jury room. It
19 is not to enter their mind in making a decision whether the
20 State has proven you guilty or failed to prove you guilt. Do
21 you understand?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: If you choose to testify, you obviously
24 subject yourself to cross-examination. You know that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And do I need to do anything about
2 clarifying what, if anything, the State would be allowed to
3 ask him about his prior criminal record for impeachment
4 purposes?

5 MS. LINDER: Judge, I don't think that he has
6 anything as far as dishonesty that would come in. It would
7 be only if he opens the door for other items. Everything
8 else in his record are drugs, drug-related charges. And he
9 has a false information from 2009 that I would potentially
10 seek to admit if he were to testify, and one from 2013.
11 Otherwise, he has an entirely drug record.

12 THE COURT: All right. So if he takes the stand,
13 what do you intend to ask him?

14 MS. LINDER: If he were to take the stand, I believe
15 that he has a 2009 conviction for false information to
16 police. He also has a 2013 conviction for false information
17 to police. I believe both of those would come in if he
18 testifies. And all of his other convictions, I do not
19 believe would come in unless and until you were to open the
20 door to it. It's all driving and drug-related incidents.

21 THE COURT: Doesn't carry more than a year?

22 MS. LINDER: Pardon me?

23 THE COURT: Rule 609 deals with defenses that carry
24 more than a year.

25 MS. LINDER: Right. All his drug-related offenses,

1 due to this being a drug charge, unless he were to make a
2 statement, as far as things that carry over a year, he has a
3 habitual traffic offender from 2014. He has a crack cocaine
4 charge from 2000. He has a possession with intent to
5 distribute cocaine from 2003. He has a crack cocaine charge
6 from 2003. He has a distribution of crack in 2003. And he
7 has a drug conspiracy conviction in 2014.

8 THE COURT: All right. So he's got offenses from
9 2000, 2003, 2003, and 2003 that carry more than a year and
10 involve illegal drugs, but they are more than 10 years old?

11 MS. LINDER: Yes, Judge, those are, yes.

12 THE COURT: And no notice was given about an intent
13 to use those?

14 MS. LINDER: Correct.

15 THE COURT: Mr. Ancrum, if you were to take the
16 stand, the State would not be allowed to ask you about the
17 crack cocaine convictions of 2003 and possession with intent
18 to distribute -- I'm sorry, crack cocaine conviction from
19 2000, possession with intent to distribute in 2003, and crack
20 cocaine conviction in 2003, and distribution of crack cocaine
21 in 2003. They would not be allowed to ask you about that.
22 Do you understand?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And there's one exception I'm going to
25 cover in a moment, but I want to clear this other one. They

1 tell me that you have a habitual traffic offender violation,
2 which is five-year felony in 2014, which does fit within Rule
3 609(a); however, I'm required to evaluate whether the
4 prejudicial effect of that outweighs the probative value
5 admitting the evidence. And I would going to allow them to
6 ask you about a habitual traffic offender violation. Do you
7 understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You also have a criminal conspiracy
10 charge, conviction from 2014. Again, that carries up to five
11 years and is a felony. And it does fit within --

12 MS. LINDER: I'm sorry. He pled to conspiracy to
13 violation the drug laws, so it was two and a half to 15
14 years. That was the 2014 conviction. It wasn't just a
15 general criminal conspiracy. I apologize, Your Honor.

16 THE COURT: Okay. You have a conspiracy to violate
17 the drug law conviction from 2014, which does qualify under
18 Rule 609(a). However, once again, I have to evaluate whether
19 the probative value of admitting that evidence outweighs its
20 prejudicial effect to you. And I find that it does not.
21 Therefore, I am not going to allow them to ask you about
22 conspiracy charge in 2014 if you take the stand. Do you
23 understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Now, there is one exception to what I

1 just told you about those rulings. And that is, if you open
2 the door, and I will give you an example of what's happened
3 in the past. If you want to talk to your lawyer about it,
4 she can give you more detail. All right?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: I have had cases before where I have
7 prohibited the State from going into certain convictions, and
8 then the defendant takes the stand and gets on the stand and
9 says something like, I've never been in any trouble with the
10 law, which was just a bold-face lie, because they had a prior
11 criminal record. They had a conviction for it. So they
12 opened the door to allow the State to ask about those other
13 convictions that I had otherwise kept out. So you understand
14 the concept of opening the door?

15 THE DEFENDANT: Yes, I do. Yes, sir.

16 THE COURT: Unless you open the door, they are not
17 going to be able to ask you about any of those drug charges
18 or the traffic offender violation. Do you understand?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: With regard to the false information to
21 a police officer from 2009 and 2013, those are covered by
22 Rule 609(a)(2), which is a different rule, and states that if
23 you had been convicted of a crime that involved dishonesty or
24 false statement, regardless of the punishment, that that's
25 admissible. So if you get on the stand and you testify, they

1 can ask you if you've been convicted of those two false
2 information to police officers in 2009 and 2013. Do you
3 understand?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Now, if you do that and if they bring
6 that out, then I will tell the jury that they can only
7 consider that evidence on the issue of your credibility, your
8 believability, and not for any other purpose. In other
9 words, the fact that you may have been convicted of something
10 in the past does not mean that you are guilty of these
11 offenses for which you are on trial. Do you understand?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: So I tell the jury that they can only
14 consider it, if at all, on the issue of your credibility,
15 your believability. Do you understand?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. Now, that *Beaty* case doesn't
18 change anything about if they don't offer any evidence, they
19 get to make last argument, correct?

20 MS. LINDER: I think that's correct.

21 MS. GAY: Yes, sir.

22 THE COURT: So, Mr. Ancrum, you understand that if
23 your side offers no evidence at all, that your lawyer gets to
24 make the last argument; otherwise, the State gets to make the
25 last argument; do you understand?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Now, have you understood everything I've
3 been over with you?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: You understand you have the right to
6 testify or not testify?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: You understand if you do choose to
9 testify, they can ask you about false information
10 convictions, but I will tell the jury they can only consider
11 that against you for purposes of evaluating your credibility;
12 do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: They cannot ask you about any of your
15 prior drug convictions or about the habitual traffic
16 offender; do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Unless you open the door; do you
19 understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Now, do you understand if you choose not
22 to testify, again, I know this redundant, if you choose not
23 to testify, I'm going to tell that jury they cannot hold that
24 silence against you at all; do you understand?

25 THE DEFENDANT: Yes.

1 THE COURT: Now, has anybody exercised any type of
2 undue influence over you to get to you choose to testify or
3 not testify?

4 THE DEFENDANT: No, sir.

5 THE COURT: Whatever decision you make about
6 testifying, it's going to be your own decision made by your
7 own of your own free will?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay. Now, you've been in jail,
10 correct?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: So you haven't had any kind of
13 medication or anything that would affect your thinking?

14 THE DEFENDANT: No, sir.

15 THE COURT: You are clear headed; know what you are
16 doing?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: I'm going to find Mr. Ancrum understands
19 the right to testify or not testify. He understands the
20 consequences of it. He understands the rulings I have made
21 and whatever decision he makes in that regard -- oh, I left
22 out one very important thing. The decision about whether to
23 testify or not is your decision to make and yours alone. Do
24 you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: I expect you to confer with your
2 attorney, with anybody whose opinion you value on important
3 decisions, but, ultimately, you are the one who makes this
4 decision; do you understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: I find whatever decision Mr. Ancrum made
7 to be freely and voluntarily and intelligently, and he
8 understands all those rights and the consequences.

9 All right. I'm going to give you all a few minutes
10 to talk. And then you can tell me if you want to testify or
11 not. I know she's already said that, but I always do this.

12 MS. GAY: We will take a bathroom break and come
13 right back.

14 THE COURT: Yeah. We are at ease.

15 (Whereupon, a recess transpired.)

16 (Whereupon, the defendant is present.)

17 THE COURT: All right. Mr. Ancrum, do you wish to
18 testify?

19 THE DEFENDANT: No, sir, Your Honor.

20 THE COURT: Is that your own decision made of your
21 own free will?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Ms. Gay, do you have any evidence to
24 offer?

25 MS. GAY: No. I believe that's his informed

1 decision, Your Honor. I believed that to be the case before
2 trial. After the break, he didn't change his mind.

3 THE COURT: All right. What I would propose to do,
4 unless y'all have objection, is I will bring the jury out. I
5 will tell them -- give them instruction about they cannot
6 hold his failure to testify against him in any way. I will
7 send them out. I will try to put the finishing touches on
8 this charge. And print it out and give it to you. And then
9 we can talk about the charge.

10 We ordered their lunch. I don't know if y'all want
11 to break for lunch, let them eat and try to have an
12 abbreviated lunch break and then come back and argue and
13 charge, if you want. Try to argue before. Most folks don't
14 like breaking up the argument and the charge. I guess I'm
15 waiting for, what is your preference?

16 MS. LINDER: We are prepared to go forward, or if
17 their food is going to be here shortly, we are fine taking an
18 abbreviated lunch so they can eat and get it all at one time.
19 Whatever the Court would prefer.

20 MS. GAY: That's what I proposed earlier, Your
21 Honor, since the time that they would be allowed to eat lunch
22 before. And then we do have a little bit more things that
23 can happen. And puts them right out in time to basically get
24 lunch.

25 THE COURT: All right. Then bring the jury, please.

1 (Whereupon, the jury returns to open court at 11:36
2 a.m.)

3 THE COURT: Ladies and gentlemen, I've been informed
4 that you now have all the evidence that you are going to have
5 to decide the case. And I need to give you an instruction
6 which you must follow. So please give me your close
7 attention.

8 I emphasize to you, ladies and gentlemen, that the
9 fact that the defendant elected not to testify is not a
10 factor to be considered by you in any way in your
11 deliberations and in your consideration on the question of
12 whether he is guilty or not guilty. His decision not to
13 testify must not be considered by you in any manner
14 whatsoever against him. An accused has a constitutional
15 right to remain silent. And the assertion of that right
16 cannot and must not be considered by you in your
17 deliberations. Under your oath, you are to reach no
18 inference, you are to draw no conclusion whatsoever from the
19 fact that the defendant elected not to testify. His decision
20 not to testify should not be discussed by you in the jury
21 room, nor should it enter your minds in making the decision
22 of whether he is guilty or not guilty of any charge.

23 The burden of proof, as I told you repeatedly, is
24 entirely on the State to prove every essential element of the
25 offenses charged against this defendant and to do so beyond a

1 reasonable doubt. And an an accused has no obligation or no
2 burden to prove anything at all.

3 Okay. Now, there are two stages that remain in this
4 trial, the closing arguments and the charge. Now, we are at
5 another one of those points where I have to discuss legal
6 matters with the attorney. So what you are going to have now
7 is some downtime. I am not able to put the entire charge
8 together until I know what evidence is presented. And so
9 while I've got a draft up here in front of me, which is
10 basically all of it, I've just got to go in and tweak it a
11 little bit that I've been working on as the trial went along,
12 I haven't tweaked it yet.

13 Now, I've got to let these folks eat. And we aren't
14 buying their lunch, or y'all aren't buying their lunch. So
15 here's what I'm going to do. Your lunch is supposed to be
16 here at noon. And so I'm going to tell them to be back here
17 at 12:30. In the meantime, I'm going to print out a charge.
18 And we are going to go over it before you come back in. And
19 then you will come out. As soon as I get you out of here,
20 you will hear the closing arguments. And then we will take
21 another very short break, and then I will tell you the law.
22 So that's how we are going to proceed. But you are probably
23 going to have about -- unless Jimmy John's gets here quicker,
24 you were going to have about 20 minutes to wait. So I hope
25 y'all are getting along well and everything will go fine

1 during that break.

2 But don't discuss the case, because it's not time.

3 As soon as I can get you out of here, I promise I will.

4 Follow the bailiffs, please.

5 (Whereupon, the jury leaves open court at 11:39
6 a.m.)

7 THE COURT: Can you all -- let me see if I can get
8 this done fairly quickly. And I can give it to you and you
9 will look at it over lunch, if the attorneys will stay with
10 me. Otherwise, we are at ease until 12:30.

11 MS. GAY: I think I need to renew my motion for
12 directed verdict based on all the prior motions that were
13 done, for the purpose of the record. I don't know if I need
14 to do rest in front of the jury, but I did, obviously. So
15 everything is renewed on behalf of my client, Your Honor.

16 THE COURT: All right. Thank you. I reconsidered
17 the matters, and I'm going to stick with the rulings I have
18 previously made. And the motions are denied.

19 MS. GAY: Thank you, Your Honor.

20 (Whereupon, a recess transpired.)

21 (Whereupon, the defendant is present.)

22 THE COURT: The food was 30 minutes late getting
23 here, so I apologize to you. I distributed a proposed draft
24 of the charge and the verdict forms. Have you all had any
25 input about that, from the State?

1 MS. LINDER: I think that everything in the proposed
2 charge covers things. It's, frankly, in more detail about
3 Miranda than I'm accustomed to, but I think this is
4 absolutely fine. And we don't have any objection to the
5 proposed charges and we have no objections to the jury forms,
6 verdict forms.

7 THE COURT: All right. Well, what about the
8 Defense?

9 MS. GAY: Well, Your Honor, there's one thing I
10 would like to ask the Court to consider. I was reading over
11 the reasonable doubt charge, and you referred to the "firmly
12 convinced" asking that -- this is, obviously, litigated
13 often. But there's also the concept of hesitate, which would
14 cause a reasonable prudent person to hesitate to act. Under
15 *Manning*, I believe that they quote the United States Supreme
16 Court in *Holland*. And we would ask you to include that in
17 your charge as well. In the past, Ms. Linder and I were
18 discussing it, we often heard it said both ways. So I would
19 ask you to add that to your charge, Your Honor.

20 THE COURT: Yes, ma'am. I don't charge hesitating
21 to act. You can argue it to the jury. I don't dispute that
22 it's still good law. I think that is a confusing charge. I
23 know people that I think are very reasonable that hesitate to
24 act over everything. And so I don't -- I think it's
25 confusing to the jury. I think what I've got in the draft is

1 recognized by United States Supreme Court. And I will
2 certainly allow it to be argued about reasonable person
3 hesitating to act, but I am not going to charge it. And if
4 I'm wrong, somebody will find I'm wrong in an opinion.

5 All right. So the way it's going to work is that
6 the State is going to go first and Defense is going to go
7 last; is that right?

8 MS. LINDER: Yes, Judge.

9 MS. GAY: Yes, sir.

10 THE COURT: Are you all ready?

11 MS. LINDER: Yes, Judge.

12 MS. GAY: Yes, Your Honor.

13 THE COURT: Some of the jurors asked if they could
14 call their families, I guess. So as soon as they are ready,
15 we will get started. We brought them out, put them in a
16 separate office as they make the call.

17 MS. GAY: Also, I reviewed the verdict form, and I
18 know Ms. Linder did as well. I have no objection to the
19 verdict form as presented.

20 (Whereupon, the jury returns to open court at 1:06
21 p.m.)

22 (Court's Exh. 2, Jury note, was marked for
23 identification.)

24 THE COURT: Ladies and gentlemen, I understand we
25 had a delay in food, so we kind of got thrown off schedule

1 today. Now it's time for us to deal with those last two
2 stages of the trial I told you about.

3 First thing that is going to happen is, you are
4 going to hear the closing arguments of the attorneys. I told
5 at the opening remarks that during opening statements, the
6 attorneys are not permitted to engage in what we refer to as
7 argument. We have reached the point in the trial now where
8 they may use the art of adequacy to attempt to get you to see
9 things as they would like you to see them on behalf of their
10 respective positions. That doesn't change the burden of
11 proof. The burden of proof remains with the State throughout
12 the trial. And the State has the entire burden of proof and
13 has to prove the defendant guilty beyond a reasonable doubt
14 on each charge.

15 Now, the way this works is that the State will make
16 the first closing argument. And then the Defense will make
17 its closing argument. After that, I always take a very short
18 break, usually no more than five minutes. I get set up out
19 here, and then I will bring you back in and tell you the law.
20 It's going to take me about 26 minutes to explain the law to
21 you. Shortly after that, you will get the case to decide. I
22 invite you to pay close attention.

23 Solicitor, you will be recognized for your closing
24 argument.

25 MS. LINDER: Thank you, Your Honor. May it please

1 the Court.

2 Good afternoon, ladies and gentlemen. I want to
3 talk to you today about a few things. I want to start just
4 briefly touching on the law. As the judge said, in this case
5 and throughout the case, he is the judge of the law. He will
6 instruct you on everything dealing with the law at the
7 conclusion of mine and Ms. Gay's closing arguments. But I
8 just want to kind of tell you a little bit about the law so
9 you can get these ideas kind of going in your mind and
10 everything.

11 First I want to talk to you about reasonable doubt.
12 The burden is on the State to prove beyond a reasonable doubt
13 that the defendant is guilty of the two crimes, which is
14 distribution of heroin and distribution of crack cocaine or
15 cocaine base crack.

16 And what is reasonable doubt? Reasonable doubt is
17 doubt that leaves you firmly convinced. It leaves you firmly
18 convinced of something. Kind of a real life example that I
19 think is appropriate after the pouring rains we had
20 yesterday, we are in this courtroom all day, there are no
21 windows to outside. If we see someone come walk in the back
22 and they take an umbrella down and shake water off of it.
23 And a minute later, we see somebody with galoshes come in and
24 with a rain coat, and you see droplets and they do that. And
25 then moments later, you leave the courtroom, and you look

1 outside and the roads and sidewalks are all wet. You did not
2 see the rainfall from the sky. You did not see
3 precipitation. But beyond a reasonable doubt, it's my
4 position that you would be firmly convinced that it just
5 rained or recently' rained.

6 And that's because you pulled together all those
7 other things. You pulled together all of these other
8 individuals and how they were addressed. You are observing
9 the droplets on them. You are observing the wet ground
10 outside. So to me, that's the best real world example that
11 I've been able to come up with that I think really explains
12 what reasonable doubt is. Though you yourself didn't see it,
13 touch it, smell it, you are firmly convinced that indeed it
14 recently did rain."

15 What I want to talk to you about is what the
16 defendant Gerald Ancrum is charged with. He's charged with
17 distribution of heroin. In order for him to be found guilty
18 of distribution of heroin, there are a few elements that I
19 have to prove to you: That this occurred in Charleston
20 County; that it was the defendant, Gerald Ancrum; that he
21 distributed, and the judge, when you first started, you heard
22 him read the indictment, which says distribute, deliver,
23 dispense, aid or abet or conspire, has all of that language.
24 Any one of those counts, but we are here for the distribution
25 part of it. And distribution is to give, to sell, to

1 transfer, to hand over heroin, which is an illegal drug in
2 the state of South Carolina.

3 The other charge is distribution of crack cocaine.
4 What I have to prove to you is I have to prove that in
5 Charleston County, the defendant Gerald Ancrum distributed
6 crack cocaine. That is what I have to prove to you. Those
7 are the elements.

8 And so those elements, I believe, were proven to you
9 by way of all the testimony and the evidence that you heard
10 in this trial. We are here today because back on February
11 the 5th of 2015, the defendant Gerald Ancrum made the
12 decision and he distributed crack cocaine and heroin here in
13 Charleston County.

