

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County
Honorable Maite Murphy, Circuit Court Judge

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Aug 02 2024
S.C. SUPREME COURT

DEAN SEAGERS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000276

APPENDIX

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1 State of South Carolina

Court of General Sessions

2 County of Charleston

3
4
5 State of South Carolina)

Transcript of Record

6 vs.)

2012-GS-10-06779

7)
8 Dean Nelson Seagers,)

9 Defendant.)

10
11 July 6-9, 2015

12 Charleston, South Carolina

13 B E F O R E:

14 The Honorable Kristi Lea Harrington, Judge; and a jury.

15
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20 Attorney for the Defendant

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24 Circuit Court Reporter
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1 (Whereupon, the following proceedings were held on
2 July 6, 2015.)

3 MR. MARSHALL: Do you want to start with our motions?

4 THE COURT: Yes. And then when the jury -- if it
5 becomes appropriate, we'll go ahead and select our jury
6 and send them on, but -- so -- so Judge Hughston and Judge
7 Jefferson are picking now.

8 MR. MARSHALL: Okay. Thank you.

9 THE COURT: Who put Ms. Linder on the witness list?

10 MR. MARSHALL: I did. I don't expect to call her.
11 She was present on the execution of the search warrant.

12 THE COURT: All right. Are you invoking the -- are
13 you requesting sequestration?

14 MR. MARSHALL: I am. I would like to have the
15 witnesses sequestered. And, I don't know, when you
16 typically do that, Judge, do you order them to be in a
17 certain area or do you just order them not to --

18 THE COURT: Not to be in the courtroom. That's the
19 purpose of sequestration.

20 MR. MARSHALL: Right.

21 THE COURT: And then I order them not to talk to each
22 other.

23 MR. MARSHALL: Right, right.

24 THE COURT: My concern is Ms. Linder's here. So do
25 you -- can she remain in the courtroom?

1 MR. MARSHALL: Yeah, I don't think I have an objection
2 to -- to Ms. Linder being here.

3 THE COURT: All right. All right. Thank you.

4 MR. SOWARDS: And, Your Honor, the State would request
5 that the case agent, Detective Burke, be present.

6 THE COURT: He's fine. Thank you.

7 MR. MARSHALL: Well, Judge, if you're -- if you're
8 ready, I'd like to start with my first motion.

9 THE COURT: Which is?

10 MR. MARSHALL: Which is, Judge, we're asking that the
11 -- that this case be dismissed based on a violation of
12 Mr. Seagers' right to a speedy trial as guaranteed by the
13 Sixth Amendment of the United States Constitution and
14 Article 1, Section 14 of the State Constitution. I believe
15 the proper analysis when the Court reviews this type of
16 motion is one under a case called Barker versus Wingo,
17 which is 407 US 514, and under that case -- and -- and by
18 the way, Judge, the relevant -- or one of the leading state
19 cases on this issue is a case called State versus Langford.
20 I think I gave --

21 THE COURT: I'm very familiar with Langford. Thank
22 you.

23 MR. MARSHALL: All right. All right. I don't need to
24 cite that for the Court then. But, Judge, I believe it's
25 -- the proper analysis is a four-part analysis, with the

1 first prong being the length of time since the charge, and
2 here we have just -- just shy of thirty-four months. My
3 client was arrested on August the 29th of 2012, so the
4 29th of August of this year would make a full three years.
5 So, let's see, the 29th of this month --

6 THE COURT: When did you file your Motion for a Speedy
7 Trial?

8 MR. MARSHALL: It's been about fifteen months ago that
9 I filed that, Judge. I think it was -- it was a date in
10 March --

11 THE COURT: Was that the date you requested a
12 continuance?

13 MR. MARSHALL: No, no. No, ma'am. I've only done
14 that once and that was a couple of months ago when they
15 said they were gonna try this case right while I was in the
16 midst of a long, two-week Federal case.

17 THE COURT: All right. So you've been granted at
18 least one continuance due to your schedule; is that
19 correct?

20 MR. MARSHALL: Well, no, because the Court I don't
21 think ever ruled on that and the case wasn't re-set.

22 THE COURT: Well, out of professional courtesy to you
23 so that it wouldn't impact your client and so then we
24 didn't address it. I didn't formally rule on it. We just
25 never called your case, Mr. Marshall.

1 MR. MARSHALL: Okay. Understood, Judge. Well, then
2 that was -- and that was about -- about two months ago that
3 was asked --

4 THE COURT: All right. What prejudice has your client
5 suffered?

6 MR. MARSHALL: Well, I -- I think that he -- that he
7 has suffered prejudice due to the length of time and
8 instead of calling it thirty-four months, if you want to
9 subtract the two months ago that I requested a continuance,
10 we're dealing with thirty-two months, but in this case
11 the -- this case is, if it goes to a jury, is gonna be
12 extremely dependent upon witnesses' recollections because
13 they're custody witnesses because there are no affidavits
14 concerning the chain of custody of these drugs in this
15 case.

16 So these people are gonna have to come in and say that
17 they remember handling these drugs and with that much time
18 gone by I think it's quite unlikely they're gonna be able
19 to be accurate about one little alleged two gram package of
20 drugs.

21 The second reason that I believe he's severely
22 prejudiced by the delay is that this confidential informant
23 is now gonna have to come in and see if he can remember
24 Mr. Seagers as the person that he claims sold drugs to him
25 on June 20th of 2012. So for those two reasons I think

1 it's -- the delay has been extremely prejudicial.

2 The -- the second prong of this analysis under Barker,
3 Judge, is the State's reason for the delay. I don't know
4 what they're gonna tell you in that regard. I would just
5 like to point out on that prong of the analysis if they
6 tell you, well, Judge, we've got a busy docket, as you
7 well know, the case law clearly holds that that is not an
8 acceptable reason for delay as the courts have analyzed
9 that argument which has been made by prosecutors in the
10 past and said, well, I understand that, but the delay is
11 of your making and you get no -- that is not an excuse, you
12 get no credit for asserting that reason for delay.

13 I'd like to just finally point out, Judge, that
14 generally a delay of a year the courts in this state have
15 ruled -- generally a delay of -- of a year, or it's even
16 been worded in opinions a delay approaching a year, invokes
17 a speedy trial analysis and there's case law that a
18 nineteen-month delay has been held to be a violation of
19 a defendant's right to speedy trial. And it goes, of
20 course, without saying that the remedy -- the only remedy
21 for the violation is dismissal of the charges.

22 Thank you, Judge.

23 THE COURT: Mr. Sowards.

24 MR. SOWARDS: Thank you, Your Honor. The first point
25 I'd like to address is the fact that the Defendant did seek

1 and receive a continuance.

2 THE COURT: Right. I need to know the reason for the
3 delay. Why was it not even -- when was the first time it
4 was placed on the docket?

5 MR. SOWARDS: It was -- when I arrived in October of
6 last year, I placed it -- or attempted to place it on the
7 docket for a trial term in February. I conferred with
8 Mr. Marshall and he said that he had a Federal trial in
9 March and that he was not available to try it then.

10 THE COURT: So the first time that you attempted to
11 place it on a docket was in February; is that correct?

12 MR. SOWARDS: That's correct.

13 THE COURT: Why didn't you place it earlier than
14 February of 2015?

15 MR. SOWARDS: Prior to my arrival at the Solicitor's
16 Office, it was handled by a prosecutor and then transferred
17 to another and that prosecutor left and as soon as I got
18 here two to three months later I started trying to put it
19 on a trial docket and get it tried. We weren't able to do
20 that in February. I put it on for April and -- at which
21 time Mr. Marshall moved to have it continued and also
22 sought an order of protection --

23 THE COURT: Was there a reason, and if there's some
24 indication in your file, why it wasn't placed on a trial
25 docket before you received it?

1 MR. SOWARDS: I think, Your Honor, there was a -- a
2 supervised released violation that was being addressed at
3 the same time and I don't think that the -- there were
4 also co-defendants, Judge, who were in these cases that
5 were being resolved. As you know, there's --

6 THE COURT: What's -- what supervised release issue
7 are you speaking of?

8 MR. SOWARDS: Based on the arrest in this case, there
9 was a Federal supervised release issue due to that arrest.

10 THE COURT: So Mr. Seagers was on supervision?

11 MR. SOWARDS: Correct.

12 THE COURT: And this arrest violated his supervision?

13 MR. SOWARDS: Well, he was -- that has not been
14 addressed yet, but he was -- he had a detainer for that
15 where there was no purposeful delay by the State.

16 THE COURT: All right. Anything else?

17 MR. SOWARDS: Your Honor, I'd just like -- like to
18 address the prejudice point that Mr. Marshall brought up.
19 The State has gone to the expense of having its case agent
20 flown in from Indianapolis. All the witnesses in this
21 case --

22 THE COURT: How does that go to the prejudice of the
23 Defendant?

24 MR. SOWARDS: Well, I think, Your Honor, the -- the
25 witnesses in this case are here, they're available.

1 They're -- they're available to be cross-examined by the
2 defense, the evidence is available, so I don't think
3 there's any prejudice on that front. And Mr. Marshall
4 brought up the fact that, you know, the witness's memory
5 may be diminished, and I think that's something that can be
6 discussed on cross-examination. And also, Your Honor, I
7 think soon after the Defendant filed the Motion for Speedy
8 Trial was granted bond -- or a bond reduction in this case,
9 so.

10 THE COURT: All right. Anything further?

11 MR. SOWARDS: Nothing further, Your Honor.

12 THE COURT: Mr. Marshall.

13 MR. MARSHALL: Yes, ma'am. Addressing the -- the
14 co-defendants as a -- a reason for the delay, I'm not quite
15 sure I understand that, but the co-defendant was convicted
16 at least a couple of years ago, Judge, and apparently -- I
17 know for a fact --

18 THE COURT: Was he tried?

19 MR. MARSHALL: No, he pled.

20 THE COURT: He pled.

21 MR. MARSHALL: He pled and he received a five-year
22 sentence and he pled, my client believes, on March 13th
23 of 2013, but he received a five-year sentence and he's
24 scheduled to be released from maxing out that sentence.

25 THE COURT: I'm not sure how that impacts your client,

1 but thank you for the information.

2 MR. MARSHALL: I -- I -- I didn't understand you.

3 THE COURT: Mr. Marshall, can you tell me -- your
4 client was on Federal probation? Is that what I
5 understand? He was on some sort of a supervision?

6 MR. MARSHALL: Still is, yes, ma'am. In the Federal
7 system, they call it supervised release. He did a -- a
8 Federal sentence and was serving his period of supervised
9 release and when this arrest was lodged against him, the
10 Federal government then lodged a detainer against him.

11 THE COURT: Is he still on that detainer?

12 MR. MARSHALL: He -- he is. He's wearing a monitor.
13 He's on -- he's wearing a Federal mon -- monitor now.
14 Judge Duffy -- once he sat in -- once he sat, Judge, in
15 the county jail for so long, I had a meeting with the U.S.
16 Attorney and his Federal public defender and Judge Duffy
17 and Judge Duffy granted him a personal recognizance bond
18 because he found the period of detention to be extreme and
19 that after such an extreme delay he though Mr. Seagers was
20 entitled to a personal recognizance bond and that's what he
21 granted him.

22 THE COURT: So your client is out on bond?

23 MR. MARSHALL: Yes, ma'am.

24 THE COURT: So -- so how does this delay prejudice
25 your client? He's still on supervision unrelated to this

1 charge, correct?

2 MR. MARSHALL: Well, it's completely related to the
3 charge because the only basis for the alleged violation of
4 this Federal supervised release is this arrest. That's the
5 only --

6 THE COURT: All right. Anything further,
7 Mr. Marshall?

8 MR. MARSHALL: He did spend -- now you've been out how
9 many months, Dean?

10 THE DEFENDANT: Three months.

11 MR. MARSHALL: You've been out three months?

12 THE DEFENDANT: Yes, sir.

13 MR. MARSHALL: All right.

14 THE COURT: All right. And, Mr. Marshall, just
15 remind me when did you inform the court of your Motion for
16 a Speedy Trial?

17 MR. MARSHALL: I can pull the motion. It was March
18 of 2014.

19 THE COURT: When did you inform me that you had a
20 Motion for a Speedy Trial? Just because you file it
21 with the court, they don't set it -- or the Clerk's Office
22 doesn't set it. It needed to be filed with the Chief
23 Administrative Judge or Mr. Sowards should have set it.
24 You've been in front of me at least two other times and --
25 and today was the first mention I had of your Motion for a

1 Speedy Trial.

2 MR. MARSHALL: I apologize, for that, Judge. I -- I
3 did take the motion in front of Judge Young I know on one
4 occasion.

5 THE COURT: What happened there, Mr. Marshall?

6 MR. MARSHALL: At that point, and I have the
7 transcript if you'd like for me to get it out of my box,
8 but at that --

9 THE COURT: I would love for you to get it out of the
10 box, Mr. Marshall.

11 MR. MARSHALL: -- at that point, if I recall, Judge,
12 I think that he said that he was not gonna --

13 THE COURT: Well, let's see. If you have the
14 transcript, let's not guess.

15 MR. MARSHALL: All right.

16 THE COURT: Thank you.

17 Mr. Sowards, were you there for that motion?

18 MR. SOWARDS: I was not.

19 THE COURT: Any notation in your file?

20 MR. SOWARDS: Judge, I have a notation in here that
21 in July of 2014 Judge Young addressed -- it looks like he
22 addressed a motion for a bond reduction, which I think
23 Mr. Marshall filed along with this Motion for Speedy Trial.
24 At that time the Defendant's bond, it looks like, was
25 reduced for a second time from 200,000 to 100,000 and he

1 was also ordered to be on home and work GPS. He remained
2 in detention because of the Federal hold, but I don't have
3 a -- I don't have a transcript it appears.

4 THE COURT: All right. Mr. Marshall, anything you
5 wish to add to that?

6 MR. MARSHALL: No, I don't believe so, Judge. I think
7 I was mistaken. See, I have a transcript from a hearing we
8 had in this case on March the 5th of 2014, and I thought
9 it was this one where I had raised the speedy trial motion
10 with him. I think I'm mistaken in that and I believe that
11 Mr. Sowards is right that it would have been in the July
12 2014 hearing, so I apologize for misspeaking about the
13 contents of this transcript.

14 THE COURT: All right.

15 MR. MARSHALL: But -- so that would be roughly a year
16 ago that the issue was raised.

17 THE COURT: All right. And did you raise it again
18 after that in front of Judge Young?

19 MR. MARSHALL: No, ma'am.

20 THE COURT: You haven't raised it again --

21 MR. MARSHALL: No, ma'am.

22 THE COURT: -- up until today and we're ready for
23 trial, correct? You're -- you're ready?

24 MR. MARSHALL: Yes, ma'am.

25 THE COURT: You're ready, Mr. Sowards?

1 MR. SOWARDS: We are.

2 THE COURT: All right. Based upon the factors that I
3 must consider, the length of the delay, the reason for the
4 delay, the assertion of Mr. Seagers' right to a speedy
5 trial and the prejudice that he has suffered, I'm denying
6 your Motion for Speedy Trial in the essence -- in the sense
7 that it is not applicable at this point, we are ready to go
8 to trial. I do not find it's -- I guess you're asking me
9 to dismiss it based upon the fact they didn't call it any
10 earl -- earlier, but we're ready for trial. As a matter of
11 fact, we met -- what was it? When did we do our -- last
12 Tuesday, and you could have addressed it then, you did not
13 address it then, and it will be going forward. And note
14 your objection and exception to my ruling.

15 Next motion.

16 MR. MARSHALL: Taking things chronologically, Judge,
17 I guess makes the most sense, so I believe the next
18 motion chronologically would be a motion to suppress the
19 confidential informant's pre-trial identification --

20 THE COURT: All right.

21 MR. MARSHALL: -- of my client and any in-court
22 identification that they hope to elicit during this trial.

23 THE COURT: Mr. Sowards, are you prepared to go
24 forward on that matter?

25 MR. SOWARDS: Your Honor, just preliminarily, I don't

1 think that a Biggers hearing is necessary in this case.
2 The State is not offering an out-of-court identification
3 conducted by law enforcement. The CI would testify that
4 he saw Mr. Seagers and is personally familiar with him and
5 that's how he made the identification. We're not offering
6 a show-up or a line-up or anything of that nature.

7 THE COURT: How did the CI identify Mr. Seagers?

8 MR. SOWARDS: He was personally familiar with him. He
9 knew him from the neighborhood. You know, Your Honor, he
10 knows him well enough to know his nickname and he even had
11 the Defendant's phone number, so that establishes that --

12 THE COURT: At any point did the investigating officer
13 show him a picture of Mr. Seagers and say is this the
14 person you know to be Mr. Seagers?

15 MR. SOWARDS: He did show him a picture, Your Honor,
16 and we're not --

17 THE COURT: Is that what you're challenging?

18 MR. SOWARDS: -- we're not seeking to introduce that.
19 We're not seeking --

20 THE COURT: Is that what -- is that -- well, whether
21 or not you're seeking to introduce it, you would agree
22 that law enforcement showed him a photograph upon which
23 Mr. Marshall is saying that perhaps it was unduly
24 suggestive.

25 MR. MARSHALL: That's correct, Judge. And then,

1 furthermore, that it would taint any in-court
2 identification.

3 THE COURT: So that's what -- that's what I
4 understand. Then it's just the photograph that he showed?

5 MR. SOWARDS: That's -- it sounds like it.

6 THE COURT: All right. Thank you.

7 MR. SOWARDS: And, Your Honor --

8 THE COURT: So is he here and ready?

9 MR. SOWARDS: -- we -- we have our case agent here.
10 Our -- our other witness, Robert Drayton, he's not here
11 yet. He had to have dialysis this morning. He's not
12 allowed --

13 THE COURT: All right. When will he be here?

14 MR. SOWARDS: If you'll give us a minute, we can check
15 on him and give you --

16 THE COURT: All right. We'll let's do something. Get
17 your one witness that's here ready.

18 MR. SOWARDS: Okay. Your Honor, it's our
19 understanding that he's still at dialysis. I think it's
20 a lengthy process. I think that there's a search warrant
21 suppression issue, which the State's prepared to address
22 right now.

23 THE COURT: You told me this morning at 8:40 that you
24 were ready.

25 MR. SOWARDS: Well, we are ready except for our --

1 THE COURT: You're not ready. If you're not ready to
2 call the witness, you're not ready, right?

3 MR. SOWARDS: Correct.

4 THE COURT: What are you prepared to go forward on
5 now?

6 MR. SOWARDS: We have Detective Burke here prepared to
7 go forward on a search warrant suppression issue.

8 THE COURT: All right. Mr. Marshall, are you ready to
9 go forward on that matter?

10 MR. MARSHALL: Yes, ma'am.

11 THE COURT: All right.

12 MR. SOWARDS: Your Honor, the State calls Detective
13 Mike Burke.

14 MR. MARSHALL: That's fine. Judge, I was wanting to
15 make a -- it's my motion. I was wanting to inform the
16 Court a little bit about my motion before --

17 THE COURT: All right. Let me hear --

18 MR. MARSHALL: -- this witness takes the stand.

19 THE COURT: -- hear you, Mr. Marshall.

20 MR. MARSHALL: Judge, we are challenging the
21 sufficiency, the constitutionality, of two warrants in --
22 in this case; one being the arrest warrant of June the 20th
23 of 2012, and the second warrant we are challenging under
24 Franks versus Delaware and Illinois versus Gates, the
25 second one is -- is the search warrant dated October --

1 excuse me, August 20 -- well, it was served August 29th.
2 I think it was dated -- dated the 24th, I believe, of
3 August of 2012.

4 So we believe that both of those warrants are fatally
5 defective. We believe that they contain deliberate
6 falsity. The affiant is -- is Mr. Burke, the lead cade --
7 case agent. We believe they contain deliberate falsi --
8 falsity or, at a minimum, reckless disregard for the truth
9 of what is stated in the affidavits.

10 The search -- I'm sorry. The arrest warrant states --
11 and this was presented to Judge -- Magistrate Judge Bonnie
12 Koontz, and it's dated the 29th of August of 2012, the same
13 day that the search was done on the location on Ashton
14 Street, which is in question in this case, but it states --
15 this is Detective Burke's affidavit. On June 20th of 2012
16 at approximately 18:21 hours, which would be about 6:21 PM,
17 while at [REDACTED] Ashton Street, the upstairs apartment, which
18 is located in the city and county of Charleston, South
19 Carolina, 29403, the above-named Defendant, Dean Nelson
20 Seagers, did knowingly, willingly and unlawfully violate
21 South Carolina Statute 44.53.375, distribution of
22 cocaine-base, in the following manner: The Defendant did
23 distribute 2.03 grams of a white powder substance
24 consistent --

25 THE COURT: Hold on one second, Mr. Marshall.

1 (Discussion between the Court and the Clerk of Court.)

2 THE COURT: All right, Counsel. We're gonna go ahead.
3 They're ready for us. In about ten minutes we're gonna go
4 ahead and pick the jury. Is there anything that we need to
5 address before we pick the jury?

6 MR. MARSHALL: Regarding jury selection? I don't
7 believe so, Your Honor.

8 MR. SOWARDS: Nothing from the State, Your Honor.

9 THE COURT: All right. Good. Strikes are five and
10 five?

11 MR. MARSHALL: Okay. I take the Court's --

12 THE COURT: Is that correct?

13 MR. MARSHALL: I take the Court's direction on that
14 because I don't know for a fact.

15 MR. SOWARDS: That's correct.

16 THE COURT: All right. Thank you.

17 What is Mr. Seagers' bond arrangement?

18 MR. MARSHALL: He posted -- is it a hundred thousand
19 on that one -- surety, on -- on this charge, the State
20 charge.

21 THE COURT: All right.

22 MR. MARSHALL: And he has a personal -- a PR on this
23 Federal charge. Judge Duffy has him on a Federal --

24 THE COURT: Is his bond person going to stay on the
25 bond?

1 MR. MARSHALL: Yes. I haven't spoken directly with
2 them. I have no reason to think they won't.

3 THE COURT: Well, do you have my form filled out --

4 MR. MARSHALL: I don't have.

5 THE COURT: -- indicating that he's gonna stay on --
6 the bonds person will stay on the bond? Who's his bonds
7 person?

8 (Discussion between Mr. Marshall and the Defendant.)

9 THE COURT: Does the State take a position as to bond?

10 MR. SOWARDS: The State requests that Defendant's bond
11 be revoked. Given that this is a life without out parole
12 case, we believe it's in the best interest --

13 THE COURT: What -- what's changed since 8:00 this
14 morning?

15 MR. SOWARDS: That's just our position.

16 THE COURT: All right. Thank you.

17 MR. MARSHALL: May I approach, Judge?

18 THE COURT: You may.

19 MR. MARSHALL: Thank you.

20 THE COURT: All right. You'll need to have the bonds
21 person sign that, that he's gonna remain on the bond. I'll
22 make a decision whether or not, but if it's -- I just need
23 to know. It'll make the decision easier if the bonds
24 person is not gonna stay on it.

25 All right. Are all of you here for 403's?

1 You can go off the record.

2 (Discussion off the record.)

3 THE COURT: Are we ready to proceed? Yes?

4 MR. SOWARDS: Yes, Your Honor.

5 MR. MARSHALL: Yes, ma'am.

6 THE COURT: Your client waives formal arraignment,

7 Mr. Marshall?

8 MR. MARSHALL: Yes, ma'am.

9 THE COURT: Mr. Sowards, at this time there was --
10 there's no offer; is that correct?

11 MR. SOWARDS: That's correct.

12 THE COURT: And you have filed your Life Without the
13 Possibility of Parole notice?

14 MR. SOWARDS: Yes, Your Honor.

15 THE COURT: All right. Mr. Marshall, you understand
16 there's no offer?

17 MR. MARSHALL: Yes, ma'am.

18 THE COURT: All right. Mr. Seagers, I'm gonna place
19 you under oath.

20 (Whereupon, the Defendant was duly sworn by the Clerk
21 of Court.)

22 THE COURT: Sir, you understand we are ready to pick
23 your jury?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: And you understand there is no offer?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: And that you have been properly served
3 with a Life Without the Possibility of Parole notice?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: All right.

6 All right. We'll just await -- await the jury then.

7 MR. MARSHALL: May we take a very quick comfort break?

8 THE COURT: You -- you may, but don't go far.

9 Mr. Seagers, you're gonna stay with -- stay with us
10 though, right?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: We're -- we're going to -- regardless of
13 what happens, we're going to continue with your trial. Do
14 you understand?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: All right. Thank you.

17 We're at ease.

18 (Whereupon, a recess taken at 12:31 p.m.)

19 (Whereupon, the proceedings were concluded for July 6,
20 2015.)

21 (Whereupon, the following proceedings were held on
22 July 7, 2015.)

23 (State's Exhibit Numbers 1 through 8 were marked for
24 identification.)

25 THE COURT: Mr. Marshall, any objection to the State's

1 voir dire or witness list?

2 MR. MARSHALL: No, ma'am.

3 THE COURT: Mr. Sowards, any objection to the voir
4 dire or any of the witnesses -- witnesses listed?

5 MR. SOWARDS: No, Your Honor.

6 THE COURT: All right. Thank you.

7 And, Mr. Marshall, I've already forgotten, has your
8 client waived formal arraignment?

9 MR. MARSHALL: He has, Judge.

10 THE COURT: Thank you.

11 Solicitor, we're going forward only on
12 2012-GS-10-6779; is that correct?

13 MR. SOWARDS: That is correct, Your Honor.

14 THE COURT: Let's go ahead and offer the first witness
15 and we'll take testimony.

16 MR. SOWARDS: The State calls Robert Drayton.

17 CLERK: Place your left hand here and raise your
18 right. Raise your right hand.

19 ROBERT DRAYTON, JUNIOR,

20 having been duly sworn, testified as follows:

21 CLERK: Thank you, sir. You may be seated. Sir, once
22 you get seated, state your first and last name and spell
23 your last loudly and clearly into the microphone for the
24 record, please. Thank you.

25 THE WITNESS: Robert Drayton, D-R-A-Y-T-O-N.

1 THE COURT: All right. For purposes of the rule of
2 sequestration, Rule 615 of the Rules of Evidence, I'm
3 allowing Detective Grill to remain in the courtroom based
4 upon our previous in-chambers conference due to the
5 sensitive nature. Note your exception to that.

6 Thank you. You may continue.

7 DIRECT EXAMINATION (In-Camera)

8 BY MS. MULKEY:

9 Q. Good morning, Mr. Drayton.

10 A. Morning.

11 Q. I -- I know it's been a long morning and I'm gonna try
12 and keep this brief, okay?

13 Mr. Drayton, do you know someone named Dean Seagers?

14 A. Yes, ma'am.

15 Q. And we're here today for something that allegedly
16 occurred back in June of 2012. I don't want to talk about
17 all that just yet, but did you know Dean Seagers in 2012?

18 A. Yeah.

19 Q. Did you -- do you know who he is today?

20 A. Uh-huh.

21 Q. Well -- I'm sorry, what was that?

22 A. Yes.

23 Q. And in 2012, how long would you say you'd known the
24 Defendant, Mr. Seagers?

25 A. I'd say, oh, about a couple of years.

1 Q. And how did you know Mr. Seagers?

2 A. Through my family.

3 Q. Had you ever had face-to-face conversations with him?

4 A. Yeah.

5 Q. And do you know if he went by any nickname?

6 A. Baby Dean.

7 Q. So you --

8 THE COURT: Mr. Drayton, could you lean forward into
9 the microphone for me? Thank you. Could you repeat what
10 you just said?

11 THE WITNESS: Baby Dean.

12 THE COURT: Baby Dean?

13 THE WITNESS: Uh-huh.

14 THE COURT: Thank -- is that a "yes"?

15 THE WITNESS: Yes, ma'am.

16 THE COURT: Thank you.

17 BY MS. MULKEY:

18 Q. So, Mr. Drayton, you -- you knew him well enough to
19 call him by a nickname?

20 A. Yes, ma'am.

21 Q. And did you ever have Baby Dean, as you call him, his
22 phone number?

23 A. Yeah, I used to call and talk to him somewhat.

24 Q. Okay. Did you get that number from him?

25 A. Yeah.

1 Q. And --

2 THE COURT: Mr. Drayton, I'm gonna need you to say,
3 and I do it, too, I say yeah and nah, but I need you to say
4 "yes" or "no". This is my court reporter. She writes down
5 everything that I say, as well as everything that you say,
6 and it's really hard for her to distinguish between "yeah"
7 and "nah", so if you would say "yes" and "no". Can you do
8 that for me?