14 But let's talk about each one of those elements.
15 Let's start with Charleston County. Did this occur in
16 Charleston County? You heard testimony -- and you will have
17 all of this evidence back there with you. You heard
18 testimony from Special Agent Frank Preston. And you heard
19 testimony from Detective Marc Brown about where all of this
20 occurred. They both specifically, when asked, is this in
21 Charleston County, the answer is yes. This is in Charleston
22 County. It was in West Ashley area of Charleston. It was
23 right there on Savannah Highway. There's a Dunkin' Donuts.
24 This map will be back there with you. And it shows the
25 Dunkin' Donuts. It shows that car place where they were

1 parked and drove around. So I would submit to you that the
2 State has satisfied the burden on the County of Charleston.

3 The next thing that I need to show, explain to you,
4 prove to you, leave you firmly convinced about, is that it
5 was the defendant. Well, okay, let's talk about that. Was
6 it the defendant? Well, during cross-examination, the
7 defense attorney acknowledged with the informant that
8 Mr. Ancrum was in the car. And the response was yes from the
9 witness. So that's the defendant.

10 The car, that BMW that happened the day of the buy,
11 was the same car that he was arrested in a week and a half,
12 two weeks later. You heard that through testimony that
13 Detective Marc Brown gave. That car was registered to him
14 and he was in it on the 5th and also then on the 19th when he
15 was arrested. Was it the defendant? The defendant
16 post-Miranda in an interview with Detective Marc Brown, who
17 you heard from first thing this morning, gave the phone
18 number, the phone number of 609-2391, defendant's words.
19 What's your phone number? Here's my phone number.

20 That's the same phone number that was used in the
21 presence of Special Agent Preston. And that's the phone
22 number that was used to call to arrange all the details of
23 this purchase. That was also the same phone number that
24 there was a text received and there were phone calls made
25 back and forth while in the undercover vehicle with Detective

1 Branham.

2 Is it the defendant? Well, you heard testimony from
3 Ms. Morris that she had known him for years. And after she
4 contacted law enforcement saying that she had information and
5 she wanted to work, she gave target names and phone numbers
6 to law enforcement. She gave that information to Detective
7 Marc Brown. And then she was breached by Special Agent
8 Preston and gave all that information.

9 Then we have the video. The video, I would argue,
10 is the most compelling evidence. You are not just relying on
11 someone else's word. You get to actually see it with your
12 own eyes. And you get to watch that video of what happened
13 that day. And it's my position that you clearly see the
14 defendant on that video. You see his face many times.

15 Next thing I need to prove to you is that there was
16 a distribution. And like I told you, the judge talked about
17 all the language that we have to use, all the legal stuff,
18 which is to manufacture, to deliver, to dispense, to
19 distribute, to aid, to abet, to possess with intent, that
20 whole long list. We are here today for that. And it's my
21 position that in the phone call that was made, well, two
22 phone calls that were made in the very beginning that you
23 heard when Special Agent Preston was on the phone, you heard
24 the phone calls being made to the defendant's phone number,
25 his admitted phone number. You heard in that phone

1 conversation negotiation of price, amount, location, all of
2 that.

3 And then also, what is other proof that he
4 distributed? Well, you can watch the video. You can watch
5 the video. And the video shows actually as the defendant is
6 sitting in the driver's seat, he ends up opening up a baggie
7 on his lap, taking out pre-packaged, and handing them over to
8 the informant. You see him do the distribution.

9 You also heard from Ms. Morris that he is the one
10 that she purchased from. The last thing we have to prove to
11 you is that they are drugs. And this morning we kind of
12 whipped through a bunch of witnesses. And that's just to
13 show you that everything was properly handled in this case.
14 And what that is is that is showing you the chain of custody
15 for everything. You heard that that is information that the
16 police department and the forensic services division, they
17 maintain it. And you heard everybody talk about it.

18 You heard talk about how the informant received the
19 drugs, placed them in the cupholder. And that was in front
20 of another officer. You heard how Marc Brown, when they
21 arrived home, got them out of the cupholder. He did the
22 field test. He weighed them in all their packagings. He
23 seal them. He labeled them. He dropped them off at
24 evidence, which is a secure facility. You heard then how
25 Karen Ford checked it in. Linda Wilson checked it out.

1 Susan Payne took it to the lab. It was tested at the lab.
2 And then all this steps back to what we are here for today.

3 One of the things that I think is interesting and we
4 didn't to go through it all, you will be able to go back and
5 look at this. You can see. This will be back there with
6 you. You can handle it. You heard from Ashley Earl. You
7 will see on her lab report her name is Ashley Carter Earl,
8 ACE. This is what she told you. She told you she sealed it.
9 She told you she initialed it. She said she knew this was
10 hers because inside of it she has written on the bags
11 themselves her initials, the item number, item 1-2 or 2-1,
12 1-1. She has the weights. And everything is all written in
13 here. And the drugs are in here. The crack is right here.
14 You've got the heroin that's in this little bag up front. So
15 this is all going to go back there with you.

16 And Ashley Earl is way more intelligent than I am.
17 I'm not gifted with sciences. And she complained the tests
18 they do. And that, in fact, after doing those tests, the one
19 substance came back as heroin, and the other came back as
20 cocaine base.

21 So it's my position that you heard everything
22 through the witness stand and through the exhibits to leave
23 you firmly convinced, indeed, of the defendant's guilt.

24 What I would urge you to do when you go back and you
25 look at everything and you listen to everything, is when you

1 go back and look at the phone calls or listen to the phone
2 calls, in the beginning, you hear Frank Preston in the first
3 call talk about the date. You hear him talk about who they
4 are placing the call to. How much? One gram of heroin, one
5 gram of cocaine. He states about how who is present in the
6 room and he states the phone number that it's being made to.

7 He then is instructing the informant. He is with
8 her every step of the way. He tells her, leave it on
9 speaker, say that you are coming with your girlfriend. Tries
10 to give all those different instructions so it's controlled,
11 so this is a controlled buy, controlled buy of evidence, as
12 he described to you.

13 And then shortly thereafter, there's a phone call
14 back from the defendant's phone number. That phone number is
15 stated again, all of these calls on speaker.

16 And then the informant, then Tessa Morris orders it
17 up: Hey, I need to get a G and a yard. You heard from
18 Special Agent Preston what that is. You also heard from the
19 informant. The defendant responds back: A yard of turkey?
20 And then they go back and forth and discuss where it's going
21 to meet and how long it's going to be.

22 I urge you to go back and listen to that. Listen to
23 the transaction being set up. Listen to the transaction
24 being planned.

25 And then what I would like for you to do is I would

1 suggest you don't have to watch the whole video, because it's
2 quite long, but think back on what was said and what was done
3 during that video. In the beginning you hear Special Agent
4 Preston talk about it. And he says that they are going to
5 Dunkin' Donuts to purchase one gram of heroin and one gram of
6 crack cocaine for 260 bucks. You hear him counting out the
7 cash. You hear him instruct and direct Tessa to split it up
8 in different pockets. He also told you that that's how he
9 always instructs people when they are going to go do this.

10 And then they go through and they talk about the
11 directions. That's a long part of it. We hear the -- you
12 heard from Lisa Branham, and she talks about, we are turning
13 left, we are waiting at this light, we are turning here, we
14 are waiting hear. And kind of goes on and on. Feels like
15 the longest drive ever from off of Leeds down to Savannah
16 Highway. But you hear all of that and then you hear parts of
17 the conversation where it's additional information about this
18 defendant. He drives a white BMW. All of that information
19 is shared. Tinted windows, all of that information is
20 shared.

21 You also heard that certain parts had to be muted
22 due to some evidentiary reasons. But you have that video.
23 And that video is in evidence and part for you to listen to.

24 Also, as part of that buy video, there's phone call
25 that's answered by the defendant because he's taking a long

1 time. He answers it. He talks about how long it's going to
2 be, that he's on his way. And then ten minutes later, you
3 hear actually Lisa Branham on there. And she says, hey, you
4 got a text, because she's looking. She's overseeing. She is
5 in the driver's seat next to the informant, the informant,
6 whose already been searched, nothing is on her, nothing is
7 hidden anywhere. We heard about the detailed search that was
8 done. She's just there. She's there with the police officer
9 right by her side.

10 So text comes. Defendant says he's five minutes
11 out. Little more time comes. The defendant calls again.
12 And when he calls this time, he says he's about to turn in.
13 Where you got your people parked at? He's in charge. This
14 is when he tells them: Move around to the back. He tells
15 them the location. He directs them where to go. That's when
16 the cars move to the back.

17 And on the map you will have back there, Detective
18 Branham explains, we were parked here, and he called, so we
19 moved back here. And you also hear her description when they
20 were facing a 10- to 12-foot fence, and she was there. You
21 hear that constant communication that's being done by law
22 enforcement. You were told through direct testimony of where
23 people are stationed throughout all of this. Everybody is
24 there. They are paying attending to all of these details.

25 And then you see the most interesting part. And the

1 most interesting part, and just to tell you the times,
2 because you will have this video back there with you, starts
3 around 32 minutes, so if you want to push through to this
4 part, this starts about 32 minutes into the video that you
5 will have back there in evidence.

6 (Video playing.)

7 MS. LINDER: There's the white BMW, same white BMW
8 the defendant was arrested in a week later. This is the lady
9 who parked too darn close, she's telling him she didn't have
10 any space.

11 (Video playing.)

12 MS. LINDER: The informant gets in the car. There
13 he is. There's Gerald. Look at his hand on his lap, drugs.

14 (Video playing.)

15 MS. LINDER: He's looping around right behind where
16 all these undercover police cars are. Moves the space.
17 There's some drugs. There's the space. That's the yard
18 confirming it. Drug type one, drug type two. Two
19 distributions.

20 So you see his face driving around, driving around,
21 driving around.

22 (Video playing.)

23 MS. LINDER: There's the cash in his hands. She
24 just said Gerald. She just said Gerald. That is exactly
25 what she was instructed to do by law enforcement. So you

1 hear her say: Thanks, Gerald. She gets back in the car and
2 they go through and they drive all the way back.

3 Ladies and gentlemen of the jury, I urge you, like I
4 said, to go back and look at things. These are still
5 pictures that anybody can do. You can do it by hitting
6 pause. I mean, that's Gerald. There's Gerald handing drugs
7 over. There's Gerald again handing drugs over. There's
8 Gerald again handing drugs over. And here he is, this is
9 cash. This is the cash that he received for doing this deal.

10 So, ladies and gentlemen of the jury, I would ask
11 that you go back, I would ask that you consider all of the
12 evidence you have heard over the past day and a half. And I
13 would ask that you consider, are you firmly convinced, in
14 fact, that in Charleston County, on Savannah Highway back on
15 February 5th, 2015, did this defendant, did this defendant,
16 distribute heroin and distribute crack cocaine, which is all
17 against the laws of South Carolina. I submit to you that
18 after reviewing all of the evidence and taking careful
19 deliberation, that, in fact, that you will come back with a
20 verdict of guilty.

21 I think that it's important to note that throughout
22 what you've heard -- and I can't anticipate exactly what Ms.
23 Gay is going to talk with you about. But in listening to it,
24 sitting through the same trial that you have been, most of
25 the thing we have heard about has been the theme of the

1 opening was dirty CI. Look, you heard from Special Agent
2 Preston, he can't go in there and buy from just anybody. You
3 have to get certain people.

4 I mean, I would like to think that, I mean, I have
5 no record, I have this, I have this, I think I would be a
6 heck of a lot better of a witness. But the fact of the
7 matter is, it is what it is. You need to have certain people
8 to access certain people. And you have that, but you have
9 all of these safe guards in place. You have a very in-depth
10 search. You have a live wire. You have video that's being
11 recorded. You have a police officer driving. You have
12 police officers throughout. All of that is there.

13 Look, she's got a record. She told you. She owned
14 it. She actually was on probation. She didn't do well. She
15 did this. Sure. She then went to prison. Okay? Like, she
16 owned it. You know, I am not asking you just to trust her.
17 That's not what we are here for. There's so much more.
18 There's so much extra. There's so much that proves the
19 defendant is guilty.

20 The only other thing that I really could pick up on,
21 I'm sure Ms. Gay is a great trial lawyer, will have a lot of
22 things to say. She talked today a tiny bit about
23 friendships. Fingerprints, you know, in investigation a lot
24 of times it's, who done it. Who did it? Who did it? House
25 is broken into. Let's try to check this window that was

1 broken, because you try to print in order to figure out who
2 the heck was there, who did it? Well, I would submit to you
3 that you see who did it. You have the video. You have the
4 stills I showed you. You have the BMW. You have the phone
5 number. And you have him and his hands on those bags. And
6 then you have the CI take it to the cupholder to mark to the
7 chain to the lab. It's heroin and crack.

8 I thank you so much for your time and attention
9 during all of this. And I ask that you come back with a
10 verdict of guilty for Gerald Ancrum for distribution of crack
11 cocaine and guilty for Gerald Ancrum for distribution of
12 heroin. Thank you.

13 THE COURT: Thank you, Ms. Linder. Ms. Gay, you are
14 recognized for your closing argument.

15 MS. GAY: Thank you, Your Honor. So now we've come
16 to the end of the trial. We've come to the end of the part
17 where I told you yesterday that this is going to be the most
18 important day of his life and most important process because
19 of the jury system. And the judge is going to instruct you
20 on many things, as Ms. Linder said, about the law and how
21 trials work and stuff to consider when you are deliberating.

22 And, mainly, one of the things he's going to talk
23 about is credibility of witnesses. There are some police
24 officer witnesses and some chemists and people like that in
25 this case. And I understand that they have no problems with

1 their credibility. But I have a problem with Ms. Morris's
2 credibility. I think Ms. Morris is a paid liar, basically.
3 She came in. She said, I was supposed to tell the truth.
4 She said what she needed to be told to say. She -- there was
5 no question that she was going to come in and say anything
6 else, because that's what she was paid to do, was to come in
7 and, you know, do a circus act for the ATF and solicitor's
8 office in this case to ensnare people she knew into things
9 because that's what she had expected -- that's what she was
10 told she needed to do.

11 If you remember with Agent Preston he said, we had
12 an agreement, we talked about it, this was her job. This is
13 what -- she was like an employee of the ATF. She was -- I
14 had expectations of her. She was to bring me people that
15 would, you know, that we could arrest, basically. And it
16 wasn't that they were going to find the people. She was
17 going to find the people.

18 And, you know, I think the parts, you know, all of
19 what Ms. Linder said is, obviously, part of the process, but
20 there was no real discussion about the people involved here,
21 about, you know, what was really going on in this woman's
22 life. Not only was she on probation and in trouble, but she
23 chose to approach them to find a way to get money so that she
24 could continue to use heroin with the money that she was
25 being paid by the ATF.

1 There was, I think, some of the most telling parts
2 of this case, and as I said, as the judge is talking about
3 all the different things, credibility is what I'm really
4 focusing on here, is when she was being -- during the tape
5 that you will see, we were given a transcript of it to go
6 over, and that's what Ms. Linder was talking from when she
7 was talking to you all. There's things that y'all will hear,
8 that something goes on with her boyfriend Will. There's a
9 point where he calls in, knowing what she's doing, knowing
10 where she is, he calls into her and he says to her -- she
11 answers the phone. So here she is, a paid employee of the
12 ATF, knowing that she's not going to get paid until after
13 this transaction happens, knowing she's not going to get paid
14 until somebody produces some drugs or such, and he calls her
15 on the phone. And the comment is: Hello, I will call you
16 back. It's going to be awhile. Probably. I will call you.
17 I don't know, Will.

18 And then the next sentence, which I had her read,
19 because I had her read it: No, I'm waiting on. I will call
20 you back. Impatient boyfriend.

21 So she's having a conversation with her man that she
22 openly admitted on her cross-examination that she did drugs
23 with and that the two of them were sitting around waiting for
24 the money to go do drugs, and she says, no, I'm waiting on,
25 I'm waiting on some stuff, some money. I'm waiting on -- she

1 wasn't going to get any drugs. They strip searched her and
2 did all those things. She's waiting on money to go buy drugs
3 with him. And says, I will call you back. And turns to the
4 officer and says, inpatient boyfriend.

5 What's happening is that she's waiting to get her
6 money from the ATF so that she can go out and get high with
7 her boyfriend. Then as it goes further on, there's a point
8 where she says she and Mr. Ancrum, or the man in the video
9 are talking and they say, all of them: Where is will? She
10 answers: He's at the room. This is my deal, my business.

11 So there's Will waiting at the room for her to get
12 the money from the ATF to come back to be able to get high.
13 As I said, she openly admitted that she was actively getting
14 high regularly in violation of her probation, testing
15 positive for drugs while she was on probation during this
16 whole period of time.

17 And then at the very end of the video, after they
18 take her all over, they are heading their way back, the very,
19 very last part, near the very end, she says, were you --
20 agent Branham says: Anybody tell you we are going anywhere
21 other than the office? Nobody told me. I got to get paid.

22 So that's what she did to get paid. As I said, you
23 know, the credibility of the witnesses matter in this case.
24 I don't believe anything she said. I don't see how anybody
25 could believe anything she had. She's brought in to follow

1 through with her arrangement, her employment for the ATF to
2 come in and, you know, to produce testimony that is
3 consistent with what they want her to say.

4 And I think that drugs are an issue in this country.
5 Obviously, they are an issue in this country. But they are
6 an issue because it's interesting how with money from the
7 ATF, an addict can continue to use. All you have to do is
8 tell the ATF that you want to go snare up some people you
9 know. And next thing you know, they will give you money to
10 be able to use drugs and continue to use drugs.

11 Now, she eventually got in more trouble and she
12 eventually, I guess, got put back in jail. This lady has --
13 well, lets put it this way, in order to be convicted of
14 property crime enhancements, you have to have at least two
15 prior shoplifting convictions, just regular shoplifting
16 convictions. She had, I believe, five counts of property
17 crime enhancements, which meant that she committed property
18 crimes at least five, six, seven, eight or more times. She's
19 out stealing, not only getting money from the ATF to satisfy
20 her drug habit, but also stealing it to get money for her
21 drug habit.

22 She also was convicted for financial transaction
23 card fraud. That's what she got convicted of, stealing
24 somebody's credit card information. So this woman is not to
25 be believed. I mean, she's just not to be believed.

1 What's interesting is that she gets rearrested, and
2 those charges are the charges that put her in prison for 2016
3 after this incident, and now she's a cleaned-up looking woman
4 who's got -- done some prison time. But at the time, she was
5 a complete basket case, complete addict, and willing to
6 anything to get money. And what she saw as a way to get
7 money, which I think is deplorable, is for her to get money
8 from the ATF so she can keep doing drugs. They kept her as
9 an addict.

10 This is case is about a lot of different things.
11 And, yes, the solicitor is standing up and saying everything
12 is present and all the elements of the offense are here. But
13 this whole case is disgusting. This whole case is horrible
14 that this woman who was kept being an addict by money she was
15 getting from the ATF, that's documented in this transcript,
16 where she's talking to her boyfriend about, yes, I'm going to
17 get money so we can get high, there's no way you can convict
18 this gentleman. Thank you.

19 THE COURT: All right. Ladies and gentlemen, I'm
20 going to ask you to step back into the jury room. I will
21 send for you very quickly and I will give you the law. Don't
22 discuss the case.

23 (Whereupon, the jury leaves open court at 1:38 p.m.)

24 THE COURT: We will be at ease for about three
25 minutes.

1 (Whereupon, recess transpired.)

2 THE COURT: Bring in the jury.

3 (Whereupon, the jury returns to open court at 1:46
4 p.m.)