9 THE WITNESS: Yes, ma'am.

10 THE COURT: Thank you.

11 MS. MULKEY: Thank you, Your Honor.

12 BY MS. MULKEY:

13 Q. Going -- going back to June 20th of 2012 when this
14 incident happened, were you working with Detective Burke?

15 A. Uh-huh.

16 Q. And --

17 THE COURT: Is that a "yes"?

18 THE WITNESS: Yes, ma'am.

19 BY MS. MULKEY:

20 Q. And when working with Detective Burke, did -- did he
21 ask you some questions about your work for him?

22 A. Something like that. We met a lot of times, so, you
23 know, I can't remember all that.

24 Q. Fair enough. Do you recall him showing you some
25 pictures --

1 A. Yeah.

2 Q. -- in regards to this case?

3 A. Uh-huh.

4 Q. And do you know who was in the -- that picture?

5 A. Yes, ma'am.

6 Q. Who was in that picture?

7 A. Baby Dean.

8 Q. And is that the Baby Dean who's phone number you have?

9 A. Yeah.

10 Q. And is that the Baby Dean that you had known for
11 several years?

12 A. Uh-huh.

13 MS. MULKEY: The Court's indulgence?

14 THE COURT: Take your time.

15 MS. MULKEY: I have no further questions, Your Honor.

16 Please answer any questions the defense has, Mr. Drayton.

17 THE COURT: Mr. Marshall.

18 MR. MARSHALL: Thank you, Judge.

19 CROSS-EXAMINATION (In-Camera)

20 BY MR. MARSHALL:

21 Q. Mr. Drayton, good morning. I'm Cameron Marshall. I
22 represent Dean Seagers. Now do you recall the date of
23 June 20, 2012?

24 A. Yes, sir.

25 Q. All right. Well, let's -- what do you recall? What

1 did you do when you got up that morning?

2 A. All kinds of things.

3 Q. Well, like what?

4 A. All kind of things.

5 Q. Do you remember any of them?

6 A. No, sir.

7 Q. And at some point you came into contact with Detective
8 Burke, correct?

9 A. Uh-huh.

10 Q. And tell us about that. How did you come into contact
11 with him?

12 A. I plead the Fifth Amendment, Your Honor. I don't have
13 nothing to say.

14 Q. All right. It's been alleged that on June the 20th of
15 2012 that you purchased some narcotics from Mr. Seagers.
16 Is that true or not?

17 A. I don't know what you're talking about.

18 Q. All right. You're not familiar with having purchased
19 any?

20 A. (Unh-unh.)

21 Q. And at -- at one point prior to this trial, as I
22 understand it, you went to an attorney's office and gave a
23 statement. Is that true?

24 A. I went to the attorney's office. I didn't give no
25 statement. He was asking me questions. He wrote the

1 statement. I didn't give no statement.

2 Q. All right. Well, did you sign a statement --

3 A. No, I did not sign nothing.

4 MS. MULKEY: Relevance objection, Your Honor.

5 THE COURT: What's your objection?

6 MS. MULKEY: Relevance.

7 THE COURT: Mr. Marshall, what is the relevance?

8 We're here just on the ID issue only.

9 MR. MARSHALL: Okay. I'll -- I'll move on.

10 THE COURT: Thank you.

11 BY MR. MARSHALL:

12 Q. So you don't recall ever seeing Dean Seagers on

13 June the 20th of 2012?

14 A. No.

15 Q. Okay. I have -- well, a couple of more questions.

16 Do you -- did you ever give Detective Burke a physical
17 description of Dean Seagers on June 20th of 2012?

18 A. No, sir.

19 Q. No? You testified on direct that you were shown some
20 photos; is that correct?

21 A. Yeah, I was shown the photos.

22 Q. Okay. And -- and what were you asked to do in viewing
23 those photos?

24 A. Excuse me?

25 Q. When you were shown -- were you shown one photo or

1 multiple photos?

2 A. One of 'em.

3 Q. Multiple?

4 A. One photo.

5 Q. One photo. And what was -- what were you asked to do
6 with that photo?

7 A. I don't know what you're talking about. I don't know
8 what you're getting at with this.

9 Q. But you're certain that you did not see --

10 A. No, sir.

11 Q. -- Dean Seagers on -- let me finish the question,
12 please. You're certain that you did not see Dean
13 Seagers --

14 A. No, sir.

15 Q. -- on June 20th of 2012; is that correct?

16 MS. MULKEY: Objection; relevance.

17 THE COURT: What's the relevance, Mr. Marshall?

18 MR. MARSHALL: Well, this is a hearing to determine
19 whether he can identify Mr. Seagers on June 20th of 2012.

20 THE COURT: It's a hearing to determine whether he
21 knows the person that is Dean Seagers to be Dean Seagers
22 and how he knows them, right, and whether or not then
23 that identification is tainted because of something the
24 detectives did. That's the purpose of this hearing.

25 BY MR. MARSHALL:

1 Q. Do you see Mr. Seagers here today?

2 A. Yeah.

3 Q. All right. And is he seated right over here at my
4 table?

5 A. Uh-huh.

6 THE COURT: Is that a "yes"?

7 THE WITNESS: Yes, sir. Or --

8 MR. MARSHALL: Okay. That's all the questions I have.
9 Thank you.

10 THE COURT: Ms. Mulkey.

11 MS. MULKEY: I have no further questions, Your Honor.

12 THE COURT: All right. You may step down.

13 (Witness excused.)

14 THE COURT: Call your next witness.

15 MR. SOWARDS: Your Honor, at this time I think that we
16 established the --

17 THE COURT: I don't think that he has. Call your next
18 witness.

19 MR. SOWARDS: The State calls Detective Mike Burke,
20 Your Honor.

21 THE COURT: Thank you.

22 MICHAEL BURKE,

23 having been duly sworn, testified as follows:

24 CLERK: Thank you, sir. You may be seated. Sir, once
25 seated if you could please state your first and last name

1 and then spell your last loudly and clearly into the
2 microphone for the record, please.

3 THE WITNESS: Michael Burke, B-U-R-K-E.

4 THE COURT: Thank you.

5 DIRECT EXAMINATION (In-Camera)

6 BY MR. SOWARDS:

7 Q. Thanks, Detective Burke. Were you involved in the
8 investigation of Dean Seagers?

9 A. I was.

10 Q. And how did you become involved in that investigation?

11 A. I was the lead case agent.

12 Q. Did you involve a CI for this investigation?

13 A. I did.

14 Q. And who was the CI in that case?

15 A. Robert Drayton.

16 Q. And when did you first meet Mr. Drayton?

17 A. I met him several weeks before the initial
18 investigation started and I conducted a debrief of -- a
19 debrief with him at CPD headquarters.

20 Q. Could you describe what happened at this debriefing?

21 A. Sure. We sat down. I asked him if he had any
22 information in regards to narcotics activity. At that
23 point, he began going through the list of people he knew,
24 one including the Defendant, Mr. Seagers. I -- I let him
25 lead the conversation as far as he would give me a name and

1 I would ask basic questions; how do you know him, how long
2 have you known him, what kind of drugs does he sell, how
3 long -- how long has he been selling drugs, what can you
4 buy from him, those sort of questions.

5 Q. And did you show any photos during this debriefing?

6 A. I did. After he gave me a list of potential targets,
7 I left the interview and in an effort to corroborate what
8 he was telling me, I printed up some photographs of
9 individuals who I believed to be who he was talking about,
10 as well as some other individuals that I knew weren't --
11 that I knew that they weren't the guys he was talking about
12 just to try to verify the accuracy of his information, and
13 then I returned to the room with the photographs and we
14 went through the photos.

15 Q. And was he able -- was he able to identify the
16 individuals in the photograph?

17 A. All the ones that he was talking about, yes. The ones
18 that were just padded in there to verify his reliability
19 were -- he wasn't able to identify.

20 Q. And on -- on June 20, 2012, did you conduct a
21 controlled buy approach?

22 A. I did.

23 Q. And did you utilize a CI in that operation?

24 A. I did.

25 Q. And who was the CI in that operation?

1 A. Robert Drayton.

2 Q. And were any identification procedures done either
3 prior to or following that controlled buy operation?

4 A. Immediately after the controlled buy prior to his
5 statement, he was shown a photograph of the person that he
6 had already identified as Baby Dean, Dean Singers -- Dean
7 Seagers, and he had confirmed to me that that was the
8 person that he had purchased narcotics from.

9 MR. SOWARDS: I beg the Court's indulgence.

10 Q. Going back to this -- this operation that occurred on
11 June 20th, did the CI use a -- a phone to set up the buy?

12 A. He did.

13 Q. And who did he call?

14 A. On -- he called the Defendant during the phone --
15 during one of those several phone calls -- I'm sorry, one
16 of the phone calls, but he also made several other calls.

17 Q. And did you supply the phone -- the phone number in
18 that case?

19 A. No, I did not. It was his phone and the phone number
20 was obtained from him. In fact, he had provided me the
21 phone number during my initial debriefing.

22 Q. Okay.

23 MR. SOWARDS: I beg the Court's indulgence.

24 Q. Now just a couple of more questions about the phone
25 calls. Did you -- did you verify that he made the phone

1 call to the Defendant, Dean Seagers?

2 A. On June 20th?

3 Q. Yes, on June 20th.

4 A. I did, yes.

5 Q. And how did you verify that?

6 A. I took a photo -- a photograph of his cell phone,
7 which had the phone number, the nickname that -- or the
8 name that the phone number was saved under, the time and
9 the duration of the phone call, and the date.

10 Q. And -- and what name was that phone number saved
11 under?

12 A. It was saved under the name "Baby".

13 Q. And do you know the Defendant to have any nicknames?

14 A. I do.

15 Q. And what would that be?

16 A. Baby Dean.

17 Q. Later on in your investigation, were you able to
18 corroborate the number that the -- the CI called?

19 MR. MARSHALL: Judge, I object to the line of
20 questions as irrelevant to the purpose of this hearing.

21 THE COURT: Overruled. You may continue.

22 BY MR. SOWARDS:

23 Q. The State executed -- or law enforcement executed a
24 search warrant on August 29th. Was there anything found
25 that you could then use to corroborate the phone number

1 that the --

2 A. Yes, the -- the phone was found during the course of
3 the search warrant. It was located in the kitchen of the
4 residence and the Defendant was located in the threshold of
5 the kitchen -- or of the doorway leading to the kitchen on
6 the date they executed the search warrant.

7 Q. And how did you determine or how did law enforcement
8 determine that that phone number was the phone that the CI
9 called during the June 20th buy?

10 A. Well, we were able to get the phone analyzed by our
11 forensic or digital -- I'm not sure what they're called,
12 but they analyze the computers and phones and things of
13 those nature and they were able to get the phone number
14 from the phone.

15 Q. All right.

16 MR. SOWARDS: Nothing further.

17 THE COURT: Mr. Marshall.

18 MR. MARSHALL: Thank you, Judge.

19 CROSS-EXAMINATION (In-Camera)

20 BY MR. MARSHALL:

21 Q. Good morning, Detective Burke. I'm Cameron Marshall.
22 How are you, sir?

23 A. Good morning.

24 Q. Now you say you had a debriefing with Mr. Drayton,
25 correct?

1 A. Yes, sir.

2 Q. Where is -- you would have made a report of that
3 meeting, correct?

4 A. Yes, sir.

5 Q. Where is that report?

6 A. That report is on a hard drive in my police cruiser
7 at the Indianapolis Metropolitan Police Department
8 headquarters.

9 Q. And what would be the reason that you haven't produced
10 that pursuant to my request for production?

11 A. I -- I never handed it over. I -- I never printed it
12 up and turned it in. It was just kept for my file so I
13 could reference it.

14 Q. Okay. Well, that's not in compliance with CPD CI
15 tracking procedures, is it?

16 A. I'm not sure. I'd have to look at the policies.

17 Q. Do you know what the policies that the City of
18 Charleston Police Department maintains regarding the
19 handling of CI's?

20 A. I was familiar --

21 MR. SOWARDS: Objection, Your Honor. Relevance.

22 THE COURT: I'm gonna give him just a little bit of
23 leeway.

24 MR. MARSHALL: I'm following up on direct.

25 THE COURT: I -- I ruled in your favor, Mr. Marshall.

1 MR. MARSHALL: Thank you, Judge.

2 THE COURT: He may answer the question.

3 MR. MARSHALL: I appreciate that.

4 BY MR. MARSHALL:

5 Q. Do you know what the policies maintained by CPD
6 regarding CI's is?

7 A. Currently, no, and mainly because I've had to learn --
8 I've since transferred departments and had to learn a whole
9 new department policy.

10 Q. Did you know them at the time of June 20th of 2012?

11 A. I -- I would have, yes, sir.

12 Q. Do you believe that you complied with them regarding
13 Robert Drayton, Junior?

14 A. To the best of my knowledge, yes.

15 Q. Now you said that you -- on the 20th after Mr. Drayton
16 allegedly made a purchase from Mr. Seagers, you said that
17 you showed a single photo to Mr. Drayton, correct?

18 A. Correct.

19 Q. And where were y'all when that was done?

20 A. We were in my vehicle.

21 Q. Where was the vehicle located?

22 A. I'm not exactly sure of the exact parking location,
23 but it would have been within the general area of where the
24 transaction occurred.

25 Q. And where did the transaction occur?

1 A. [REDACTED] Ashton Street.

2 Q. Okay. Where is Ashton Street in relation to Norman
3 Street?

4 A. I'd have to look at a map to remember my geography of
5 the areas. It's not as good as it was when I worked here.

6 Q. Are you aware that supposedly on the 20th in a written
7 statement -- because Mr. Drayton did do a brief written
8 statement on the 20th of June, 2012. Is that what is being
9 alleged?

10 A. Yes, sir.

11 Q. And are you aware that in that statement that he said
12 he purchased some drugs on Norman Street?

13 A. I'd have to see the statement. I -- I'm not sure --

14 Q. Let me show that to you. Do you not have a -- a file
15 on this case?

16 A. The -- the case file is at the CPD narcotics office.
17 I -- I was flown in on Sunday, so I -- I don't have access
18 to that file anymore.

19 Q. And you haven't been provided a copy of the file by
20 anybody at CPD?

21 A. No, sir.

22 Q. You haven't been provided a copy of the file by
23 anybody with the Solicitor's Office?

24 A. I've seen the arrest packages.

25 MR. MARSHALL: I apologize. I thought I'd made

1 some copies, but let me get it out of my discovery
2 package here.

3 MR. SOWARDS: I'm gonna object to this line of
4 questioning. The -- the scope of this hearing is about
5 establishing whether the CI had prior knowledge --

6 THE COURT: Mr. Marshall, what are we doing here?

7 MR. SOWARDS: It seems like we're exceeding the scope.

8 MR. MARSHALL: Showing the complete unreliability of
9 the identification as it goes to --

10 THE COURT: Let's -- let's move on. Thank you.

11 MR. MARSHALL: Well, I found my -- my statement. Can
12 I show it to the witness?

13 THE COURT: What's the relevance of what's contained
14 in the statement, Mr. Marshall?

15 MR. MARSHALL: Well, the -- the hearing is about the
16 CI's identification of my client and if it's being alleged
17 that the identification was made in one location and, in
18 fact, the CI says it was made in another location, then I
19 think it goes to the reliability of the identification.

20 THE COURT: I'm gonna give you just a little leeway,
21 but we need to move on.

22 BY MR. MARSHALL:

23 Q. All right. Sir, here is -- excuse me one moment. All
24 right. This is the statement to which I was referring,
25 sir. If you could look at -- at this for me and direct

1 your attention to the top which says "which occurred at",
2 and tell us for the record, please, what it says right
3 after that printed portion of that statement there.

4 A. This statement is in reference to a controlled
5 purchase of cocaine, which occurred at [REDACTED] Norman Street
6 on or about 6/20/2012, at approximately 18:21 hours,
7 Charleston, South Carolina. This statement is given
8 6/20/2012, 18:38 hours at -- on Congress Street.

9 Q. Okay. Does that -- so you do agree that the statement
10 says that it pertains to an alleged purchase which happened
11 on Norman Street?

12 A. Correct.

13 Q. And you're now maintaining that that's incorrect?

14 A. That is incorrect, yes, sir.

15 Q. All right.

16 A. It was a mistake on my part.

17 Q. Okay. So you're the one that filled that top portion
18 out?

19 A. That -- that top portion was filled out by me, yes,
20 sir.

21 Q. And does this refresh you as to where it is that the
22 statement was given and that the CI allegedly identified
23 Mr. Seagers as someone who sold him an illegal substance?

24 A. Yes, sir.

25 Q. Okay. Where is -- where was that?

1 A. Congress Street in the -- it would have been in the
2 parking lot of the Citadel Alumni Center all right in there
3 -- right there off Congress Street by the stadium.

4 Q. That's not where you met up with the CI, is it, after
5 the alleged purchase?

6 MR. SOWARDS: Objection, Your Honor. Relevance.

7 THE COURT: Move on, Mr. -- move on, Mr. Marshall.

8 MR. MARSHALL: I'll move on, Judge.

9 BY MR. MARSHALL:

10 Q. Detective Burke, the purposes of this hearing has to
11 do with the CI's identification -- alleged identification
12 of -- of Mr. Seagers, and in that regard do you now how far
13 away -- well, first of all, let's go more general. Do you
14 know -- do you know whether or not Mr. Drayton was able to
15 see someone who he claims distributed drugs to him on
16 June 20th of 2012? Do you know whether he was able to see
17 the person that he claims did that? If, in fact, he claims
18 that.

19 A. Are you asking for my opinion?

20 Q. No, I don't want opinion. I want to know for a fact.
21 Do you -- do you know -- in other words, did you witness
22 the CI involved in an alleged drug transaction on the 20th
23 of June of 2012?

24 A. Did I -- I did not witness it, no.

25 Q. All right. Were you monitoring the CI's alleged

1 attempt to buy drugs on June 20th of 2012 by video and
2 audio?

3 A. Not by -- not by video. Only audio. Audio was the
4 only thing that was live. The Video was -- had to be
5 downloaded afterwards.

6 Q. Okay. So you didn't have a live feed of the camera
7 that the CI may have been wearing, correct?

8 A. That's correct.

9 Q. So have you looked at that video since the time of
10 June 20th of 2012?

11 A. Yes.

12 Q. And how many times?

13 MR. SOWARDS: Objection, Your Honor. Relevance.

14 THE COURT: Overruled. You may answer. How many
15 times have you viewed it?

16 THE WITNESS: More than two, less than five.

17 BY MR. MARSHALL:

18 Q. Okay. Well, based on what you viewed on the video,
19 what do you believe the -- the distance that the CI, Robert
20 Drayton, was from an alleged person who distributed drugs
21 to him?

22 A. Maybe from here to the ceiling. Fifteen feet.

23 Q. And based on your view of the video, how long -- or,
24 first of all, do you know -- based on your view of the
25 video, do you know whether the CI actually viewed a person

1 who was allegedly distributing drugs to him?

2 A. You can't -- you cannot tell that from the video. The
3 vid -- the camera was attached to his shirt, it wasn't
4 attached to his head, so whatever his eyes saw I couldn't
5 testify to that.

6 Q. All right.

7 MR. MARSHALL: One -- one moment, please, Your Honor.

8 Q. And on the video that we're speaking of now, did you
9 see any person allegedly distributing drugs to Robert
10 Drayton?

11 A. No.

12 Q. On the video, did you see the CI, Robert Drayton, in
13 possession of any drugs?

14 A. No.

15 MR. MARSHALL: That's all I have. Thank you.

16 EXAMINATION (In-Camera)

17 BY THE COURT:

18 Q. Detective Burke, you indicated when you began to set
19 up the buy Mr. Drayton indicated that he could make
20 purchases. Is that your testimony?

21 A. Yes, ma'am.

22 Q. And so he had already identified to you who he could
23 buy from?

24 A. He had already -- during the initial debrief weeks
25 prior to -- several weeks prior to actually beginning an

1 investigation.

2 Q. And he named the Defendant?

3 A. Yes, ma'am. He'd actually named him on a previous
4 buy. That wasn't the first buy we did off of him. That
5 was --

6 Q. And did you -- is that when you showed him photographs
7 of the person that you knew to be Dean Seagers?

8 A. No, ma'am. He originally identified -- on the initial
9 debrief, I brought in a bunch of -- several photographs of
10 individuals that he had named that he knew from -- from the
11 streets and several other individuals that I knew that he
12 wouldn't know just to verify his accuracy and it was at
13 that time I -- we're flipping through the photos. I'd say
14 do you know this guy and he would say yeah, that's Baby
15 Dean, and the next guy and the next guy. And if he didn't
16 know them, he didn't know them, but if he did know them,
17 he would identify them to me, and that's when he -- he
18 initially identified him.

19 Q. Did you know the person that he identified as Baby
20 Dean to be Dean Seagers?

21 A. Yes, ma'am.

22 THE COURT: All right. Thank you. You may step down.
23 (Witness excused.)

24 THE COURT: All right, Counsel. Based upon the
25 testimony, specifically from Detective Burke based upon my

1 questions, indicates to me that the CI, Mr. Drayton,
2 knew Mr. Seagers prior to, there was no improper flu --
3 influence by the detective or any other police entity to
4 improperly influence or taint the identification. Based
5 upon my reading of the State versus Lieberman, I do not
6 feel that we need to go any further with this inquiry. I
7 will allow the identification of Mr. Drayton as -- that
8 Mr. Seagers is the person he knows to be Mr. Seagers and
9 also knows him as Baby Dean. Note your exception to my
10 ruling. Thank you.

11 MR. SOWARDS: Thank you.

12 THE COURT: All right. The jury is here and we'll
13 continue with our pretrial motions at the appropriate time.
14 Thank you.

15 MR. MARSHALL: Thank you very much.

16 (Recess taken.)

17 THE COURT: Is Ms. Linder on the witness list?

18 MR. MARSHALL: Yes, ma'am.

19 THE COURT: Thank you.

20 MR. MARSHALL: I'd like to seek clarification from the
21 Court as to whether you're gonna allow testimony regarding
22 the alleged identification on June 20th of 2012 as well as
23 an in-court identification?

24 THE COURT: He still knows Mr. Seagers to be
25 Mr. Seagers.

1 MR. MARSHALL: Right. But the issue --

2 THE COURT: The --

3 MR. MARSHALL: I'm sorry.

4 THE COURT: No, the purpose of my hearing that we
5 had today was whether or not by showing a photo, which
6 was -- that was it, had improperly tainted Mr. Drayton's
7 identification of your client. Whether or not Mr. Seagers
8 committed the offense, identification is an issue that must
9 be proven by the State beyond a reasonable doubt. That
10 becomes an issue for the jury to determine. I'm just
11 making a determination whether or not it was improperly
12 influenced and the influence by Detective Burke had tainted
13 his identification. The testimony was abundantly clear
14 that Mr. Drayton knew Mr. Seagers independently of this
15 incident, all right? Did that answer your question?

16 MR. MARSHALL: Well, respectfully, I don't think so,
17 Judge, because it was abundantly clear that the testimony
18 that -- was that he did not see my client on June the 20th
19 of 2012.

20 THE COURT: Well, then that -- that's an -- that's an
21 element the State must prove, Mr. Marshall.

22 MR. MARSHALL: Right. So if the only evidence we
23 have is that the CI saying I didn't see your client on
24 June 20th of 2012, Detective Burke says I didn't see
25 Mr. Drayton see your client, then there's absolutely no

1 evidence that the CI saw my client on June 20th and,
2 therefore --

3 THE COURT: But that's not the issue before me at this
4 point, Mr. Marshall.

5 All right. Thank you. It could become appropriate at
6 the appropriate time, but now is not the appropriate time.

7 BAILIFF: We're at 45, so I think we've got them.

8 THE COURT: I think we are --

9 CLERK: There's 44. We're at 44.

10 THE COURT: We're at 44. We are missing one? Then we
11 can go ahead and begin.

12 CLERK: Whenever your name is called, if you would,
13 please, take a seat. Juror Number 1, Julia Abraham; Juror
14 Number 5, Renee Alexander; Juror 28, Judi Brantley; Juror
15 34, Kareem Brooks; Juror 37, Eric Brown. Thank you.

16 Juror 47, David Buckles. Thank you. Juror 48,
17 Cassandra Bullock. Thank you. Juror 54, Howard Carney.
18 Thank you. Juror 70, Jason Cook. Thank you. Juror 87,
19 Denise Dhein. Thank you. Juror 92, Kevin Dong. Thank
20 you. Juror 105, Harold Etherington. Thank you. Juror
21 142, Howard Harter. Thank you. Juror 147, Debbie Hayward.
22 Thank you. Juror 148, Miranda Head. Thank you. Juror
23 153, Kenneth Hollington. Thank you. Juror 154, Peter
24 Hovanec. Thank you. 166, Meredith Johnson. Juror 174,
25 Kenneth Kelly. Juror 178, Peterjohn Kerr. 186, Karen

1 Koerner. Thank you. Juror 204, Laurel Lotterhos. Thank
2 you. 219, Lynn McCain. Thank you. 229, Jennifer
3 Mendelsohn. Thank you. Juror 244, Joseph Myers. 245,
4 Ashley Neale. Thank you. 247, Nathaniel Nelson. Thank
5 you. 250, Susan Nevers. Thank you. 260, Lloyd Outland.
6 Thank you. 289, Tiffany Richardson. Thank you. 308,
7 Kathy Seitz. Thank you. 309, Ashley Shaw. Thank you.
8 312, Linda Silance. Thank you. 325, Beverly Snelgrove.
9 Thank you. 328, Reagan Sobel. Thank you. 331, Walter
10 Staley. Thank you. 336, Mary Steward. 363, Ashley
11 Vereen. 368, Anna Warner. Thank you. 373, Rebecca Weiss.
12 379, Susanna White. 380, Henry Wigfall. 387, Mary
13 Williams. And 399, Liane Ziel.

14 Jurors are all present, Your Honor.

15 THE COURT: All right. Thank you.

16 Good morning, ladies and gentlemen. I am Judge
17 Kristi Harrington. I am your resident judge with the
18 Ninth Circuit, which is Charleston and Berkeley counties.

19 I have the pleasure this week of presiding over a term
20 of General Sessions, which is otherwise known as criminal
21 court. The case that we are about to begin is the case of
22 the State of South Carolina versus Dean Nelson Seagers. I
23 have a series of questions to ask you to determine your
24 general qualifications to serve as jurors in this case.

25 I will give you an opportunity to come speak with me

1 at the end if you need to answer any of these questions.
2 I know some of these questions are going to be a bit
3 personal and while you all have spent yesterday together
4 and some of this morning together, I know that some of
5 these questions you may not want to stand up and answer
6 in front of 43 other people, so I will allow you to come
7 forward.

8 This is my court reporter. She is writing down
9 everything that I say as well as everything that you say,
10 so I need for you when you stand to answer questions to
11 stand up, state your name and your jury number, and if I
12 have you repeat your answer it doesn't mean that I didn't
13 like your answer, it just means that I did not hear it and
14 so then I believe that my court reporter has not heard it.

15 Ladies and gentlemen, I remind you that you are still
16 under the oath that you took yesterday to give me your
17 complete and truthful responses.

18 Mr. Seagers has been charged in an indictment, which
19 is -- simply it's the piece of paper that brings us to
20 court here today. He has been charged with distribution
21 of cocaine base. The State alleges that in Charleston
22 County, South Carolina, on or about June 20th of 2012,
23 the Defendant, Dean Nelson Seagers, did manufacture,
24 distribute, dispense, deliver, purchase, or did aid, abet,
25 attempt or conspire to manufacture, distribute, dispense,

1 deliver or purchase, or did possess with the intent to
2 distribute, dispense or deliver a controlled substance, or
3 a controlled substance analogue, to wit, cocaine base, in
4 violation of 44-53-375 of the South Carolina Code of Laws,
5 1976, as amended. Mr. Seagers has pled not guilty to this
6 indictment.

7 Ladies and gentlemen, I'm now going to introduce you
8 to the parties that are involved in this case and the
9 attorneys will be taking notes as to your response. So
10 that, again, is another reason why I have you state your
11 name and your jury number before you give your response and
12 then before you sit down again.

13 Mr. Marshall, if you would, please, stand, introduce
14 your client and tell us a little bit about yourself as
15 well.

16 MR. MARSHALL: I'll be glad to, Your Honor.

17 Ladies and gentlemen, good morning. My name is
18 Cameron Marshall. I was raised here in Charleston,
19 graduated from USC law school in 1991, came back and worked
20 in this solicitor's office, the same office that's now
21 prosecuting my client, Dean Seagers. I did that for about
22 nine years and then for the last fifteen I've been in
23 private practice. And I do about half criminal defense
24 work and -- and municipal magistrate courts, state court
25 here, federal court across the street, mostly in

1 Charleston, Dorchester, and Berkeley counties. I also do
2 a fair amount of personal injury work, auto accidents and
3 things of that nature where people have been injured, in
4 that sort of civil setting. And this is my client, Dean
5 Seagers. Thank you for being here.

6 THE COURT: Thank you.

7 Is there any member of the jury panel related by
8 blood, marriage, close personal friend, ever have any
9 business, personal or professional dealings where you know
10 Mr. Seagers in any way? If so, please stand.

11 Thank you. There are none.

12 Is there any member of the jury panel related by
13 blood, marriage, close personal friend, ever have any
14 business, personal or professional dealings, or ever been
15 represented by Mr. Marshall? If so, please stand.

16 Thank you. There are none.

17 Mr. Sowards, if you would, please, stand, introduce
18 yourself, the persons who will be assisting you at your
19 table or throughout this trial, and give us a little
20 information about your office.

21 MR. SOWARDS: Thank you, Judge.

22 Good morning. My name is Whit Sowards. I am an
23 assistant solicitor with the Ninth Circuit Solicitor's
24 Office. With me is Lauren Mulkey, also an assistant
25 solicitor. And to her right is Michael Burke, formerly of

1 the Charleston Police Department. Together, Lauren and I
2 work for your elected solicitor, Scarlett Wilson.