5 THE COURT: Members of the jury, all the evidence
6 has been presented. You heard the arguments of counsel.
7 It's now time for me to instruct you on the law that applies
8 to the case. Please continue to pay close attention during
9 this next stage.

10 At first, you need to understand some basic ground
11 rules. You the jury members are the sole judges of the
12 facts. You decide all of the issues of fact, the truth of
13 the evidence, its effect, its value and its weight. You
14 alone will judge the credibility of witnesses, in other
15 words, whether or not a witness's testimony is believable.

16 In evaluating testimony of witnesses, you may
17 believe all that a witness said or none of it. You may
18 believe part of what a witness said and not believe the
19 balance. You may believe one witness against many or many
20 against one. You may consider any interest, bias, or
21 prejudice that you feel that a witness has in the case. You
22 may consider the demeanor, the appearance of the witness, and
23 the opportunity for knowledge that the witness had. You may
24 consider the lack of evidence presented by the State. You
25 may consider whether a witness has been consistent or

1 inconsistent.

2 But you are not to exercise these considerations
3 arbitrarily. What you are to do is to use your common sense.
4 Use your sense of logic and reason and your good judgment.
5 It's not proper for me to give you a charge on the facts of
6 the accident. I cannot discuss the facts with you or even
7 convey to you an impression as to what personal opinions, if
8 any, I may develop by the facts of this case. So if during
9 any stage of this trial, if you developed an impression that
10 I have a personal opinion about the facts, you must remove
11 that belief totally from your mind. You are the sole judges
12 of the facts.

13 I am the judge of the law that applies in this case.
14 Under your oath, you must accept and apply the law as I give
15 it to you. You have to abandon any conflicting ideas that
16 you might have as to what the law is or what it should be. I
17 give you the law. You apply it to the fact as you determine
18 them to be. And in that way, you reach your verdict.

19 It's also my job to decide what evidence is
20 admissible. If I have ruled something inadmissible or
21 instructed you to disregard something, you are not to
22 consider those things in arriving at your verdicts. Base
23 your verdict on the competent evidence before you. Consider
24 the competent testimony from the witnesses and the exhibits
25 admitted.

1 I need to explain to you that the rules of evidence
2 allow for opinion testimony to be given under certain
3 circumstances. One area where that's allowed is for persons
4 who, by virtue of education, training and experience, are
5 designated as expert witnesses. Now, the mere fact that a
6 person is allowed to give opinion testimony under our rules
7 does not mean that you have to accept the opinions given if
8 you choose not to do so. You may accept or reject the
9 testimony of an expert witness just as you may with any
10 witness in whole or in part.

11 I also need to explain to you that there are two
12 types of evidence generally presented during a trial, direct
13 evidence and circumstantial evidence. Direct evidence
14 directly proves the existence of a fact and does not require
15 deduction. Direct evidence is the testimony of a person who
16 claims to have actual knowledge of the facts, such as an
17 eyewitness. It is evidence that immediately establishes the
18 main fact to be proven.

19 Now, circumstantial evidence is proof of a chain.
20 It's proof of a chain of facts and circumstances indicating
21 the existence of a fact. It is evidence which immediately
22 establishes collateral facts from which the main fact may be
23 inferred. Circumstantial evidence is based on inference and
24 not on personal knowledge or observation.

25 Now, the law makes absolutely no distinction between

1 the weight or value to be given to either direct or
2 circumstantial evidence, nor is a greater degree of certainty
3 required of circumstantial evidence than direct evidence.
4 You should weigh all the evidence in the case. And after
5 weighing all of the evidence, if you are not convinced of the
6 guilt of the defendant beyond a reasonable doubt, then you
7 must find him not guilty.

8 Now, to the extent the State relies on
9 circumstantial evidence, all of the circumstances must be
10 consistent with each other, and when taken together, point
11 conclusively to the guilt of the accused beyond a reasonable
12 doubt. If the circumstances merely portray the defendant's
13 behavior as suspicious, that's not enough to prove his fate.

14 The State has the burden of proving the defendant
15 guilty beyond a reasonable doubt. And that burden rests with
16 the State regardless of whether the State relies on direct
17 evidence, circumstantial evidence, or some combination of the
18 two.

19 I remind you and emphasize to you once again that
20 the fact that the defendant elected not to testify is not a
21 factor to be considered by you in any way in your
22 deliberations and in your consideration on the question of
23 whether he's guilty or not guilty. That decision not to
24 testify must not be occurred by you in any manner whatsoever
25 against the defendant. An accused has the constitutional

1 right to remain silent. And the assertion of that right
2 cannot and must not be considered by you in your
3 deliberations.

4 Under your oath, you are to reach no inference and
5 you are to draw no conclusion whatsoever from the fact that
6 the defendant elected not to testify. His decision not to
7 testify should not be discussed by you in the jury room, nor
8 should it enter into your minds in making a decision of
9 whether he is guilty or not guilty. The burden of proof, as
10 I told you repeatedly, is entirely on the State to prove
11 every essential element of the offenses charged against this
12 defendant beyond a reasonable doubt. An accused has no
13 burden to prove anything at all.

14 The defendant in this case, Mr. Ancrum, is presumed
15 to be innocent. This is no mere legal theory. It is a
16 fundamental and substantial right to which everyone is
17 entitled. It's been described as being like a robe of
18 righteousness placed around the defendant and remains with
19 him through every stage of the trial, and continues to exist
20 after you retire to your jury room to deliberate, and it
21 continues to exist so that the defendant is presumed to be
22 innocent unless and until you the jury determine that the
23 State has proved the guilt of the defendant beyond a
24 reasonable doubt.

25 A defendant is not required to prove his innocence.

1 He's not required to prove anything. The burden is on the
2 State to prove the guilt of the defendant beyond a reasonable
3 doubt. And it's required that every essential element of the
4 offense charged be proven by the State beyond a reasonable
5 doubt.

6 Now, the State is not required to prove the guilt of
7 the defendant beyond all doubt or beyond every doubt. The
8 appropriate standard is proof beyond a reasonable doubt.

9 Some of you may have served as jurors in civil
10 court. And if you have, you know that the burden of proof in
11 civil court requires establishing that something is more
12 likely than not, which is called the greater weight or
13 preponderance of the evidence. But we are not in civil
14 court. We are in criminal court. And in criminal court, the
15 standard is much higher and the proof must be much stronger
16 than what is required in a civil case. The burden of proof
17 in a criminal case, such as these, is proof beyond a
18 reasonable doubt.

19 So what do I mean by that term? Proof beyond a
20 reasonable doubt is proof that leaves you firmly convinced of
21 the defendant's guilt. There are few things in the world
22 that we know with absolute certainty. And in criminal cases,
23 the law does not require proof that overcomes every possible
24 on doubt. If, based on your consideration of the evidence,
25 you are firmly convinced that the defendant is guilty of the

1 crime charged, then you are to find him guilty of that crime.

2 If, on the other hand, you think there's a real
3 possibility that he's not guilty, you must give him the
4 benefit of the doubt and find him not guilty as to that
5 charge.

6 Now, there's no obligation on the part of the
7 defendant to raise any doubt or any other possibility. He is
8 presumed to be innocent. And the State has the entire burden
9 of proof and has to prove to you that the defendant is guilty
10 of the charge to the exclusion of any other real possibility.

11 All right. Now I need to explain to you the law
12 related to statements made to law enforcement officials while
13 in custody. Testimony has been presented in this case,
14 evidence has been presented in this case about a statement
15 allegedly made by the defendant to law enforcement officers
16 while the defendant was in custody. When an accused is taken
17 into custody by law enforcement, the officers are not allowed
18 to interrogate him until the accused has been advised of his
19 rights and knowingly and intelligently waived those rights.

20 So in evaluating any statement alleged to have been
21 made to law enforcement while the defendant was in custody,
22 you first have to determine whether the State has proven that
23 the defendant, in fact, made the statement. If not, then you
24 could not consider that alleged statement in any way against
25 the defendant.

1 If you find if you find that the defendant made the
2 statement, the next thing you are going to have to determine
3 is whether the defendant gave the statement in response to
4 police questioning.

5 In order for you to know what the law requires
6 concerning these types of statements, I need to explain some
7 things to you. You've probably heard about Miranda warnings.
8 Miranda warnings are that you have the right to remain
9 silent, that any statement made can and will be used against
10 you in court, that you have the right to an attorney, and if
11 you do not have the resources to hire a lawyer, the court
12 will appoint one at no expense, that you have the right to
13 consult a lawyer at all times during all interviews and all
14 interrogations. And you have the right to consult the
15 attorney before answering any questions or making any
16 statements, and that you may stop answering questions at any
17 time.

18 Now, those exact words do not have to be used, but
19 the substantial equivalent has to be communicated by law
20 enforcement to the accused in order for them to constitute
21 valid Miranda warnings. Now, Miranda warnings are required
22 before the police may interrogate a person whom they have in
23 custody. Police interrogation means that the police are
24 questioning the person or engaging in the substantial
25 equivalent of questioning. In other words, where a police

1 officer makes some statement or engages in some conduct that
2 is designed to elicit a response, then that is the functional
3 equivalent of interrogation.

4 Now, if you find that the defendant in question was
5 given -- I'm sorry, if you find that the statement in
6 question was given by the defendant while in custody and in
7 response to police interrogation, then the next we would be
8 whether the State has proven beyond a reasonable doubt that
9 the defendant was properly advised of his Miranda rights
10 before giving the statement.

11 The next thing the State has to prove before you may
12 consider any alleged statement against the defendant is that
13 the defendant knowingly and intelligently waived his
14 constitutional rights and made the statement to the police.

15 And the final requirement is that the statement in
16 question must have been given voluntarily. The State has to
17 prove to you that the statement was the expression of the
18 defendant's own free will, and was not improperly induced by
19 compulsion, duress, force or fear, or by the promise of some
20 reward or hope of a reward. Unless the State proves to you
21 that the statement was given freely and voluntarily, you may
22 not consider it against the defendant.

23 Now, let's turn to the specific charges that are
24 lodged in this case. As you know, the defendant is charged
25 under two separate and distinct indictments. One charges is

1 distribution of crack cocaine or cocaine base. The other
2 charges him with distribution of heroin. Both indictments
3 alleged that Gerald Jarrod Ancrum did, in Charleston County,
4 South Carolina, on or about February 5, 2015, distribute the
5 respective controlled substance without the authority of law.

6 Now, ladies and gentlemen, indictments have no
7 evidentiary value. They are merely charging papers. An
8 indictment is the formal means by which someone is charged
9 and brought to trial. You cannot give an indictment any
10 evidentiary value. It has none.

11 Now, the law related to distribution of controlled
12 substances is rather simple. It is unlawful for any person,
13 except a properly licensed medical professional, to
14 distribute a controlled substance. Crack cocaine is the same
15 as cocaine base. And both heroin and cocaine base are
16 controlled substance under the law. The State has to prove
17 to you that the substance in question was the illegal drug
18 charged, crack cocaine on one indictment, heroin on the
19 other.

20 Crack cocaine is referred to in the statute as
21 cocaine base. Cocaine base is a defined term. It's defined
22 as an alkaloid cocaine or free-base form of cocaine which is
23 the end product of a chemical alteration whereby the cocaine
24 in salt form is converted to a form suitable for smoking.
25 Cocaine base is commonly referred to as rock or crack

1 cocaine.

2 To prove the defendant guilty, the State has to
3 prove to you beyond a reasonable doubt that the defendant
4 distributed the controlled substance in question as alleged
5 in the indictment.

6 Now, the word "distribute" means to deliver or to
7 transfer a drug. "To deliver" means to actually or
8 constructively transfer a controlled substance.

9 A distribution may take place even if nothing of
10 value had been given in exchange for the drug. In other
11 words, while a distribution may be done for money or
12 something of value, that is not an essential element.

13 To constitute a crime, an act has to be done with a
14 criminal intent. The criminal intent required to be guilty
15 of distribution of a controlled substance is that the act has
16 to be done knowingly. To do an act knowingly means that it's
17 done with knowledge and consciously, not accidentally. It is
18 an act that is done intentionally, which means willfully,
19 intending the result that actually occurs, not something that
20 occurs by accident or involuntarily.

21 Now, intent may be shown by acts and conduct of the
22 defendant and other circumstances from which you may
23 naturally and reasonably infer intent. But the State has to
24 prove to you beyond a reasonable doubt that the defendant
25 knew that he was distributing the particular controlled

1 substance alleged at the time that he is alleged to have
2 committed the act.

3 So to recap, in order to prove the defendant guilty
4 of distribution of a controlled substance, the State has to
5 prove to you these things beyond a reasonable doubt: First,
6 that the substance in question was, in fact, the controlled
7 substance alleged, that is crack cocaine on one indictment,
8 heroin on the other; second, that the defendant knowingly and
9 intentionally distributed that drug as alleged in the
10 indictment; and, third, that the distribution occurred in
11 Charleston County, South Carolina, on the date alleged in the
12 indictment.

13 The final thing I have tell you about the law,
14 ladies and gentlemen, is that the defendant is entitled to
15 every reasonable doubt that arises in an entire case. If
16 upon any issue of fact essential to a conviction, you have a
17 reasonable doubt as to how that issue should be resolved, you
18 have to resolve that doubt in favor of the defendant.

19 If upon reviewing an entire case you have a
20 reasonable doubt as to whether the defendant has been proven
21 guilty on that charge, he is entitled to that doubt and a
22 verdict of not guilty.

23 On the other hand, if upon reviewing an entire case
24 you find that the State has proved every essential element of
25 its case against the defendant beyond a reasonable doubt, it

1 is equally your duty to find the defendant guilty of that
2 charge.

3 That's the law.

4 Ladies and gentlemen, when you go back to the jury
5 room to decide the case, you are going to have with you all
6 the exhibits that have been admitted in the trial. And you
7 are going to have these verdict forms. You are also going to
8 be given a computer, if you wish, to play the things that are
9 in electronic format. You will have something you can plug
10 in.

11 Now, on these verdict forms, you are going to tell
12 us your decisions. As I told you over and over again, there
13 are two separate and distinct charges, each of which have to
14 be evaluated on its own merit or lack of merit. So you have
15 two verdict forms. I will take them in the order that they
16 are numerically.

17 You will see this verdict form on Case No.
18 2015-GS-10-02965, reads: As to the charge of distribution of
19 cocaine base, and in (crack cocaine), we the jury unanimously
20 find the defendant, and you have two options. You may find
21 the defendant not guilty or you may find the defendant guilty
22 of distribution of cocaine base crack cocaine.

23 The other verdict form is on Case No. 2966. And it
24 reads: As to the charge of distribution of heroin, we the
25 jury unanimously find the defendant, and you have two

1 options. You may find him not guilty or you may find him
2 guilty of distribution of heroin.

3 Now, Mr. Foreman, part of your job is going to be
4 record these verdict forms. I think you will find the form
5 self-explanatory. Check the option chose by the jury on each
6 form and sign your signature on the line where it's
7 indicated.

8 Folks, how you go about taking your votes and go
9 about your deliberation is subject to your discretion, with
10 this requirement. The verdict has to be unanimous. All 12
11 of you must agree on a verdict on each of these cases before
12 the foreman can record your verdict.

13 When you have reached your verdict, knock on the
14 door. Bailiff will respond to your knock.

15 I've told you dozen times or more not to discuss the
16 case until I give it to you. Believe it or not, it's not
17 time yet. The law says I have to go over with the attorneys
18 what I just told you. That's just common sense. We don't
19 want you back there deciding the cases using the wrong law.
20 So I have to give them a chance to point out to me what I may
21 have said wrong.

22 Now, the truth is, as I think you know, I printed
23 this out. We've already been over this. It shouldn't take
24 long, but I never read the charge verbatim. Sometimes I say
25 things I don't even know I said. So the lawyers have to be

1 given a chance to point that out to me. Here's what you need
2 to look for. If I'm satisfied with what I told you, I will
3 send into the jury room, by the bailiff, the exhibits, the
4 computer and the verdict forms. The bailiff will bring the
5 alternate out. When it's just the 12 of you in there and
6 you've got those things, you don't have to wait one more
7 second, you can start talking about the case. But don't talk
8 about it until then.

9 You may take your notes with you into the jury room
10 now subject to those three rules I've given you previously.
11 I sincerely appreciate your attention. You may retire to the
12 jury room.

13 (Whereupon, the jury leaves open court at 2:07 p.m.)

14 THE COURT: Are any corrections, exceptions,
15 additions or objections to the charge from the State?

16 MS. LINDER: None from the State.

17 THE COURT: From the Defense?

18 MS. GAY: Well, Your Honor, I would like to mark my
19 exception that I asked you to add *State vs. Manning* in the
20 reasonable doubt charge. And I think I have to at this time
21 state an objection. You overruled me, I believe. So just
22 for the record.

23 THE COURT: Yes, ma'am. The request is considered
24 and denied.

25 All right. Folks, check the verdict forms. Check

1 the exhibits. When you are satisfied, give this to the
2 bailiff, please.

3 (Whereupon, the jury deliberates at 2:09 p.m.)

4 THE COURT: Bring the alternate in. Ms. Nelson,
5 everybody made it through the case without having to use an
6 alternate. So you are discharged from jury duty. And I want
7 you to understand, I use alternates about half the cases I
8 do. So once we swear in the jury, we have to continue.
9 That's when jeopardy attaches. And so I didn't have you
10 sitting over there for no reason. I don't think they have
11 any more jury trials.

12 THE CLERK: No, sir, that's it. They are released
13 for the week.

14 THE COURT: Do you need to talk to her about
15 anything?

16 THE CLERK: We are going to be sending you your
17 check and a letter saying how many days you were with us and
18 that will go out tomorrow.

19 THE COURT: You are welcome to stay if you wish to
20 stay, but you are free to go if you wish to go. Make sure
21 you gave your notes to the bailiffs. We are at ease pending
22 a verdict.

23 (Whereupon, a recess transpired.)

24 THE COURT: Jury has sent me a note indicating they
25 want to hear the audio of Karen Ford and Marc Brown. So

1 bring them back in.

2 (Court's Exh 3, Jury note requesting playback of
3 testimony of Karen Ford and Marc Brown, was marked for
4 identification.)

5 (Whereupon, the jury returns to open court at 3:34
6 p.m.)

7 THE COURT: All right. Mr. Foreman, I understand
8 the jury wants to hear the testimony played back. So the
9 first one will be Marc Brown. There's going to be a buzz in
10 it, but we can't get that out.

11 (Whereupon, the testimony of Karen Ford and Marc
12 Brown are played back.)

13 THE COURT: You may retire to the jury room.
14 Assuming there's nothing to put on the record, we are at ease
15 pending the verdict.

16 (Whereupon, recess transpired.)

17 (Court's Exh. 4, Jury note, was received for
18 identification.)

19 THE COURT: I received a note from the jury that
20 reads that the jury has a verdict on heroin charge. The jury
21 is hung on cocaine charge. My proposal would be to give them
22 an Allen charge on the cocaine charge and see where we go
23 from there.

24 Does the State have any input?

25 MS. LINDER: I think that sounds appropriate, Judge.

1 THE COURT: Defense?

2 MS. GAY: I understand your reasoning, Your Honor.
3 Yes. Thank you.

4 THE COURT: Okay. It's going to take me a minute to
5 pull this up. Okay. Bring the jury in, please.

6 (Whereupon, the jury returns to open court at 4:29
7 p.m.)