3 THE COURT: Thank you.

4 Is there any member of the jury panel related by
5 blood, marriage, close personal friend, ever have any
6 business, personal or professional dealings, or ever been
7 represented by Mr. Sowards or Ms. Mulkey? If so, please
8 stand.

9 Thank you. There are none.

10 Any member of the jury panel ever have any matters
11 handled by the Solicitor's Office in the Ninth Circuit?
12 And that does comprise Berkeley and Charleston counties.
13 If so, please stand.

14 Thank you. There are none.

15 Is there any member of the jury panel that knows
16 Detective Burke, formerly with the Charleston City Police
17 Department; is that correct?

18 DETECTIVE BURKE: Yes, ma'am.

19 THE COURT: Yes. Know him in any way. If so, please
20 stand.

21 Thank you. There are none.

22 I understand, Detective Burke, you are now with the
23 Indianapolis Police Department; is that correct?

24 DETECTIVE BURKE: Yes, ma'am.

25 THE COURT: All right. Anyone ever been employed with

1 the Indianapolis Police Department or have a family member
2 from Indianapolis? If so, please stand.

3 Thank you. There are none.

4 Ladies and gentlemen, I'm now going to call a list of
5 potential witnesses who may be called to testify in this
6 case. If you are related by blood, marriage, close
7 personal friend, to any of these individuals, if you know
8 these individuals in any capacity, please stand as I call
9 their name.

10 Jake Grill, Robert Drayton, Junior, Michael Burke,
11 William Olson, Lori Roe, Susan Payne, Renee Hilton, Linda
12 Wilson, Jeffrey Miller, Mary K. Phillips, Kathleen Butler,
13 Rodney Van Horn, Lucille Browder, Mark Evans, Moses Dennis,
14 Officer Dutton, Stephanie Linder.

15 If you are related by blood, marriage, close personal
16 friend to any of those individuals, please stand at this
17 time.

18 Thank you.

19 Any member of the jury panel ever been employed by or
20 a member of your family or close personal friend ever been
21 employed with the Charleston City Police Department? If
22 so, please stand.

23 Thank you. There are none.

24 Is there any member of the jury panel that is a
25 current or previous law enforcement officer or a member of

1 your immediate family or close personal friend is a law
2 enforcement officer in any capacity? If so, please stand.

3 (Prospective juror stands.)

4 Yes. Your jury number and name.

5 PROSPECTIVE JUROR: My jury number is 28 and my name's
6 Judi Brantley and my husband retired from narcotic and drug
7 control in 1997.

8 THE COURT: All right. And what office was that?

9 PROSPECTIVE JUROR: DHEC --

10 THE COURT: All right.

11 PROSPECTIVE JUROR: -- narcotic and drug control and
12 substance --

13 THE COURT: Is there anything about your husband's
14 previous employment that would affect your ability to be
15 fair and impartial in this case?

16 PROSPECTIVE JUROR: No, ma'am.

17 THE COURT: All right. And your jury number and name?

18 PROSPECTIVE JUROR: 28, Judi Brantley.

19 THE COURT: Thank you. Is there anyone else?

20 Thank you. There are none.

21 Is there any member of the jury panel that has
22 previously been a witness -- a witness in either a civil
23 or a criminal case? You came in and testified in court as
24 a witness. If so, please stand.

25 (Prospective juror stands.)

1 THE COURT: Yes, ma'am. Your jury number and name.

2 PROSPECTIVE JUROR: Cassandra Bullock, Number 48.

3 About seven years ago I was a witness in a civil case
4 involving construction.

5 THE COURT: All right. Is there anything about that
6 experience that would affect your ability to be fair and
7 impartial in this case?

8 PROSPECTIVE JUROR: No, ma'am.

9 THE COURT: And it was in this courthouse or somewhere
10 else?

11 PROSPECTIVE JUROR: This courthouse.

12 THE COURT: And Ms. Bullock?

13 PROSPECTIVE JUROR: Correct, Number 48.

14 THE COURT: Thank you. Is there anyone else?

15 Thank you. There are none.

16 Ladies and gentlemen, I now have a series of
17 questions, there's about five of them, so please listen
18 very carefully, that I have determined that in order for
19 you to respond I want you to come forward and speak with
20 me in private. And as I indicated to you, we are a court
21 of record, so "in private" is going to be in front of my
22 court reporter with me so that she is able to take down
23 everything that you say as well as everything that I say.

24 Ladies and gentlemen, I will need you to come forward
25 at the appropriate time if you or any member of your family

1 or close personal friend has ever been accused of a crime.

2 If you or a member of your family or close personal
3 friend has ever been incarcerated or you have a family
4 member or close personal friend that is currently
5 incarcerated.

6 Does any member of your -- member of the jury panel
7 have relatives or close friends in prison for a
8 drug-related offense?

9 Is there any member of the jury panel or a close
10 personal friend or family member that has ever been
11 arrested by the City of Charleston Police Department?

12 Is there any member of the jury panel that has a
13 belief that illegal drugs should be legalized?

14 Is there any member of the jury panel that has any
15 relative or close friend that has ever been arrested for
16 drugs?

17 Ladies and gentlemen, if you need to come forward to
18 answer those questions or if you feel that based upon what
19 I have read to you just in what was contained in the
20 indictment, which is not evidence in this case, it's merely
21 the allegation, if you feel that for whatever reason you
22 would be unable to listen to the facts from the witness
23 stand, apply the law as I give it to you and render a
24 verdict based only on those things free from any political,
25 moral, religious beliefs that you may hold, if for whatever

1 reason you feel you would be unable to be a fair and
2 impartial juror, please move to the center aisle and the
3 bailiff -- bailiffs will assist you in coming forward. If
4 you need to answer any of those previous questions as well.

5 Thank you.

6 (Whereupon, the following proceedings were held out of
7 the hearing of the jury panel.)

8 BAILIFF: Juror Number 54.

9 PROSPECTIVE JUROR: I was a previous resident of
10 Washington State --

11 THE COURT: Okay.

12 PROSPECTIVE: -- and I'm a passive supporter of
13 legalized marijuana.

14 THE COURT: All right. And so the -- the allegations
15 -- you heard the allegations?

16 PROSPECTIVE JUROR: Uh-huh.

17 THE COURT: Would you be able to listen to the facts
18 from the witness stand, apply the law as I give it to you
19 and then render a verdict based upon those things?

20 PROSPECTIVE JUROR: That coupled with my defense
21 background in the Air Force, I -- I don't think I would be
22 a fair juror, no.

23 THE COURT: Okay. What you have shared with us would
24 affect your ability to be fair and impartial. Tell me your
25 jury number.

1 PROSPECTIVE JUROR: 54.

2 THE COURT: All right. Sir, I'm gonna excuse you from
3 the trial of this case. What I need you to do is stay with
4 us and I'm gonna give you further instructions regarding
5 your service for the week, all right?

6 PROSPECTIVE JUROR: Thank you.

7 (Whereupon, the prospective juror returns to his
8 seat.)

9 THE COURT: All right. Juror 54 is excused.

10 BAILIFF: Juror Number 244.

11 THE COURT: Do you have any additional questions,
12 Mr. Marshall?

13 MS. MARSHALL: No.

14 THE COURT: Do you have any additional questions?

15 MS. MULKEY: No, Your Honor. Thank you.

16 PROSPECTIVE JUROR: Good morning.

17 THE COURT: Good morning.

18 PROSPECTIVE JUROR: About 25 years ago I was arrested
19 for -- by the City of Charleston for drunk and disorderly.

20 THE COURT: All right.

21 PROSPECTIVE JUROR: I was 21.

22 THE COURT: Is there anything about that experience
23 that would affect your ability to be fair and impartial in
24 this case?

25 PROSPECTIVE JUROR: I don't think so.

1 THE COURT: All right. Most of the witnesses will be
2 from the City of Charleston. Is there anything -- will
3 you be able to listen to the facts from the witness stand,
4 apply the law as I give it to you and render a verdict
5 based on those things?

6 PROSPECTIVE JUROR: I don't think that's a problem.

7 THE COURT: All right. I don't think that's a
8 problem, I need a yes or a no.

9 PROSPECTIVE JUROR: Oh, yes.

10 THE COURT: All right. Will you be the juror -- both
11 the Defendant and the State deserve a juror who's able to
12 listen to the facts, apply the law as to those facts as I
13 give it and render a verdict based upon those things free
14 from any outside influence. Can you be that juror?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Tell me your juror number.

17 PROSPECTIVE JUROR: 244.

18 THE COURT: 244 shall remain. Thank you.

19 (Whereupon, the prospective juror returns to his
20 seat.)

21 BAILIFF: Juror Number 142.

22 THE COURT: Good morning.

23 PROSPECTIVE JUROR: Good morning. I have several
24 categories.

25 THE COURT: Okay. Great.

1 PROSPECTIVE JUROR: One, I have a niece who is serving
2 a ten-year prison sentence in North Carolina who was
3 involved in a high-speed crash that took the life of two
4 people and has a drug and alcohol problem. My son was
5 arrested in Mount Pleasant for filing a false police report
6 a year and a half ago and he did a PTI and it was expunged.
7 That same son with his wife ten days ago entered a rehab
8 center for a 90-day treatment for addiction to prescription
9 drugs and cocaine.

10 THE COURT: All right. You have shared a lot with me.
11 Thank you. And I appreciate, first of all, for listening
12 to all of my questions and you -- what you've shared, would
13 you be able to set aside those things, listen to the facts
14 from the witness stand, follow the law as I give it to you
15 and then render a verdict based on that information?

16 PROSPECTIVE JUROR: The first two, yes. I'm a little
17 concerned about the rehab thing because I'm kind of angry.

18 THE COURT: All right. Let's do -- let's do this
19 because both the State and the Defendant deserve a juror
20 who can stay focussed on what is happening here and follow
21 the law as I give it. Let me excuse you from the trial of
22 this case. Please stay with us. I'm gonna give you
23 instructions regarding your service for the remainder of
24 the day --

25 PROSPECTIVE JUROR: Got you.

1 THE COURT: -- and the rest of the week, so you don't
2 have to answer any more questions regarding this case.
3 Tell me your jury number.

4 PROSPECTIVE JUROR: 142.

5 THE COURT: 142 is excused from the trial of this
6 case.

7 PROSPECTIVE JUROR: So do I leave?

8 THE COURT: No, stay with us. Just don't answer any
9 more questions.

10 (Whereupon, the prospective juror returns to his
11 seat.)

12 BAILIFF: Juror Number 308.

13 THE COURT: Good morning.

14 PROSPECTIVE JUROR: I'm 308. They sentenced a family
15 member 34 years ago, conspiracy and armed robbery.

16 THE COURT: Okay. Was that here in Charleston or
17 somewhere else?

18 PROSPECTIVE JUROR: No, Charleston.

19 THE COURT: All right.

20 PROSPECTIVE JUROR: And then just some friends going
21 to high school, you know, for, you know, simple possession,
22 but they were school friends, not --

23 THE COURT: Is there anything about what you've shared
24 with us that would affect your ability to be fair and
25 impartial in this case?

1 PROSPECTIVE JUROR: No.

2 THE COURT: All right. And tell me your jury number,
3 Ms. Seitz.

4 PROSPECTIVE JUROR: Kathy Seitz.

5 THE COURT: And your -- your jury number?

6 PROSPECTIVE JUROR: 308.

7 THE COURT: 308 will remain. Thank you so much.

8 PROSPECTIVE JUROR: Thank you.

9 (Whereupon, the prospective juror returns to her
10 seat.)

11 (Whereupon, the following proceedings was held in open
12 court.)

13 THE COURT: Is there anyone else?

14 (No response.)

15 THE COURT: Thank you very much. No additional
16 questions?

17 MR. MARSHALL: No, ma'am.

18 THE COURT: No additional questions?

19 MR. SOWARDS: No, ma'am.

20 THE COURT: All right. Mr. Clerk, please strike me --
21 strike the jury. Strikes are five and five. We'll pick
22 two alternates.

23 CLERK: Yes, ma'am.

24 Ladies and gentlemen, whenever your name is called if
25 you would please gather your belongings, make your way to

1 the podium in the middle of the courtroom. Once you reach
2 the podium, you may turn and face the back of the courtroom
3 and I'll instruct you from that point on.

4 Starting with juror -- I apologize, Your Honor. I
5 need to generate the strike sheets.

6 THE COURT: All right.

7 CLERK: All right, folks. Let's try this again.

8 Whenever your name is called, please approach the
9 podium in the middle of the courtroom, turn and face the
10 back of the courtroom as Mr. Williams is indicating right
11 now, and we will instruct you from that point on.

12 Starting with Juror Number 204.

13 (Whereupon, Laurel L. Lotterhos, a white female, came
14 forward.)

15 CLERK: Thank you. Strikes are five and five, with
16 the State striking first. What say you for the State?

17 MR. SOWARDS: Please seat the juror.

18 CLERK: What say you for the Defendant?

19 MR. MARSHALL: Please seat the juror.

20 CLERK: Ma'am, if you will, please take a seat in the
21 jury box. You've been selected as a juror in the trial of
22 this case.

23 Juror 373.

24 (Whereupon, Rebecca A. Weiss, a white female, was
25 called forward.)

1 CLERK: What say you for the State?

2 MR. SOWARDS: Please strike the juror.

3 CLERK: Ma'am, if you will, please return to your
4 seat. You've been excused from the trial of this case.
5 Juror 387.

6 (Whereupon, Mary H. Williams, a white female, was
7 called forward.)

8 CLERK: What say you for the State?

9 MR. SOWARDS: Please seat the juror.

10 CLERK: What say you for the Defendant?

11 MR. MARSHALL: Please excuse Ms. Williams.

12 CLERK: Ma'am, if you will, please return to your
13 seat. You've been excused from the trial of this case.
14 Juror 336.

15 (Whereupon, Mary A. Steward, a black female, was
16 called forward.)

17 CLERK: What say you for the State?

18 MR. SOWARDS: Please seat the juror.

19 CLERK: What say you for the Defendant?

20 MR. MARSHALL: Please seat this juror. Thank you.

21 CLERK: Ma'am, if you will, please take a seat in the
22 jury box. You've been selected as a juror in the trial of
23 this case.

24 Juror 250.

25 (Whereupon, Susan R. Nevers, a white female, was

1 called forward.)

2 CLERK: What say you for the State?

3 MR. SOWARDS: Please seat the juror.

4 CLERK: What say you for the Defendant?

5 MR. MARSHALL: Please seat this juror. Thank you.

6 CLERK: Ma'am, if you will, please take a seat in the
7 jury box. You've been selected as a juror in the trial of
8 this case.

9 Juror 309.

10 (Whereupon, Ashley L. Shaw, a white female, was called
11 forward.)

12 CLERK: What say you for the State?

13 MR. SOWARDS: Please seat the juror.

14 CLERK: What say you for the Defendant?

15 MR. MARSHALL: Please seat this juror. Thank you.

16 CLERK: Ma'am, if you will, please take a seat in the
17 jury box. You've been selected as a juror in the trial of
18 this case.

19 Juror 147. Ms. Hayward.

20 (Whereupon, Debbie C. Hayward, a white female, was
21 called forward.)

22 CLERK: What say you for the State?

23 MR. SOWARDS: Please seat the juror.

24 CLERK: What say you for the Defendant?

25 MR. MARSHALL: Please excuse this juror. Thank you.

1 CLERK: Ma'am, if you will, please return to your
2 seat. You've been excused from the trial of this case.

3 Juror 219.

4 (Whereupon, Lynn M. McCain, a white female, was called
5 forward.)

6 CLERK: What say you for the State?

7 MR. SOWARDS: Please strike this juror.

8 CLERK: Ma'am, if you will, please return to your
9 seat. You're excused from the trial of this case.

10 Juror 70.

11 (Whereupon, Jason C. Cook, a white male, was called
12 forward.)

13 CLERK: What say you for the State?

14 MR. SOWARDS: I beg the Court's indulgence.

15 THE COURT: Take your time.

16 MR. SOWARDS: Please seat this juror.

17 CLERK: What say you for the Defendant?

18 MR. MARSHALL: Please seat the juror. Thank you.

19 CLERK: Sir, if you will, please take a seat in the
20 jury box. You've been selected as a juror in the trial of
21 this case.

22 Juror 380.

23 (Whereupon, Henry B. Wigfall, a black male, was called
24 forward.)

25 CLERK: What say you for the State?

1 MR. SOWARDS: Please seat this juror.

2 CLERK: What say you for the Defendant?

3 MR. MARSHALL: Please seat the juror. Thank you.

4 CLERK: Sir, if you will, please take a seat in the
5 jury box. You've been selected as a juror in the trial of
6 this case.

7 Juror 105.

8 (Whereupon, Harold S. Etherington, a white male, was
9 called forward.)

10 CLERK: What say you for the State?

11 MR. SOWARDS: Please seat the juror.

12 CLERK: What say you for the Defendant?

13 MR. MARSHALL: Please seat this juror. Thank you.

14 CLERK: Sir, if you will, please take a seat in the
15 jury box. You've been selected as a juror in the trial of
16 this case.

17 Juror 154.

18 (Whereupon, Peter C. Hovanec, a white male, was called
19 forward.)

20 CLERK: What say you for the State?

21 MR. SOWARDS: Please seat this juror.

22 CLERK: What say you for the Defendant?

23 MR. MARSHALL: Please seat this juror. Thank you.

24 CLERK: Sir, if you would, please take a seat in the
25 jury box. You've been selected as a juror in the trial of

1 this case.

2 Juror 247.

3 (Whereupon, Nathaniel E. Nelson, a black male, was
4 called forward.)

5 CLERK: What say you for the State?

6 MR. SOWARDS: I beg the Court's indulgence.

7 THE COURT: Take your time.

8 MR. SOWARDS: Please strike this juror.

9 CLERK: Sir, if you will, please return to your seat.
10 You've been excused from the trial of this case.

11 The State has exhausted three of their five strikes.

12 Juror 399.

13 (Whereupon, Liane M. Ziel, a white female, was called
14 forward.)

15 CLERK: What say you for the State?

16 MR. SOWARDS: Please seat this juror.

17 CLERK: What say you for the Defendant?

18 MR. MARSHALL: Please seat the juror. Thank you.

19 CLERK: Ma'am, if you will, please take a seat in the
20 jury box. You've been selected as a juror in the trial of
21 this case.

22 Juror 331.

23 (Whereupon, Walter L. Staley, III, a white male, was
24 called forward.)

25 CLERK: What say you for the State?

1 MR. SOWARDS: Please seat the juror.

2 CLERK: What say you for the Defendant.

3 MR. MARSHALL: Please excuse this juror. Thank you.

4 CLERK: Sir, if you will, please return to your seat.

5 You've been excused from the trial of this case.

6 The Defendant has exhausted three of his five strikes.

7 Juror 178.

8 (Whereupon, Peterjohn H. Kerr, a white male, was
9 called forward.)

10 CLERK: What say you for the State?

11 MR. SOWARDS: I beg the Court's indulgence.

12 THE COURT: Take your time.

13 MR. SOWARDS: Please seat the juror.

14 CLERK: What say you for the Defendant?

15 MR. MARSHALL: Please present this juror. Thank you.

16 CLERK: Sir, if you would, please take a seat in the
17 jury box. You've been selected as a juror in the trial of
18 this case.

19 Juror 186.

20 (Whereupon, Karen T. Koerner, a white female, was
21 called forward.)

22 CLERK: What say you for the State?

23 MR. SOWARDS: I beg the Court's indulgence.

24 THE COURT: Take your time.

25 MR. SOWARDS: Please strike this juror.

1 CLERK: Ma'am, if you will, please return to your
2 seat. You've been excused from the trial of this case.

3 The State has one strike remaining.

4 Juror 289.

5 (Whereupon, Tiffany E. Richardson, a black female, was
6 called forward.)

7 CLERK: What say you for the State?

8 MR. SOWARDS: Your Honor, may we approach?

9 THE COURT: Yes.

10 (Proceedings held at the bench; not reported.)

11 THE COURT: Ms. Richardson, you are not selected as a
12 juror in this case. Please have a seat. Thank you so
13 much.

14 CLERK: Thank you, your Honor.

15 Juror 174.

16 (Whereupon, Kenneth K. Kelly, a white male, was called
17 forward.)

18 CLERK: What say you for the State?

19 MR. SOWARDS: Please seat this juror.

20 CLERK: What say you for the Defendant?

21 MR. MARSHALL: Please seat the juror.

22 CLERK: Sir, if you will, please take a seat in the
23 jury box. You've been selected as a juror in the trial of
24 this case.

25 Juror 379.

1 (Whereupon, Susanna C. White, a black female, was
2 called forward.)

3 CLERK: What say you for the State?

4 MR. SOWARDS: Please seat the juror.

5 CLERK: What say you for the Defendant?

6 MR. MARSHALL: Please seat this juror. Thank you.

7 CLERK: Ma'am, if you would, please take a seat in the
8 jury box. You've been selected as a juror in the trial of
9 this case.

10 How many alternates, Your Honor?

11 THE COURT: Two, please.

12 CLERK: Thank you, ma'am.

13 We are now selecting for our first alternate. Strikes
14 are one and one.

15 Juror 47.

16 THE COURT: One and two.

17 CLERK: Thank you. Clarification. Strikes are one
18 and two.

19 Juror 47.

20 (Whereupon, David F. Buckles, a white male, was called
21 forward.)

22 MR. SOWARDS: Please seat the juror.

23 CLERK: What say you for the Defendant?

24 MR. MARSHALL: One moment, please.

25 Please seat this juror. Thank you.

1 CLERK: Sir, if you will, please take a seat in the
2 jury box. You've been selected as an alternate in the
3 trial of this case.

4 Now striking for our second of two alternates.
5 Strikes are one and two.

6 Juror 308.

7 (Whereupon, Kathy L. Seitz, a white female, was called
8 forward.)

9 CLERK: What say you for the State?

10 MR. SOWARDS: I beg the Court's indulgence.

11 Please seat this juror.

12 CLERK: What say you for the Defendant?

13 MR. MARSHALL: Please seat this juror. Thank you.

14 CLERK: Ma'am, if you will, please have a seat in the
15 jury box. You've been selected as an alternate in the
16 trial of this case.

17 Thank you, Your Honor.

18 THE COURT: Thank you.

19 Ladies and gentlemen of the jury panel, is there any
20 member of the panel who for whatever reason between being
21 selected and sitting down, if you will, that you would be
22 unable to be a fair and impartial juror in this case? If
23 for whatever reason you cannot proceed with the trial of
24 this case, please signify by standing at this time.

25 All fourteen jurors have indicated that they are ready

1 and able to continue with the trial of this case.

2 Any motions or matters from the State?

3 MR. SOWARDS: None from the State, Your Honor.

4 THE COURT: From the Defendant?

5 MR. MARSHALL: No, ma'am. Thank you.

6 THE COURT: All right. Ladies and gentlemen, you have
7 been selected as the jury to try this case. Please be
8 escorted to your jury deliberation room. We'll receive you
9 back in just a few moments. Feel free to take any comfort
10 breaks or anything at this time. Thank you.

11 (Whereupon, the jury retires to the jury room at
12 11:48 AM.)

13 THE COURT: Thank you. Please be seated.

14 Ladies and gentlemen, you were not selected as the
15 jury to try this case. You are free and excused for the
16 day. Please call back after 6 PM to receive your
17 instructions for the remainder of the week.

18 Thank you again for your service to Charleston County.
19 It was a pleasure meeting you. Thank you.

20 (Whereupon, the remaining jury panel was excused at
21 11:48 AM.)

22 THE COURT: Thank you. Be seated.

23 Outside the presence of the jury, any motions or
24 matters from the State?

25 MR. SOWARDS: None from the State, Your Honor.

1 THE COURT: Concerning the jury selection.

2 MR. MARSHALL: No, Your Honor.

3 THE COURT: Okay. Thank you.

4 My 403's please move back to the gallery.

5 All right. I think we've reached an appropriate time
6 that I can release them for lunch and have them come back
7 at 2:00 so that we can get to the substance of our
8 pre-trial matters. Unless you are wanting to begin the
9 trial of the case, put the CI on and then break for lunch.

10 MR. SOWARDS: Is one of the options breaking for
11 lunch? I'm sorry.

12 THE COURT: Correct.

13 MR. SOWARDS: I think that would be the best.

14 THE COURT: All right.

15 Mr. Wigfall has been selected as the foreperson.

16 Whenever -- sir, could you take your sunglasses off? Thank
17 you. It just catches the light. Thank you.

18 Let's have the jury come back. They don't need their
19 notepads for this.

20 (Whereupon, the jury returns to the courtroom at
21 11:56 AM.)

22 THE COURT: All right. Thank you.

23 Where's Mr. Wigfall?

24 JUROR: Right here.

25 THE COURT: I need Mr. Wigfall in your seat, ma'am.

1 Sorry. Mr. Wigfall, you have been selected as the
2 foreperson in this case.

3 FOREPERSON: All right.

4 THE COURT: So if I could just have y'all switch.

5 Thank you. Please be seated.

6 Ladies and gentlemen of the jury, you may have noticed
7 when you came in this time the attorneys, the parties
8 involved in this case and the members of the audience were
9 standing. This is out of respect for your new position as
10 judges of the facts. So please come in and have a seat
11 because they will remain standing until all fourteen of you
12 are seated.

13 Ladies and gentlemen, we've reached an appropriate
14 time for us to take our lunch break. There are some other
15 matters that I must attend to outside of your presence, but
16 since it's -- I try to break as close to noon as possible.

17 Ladies and gentlemen, until you have been discharged
18 from service in this case, you may not perform any
19 investigation, research or experiment of any kind, either
20 on your own or together as a group. Do not consult any
21 dictionaries for the meaning of any words or encyclopedias
22 for general information on the subject of this trial. You
23 may not look up anything on the Internet or otherwise
24 concerning this case, and that includes the people involved
25 at the Solicitor's Office, the detectives, the witnesses

1 that I called out, the defense attorney, the Defendant, as
2 well as the judge. Please do not go to the scene where any
3 of the events that are alleged to have occurred, where they
4 have taken place. You may not use anything like Google
5 Earth to search for those things. You must not have any
6 discussion regarding this case, and that includes your --
7 with your fellow jurors, your friends, your family members,
8 or anyone else. It includes face-to-face discussions, but
9 it also includes any discussions or posting on Facebook or
10 something of that nature, any texting, blogging, something
11 of that nature. Simply put, do not discuss this case with
12 anyone in any way until I tell you you may do so.

13 Ladies and gentlemen, please understand that I
14 give these instructions and directions as part of my
15 responsibility to ensure that fairness is done and justice
16 is done between the parties that you see here today. Your
17 actions, if you violate my instructions, could jeopardize
18 the outcome of this trial. If you become aware of another
19 juror's violations, you must report that to me immediately.

20 Ladies and gentlemen, you are going to have your lunch
21 break, so please be back -- the bailiffs will instruct you
22 on how and where to return, but you will need to be back
23 ready to begin promptly at 2 PM. Please use this clock as
24 your guide. 2 PM. 2 PM, and we will begin at that time.

25 Please remember all of my admonitions. Do not discuss

1 this case with anyone in any form or fashion.

2 Please rise for the jury. I'll see you back at 2:00.

3 (Whereupon, the jury was excused for lunch at
4 11:59 AM.)

5 THE COURT: Thank you. Please be seated. Let's take
6 our comfort break. About five minutes, Mr. Sowards? Is
7 that sufficient?

8 MR. SOWARDS: That's sufficient, Judge. Thank you.

9 THE COURT: Thank you. See you back in about five
10 minutes.

11 (Recess taken.)

12 THE COURT: All right. Mr. Marshall.

13 MR. MARSHALL: Judge, at this time before we take up
14 any more of the Court's time, with the Court's permission
15 I'd like to move to have the indictment dismissed by the
16 Court.

17 In the pretrial hearing, Robert Drayton, the alleged
18 confidential informant, testified on June the 20th of 2012
19 he didn't see Mr. Seagers, he didn't get any drugs from
20 Mr. Seagers. Officer Burke then went on to testify that he
21 didn't see any drug transaction, went on to testify that he
22 didn't view the video and, no, he did not see any drugs, he
23 did not see any drug transaction. That being the case, it
24 seems to me to be an exercise in -- well, let me say that I
25 think we could save State resources and juror time because

1 no chain of custody, obviously given the testimony that's
2 occurred this morning, if you just look at that issue,
3 Judge, no chain of custody for the drugs -- the alleged
4 drugs can be established, and the case should be dismissed.

5 THE COURT: All right. At this time, I'm gonna deny
6 your motion to dismiss. It may be properly raised at the
7 motion for directed verdict stage.

8 All right. What else do you have? What other
9 motions? There was a chain of custody motion; is that
10 correct?

11 MR. MARSHALL: There is. You had indicated in
12 chambers, Judge, that you didn't want -- that you didn't
13 want to, in essence, hear the case twice, and that's
14 understandable.

15 THE COURT: Right. So tell me what -- if you could
16 outline the argument --

17 MR. MARSHALL: On chain of custody?

18 THE COURT: Yes.

19 MR. MARSHALL: Certainly. Well, this is a -- this is
20 a case which is, from my experience, somewhat unusual in
21 that their -- none of the SLED procedures for the handling
22 of fungible goods, and particularly in this case drugs,
23 none of them were followed and the gist of the SLED
24 regulations requires affidavits from each person who's
25 handled the drugs. I'm going to pull out my copy.