8 THE COURT: All right. Mr. Foreman, I received a
9 note from the jury that reads: The jury has a verdict on the
10 heroin charge. The jury is hung on the cocaine charge; is
11 that correct?

12 THE FOREPERSON: Yes, sir.

13 THE COURT: Hold on to that, if you would. I'm
14 required to give you an additional instruction. So give me
15 your attention, please.

16 Ladies and gentlemen, you've stated that you've been
17 unable to agree on a verdict on the crack cocaine charge. As
18 I instructed you earlier, the verdict of the jury must be
19 unanimous. And you have advised me that you have not been
20 able to reach a unanimous verdict on that charge. As I also
21 told you earlier, you are the sole judges of the facts and I
22 am not permitted to give you any indication of what, if any,
23 opinions I may have about the facts of the case. So,
24 obviously, nothing I'm saying to you should be construed in
25 any way as indicating anything about my view of the facts.

1 Any time a jury sends out a note like the one that you sent
2 to me, I'm required to give the jury an additional
3 instruction or charge to see if the jury can make a further
4 effort to reach a verdict, if that can be done without any
5 juror' doing violence to his or her own conscience.

6 When a matter is in dispute, it isn't always easy
7 for even two people to agree. So when 12 people must agree,
8 it often becomes correspondingly more difficult. You have a
9 duty to make every reasonable effort to reach a unanimous
10 verdict. In doing this, you should consult with each other,
11 express your own views, and listen to the opinions of your
12 fellow jurors. Tell each other how you feel and why you feel
13 that way. Discuss your differences with open minds.

14 Now, although the verdict of the jury must be
15 unanimous, every one of you has the right to your own
16 opinion. Any verdict must be the verdict of each and every
17 juror, the result of your own convictions. And you should
18 not give up your firmly held bailiffs merely to be in
19 agreement with your fellow jurors. The majority should
20 consider the minority's opinion and the minority should
21 consider majority's position. You should carefully consider
22 and respect the opinions of each other and evaluate your
23 position for reasonableness, correctness and impartiality.
24 You must lay aside all outside matters and examine the
25 questions before you based on the law and the evidence in the

1 case.

2 Now, if you do not agree on a verdict, it does not
3 mean that anybody wins. It just means that at some future
4 time, some on the jury will come and sit where you are
5 sitting. Some participate will likely come and pose the same
6 questions. And the witnesses will likely come and give the
7 same answers. And we will go through the whole process
8 again.

9 You were selected in the same manner and from the
10 same source as any future jury will be. There's no reason
11 for me to suppose that the case will ever be submitted to
12 more intelligent, impartial, conscientious and competent
13 jurors than you. I, therefore, ask you to return to your
14 jury room to deliberate to see if you can reach a verdict on
15 that one charge of crack cocaine. However, I remind you of
16 what I said at the outset, that while it is important that
17 litigation be ended, it should never be ended where a juror
18 does violence to his or her own conscience. No juror is
19 expected to give up an opinion that was reached after proper
20 deliberation, fairly and impartially, based on reasoning that
21 is satisfactory to that juror just for the purpose of being
22 in agreement.

23 So I ask, ladies and gentlemen, that you please
24 retire to your jury room to make a further effort to see if
25 you can reach a verdict on the charge of distribution of

1 cocaine base. And let me know whether or not you are able to
2 reach a verdict.

3 And, please, in any note you send me, of whatever it
4 may be, don't tell me the division. Don't tell me how many
5 vote one way and how many vote another. Okay?

6 Thank you. You may retire to your jury room.

7 (Whereupon, the jury leaves open court at 4:33 p.m.)

8 THE COURT: Please state for the record any
9 objections or additions to the Allen charge; from the
10 State.

11 MS. LINDER: None from the State.

12 THE COURT: The Defense?

13 MS. GAY: No, sir.

14 THE COURT: We are at ease.

15 (Whereupon, a recess transpired.)

16 (Court's Exh. 5, Jury note, was marked for
17 identification.)

18 THE COURT: I received a note from the jury that
19 reads: Please advise the criteria needed to convict on the
20 cocaine charge and if lawful criteria have to apply for a
21 conviction.

22 And the second part of the note is: Please advise,
23 does the substance have to be identified as charged, i.e.,
24 cocaine, or is the appearance of a plastic bag with an
25 appearance of cocaine -- it says suffice, I'm assuming they

1 mean sufficient. Signed by the foreperson.

2 I can charge the jury again about distribution of
3 controlled substance. And in the charge, it's pretty clear
4 that, in my mind, that the State has to prove beyond a
5 reasonable doubt that the substance was, in fact, cocaine
6 base. And at the end of it, I said that they have to
7 prove -- I had a recap session where I see in order to prove
8 the defendant guilty of distribution of controlled substance,
9 the State has to prove certain things beyond a reasonable
10 doubt: First, that the substance in question was, in fact,
11 the controlled substance alleged, crack cocaine; second, that
12 the defendant knowingly and intentionally distributed that
13 drug as alleged in the indictment; and third, that the
14 distribution occurred in Charleston County, South Carolina on
15 the date alleged in the indictment.

16 So what I would just propose is read them the charge
17 on distribution again, which is only a couple of pages.
18 Y'all have any input?

19 MS. LINDER: Judge, I returned the jury charges
20 after we read them over lunch, but I am just trying to think.
21 I know there was a section where you read kind of the
22 description and explained that cocaine base and crack cocaine
23 and kind of described what it is. I don't know if they are
24 confused. I can't read what they are thinking. But, you
25 know, the lab report says cocaine base, which is cocaine base

1 crack, which is crack cocaine. I don't know if they are
2 confused about that or what.

3 THE COURT: I put that on there because years ago,
4 one of the judges who writes the charge book was upset, not
5 with me, but with another judge, because that judge was
6 distributing materials that he felt were copyrighted. So the
7 charge -- I can only speculate about what they are dealing
8 with. And juries fool me all the time. So I don't know what
9 they are wrestling with. They may be wrestling with one
10 witness who testified about handling one drug but not
11 handling another drug.

12 MS. GAY: I agree with you. I think it has
13 something to do with the chain. That's my thoughts.

14 THE COURT: One witness said she didn't do anything
15 with the heroin. You have a verdict on heroin. And then you
16 have another witness, I mean, same witness who -- maybe they
17 are questioning the chain. I don't know.

18 MS. GAY: But what you said you would do is go
19 through the distribution, redo the distribution charge. And
20 I had said to Ms. Linder that I felt that it was very
21 important for you to establish that all elements had to be
22 proven beyond a reasonable doubt. And I think what you read
23 just a few minutes ago covers that, that you are telling them
24 that they have to find -- this business about the appearance
25 of the bag, it kind of looks like it will suffice. I think

1 in saying it has to be reasonable doubt, you covered that.

2 THE COURT: I can't get that specific. I do charges
3 on the facts.

4 MS. GAY: I do agree what you said you will recharge
5 sounds good.

6 THE COURT: I intend to recharge the whole
7 controlled substance distribution.

8 MS. LINDER: The whole distribution of controlled
9 substance, does that go to the next paragraph where it
10 defines cocaine?

11 THE COURT: Goes to the end.

12 MS. LINDER: Perfect. Yes, Judge.

13 (Whereupon, the jury returns to open court at 5:08
14 p.m.)

15 THE COURT: Mr. Foreman, I received a note from the
16 jury that reads: Please advise the criteria needed to
17 convict on the cocaine charge. And if multiple criteria, do
18 all criteria have to apply for a conviction? And second part
19 is: Please advise, does the substance have to be identified
20 as charged, i.e.,, "cocaine" or is the appearance of a
21 plastic bag with an appearance of cocaine sufficient?

22 Are those questions of the jury?

23 THE FOREPERSON: Yes, sir.

24 THE COURT: All right. Folks, all I can do in
25 response to your questions is to give you the charge again on

1 distribution. So I'm going to charge you again on
2 distribution. It's not very long. And then if you have
3 other matters you need me to address, you send me a note. So
4 what I told you earlier is this. The law related to
5 distribution of controlled substances is rather simple.

6 It is unlawful for any person except for properly
7 licensed medical professionals, to distribute a controlled
8 substance. Crack cocaine is the same as cocaine base.
9 Cocaine base is a controlled substance under the law. The
10 State must prove to you that the substance in question was
11 the illegal drug charged, crack cocaine or cocaine base.

12 Crack cocaine is a defined term. It is referred to
13 in the statute as cocaine base. Cocaine base is defined as
14 an alkaloidal cocaine or free-base form of cocaine which is
15 the end product of a chemical alteration whereby the cocaine
16 in salt form is converted to a form suitable for smoking.
17 Cocaine base is commonly referred to as rock or crack
18 cocaine.

19 To prove the defendant guilty, the State must prove
20 to you beyond a reasonable doubt that the defendant
21 distributed the controlled substance in question as alleged
22 in the indictment.

23 "To distribute" means to deliver or to transfer a
24 drug.

25 "To deliver" means to actually or constructively

1 transfer a controlled substance. A distribution may take
2 place even if nothing of value is given in exchange for the
3 drug. In other words, while a distribution may be done for
4 money or something of value, it is not essential that money
5 pass hands.

6 To constitute a crime, an act must be done with
7 criminal intent. The criminal intent required to be guilty
8 of distribution of a controlled substance is that the act be
9 done knowingly. To do an act knowingly means that it is done
10 with knowledge and consciously, not accidentally. It is an
11 act that is done intentionally, which means willfully,
12 intending the result that actually occurs, not something that
13 occurs by accident or involuntarily. Intent may be shown by
14 acts and conduct of the defendant and other circumstances
15 from which you may naturally and reasonably infer intent.
16 But the State must prove to you beyond a reasonable doubt
17 that the defendant knew that he was distributing the
18 particular controlled substance alleged at the time that he
19 is alleged to have committed the act.

20 So to recap all of that, in order to prove a
21 defendant guilty of distribution of a controlled substance,
22 in this instance, cocaine base or crack cocaine, the State
23 has to prove to you certain things beyond a reasonable doubt:
24 First, that the substance in question was, in fact, the
25 controlled substance alleged, crack cocaine or cocaine base;

1 second, that the defendant knowingly and intentionally
2 distributed that drug as alleged in the indictment; and
3 third, that the distribution occurred in Charleston County,
4 South Carolina, on the date alleged in the indictment.

5 And then I told you about reasonable doubt, that the
6 defendant is entitled to every reasonable doubt arising in
7 the entire case. If upon any issue of fact essential to a
8 conviction you have a reasonable doubt as to how that should
9 be resolved, you have to resolve the doubt in favor of the
10 defendant.

11 If upon reviewing an entire case, you have a
12 reasonable doubt as to whether the defendant has been proven
13 guilty on that charge, he is entitled to that doubt and a
14 verdict of not guilty. On the other hand, if upon reviewing
15 an entire case, you find that the State has proved every
16 essential element of its case against the defendant beyond a
17 reasonable doubt, it is equally your duty to find the
18 defendant guilty of that charge.

19 Does that help? All right. You may retire to your
20 jury room. Thank you.

21 (Whereupon, the jury leaves open court at 5:13 p.m.)

22 THE COURT: Please state for the record any
23 exceptions, additions or objections to the charge?

24 MS. LINDER: None from the State.

25 THE COURT: The Defense?

1 MS. GAY: No, Your Honor.

2 THE COURT: Thank you. We are at ease pending a
3 verdict.

4 (Whereupon, recess transpired.)

5 THE COURT: I received another note from the jury
6 that indicates they are still hung on the cocaine charge.
7 They have a verdict on the heroin charge. So I will bring
8 them out, ask them if -- I will explain to them the only way
9 I can require they go any further is if they tell me they
10 want to. Assuming that they do not go forward, then I will
11 have to declare a mistrial on the cocaine charge and take the
12 verdict on the heroin charge.

13 (Court's Exh. 6, Jury note indicating they are
14 still hung on the cocaine charge, was marked for
15 identification.)

16 THE COURT: Bring the jury, please.

17 (Whereupon, the jury returns to open court at 5:26
18 p.m.)

19 THE COURT: All right. Mr. Foreman, ladies and
20 gentlemen of the jury, I received a note. The first part of
21 it reads that you are still hung on the cocaine charge.

22 Is that correct, Mr. Foreman?

23 THE FOREPERSON: Yes, Your Honor.

24 THE COURT: Mr. Foreman, we have a statute in South
25 Carolina. It's 14-7-1330. And what it provides is that when

1 a jury returns a second time without having agreed on a
2 verdict, the trial judge cannot send the jurors out again
3 without the jurors' consent unless the jurors ask for further
4 explanation of the law. And then we had a case in 2000 that
5 interpreted that statute. And it states that I'm supposed to
6 diplomatically discuss with you whether further deliberations
7 would be beneficial. Do you feel that further deliberations
8 would serve any useful purpose?

9 THE FOREPERSON: No, Your Honor.

10 THE COURT: Do you believe the jury is deadlocked?

11 THE FOREPERSON: Yes, sir.

12 THE COURT: All right. What I'm going to do then is
13 declare a mistrial on the charge of distribution of cocaine
14 base. And we will receive the verdict on the heroin charge.

15 Mr. Foreman, has the jury reached a verdict on the
16 charge of distribution of heroin?

17 THE FOREPERSON: Yes, Your Honor.

18 THE COURT: Will you hand it to the bailiff, please.

19 All right. This is Case No. 2015-GS-10-02966. As
20 to the charge of distribution of heroin, we the jury
21 unanimously find the defendant guilty of distribution of
22 heroin, signed by the foreman.

23 Mr. Foreman, ladies and gentlemen of the jury, if
24 I've accurately stated your verdict, that is guilty of the
25 charge of distribution of heroin, please signify by raising

1 your right hand. All 12 hands are raised.

2 Are there any matters to take up prior to the jury
3 being discharged, from the State?

4 MS. LINDER: None from the State.

5 THE COURT: From the Defense?

6 MS. GAY: We ask that you poll the jury.

7 THE COURT: What's going to happen now is, the clerk
8 is going to call the roll. When he calls your name, if you
9 will raise your hand so he knows where to look. Put your
10 hand down when he makes eye contact with you. He's going to
11 ask you two questions. Sometimes they ask you one question.
12 Sometimes clerks ask two. Basically, the questions are going
13 to be: Was this your verdict, and is it still your verdict?
14 Answer the clerk truthfully, please. Are you ready?

15 The Clerk: Juror No. 9, was that your verdict?

16 JUROR 9: Yes, sir.

17 THE COURT: Is that still your verdict?

18 JUROR 9: Yes, sir.

19 THE COURT: Thank you. Juror No. 39, was that your
20 verdict?

21 JUROR 39: Yes, sir.

22 THE COURT: Is that still your verdict?

23 JUROR 39: Yes, sir.

24 THE CLERK: Juror No. 58, was that your verdict?

25 JUROR 58: Yes.

1 THE CLERK: Is that still your verdict?

2 JUROR 58: Yes.

3 THE CLERK: Juror No. 66, was that your verdict?

4 JUROR 66: Yes.

5 THE CLERK: Is that still your verdict?

6 JUROR 66: Yes.

7 THE CLERK: Juror No. 70, was that your verdict?

8 JUROR 70: Yes.

9 THE CLERK: Is that still your verdict?

10 JUROR 70: Yes.

11 THE CLERK: Juror No. 138, was that your verdict?

12 JUROR 138: Yes.

13 THE CLERK: Is that still your verdict?

14 JUROR 138: Yes.

15 THE CLERK: Juror No. 170, was that your verdict?

16 JUROR 170: Yes.

17 THE CLERK: Is that still your verdict?

18 JUROR 170: Yes.

19 THE CLERK: Juror No. 180, was that your verdict?

20 JUROR 180: Yes.

21 THE CLERK: Is that still your verdict?

22 JUROR 180: Yes.

23 THE CLERK: Juror No. 211, was that your verdict?

24 JUROR 211: Yes, sir.

25 THE CLERK: Is that still your verdict?

1 JUROR 211: Yes, sir.

2 THE CLERK: Thank you.

3 Juror No. 233, was that your verdict?

4 JUROR 233: Yes, sir.

5 THE CLERK: Is that still your verdict?

6 JUROR 233: Yes, sir.

7 THE CLERK: Juror No. 263, was that your verdict?

8 JUROR 263: Yes, sir.

9 THE CLERK: Was that still your verdict?

10 JUROR 263: Yes, sir.

11 THE CLERK: Juror No. 378, was that your verdict?

12 JUROR 378: Yes.

13 THE CLERK: Is that still your verdict?

14 JUROR 378: Yes, sir.

15 THE CLERK: Was there any juror whose number I did
16 not call? Please raise your right hand.

17 Your Honor, the jury has been polled and the verdict
18 stands.

19 THE COURT: Anything further before the jury is
20 discharged, from the Defense?

21 MS. GAY: No, Your Honor.

22 THE COURT: All right. Ladies and gentlemen of the
23 jury, that's going to conclude your jury service. The clerk
24 is going to tell you a couple of things. You are
25 disqualified for a year from serving on the jury in state

1 court, civil or criminal, and you have an exemption for 2017,
2 2018, 2019. So you would not have to serve on a state court
3 jury again until 2020 at the earliest. The exemption is not
4 a disqualification. If you are willing to serve, you can
5 serve. Try to remember when you served in case you want to
6 claim the exemption.

7 All right. Mr. Clerk, tell them what you told me.

8 THE CLERK: We will be mailing out your check
9 tomorrow, along with a letter saying how many days you were
10 with us this week for your employer, whoever may need that.
11 So if you don't get the check by, I would say, next Tuesday
12 or so, give us a call and we will look into it. Thank you.

13 THE COURT: Mr. Foreman, I need you to sign the
14 original indictment before you can go. The clerk will meet
15 you back there. It's just the heroin charge. So thank you
16 so much. You are free to go.

17 (Whereupon, the jury leaves open court at 5:32 p.m.)

18 THE COURT: Are there any post-trial motions?

19 MS. LINDER: Not from the State?

20 MS. GAY: Yes, Your Honor. I would renew -- make a
21 motion for a new trial based on the prior rulings that we had
22 with my motion for directed verdict and my two motions for
23 mistrial, Your Honor. And I don't believe that the verdict
24 should speak the truth in this case.

25 THE COURT: Thank you. The Court believes that

1 there's sufficient evidence to support jury's verdict, and
2 respectfully denies the motion. And having reviewed or
3 reconsidered the mistrial motion that was made, the Court
4 declines to change its previous rulings on that.

5 So what offense is this?

6 MS. LINDER: This is third or subsequent, Judge. So
7 carries 10 to 30 years and a fine up to \$50,000. And the 10
8 is a mandatory minimum without any of that part suspended.
9 And I have a sentencing sheet, Your Honor, if I may hand it
10 forward.

11 THE COURT: Sure.

12 MS. GAY: Would you like us to come to the podium?

13 THE COURT: Is that what you usually do? It's fine
14 with me if you stay where you are or come to the podium.

15 Does the State have anything else on sentencing?

16 MS. LINDER: Your Honor, as far as the sentence is
17 concerned, I've read into the record at least his felony
18 record previously. He has, I believe, eight prior drug
19 convictions, including distributions. He has prior strikes
20 also. And as a result of this, he is eligible for LWOP. He
21 actually still has at least -- I didn't bring all the
22 files -- at least five other charges pending in my office,
23 including distributions and traffickings.

24 And, Your Honor, he was also on probation when all
25 of this occurred. And he is still on probation to this day

1 after serving a split sentence. In the past, he has also
2 served the longest active sentence he has ever served before,
3 seven years. I would respectfully request something in the
4 middle range of that 10 to 30. And I would do that for a
5 number of reasons. I would do that due to the defendant's
6 prior history. I would do that also because I believe that
7 may assist in wrapping up all of his other outstanding
8 charges. And if that's the case, then the State would be
9 taking LWOP off the table for future trials of his remaining
10 charges.

11 THE COURT: Okay. Ms. Gay.

12 MS. GAY: Thank you, Your Honor. He's 35 years old.
13 He has a 10th grade education. He does have six children,
14 Your Honor. He has been working in the construction industry
15 before his arrest, and has done that for a number of years.
16 I think you know as much as we can know today about him other
17 than he's asking for mercy, Your Honor. You know, there was
18 reasons in his mind where he felt like he needed to exercise
19 his right to a trial. As it went forth, they did hang him on
20 one of his charges, Your Honor. And I would just ask you to
21 be as lenient as possible.

22 I've explained to him that he's got all these other
23 things out there. And I was asking him at one point, are you
24 ready for me to try to resolve everything now. I think
25 that's something that he wants me to do as part of it all.

1 He's going to have to let me know. We do have a probation
2 violation. There are no probation agents in this courtroom.
3 Normally there is. But I would assume -- his probation case
4 was actually on the docket for Monday morning, and they
5 continued it. So we can get him over for the probation
6 matter quickly.

7 Do you have anything you would like to say,
8 Mr. Ancrum?

9 THE DEFENDANT: I just ask for the leniency of the
10 Court.

11 THE COURT: How long have you been in jail?

12 THE DEFENDANT: For these charges, probably a year
13 now.

14 THE COURT: Do you know when he got arrested?

15 MS. LINDER: Your Honor, it was not from the arrest
16 date. There's a bench warrant. They were looking for him.
17 He was on the trial docket last summer and no-showed. And
18 that's when he was picked up on a bench warrant late last
19 summer.

20 MS. GAY: And he's been in jail ever since then,
21 Your Honor. One of the things that we have to figure out is
22 how much time he gets credit for this warrant number as
23 opposed to some of the other problems he's had. But when you
24 have a bench warrant -- when were you picked up on the day
25 for the bench warrant? Was it the fall? Okay. It was some

1 time late last year, I believe, he was picked up. I'm sure
2 the Department of Corrections can figure that out.

3 THE COURT: Is there any disagreement that this is
4 his third offense?

5 MS. GAY: No, sir.

6 THE COURT: And the other ones were not all for
7 possession, obviously?

8 MS. LINDER: Correct, Judge.

9 THE COURT: All right. Mr. Ancrum, I always make
10 sure to put this on the record before I sentence someone
11 after a trial where the person is found guilty. You
12 understand that if you wish to appeal anything from these
13 proceedings, it has to be in writing.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And there's a very short time frame in
16 which to file an appeal. So if you want to file an appeal,
17 you make sure you tell Ms. Gay to file a notice of appeal
18 right away. All right? You understand, sir?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Sentence of the Court is you be
21 committed to the South Carolina Department of Corrections for
22 15 years, plus costs and assessments. You get credit for
23 jail time under Section 24-1340, to be calculated and applied
24 by the Department of Corrections. Pay your court costs
25 within six months of being released from prison.

1 I have taken into consideration that this is a
2 no-parole offense, which means you are going to have to serve
3 minimum 85 percent unless something changes.

4 MS. GAY: Thank you, Your Honor.

5 THE COURT: Good luck to you, sir.

6 MS. GAY: Thank you.

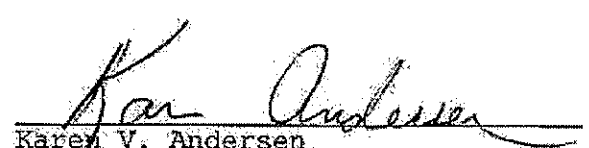
7 THE COURT: Thank you, ma'am.

8 (Whereupon, proceedings are adjourned.)
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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina
at Large, do hereby certify that the foregoing transcript is
a true, accurate and complete Transcript of Record of the
proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

278

SBL/0244590/20150201246
WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER
2015-01961

ARREST WARRANT NUMBER
2015-GS-10-02966

DATE OF ARREST
02/19/2015

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

JUN 8 2015

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-10-02966

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS
JUNE TERM 2015

THE STATE

VS.

GERALD JARROD ANCRUM
B/M DOB [REDACTED]

Indictment for

DISTRIBUTION OF HEROIN

SC Code: § 44-53-0370(b)(1)
CDR Code: 0185

FILED

6/17/2015 11:58:04 AM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

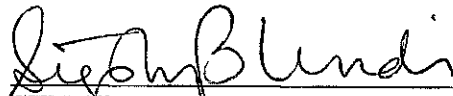
INDICTMENT

At a Court of General Sessions, convened on June 8, 2015, the Grand Jurors of Charleston County present upon their oath:

Distribution of Heroin

The defendant, Gerald Jarrod Ancrum, did on or about February 5, 2015, in Charleston County, South Carolina, manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase Heroin, a schedule I controlled substance narcotic. All in violation of 44-53-0370(b)(1) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



STEPHANIE B. LINDER
ASSISTANT SOLICITOR

COUNTY OF CHARLESTON

STATE VS.

GERALD J ANCRUM

AKA: Gerald Jarrod Ancrum, Gerald Jarod Ancrum

Race: Black/African AmericanSex: M

DOB: _____

SS#: _____

Address: _____

City, State, Zip: _____

DL#: _____

SID# SC01248496*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Distribution Heroin 3rdIn violation of § 44-53-0370(b)(1) of the S.C. Code of Laws, bearing CDR Code # 0185☒ NON-VIOLENT☒ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)

The charge is:

☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Stephanie B. Linder, Assistant Solicitor SC Bar # 72656

Defendant

Attorney for Defendant

63773
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: PAY COURT COSTS w/in 6 mo. of
RELEASE FROM PRISON

Recipient: _____

*Fine: _____

\$ _____

§14-1-206 (Assessments 107.5%)

\$ _____

§14-1-211 (A)(1)(Conv. Surcharge)

\$100

\$ 100.00

§14-1-211 (A)(2)(DUI Surcharge)

\$100

\$ _____

§56-5-2995 (DUI Assessment)

\$12

\$ _____

§56-1-286 (DUI Breath Test)

\$25

\$ _____

Proviso 61.6 (Public Def/Prob)

\$500

\$ _____

§14-1-212 (Law Enforce. Funding)

\$25

\$ 25.00

§14-1-213 (Drug Court Surcharge)

\$150

\$ 150.00

§50-21-114 (BUI Breath Test Fee)

\$50

\$ _____

§56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$ _____

3% to County (if paid in installments)

\$

\$ 8.25

TOTAL

\$ 283.25☐ Appointed PD or appointed other counsel,

\$47.12 requires \$500 be paid to Clerk

during probation.

Clerk of Court/Deputy Clerk: ColleenCourt Reporter: Raren AndersonPresiding Judge: William P. HensleyJudge Code: 2050Sentence Date: May 24, 2017ATTEST A TRUE COPY
JULIE J. ARMSTRONG (SEAL)By: [Signature]

DEPUTY CLERK

INDICTMENT/CASE#: 2015-GS-10-02966A/W: 2015GS1002966Date of Offense: 02/05/2015S.C. Code §: 44-53-0370(b)(1)CDR Code #: 0184

RECEIVED

SENTENCE SHEET

JUN 12 2017

SC Court of Appeals

☒ CONVICTED OF or☐ PLEADS

FORM 5

STATE OF SOUTH CAROLINA)

County of Charleston)Gerald Ancrum #267461)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

2020-CP-10-902
IN THE COURT OF COMMON PLEASFILED
2020 FEB 19 PM 12:01
CLERK OF COURT

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Corr Inst.
2. Name and location of Court which imposed sentence Charleston County
Ninth Judicial Circuit Court of Common Plea
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2015-GS-1002966, 2015-GS-1002970, 2015-GS-1002971
and 2015-GS-1002972
(b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) MAY 24, 2017 15 yrs.; June 23, 2017 (3) concurrent 12 yrs.
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Feb-13-2019
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. NA
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) NA
- (b) NA

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) 6th Amendment Violation
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Denial of a Fair trial do to
- (b) ineffective assistance of counsel
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

N/A

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

N/A

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? yes
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. MELISA W. GAY, Attorney and Counselor at law
Post Office box 2144, Mt Pleasant S.C. 29465-2144
 ii. Wanda H. Carter, Division of Appellate defense
Post Office box 11589, Columbia S.C. 29211
 iii. _____

(b) the proceedings at which each such attorney represented you:

i. Trial and Guilty Plea
 ii. Direct Appeal
 iii. _____

19. State clearly the relief you seek in filing this application:

VACATE with Prejudice

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of Charleston)

VERIFICATION

I, Gerald Ancrum, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Gerald Ancrum

SWORN to and subscribed before me this 5th
day of February, 2020.

Ludrean Bryant (L.S.)
Notary Public

My Commission Expires: May 21, 2020

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Gerald Ancrum, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Gerald Ancrum
Applicant

SWORN or affirmed to and subscribed before me this
5th day of February, 2020.

Ludeman Bryant
Notary Public

My Commission Expires: May 26, 2020

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Gerald Ancrum #267401,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Case No.: 2020-CP-10-902

RETURN

2020 AUG -3 PM 12:02
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

The State (Respondent), making its Return to the application for Post-Conviction Relief (PCR) filed on February 19, 2020, would respectfully show this Court:

Procedural History

Gerald Ancrum (Applicant) is presently confined pursuant to orders of the Charleston County Clerk of Court. In July 2015, a Charleston County Grand Jury indicted Applicant for distribution of heroin (2015-GS-10-02966), distribution of heroin (2015-GS-10-02970), distribution of crack cocaine (2015-GS-10-02971), and trafficking in heroin (2015-GS-10-02972). On May 23-24, 2017, a jury trial was held in the Charleston County Court of General Sessions with the Honorable William P. Keesley presiding. Applicant was represented by Melissa Gay, Esquire. The State was represented by Assistant Solicitors Stephanie B. Linder and Whitt Sowards of the Ninth Circuit Solicitor's Office. At the conclusion of trial, the jury convicted Applicant of one count of distribution of heroin. A mistrial was declared on the distribution of cocaine base after the jury was unable to reach a verdict. Following the verdict, Applicant conceded that the heroin conviction was his third offense. The trial judge sentenced Applicant to a term of fifteen years imprisonment. Subsequently, Applicant plead guilty before

the Honorable R. Markley Dennis. Applicant plead guilty as indicted on indictments 2015-GS-10-02970, 2971, and 2972. Pursuant to negotiations, Judge Dennis sentenced Applicant to twelve years to run concurrent for all three counts.

Applicant then timely filed a notice of appeal, challenging his trial conviction. The South Carolina Court of Appeals affirmed Applicant's convictions by Unpublished Opinion No. 2019-UP-075, filed on February 13, 2019. The Remittitur was issued to the lower court on June 28, 2019.

Current Application

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of counsel"
2. "6th Amendment violation"

In relief sought, Applicant is seeking: "Vacate with prejudice."

Attached to this Return and incorporated by reference are the records of the Charleston County Clerk of Court regarding the subject convictions, the plea transcript, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials. Applicant alleges he received ineffective assistance of counsel. Nevertheless, Respondent contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in his or her application. See Butler, 286 S.C. at 442, 334 S.E.2d at 814. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that

“counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See Strickland, 466 U.S. at 669. Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. See Hill v. Lockhart, 474 U.S. 52, 52 (1985).

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record, a question of fact is raised which can only be resolved by an evidentiary hearing. See Sharper v. State, 279 S.C. 264, 265,

305 S.E.2d 247, 248 (1983). Because Applicant's claims of ineffective assistance of counsel are not conclusively refuted by the record, then Respondent would request an evidentiary hearing to fully resolve this issue.

Motion for a More Definite Statement

In his application for relief, Applicant fails to set forth with specificity the facts and circumstances upon which his allegations of ineffective assistance of appellate counsel are based. The Uniform Post- Conviction Procedure Act requires that the Applicant must ". . . specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDowell*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant fails to provide any supporting information for his claims.

Accordingly, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss his application.

Response to Any and All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

Request for an Evidentiary Hearing

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BENJAMIN LIMBAUGH
Assistant Attorney General

By: s/ Benjamin H. Limbaugh
ATTORNEY FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

July 31, 2020

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Gerald Ancrum, #267401

Case No.: 2020-CP-10-902

Applicant,

v.

Certificate of Service by Mail

State of South Carolina

Respondent,

FILED
2020 AUG -3 PM 12:03
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion for More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James K. Falk, Esquire
Falk Law Firm, LLC
Post Office Box 1058
Charleston, SC 29402

DATED this 31st day of July, 2020.


Jennifer Jennison, Administrative Coordinator
For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE 9th JUDICIAL CIRCUIT
	)	
GERALD ANCRUM 267401	)	
Applicant	)	2020-CP-10-0902
Vs.	)	
State of South Carolina	)	AMENDED TO PCR APPLICATION
Respondent,	)	
_____	)	

2022 FEB 24 AM 11:35
 JULIE J. ARMSTRONG
 CLERK OF COURT
 Dkt
 FILED

Applicant by and through undersigned counsel amends his February 19, 2020 PCR application to include the following specific grounds for relief.

1. Trial Counsel provided ineffective assistance of counsel by failing to object to the testimony by ATF investigator Frank Preston that confidential informants are chosen because they “*had a history with the targets*” of the drug investigation. (TR p. 89-l. 25 – p. 90 l.). Investigator Preston went on to testify that: *Ms. Morris had information about her past dealings, about her past drug uses and drug purchases. She identified several individuals who she's gone to before, who she's purchased drugs before.* (TR p. 90 l. 15-18). Since Ms. Morris was used as a confidential informant to make a controlled purchase from Applicant, this testimony allowed the jury to infer that Ms. Morris had personal knowledge that Applicant sold drugs in the past. Such testimony was excludable under Rule 404(b) SCRE.

2. Trial Counsel provided ineffective assistance when her cross examination of investigator Preston opened the door that because of Morris’ drug history she had a prior relationship with Applicant.

Q. (trial counsel) It wasn't as if you gave her a name and said, hey, can you call this man for us? She's the one day who said, I can call Mr. Ancrum?

A. (Investigator Preston) Yes, ma'am. (TR. 103-13-16)

3. Trial Counsel provided ineffective assistance of counsel when her cross examination of Tessa Morris (TR p. 137 line 6 – 16) regarding the nature of her past relationship with Applicant, opened the door to for the State’s re-direct examination. During her re-direct testimony sMorris then testified that she knew Applicant for several years “from purchasing drugs” (TR p. 147 line 5).

Respectfully Submitted

s/ *James Falk*

James Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29401
(843) 606 6007
James@falklaw.org

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	DOCKET NO. 2020-CP-10-0902
	)	
	)	
GERALD ANCRUM	)	
	)	
Applicant	)	
	)	
vs.	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
Respondent	)	
	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD

June 24, 2022
Charleston, South Carolina

B E F O R E:

THE HONORABLE KRISTI F. CURTIS, JUDGE

A P P E A R A N C E S:

JAMES K. FALK, ESQ.
Attorney for the Applicant

LAUREN T. MIMS, ESQ.
Attorney for the Respondent

JOYCE C. RUEGER,
Certified Verbatim Reporter-Master
Circuit Court Reporter

[Certified Transcript Provided to: S.C. Attorney General]

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Gerald Ancrum v State of S.C.
Post-Conviction Relief Hearing
June 24, 2022

PROCEEDINGS

THE COURT: Good morning. This is Mr. Ancrum, is that what I understand?

MR. ANCRUM: Yes, Your Honor. .

THE COURT: Good morning, Mr. Ancrum. For the record this is 2020-CP-10-00902. Mr. Falk on behalf of the Applicant, Ms. Mims on behalf of the State. Ms. Mims, if I could get you to give us a little bit of a procedural history.

In looking through the packet yesterday it was a little difficult to discern exactly what he was indicted for verses what he pled to but if you would give me a little bit of a breakdown.

MS. MIMS: Yes, Your Honor. May it please the Court? I'm Lauren Mims here on behalf of the State. And we're here on behalf of the application for post-conviction relief filed by Mr. Gerald Ancrum.

In July 2015 Charleston County Grand Jury indicted Applicant for distribution of heroin; two charges of distribution of heroin, and distribution of crack cocaine and trafficking in heroin.

On May 23rd through the 24th, 2017 a jury trial was held in front of the Honorable William P. Keesley. Applicant was represented by Melisa Gay, Esquire. Assistant Solicitors Stephanie B. Linder and Whit Sowards

Gerald Ancrum v State of S.C.
Post-Conviction Relief Hearing
June 24, 2022

1 represented the State. The jury convicted Applicant of
2 one count of distribution of heroin. A mistrial was
3 declared on the distribution of cocaine base. The trial
4 judge sentenced Applicant to a term of 15 years
5 imprisonment.

6 The Applicant subsequently pled guilty to the
7 remaining charges before R. Markley Dennis. And pursuant
8 to a negotiated guilty plea he was sentenced to 12 years
9 to run concurrent for all counts of the remaining
10 charges.

11 Applicant then filed a notice of appeal challenging
12 his trial conviction. The South Carolina Court of
13 Appeals affirmed that conviction and the remittitur was
14 issued to the lower court on June 28th of 2019 and this
15 PCR followed.

16 THE COURT: So I understand he was tried for one
17 count of distribution of heroin and one count of
18 distribution of crack.

19 MS. MIMS: Yes, ma'am.

20 THE COURT: And there was a mistrial on the
21 distribution of crack cocaine.

22 MS. MIMS: Uh Huh.

23 THE COURT: He got 15 years on the distribution of
24 heroin; it was the third offense.

25 MS. MIMS: Right.

Gerald Ancrum v State of S.C.
Post-Conviction Relief Hearing
June 24, 2022

1 THE COURT: And then it looks like maybe they pled
2 the trafficking heroin down to a distribution of heroin?

3 MS. MIMS: Yes.

4 THE COURT: So he then pled guilty to three counts
5 of distribution of heroin third offense, one count of
6 distribution of cocaine base and got 12 years concurrent,
7 330 days credit. And then it looks like they in addition
8 dismissed it just said several other charges.

9 MS. MIMS: Yes.

10 THE COURT: It's a little confusing because at the
11 end of something in the transcript it says that he had
12 had two trials and the first one was not guilty and the
13 second one was guilty of one and mistrial on the other.
14 But apparently that first trial had nothing to do with
15 the ones he ultimately pled guilty to.

16 MS. MIMS: No, Your Honor.

17 THE COURT: Okay. And is that your understanding
18 as well, Mr. Falk?

19 MR. FALK: Yes, Your Honor.

20 THE COURT: Okay. Mr. Ancrum, I need to go over a
21 few things with you before we get started, sir.

22 MR. ANCRUM: Yes, ma'am.

23 THE COURT: Well, first let me ask this. Mr. Falk,
24 is he contesting both the guilty plea and the trials?

25 [Whereupon, Mr. Falk confers with his client]

Gerald Ancrum v State of S.C.
Post-Conviction Relief Hearing
June 24, 2022

1 MR. FALK: I guess he's looking to contest the
2 guilty pleas and the trial. But what I was planning on
3 going forward with today was on the issues regarding the
4 trial. And I guess he would try to argue that the guilty
5 pleas were involuntary but I had not pled that.