1 THE COURT: So is that SLED protocol?

2 MR. MARSHALL: SLED protocol.

3 THE COURT: All right. Is it required by statute?

4 MR. MARSHALL: It's required by regulation.

5 THE COURT: All right. Which is different from --

6 MR. MARSHALL: Statute, yes, ma'am.

7 THE COURT: Correct.

8 MR. MARSHALL: But it's authorized by 44.53.120 and
9 44.53.485. And, if I may, I have a copy of the regs.
10 This is Article 6 of the South Carolina Regulations. It's
11 entitled Uniform Procedures for Handling --

12 THE COURT: Mr. Marshall, if they didn't follow
13 SLED protocol, that would be proper -- more proper for
14 cross-examination.

15 MR. MARSHALL: Okay. I understand, Judge.

16 THE COURT: Thank you. So is that -- that's the crux
17 of your -- you're not saying that there's missing chain
18 witnesses, you're just saying that the chain witnesses
19 didn't follow protocol?

20 MR. MARSHALL: Well --

21 THE COURT: Is that -- I just want to make sure I
22 understand the argument.

23 MR. MARSHALL: That's an el -- that's an element of
24 the argument. Now we have the additional confirmed
25 testimony of the CI who's now twice stated under oath that

1 he never got any drugs from Dean Seagers. He's done so by
2 affidavit and he's done so now here in open court. He's
3 never stated under oath that he did get drugs from Dean
4 Seagers. So we have two sworn statements now from this CI
5 saying that he didn't. I mean, the fact -- and then we
6 have no corroboration through -- through the detective or
7 a video that he did, so the chain has absolutely failed
8 based upon that missing link and all the case law supports
9 that.

10 It's not that he just didn't testify. He's gone
11 farther than that. The case law says if you don't have a
12 CI, the case has got to be dismissed. Not only -- I mean,
13 this is stronger for the defense because we do have a CI.
14 He's saying not only -- you know, I just didn't get the
15 drugs from the man. That's what he's saying. So the case
16 has even more reason than if the CI weren't here at all
17 that this case should be immediately dismissed.

18 THE COURT: All right. Anything further,
19 Mr. Marshall? Are there -- what are your -- what are the
20 rest of your motions? I seem to have lost my list.

21 MR. MARSHALL: Well, there's a Franks -- I need to
22 do a Franks hearing to protect the record for my client;
23 otherwise -- or protect --

24 THE COURT: Say that one more time.

25 MR. MARSHALL: A Franks versus Delaware challenging

1 the sufficiency of the arrest and the sufficiency of the
2 search warrants.

3 THE COURT: All right.

4 MR. MARSHALL: Okay.

5 THE COURT: So what are you -- what are you
6 challenging?

7 MR. MARSHALL: Well, we're chal -- let's start, if we
8 may, please, Judge, with the arrest warrant. And in the
9 arrest warrant, it's an af -- it's an affidavit signed by
10 Officer Burke and in the warrant we believe that it's --
11 that it contains either deliberate falsity or reckless
12 disregard for the truth. This was an affidavit that was
13 presented to Judge Bonnie Koontz and in the affidavit
14 Officer Burke -- first of all, we believe that the warrants
15 fail in two regards, but, first of all, because Mr. Burke
16 makes no reference to the reliability of the confidential
17 informant. And -- and to aid the Court in following along,
18 with the Court's permission, I'll have this marked as a
19 Court's Exhibit so you -- you may see it.

20 May I approach?

21 THE COURT: You may.

22 (Court's Exhibit Number 1 was marked for
23 identification.)

24 MR. MARSHALL: Thank you, Judge.

25 So there's no reference to the reliability of the CI

1 and I submit to you that's because there was no evidence at
2 that time that the CI was reliable. During the pre-trial
3 hearing, Officer Burke said that -- that there had been
4 previous -- or he alleges a previous transaction on
5 June 13th of 2012 between this CI and my client, but
6 there's no -- again, in that case there's no corroboration
7 of that. It's not seen on video, it wasn't witnessed by
8 anyone, so I believe the reason that it's not stated in
9 this affidavit that the CI was reliable is because Officer
10 Burke realized there wasn't any evidence he was reliable
11 and it's -- it's a requirement of an arrest warrant and the
12 search warrant based on a confidential informant that some
13 showing of reliability be given to the magistrate. That --
14 that was not -- that was not done in this case.

15 If you look at some of the cases, for instance, a
16 2000 Supreme Court case, an opinion written by Justice
17 Pleicones, State versus Jones, talks about the magistrate
18 must have a, quote, substantial basis, end quote, for
19 finding probable cause. And he goes on to talk about a
20 false affidavit circumvents the affidavit requirements
21 of Code Section 17-13-140, and he notes that the South
22 Carolina Constitution actually affords more protection than
23 the Federal Constitution and the statute actually requires
24 a written affidavit. Now I don't know yet whether they're
25 gonna allege any supplemental testimony from Officer Burke

1 or not, but regardless the law in this state is clear that
2 your affidavit, your written affidavit, must be sufficient
3 as it's presented to the magistrate.

4 And the second issue in this affidavit, if you'll
5 note, Judge, is that Officer Burke alleged under oath to
6 Judge Koontz that the entire -- okay, if you look in the
7 second paragraph -- let me read -- let me just read this
8 into the record.

9 THE COURT: It's already marked as an exhibit. Please
10 do not read to me.

11 MR. MARSHALL: All right. I will not read the
12 entire paragraph, but the essence of it is prior to the
13 transaction -- this is reading from the warrant. Prior
14 to the transaction, the CI --

15 THE COURT: Mr. Marshall, I can read the warrant.
16 Tell me what you want me to know.

17 MR. MARSHALL: Well, what I want you to know is that
18 -- that it states -- he stated in this affidavit that the,
19 quote, entire transaction was recorded, and we know that
20 not to be true. We know that from his own testimony and I
21 don't think that the State would argue --

22 THE COURT: All right. Let me hear from you,
23 Mr. Sowards -- I'm sorry, Ms. Mulkey.

24 MS. MULKEY: That's fine. Thank you, Your Honor. May
25 it please the Court? First, the State would appreciate

1 some clarification because as our understanding of the law
2 is the defense must make a substantial preliminary showing
3 that there was either a false statement or that it was made
4 with reckless disregard. So we're prepared if -- if Your
5 Honor believes that -- that substantial preliminary showing
6 has been made by the defense that there was either that
7 false statement --

8 THE COURT: Explain to me -- because what I recall
9 from the testimony of Detective Burke was there was -- tell
10 me what he can -- what's on the audio/video recording.

11 MS. MULKEY: The audio/video recording, Your Honor,
12 is a recording from the vantage point of a camera that was
13 placed on the CI. Detective Burke will testify that he
14 was actually outfitted with this camera and there is no
15 requirement by -- by case law or statute that that camera
16 shows certain angles. So the reality of this type of
17 complex investigation that involves these confidential
18 informants is that they must utilize devices that can be
19 concealed in order to perform these transactions. The
20 actual transaction is recorded. The State is not saying
21 that you clearly see the Defendant at all; however, we
22 claim to elicit testimony that, in fact, that camera can
23 only show from a certain angle based on its placement
24 and that -- that the substantive video and audio can be
25 corroborated by officers that were able to hear on the

1 live wire, by a statement that was taken contemporaneous to
2 this by the CI and additional testimony.

3 THE COURT: All right.

4 MS. MULKEY: So that a lack of an angle does not mean
5 that it's insufficient.

6 THE COURT: All right. So there was audio?

7 MS. MULKEY: Yes, Your Honor.

8 THE COURT: And the en -- the entire transaction was
9 recorded although there may not be on the recording
10 everything that happened?

11 MS. MULKEY: Yes.

12 THE COURT: All right. Mr. Marshall.

13 MR. MARSHALL: Well, Judge, I believe that's clearly
14 either deliberate falsity or it's reckless disregard for
15 the truth. To say that the entire transaction is recorded
16 is simply untrue, so that's an important thing for Judge
17 Koontz to know and there's a clear misrepresentation here.
18 Whether -- whether it was intentional or reckless, it's
19 crystal clear. She did not have --

20 THE COURT: It is not -- well, it's not crystal to
21 me, Mr. Marshall. How -- how is that in -- intentional
22 disregard or --

23 MR. MARSHALL: Well, by the time that he signed this
24 affidavit on August 29th --

25 THE COURT: Correct.

1 MR. MARSHALL: -- he had reviewed the video by his
2 testimony at least twice, or at least once by then, I
3 guess. I guess it's possible he was intending to say
4 that he's reviewed it again prior to this trial, but he
5 had reviewed it prior to submitting this affidavit and he
6 went to the judge and said judge, this entire thing's on
7 video, and certainly we'll play the video for you, Judge,
8 but there's -- he -- he testified no, you don't see a
9 transaction, you don't see any drugs. He testified to
10 that today. So it's either a reckless misstatement or
11 it's an intentional misstatement and that's in --

12 THE COURT: Tell me how that's reckless. The
13 entire thing is recorded. It may not be that the entire
14 transaction is recorded from the vantage point that you
15 deem it necessary, but that's not what the law requires
16 and that's not what is indicated in here in the warrant
17 -- in the affidavit.

18 MR. MARSHALL: Well, I agree -- yes, ma'am. I
19 agree that the law doesn't require that they have the
20 drug transaction on video. The law absolutely requires
21 that the officer be honest and forthcoming with the
22 magistrate. That's the issue. Otherwise, Judge,
23 obviously we would just have a society in which, you know,
24 officers were issuing their own warrants and that's what
25 this requirement's designed to avoid.

1 THE COURT: But I still haven't heard you tell me what
2 has been improper.

3 MR. MARSHALL: The -- the either intentional or
4 reckless misstatement as to the evidence that was presented
5 to Judge Koontz.

6 THE COURT: And, again, it's -- you believe that the
7 statement in the affidavit that the entire transaction was
8 recorded is reckless and intentional?

9 MR. MARSHALL: Absolutely. I mean, he didn't have to
10 use the word "entire". You know, he didn't have to do
11 that. That's -- that connotes an effort to mislead Judge
12 Koontz without question.

13 THE COURT: All right. I disagree.

14 What else do you have? What else -- what do you --
15 what else are you challenging the warrant on?

16 MR. MARSHALL: There's no -- there was nothing in the
17 warrant, there was no assertion to Judge Koontz that the
18 CI was reliable and the case law is replete with cases
19 that state that that failure to allege and be able to show
20 reliability is -- is fatal to a warrant.

21 THE COURT: All right. Provide me some cases.

22 MR. MARSHALL: Alrighty. One would be an opinion
23 written by Justice Toal, 395 S.E.2d 167, that goes all the
24 way back to 1990. That's State versus Johnson.

25 THE COURT: Do you have a copy?

1 MR. MARSHALL: I -- I may, Judge. Sorry I didn't get
2 to the point of setting up my copier here today.

3 THE COURT: That's all right. Our Westlaw is down, so
4 I cannot pull that case up.

5 MR. MARSHALL: I think I've got one here. May I
6 approach, Judge?

7 THE COURT: You may.

8 All right. Anything else, Mr. Marshall?

9 MR. MARSHALL: Well, there's some other cases I could
10 cite, but this one from Justice Toal is a --

11 THE COURT: That's the one you're relying on?

12 MR. MARSHALL: -- is a good summary. Well, I would
13 -- I can -- I'd like to put some others in the record if
14 you're inclined not to agree with our position, but in this
15 case I'd like to point out some language. In this case,
16 Judge, it differs from ours because the finding was that,
17 in fact, the -- the police officer had worked with the
18 informant on -- I'm looking at the bottom of Page 3, the
19 top of Page 4 -- on several other cases. This is -- that's
20 clearly not the case in State versus Seagers here. And it
21 says at the end of the first full paragraph on Page 4,
22 applying the totality of the circumstances test, it's the
23 opinion of this court that the affidavit by itself did
24 not provide the magistrate with sufficient information
25 concerning the informant's reliability upon which he could

1 base the probable cause determination.

2 THE COURT: All right. Mr. -- Ms. Mulkey, what's your
3 position?

4 MS. MULKEY: Your Honor, the State's position would
5 be that Detective Burke did, in fact, orally supplement
6 the warrant as is routine in his cases if you're not --

7 THE COURT: It's your position that would be his
8 testimony?

9 MS. MULKEY: Yes.

10 THE COURT: Well, then I think we need to hear that.

11 MS. MULKEY: Okay.

12 THE COURT: All right.

13 MS. MULKEY: The State would call Detective Burke.

14 THE COURT: Detective, I remind you that you're still
15 under oath.

16 THE WITNESS: Yes, ma'am.

17 THE COURT: For this very limited issues, Ms. Mulkey.

18 MS. MULKEY: Thank you, Your Honor.

19 MICHAEL BURKE,

20 having been previously duly sworn, testified as follows:

21 DIRECT EXAMINATION (In-Camera)

22 BY MS. MULKEY:

23 Q. Detective Burke, could you, please, advise the Court
24 what happens when you take a search or arrest warrant
25 before a magistrate.

1 A. The -- the first thing I do is I take everything
2 involved in the case, the incident report, the witness
3 list, all the documents required, because typically Judge
4 Koontz wanted a copy of everything. I would take that down
5 to her office, meet her at her office, and then explain
6 the particulars of the case, and in this case it was --
7 involved multiple individuals and multiple months of work.

8 Q. And when you present her with the -- the search
9 warrant and the arrest warrant, does she actually read that
10 while you're in there?

11 A. Yes, ma'am.

12 Q. Does she ask questions on it?

13 A. Sometimes.

14 Q. And in addition to that, do you provide her with a
15 brief summation of the case?

16 A. I do, yeah. Usually when I -- or every time I hand
17 a warrant over to the judge, I just kind of do a quick
18 rundown as to what it was, a summary of what the in -- the
19 investigation entailed.

20 Q. And in that summary, do you include information as to
21 -- for -- in a case like this where there's a CI, whether
22 that CI has worked for you before?

23 A. Yes.

24 Q. And if you had had any issues with their reliability?

25 A. If -- if there were any issues, I just wouldn't use

1 them. So, I wouldn't --

2 Q. So -- so is your position here today that if there
3 had been issues with a CI's reliability that you would not
4 present a warrant to the judge?

5 A. Yes.

6 Q. And if the judge had questions with any specificity as
7 to somebody -- a CI's reliability, would you answer those?

8 A. Yes.

9 MS. MULKEY: The Court's indulgence.

10 Nothing further, Your Honor.

11 CROSS-EXAMINATION (In-Camera)

12 BY MR. MARSHALL:

13 Q. All right. Detective Burke, specifically regarding
14 the warrant -- the arrest warrant pertaining to the alleged
15 June 20th of 2012 incident, what is it, if anything, that
16 Judge Koontz asked you prior to signing the warrant?

17 A. I -- I can't remember. It's been three years. I
18 don't remember specifics.

19 Q. Regarding the search warrant which was issued for
20 [REDACTED] Ashton Street, what was it, if -- if you remember,
21 what was it, if anything, that Judge Koontz asked you prior
22 to her signing the warrant?

23 A. I don't remember specific questions.

24 MR. MARSHALL: All right. Nothing further. Thank
25 you.

1 THE COURT: Ms. Mulkey.

2 MS. MULKEY: The Court's indulgence, Your Honor. We
3 have no further questions, Your Honor.

4 THE COURT: Okay. You may step down. Thank you.

5 (Witness excused.)

6 THE COURT: Any additional argument on that issue for
7 me?

8 MS. MULKEY: From the State, Your Honor?

9 THE COURT: Yes.

10 MS. MULKEY: Your Honor, we would just submit that
11 in terms of the -- a reliability issue, as -- as this case
12 says, it's the totality of the circumstances, and we heard
13 testimony from Detective Burke that not only is it his --
14 his routine, but, in fact, he did on this case as it
15 pertains to the search warrant and the arrest warrant
16 provide a background, had a conversation with the judge,
17 in addition to written material that was provided to her.
18 He testified that if there are problems with a CI's
19 reliability, in fact, not only does -- does he discontinue
20 to use them, but he would not present a warrant to a judge,
21 and as such we think it's distinguished from this case
22 here where it says that it was, in fact, not clear if that
23 information was given to the magistrate. That's not what
24 we have here and we would -- I respectfully request that
25 you deny the defense's motion.

1 THE COURT: All right.

2 MR. MARSHALL: Judge, I've got a -- well, I might
3 just note that -- that cases can't proceed to the jury
4 deliberation stage based on -- on routine. It's got to --
5 this issue requires specific testimony that there was
6 supplemental --

7 THE COURT: That's why we're gonna have a trial.

8 MR. MARSHALL: -- information given to the judge and
9 we know now that that won't happen at the trial stage in
10 front of the jury if we get to that point.

11 But some other cases I'd like to cite to the same
12 proposition, Judge, are State versus Adolphe, which is
13 441 S.E.2d 832, again, stating that the warrant must
14 allege reliability of the CI. State versus -- State
15 versus Philpot, which is 454 S.E.2d 905, on the same issue
16 regarding potential supplemental testimony to fill in gaps
17 in the -- in the written affidavit. Those two cases are
18 both relevant. Of course, Illinois versus Gates, 462 U.S.
19 213, and Franks versus Delaware are relevant cases on
20 this issue, but it's just been established at this brief
21 hearing, Judge, that the affidavit and the arrest warrant
22 does not comply with the requirements as given by our State
23 Supreme Court and it's -- it's a defect that -- that can't
24 be remedied. Carrying the trial on at this point I think
25 is -- is not -- is not a judicial use of -- of the State's

1 resources. We have the evidence that we need for the Court
2 to make a decision.

3 I have copies, Judge, of -- of those cases, I think,
4 if -- if you'll permit me to pass them up. Would that be
5 permissible, Judge?

6 THE COURT: You may. Why don't we just -- we'll just
7 clip them together and you can mark them as Court's 2.

8 MR. MARSHALL: Let me do that and then reference a
9 little bit of language from them, if you will permit me.

10 All right. I'm gonna have these two -- this is
11 State versus Adolphe and State versus Philpot that were
12 referenced in my argument. We'll have these, please,
13 marked as Court's Number 2.

14 (Court's Exhibit Number 2 was marked for
15 identification.)

16 MR. MARSHALL: Thank you. May I approach, Judge?

17 THE COURT: You may. Thank you.

18 MR. MARSHAL: Judge, in -- first of all, in Adolphe,
19 I highlighted some language that I'd hopefully call to
20 the Court's attention. At Page 2 of 4, in the last full
21 paragraph, it talks about the magistrate -- the task of
22 the magistrate when determining whether the issue --
23 whether to issue a warrant is to make a practical, common
24 sense decision as to whether, under the totality of the
25 circumstances set forth in the affidavit, there is a fair

1 probability that evidence of a crime will be found in a
2 particular place, and this includes consideration of the
3 veracity of the person supplying the information and the
4 basis of his or her knowledge. So as a reviewing court,
5 our task is to decide whether the magistrate had a
6 substantial basis for concluding that probable cause
7 existed. And the case law is -- states over and over --

8 THE COURT: Well, I appreciate that, but you left out
9 in the middle of that paragraph that the magistrate may
10 also be sup -- be supplemented with sworn oral testimony
11 before the magistrate, which is exactly what the detective
12 has indicated, so you -- if you're gonna read to me, you
13 need to read the whole paragraph, Mr. Marshall.

14 MR. MARSHALL: Well, that was below that.

15 THE COURT: All right. Thank you. Anything else?

16 MR. MARSHALL: Well, Judge, he -- he testified that he
17 does not know if he supplemented.

18 THE COURT: Okay. Anything further, Mr. Marshall?

19 MR. MARSHALL: If I could look at Philpot for a
20 moment, Judge, please.

21 In Philpot, what -- what's interesting is if you look
22 at the last full paragraph on Page 2, this is a case in
23 which the presenting officer made the presentment of the
24 affidavit to the magistrate, supplemented it with a
25 statement from the confidential informant. The court

1 reviewed the affidavit and the supplemental statement
2 and states that they find absolutely no showing of the
3 confidential informant's reliability and, therefore,
4 conclude that the search warrant should not have been
5 issued, and that's the exact same situation that we
6 have here. There's been absolutely no showing of the
7 confidential informant's reliability in terms of what was
8 presented to Judge Koontz. It's a separate issue. I
9 understand that Officer Burke is convinced and believes
10 that -- that the CI was reliable. That's not the issue.
11 The issue is what was presented to Judge Koontz and it's
12 very technical, it's very specific, and if it's not done,
13 then the law requires dismissal.

14 THE COURT: All right. Ms. Mulkey.

15 MS. MULKEY: Thanks, Your Honor. Just briefly.
16 Because a search warrant may be valid both through the
17 written and oral testimony, we submit that we have shown
18 that. Both the -- the document on its face and through the
19 testimony of Detective Burke here today through the two
20 hearings, not only had he had an op -- opportunity to vet
21 the CI in the -- in the debriefings and in previous buys,
22 but that he, in fact, discussed the investigation briefly
23 as is customary for him in all of his investigations with
24 the judge.

25 Using the cases cited by the defense, the -- the

1 Adolphe case says that one of the -- the fatal flaws was
2 that the informant's allegations were never corroborated
3 by identifiable individuals. That's not what we have here
4 and that's not the evidence that we intend to present.
5 Furthermore, in Philpot, it says the affidavit alone can
6 be insufficient, but may be supplemented through oral
7 testimony. In that case, they did not have testimony about
8 -- about what the -- the officer told the judge. I don't
9 think those cases apply and we would just argue that there
10 has been a substantial showing of the -- the articulable
11 probable cause in this case both through the document and
12 through the testimony of Detective Burke.

13 THE COURT: All right.

14 MR. MARSHALL: Judge, in this case that we're dealing
15 with today, there's absolutely no corroboration. In fact,
16 the CI has stated no, that information is wrong.

17 THE COURT: All right. Please do not mix your
18 arguments. What the CI said here today is not what was
19 presented to -- to Judge Koontz. Is that correct,
20 Ms. Mulkey?

21 MS. MULKEY: Correct, Your Honor. The CI was not
22 present for the application of the warrant to Judge Koontz.

23 THE COURT: All right. So please focus this argument
24 on what Detective Burke presented to the Judge.

25 MR. MARSHALL: Right, and -- and Detective Burke

1 presented to the judge --

2 THE COURT: What's happened three years after this,
3 right, what his testimony be -- may be three years after
4 this, the argument is what was presented to the judge at
5 that time.

6 MR. MARSHALL: That's correct, Judge.

7 THE COURT: So please focus on that issue. I
8 understand that this is going to unfold very differently
9 perhaps today, three years later, when the CI takes the
10 stand, but I am only focussed on the -- what was presented
11 to Judge Koontz.

12 MR. MARSHALL: Yes, ma'am. And when Officer Burke
13 presented his affidavit, he attempted to corroborate what
14 he says he was told by the CI by stating that the entire
15 transaction, quote, unquote, was captured on audio and
16 video. That is a misstatement. Whether it was reckless
17 or whether it was worse, I don't know, it doesn't matter
18 because both of them subject this case to immediate
19 dismissal. He attempted to corroborate what he says he
20 was told by the CI with misleading, incorrect, untruthful
21 information.

22 THE COURT: And so what relief are you seeking here
23 today, Mr. Marshall?

24 MR. MARSHALL: Dismissal, Your Honor.

25 THE COURT: Dismissal of the entire case based upon

1 the --

2 MR. MARSHALL: Yes, ma'am.

3 THE COURT: -- the def -- what you believe to be the
4 defective affidavit?

5 MR. MARSHALL: Yes, ma'am.

6 THE COURT: Your mo -- based upon the testimony that
7 has been presented and my review of the case law that has
8 been now marked as Court's 2, I deny your motion to dismiss
9 based upon the testimony. I find that the testimony
10 presented by Detective Burke that he supplemented the
11 affidavit to the judge is sufficient and deny your motion
12 to suppress -- or to dismiss. Note your exception to my
13 ruling.

14 Anything further? What other --

15 MR. MARSHALL: I -- I don't want to --

16 THE COURT: I think that's -- to the motion to
17 suppress the cell phone and the plastic jar, is that
18 the --

19 MR. MARSHALL: One -- Judge, I'm sorry, I don't want
20 to belabor this, and if you tell me to stop, I'll certainly
21 stop, but what he said was that it was his routine --

22 THE COURT: I've already ruled on that. Thank you.
23 Let's move on. Are you still wanting to suppress the cell
24 phone and the plastic jar?

25 MR. MARSHALL: Yes, ma'am.

1 THE COURT: All right. Let me hear -- and that's --
2 that was based upon the search; is that correct?

3 MR. MARSHALL: Well, yes, ma'am. This was the search
4 warrant executed on the 29th of August of 2012, so it was
5 about 69 days -- it could have been a prospective 69 days
6 after this alleged sale to the CI by -- by my client.

7 Again, I renew all my arguments regarding the validity
8 of the search warrant based on the arguments that I just
9 presented to the Court. I believe that the warrant is
10 defective. The testimony was that this officer -- from
11 this officer, he doesn't know whether he supplemented his
12 affidavit with oral testimony or not, so the -- the search
13 warrant is defective.

14 But second of all, Judge, Mr. Seagers was merely
15 present. All the evidence indicates that he was merely
16 present at the scene of the search on August 29th. The
17 cell phone that they want to introduce that Officer Burke
18 says he photo'd, the CI's cell phone showing a -- a phone
19 number in the name "Baby" as the contact written above
20 it, there's -- to my knowledge, there's no evidence other
21 than that which links Mr. Seagers to the cell phone.
22 There's nothing from a phone company saying yes, Mr. --
23 that's Mr. Seagers' account or he's a user on it or it's
24 somebody's -- a family member's. There's nothing. So
25 obviously anybody can -- I can take my cell phone right

1 now and under contacts type "Baby" and put a phone number
2 in. That's not evidence that -- that the CI was speaking
3 to my client from -- from his phone, which -- from which
4 Detective Burke took this photo of the phone number
5 allegedly -- outgoing phone number and the person allegedly
6 being called.

7 THE COURT: All right. So are you objecting to that
8 -- you're objecting to the cell phone?

9 MR. MARSHALL: Well, I'm just stating I'm objecting
10 to the two things that they've informed me that they want
11 to introduce as a result of the search, which are a cell
12 phone allegedly on the receiving end of this CI's cell
13 phone of which Detective Burke says he took a photograph
14 showing the name "Baby" and a phone number. They now say,
15 and I -- and I think they do have this evidence, that
16 somebody's gonna come in and say when we searched that
17 house at ■ Ashton where this transaction allegedly
18 occurred on -- on June 20th, we found a phone that we can
19 link as being the receiving phone from June 20th of 2012,
20 but I don't think they can for the reasons -- part of the
21 reasons that I just stated, Judge. You know, that evidence
22 can be -- can be manufactured in a matter of 30 seconds.
23 So, second of all, when they go in on the search warrant,
24 I think it's an AT&T -- it's called an AT&T Pantech that
25 they -- well, they found apparently about, I think, eight

1 -- maybe eight cell phones in this apartment. The one
2 they're interested in --

3 THE COURT: Let me -- let me ask you this. Is -- is
4 this your argument, Ms. Mulkey?

5 MR. SOWARDS: It's mine, Judge.

6 THE COURT: All right. What are you intending to
7 introduce regarding the cell phone? Are you even
8 attempting to introduce the cell phone? Or what --

9 MR. SOWARDS: Where it was found in the home and the
10 forensic analysis of it which shows that it has the phone
11 number that the CI dialed according to the picture --

12 THE COURT: Did you -- is -- was there a separate
13 warrant done for the cell phone?

14 MR. SOWARDS: The search for the cell phones came
15 in under the search warrant of the home, which I think
16 included electronic devices that were found in the home.

17 THE COURT: So there wasn't a separate cell phone
18 done?

19 MR. SOWARDS: There was not a separate search warrant
20 for the phone. And it's really more for identification
21 purposes.

22 THE COURT: And what's the plastic jar? You intend to
23 introduce that?

24 MR. SOWARDS: Yes, Your Honor. That was -- our
25 contention is that the method of sale was the lowering of

1 a plastic jar down from the second story window of the
2 home. They search the home on August 29th and they find
3 a plastic jar with a string tied to it. We think it
4 corroborates specifically the buy that occurred on
5 June 20th.

6 THE COURT: Okay. Where is -- you just said something
7 I didn't understand. Where's the search warrant? I don't
8 have a copy of the search warrant.

9 MR. SOWARDS: I've got one I can hand up, Judge. May
10 I approach?

11 THE COURT: You may. Thank you. We'll -- we'll mark
12 it as needed. Thank you.

13 MR. SOWARDS: All right. All right. And, Judge,
14 I can't -- I know that a recent Supreme Court -- U.S.
15 Supreme Court case came out regarding the necessity
16 of a warrant for the search of a phone. Unfortunately, I
17 can't represent to the Court that I'm well-versed in the
18 case. I should be, but I'm unfortunately not. So we'll
19 have to rely on the Court's interpretation of that case
20 to find out whether or not -- whether or not the search
21 of -- of the phone may be in violation of Mr. Seagers'
22 constitutional rights.

23 THE COURT: Mr. Marshall, are you objecting to the
24 introduction of the cell phone -- that the cell phone was
25 in the location? Is that what you're objecting to or are

1 you objecting to the contents on the cell phone? Because
2 it's a different analysis for me.

3 MR. MARSHALL: Well --

4 THE COURT: Or both?

5 MR. MARSHALL: -- we're objecting to both.

6 THE COURT: All right.

7 MR. MARSHALL: There were -- just to finish up what
8 I know about this cell phone that they want to introduce,
9 as I said, I think there were about eight cell phones found
10 in there. This one that -- that they claim was on the
11 receiving in of what they allege to have been a call from
12 the CI on the 20th, was found in the kitchen. My client
13 was on the premises, which belonged to the co-defendant
14 who's pled guilty in this case and is currently in prison,
15 but it wasn't found on his person. Now if it were found on
16 -- on his person -- to my knowledge it wasn't found on his
17 person. Am I correct on that, Ms. Solicitor?

18 MS. MULKEY: All right. I'm sorry.

19 MR. SOWARDS: Your Honor, I think it was on the
20 kitchen counter. It was not on his person. Or did find a
21 cell phone on his person, but this is not the one.

22 THE COURT: All right.

23 MR. MARSHALL: And there were other people. In fact,
24 the co-defendant who's pled guilty to the crimes involved
25 in this apartment. There were a lot of cell phones there.

1 It wasn't found on my client. The -- the jar that we seek
2 to suppress based on the arguments concerning the defects
3 of the search warrant, but that jar just for the Court's
4 edification on the subject of the jar, it was dusted for
5 prints. It's a small -- we've got it here in evidence if
6 the Court wants to see it. It's a -- a small little
7 plastic jar with a cap and it was dusted for fingerprints
8 and -- and my client's were not found on there.

9 So I think, in general, Judge, the -- the prejudicial
10 effect of getting into the search warrant, which is the
11 subject of a whole other indictment, it's a separate
12 incident, it's 69 days after --

13 THE COURT: All right. Is -- is this your final
14 argument? Is this your final argue -- motion?

15 MR. MARSHALL: Oh, I'm sorry, Judge.

16 THE COURT: Are there any other matters? It's time
17 for lunch.

18 MR. MARSHALL: Right. Let me -- is there something
19 else --

20 THE COURT: I don't see anything else on your
21 pre-trial motion list that I --

22 MR. MARSHALL: -- on my little list? Okay. That's
23 what I was trying to find, Judge.

24 THE COURT: I don't see any. I think this is the last
25 issue.

1 MR. MARSHALL: That's correct.

2 THE COURT: All right. I'm gonna review -- because
3 this is the first time I've seen the search warrant. It
4 will be Court's 3. I'm gonna review it over the lunch
5 hour. So when you are preparing your opening, my
6 inclination is to allow you to testify that cell phones
7 were found, but I'm gonna review the search warrant to
8 make the next determination of whether or not the testimony
9 concerning what was contained on the search warrant --
10 contained on the cell phone, I'm sorry. I just need to
11 make sure that the warrant was done properly. I typically
12 have had two warrants, two separate warrants, right? So
13 I've never seen one -- I haven't seen one yet to do it
14 this way, which does not mean that it's not appropriate.
15 I'm just having -- I typically have them where they've
16 seized the cell phone and then done a search warrant on
17 that particular cell phone.

18 So when you're preparing your closing -- or your
19 opening, please do not prepare it to include that the
20 numbers were matched up. Does that make sense?

21 MR. SOWARDS: It does.

22 THE COURT: All right. That does not mean I'm ruling
23 against you, I'm just taking it under advisement, but I
24 know you're gonna be working on your opening.

25 All right.

1 MR. SOWARDS: Can I make one just quick argument?

2 THE COURT: No. Thank you.

3 All right. One hour. Please be back at 1:55.

4 Thank you.

5 (Court's Exhibit Number 3 was marked for
6 identification.)

7 (Whereupon, a luncheon recess was taken.)

8 THE COURT: Madam Court Reporter, are you ready?

9 THE COURT REPORTER: I am.

10 THE COURT: Over the lunch hour, or the fifty-five
11 minutes, I reviewed the case of Bradley vs. California,
12 which was the one, Mr. Marshall, that you were referring
13 to, the Supreme Court case that was decided in June of last
14 year, and I've read that in light of the search warrant
15 that was prepared by Detective Burke, and based upon that
16 clearly the search warrant is in line with what is required
17 by the Supreme Court. Since I found that the phone was --
18 was appropriately seized, the information contained in the
19 search warrant also requested that the phone -- the data
20 on the phone be searched, so I will allow that as well.
21 Note your exception to my ruling and, please, make sure
22 that you make contemporaneous objections at the -- at the
23 time in order to preserve the record.

24 MR. MARSHALL: Yes, ma'am.

25 MR. SOWARDS: The cup as well?

1 THE COURT: The -- the cup had already come in. It
2 was just the --

3 MR. SOWARDS: Okay.

4 THE COURT: -- the data.

5 THE COURT: Counsel, just approach on a related
6 matter, but --

7 (Proceedings held at the bench; not reported.)

8 (Court's Exhibit Numbers 4 and 5 were marked for
9 identification.)

10 THE COURT: All right.

11 MR. MARSHALL: I would like some guidance from the
12 Court on the issue of -- of whether or not you're gonna
13 allow witnesses to testify to the fact that there was a
14 search warrant for [REDACTED] Ashton. It may not be an issue
15 because the Solicitor, I think, yesterday indicated that
16 the extent of any testimony they wanted to elicit regarding
17 the search would be limited to the fact that Mr. Seagers
18 was arrested at the location, [REDACTED] Ashton; that found there
19 was this cell phone in the kitchen and a cup with a string
20 on it. Is that still your intention?

21 MR. SOWARDS: Your Honor, we have no intention of
22 talking about a search warrant. Just he was arrested
23 there, that they found the cup and they found the phone.
24 We don't want to get into the search warrant.

25 MR. MARSHALL: Because I think if they talk about a

1 search warrant there, I'm gonna -- I'm gonna have to move
2 for a mistrial. I think there would be grounds for a
3 mistrial.

4 THE COURT: On what basis?

5 MR. MARSHALL: Well, I think it's a separate -- it's
6 the subject of a separate indictment and it's the subject
7 of -- of different -- of different sales by different
8 defendants from that location.

9 THE COURT: Go ahead.

10 MR. MARSHALL: My client was clearly not a resident of
11 that location and I think that the prejudicial effect would
12 outweigh the probative value.

13 THE COURT: All right. We'll address it when it
14 arises. Thank you.

15 Anything else?

16 MR. MARSHALL: No.

17 MR. SOWARDS: Nothing from the State.

18 THE COURT: All right. Let's bring in the jury.

19 MR. SOWARDS: Can we do the evidence real quick, Your
20 Honor?

21 THE COURT: Let's just wait.

22 (Whereupon, the jury enters the courtroom at 2:08 PM.)

23 BAILIFF: All jurors present and seated, Your Honor.

24 THE COURT: Thank you. Please be seated.

25 Please swear the jury.

1 CLERK: Yes, Your Honor.

2 If all jurors could stand and raise their right hand
3 and be sworn.

4 (Whereupon, the jury was sworn in by the Clerk of
5 Court.)

6 CLERK: Thank you. You may be seated.

7 If there is any juror that cannot adhere to this oath,
8 if they, please, would stand at this time.

9 Please let the record reflect that all jurors are
10 sworn.

11 THE COURT: Thank you.

12 Ladies and gentlemen, did every member of the jury
13 panel comply with my instructions over the lunch hour? If
14 you did not comply with my instructions, please stand.

15 Thank you. All fourteen jurors have complied with
16 the Court's instructions.

17 Ladies and gentlemen, the case that we are about
18 to try is the case of the State versus Dean Seagers,
19 Defendant. Before we begin this trial, I like to take the
20 opportunity to explain to you what is happening. Most
21 people don't have the opportunity to come to court and they
22 get their information from television or movies or books.
23 While those trials are often intense and exciting, please
24 remember that the opposite is true here. We are here to
25 search for the truth and the search for the truth is often

1 slow, deliberate and repetitive; the opposite of what you
2 may have seen on television, seen in movies or read in
3 books.

4 This courtroom is a place of honor. It is dedicated
5 to the protection and preservation of citizens' rights
6 through what many have called the greatest justice system
7 ever created.

8 The attorneys that appear before you are advocates for
9 the party they represent, but first and foremost, they are
10 officers of this court. They are sworn to uphold the law
11 and the integrity and the fairness of our judicial system
12 and to help you in the search for the truth. You should
13 expect them to be professional, competent and ethical in
14 the representation of their client's interest. You are
15 also expected to be professional, reasonable and ethical.
16 Thank you, again, for accepting this most important
17 responsibility of jury service.

18 What I say now is intended to serve as the
19 introduction to the trial of this case. These remarks
20 are not a charge on the law. I will instruct you on the
21 law applicable to this case throughout the trial and at
22 the close of the trial before you retire to consider your
23 verdict. I just wanted to take the opportunity so that
24 you'll be able to understand what is happening.

25 The Defendant is charged by an indictment filed in

1 this court with the crime of distribution of cocaine base.
2 I will explain the elements of that charge to you at a
3 later time. The indictment, as I indicated to you, is
4 simply the charge by which this case is brought into court.
5 It is not in any sense evidence of the allegations it
6 contains.

7 The Defendant has pled not guilty to this indictment.
8 The State must prove beyond a reasonable -- beyond a
9 reasonable doubt each of the elements of the indictment.
10 It is your duty, ladies and gentlemen, to determine whether
11 the State has met that burden. Your purpose as jurors is
12 to find and determine the facts. You are the sole judges
13 of the facts in this case. If at any time I make any
14 comment regarding the facts, you must disregard it. You
15 are to determine the facts from the testimony you hear, as
16 well as other evidence that is introduced in court. It is
17 up to you to determine the inferences which you feel may
18 be properly drawn from the evidence. It is important that
19 you perform your duty of determining the facts diligently
20 and conscientiously because ordinarily there is no way to
21 correct an erroneous determination of the facts by a jury.

22 On the other hand, and with equal emphasis, the same
23 law that makes you the judges of the facts makes me the
24 judge of the law. The law as given by this Court is the
25 only law that you may consider. You must accept it and

1 follow it even though you may disagree with it. I cannot
2 tell you what I think the facts are and you cannot disagree
3 with me about what the law is or what the law ought to be.
4 Your job is to take the law as I give it to you, apply it
5 to the facts as you find them from the testimony of the
6 witnesses and any other evidence that is introduced. After
7 doing that, you will render your verdict, a true and just
8 verdict, under the solemn oath that you just took as
9 jurors.

10 As I indicated to you before lunch, my general
11 admonitions, my general instructions, are you may not
12 discuss this case with anyone until I tell you otherwise.
13 You may not make any posts on Facebook or any other social
14 Internet media site regarding this case. You must not do
15 any independent investigations regarding this matter.
16 Everything that you know about this case must come solely
17 from the evidence as it is presented to you in this
18 courtroom. Also, as I indicated to you, if you become
19 aware of another juror's violation of my rules, you must
20 inform me immediately.

21 It is important that you keep an open mind and not
22 decide any issue in this case until all of the evidence
23 has been presented, the parties have made their closing
24 arguments, and I have instructed you on the law applicable
25 to this case.

1 It is your solemn responsibility to determine the
2 guilt or innocence of the Defendant and your verdict must
3 be based solely upon the evidence as it is presented to you
4 in this trial and on the law as I instruct you during and
5 at the close of trial.

6 In just a moment, the Solicitor's gonna make what is
7 called an opening statement in which the Solicitor will
8 explain to you the issues in this case or at least what the
9 Solicitor believes the issues to be. The attorney for the
10 Defendant may also make an opening statement, although he
11 is not required to do so at this time.

12 Please remember what the attorneys tell you in their
13 opening statements, as well as in their closing arguments,
14 is not evidence in this case. It is only their contention
15 as to what the evidence will show you. The evidence in
16 this case will be presented to you by the testimony of
17 sworn witnesses from the witness stand, as well as any
18 exhibits that may be introduced. If there are exhibits
19 introduced into evidence, they will go back with you in
20 your jury room while you retire to consider your verdict.
21 So if you do not have an opportunity to see those items,
22 do not worry. You will have plenty of time to see those.

23 I have made sure that you have notepads, so that means
24 you may take notes throughout the progress of this trial.
25 I caution jurors some of us are much better note-takers

1 than others. One juror's notes are no more correct or
2 accurate than another juror's notes. You will be allowed
3 to have those notes with you during your deliberations, but
4 please remember if you need to hear any testimony played
5 back to you, we will either bring you back and -- we'll
6 probably bring you back in the courtroom or we may have
7 the testimony played back to you during the deliberations.
8 We do not have the availability or capability to send a
9 complete transcript back to you, but please do not worry
10 that you have to take word for word notes. You will have
11 the audio available to you.

12 From time to time you may hear one of the attorneys
13 state an objection or ask to approach the bench or I might
14 find it necessary to excuse you from the courtroom for a
15 short while. If I do have the attorneys approach, please
16 do not try to overhear us or read our lips. Do not think
17 that we're trying to hide anything from you when I have
18 the attorneys approach the bench or excuse you from the
19 courtroom. The reason I do this is because sometimes it
20 is necessary for me to make a comment on the facts in order
21 to issue a ruling on the law, so I may excuse you so that
22 in no way anything that I say or do throughout the progress
23 of this trial influences you as to the finding of the true
24 facts.

25 In determining what the true facts are in this case,

1 you must decide whether or not the testimony you hear is
2 believable. It is my responsibility to rule as a matter
3 of law whether certain testimony is admissible at all, but
4 once the testimony is admitted whether or not you believe
5 it is solely for you to determine.

6 In deciding whether to believe a witness, you have the
7 right to consider the interest of the witness, the bias of
8 the witness, the prejudice of the witness, the opportunity
9 for the witness to see and hear the things about which the
10 witness will testify, as well as the way the witness acts
11 on the witness stand. You have a right to consider
12 anything in the record that will help you evaluate the
13 testimony of the witnesses. That means it's your duty to
14 pay close attention. Please do not let your thoughts
15 wander so at the end of the trial after you have heard
16 closing arguments on behalf of counsel and I have
17 instructed you on the law applicable to this case, you
18 will be in a position to -- to determine what the true
19 facts are, apply the law to those facts and render a true
20 and just verdict.

21 It is your added duty, Mr. Foreperson, you will be
22 required to write the verdict, but I'll give you additional
23 instructions regarding that matter when I instruct you on
24 the law applicable to this case. As foreperson, you are
25 the jury's spokesperson here in court and that is your

1 assigned seat. If at any time any of you need any
2 additional breaks or have any questions or concerns, please
3 let your foreperson know. He will alert the bailiff and
4 we'll handle the matter immediately.

5 Ladies and gentlemen, please give your strict
6 attention.

7 MR. SOWARDS: Thank you.

8 THE COURT: Mr. Sowards.

9 MR. SOWARDS: May it please the Court?

10 THE COURT: Yes.

11 MR. SOWARDS: Good afternoon.

12 On June 20, 2012, narcotics detectives with the City
13 of Charleston Police Department Special Investigations
14 Unit conducted a controlled buy investigation at ■ Ashton
15 Street. Now detectives used a confidential informant to
16 purchase cocaine base from the Defendant, Dean Seagers.

17 There's an ongoing debate in this country about
18 whether and to what extent drugs should be legal or
19 illegal, but today, and on June 20, 2012, the distribution
20 of cocaine base is and was illegal.

21 Over the next couple of days you'll hear testimony
22 from the investigator who controlled the operation, you'll
23 hear testimony from another investigator who participated
24 in the investigation, and you'll hear from witnesses who
25 processed the evidence that was collected. You will also

1 hear from the confidential informant police used to
2 purchase cocaine base from the Defendant.

3 Now at the conclusion of all the -- the testimony, the
4 Judge will give you a further instruction on the law, but
5 in South Carolina the charge of distribution of cocaine
6 base requires proof that the Defendant distributed,
7 dispensed, or delivered cocaine base or otherwise aided,
8 abetted, attempted or conspired to distribute, dispense or
9 deliver cocaine base.

10 I submit to you that after you've heard all of the
11 testimony and after you've reviewed all of the evidence
12 that you will be firmly convinced that on June 20, 2012,
13 Dean Seagers sold cocaine base to a confidential informant
14 and you will enter -- you will render a verdict of guilty.

15 Thank you.

16 THE COURT: Mr. Marshall.

17 MR. MARSHALL: Thank you, Your Honor.

18 Good afternoon, ladies and gentlemen.

19 In this country, as the Judge said, is the most
20 advanced justice system in the world. We don't convict
21 people of crimes based on the uncorroborated false
22 testimony of one confidential informant. That's not our
23 system.

24 In this case, we believe you're gonna have at the
25 conclusion of the evidence numerous reasonable doubts as

1 to whether the allegations against Dean are correct. We
2 submit to you that they're not. That if anybody sold
3 drugs, which we submit there's no evidence beyond a
4 reasonable doubt that anyone did, but if anyone did, it
5 wasn't Dean Seagers.

6 There's certain things I'm gonna ask you to sort of
7 look at as the evidence is presented to you by the State.
8 One is what's called in the law chain of custody. So it's
9 the State's burden to establish to you beyond a reasonable
10 doubt that the drugs were gathered as they say they were by
11 this confidential informant and that those same alleged
12 drugs went to each person who handled them before they got
13 here in court today and that they handled them properly and
14 that they handled them in accordance with the requirements
15 of the law.

16 There are a couple of areas in which we allege that
17 that was not done. There are some regulations that I'm
18 gonna question these witnesses about which have been
19 promulgated by SLED, our chief law enforcement agency in
20 this state, and the regulations clearly state that they
21 apply to every police force in this state. Without
22 question we believe you're gonna find those regulations
23 for the handling of these drugs were not followed.

24 Each element must be proven beyond a reasonable doubt
25 by the State, so please pay some particular attention --

1 well, to all of the evidence, but that's one thing that
2 we're asking you to pay particular attention to as to
3 whether the drugs were properly handled. Because drugs,
4 like a dollar bill, are what is called in the law a
5 fungible item. They all look alike. If it was something
6 like a painting or something -- a purse or something that
7 doesn't look like other items, then the rules are more
8 relaxed, but the rules are very strict when it comes to
9 drugs, and we submit to you that the Charleston Police
10 Department for whatever reason just didn't follow
11 procedures, so we believe there's reasonable doubt when it
12 comes to the chain of custody.

13 I'm also gonna ask you to pay particular attention to
14 the credibility of the witnesses that are offered up by the
15 State, and the lack thereof, because we believe at this
16 point we may discover what we believe to be other failings
17 in the area of the credibility of the witnesses, but at
18 this point we believe that the confidential informant is
19 not credible and we'll get into statements that he's made
20 since the time of -- of his arrest.

21 We also believe that there are serious credibility
22 issues with Officer Burke. I'm not saying he's a bad man,
23 but in this case pay very close attention, please, to what
24 Officer Burke has said on previous occasions under oath.

25 There's a video in this case and it's gonna be played.

1 If they don't play it, I'll play it. But they allege that
2 this video captures in -- in Officer Burke's sworn words in
3 an affidavit "the entire alleged transaction". He says the
4 entire transaction in the search warrant and that's just
5 simply not true.

6 When you look at this video, we submit you're not
7 gonna see a drug transaction. By looking at this video
8 you're not gonna know whether a dread -- a drug transaction
9 occurred or not and you certainly are not gonna believe
10 that Dean Seagers was involved in a drug transaction. It's
11 right there for you to see, so this -- that's the best kind
12 of evidence you can have, contemporaneous with the alleged
13 occurrence, and we have it for you and you'll see it.
14 Please pay very close attention to that video when it's
15 played.

16 And this sort of loops back to the -- to the chain
17 of custody that I'm asking you to follow closely because
18 you'll see in this case that this substance, this alleged
19 illegal substance, which they have here in court, and
20 you'll see it, it's a little baggy with some rock-like
21 flaky substance in there, but throughout the investigation,
22 throughout the reports, this substance is referred to as a
23 white powdery substance, cocaine, powder cocaine.

24 Well, mysteriously after this substance was analyzed
25 by a chemist at the City of Charleston Police Department,

1 the lab report came back identifying this substance as
2 crack cocaine. Apparently there's a significant difference
3 between those two, and I'm certainly not an expert and I'm
4 gonna ask the chemist to explain the difference between the
5 two substances, but throughout this investigation it was
6 alleged that this confidential informant purchased a white
7 powdery substance, powder cocaine, and then after the
8 chemist analyzed it she said that's not powder cocaine,
9 that's crack cocaine. These are all things that -- that go
10 to reasonable doubt.

11 You're gonna hear when I cross-examine -- I'm gonna
12 try to talk to a couple of these witnesses about whether or
13 not they followed proper procedure and SLED regulations lay
14 out proper procedure for handling drug evidence.

15 There's also another relevant procedure in this case,
16 which is the City of Charleston Police Department's
17 procedure for handling CI's, confidential informants.
18 Sometimes -- you've probably heard that term. Sometimes
19 they're referred to as CRI's, confidential reliable
20 informants. This CI's not ever referred to in this case
21 as a confidential reliable informant, but, nevertheless,
22 the proper procedure's laid out by the Charleston Police
23 Department in the handling of this CI and the documentation
24 of how they tried to work with him. Those procedures
25 simply weren't followed for whatever reason. I'll ask why

1 weren't they and we'll see what the witnesses say.

2 Another area in which we believe that reasonable doubt
3 exists in this case is in the area of identification. So
4 the CI will be required to say that he got the drugs from
5 this Defendant, and if he says that, what's relevant is
6 well, how sure can he be that this is the person from whom
7 he allegedly got drugs. So pay close attention to his
8 testimony regarding that and also what you see on the
9 video. Does it appear to you that this CI who's gonna
10 try to make an identification of the person he claims
11 distributed drugs to him, does it appear to you that he
12 could be certain beyond a reasonable doubt who did that?

13 This case is unusual in this regard. It's alleged
14 specifically that my client was in the upstairs window of
15 a building downtown, you'll see it, it's sort of an old
16 two-story house, and that -- that he lowered down in a
17 little plastic jar basically this little -- small quantity
18 of cocaine and that he -- that he raised this string, it's
19 on a string basically, and that's here in the court with
20 us, and that he then raised the money up and that that's
21 the way that the transaction allegedly occurred.

22 So please pay close attention as to whether you
23 believe beyond a reasonable doubt that the CI could know
24 who was allegedly in this window distributing drugs to him,
25 which he won't, I submit to you. If I'm wrong, certainly

1 it's your prerogative to correct me with your verdict, but
2 I submit to you you're not gonna see a drug transaction on
3 this video despite the fact that Officer Burke represented
4 in a sworn affidavit to a judge that the entire -- quote,
5 the entire transaction, was on video.

6 These are all areas of reasonable doubt and we
7 believe, Judge -- well, ladies and gentlemen, judges of the
8 facts, because that's what you are, ladies and gentlemen,
9 we believe at the conclusion of the case that you're not
10 gonna have just one reasonable doubt as to whether or not
11 Mr. Seagers is guilty, you're gonna have numerous. And I
12 anticipate at the close of the case when I'm going over
13 those, and I may try to -- I don't see a board in here,
14 but I'll probably try to bring a big piece of paper and
15 go through what we submit to you is numerous cases of
16 reasonable doubt. But if you have just one, you have
17 one reasonable doubt, then the -- the law is that you're
18 required to return a verdict of not guilty.

19 And this term reasonable doubt, ladies and gentlemen,
20 this is -- this is not something that defense attorneys
21 hide behind. This is the foundation of our criminal
22 justice system. It is the bedrock because the law, and the
23 judge will tell you this, does not permit you to convict
24 someone if you have just one reasonable doubt. You're not
25 permitted to do it. And that law is for the benefit of all

1 of us. No one wants to be convicted where a jury had a
2 reasonable doubt and hesitated to act, was not -- as the
3 judge will tell you, was not firmly convinced.

4 And beyond reasonable doubt is a very heavy burden in
5 this case. I used to carry it. I carried it for almost
6 ten years when I tried cases for the State. It's very,
7 very difficult. It's not like a civil case. In a civil
8 case, once -- if you believe that the scales of justice tip
9 just ever so slightly in favor of one party, you find in
10 favor of that party.

11 But the burden of proof here is much, much higher.
12 Much, much higher. When I explain it to clients, I tell
13 them it's something up in the 99 plus percent certainty
14 range. That's the way I explain it. The judge will
15 instruct you. Please follow her instructions on that.
16 But it's -- you have got to be sure beyond a reasonable
17 doubt.

18 A lot of times the courts will write well, just take
19 the plain meaning of those words. You read that sometimes
20 in opinions that the appellate courts write, but I don't
21 find that to be very helpful, so I offer that to you as my
22 interpretation. It's not a hundred percent. You don't
23 have to be 100 percent firmly convinced, but you've got to
24 be real close, and it has to be unanimous. We submit to
25 you that at the conclusion of this case you will return a

1 just and true verdict of not guilty.

2 Thank you.

3 THE COURT: Call your first witness.

4 MS. MULKEY: Thank you, Your Honor.

5 The State calls Detective Grill.

6 CLERK: Sir, watch your step going up the ramp. Raise
7 your right hand and place your left hand on the Bible.

8 CHARLES JACOB GRILL,
9 having been duly sworn, testified as follows:

10 CLERK: You may be seated. Sir, once seated if you
11 could please state your first and last name and then spell
12 your last loudly and clearly into the microphone for the
13 record, please.

14 THE WITNESS: All right. Detective Charles Jacob
15 Grill, G-R-I-L-L.

16 MR. MARSHALL: Judge, may we -- may I move this podium
17 slightly so that I can see the witness?

18 THE COURT: That's fine. Thank you.

19 DIRECT EXAMINATION

20 BY MS. MULKEY:

21 Q. Good afternoon, Detective Grill.

22 A. Good afternoon.

23 Q. Could you please tell the Court your current
24 occupation.

25 A. Yes, ma'am. I am a detective with the City of

1 Charleston Police Department.

2 Q. And how long have you been with the Charleston Police
3 Department?

4 A. Ten years and a couple of days.

5 Q. Could you please tell the jury just generally about
6 your background and experience.

7 A. Yes, ma'am. I was a -- I graduated from the Citadel
8 in 2005 and I was hired on with the City of Charleston
9 Police Department in 2005 and I was first assigned out of
10 the academy, the police academy, to the Team 1 area of
11 the patrol division of the Charleston Police Department,
12 basically wearing a uniform, driving a marked police car,
13 responding to calls, that -- that type of regular police
14 work, and I did that for a little over two years, and then
15 I was assigned to the narcotics division, which is now
16 called the Special Investigations Unit, and my duties on
17 that were to focus on the drug traffickers, drug crimes,
18 that were occurring within the jurisdiction of the City of
19 Charleston. In 2009 -- in July of 2009, I was then moved
20 to the -- or assigned to the DEA Task Force, the Drug
21 Enforcement Administration, Charleston Task Force, where my
22 overall duties kind of changed. I was still investigating
23 drug traffickers, but these were major drug traffickers
24 within the borders of the United States overall dealing
25 with complex conspiracy cases, international cases,

1 everything that involved drug -- any type of drugs or any
2 type of drug crimes, so, and that's where I -- I currently
3 am today.

4 Q. And how long have you been assigned to the DEA Task
5 Force, Detective?

6 A. I believe it was June -- July of 2009 I've been
7 assigned there. And, like I said, I'm still there today
8 and -- so.

9 Q. And as a member of the -- the DEA Task Force, have you
10 received any additional training in drug conspiracies?

11 A. Yes, ma'am. Pretty much every policer receives some
12 type of training in this. We go through some training in
13 the police academy. When I went through, it was a nine
14 weeks course, but I think now it's up to a twelve or
15 13-week in my understanding of that. But since graduating
16 from the police academy, you know, we do annual trainings,
17 annual legal updates or any type of training through the --
18 through the City of Charleston, and then we also -- I've
19 also had a specialized training in drug enforcement and
20 drug crimes.

21 I've attended the undercover techniques and --
22 undercover techniques and procedures through the Criminal
23 Justice Academy, which is in Columbia, South Carolina,
24 I've attended the DEA Investigator -- Basic Investigator
25 School, which is a school put on by the Drug Enforcement

1 Administration, and then since being assigned to the Task
2 Force I have received training in -- advanced training in
3 DEA investigations, like how the Federal government or
4 how the DEA investigates drug crimes. I've been certified
5 into the clandestine lab -- labs, like the methamphetamine
6 labs, how to deconstruct those and safely contain those,
7 and, you know, the problems and, you know, stuff that's
8 associated with that.

9 Money laundering investigations, financial
10 investigations, I've had training -- training in that, and
11 then, you know, numerous additional hours of specialized
12 training. I went to like Federal investigations for drug
13 crimes, which typically result in a wiretap investigation
14 as, you know, tapping someone's phone in order to expose
15 the whole drug enterprise crime, so.

16 Q. And on that -- that last bit of training when you
17 mentioned wiretapping, can you tell the jury kind of
18 what that is, what that involves, as it relates to drug
19 conspiracies?

20 A. Yes, ma'am. You know, a drug conspiracy -- the
21 Federal government, or DEA, typically likes to work
22 organizations, investigate organizations. An organization,
23 even if someone's not known to it, is still part of an
24 organization. You may not know the person that somebody
25 gets the drugs from, but that person gets it from somebody,

1 who get gets it from somebody, who gets it from somebody.