6 THE COURT: Okay.

7 MR. FALK: I don't know if that is something I
8 should have done.

9 THE COURT: Well Mr. Ancrum let me ask you this,
10 sir. Let me pull up this packet here. If you don't mind
11 handing me a hard copy; you've got this packet handy?

12 MS. MIMS: I have the transcript here and his PCR
13 application too.

14 [Whereupon, Ms. Mims provides documents to the
15 Court]

16 [Whereupon, the Court reviews documents]

17 THE COURT: Okay. It's not clear from his initial
18 application. It just says the proceeding at which each
19 such attorney represented you, it says trial and guilty
20 plea. It does say denial of a fair trial due to
21 ineffective assistance of counsel.

22 So, Mr. Ancrum let me get you to raise your right
23 hand as best you can, sir?

24 [Whereupon, the witness complies]

25 [Whereupon, the witness is duly sworn by the Court]

Gerald Ancrum v State of S.C.
Post-Conviction Relief Hearing
June 24, 2022

1 THE COURT: I just need to go over some things with
2 you before we go forward on your application. So the
3 charge of distribution of heroin third offense, can y'all
4 tell me what that carries; what's the potential sentence
5 on that?

6 [Whereupon, all counsel confer]

7 MR. FALK: I think it has a minimum of 25.

8 THE COURT: Well, distribution third doesn't have a
9 minimum of 25.

10 MR. FALK: The trafficking ---

11 THE COURT: --- the trafficking would have. And
12 what I'm getting at is that there are two things that I
13 can do in this case. I can either grant the petition or
14 I can deny the petition.

15 If I agree with you and I grant your petition for
16 PCR it means that all of those charges are now back in
17 play. It means the State can now prosecute you for all
18 of those charges as if your trial or guilty plea never
19 took place. So you are facing significant exposure if
20 you go back on a retrial.

21 The pleading down of the trafficking to the
22 distribution of heroin saved a lot of time on your
23 sentence. The distribution -- excuse me, the trafficking
24 heroin four grams or more third offense that would carry
25 a minimum of 25 years. So, I just want you to understand

Gerald Ancrum v State of S.C.
Post-Conviction Relief Hearing
June 24, 2022

1 you can be successful on this and end up in a worse
2 position on retrial than you are now with the concurrent
3 15 year sentence and then the 12 year sentence. In
4 addition, I don't know what other charges they dismissed
5 as a result of that plea that you did when you pled to
6 the three counts of distribution of heroin and the count
7 of distribution of cocaine base.

8 Just in the record it says that other charges were
9 being dismissed so that it cleared out all of your
10 pending charges in Charleston. Do you know what charges
11 were dismissed against you?

12 MR. ANCRUM: It was like several other
13 distributions. But I was told, if I could speak, I was
14 told that if I lost the trial by my attorney that I
15 wouldn't plead to any charges. But I was brought back a
16 month later to plead to three charges.

17 THE COURT: Okay.

18 MR. ANCRUM: So after losing the trial ---

19 THE COURT: --- I guess what I would say to that is
20 when you have a trial there is no agreement amongst the
21 prosecuting attorney and the defense attorney. That's
22 why you're having a trial.

23 MR. ANCRUM: Yes, ma'am.

24 THE COURT: And Judge Dennis gave you a concurrent
25 sentence. Is that your understanding as well Mr. Falk

Gerald Ancrum v State of S.C.
Post-Conviction Relief Hearing
June 24, 2022

1 that the 12 years ---

2 MR. FALK: --- right ---

3 THE COURT: --- that he got is concurrent with the
4 15. So in essence I mean you didn't get any additional
5 time from the trial to the plea. You didn't get any
6 additional time when you entered the plea after the
7 trial.

8 MR. ANCRUM: Yes, ma'am.

9 THE COURT: And then they went ahead and dismissed
10 some other distribution charges. But I just want to make
11 you understand if we set this aside you go back to zero,
12 which means you can be prosecuted for the original
13 distribution of heroin and the distribution of crack
14 cocaine and trafficking in heroin that you were
15 originally charged with. Everything that you were
16 originally charged with goes back.

17 If you had any plea agreement or any recommendation
18 for a sentence that's all out the window. It's as if the
19 guilty plea and the trial never took place. So if a
20 judge or a jury found you guilty on all of those again
21 the trafficking carries the minimum 25 year sentence.

22 There is no guarantee that those sentences would run
23 concurrently. They could run consecutively and you could
24 potentially be looking at a lot more time than what
25 you're currently serving. None of us can look in a

Gerald Ancrum v State of S.C.
Post-Conviction Relief Hearing
June 24, 2022

1 crystal ball and tell you what would happen but whatever
2 charges were dismissed as a result of this plea agreement
3 those would be back in play as well and the State could
4 try you on each of those.

5 So today is your day for PCR. This is your one
6 chance that you get. If you decide to go forward, that's
7 fine. If you withdraw, that's fine. But if you do
8 withdraw you can't come back later and say that you've
9 changed your mind and you want to have your PCR. You
10 understand that?

11 MR. ANCRUM: Yes, ma'am.

12 THE COURT: And you also understand that if I were
13 to say okay, there were some deficiencies with your trial
14 counsel and that you are entitled to a new trial on that
15 it doesn't mean that the 12 year plea would necessarily
16 be set aside. You understand its two totally different
17 things.

18 So, you would have to be successful, you'd have to
19 convince me that you had ineffective assistance of
20 counsel in both the plea and the trial in order for you
21 to get anywhere with this. Does that make sense?

22 MR. ANCRUM: Yes, ma'am.

23 THE COURT: Okay. And you've discussed that with
24 your attorney?

25 MR. ANCRUM: Yes, ma'am.

Gerald Ancrum v State of S.C.
Post-Conviction Relief Hearing
June 24, 2022

1 THE COURT: And are you satisfied with what Mr.
2 Falk has done for you in this case?
3 MR. ANCRUM: Yes, Your Honor.
4 THE COURT: And you want to go forward with the
5 application today?
6 MR. ANCRUM: Yes, Your Honor.
7 THE COURT: Okay. Mr. Falk?
8 MR. FALK: Yes, Your Honor. Are we starting?
9 THE COURT: Yes, sir.
10 MR. FALK: I'll call Mr. Ancrum.
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Gerald Ancrum v State of S.C.

Post-Conviction Relief Hearing-Gerald Ancrum-Direct Examination by Mr. Falk
June 24, 2022

1 [Whereupon, Mr. Ancrum comes forward]

2 [Whereupon, the witness is duly sworn by the Clerk
3 of Court]

4 THE CLERK OF COURT: Please state your name for the
5 record and spell your last name.

6 MR. ANCRUM: Gerald Jarrod Ancrum, A-N-C-R-U-M.

7 - - - - -

8 GERALD ANCRUM,

9 Having been first duly sworn,

10 Was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. FALK:

13 Q. Mr. Ancrum, can you hear me?

14 A. Yes, sir.

15 Q. Okay. So why don't we start talking, tell me a
16 little bit about how you retained counsel in this case?
17 Sort of go through that history for me, please.

18 A. Well first I was indicted, filed a preliminary
19 hearing, had all charges dismissed at the preliminary
20 hearing, was reindicted by the State.

21 They was trying to kind of like -- I turned down a
22 12 year, I think it was a 12 year plea and I had Jim
23 Smiley at the time. So I fired Jim Smiley and they told
24 me I needed to have a lawyer in 45 days so I hired Melisa
25 Gay.

Gerald Ancrum v State of S.C.

Post-Conviction Relief Hearing-Gerald Ancrum-Direct Examination by Mr. Falk

June 24, 2022

1 Q. Okay. Who was representing you at the preliminary
2 hearing?

3 A. Jim Smiley.

4 Q. Okay. And so what were your discussions with Melisa
5 Gay as far as going forward? Were you planning for a
6 trial or were you looking for some kind of a wrap up
7 deal?

8 A. I was actually in jail. I wanted a wrap up deal but
9 they were rushing us like they pretty much pushed us in
10 Court probably like in two weeks or less.

11 Q. Okay.

12 A. Yeah.

13 Q. And so did you have any conversations specifically
14 with Ms. Gay as far as what your prior conviction history
15 was on drug charges?

16 A. I believe that I tried to speak to her about it but
17 I guess the Solicitor had been telling her that I'm a
18 third offender and I had multiple distributions, which I
19 didn't. But she was just sticking with that so.

20 Q. Did you have some convictions from 2002?

21 A. In 2002 I had some charges that I pled to in 2003.
22 And I later had them reconsidered at a reconsideration by
23 my attorney Tara Anderson.

24 Q. Okay ---

25 A. --- Tara...

Gerald Ancrum v State of S.C.

Post-Conviction Relief Hearing-Gerald Ancrum-Direct Examination by Mr. Falk
June 24, 2022

1 Q. So Ms. Anderson represented you on those
2 reconsiderations back in 2002?

3 A. She represented me, yeah.

4 Q. And what happened?

5 A. The judge nol prossed the second offense charge that
6 I had for distribution. And I think him and the
7 Solicitor agreed to nol pros it. But later on something
8 happened where they said that a charge that I already
9 pled guilty to couldn't be nol prossed.

10 So I had to file another post-conviction and sit in
11 jail for like two or three more years just to get that
12 straight. And they finally released me because of that.

13 Q. Okay. All right. So what was your understanding
14 prior to your arrest on these charges what your criminal
15 record was?

16 A. That those charges would not be enhanceable and it
17 was used, it was actually used to enhance me as a third
18 offender on these current charges.

19 Q. Okay. Would you have made a different decision with
20 this case had you known what your sentencing exposure
21 could be?

22 A. Definitely. I would have never went to trial ---

23 Q. --- okay ---

24 --- first of all if I knew if me and my lawyer had a
25 complete understanding and she could probably give me a

Gerald Ancrum v State of S.C.

Post-Conviction Relief Hearing-Gerald Ancrum-Direct Examination by Mr. Falk
June 24, 2022

1 sentence because there is a difference between being a
2 third offender and a second offender in SCDC.

3 Q. And what is that?

4 A. You are 85 percent if you are a third offender.

5 Q. Okay.

6 A. If you're a second offender you're 51 percent. You
7 get work credits, you get school credits; you get credits
8 for everything. You don't get any credit for anything if
9 you're a third offender in SCDC.

10 Q. Third offender on a PWID charge?

11 A. No, third offender on distribution. I think any
12 charge, any drug charge that you are a third offender in
13 SCDC they control whether you're 85 or 51 if you're doing
14 a non-violent.

15 Actually let me get it right. I'm a non-violent
16 offender of the charges that I pled guilty to and I lost
17 the trial to. But SCDC has me doing 85 percent of my
18 time because I'm a third offender.

19 Q. That's your understanding?

20 A. Yeah, that's what they have me doing. But I don't
21 believe that I should be a third offender.

22 Q. What did you get convicted of?

23 A. Distribution of heroin and distribution of crack.

24 Q. So did you get convicted of trafficking?

25 A. No, I never had a trafficking -- I never pled guilty

Gerald Ancrum v State of S.C.

Post-Conviction Relief Hearing-Gerald Ancrum-Direct Examination by Mr. Falk
June 24, 2022

1 to a trafficking charge in my life. I never had a
2 trafficking charge.

3 Q. Okay. And then you said that had you had a better
4 understanding you would not have wanted to go to trial?

5 A. Definitely.

6 MR. FALK: No further questions.

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Gerald Ancrum v State of S.C.

Post-Conviction Relief Hearing-Gerald Ancrum-Cross-Examination by Ms. Mims
June 24, 2022

1	CROSS-EXAMINATION
2	BY MS. MIMS:
3	Q. Good morning, Mr. Ancrum. How are you?
4	A. Fine.
5	Q. How many times did you meet with your attorney?
6	A. Maybe it might have been two or three times.
7	Q. Two or three times?
8	A. Uh Huh.
9	Q. Okay. And what did y'all discuss during those
10	meetings?
11	A. How am I going to pay her.
12	Q. So y'all never discussed any strategy regarding
13	trial?
14	A. Not really.
15	Q. Not really? Y'all didn't discuss anything regarding
16	trial or a plea or?
17	A. See, we went to a trial before this actual one that
18	I lost.
19	Q. Okay.
20	A. So we probably talked about that one but the one
21	that I lost that we're here for right now no, we didn't
22	really talk about much.
23	Q. Okay. And so do you recall her discussing any
24	evidence that was against you at this trial?
25	A. I remember her saying something, showing me a video

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1 actually. She came the day that we -- she was trying to
2 get me to plead. They were trying to get me to plead
3 actually and I didn't take the plea. I think the plea
4 was for like for 20 years or 18 years. I didn't take it.
5 I remember that.

6 Q. Okay. So, you didn't -- there was a plea offer that
7 you didn't take for these specific, these two charges.

8 A. Yeah, they tried; they offered me it was like 18
9 years I believe.

10 Q. Okay. And why didn't you take the plea?

11 A. I mean because we didn't really discuss anything. I
12 wanted to take to a plea. I didn't really want to go to
13 trial but me and her never really had a full
14 understanding.

15 I just feel like I was being rushed and hounded for
16 money. It was really that I gave her; I didn't even give
17 her the full amount that I owed her so she was really on
18 me about that. That's really it seems like all we
19 discussed honestly.

20 Q. Okay. And so you testified a little bit ago that
21 she was talking to you about the charges that you had so
22 y'all discussed those charges right?

23 A. My prior charges, the '03 charges?

24 Q. Uh Huh.

25 A. I think I tried to mention to -- is that her

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1 assistant right there [indicates], Ms. Lisa Gay?

2 Q. I didn't really see her.

3 A. She had an assistant at the time and I remember
4 telling him that I had some prior charges that had been
5 amended and reconsidered and I had to go through PCR
6 court to get those straight.

7 Those charges are actually still intact and I don't
8 think they should have been intact which I was trying to
9 let them know because I'm being enhanced off of those
10 same convictions that were like 10 years old, 15 years
11 old at the time.

12 Q. So it is your understanding that those charges from
13 the 2003 charges are still intact but they haven't been
14 nol prossed but they are still intact, correct?

15 A. I thought that they were actually vacated. I
16 thought when I was released because of those charges I
17 thought they were actually vacated and they were behind
18 me and they no longer existed.

19 That was my understanding. That's why I never
20 wanted to plea to a third offense.

21 Q. And you were given time served if my memory serves
22 me correctly. You were ---

23 A. --- on one ---

24 Q. --- you were given time served?

25 A. On one yeah and released, I went to PCR court and I

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1 was released maybe 30 days later.

2 Q. Okay. But those charges went back in front of a
3 judge though, correct?

4 A. Yeah. I think Judge Dennis, the same judge who
5 sentenced me, he did the PCR too if I'm not mistaken.

6 Q. Okay. So you don't recall any trial, talking about
7 any trial strategy with Ms. Gay?

8 A. We didn't have a strategy. I mean they flew an
9 informant from out of town to come testify on me and
10 that's all I really -- it was pretty wild. It was pretty
11 wild.

12 Q. Did you ever talk to Ms. Gay about you and the
13 confidential informant having some sort of relationship?

14 A. I believe that I did tell her something that I knew
15 the confidential informant. And I think she mentioned
16 that in that terms at the trial, which led to the
17 confidential informant saying that she knew me from
18 purchasing drugs and things of that nature; things that
19 we had actually set aside to not be used in the trial as
20 prior bad acts.

21 So I feel like my attorney actually she caused, she
22 caused the trial to go a direction that I believe it
23 shouldn't have went by saying that to that woman.

24 Q. Do you recall your attorney also asking for a
25 mistrial because of that?

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1 A. Yes, she did, she did. She did ask for a mistrial
2 and the judge, Mr. Judge Keesley he told her that I was
3 mentioned as a target two or three times already during
4 the trial.

5 So it was like they already labeled me as a drug
6 dealer and she wasn't objecting during those times. She
7 allowed me to be referred to as a target, a drug dealer
8 and all kinds of things during the trial.

9 But when she actually opened the door to something
10 dealing with that informant that's when she objected to a
11 former statement. But I think by that time it was
12 already too late.

13 Q. And then do you recall Judge Keesley actually
14 issuing what we call in the legal field a curative
15 instruction to the jury saying they can't consider any
16 testimony or anything of prior bad acts?

17 A. Yes.

18 Q. Okay. So let's get into a little bit with the
19 subsequent plea. So we're done with trial and you plea
20 to these other charges. It was your intention to plea at
21 that time, correct?

22 A. No. I had got sentenced after trial -- I got
23 sentenced at the trial and I went to, I left the county
24 jail and went to R & E at the prison. And 30 days later
25 they brought me back to the Charleston County jail to

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1 plead to some charges related to these. All of these
2 charges ran along the same charges. And she told me that
3 if I, Ms. Linder told her that if I lost trial she would
4 dismiss every other charge. That's what I was told.

5 So when I got brought back to Charleston County that
6 month after losing that trial I'm pleading to three more
7 charges but I'm afraid because I just lost a trial. So I
8 don't want to take the plea but I really don't want to go
9 back to trial and get a life sentence.

10 Q. And it was your understanding when you were speaking
11 with Judge Curtis that there were several charges that
12 were dismissed because of this plea correct?

13 A. I mean as far as my knowledge my caseworker said I
14 still have pending charges. If I was to be released
15 right now I would still have those same pending charges
16 right now.

17 It's showing in the computer in the prison system
18 that I still have the same charges from 2017 still
19 pending.

20 Q. Okay. So let's just go through the transcript of
21 the plea a little bit here. Of course you pled guilty to
22 those two charges correct?

23 A. Yes, ma'am.

24 Q. There were no threats or promises that were made to
25 you for pleading guilty, correct?

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1 A. The only thing I was told was that I would not be
2 pleading to any charges if I lost that trial. And I was
3 brought back to plea to those charges.

4 Q. Okay. Did you understand at that time that you
5 didn't have to take the plea deal, correct?

6 A. I mean she told me I'd get a life sentence if I lost
7 trial.

8 Q. But you, did you understand that you didn't have to
9 take the plea? I mean ---

10 A. --- I understand that. I understand if you don't
11 take the plea you go to trial. I understand that if I go
12 to trial again after I just lost a trial then I'll be
13 doing third or subsequent offense I would get a life
14 sentence.

15 Q. Okay. And do you remember telling Judge Dennis that
16 you had been satisfied with Ms. Gay's representation?

17 A. I mean I don't really remember saying that. I don't
18 remember saying that. I might have but I don't remember
19 saying it.

20 Q. If I showed it to you would that refresh your
21 memory; in the transcript if I showed it to you where you
22 said that?