2 MR. MARSHALL: Judge, I object just based on
3 relevance. I'm not aware of any wiretapping --

4 THE COURT: She's laid his -- his foundation. I'm
5 gonna give her a little more leeway.

6 You may continue.

7 THE WITNESS: Yes, ma'am. So typically what we -- a
8 tool that we use in our toolbox on the Federal level is a
9 -- a wiretap where we tap someone's either landline or we
10 tap somebody's cellular phone or whatever because that
11 person then calls other people, then you can see -- once
12 you tap the phone, once you've pulled on that string, you
13 can see the spiderweb effect happen and you can actually
14 lay out the whole organization or a whole enterprise.

15 BY MS. MULKEY:

16 Q. And when you do these kind of investigations, what --
17 what devices are you listening to these people on?

18 A. We're listening to -- I mean, with today's technology,
19 cellular phones. I mean, not many people today own a
20 landline. In this type of business, typically people don't
21 have landlines and they don't have houses in their names
22 and they don't have cell phones in their names, but, you
23 know, we identify a target, we identify a phone number
24 associated with that target and we -- we tap that phone --
25 or cellular phone. I'm sorry.

1 Q. How many calls or -- phone calls or wiretaps would
2 you say that you have listened to in -- in your career?

3 A. I would say well over 50,000. Just in one of our
4 last investigations into a -- one of our last drug
5 investigations one guy alone had 30,000 phone calls, and
6 that's call -- phone calls, text messages, all that good
7 stuff, so.

8 Q. And just to be clear, do you -- do you ever watch
9 people on these wire taps or is it -- are you able to see
10 lips moving?

11 A. No, ma'am. When you -- when you -- when you tap a
12 cell phone, I mean, you're -- we're in a room with a
13 computer, the call comes over the -- the computer and all
14 -- all that's received is the audio and all -- obviously
15 the -- the call data records, you know, who's calling who,
16 what number, all that time -- it's all time-stamped, but,
17 I mean, you're looking at a computer screen -- computer
18 screen. So, I mean, that's -- all you can hear is a voice.

19 Q. So you're strictly listening?

20 A. Yes, ma'am.

21 Q. And do you ever make identifications of voices or
22 people based on listening to them?

23 A. Yes, ma'am. Absolutely. You know, when you become
24 involved in an investigation, you live that investigation
25 and you almost get to know everybody's moves, everybody's

1 -- you know, the way they talk, they way -- expressions
2 that they use and the sounds of their voice. I mean,
3 that's just -- I mean, everybody has a distinct voice and
4 so you become very familiar. You recognize the voice in --
5 in these.

6 Q. And, Detective Grills -- excuse me -- Grill, are
7 narcotics investigations generally different from other
8 police investigations?

9 A. Yes, ma'am. Absolutely. They -- drug investigations
10 -- you know, us being a drug investigation unit, we are
11 pretty much the only proactive unit of a police department.
12 We actively go out and see -- go out and seek the -- you
13 know, we don't respond to a -- a crime scene. We go out
14 and investigate drug dealers and drug, you know, users
15 and drug traffickers and we actually go out and find these
16 -- these people and, you know, we go after them. So we're
17 -- we're actually -- we have to develop our own intel and,
18 you know, work the streets on our own. It's not like
19 someone calls us up and says hey, you need to respond to
20 this area, you know. I mean, that's -- that's not what we
21 do. We don't wear uniforms. We wear -- plainclothes is
22 what we call it, so I wear jeans and T-shirts and shorts
23 or whatever I feel like wearing that day. Obviously I grow
24 my hair out and we blend into our environment and so that
25 way when we're in -- working these streets and we're

1 doing surveillance in these areas, we blend into -- with
2 everybody and anybody and that's how we conduct our
3 surveillance and we gather our street intel of these guys
4 that are doing these crimes.

5 Q. Are these investigations in narcotics -- these special
6 investigations, are they detailed?

7 A. Yes, ma'am. They're very detailed. You know, we --
8 we -- you know, we always take notes, we always -- you
9 know, we talk to multiple people, you know, hundreds of
10 people or whatever during an investigation and, you know,
11 we -- you have to blend into your community and interact
12 with them to -- to -- to get all the intel that we need for
13 an investigation.

14 Q. Would you say these investigations are complex?

15 A. Yes, ma'am. I -- I would say that we -- you know,
16 it's not -- what we do, what we specialize in, is
17 investigations. You know, there are calls that, you know,
18 come in through our dispatch to our uniformed police
19 officers who say they get tips, anonymous tips, all the
20 time about drug crimes that are happening at -- you know,
21 right then or right there and they respond to those. Well,
22 we develop our own intel by, like I said, you know, a
23 complex conspiracy case, a complex investigation, to where
24 they may take a long time or they may -- they may not, I
25 mean, but we always have to talk to somebody and develop

1 our information and then act upon that information.

2 Q. Have you ever offered testimony on narcotics
3 investigations before in court?

4 A. Yes, ma'am. Both in State court and Federal court.

5 Q. And have you ever been qualified as an expert before
6 on narcotics investigations?

7 A. Yes, ma'am, I have.

8 Q. How many times would you approximate?

9 A. I believe once in State and once in Federal.

10 MS. MULKEY: Your Honor, at this time the State would
11 move to have Detective Grill admitted as an expert in the
12 field of narcotics investigations.

13 THE COURT: Mr. Marshall?

14 MR. MARSHALL: No objection, Your Honor.

15 THE COURT: All right. Ladies and gentlemen, normally
16 a person cannot give opinion testimony. Typic -- typically
17 when they testify, they must testify as to either what
18 they've heard or saw or sensed by smell or something of
19 that nature. There's an exception in our law when someone
20 is qualified because of their training or education or
21 experience they would then be qualified as an expert to
22 give opinion in that area. This witness will be qualified
23 in the area of narcotics investigation to give opinion
24 testimony in that area. That does not mean that you must
25 accept his opinion. It is simply evidence for you to use

1 in any way that you see fit.

2 Ms. Mulkey.

3 MS. MULKEY: Thank you, Your Honor.

4 BY MS. MULKEY:

5 Q. Detective Grill, so, if you could, please specify --
6 maybe give some examples to the jury of what kind of
7 narcotics investigations -- what types of investigations
8 the narcotics unit is involved in.

9 A. Yes, ma'am. Typically the way investigations -- our
10 investigations work we develop an informer. We'll use a
11 -- an undercover officer to target either an organization
12 or a single person that we know of that's selling, you
13 know, narcotics or drugs and typically in those operations
14 we only have a couple of methods that we use. One's a
15 buy-bust operation, which typically is just basically what
16 it says. You buy drugs and you bust that individual, and I
17 mean arrest by that. Or you buy-walk, which you typically
18 -- you buy using an informant or an undercover officer to
19 buy drugs from an individual person and then you walk away
20 and continue the investigation, continue to develop it,
21 continue to identify other people from long distance and
22 then, you know, we -- we use those methods accordingly
23 and to what we are trying to achieve as an overall goal.
24 You know, if you're trying to just take a -- someone off
25 the street immediately, you do -- you utilize a buy-bust

1 method or if you wanted to extend that investigation to
2 see, you know, where that guy's going or -- or develop
3 more information so you can see the overall enterprise,
4 then you use a -- a buy-walk method, so.

5 Q. And -- and earlier you -- when you mentioned these
6 investigations as being complex and lengthy, I think it's
7 important for -- for the -- the jury to understand kind of
8 the background before getting into the specifics of this
9 case. You mentioned something about surveillance. Could
10 you explain to the jury what that means?

11 A. Yes, ma'am. I mean, surveillance is exactly what it
12 means. It's surveillance. You embed yourself in an area
13 and you -- you observe and we -- you know, we -- we get
14 tips, we get complaints, we get, you know, information from
15 informants of certain areas that are having heavy drug
16 traffic or certain people that are, you know, selling drugs
17 or using drugs or whatever, and we go out and we do
18 surveillance. Either it's -- there's a couple of different
19 types of surveillance we use. We use mobile surveillance,
20 we use -- which is exactly what it says. In mobile
21 surveillance, you drive around, you know, you get out on
22 foot, you can walk, you can -- you use different methods.
23 For that way really you can just sit there in your car and
24 watch an area and you just observe, you know, is there a
25 lot of people coming in and out, a lot of traffic to and

1 from. I mean, just things that you -- you embed yourself
2 in in that area to work in this scenario.

3 Q. And you also referenced two different types of buys,
4 a buy-walk and a buy-bust.

5 A. Yes, ma'am.

6 Q. If you could explain -- if there is a control in --
7 some control that your unit exhibits in those, if you could
8 explain that to the jury.

9 A. Yes, ma'am. When we -- when we do an operation, a
10 buy-bust operation or a -- a buy-walk operation, we try to
11 -- we refer to those as being a controlled purchase. And
12 that's we try to control everything that we can to ensure
13 the safety of the undercover officer, the -- the CI, the
14 Defendant or the suspect we're investigating, and the
15 overall community, the -- the -- just the average, you
16 know, civilian that might be in the area that we don't want
17 to put in harm's way. So we do certain parameters that we
18 -- we use to try to make everything safely -- as safely as
19 possible. And that's, you know, searching the informant,
20 equipping the informant with -- or a UC with recording and
21 transmitting devices, you know, having other plainclothes
22 officers in the area, you know, with different vantage
23 points or surveillance points over a certain area and --
24 so they can -- that's just more eyes that are observing
25 everything that's going around in certain -- you know,

1 where we're trying to do an operation at.

2 Q. You referenced a term "UC". Could you please explain
3 to the jury what that means?

4 A. Oh, I'm sorry. You know, in investigations we use
5 UC's, which are undercover police officers, or we just
6 refer to them as UC's, or we use a CI, which is a
7 confidential informant, and that's -- it's just someone
8 that has agreed to assist the police department with
9 investigations or provide information into -- you know,
10 into these crimes.

11 Q. And how are these controlled purchases typically
12 arranged?

13 A. Usually we -- we receive information either from a --
14 an informant or a complaintant about a certain area and we
15 -- if we have an informant we'll -- we'll use the informant
16 to arrange a purchase from that individual or we'll --
17 we'll -- you know, if the information is about a certain
18 area, we'll send an informant or an undercover officer into
19 that area to attempt to contact somebody and to purchase
20 those drugs. If it's an informant we use, or a CI, then we
21 use -- you know, they typically know that person and they
22 typically are -- I mean, they have someone's cell phone
23 number, they'll call them, they'll arrange the purchase.

24 And, you know, then we meet with that -- that
25 informant before he goes in there or she goes in there and

1 that informant is searched to make sure that the informant
2 doesn't have any contraband, any weapons or any extra
3 money, and then we equip them with devices, audio recording
4 devices, audio transmitter devices, and on some cases --
5 or pretty much all cases, video recording devices to where,
6 you know, when we send that informant out after, you know,
7 he's arranged for the purchase or whatever, that way we can
8 hear realtime what's -- what's occurring as -- as he's out
9 there or she's out there doing -- doing their thing.

10 And, you know, when that informant goes out and makes
11 contact with that person, we -- we hear it realtime what
12 they're talking about just in the event of, you know, an
13 informant being robbed or an informant, you know, having
14 issues, we -- we can respond and -- and deal with that.
15 And -- and then -- you know, then when the informant
16 leaves, we pick them up from kind of a prearranged area or
17 wherever and we take them back to a secure location and we
18 search them again, or her again, and we obtain the drugs
19 that they obviously obtained from others.

20 Q. And can you elaborate like specifically on -- on how
21 that transaction occurs? You mentioned a phone, but if you
22 could explain to the jury how that detail -- those details
23 are flushed out.

24 A. Yes, ma'am. Typically when we -- when we have an
25 informant and before we do an operation, before we send

1 that person out, we have a -- a briefing period, okay, and
2 that briefing period is basically you have an informant
3 and you put him -- or provide him the money from our fund,
4 from the City fund, to purchase the drugs and, you know,
5 you put the recorder and transmitter and all that good
6 stuff on them and then we have a briefing of all the other
7 investigators and detectives that are around, you know, we
8 assign each person -- the case agent will assign the, you
9 know, responsibilities to the other detectives that are in
10 that area and then we -- well, the case agent would --
11 would tell the -- instruct the -- the informant or the UC
12 hey, you know, just this is what I want you to do out
13 there, you know, this is what you can and can't do. You
14 know, there's certain parameters we -- we put on them to
15 ensure their safety when they're out there, and one of the
16 big things is to update us as they're out there.

17 You know, obviously they can't say hey, I'm, you know,
18 about to buy drugs from -- from, you know, this guy, you
19 know, Joe Schmo, while he's standing in front of Joe Schmo,
20 but as he's walking up or as he's riding up in the car,
21 he could say hey, I'm at the intersection of, you know,
22 123 Main Street, and that lets us know where that informant
23 is at that time, and then -- it's just a safety issue
24 there. And we tell them instruct us -- talk to us as much
25 as you can because we can hear him. You know, obviously we

1 can't talk through the transmitter, but we can up -- we can
2 get his updates realtime or her updates realtime.

3 Q. And so does the confidential informant actually place
4 the phone call to the target?

5 A. Yes, ma'am.

6 Q. And what kind of information do you get at that time?

7 A. Well, typically what we -- it's just like any other
8 transaction that you -- you -- you call and arrange, you
9 know. You get an amount, what you're buying, how much
10 you're gonna pay for it, and that way we know because when
11 we do an operation we use our -- our own money. The City
12 -- the City -- the City has a separate account that we draw
13 from to buy -- to use so we can use to go out there and
14 buy drugs. All that money that is taken out of there is
15 recorded and -- and -- I mean, it's recorded because all
16 money has -- I mean, the dollar bill has a serial number
17 on it, so all money is recorded. And so we record those
18 serial numbers and we -- you know, we -- we have to know
19 how much we're getting out just through our policies and
20 our checks that we have to know -- we have to go to our
21 supervisor and say hey, I need, you know, X number of
22 dollars to buy so -- some amount -- so much drugs in order
23 to get it approved. So in order for us to -- to get it
24 out, we have to know what -- how much we're getting out.
25 Q. So prior -- after -- after a confidential informant

1 makes this phone call, do you know the location where
2 they're headed?

3 A. Yes, ma'am. I'm sorry, yeah. So it's just -- it's
4 -- you know, during the phone call you get the price, you
5 get the amount and a location where to meet or if an
6 informant knows where -- already knows where to meet
7 because they typically know the person they're calling
8 and so they generally know where to go, so.

9 Q. And does that assist in your operation plan for where
10 your officers go?

11 A. Yes, ma'am. I mean, depending on the location. I
12 mean, there's certain things that we can and can't do in
13 certain areas. There's -- you know, there's just logistic
14 problems of, you know, one-way streets or the area, the
15 neighborhood that is typically -- or that it's in. I mean,
16 there's certain things that we have to -- we have to know
17 beforehand what we can and can't do, and that's why we like
18 to know the location and plan accordingly.

19 Q. And do you ever attempt to verify the number, the
20 actual phone number, that the CI uses for that phone call?

21 A. Yes, ma'am, we do, but typically in any drug
22 investigations a dealer or a distributor tries to insulate
23 himself. They don't put cell phones in their names, they
24 don't put cars in their names, they don't put houses in
25 their names, they actually don't have good addresses. It's

1 just the way that -- that someone that's doing illegal
2 activity can stay hidden, you know, and thwart law
3 enforcement's attempts to try and identify them, locate
4 them and arrest them, and that's very typical to pretty
5 much every investigation; fake names, girlfriend names or
6 boyfriend names or whatever, but generally people do not
7 use -- drug dealers do not use their own names for obvious
8 reasons, so.

9 Q. Are there any special kinds of phones?

10 A. Yes, ma'am. I mean, it's common to see. I mean, you
11 can go into an Exxon gas station and buy a cell phone
12 nowadays, and we refer to those as burner phones. You
13 know, they just use them for a short time period or they'll
14 put money in on it, you know, twenty dollars, and put a
15 couple of minutes on it and then once it's up they either
16 use it, discard it or put more money on it, but typically,
17 you know, it's not uncommon to find drug distributors with
18 multiple phones. I mean, that's -- that's pretty easy
19 nowadays.

20 Q. So is there any significance of -- of these type of
21 phones, these burner phones as you referenced them, to you
22 as a narcotics detective?

23 A. Yes, ma'am. I think you can -- you know, you can
24 gauge a guy or a dealer's ability or the level of dealer
25 that he is is how -- or he or she is and -- and big into

1 the game is in, you know, amounts of drugs that they're
2 dealing is how well insulated they are or how detailed they
3 are or how their ability is -- or their abilities are to
4 thwart our law enforcement's abilities to identify them and
5 -- and pursue them. Kind of a way of gauging them, I guess
6 you could say, is all right, this guy knows what he's doing
7 or this girl knows what she -- what she's doing and they
8 know our capabilities, so.

9 Q. Interesting. Now in your training and experience,
10 specifically with narcotics investigations, is -- is a
11 burner phone the only way that someone can distance
12 themselves from a transaction?

13 A. No, ma'am. They -- they use different methods. I
14 mean, we've seen all kind of methods to where, you know,
15 an individual will -- will tell an informant -- you know,
16 they'll -- they'll take the informant's money and then
17 they'll tell an informant or a CI or a UC to, you know, go
18 around the corner, open the grill and the drugs will be in
19 the grill and -- or they'll be hidden under a rock or --
20 or, you know, they'll take the money and then, you know,
21 tell -- instruct someone -- instruct them or even they'll
22 have someone else deliver the drugs to the -- the person
23 who's the CI or the UC. So basically you'll go and call
24 up the main person, that person will either get your money
25 or have someone come get your money or, you know, have

1 that person deliver you the drugs and then -- but, you
2 know, that's just another way of -- they think -- you
3 know, people -- drug dealers think that as long as they're
4 not, you know, putting the drugs in someone's hands, then
5 they're not tied to it, which is not the case, so.

6 Q. And what is your experience with like actual
7 residences and locations? I know you mentioned grills,
8 but --

9 A. Yes, ma'am.

10 Q. -- houses. Are houses ever commonly used for drug
11 transactions?

12 A. Yes, ma'am, they are, and they -- they -- we refer to
13 those are trap houses is typically the jargon that we use,
14 and the trap houses can be -- you have trap houses, you
15 have stash houses. A stash house is basically what it says
16 is to stash drugs. That's where somebody keeps a stash
17 of drugs or a stash of whatever that they -- or whatever
18 we're investigating, that's what it is. A trap house is
19 basically a house or a building or a location that, you
20 know, dealers use or -- or an area we'll use to -- you
21 know, it could be several people in there selling drugs in
22 -- in this house, it could be one person, it could be
23 multiple people, it could be multiple people selling
24 different types of drugs, it could be -- there's all sorts
25 of things that happen in these houses.

1 And typically they're either abandoned houses in the
2 city or they're, you know, drug addicts that are -- are
3 letting, you know, drug dealers use -- utilize their house
4 in order for payment, ask for a supply of drugs for the day
5 or whatever, whatever the reasons, but that's what we refer
6 to as a house that's being utilized to -- to distribute
7 drugs is a trap house.

8 Q. What is the benefit of a -- of a trap house to someone
9 who's in the business of selling drugs?

10 A. Well, it -- it -- like I said earlier, it's not gonna
11 be in that person's name. It's just not because they're
12 not gonna attach their own name to that -- that location
13 in the event that they're arrested. Obviously they can
14 then say it's not my house, it's, you know, someone else's
15 house, and -- or, you know, if we move to seize the -- that
16 house as -- as a drug house, you know, they can -- that's
17 another way of -- they can say well -- you know, it's
18 deniability that they can use for -- you know, if they're
19 ever arrested at that location.

20 Q. Do these trap houses have actual physical addresses
21 though?

22 A. Yes, ma'am, some of them do sometimes. I mean, they
23 -- they -- they can be someone's house, like I said, you
24 know, they can be a location that -- or an abandoned house
25 that they've -- some of these dealers just have taken over

1 or it could be someone's house that they're just allowing
2 it or it could be someone's parents' house, you know, that
3 the kids are selling the drugs out of. I mean, it -- it
4 happens all the time.

5 Q. So would the -- would the physical address of a trap
6 house match the address on a driver's license of someone
7 dealing from there?

8 A. No, ma'am. Like -- like I said earlier, they're not
9 gonna attach their -- their name to that house. You know,
10 it -- it -- I mean, it does happen occasionally, but
11 typically it does not happen.

12 Q. And it -- this may seem like a -- a silly question,
13 Detective Grill, but, you know, in your -- again, using
14 your training and experience, do trap houses have office
15 hours? There's business, so do they have set hours?

16 A. No, ma'am. Typically they run 24/7. As long as
17 someone's there with a supply of drugs at these houses,
18 they're -- I mean, they're -- they're in business.

19 Q. Is the business somewhat irregular?

20 A. Yes, ma'am, it's sporadic. I mean, it's -- I mean,
21 these guys don't have a set schedule. They work when they
22 get up in the morning or, you know --

23 Q. And is your -- in your opinion, is that to -- another
24 layer for them to avoid detection from law enforcement?

25 A. Yes, ma'am, it can be because if they're erratic, then

1 their behavior is, and then it's -- you know, it's hard to
2 keep an eye on them and -- and all that stuff.

3 Q. All right. I want to go into a little bit more on
4 this confidential informant since that relates to -- to
5 this case. Are there different types of confidential
6 informants in your line of work?

7 A. Yes, ma'am. Typically we find a couple of different
8 types. There's obviously a confidential informant that is
9 -- these are all gonna be confidential informants. There's
10 -- there's informants that typically are -- have pending
11 charges and they're -- they're working off their charges
12 or leniency on another charge. There's paid informants.
13 Informants that are -- they get paid. They get paid to go
14 out and buy drugs or provide us information for drug crimes
15 or -- or any crimes in an area. There's informants that
16 they just do it out of the goodness of their heart, that
17 want to change the community, want to change an area, and
18 then there's informants that are trying to do it because
19 they want to -- they have a belief that they want to be a
20 police officer or law enforcement officer and they just
21 -- they want to go out and get these guys, I guess, but --
22 but typically informants are either paid or they have -- or
23 they're working off charges.

24 Q. And do you know what type of confidential informant
25 was utilized in this case?

1 A. I believe it was a paid informant.

2 Q. Can you explain to -- to the jury -- you touched on
3 this, but how you actually pay a CI for purposes of a -- a
4 buy?

5 A. Yes, ma'am. We pay them for services rendered. Is
6 it information that an informant provides us that may lead
7 to an arrest? You know, a guy who's -- who's on the street
8 who's an informant, if they see somebody with drugs and
9 they call us that results in an arrest, then, yes, we --
10 we would pay somebody for that or if they go out with us,
11 you know, under our controls and go out and conduct a
12 controlled purchase from somebody, then we would pay
13 somebody for that.

14 Q. So your unit utilizes people who sometimes you know
15 use drugs?

16 A. Yes, ma'am.

17 Q. And do you ever have concerns about their ability to
18 work with you?

19 A. Yes, ma'am. I mean, that's -- you know, some of these
20 guys are drugs -- drug addicts that we use, so they're --
21 they're -- you know, they show up late sometimes to work,
22 absolutely they do, but, you know, to find some -- to find
23 drug dealers you need to look at drug users. They'll be
24 able to tell you where the dealers are because they --
25 that's what they need to know and that's why we use -- use

1 them because they -- they have the insight into that type
2 of lifestyle that we will never have. They live it, they
3 -- they understand it and so we depend on their information
4 that they provide to us to further our investigations.

5 Q. What happens if during the course of your
6 investigation you determine that they have lied to you?

7 A. We -- we cut them off. We don't use them.

8 Q. Do they get paid for that service?

9 A. No, ma'am, they do not. They get paid for services
10 rendered. If they go out and they try to do a drug
11 transaction and they fail to do that, sometimes we won't
12 pay them, but it -- you know, if they arrange something
13 that doesn't go through, then, you know, sometimes we won't
14 pay them. I mean, they get paid for services rendered,
15 but, you know, in the event that they -- they go out and
16 find people to buy drugs from or they arrange it and a deal
17 goes through or they provide information, we'll pay them
18 sometimes -- or we'll pay them. I'm sorry. We'll pay
19 them, but then, you know, if they arrange something that
20 doesn't go through, then they won't get a full benefit, I
21 guess you could say, if that makes sense.

22 Q. So, I mean, do you have rules or some checks and
23 balances in place to work with the CI's?

24 A. Yes, ma'am. We have -- we have a cooperation
25 agreement to where an informant signs. I mean, they --

1 they -- they sign -- before they can do any -- any work for
2 us, they have to read this agreement, sign it, date it, and
3 then provide information, like just personal information
4 and where we can find them and all that good stuff, but
5 there's rules and regulations of what we expect and what
6 they can and can't do while they're an informant with the
7 City of Charleston.

8 Q. And what -- do you brief them before each buy as to
9 the rules and remind them in case they've forgotten?

10 A. Yes, ma'am, we do. You know, typically a detective
11 will tell them, you know, just certain things that they
12 can and can't do. Mostly safety issues. We don't want
13 -- we don't want an informant to put themselves in a bad
14 situation of, you know, being kidnapped or being taken away
15 in a car or just walking into some bad -- a bad situation,
16 so we -- we try to limit that. We try and instruct them
17 what they can and can't do. Obviously anything illegal
18 they can't do. We tell them that. And -- and so -- but
19 the main thing we brief them on is -- is security issues
20 and, you know, evidentiary issues, so.

21 Q. Do you ever have them write a statement right
22 afterwards while it's still fresh in their memory?

23 A. Yes, ma'am, we do. Typically after -- after an
24 informant goes out and does a buy and after we pick that
25 informant up and that case agent takes those drugs home,

1 you know, he's -- like I said earlier, he's taken to a
2 secure location, he's searched again, the -- all the
3 equipment is removed from him and then that -- that
4 informant issues a statement, a written statement, of --
5 or if they can write. You know, we'll write it for them
6 if they can't. And at their -- at their -- you know,
7 we'll write what they tell us to write and then -- but we
8 do it right after that -- that transaction has occurred.

9 Q. Can you elaborate for the jury on the special
10 equipment you've talked about that you're using with the
11 CI?

12 A. Yes, ma'am. There's a couple of different types of
13 equipment we use. We use audio transmitter devices, which
14 it takes realtime audio and then transmit it to devices,
15 you know, scanners or whatever listening devices that we
16 have in our vehicles, and then we have audio and video
17 recording devices. I mean, they're -- they're discrete,
18 they're concealable, but they do give us a picture of --
19 of what's going on at that time and, I mean, it's recorded
20 to a small thing which can be downloaded to a -- to a
21 computer.

22 Q. And who physically places all of that equipment on the
23 CI?

24 A. Typically it's the case agent that does that --

25 Q. And once --

1 A. -- or -- or that case agent -- I'm sorry. Or that
2 case agent will assign somebody in -- in the briefing to do
3 that for him.

4 Q. But it is always a member of the narcotics unit?

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

6 Q. Once that audio wire and the camera are in place, does
7 the CI have the ability to manipulate that recording?

8 A. No, ma'am, he does not. Or she does not. I mean,
9 it's typically a -- it's a -- a small device. It's a
10 pinnable camera that we -- we place on them. I mean, it's
11 -- sometimes a shirt will go in front of it. I mean, it
12 happens. You know, in the wintertime there's a coat, it
13 may flap open, flap over it, but as to -- that video is
14 always running, it's always recording, and unless -- I
15 mean, that -- there's no way that they can manipulate that
16 to that degree. It's -- if it's recording, it's recording.

17 And, you know, we're not out there making major motion
18 pictures, we don't get reviews in this line of work, so
19 when that -- when we hit record on that, we get what we
20 can get and, you know, either we'll try to do another
21 operation if we don't like the video from it, but as of
22 that day we can't tell the drug dealer hey, hold on, time
23 out, I need to get that angle. You know, these are --
24 these are discrete cameras that we use and so we have to
25 get what we can get and get out to minimize our safety

1 issues out there.

2 Q. So does that recording show -- show the entire
3 transaction or does the CI have the ability to see
4 additional stuff?

5 A. Yes, ma'am. There -- there's a small area -- I mean,
6 it's not a small area, but the frame -- I don't -- I mean,
7 I'm not an expert on that, but the frame is typically, I'd
8 say -- you know, we put it on -- we put it on the front of
9 an informant so your -- your video, your view, is in front
10 of you. I mean, if somebody walks up behind you, obviously
11 you can't see that, but -- so you can hear voices, it's
12 recording their voices, it's doing all that, but, I mean,
13 if you walk up behind somebody, you can't see them on the
14 video. Or if, you know, someone's above them or someone's
15 to the right or left of them, then you may not capture
16 that, but the informant still may turn and be able -- eye
17 to eye with that person and you still may not see it.

18 I mean, if you're sitting in the car and, you know,
19 you're doing a -- a deal with the driver of the vehicle,
20 you'll just reach over naturally. I mean, it would be
21 unnatural for you to turn your whole body in the front seat
22 of the car to try to capture that on video. So, I mean, it
23 is what it is and we get what we can get and if we capture
24 that video and we capture that -- that person selling those
25 drugs, then great, but, if not, we still capture the audio

1 and the surrounding stuff.

2 Q. And then afterwards, as you stated earlier, you go
3 back and take a statement?

4 A. Yes, ma'am.

5 Q. And if you see any confliction -- or, excuse me,
6 conflicting evidence between the statement and that video,
7 what would you do?

8 A. We would -- I mean, you would -- you would go to the
9 informant, you would ask him further details, and we would
10 just do another one -- another violator at another time,
11 you know, and that's just -- that's just what you do. You
12 either investigate it or -- or just keep -- keep working
13 the case.

14 Q. Thank you for that background, Detective Grill. I'd
15 like to get into some of the specifics of the case before
16 us, so if you could let us know were you working in the
17 Special Investigations Unit on June 20, 2012?

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

19 Q. And did you have the occasion to become involved in
20 the case here today, the State v. Dean Seagers?

21 A. Yes, ma'am, I -- I did.

22 Q. And could you, please, tell the jury how you were
23 involved in this case on that date.

24 A. Yes, ma'am. I believe Detective Burke was -- he
25 arranged to do an operation that day. He was the case

1 agent on that operation and we -- you know, he just called
2 out -- called up the unit, the guys in -- the other guys
3 in our unit and just hey, I've got an operation plan, I got
4 buy of -- a controlled purchase, or a buy is what we call
5 it, arranged for the day and, you know, the buy time, the
6 brief time, which is when we, you know, have a briefing
7 and all that, and, you know, we set a time and we -- we
8 all met at a location and he laid it out -- laid out the
9 plan for the buy. The informant was there and, you know,
10 we left him there after he assigned us all of the duties
11 and responsibilities and we went out and established
12 surveillance in that area and, you know, the informant
13 went out and did his -- did a buy.

14 Q. Were you present when this -- so you were present at
15 the initial debriefing?

16 A. Yes, ma'am.

17 Q. Was the confidential informant there?

18 A. Yes, ma'am.

19 Q. And were you present when the confidential informant
20 was searched?

21 A. Yes, ma'am. I believe Detective Burke searched that
22 -- that informant and -- I mean, I think he was either --
23 he was either in the process of doing it or he just was
24 about to do it when I -- when I got there, but he searched
25 him.

1 Q. And at the conclusion of that briefing, what was your
2 assignment?

3 A. I was assigned to perimeter security and surveillance.
4 Basically had a location that we were investigating and,
5 you know, other detectives went to areas around that --
6 that -- that address with different surveillance -- you
7 know, surveillance points. You know, that way -- we put
8 them in the surround -- surrounding area. That way if --
9 if -- you know, one guy may see something and another
10 guy may see something. You know, you put multiple people
11 around the area to try to control that whole area.

12 Q. And what type of controlled purchase was this?

13 A. This was a -- I believe a cocaine purchase.

14 Q. And was it a buy-walk or a buy-bust as you referred to
15 earlier?

16 A. It -- it was a buy-walk. I believe it was for -- for
17 cocaine, but it -- after it was -- it was actually crack
18 cocaine that was -- was smashed up to look like cocaine,
19 so.

20 Q. I know you're not a scientist, but in your experience
21 as a -- as a police officer, have you had the opportunity
22 to see cocaine and crack cocaine?

23 A. Yes, ma'am.

24 Q. And just visit -- visually, what -- what makes them
25 different?

1 A. The consistency of it. Obviously, I mean, cocaine is
2 typically more of a powder, a powder form. It can be a
3 rock-like substance, but that's typically after it's been
4 compressed in -- from a powder into like a solid. It can
5 -- that can happen, but you have to, you know, compress it,
6 but the -- the consistency of it is white and it's a --
7 it's -- I mean, it's typically found in small amounts in
8 the powder form, whereas crack cocaine or simple crack, is
9 a hard -- cocaine substance that's hard. It's whitish in
10 color, but most likely off-white to a slight yellowish
11 color.

12 Q. And when you're -- when you're out there and you're in
13 the field, and because you're not a scientist, do you have
14 any way to determine what a substance is in the field?

15 A. Yes, ma'am. You can -- you can test for the presence
16 of cocaine in a field test. Obviously crack cocaine will
17 test positive for cocaine because it has cocaine in it, so
18 that test, they're one and the same.

19 Q. And getting back to -- to this buy, when the buy was
20 complete, what did you do?

21 A. We stayed in the area. We -- we stay in the area from
22 our surveillance positions after a buy is done. So once
23 the informant either drives or walks to a location, we stay
24 in that area for -- for a brief time period to make sure
25 that no one's following that informant, make sure no one

1 from the neighborhood's following that informant, to just
2 either do counter-surveillance or, you know, make sure that
3 that informant gets out of that area safely and -- or that
4 undercover officer, and typically someone will follow him
5 back to -- or her back to the location, to an agreed
6 meeting location.

7 Q. And were you present when this CI returned to the
8 predetermined location?

9 A. Yes, ma'am. I believe he was already there when I --
10 when I pulled back up into that area, to the arrangement
11 area, and -- because I -- I believe he was in or already --
12 Detective Burke had already met with him and picked him up
13 and he was in Detective Burke's vehicle, I believe, at that
14 time when I pulled back in.

15 Q. Was the CI successful in purchasing drugs that day?

16 A. Yes, he was.

17 Q. And who took custody of those drugs?

18 A. I believe it was Detective Burke.

19 Q. Now you mentioned that the -- the CI has a video and
20 a live wire attached to them during the course of the buy,
21 correct?

22 A. Yes, ma'am.

23 Q. Did you ever watch a video of that controlled buy?

24 A. Yes, ma'am, I have.

25 Q. And prior to June 20th of 2012 when this buy occurred,

1 had you ever had an opportunity to become familiar with the
2 Defendant's voice?

3 A. Yes, ma'am.

4 Q. And tell the jury how.

5 A. I believe it was just interaction in the community.
6 I mean, I've worked in that area for almost ten years, I
7 believe.

8 MR. MARSHALL: Judge, I'm gonna object at this point
9 to any testimony from this witness regarding voice
10 identification because he's not a voice identification
11 expert.

12 THE COURT: All right.

13 MS. MULKEY: I wasn't attempting to admit him as an
14 expert, Your Honor.

15 THE COURT: All right. He can testify as to what he
16 saw or heard. You may continue.

17 THE WITNESS: Thank you.

18 MS. MULKEY: Thank you, Your Honor.

19 BY MS. MULKEY:

20 Q. So you have had actual conversations with the
21 Defendant?

22 A. Yes, ma'am.

23 Q. Back and forth conversations?

24 A. Yes, ma'am. I mean, just -- you know, just typical
25 police infor -- you know, I mean, that's all it was.

1 Q. I guess what I'm getting at, conversations that were
2 more than just yes or no?

3 A. I believe so, yes, ma'am.

4 Q. And after watching and listening to the video and
5 listening to the live wire that day, were you able to
6 personally identify any voices from your training and
7 experience?

8 A. Yes, ma'am, I heard Baby Dean's voice.

9 Q. And who exactly is Baby Dean?

10 A. He's sitting right over there.

11 Q. How --

12 MR. MARSHALL: Judge, I renew my objection. She just
13 stated she wasn't trying to elicit some -- some sort of
14 identification based on voice. I thought that she said
15 that, but I want my objection preserved.

16 THE COURT: All right. Counsel approach.

17 (Proceedings held at the bench; not reported.)

18 THE COURT: Mr. Foreman, it would be an appropriate
19 time to take a break, all right? Please remember all of my
20 admonitions. You may take your notepads with you or leave
21 them in your chair.

22 Please rise for the jury. Detective Grill, stay
23 seated.

24 THE WITNESS: Okay.

25 (Whereupon, the jury retires to the jury room at

1 3:20 PM.)

2 THE COURT: Thank you. Be seated.

3 We're gonna go ahead and take a break. Please
4 remember you may not discuss your testimony with anyone.

5 THE WITNESS: Yes, ma'am.

6 THE COURT: Thank you.

7 THE WITNESS: Yes, ma'am.

8 (Whereupon, the witness steps down from the stand.)

9 THE COURT: All right. Let me -- let me hear your
10 arguments, Mr. Marshall.

11 MR. MARSHALL: Well, it -- it's simple, but he's not
12 -- first of all, he hasn't laid a found -- he hasn't laid a
13 foundation to -- if he wants to try to identify his voice
14 as a layperson. I don't believe he's laid -- laid a proper
15 foundation for that. And, second of all, I don't think
16 that he's qualified to testify on -- on the issue of voice
17 identification.

18 THE COURT: All right. It's -- your argument is
19 preserved for the record. I disagree with your analysis,
20 but it's preserved for the record.

21 All right. About ten minutes. Thank you.

22 (Recess taken.)

23 THE COURT: Anything before we bring in the jury from
24 the State?

25 MR. SOWARDS: Nothing from the State.

1 MR. MARSHALL: No, ma'am. Thank you.

2 THE COURT: Go ahead and bring them in.

3 CLERK: Mr. Grill, if you would --

4 (Whereupon, the witness returns to the stand.)

5 THE COURT: I remind you you're still under oath.

6 THE WITNESS: Yes, ma'am.

7 (Whereupon, the jury returns to the courtroom at
8 3:34 PM.)

9 BAILIFF: The jury is all seated, Your Honor.

10 THE COURT: Thank you. Please be seated.

11 Ms. Mulkey, you may continue.

12 MS. MULKEY: Thank you, Your Honor. May it please the
13 Court?

14 BY MS. MULKEY:

15 Q. Detective Grill, I just want to touch back on where
16 we were at before the break. Did you know the Defendant
17 in this case, Dean Seagers, prior to this transaction?

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

19 Q. And had you spoken with him on several occasions prior
20 to June 20th of 2012?

21 A. Yes, ma'am. I'd say a couple of times, yes, ma'am.

22 Q. And did you listen to the live wire during this
23 controlled buy?

24 A. Yes, ma'am. We -- we're all equipped with listening
25 to the -- the transmitter when we're out there, yes, ma'am.

1 Q. And after the buy, did you watch the video of this
2 buy?

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

4 Q. And while either listening to the live wire or
5 watching the -- the controlled buy, did you recognize a
6 voice on the video?

7 A. Yes, ma'am, I did as Dean Seagers' voice.

8 Q. And do you recall at what point during the transaction
9 or on the video that was?

10 A. Yes, ma'am. It was when the -- the Defendant went to
11 the back of the -- the residence. The Defendant -- the
12 Defendant was at the window at the upstairs -- the back --
13 back upstairs window and there was some conversation at
14 that point.

15 Q. And, Detective Grill, were you present when the
16 Defendant was arrested and charged with this crime?

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

18 Q. And do you recall where he was arrested?

19 A. He was at that same location --

20 Q. And do you --

21 A. -- in the up -- upstairs apartment.

22 Q. Thank you. And after the Defendant was arrested,
23 did you have the opportunity to speak with the Defendant
24 again?

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

1 Q. And --

2 A. Myself and Detective Burke.

3 Q. And without getting into the substance of that
4 conversation, was it a conversation or yes or no questions?

5 A. It was a conversation, yes, ma'am.

6 Q. And after having that opportunity to speak with the
7 Defendant again, was there any doubt in your mind that the
8 voice on that video was, in fact, the Defendant?

9 A. Yes, ma'am, that -- I mean, that -- that was the
10 Defendant on the video, yes, ma'am.

11 Q. And I want to get back to something briefly that you
12 had mentioned earlier. You testified you were at the
13 debriefing prior to the buy, correct?

14 A. Yes, ma'am.

15 Q. And what was your assignment again?

16 A. Just perimeter security, surveillance -- mobile
17 surveillance in that area.

18 Q. So based on that assignment, did you drive past the
19 location where this buy was conducted prior to the buy?

20 A. Yes, ma'am. I believe I was -- I did surveillance --
21 the residence was at Ashton Street, which runs into Hagood
22 right at -- near the corner of Ashton and Hagood near the
23 McDonalds on Crosstown, so we -- we went down Hagood and
24 I believe I was either at the -- I don't know the name of
25 the big gray building, but it was a Subway right there on

1 Hagood Avenue, or I was in the McDonald's, but I passed
2 Ashton Street and I saw the -- a vehicle, a gray Dodge
3 Charger, that was the -- that we knew that the Defendant
4 was driving parked on Ashton Street just right down from
5 the address, the target location.

6 Q. And, I'm sorry, where was it parked in relation to
7 the -- the address where the buy took place?

8 A. It was like -- it was on the same side of the street
9 as the residence, but right down -- down from the street
10 -- or right down from the house. I'm sorry. I think like
11 two houses down, but I don't know the exact numerics there.

12 MS. MULKEY: The Court's indulgence, Your Honor.

13 THE COURT: Yes, ma'am.

14 MS. MULKEY: Detective Grill, I have no further
15 questions at this time. Please answer any that the defense
16 may have.

17 THE WITNESS: Yes, ma'am.

18 THE COURT: Mr. Marshall.

19 MR. MARSHALL: Thank you, ma'am.

20 CROSS-EXAMINATION

21 BY MR. MARSHALL:

22 Q. Officer Grill, good afternoon.

23 A. Good afternoon.

24 Q. Now you've received pretty extensive training in the
25 area of law enforcement, correct?

1 A. Yes, sir, I have.

2 Q. And is it true that you've been trained, I would
3 imagine, in numerous classes that it's very important to
4 document things when you're conducting an investigation.

5 A. Yes, sir.

6 Q. Is that a true statement?

7 A. Yes, sir.

8 Q. And in this case, you just testified that you believe
9 that you identified Dean Seagers' voice as on this tape,
10 which we'll play for the jury at some point; is that
11 correct?

12 A. Yes, sir.

13 Q. And that -- if that were true, that would be a
14 significant fact in this case, something that everyone
15 should be aware of, right?

16 A. Yes, sir.

17 Q. Something that should be documented, correct?

18 A. Yes, sir.

19 Q. It wasn't documented, was it?

20 A. I'm here today.

21 Q. All right. We're talking about documentation, sir.
22 Haven't you been trained to write down things which are
23 important in an investigation?

24 A. Oh, yes, sir. Yes, sir.

25 Q. And you wouldn't be offering that testimony unless you

1 thought it was gonna be important and was gonna carry some
2 weight with this jury, correct?

3 A. I don't understand what you're saying. I'm sorry.

4 Q. Well, isn't the reason you come here and said this for
5 the first time today is that you're hoping to convince the
6 jury that you're accurate in your statement that you've
7 heard Dean Seagers' voice on this audio?

8 A. I'm here today to tell the jury -- members of the jury
9 that I did hear Mr. Seagers' voice.

10 Q. And why don't you go ahead and tell them, if that's
11 true, why it is that you wouldn't document something
12 important like that?

13 A. We do hundreds of these a year. It -- this is
14 something we do multiple times a day. We just -- I just
15 didn't document it. I just didn't write it.

16 Q. That's your explanation? You just failed to do it.
17 And you furthermore just testified that there was a car,
18 a gray car of some sort, parked --

19 A. Yes, sir.

20 Q. -- near this location of [REDACTED] Ashton where allegedly a
21 drug sale occurred, correct?

22 A. Where a drug sale occurred, yes, sir.

23 Q. And to whom was that car registered?

24 A. I do not know that. I -- I do not know that, sir.

25 Q. Well, if you're trying to link that car to Dean

1 Seagers, wouldn't it kind of be important to find that
2 out?

3 A. Sir, I was not assigned the case agent. I'm not
4 the case agent of -- of this investigation. I was just
5 assigned a responsibility or a role in this controlled
6 purchase that we did on that particular day.

7 Q. And if you're here telling the jury about it, then I
8 assume that you believe that that's significant -- that
9 that's important that you're now stating that there was a
10 gray car that you believe to somehow link to Dean Seagers
11 where --

12 A. He -- he was observed driving that vehicle, yes.

13 Q. Okay. And that would be an important thing to write
14 in a report, wouldn't it?

15 A. That we saw somebody drive a vehicle?

16 Q. No, if you're claiming that you saw Dean Seagers
17 driving the vehicle and --

18 A. He was known to drive that vehicle, yes, he was.

19 Q. And in what report did you write that, sir?

20 MS. MULKEY: Your Honor, objection.

21 THE COURT: What's the objection?

22 MS. MULKEY: May we approach?

23 THE COURT: You may.

24 (Proceedings held at the bench; not reported.)

25 THE COURT: Mr. Marshall, go ahead and rephrase your

1 question.

2 BY MR. MARSHALL:

3 Q. Officer Grill, you just stated that -- that you
4 believe some link supposedly between a gray car and
5 Mr. Seagers is something that would be important and I --
6 my question to you is in what report, and when, did you
7 write that information down?

8 A. I didn't write any report linking Mr. Seagers with
9 that vehicle.

10 Q. And why is that?

11 A. Because we just didn't write it. It was -- I mean,
12 we observe a lot of things when we're on surveillance. As
13 I said earlier, I -- I was not assigned the case agent,
14 I'm not the case agent of this investigation, but on that
15 particular day, you know, we -- we saw a vehicle that we
16 associated with Mr. Seagers who was known to drive that or
17 operate that vehicle at that location.

18 Q. Uh-huh. But you failed to write that in a report.
19 Now, again, on the subject of procedures, just as proper
20 report writing and documentation is an important procedure,
21 on the same subject of documentation and following
22 procedures, tell us what documents according to -- well,
23 first of all, are you familiar with the City of Charleston
24 Police Department -- what they call the City of Charleston
25 Police Department Policy and Procedure Manual? Are you

1 familiar with that document?

2 A. Yes, sir, I -- I'm familiar with that.

3 Q. And is there a section of the CPD Policy and Procedure
4 Manual which pertains specifically to the handling of
5 confidential informants?

6 A. Yes, sir, I believe it is. There -- there is one,
7 yes, sir.

8 Q. Huh. And what is the -- what does that policy and
9 procedure manual say -- what -- what documents should be
10 maintained when the police department forms a relationship
11 with a confidential informant?

12 MS. MULKEY: Objection, Your Honor.

13 THE COURT: What's the basis?

14 MS. MULKEY: Relevance. I would argue that he
15 testified in general about narcotics investigation, but
16 he is not the actual case agent of this particular case.

17 MR. MARSHALL: Well, I'm asking in general, Judge.

18 THE COURT: Please don't -- please don't argue.

19 Rephrase your question to -- to be -- narrowly tailor
20 it. Thank you.

21 BY MR. MARSHALL:

22 Q. Concerning this investigation about which you just
23 spent the second half of your testimony testifying, what
24 documents should have been maintained pertaining to the
25 CPD -- the City of Charleston Police Department's contact

1 with the confidential informant in this case, Robert
2 Drayton?

3 A. I don't know what you're asking, but typically when
4 we do a controlled purchase, there's vouchers that we
5 assign, that we use, if that's what you're asking about,
6 but we're -- we -- we document what drugs we purchase on
7 that particular operation, how much that -- that was
8 spent on that operation, that particular operation or any
9 operation, and it's a way that we can account for monies
10 that were taken out of our -- our narcotics fund to
11 purchase, you know, evidence from -- from drug dealers,
12 but each operation has a -- a voucher system which it
13 shows money coming out of the fund, it's assigned to an
14 investigator and then, you know, used for whatever reasons
15 in particular we use it, and then we also use a payment
16 form to document money that's paid to -- if it is a paid
17 informant, and then we also document the activity of a --
18 a controlled informant. I don't know if that's what you're
19 asking for, sir.

20 Q. All right. And what paperwork that's mandated by the
21 City of Charleston Police Department's Policy and Procedure
22 Manual concerning confidential informants, what paperwork
23 exists in this case against Dean Seagers?

24 MR. MULKEY: Objection, Your Honor.

25 THE COURT: Sustained. He's not the case agent,

1 Mr. Marshall.

2 BY MR. MARSHALL

3 Q. Do you know -- do you know which commanding officer
4 reviewed the documents which are supposed to be maintained
5 concerning the confidential informant in this case?

6 A. I don't know what documents you're referring to,
7 sir. Is there a particular --

8 Q. Well -- well, you talked about an activity log,
9 right?

10 A. Yes, sir. That's -- that's -- that is kept in our
11 first line supervisor's officer in a -- in a -- you know,
12 every -- everybody that's an informant is assigned a number
13 and a name to keep their confidentiality. So when report
14 writing, when we write a report, you know, we'll refer to
15 a CI or a control -- or a confidential informant as either
16 by a number or by a fake name. It's a fictitious name
17 that we assign that particular individual to keep their
18 actual real name out of the report. That way we can keep
19 their confidentiality as long as we can. So that's --
20 that's how -- a way that we can use to keep their identity
21 secret because obviously once somebody knows that someone's
22 a confidential informant or working on behalf of law
23 enforcement, obviously that drug dealer is gonna stop
24 selling drugs to that person. You know, it's just --

25 Q. Okay. Well, this document is called, according to

1 your testimony and according to the policy and procedure
2 manual, it's called an activity log, a Confidential
3 Informant Activity Log. Do you know the document to which
4 I refer?

5 A. I don't know what -- what the policy manual actually
6 refers that, but that's what we call it, the activity log.

7 Q. Okay.

8 A. If that -- if that's what you're asking then, our
9 sergeant, our supervisor, maintains that. Or he doesn't
10 maintain it, but he maintains custody of it, but actually
11 the case agent, after an informant is used, then updates
12 the activity log of -- you know, CI number so and so did
13 such and such and such on that date. Do you understand
14 what I'm saying, sir?

15 Q. Perhaps. Let me ask you this. Do you know why when
16 I subpoenaed CPD for the complete file on the alleged
17 confidential informant in this case why I didn't get an
18 activity log?

19 A. I --

20 MS. MULKEY: Your Honor, I would object based on
21 discussions during -- when you gave a ruling.

22 THE COURT: Mr. Marshall, is there some reason this
23 witness would know that answer?

24 MR. MARSHALL: Well, I -- I think he testified that
25 he's been with CPD for almost ten years and he's been in

1 the Special Investigations Unit.

2 THE COURT: All right. Please -- please watch the
3 speaking objections.

4 Rephrase. I'm gonna sustain your objection. Rephrase
5 it. I think you're getting outside the scope of what we
6 need to be addressing.

7 BY MR. MARSHALL:

8 Q. Have you reviewed the confidential informant file, the
9 totality of the file, all documents which pertain to this
10 case we're trying here today?

11 A. All right. Say that one more time. I'm sorry.

12 Q. Have you reviewed all of the documents, which concern
13 the CI in any way, which pertain to this case that we're
14 trying today?

15 A. No, sir, I have not, but the activity log I have seen.
16 So if that's what you're asking, then, yes, sir, I have
17 seen it and I guess -- but there -- there are some forms
18 dealing with this informant that I have not seen, like the
19 actual -- whenever we develop a confidential informant,
20 the informant signs, like I said earlier, the rules and
21 regulations of what he can or she can't do while working
22 with the Government -- or with the City and then they also
23 sign -- like I said earlier, they sign -- we get personal
24 information so if we ever need to locate them, cell phone
25 numbers, that type stuff, we'll be able to locate them,

1 and then that's -- at that point on that same piece of
2 paper is where we assign the CI number and a fictitious
3 name. It could be Minnie Mouse or Mickey Mouse, whatever,
4 but that then goes into a -- a manila envelope which is
5 sealed -- after the case agent, whoever develops that
6 informant, signs off on it and the informant signs --
7 agrees to sign off on it, that is then sealed with tape
8 and signed by the -- I believe our sarg -- or supervisor
9 signs it and then it goes to our lieutenant's office, then
10 -- in which, in turn, it is kept for -- or kept in a locked
11 safe, so we do not have access. We have to go through our
12 -- our chain of command to get that access, so, sir, I have
13 not reviewed -- that's some documents I have not reviewed,
14 but I have seen the activity log.

15 Q. And you don't know why that wasn't provided to me at
16 my request; is that correct?

17 A. Well, I believe that's -- I mean, I -- I don't know
18 how I can answer that, sir, but --

19 Q. Do you know why it wasn't provided or not?

20 A. Yes, sir, I -- I do.

21 MS. MULKEY: Objection, Your Honor. Just for
22 clarification, is he asking for what was already ruled on?

23 THE COURT: All right. Counsel approach.

24 (Proceedings held at the bench; not reported.)

25 BY MR. MARSHALL:

1 Q. Now you -- you testified a little bit on direct -- or
2 actually more than a little bit, I guess, about funds being
3 used to pay CI's, correct?

4 A. Yes, sir.

5 Q. And you've done that, I would assume, on numerous
6 occasions?

7 A. Yes, sir, I have.

8 Q. And you stated that the CI in this case that we're
9 trying today was being paid?

10 A. That's correct. Yes, sir. I believe so, yes, sir.
11 I'm not -- like I said, I'm not the controlling agent.
12 That -- that is something that the case agent or
13 controlling agent of that informant would know, not me.

14 Q. Okay. And --

15 A. But to my belief, I believe at that time he was a paid
16 informant, if that make sense. So I don't know the -- to
17 my -- to my belief that he was a paid informant, but I'm --
18 that's not -- I don't know a hundred percent I guess you
19 could say.

20 Q. Do you know if he ever worked for the City of
21 Charleston Police Department in an effort to work off
22 charges he was facing?

23 A. I believe --

24 MS. MULKEY: Your Honor, relevance. I would object.

25 THE COURT: All right. Counsel approach.

1 (Proceedings held at the bench; not reported.)

2 THE COURT: Sustained.

3 BY MR. MARSHALL:

4 Q. Now you have reviewed the video and audio that exist
5 in this case?

6 A. Yes, sir, I have.

7 Q. And do you know whether any -- there are any -- I
8 would refer to them as blackout spots where someone viewing
9 it can't see what's occurring?

10 A. Yes, sir, I believe there is -- there is a short time
11 -- time that happens, yes, sir.

12 Q. All right. Do you know the number of -- of times that
13 that occurs where you can't see what's happening?

14 A. A delete to the video footage, is that what you're
15 saying?

16 Q. Well, first of all, do you know how many times on that
17 video you're unable to see what's happening?

18 A. No, sir, I can't. I mean, I -- I just remember that
19 there is -- there is a time -- a short time frame of that,
20 yes, sir.

21 Q. And you remember just one -- one incidence of that?

22 A. Yes, sir. I mean, I don't -- it could be more. I
23 mean, I don't know. I just can't recall right offhand,
24 but it -- there is a -- a time where, yeah, you can't
25 see anything on the screen, but you can hear, so it's

1 recording, yes, sir, if that makes sense.

2 Q. And I would assume you would agree with me that if you
3 can't see what's happening on the video, then there exists
4 some possibility that a confidential informant could be
5 receiving drugs at that point; is that correct?

6 A. I don't believe so. Not in this particular incidence
7 from I remember, no, sir.

8 Q. And why do you say that?

9 A. I believe he was riding a bike when that -- when it --
10 from what I remember. Obviously, I guess, you're gonna
11 watch it here pretty soon, but I believe he's on a bike
12 when -- when it -- it -- the video footage -- the video
13 footage cuts out and the audio is still recording, if that
14 makes sense, but I believe that that -- that's at that
15 time.

16 Q. Do you recall if while he's riding the bike he ever
17 passes any pedestrians?

18 A. I don't -- there may be one on there, sir. I don't
19 know. That I do not -- I do not recall.

20 Q. How many officers -- you said there were some
21 officers, I guess, staked out in this vicinity, right? Do
22 you know the number of officers that were around?

23 A. I believe it was three or four of us. We typically
24 have -- try to have four police officers and a uniformed
25 police officer in the area during any operation.

1 Q. Did -- did any officer or combination of officers
2 maintain constant eye contact with the CI as he was
3 travelling on his bike and as he was at this location of
4 [REDACTED] Ashton?

5 A. Yes, sir. I -- I -- well, I believe so. I thought
6 -- I know when you watch the video you can see some of
7 our undercover vehicles trying to follow the -- the CI at
8 this time and you can -- I mean, you can see them. I
9 think one's a Ford Ranger during this time and I believe
10 Mr. -- or Detective Burke was driving a Dodge Caravan, I
11 believe, so you can see them on the video. And we -- we do
12 try to maintain a visual to and from the residence with --
13 with our informants, but obviously, I mean, he went to the
14 back of the residence and we're not gonna be able to see
15 that at that point, if that makes sense. Does that make
16 sense?

17 Q. Yes. But if constant visual surveillance was
18 maintained at least while he was riding the bike by some
19 officer or a combination of officers, that would be
20 something important that should be documented in reports,
21 correct?

22 A. To follow someone on a bike? I mean, I don't -- I
23 don't see the reason for that, but --

24 Q. You don't think it's important for the police to try
25 to ensure that a confidential informant doesn't get drugs

1 at some point between the time that he parts company with
2 the police officer and allegedly makes contact with a drug
3 dealer?

4 A. Well, sir, we -- what we do, like I said earlier, we
5 -- we equip our informants with an audio transmitter. So
6 if he encounters somebody or she encounters somebody on the
7 street and they negotiate a deal, then, yes, we would --
8 we would document that, but just because someone approaches
9 and sees someone and says hey, how you doing, I mean,
10 that's -- he's from the -- he's from this area and so he
11 knows a lot of people in this area and it's not uncommon
12 for an informant in Charleston to see someone that they
13 know, but you -- you can -- if we're on surveillance and
14 we hear someone negotiate another deal, then obviously
15 that's very important and we would handle that and -- and
16 act appropriately, but for --

17 Q. Well, if a drug user has a -- has a regular supplier,
18 it wouldn't take him more than five or ten seconds to ride
19 up to that person with a twenty -- ten, twenty, fifty
20 dollar bill in his hand and hand it and receive drugs,
21 would it? Nothing would have to be said, would it?