23 A. I mean, it is what it is. I understand. I probably
24 did say that.

25 Q. Okay.

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1 MS. MIMS: Beg the Court's indulgence.
2 [Whereupon, Ms. Mims and Ms. Weidauer confer]
3 MS. MIMS: No further questions, Your Honor.
4 MR. FALK: Just briefly redirect?
5 THE COURT: Uh Huh.
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Post-Conviction Relief Hearing-Gerald Ancrum-Redirect Examination by Mr. Falk

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1	REDIRECT EXAMINATION
2	BY MR. FALK:
3	Q. So you would -- these charges from 2002 you had
4	gotten some relief from those charges is that correct?
5	A. All of them were amended and changed.
6	Q. Okay.
7	A. They were actually changed to sentences that carried
8	zero to six months almost like misdemeanors.
9	Q. Okay. And you got time served and you walked out of
10	SCDC ---
11	A. --- yeah, 30 days later I was released.
12	Q. Okay. And your understanding then of how those
13	charges would have affected subsequent. And your
14	understanding was that they could not be enhanced; that
15	they could not be a basis for enhancement.
16	A. Exactly.
17	Q. Okay. I thought that's what you had said.
18	MR. FALK: No further questions.
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EXAMINATION

BY THE COURT:

Q. Let me just clarify because I'm looking at his SCDC records here and it shows two counts of distribution of crack second offense in 2002 and then it also shows a possession of crack.

It says cocaine P-O-S-S-I-N-T slash D-I-S-T-R; I'm not sure what that means. But that's from 2003 and then I see in April of 2004 manufacturing distribution of crack second offense.

A. No, I was already, as a matter of fact in 2004 I had already pled in 2003. I didn't have any charges pending in 2004.

Q. This is showing 2002 charges, 2003 charges, and 2004 charges. It's got three separate start dates there.

A. Yes, I was imprisoned by 2003, Your Honor.

Q. Okay.

A. Yeah, I was in prison. I was already in prison in 2003.

MS. MIMS: May we approach, Your Honor?

THE COURT: Uh Huh.

[Whereupon, an off the record bench conference is held]

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1 MR. FALK: May I have a moment to talk with my
2 client? Can we put him in a booth?

3 THE COURT: Sure. Mr. Ancrum, we're going to give
4 you a minute to talk to your lawyer about procedurally
5 where we are with this since you've got a trial and a
6 plea.

7 [Whereupon, the witness exits the witness stand]

8 [Off the record momentarily]

9 [Whereupon, an off the record bench conference is
10 held]

11 MR. FALK: Your Honor, I think procedurally we're in
12 the situation where we're talking about two separate
13 events; the adjudication on the pleas and the 12 year
14 sentences and the adjudication on the 15 year trial.

15 And I think it's in my client's best interest if we
16 try and bifurcate this at this time and just go forward
17 today on the issues that I raised in the amended PCR
18 relative to the trial.

19 And I think my client should then have an
20 opportunity to bring these issues as far as being sort of
21 an involuntary guilty plea that he should immediately
22 file a PCR on those three claims and then we'd have
23 discussion with the Court at another time about whether
24 or not some equitable toll should apply so that he can
25 still go forward with those.

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1 THE COURT: Ms. Mims?

2 MS. MIMS: The State is agreeable with that.

3 THE COURT: Okay. Then the scope of today's PCR
4 will be limited to those issues raised in the amended
5 application for post-conviction relief pertaining to the
6 jury trial only and not the guilty plea. Okay. Do you
7 want to recall Mr. Ancrum to the stand?

8 MR. FALK: No, Your Honor.

9 THE COURT: Were you?

10 MS. MIMS: I had no further questions.

11 THE COURT: Okay.

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1 MR. FALK: We'll call Ms. Gay to the stand.

2 [Whereupon, Ms. Gay comes forward]

3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 THE CLERK OF COURT: Please state your name for the
6 record and spell your last name.

7 THE WITNESS: My name is Melisa Gay spelled G-A-Y.

8 - - - - -

9 MELISA GAY,

10 Having been first duly sworn,

11 Was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. FALK:

14 Q. So walk me through the timeline of your
15 representation of Mr. Ancrum. He had said something
16 about y'all had a trial that he got acquitted on, is that
17 right?

18 A. Yes. Okay, so Mr. Ancrum hired me and he had a
19 number of charges. And just a side note I talked to Mr.
20 Ancrum a lot, multiple times throughout this entire
21 process of representing him because he had so much going
22 on.

23 We made the decision to have a trial. It was a
24 trafficking case, it was a not guilty; I think it was the
25 second not guilty, and I don't even know if Stephanie

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1 Linder has lost any since then, but it was a great
2 outcome on his trial; lots of conversations about that
3 case plus conversations about the next set of problems
4 that he was going to have.

5 And so because he had won the first trial and the
6 plea offer that they were offering was you know not
7 palatable and he didn't want to do that, he decided he
8 wanted a second trial. That trial which is the one we're
9 here about involved a CI, a confidential informant.

10 So I made a motion to reveal the identity of the
11 confidential informant ---

12 Q. --- if you can just stop. I'm going to bring you
13 back there ---

14 A. --- okay ---

15 Q. --- just because he said he originally had Jim
16 Smiley and he had all of his cases, he had a bunch of
17 cases dismissed at a preliminary hearing. And then they
18 got direct indictments and then it made it sound like he
19 went to trial on this case two weeks later.

20 A. It wasn't that fast.

21 Q. No, I know but when did you -- what was the gap in
22 time between the trial that there was the acquittal on
23 and then this trial?

24 A. I don't know. I don't have that date in front of
25 me. It would be in the court system.

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1 Q. No, I know. I mean is it years or is it weeks ---

2 A. --- I don't remember. It wasn't weeks, it wasn't
3 years. You know Ms. Linder was interested in convicting
4 him of something.

5 She was motivated to get something; it was a
6 conviction. So, I would say it was pretty quickly. I
7 don't remember exactly how many weeks passed.

8 Q. Okay. So you did, you prepared for the one trial,
9 you got the acquittal and then you started preparing for
10 this trial?

11 A. Exactly. But what I was saying is that the
12 preparation for this trial was ongoing even before the
13 other trials started because I had to file a motion to
14 reveal the informant to be able to know who the lady was
15 that she was actually coming into court.

16 So a lot of these informants they, well if you have
17 a trial they have to come but I was working to get her
18 identify so that I could talk to Mr. Ancrum about her,
19 specifically her.

20 Q. And so did you know the identity of the confidential
21 informant prior to the trial?

22 A. I think we did. I don't -- yeah, I think we did
23 because he had told me personal information about how he
24 knew her and so yes we definitely knew who she was before
25 the trial or before she testified.

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1 Q. And did you make any type; try to make any type of
2 motion in *limine* as far as prior bad acts?

3 A. Yes sir, I did.

4 Q. And what was that? What happened?

5 A. Well, looking at the transcript I have a standard
6 set of motions that I make when I go to trial involving
7 simple stuff like their prior record, if they choose to
8 testify, and also prior bad acts under Lyle.

9 And looking at the transcript it appears that the
10 Solicitor said that there wasn't any information that she
11 intended to elicit from a witness about any prior bad act
12 which generally means something that may have occurred;
13 all those things that are exceptions to Lyle.

14 But she was not, she had not given me any
15 information about any specific prior bad acts and that's
16 what we talked about in the *in limine* hearing.

17 Q. And if you look at page 89 in the transcript.
18 That's testimony from Frank Preston. If you look at page
19 86 that will sort of reintroduce you to what his role
20 was.

21 THE COURT REPORTER: What was his name again?
22 Frank?

23 MR. FALK: Preston, Frank Preston.

24 [Whereupon, the witness reviews document]

25 A. Okay. What do you want me to ---

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1 Q. --- so ---

2 A. --- I know who Preston is pursuant to who he is in
3 this trial, yes.

4 Q. Right. And so what was his role in this?

5 A. He was the officer that set up the controlled buy.

6 Q. Okay. So then he started, he testifies then about
7 using the confidential informant starting on page 89.
8 But if I could draw your attention to that sentence on
9 the bottom of page 89 it starts with the word but the
10 informant has and then it goes on into the next page at
11 90.

12 A. Okay. Page 89 you said?

13 Q. Yes, line 25 page 89 starting with the word but.

14 [Whereupon, the witness reviews document]

15 A. Okay. So this is testimony from Tessa Morris it is
16 listed as redirect by the Solicitor.

17 Q. Wait a minute. We're looking at two different
18 things. Hold on.

19 [Whereupon, Mr. Falk reviews document with the
20 witness]

21 A. Okay. But the informant...

22 Q. So this, is it fair to say that Officer Preston is
23 talking about using confidential informants and the
24 reason why he uses confidential informants is because
25 they have a prior history with the target?

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1 A. Yes. There is no mention of the specific informant
2 but he's talking in general about using informants.

3 Q. Did you consider whether or not you should object to
4 that testimony and that it implies that the confidential
5 informant is dealing with somebody who has a prior
6 history of drug use?

7 A. No, I didn't object. I believe that the reason I
8 wouldn't have objected is because it wasn't specifically
9 discussing the informant and Mr. Ancrum based on this
10 witness came out of his mouth because he's describing
11 what the process is and how they set up people for drug
12 buys and I was dealing with a drug buy case. So I did
13 not object. If that's a problem then I didn't.

14 Q. Then she sort of narrowed, they narrow it down a
15 little bit further on page 90 starting with line 15.

16 [Whereupon, the witness reviews document]

17 A. Okay. So he's saying Ms. Morris had information
18 about her past dealings about her past drug uses and her
19 drug purchases.

20 She identified several individuals who she has gone
21 to before. She's purchased drugs before and that was
22 pretty much the background of it.

23 Q. Does that seem to point more closely to your client
24 at this point?

25 A. Still I'm answering Mr. Ancrum but I did not object.

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1 Q. Okay. Let me call you to the testimony that is on
2 page 103 lines 13 to 16.

3 [Whereupon, the witness reviews document]

4 A. It says it wasn't as if you gave her -- this is Ms.
5 Tessa's or Mr. Preston's cross-examination -- it wasn't
6 as if you gave her a name and said hey, can you call this
7 man for us. She's the one who said I can call Mr. Ancrum
8 and he answers yes, ma'am.

9 Q. What was your point in asking that question? What
10 was the strategy there?

11 A. Well, so there is this theory that Mr. Ancrum knew
12 her for other reasons and that on some level she may have
13 been upset with him or biased on some level towards him.

14 So at some point later I asked him if she was in a
15 sexual relationship with him and that I had been given
16 information from my client that they were.

17 So this question is sort of me asking him, setting
18 him up for me to argue that she was throwing him under
19 the bus basically.

20 Q. Okay because again then if you look at line 18 you
21 question she would be the one identifying the people that
22 she would call.

23 Again, the jury can draw the inference that she's
24 identifying anybody she called would be people that she
25 had a past history with.

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1 Q. This was a distribution case where she was on video
2 selling drugs to Mr. Ancrum. So certainly she set up the
3 deal with Mr. Ancrum and got him on video selling her
4 drugs.

5 So my whole questioning here was to say that it was
6 her who was the one who was aiming at Mr. Ancrum because
7 ultimately I was arguing that they had some kind of
8 relationship that had gone sour and that she was setting
9 up Mr. Ancrum.

10 So, I don't see that as a problem question. If you
11 see that as a problem question, I asked it. I mean I
12 think the problem was is that I didn't see prior bad acts
13 at that time prior bad acts of whatever happened between
14 her and Mr. Ancrum and the history of setting up this
15 deal as something that was maybe in a prior bad act.

16 I just didn't perceive it that way because she was
17 setting him up and I was going to argue that she was
18 setting him up for more if you want to call it malicious
19 reasons.

20 And therefore I didn't -- I mean I did make a
21 motion, obviously we're going to get there, but I did
22 make a motion for a mistrial when I thought it really
23 crossed the line and it was a direct violation of the
24 prior bad acts rulings. But these earlier questions for
25 me were just setting up a history between the two of

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1 them.

2 Q. And then let's get to that I guess on page 147.

3 [Whereupon, the witness reviews document]

4 A. So during this testimony, this was a redirect by Ms.
5 Linder for Ms. Morris. What line would you like for me
6 to look at?

7 Q. If you look at line 5 on that page the question was.

8 A. Yes ---

9 Q. --- but you knew him where she's asking Ms. Morris
10 but you knew him for several years and then she says yes
11 from purchasing drugs.

12 A. Correct. And so that became a real problem. Then I
13 said Your Honor may we approach. And then I made a
14 motion for a mistrial, which the record reflects I made a
15 motion for mistrial for her saying for purchasing drugs.

16 Ms. Linder responded that she didn't ask that
17 question on purpose or try to elicit that testimony on
18 purpose that you know she just sort of had a rogue
19 witness who you know -- the other thing is we had had
20 discussion beforehand in the beginning of this case that
21 these types of statements were not going to be asked by
22 Ms. Linder, that she was going to stay away from any
23 prior purchases that they had had together.

24 So this came as a shock to her and then we all tried
25 to figure out how to handle it. And so I made a motion

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1 for mistrial and said that it was prejudicial to my
2 client and asked for at least asked for a curative
3 instruction.

4 There was colloquy back and forth with Ms. Linder
5 saying that she didn't ask a question that intended to
6 get that answer so she hadn't, at some point I was saying
7 that she had done something inappropriate and that she
8 saying no, I didn't. This just popped out of this lady's
9 mouth and so now what are we going to do about it.

10 And so as time went on the judge did give a curative
11 instruction. But his whole colloquy after I made the
12 motion was like how do you stick the rabbit back in the
13 hat or this is a drug case and obviously there would be
14 some communication or contact between an informant and a
15 person. But I made the motion.

16 Q. And as part of the ruling that the Court made in
17 denying the motion on page 148 where the Court said
18 starting on line 8.

19 [Whereupon, the witness reviews document]

20 A. It says well I understand your position but if the
21 testimony has been offered several times now that she
22 provided the targets what other logical conclusion is
23 there but that she is providing the target because he is
24 involved in the drug trade in some way.

25 So that certainly does go back to the fact that I

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1 didn't object at the time of her -- of him identifying
2 targets through the informants. But during his testimony
3 he didn't say that she had had transactions with Mr.
4 Ancrum in the past. He just was talking broadly about
5 targets.

6 But yes, this is what he says and this is I guess
7 why he chooses not to grant a mistrial. But I still then
8 say that's the logical conclusion but we need to still
9 have this mistrial and this is still prejudicial and
10 that's when he says he would do a curative instruction.

11 MR. FALK: No further questions.

12 THE COURT: Ms. Mims?

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1 CROSS-EXAMINATION

2 BY MS. MIMS:

3 Q. Good morning, Ms. Gay. How are you doing?

4 A. Oh, I'm fine.

5 Q. How long have you been practicing law?

6 A. Since 1991.

7 Q. So a little longer than...

8 A. Thirty years ---

9 Q. --- thirty years. So, how much of that practice has
10 been criminal?

11 A. A lot. Not all but the majority.

12 Q. Okay. And so you testified that you were retained
13 to represent Mr. Ancrum.

14 A. Yes.

15 Q. And that you had represented him on multiple
16 charges.

17 A. He had lots going on and so I represented him on his
18 first trafficking case that we won, it was a drop case.

19 Q. Okay. And so you also testified you represented him
20 through most of this trial process, correct?

21 A. I represented him till his cases ended; like all of
22 them.

23 Q. Okay. And so can you give me a ballpark about how
24 many times you guys met or talked about this case, this
25 specific case?

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1 A. Many. Many is not two or three. Many would be many
2 before we even had the first trial and many before we
3 even had the next trial.

4 A lot of times you don't necessarily talk to them
5 that many times directly if you know what they strategy
6 is or what they've already told you. You need to just get
7 ready legally to do it.

8 So having discussions with him I would say that
9 there is no part of me that thought I didn't talk to him
10 enough. I felt that we had prepared for both trials.

11 Q. And so you discussed you know his Rule 5 discovery
12 with him?

13 A. Yes.

14 Q. Okay. You discussed his charges with him?

15 A. Yes.

16 Q. And discussed the State's burden of proof and you
17 said this is his second trial.

18 A. Yes. And he still had other pending charges even
19 after this.

20 Q. Okay. And there was a plea offer made correct, for
21 this?

22 A. There was. There was a global plea offer made which
23 would have involved the resolution of all of it. And it
24 involved a good bit of jail time and he didn't want to do
25 that.

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1 Q. Okay. And so was there, what information did Mr.
2 Ancrum give you about what happened here? What was his
3 kind of theory of the case if you would?

4 A. Well from looking at the transcript and just kind of
5 remembering things there is a point where I ask the
6 victim, the CI, if they had sex.

7 And then one of the questions that I asked was well
8 if my client had told me that you're telling me that
9 that's not true and she said no, it's not true. But I
10 mean I got that information from him. I didn't make it
11 up.

12 Q. Okay. And so going into trial did you find anything
13 particularly problematic with this case ---

14 A. --- well it's -- you know when you have a
15 distribution trial and they actually bring the CI. Part
16 of the issue with this case is this lady didn't live
17 here. She had moved away.

18 And so there was some thought that maybe she was not
19 going to come back because she wasn't local anymore. And
20 so I don't know if they had to fly her back or how she
21 got back but she did come back.

22 But my conversations with Stephanie as we were
23 working towards whether this case was going to be tried
24 or not was well, you may not even have your witness
25 because she may not even come back. But she did.

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1 Q. And what was your trial strategy for this case?

2 A. I didn't reread the closing argument but I don't
3 remember. Just that she -- what I'm trying to say is
4 that he had told me that they had other reasons to be
5 talking and had other contact with each other and that he
6 didn't sell her drugs. But, again we had the video and a
7 few other things.

8 Q. Okay. And you testified that there were pretrial
9 motions and that...

10 A. Yes.

11 Q. Okay. And in those pretrial motions you got the
12 identity of the informant, correct?

13 A. I knew that ahead of time.

14 Q. Okay. And also in these pretrial motions you and,
15 you testified that you and the Solicitor spoke at length
16 about the prior bad evidence not coming in correct?

17 A. Well, yes. In the first part of the trial when we
18 were doing the bad acts motion we discussed the fact that
19 she would, she said well I'm not going to bring up any
20 bad acts unless the defendant testifies and opens the
21 door, which is completely different than a witness saying
22 something.

23 But the defendant didn't testify so he wouldn't have
24 opened the door. So, it wasn't as if well I'm not going
25 to bring up any prior bad acts unless the defense opens

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1 the door. And so her position was that because I had
2 asked her about some personal relationship with him that
3 that gave her the opportunity in redirect to ask well how
4 do you know him or whatever.

5 And then the lady herself is the one who said that
6 she purchased drugs from him in the past from purchasing
7 drugs. But Stephanie didn't ask a question did you buy
8 drugs from him in the past or anything like that. She,
9 our whole trial procedure was that she wasn't supposed to
10 open the door to that in any questioning.

11 And that was her whole response in the motion for
12 directed verdict is I didn't open the door for that; the
13 lady just blurted it out. That's why he did the curative
14 instruction. I mean I obviously was asking for a
15 mistrial.

16 Q. Right. And I wanted to speak with you a little bit
17 about that. You know you felt that this, you testified
18 this portion got a little bit egregious then and because
19 of that you asked for the mistrial.

20 A. Yes ---

21 Q. --- and a curative.

22 A. Well, I didn't think that it could be fixed through
23 a curative instruction. I thought that you know like I
24 said how can you stick the rabbit back in the hat. And
25 then when the judge bolstered whatever he was ruling on

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1 Preston's testimony about targets at that moment my brain
2 wasn't connecting those two things but the judge
3 obviously connected it.

4 But I did make the motion and you know I think I .
5 read the transcript on appeal. But all I could do is
6 make the motion and try.

7 Q. And so let's talk a little bit about Frank Preston's
8 testimony. You spoke a little bit earlier that you
9 wouldn't; you didn't think to object in this instance.

10 A. Well, he wasn't talking about Mr. Ancrum directly.
11 He was talking about law enforcement procedure I guess;
12 how they do these things.

13 Q. Right. And furthermore, I guess we're going over a
14 little bit when you talked to Mr. Preston about Ms.
15 Morris. Did you find that to be problematic at all or do
16 you think you should have objected in that instance?

17 A. What was the question again? I'm sorry.

18 Q. I apologize. I beg the Court's indulgence. Let me
19 find it.

20 A. Is there a page you want me to look at?

21 Q. Yes. It is on page -- this is on page 103 line 13
22 where you questioned it wasn't as if you gave her a name
23 and said hey, can you call Ms. Morris. She was the one
24 that you said can I call Mr. Ancrum.

25 A. Yes, that's in the transcript.

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1 Q. Yes. And it was your testimony that this was going
2 to your defense strategy, correct?

3 A. Yes.

4 Q. Okay. And did ---

5 A. --- that she was setting him up for other reasons.

6 Q. Right. Correct.

7 MS. MIMS: I beg the Court's indulgence.

8 [Whereupon, Ms. Mims and Ms. Weidauer confer]

9 MS. MIMS: No further questions, Your Honor.

10 THE COURT: Anything further, Mr. Falk?

11 MR. FALK: No redirect.

12 THE COURT: Thank you.

13 THE WITNESS: Thank you. May I be excused, Your
14 Honor?

15 THE COURT: Any objection?

16 MS. MIMS: None.

17 MR. FALK: No objection.

18 THE COURT: Yes, ma'am.

19 THE WITNESS: Thank you very much. Y'all have a
20 good day.

21 [Whereupon, the witness is excused and exits the
22 witness stand]

23

24

25

Gerald Ancrum v State of S.C.
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June 24, 2022

1 THE COURT: Okay Mr. Falk, anything further?

2 MR. FALK: Nothing further, Your Honor.

3 THE COURT: Ms. Mims?

4 MS. MIMS: Nothing further unless you would like me
5 to provide a brief closing argument.

6 THE COURT: I mean you're welcome to.

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Gerald Ancrum v State of S.C.
Post-Conviction Relief Hearing-Closing Argument by Ms. Mims
June 24, 2022

CLOSING ARGUMENT

BY MS. MIMS:

We ask the Court to deny Mr. Ancrum's post-conviction relief application. To be entitled for post-conviction relief Applicant must show that counsel was deficient according to professional norms and that he was prejudiced by these deficiencies such that there is a reasonable possibility he would have not been convicted but for counsel's errors or omissions.

And I would just point to the Court that I believe Ms. Gay did her due diligence. She met with Applicant as she testified multiple times; spoke with him on possible defense strategies in her, and she also filed pretrial motions to leave out this prior bad act evidence.

And when she felt that there was any issue regarding the prior bad act evidence she immediately asked for a mistrial and got a curative instruction on that portion.

So, for those reasons, Your Honor, I ask the Court to deny Mr. Ancrum's petition.

Gerald Ancrum v State of S.C.
Post-Conviction Relief Hearing-Closing Argument by Mr. Falk
June 24, 2022

CLOSING ARGUMENT

BY MR. FALK:

Your Honor, it was an issue she felt was serious enough to raise a motion for a mistrial. And when the Court considered the motion for a mistrial and acknowledged the fact that she had missed three other opportunities or however many opportunities to object to this testimony prior to that our position is that from the very first line from Officer Preston's testimony about that CI's always go to people they've done business with before and their testimony at first had to talk about it that's where the first discussion should have been made, that's where the first objection should have been made. There is no way; you know the Appellate Court could never have addressed that issue on appeal because there is no preservation of the objection.

And that's where the problem started. That's where the ineffective assistance of counsel was in failing to try to immediately seek a remedy to this testimony and then it just kept coming. And that we think that any testimony about prior transactions that might have occurred between, prior illegal transactions that might have occurred between the witness and the defendant it comes in, it comes before the jury, and it is highly prejudicial and that's why we have Rule 404(b).

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1 THE COURT: Thank you, sir. I will look at this
2 carefully before I give y'all my ruling via email.

3 MR. FALK: Thank you.

4 MS. MIMS: Thank you, Your Honor.

5 THE COURT: Thank you.

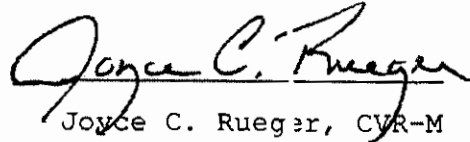
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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of Common Pleas for Charleston County, South
Carolina on the 24th day of June, 2022.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

January 16, 2023



Joyce C. Rueger, CVR-M

Court Reporter

ATT
SOL
GS
AGSTATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

GERALD ANCRUM, #276401

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2020-CP-10-0902

ORDER OF DISMISSALFILED
2023 OCT 10 PM 4:14
CLERK OF COURT

This matter comes before this Court by way of Applicant Gerald Ancrum's Application for Post-Conviction Relief and Amended Application for Post-Conviction Relief filed February 19, 2020 and February 24, 2022, challenging his conviction for Distribution of Heroin. Respondent State of South Carolina filed a return August 3, 2020 seeking to require an amended application specifically setting forth the grounds upon which the application was based. The Amended Application alleged "ineffective assistance of counsel" as the grounds for the Application. An evidentiary hearing on this action was convened June 24, 2022, before this Court. Applicant appeared with his counsel, James K. Falk. Respondent State of South Carolina was represented by Lauren Mims of the South Carolina Attorney General's Office. Applicant proceeded forward on the claims raised in his Application and Amended Application. This Court heard testimony from Applicant and his former trial counsel, Melisa Gay ("Counsel").

Following a review of the record and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice. Specific findings of fact and conclusions of law as required pursuant to S.C. Code Ann.

§ 17-27-80 are set forth below:

FACTUAL AND PROCEDURAL HISTORY

The records before this Court establish Applicant is currently incarcerated in the South Carolina Department of Corrections.

This case began when, on February 5, 2015, during a recorded call from a confidential informant to Applicant, the Applicant agreed to meet and sell heroin to the CI, in exchange for cash. Prior to the meeting, the CI was searched and found to have no drugs or money on her. She was given money and placed in an undercover car with an undercover officer, who drove to the location the Applicant suggested, which was “kind of near” the Dunkin’ Donuts area in West Ashley in Charleston County, South Carolina. In addition to the CI riding with law enforcement to the location, she was wired (audio and video) so law enforcement could clearly see and hear the exchange. There was both audio and video evidence of the CI getting out of the undercover car, going to Applicant’s car, and returning with the heroin that Applicant had agreed to sell to her. The audio wire reflects she called the Applicant by name (“Gerald”). Additionally, multiple other officers were around the area to see and hear the portions of the exchange that were visible and audible (via the wires) to them. Following the deal, the CI returned to the undercover officer and car, and placed the drugs in the car’s center console as previously instructed. She then was driven back to a “secure location” where she was again searched and found to have no drugs or cash on her, having used the cash she was provided to buy the drugs and having turned the drugs over to law enforcement personnel.

Following the events above, in July 2015, a Charleston County Grand Jury indicted Applicant for two charges of distribution of heroin (2015-GS-10-02966 and -02970), distribution

of crack cocaine (2015-GS-10-02971), and trafficking in heroin (2015-GS-10-02972). On May 23 and 24, 2017, a jury trial was held in Charleston County in front of the Honorable William P. Keesley. The trial was on one of the charges of distribution of heroin and the charge of distribution of crack cocaine. Applicant was represented by Melisa Gay, Esquire. Assistant Solicitors' Stephanie B. Linder and Whit Sowards represented the State.

Following testimony, which included the facts above as well as the CI's identification of Applicant, the jury convicted Applicant of one count of distribution of heroin. A mistrial was declared on the distribution of cocaine. Following the verdict, Applicant conceded that the heroin conviction was his third offense. The trial judge sentenced Applicant to a term of 15 years imprisonment.¹

Applicant then filed a notice of appeal, challenging his trial conviction for distribution of heroin. The South Carolina Court of Appeals affirmed Applicant's conviction by unpublished opinion No. 2019-UP-075, filed on February 13, 2019. The Remittitur was issued to the lower court on June 28, 2019. This PCR followed.

¹ Following this conviction, Applicant still faced multiple drug charges in Charleston County. Applicant subsequently pled guilty to several of these charges, in exchange for a sentence of twelve years run concurrent, and dismissal of several other distribution charges. Tr. p. 5, l. 3 – 9; *Id.* at p. 8, l. 8 – 13. At the PCR evidentiary hearing in this case, there was some discussion of Applicant desiring to contest both the May 23 and 24, 2017 trial result and the subsequent guilty plea in this one proceeding. PCR Hrg. Tr. p. 5, l. 23 to p. 6, l. 5. After discussing with counsels the issues raised during the testimony of the Applicant, and after PCR Counsel talked with the Applicant, Applicant's PCR counsel indicated "since we're talking about two separate events; the adjudication on the pleas and the twelve year sentences (resulting from the pleas) and the adjudication on the 15 year trial (which was the trial held May 23 and 24, 2017) ... it's in my client's best interest to bifurcate this at this time and just go forward today on the issues that I raised in the amended PCR relative to the trial. . . my client should have an opportunity to bring these issues as far as being sort of an involuntary guilty plea that he should immediately file a PCR on those three claims and then we'd have discussion with the Court at another time about whether or not some equitable toll should apply so that he can still go forward with those." Tr. p. 27, l. 11-1825. Thereafter, this court limited the current PCR proceeding to the issues raised in Applicant's amended application for post-conviction relief pertaining to the jury trial only and not the guilty plea. Any matters regarding the subsequent guilty pleas are not issues before the court at this time. Tr. p. 27, l. 11 – p. 28, 3-6.

ALLEGATIONS BEFORE THE COURT

In the original application, filed February 19, 2020, the pro se Applicant raised the following:

1. “Ineffective assistance of counsel.”
 - a. Denial of a fair trial due to ineffective assistance o counsel.
2. “6th Amendment violation.”

In his amended application for post-conviction relief, filed on February 24, 2022, Applicant, through appointed counsel James Falk, alleged his trial counsel provided ineffective assistance of counsel because:

1. Counsel failed to object to testimony by an ATF investigator that confidential informants (“CI’s”) are chosen because they “have a history” with the targets of the drug investigation;
2. Counsel’s cross-examination of the ATF investigator opened the door that it was because of the CI’s drug history that she had a prior relationship with the Appellant; and
3. Counsel cross-examined the CI regarding the nature of her prior relationship with Appellant, which opened the door for the State’s re-direct examination.

The State’s return was filed before Appellant’s amended return, which listed the issues above. Before this Court are the records from Applicant’s general sessions proceedings, his appellate records, his SCDC records, and the records from this current PCR proceeding.

At the evidentiary hearing Applicant proceeded forward on the grounds above, which were

set forth in his Amended Application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged three instances of ineffective assistance of trial counsel and asserts that as a result of Counsel's purported errors, he is entitled to have his conviction vacated with prejudice.

Standard of Review

Under the Uniform Post-Conviction Procedures Act, an applicant may seek post-conviction relief upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

The ground for relief upon which Applicant proceeded at the evidentiary hearing pertains to alleged ineffective assistance of counsel. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance

of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). It is common that post-conviction relief allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in post-conviction relief actions). The allegation of denial of such representation sets forth a prima facie violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel’s performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel’s representation fell below an objective standard of “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler,

286 S.C. at 442, 334 S.E.2d at 814.

Strickland “does not guarantee perfect representation [—]only a ‘reasonably competent attorney.’ ” Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” Harrington, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. Id. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Reviewing courts “must judge the reasonableness of counsel’s challenged conduct on the

facts of the particular case, viewed at the time of counsel's conduct." Strickland, 466 U.S. at 690. An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." Id. The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." Id.

The Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing court, the trial attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable

probability is a probability “sufficient to undermine confidence in the outcome.” Strickland, 466 U.S. at 694. Thus, it is not enough “to show the errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to deprive the defendant of a fair trial.” Id. at 687 (emphasis added). “An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” Id. at 668. In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. Id. at 695.

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” Id. at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” Id. at 697. The court need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

FINDINGS AS TO CLAIMS RAISED

Applicant has alleged three specific claims of ineffective assistance of trial counsel and asserts that as a result of Counsel’s purported errors, he is entitled to have his conviction vacated with prejudice. This Court finds Applicant has failed to meet his requisite burden of proof as to each allegation. Each allegation is addressed below:

Allegation #1: Counsel was ineffective for failing to object to testimony by an ATF

investigator that confidential informants (“CI’s”) are chosen because they “have a history” with the targets of the drug investigation.

Applicant first asserts Counsel was constitutionally ineffective for failing to object to the testimony of ATF investigator Frank Preston that confidential informants are chosen because they have “a history” with the targets of the drug investigation. Investigator Preston further testified that “Ms. Morris (the CI) had information about her past dealings, about her past drug uses and drug purchases. She identified several individuals who she’s gone to before, who she’s purchased drugs before.” Trial transcript, p. 89, l. 1 – p. 90, l.5. Applicant argues that since this CI was used as a CI to make a controlled purchase from him, this testimony allowed the jury to infer that the CI had personal knowledge that Applicant had sold drugs in the past.

Counsel testified that she did not object to this testimony because the ATF investigator was not talking of the specific informant in Applicant’s case, but rather, in general, about using informants. PCR hearing transcript, p. 34, l. 1-2. At the PCR hearing, Counsel indicated she did not object because “it (the testimony) wasn’t specifically discussing the informant and Mr. Ancrum (the Applicant). ...he’s describing what the process is and how they set up people for drug buys and I was dealing with a drug buy case. So I did not object.” *Id.* at p. 34, l. 7-13.

Counsel testified that she has been practicing law thirty years, with the majority of her practice being criminal. *Id.* at p. 40, l. 8-12. She was retained by Applicant and had represented him on multiple charges, including his first trafficking case which they won. *Id.* at p. 40, l. 12-18. They met before trial and talked trial strategy and “there is no part of me (Trial counsel) that thought I didn’t talk to him enough. I felt that we had prepared for both trials.” *Id.* at p. 41, l. 1-10.

This Court finds Counsel’s testimony on this issue credible. Counsel has been engaged in

the practice of criminal law in this State for thirty years and has significant experience trying cases before juries and evaluating trial tactics and strategy. In the instance above, Counsel did not object because she did not believe the testimony describing, in general, how drug buys are set up was objectionable as it did not relate specifically to the transaction between her client and the CI. “During his testimony, he didn’t say that she had had transactions with Mr. Ancrum in the past. He was just talking broadly about targets.” *Id.* at p. 39, l. 2-5. When counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel. *Smith v. State*, 386 S.C. 562, 689 S.E.2d 629 (2010). This Court finds Applicant has not established any deficiency of Counsel regarding this allegation.

Moreover, Applicant has not established any resulting prejudice from Counsel’s failure to object to the testimony, which does not relate to or implicate Applicant. Applicant argues this testimony allowed the jury to infer the CI knew he had sold drugs in the past. Counsel disagreed. Applicant was recorded on video selling the drugs and didn’t dispute that it was him. There was no prejudice shown by the general comment.

Accordingly, this Court denies and dismisses this allegation with prejudice.

Allegation #2: Applicant’s Counsel was ineffective for opening the door “that because of (the CI’s) drug history she had a prior relationship with Applicant.”

Next, Applicant asserts that trial counsel was ineffective for opening the door to a relationship between Applicant and the CI. On this point Counsel testified that she asked the Investigator the question “She’s the one day (sic) who said, I can call Mr. Ancrum?” to set the CI up for Counsel to argue that the CI was throwing Applicant under the bus because she was mad at him because they had been lovers and he had spurned her. *Id.* at p. 35, l. 9- 19; p. 43, l. 3-7. Counsel had been

told by Applicant that he and the CI had had a sexual relationship and, with the purchase on tape, Counsel felt the best strategy to pursue was that the CI had set the Applicant up. *Id.* at p. 35, l. 11- p. 36, l. 19. With the undercover tape, there wasn't any question about the CI's purchase of drugs from Applicant. Instead, Counsel put on a "set-up" defense. Further, Counsel testified "I don't see it as a problem question." *Id.* at p. 36, l. 10. Counsel discussed the strategy with Applicant and Counsel articulated valid reasons for the strategy.

This Court finds Counsel had a valid reason for asking the Investigator the question regarding the CI being the first person to bring up Applicant's name when she offered to make undercover buys for law enforcement. When counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel. *Smith v. State*, 386 S.C. 562, 689 S.E.2d 629 (2010). This Court finds Counsel was not deficient for asking the question in an attempt to show the buy was a malicious revenge set up. Further, Applicant failed to establish any prejudice resulted from Counsel's question.

Accordingly, this Court denies and dismisses this allegation with prejudice.

Allegation #3: Counsel was ineffective for cross-examining the CI regarding the nature of her prior relationship with Applicant, which opened the door for the State's re-direct examination.

Applicant next asserts that Counsel was ineffective for cross-examining the CI regarding the nature of her prior relationship with Applicant because it opened the door for the State to ask about the parties' relationship on redirect. As stated above, Counsel's theory of the case was that the CI and the Applicant had had a prior relationship, sexual in nature, and that the CI was out to get Applicant and threw him under the bus the moment she began making controlled buys. Counsel attempted to

bring these points out on cross-examination. Thereafter, the state was allowed a redirect examination. On redirect, the State asked, “you knew him for several years?”, to which the CI witness responded, “yes from purchasing drugs.” *Id.* at p. 37, l. 9-11.

Counsel immediately noticed the issue and made a motion for a mistrial. The State and Defense had covered the issue pre-trial and had agreed that the prosecution would not ask questions relating to prior purchases. *Id.* at p. 37, l. 16-25; p. 44, l. 5 – l. 15. In this instance, however, the witness just blurted the information out. *Id.* at p. 44, l. 12-14. There was no intent of the State to elicit that answer.² *Id.* at p. 44, l. 7-8. Counsel immediately requested a mistrial and, when the presiding judge denied the motion, asked for a curative instruction, which was granted. *Id.* at p. 37, l. 24- p. 38, l. 24.

This Court finds Counsel articulated prudent, strategic reasons for her decision to cross-examine the CI. When counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel. *Smith v. State*, 386 S.C. 562, 689 S.E.2d 629 (2010). Moreover, this Court notes that Applicant has not established any resulting prejudice from Counsel’s failure to object to the instruction.

Accordingly, this Court denies and dismisses this allegation with prejudice.

CONCLUSION

After careful consideration of Applicant’s Amended Application for Post-Conviction Relief, the Record of the case, the arguments of Attorneys Falk and Mims, and the testimony of witnesses, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. To

² This was a specific finding of the trial court: that there was no prosecutorial misconduct. The court specifically found that it was not the question asked, but the way the witness responded that created the problem. Trial transcript, p. 154, l. 22-25.

satisfy the two prongs of Strickland, the Applicant must show that counsel was deficient and also show the deficiency resulted in prejudice. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984). The Applicant has not met this burden on any of the allegations made. Therefore, the Court denies Applicant's requested relief in this matter.

This Court notes if Applicant desires to appeal this Order, he must file and serve a notice of appeal within thirty days from the receipt of this Order through his counsel of record. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 3rd day of October, 2023.

Kristi F. Curtis
KRISTI F. CURTIS
Presiding Judge
Ninth Judicial Circuit

Sunder, South Carolina