22 A. Well, no, I think -- I think you would have to have
23 some conversation with anything. You know, he --

24 Q. So in all your experience, you've -- you've never
25 known a regular drug user to have a regular dealer where

1 when they see each other on the street and one of them's
2 holding something, the other one pulls out what he's got
3 and that's it, it's just that fast?

4 A. Well --

5 Q. You've never seen that?

6 A. I would -- I would feel very comfortable to say no, I
7 have never seen that because there's always conversation
8 before a guy or some -- a girl encountering somebody that
9 they know to sell drugs and there's a conversation of hey,
10 I've got ten dollars, let me get such and such or hey, what
11 you got on you, you know. There is conversations before
12 every deal that I have been a part of. That I can say.

13 Q. You've never known a drug customer -- a drug seller
14 who had regular customers and that customer got the same
15 thing from him every time?

16 MS. MULKEY: Your Honor, objection. Asked and
17 answered.

18 THE COURT: Hold -- hold on one second. What's the
19 basis?

20 MS. MULKEY: Asked and answered.

21 THE COURT: Sustained.

22 BY MR. MARSHALL:

23 Q. Now you've testified on direct about the very strict
24 process, policy, procedure for the handling of money given
25 to informants, correct?

1 A. Yes, sir.

2 Q. And that's something that CPD tries to maintain very
3 strict control in accounting for those funds that are
4 given --

5 A. Yes, sir.

6 Q. -- to paid informants?

7 A. Yes, sir.

8 Q. Are you aware of there ever having been any
9 discrepancies in the funds at your unit -- special
10 investigative unit regarding funds set aside for use with
11 CI's?

12 A. Sure, I'm sure it has happened, yes, sir.

13 Q. And what are you aware of?

14 A. Is there a particular incident or -- I don't
15 understand what you're asking. If we --

16 Q. Well --

17 MS. MULKEY: Objection, Your Honor. Relevance.

18 THE COURT: All right. Move on, Mr. Marshall.

19 BY MR. MARSHALL:

20 Q. All right. Let's talk about the conversations that
21 you've just brought to light today, which you claim you've
22 had with Mr. Seagers on prior occasions. And I think you
23 said you believed prior to June 20th of 2012 you think you
24 maybe had spoken with him on two occasions if I understood
25 you correctly.

1 A. Yes, sir. I -- I mean, I believe it was just more
2 of a hey, how are you. I knew the Defendant -- I know the
3 Defendant. I believe it was just kind of a hey, how are
4 you doing-type deal as we were on the street working either
5 doing -- executing warrants in this area or just -- just an
6 encounter. I mean, I -- I'm -- I think I'm a friendly guy,
7 I talk to anybody, but -- because I know after -- after the
8 Defendant was arrested we did have a long conversation with
9 the Defendant. Yes, sir, I did.

10 Q. At these two occasions where you-all spoke perhaps
11 briefly, do you remember when those brief conversations
12 occurred?

13 A. No, sir, I do not. I'm sorry. I just -- I just know
14 that we -- I've spoke -- spoken to the Defendant, yes, sir.

15 Q. Said hello on the street?

16 A. Yes, sir. Just an encounter.

17 Q. Now you state that you believe that the voice which
18 the jury will hear on this audio and video belongs to
19 Mr. Seagers. Is there anything -- what is it that you
20 heard this voice say on the -- on the vid -- on the --
21 excuse me, on the audio?

22 A. I believe it was just general conversation between the
23 two while the Defendant was at the window in the upstairs
24 apartment and that the informant was at the -- on the
25 ground level in the back of the house.

1 Q. You don't remember any more specifics?

2 A. I -- I -- I don't remember word for word. I'm sorry,
3 I don't.

4 Q. Now is it true that in your job capacity you're very
5 familiar with South Carolina Law Enforcement Division's
6 policies and procedures for the proper handling of drug
7 evidence?

8 A. I don't work for SLED, so I don't know their policies,
9 if that's what you're asking.

10 Q. Have you ever been to a SLED training academy?

11 A. I don't know -- are you -- are you asking the Criminal
12 Justice Academy?

13 Q. Right. Or in special programs that they might run
14 as continuing education through the year regarding the
15 proper handling of drug evidence so that the results will
16 be reliable.

17 MS. MULKEY: Objection, Your Honor.

18 THE COURT: I'm gonna allow that question.

19 MS. MULKEY: Okay.

20 THE WITNESS: I don't understand what you're asking,
21 but -- can you say that again?

22 MR. MARSHALL: Yeah.

23 BY MR. MARSHALL:

24 Q. Have -- have -- first of all, did you go to the South
25 Carolina Law Enforcement Justice Academy in Columbia?

1 A. I think every officer attends the South Carolina
2 Criminal Justice Academy, yes.

3 Q. Okay. And there did you receive any training on
4 SLED's mandated policies for the handling of drug evidence
5 and drug cases?

6 A. We received training, it was over ten years ago, on
7 whatever the policies were. SLED policies -- I don't know
8 if it was a SLED policy. I don't know the name of it or
9 whatever organization it was, but we just see -- receive
10 basic training and then the -- the police department, CPD,
11 has their own policy of how we handle the evidence and we
12 collect evidence. We -- the case agent or whoever collects
13 the evidence maintains custody of that and take it to the
14 police department, they seal it in a sealed envelope and
15 then it goes to our -- the CPD drug lab where it's tested
16 and that's where we get our results from, so. Does that --
17 does that answer you question?

18 Q. Well, sort of. Do you know -- so, if I understood
19 you, you're saying that the City of Charleston Police
20 Department has a different procedure for handling drug
21 evidence than does SLED?

22 A. I don't know the answer to that. It could be one and
23 the same.

24 MS. MULKEY: Your Honor, objection. Relevance.

25 THE COURT: Well, I think you've asked and answered.

1 Move on.

2 MR. MARSHALL: Just give me one minute while I look at
3 this evidence.

4 BY MR. MARSHALL:

5 Q. You -- did you have any involvement with the phone
6 that was seized by the police?

7 A. At the time of his -- the Defendant's arrest?

8 Q. Right.

9 A. I mean, I was present at that time, yes, sir.

10 Q. Okay. But you didn't handle it? You're not in the
11 chain of custody on any phone?

12 A. There was a lot of evidence taken that day. I don't
13 particularly know.

14 Q. Have you had -- well, since you were in on the
15 beginning of this investigation, were you also of a belief
16 that the substance which was allegedly purchased by the CI
17 in this case on June 20th at [REDACTED] Ashton, were you also of a
18 belief that that substance was what's been described in all
19 the reports as powder cocaine?

20 A. That's what the informant had arranged to purchase. I
21 believe so, yes, sir. Is that what you're asking?

22 Q. Did you look at the -- did you look at the substance
23 on the date of June 20th of 2012?

24 A. I don't believe so. I don't believe I was in the
25 chain of -- I don't think I ever touched the drugs, if

1 that's what you're asking. I -- I don't know that. I
2 don't remember that, sir.

3 Q. Well, you could have looked at it without touching it.

4 A. Yes, sir, I could have. Yes, sir, I could have. I
5 don't know.

6 Q. Okay. But after the June 20th date, did you follow
7 this investigation, developments in the investigation? Do
8 you remember when, for instance, specifically all of a
9 sudden this powder cocaine went to what the lab analyst
10 said was crack cocaine? Were you aware of that development
11 in this case?

12 A. I believe so. I mean, that's -- that's -- something
13 that --

14 MS. MULKEY: Your Honor, objection. Outside the scope
15 of direct.

16 THE COURT: Overruled on that basis. You may answer.

17 THE WITNESS: I'm sorry. Say that again.

18 BY MR. MARSHALL:

19 Q. Well, I'm asking when -- when what everybody thought
20 was --

21 A. Oh, I got you.

22 Q. -- powder all of a sudden is not powder, it's now
23 crack, were you aware of when everybody with the police
24 department, the people involved, became aware of that,
25 which would have been once the lab report was generated --

1 A. Right.

2 Q. -- and then disseminated?

3 A. Right. Well --

4 MS. MULKEY: Your Honor, I object. Relevance.

5 THE COURT: Sustained.

6 BY MR. MARSHALL:

7 Q. Who -- with whom, rather, have -- have you spoken in
8 preparation for your testimony here today?

9 A. Well, I'm -- I mean, I've spoken to the prosecutors in
10 this case, yes, sir.

11 Q. Anybody else?

12 A. I don't know who you're referring to, but --

13 Q. I'm asking you, sir. I don't know with whom you've
14 spoken. So you've spoken to these two prosecutors?

15 A. Yes, sir. And Ms. Linder with the Solicitor's Office.

16 Q. Okay.

17 A. I've spoken to you about it, I believe, at one time,
18 I think. I don't really understand.

19 Q. Have you spoken with the confidential informant?

20 A. Yes, sir.

21 Q. And are you aware that the confidential informant,
22 as I understand it, was subpoenaed to be in court here
23 yesterday?

24 A. I think there's a discrepancy on that.

25 MS. MULKEY: Your Honor, objection. Outside the

1 scope.

2 THE COURT: Please approach.

3 (Proceedings held at the bench; not reported.)

4 BY MR. MARSHALL:

5 Q. The -- the CI's that work for your police agency
6 typically have someone that you-all refer to as a handler,
7 a police officer that handles them?

8 A. Yeah, we -- we call them controlling agents mostly.

9 Q. Controlling agents?

10 A. Yes, sir.

11 Q. Okay. Are you the controlling agent for the CI,
12 Robert Drayton, in this case?

13 A. No, sir. Detective Burke was originally, I believe,
14 the -- the controlling agent. He's since moved away and so
15 I -- I've been in contact with him, but just -- just for
16 logistics reasons.

17 Q. Are you the person from CPD that's had the most
18 contact with the CI in this case regarding this case?

19 A. No, sir. I would say no.

20 Q. Who would that person be?

21 A. I believe it would be -- probably, I guess -- are you
22 saying -- maybe I'm not understanding your question, but
23 who had the most handling with the informant would be
24 Detective Burke. I mean, I've talked to -- I've spoken
25 with the informant regarding this case since Detective

1 Burke has moved away, but as to the details of this case
2 I don't think so.

3 Q. Well, how many times have you spoken with the CI in
4 this case about this case?

5 A. I -- in preparation for the trial, I -- that's when
6 I became involved with the informant. That's it. I was
7 not his handling -- his handler. I've just been providing
8 transportation to and from court hearings or whatever.
9 Does that make sense?

10 Q. Well, sure, but I'm still looking for a number of how
11 many times you've --

12 A. Oh, let's see. I met with him yesterday. I mean,
13 I'd say four to five maybe; maybe more, maybe less. Maybe
14 three to five.

15 Q. Over how long a period? Going back how far?

16 A. I would just say this past couple of weeks just
17 preparing for it. Does that make sense?

18 Q. Yes, sir.

19 MR. MARSHALL: Excuse me one second while I confer
20 with my client. Thank you.

21 THE WITNESS: Yes, sir.

22 MR. MARSHALL: I don't have any more questions. Thank
23 you, sir.

24 THE WITNESS: Thank you, sir.

25 THE COURT: Ms. Mulkey.

1 MS. MULKEY: Thank you, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. MULKEY:

4 Q. Detective Grill, you have a diverse and lengthy
5 background in narcotics investigations?

6 A. Yes, ma'am.

7 Q. And -- but were you the case agent for this case?

8 A. No, ma'am, I was not.

9 Q. And, generally speaking, everybody has an assignment
10 from the case agent?

11 A. Yes, ma'am.

12 Q. And who writes that report on the case?

13 A. It would be Detective -- or the case agent. I'm
14 sorry.

15 Q. And during your riding around, doing surveillance and
16 just your every day job as a police officer, do you write a
17 report every time you see someone driving a vehicle?

18 A. No, ma'am, we don't.

19 Q. And every time that you see something that arouses
20 your suspicion, do you write a report?

21 A. No, ma'am, we do not.

22 Q. Are you required to write a report?

23 A. No, ma'am, we are not.

24 Q. Is it fair to say that you observe a lot of things on
25 a -- on a surveillance for a controlled buy that may arouse

1 your suspicion?

2 A. Yes, ma'am.

3 Q. And is that kind of because you're in the zone at the
4 time?

5 A. Yes, ma'am, I'm -- yeah.

6 Q. And things can be of significance to you but not
7 concrete?

8 A. Yes, ma'am.

9 Q. And you didn't run the plates on that car, did you?

10 A. No, ma'am, I did not.

11 Q. And based on your testimony earlier, it's quite
12 possible that those plates would not have come back
13 registered to the Defendant.

14 A. Very -- very likely, yes, ma'am.

15 Q. And why is that again?

16 A. It's a way of insulating themselves from actual
17 ownership of a vehicle or -- or even being in the area to
18 try to stay unknown to law enforcement. You know, if
19 someone is caught with drugs in a vehicle and we move to
20 seize that vehicle, they use that vehicle for drug crimes,
21 and that's a way someone can claim they're an innocent
22 owner or it could be a rental vehicle, which is very common
23 for drug dealers to utilize, which it would be owned by a
24 rental company.

25 Q. And so a car that you had previously seen the

1 Defendant driving on the surveillance just prior to a buy
2 was of significance to you?

3 A. Yes, ma'am. Just --

4 Q. But you could not tie that to the Defendant?

5 A. I mean, we --

6 Q. With specificity. Let me rephrase that. You could
7 not tie that to the Defendant under his name?

8 A. Right. I -- I want to say that the vehicle had New
9 -- or not New York, North Carolina license plates or a
10 Virginia license plate, but I'm not a hundred percent,
11 which leads us to believe that it was a rental vehicle.
12 But, like I said, I'm not a hundred percent. So,
13 therefore, yeah, it wouldn't have been in his name or her
14 name.

15 Q. So it -- it was a hunch?

16 A. He was known to us to operate and utilize a gray
17 Dodge Charger and that Charger was at -- parked on Ashton
18 Street right down from the house where the CI was going to
19 purchase the drugs from.

20 Q. And that -- that was why it was of significance to
21 you?

22 A. It just lets us know that he's in the area.

23 Q. That would --

24 A. Or he -- that's where he's at.

25 Q. And that is your opinion?

1 A. Yes, ma'am.

2 Q. Now you testified that -- earlier that you
3 corroborate what you see and hear on a video with a
4 subsequent statement from a CI?

5 A. Yes, ma'am.

6 Q. And if there is an inconsistency between what you see
7 and you hear and what the CI tells you in that statement,
8 what do you do?

9 A. We refer to the video. I mean, if -- if we see a
10 discrepancy or something that the -- the CI says or
11 something in that, we'll just go back to the video. The
12 video doesn't lie. It's -- it is what it is, and, you
13 know, minor details, car colors or -- or just the small
14 details, you know, some people do forget those.

15 Q. And, you know, you mentioned that these CI's are all
16 just from the community and where they later go to do a
17 buy?

18 A. Yes, ma'am, sometimes.

19 Q. And these investigations, they're fluid?

20 A. Very fluid.

21 Q. And so would it alert other members of the community,
22 would it raise suspen -- suspicion in your opinion if
23 someone who is from the community passes them and fails to
24 acknowledge them?

25 A. It could. I mean, it's kind of -- it's kind of weird.

1 Q. So it -- does it concern you as a narcotics detective
2 if while you're listening to a wire you hear somebody shout
3 out "hey" or "what's up" to somebody else?

4 A. No, ma'am, it's -- I mean, that's human nature. You
5 know, if I see somebody I know, I'll go talk to them. I
6 mean, we tell our informants to act nom -- act normal,
7 don't -- you know, just act -- be yourself, act normal.

8 Q. But there are -- there's a fluid investigation, but
9 there are some specific protocols?

10 A. Yes, ma'am, there are.

11 Q. And you said that they search a CI prior to sending
12 them out into the field?

13 A. Yes, ma'am, we do.

14 Q. And, generally speaking, what is that -- what is that
15 search? How -- what does that search entail?

16 A. It's a very detailed search and we search pretty much
17 every crevice of -- of an informant's body, pockets,
18 anywhere that they can hide drugs or hide, you know, a
19 weapon or whatever, we -- we search those individuals.

20 Q. And they are given a specific amount of money?

21 A. Yes, ma'am.

22 Q. And the details of -- of where they're going or who
23 they're going to try and buy from, those are arranged prior
24 to them going out?

25 A. Generally speaking, yes, ma'am.

1 Q. So unless a drug dealer was just gonna front them
2 drugs, they would not have the ability to pay for any
3 additional drugs while driving around to make the buy that
4 you have sent them on?

5 A. Correct. If --

6 Q. In your --

7 A. I'm sorry. We -- if someone has a large amount of
8 money on them, our informant or -- an informant has a large
9 amount of money, we'll -- we'll hold onto that money so
10 that way they have our money, the money that's agreed to be
11 spent, they have that and no other money on them.

12 Q. Did you actually handle any evidence in this case?

13 A. I don't believe so, but I -- I'd say no.

14 Q. In your preparation with our office, did we speak to
15 you about the handling of any specific evidence?

16 A. I don't remember.

17 Q. And as part of a controlling agent's duties, do you --
18 for CI's, do you maintain contact with them over time for
19 logistical purposes?

20 A. Sometimes we do. You know, we have -- we do have
21 informants that have worked for years, have done a lot of
22 -- a lot of stuff, so there is reasons why we keep in
23 contact with informants and we always try to keep a good
24 number for an informant just in case if anything happens.

25 Q. And if you're providing transportation to -- to one

1 of these CI's, do you get into the substantive part of the
2 case or are you just kind of shooting the breeze?

3 A. Just shooting the breeze.

4 Q. Do you ever discuss any concerns that they have?

5 A. Yes, ma'am. I mean, you know, I ask them how they're
6 doing or, you know, just general conversation like that.

7 Q. And logistics for picking them up or dropping them
8 off?

9 A. Yes, ma'am.

10 Q. How to get in touch with them?

11 A. Yes, ma'am.

12 MS. MULKEY: The Court's indulgence, Your Honor?

13 THE COURT: Yes, ma'am.

14 MS. MULKEY: I have no further questions, Your Honor.

15 RE CROSS EXAMINATION

16 BY MR. MARSHALL:

17 Q. Officer Grill, I think you said in your direct
18 testimony that you think you probably saw Officer Burke
19 search the CI in this case on June 20th?

20 A. Yes, ma'am. Yes, sir. I'm sorry.

21 Q. Okay. You're not positive about that I think you
22 said. I just want to be clear.

23 A. Well, it was over, you know, two years ago, but I
24 believe -- I believe we were meeting right there by the --
25 by the Citadel Alumni Center in the back lot back there and

1 I believe when I was pulling in he was searching the -- the
2 informant at that time. I believe so, yes, sir.

3 Q. Do you know whether the CI's underwear, his socks,
4 underclothing, were -- were searched?

5 A. I mean, we -- we search the -- we search our
6 informants very well, very good.

7 Q. I understand in those particular cases. You didn't
8 conduct the search. Did you witness a search of the CI's
9 underwear and/or socks?

10 A. I mean --

11 Q. If you don't know, that's fine, but if you do know, we
12 need to --

13 A. I can't testify -- I mean, I don't know on this
14 particular instance, but I have seen and observed Detective
15 Burke search informants on numerous times at which time he
16 searches -- he searches every crevice of a person's body I
17 guess you could say. He gets in there, if that makes
18 sense. Is that what you're asking?

19 Q. Well, not to be too graphic, is there --

20 A. I'm sorry.

21 Q. -- is there a, say, buttocks/cheek search conducted?

22 A. Yes, sir. He -- he gets up in there.

23 Q. All right. But in this case you're not sure whether
24 that was done, right?

25 A. It -- it would be typical behavior, so it would stand

1 out to me, if that makes sense.

2 Q. Okay. And regarding this car that you've testified
3 about today, now you don't know the VIN on this car, this
4 gray car, correct?

5 A. No, sir, I do not.

6 Q. And you don't know the tag number?

7 A. No, sir. I -- I want to say -- like I said earlier,
8 I believe it was a North Carolina plate or -- or it could
9 have been a South Carolina plate, but I just -- I remember
10 something about the plate that stood out, but I don't
11 remember in particular what, but, yes, it was a gray
12 Charger.

13 Q. And you didn't take any photos of that car, correct?

14 A. It's on the video, if that makes sense.

15 Q. Okay. I didn't -- I didn't realize that because I
16 didn't know a gray car was an issue in the case because it
17 doesn't appear in any report, but --

18 A. It's on the video.

19 Q. -- you say --

20 A. It's on the video.

21 Q. -- there's a gray car on the video?

22 A. Yes, sir.

23 Q. Okay. You don't have any photographs of Dean Seagers
24 ever being in a gray -- Charger you said it is?

25 A. Yes, sir.

1 Q. You don't have any photos of --

2 A. No, sir. Not to my knowledge, no, sir.

3 Q. So you can't say beyond a reasonable doubt that
4 the car that you're now testifying about as being near
5 Ashton --

6 MS. MULKEY: Objection, Your Honor. Asked and
7 answered.

8 THE COURT: I'm gonna allow it.

9 BY MR. MARSHALL:

10 Q. So, final question.

11 A. Uh-huh.

12 Q. If I'm understanding, you can't say beyond a
13 reasonable doubt that the car that you're testifying
14 about today that you said was somewhere near [REDACTED] Ashton is
15 a car that you've seen Dean Seagers in before, can you?

16 A. We -- we knew that he operated that vehicle. Where
17 that intel came from, I don't know if I saw him or
18 Detective Burke saw him, but we knew that he was operating
19 and utilizing that vehicle. Does that make sense? Is that
20 clear?

21 Q. So you didn't personally know, but somebody you think
22 had probably told you yeah, I think that's a car that Dean
23 Seagers has been in before? Is that what you're saying?

24 A. It -- it could have been, yes, sir. That would be
25 something that's covered in the briefing. You know,

1 known locations, known associates of a -- of a particular
2 guy that we're investigating, known vehicles, that's
3 something that we all cover in a -- in a pre-briefing of
4 an operation.

5 Q. Uh-huh.

6 A. Does that make sense?

7 Q. Yeah, but the car wasn't important enough for you to
8 do any check on it and find out its source or try to get
9 any fingerprints off of it or DNA off of it?

10 A. It would have been a little weird to go up there
11 with the Crime Scene Unit to -- if you're continuing an
12 investigation to take that car into custody at that
13 time. What premises are we taking that vehicle? We'd
14 have to explain that and then obviously we'd have to tell
15 Mr. Seagers that we were investigating him for drug crimes,
16 which I would think he would cease his activities at that
17 point. Does that make sense?

18 Q. Well, you could run a VIN and you said you thought it
19 was a --

20 A. It could have been done. Someone -- I don't know.
21 Someone could have done that. I -- I don't know.

22 Q. Right. The -- but the car wasn't especially important
23 on June 20th of 2012, but now you're saying it is very
24 important?

25 A. I believe we knew that he was driving that vehicle and

1 that's -- would indicate to us that he is there at that
2 location.

3 Q. Uh-huh. And that's something, again, you would agree
4 that that would be a good thing to put in a report,
5 correct?

6 A. At that time? I mean, sure. It could have been just
7 -- just one more detail, but someone could have checked
8 that, I don't know. I was just -- on that particular day,
9 I was just assigned the particular task of surveillance in
10 that area and maintain a perimeter of security and be able
11 to react if something happens. Typically if we see
12 somebody driving a vehicle, we'd say hey, you know, I've
13 got them spotted over here or this car's parked in this
14 location and that would be pretty much what it -- what it
15 would entail.

16 Q. Well, just a couple more questions. Did you at -- at
17 some point see the CI riding his bicycle on June 20th of
18 '12?

19 A. Yes, sir.

20 Q. Okay.

21 A. I think it -- I think it was a bike, yes, sir. He --
22 he was riding a bike, yes, sir.

23 Q. Did you follow along behind him?

24 A. I could have at some point. I'm not a hundred
25 percent, so I -- I don't know the answer to that. I could

1 have, yes, sir.

2 Q. But you never wrote a report indicating what your role
3 in surveillance of the CI was?

4 A. No, sir. And I -- I -- like I said earlier, I believe
5 I was parked across the street from Ashton either at the
6 McDonald's or the -- the big gray building, but -- I think
7 it's like Harbor Tower. There was a Subway right there. I
8 believe that's where I was parked, in that area, yes, sir.

9 Q. And you're not able to say for certain whether or not
10 you and/or any combination of other officers, which you say
11 there were several in the area, maintained constant visual
12 contact with the CI while he -- from the time he left
13 Officer Burke until he got to [REDACTED] Ashton and, vice versa,
14 leaving [REDACTED] Ashton back to Detective Burke; is that correct?

15 A. I'm sorry?

16 Q. You're not -- you're not -- you're not able to say
17 whether the City of Charleston Police Department maintained
18 constant visual contact with the CI in this case?

19 A. Well, we -- we attempt to -- we attempt to do that
20 and I know efforts were made on that particular date to do
21 that through a series of people who may be following him,
22 I don't know, but if -- you know, like I said earlier, you
23 can see on the video footage of some surveillance vehicles
24 following the Defendant -- or following the informant. You
25 know, one person can cover -- maintain surveillance on all

1 of Hagood Avenue, you see what I'm saying, so it could be
2 just one person or it could be multiple people that -- that
3 keep an eye on -- on the informant, if that makes sense.

4 Q. Right. And if constant visual contact was made
5 between agents of CPD and the CI, that would be something
6 important to document; would it not?

7 A. Not in particular, no, sir. If something stood out to
8 us, then we would document it, if that makes sense.

9 Q. All right. Well, from your review of the video, do
10 you recall hearing any phone conversations between an
11 officer of CPD, whom I believe to be Officer Burke, I could
12 be mistaken --

13 A. Right.

14 Q. -- between some officer and the CI? Do you recall
15 that?

16 A. Yes, sir. I believe there was a phone call made, yes,
17 sir.

18 Q. Okay. And do you recall further that it seems to be
19 -- the substance of that call is that the officer or CPD
20 agent, whoever it was, was trying to find out the location
21 of the CI?

22 A. I don't know the -- the substance of that phone call.
23 I don't remember it. I mean, if it's on the video, it's on
24 the video, but --

25 Q. You don't recall?

1 A. I don't recall that --

2 Q. Okay.

3 A. -- but I do recall a phone call. Does that make
4 sense?

5 Q. Yes, sir.

6 MR. MARSHALL: All right. I'm done.

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

8 (Witness excused.)

9 THE COURT: Ladies and gentlemen, there's a matter
10 I must take up outside of your presence. It's also an
11 appropriate time -- I'd like to continue with the
12 testimony and get at least one or two more witnesses in
13 this evening. If anyone has any childcare issues or other
14 issues that you cannot stay past 6, 6:30, please ask to
15 use the telephone. We'll take about a ten minute break.
16 Mr. Foreperson, if anybody has any issues, please let me
17 know.

18 Please rise for the jury.

19 (Whereupon, the jury retires to the jury room at
20 4:32 PM.)

21 THE COURT: Thank you. Be seated.

22 Please go get the CI. Anything before we take our
23 break?

24 MS. MULKEY: Nothing.

25 MR. MARSHALL: No, ma'am.

1 THE COURT: All right. Thank you. We're -- we'll
2 take a ten minute break.

3 (Recess taken.)

4 THE COURT: Please bring in the jury.

5 (Whereupon, the jury returns to the courtroom at
6 4:56 PM.)

7 BAILIFF: Jurors all seated, Your Honor.

8 THE COURT: Thank you. Please be seated.

9 Please swear the witness.

10 CLERK: If you would stand and put your left hand on
11 the Bible, sir, and raise your right.

12 ROBERT DRAYTON, JUNIOR,

13 having been duly sworn, testified as follows:

14 CLERK: You may be seated, sir. Sir, once seated if
15 you could please state your first and last name and then
16 spell your last loudly and clearly into the microphone for
17 the record, please.

18 THE WITNESS: Robert Drayton, D-R-A-Y-T-O-N.

19 MS. MULKEY: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MS. MULKEY:

22 Q. Mr. Drayton, I know it's been a long day for everyone
23 here. I'll try and get through this very briefly, okay?

24 Do you know someone by the name of Dean Seagers?

25 A. Uh-huh.

1 THE COURT: Is that a "yes"?

2 THE WITNESS: Yes, ma'am.

3 THE COURT: Thank you.

4 BY MS. MULKEY:

5 Q. And how long have you known Mr. Seagers?

6 A. A couple of years.

7 Q. How do you know Mr. Seagers?

8 A. Through a family member of mine.

9 Q. Do you know him by a nickname?

10 A. We call him Baby Dean.

11 Q. And is he the Defendant in this case?

12 A. Yes, ma'am.

13 Q. Now did you receive a subpoena today to be here?

14 A. Yes, ma'am.

15 Q. Do you want to be here today, Mr. Drayton?

16 A. No, ma'am.

17 Q. Did you ever work as a confidential informant for the
18 Charleston Police Department?

19 A. Yes, ma'am.

20 Q. And when you did a buy on June 20th of 2012, were you
21 searched and wired?

22 A. Yes, ma'am.

23 Q. Who did that for you?

24 A. Detective Burke.

25 Q. And at the end of the buy, did you give drugs to

1 Burke?

2 A. Yes, sir. I mean, yes, ma'am.

3 Q. And since then have you reviewed a video?

4 A. Yeah.

5 Q. And have you initialled that video in my office?

6 A. Yes, ma'am.

7 Q. Thank you.

8 MS. MULKEY: Your Honor, at this time we would move to
9 admit State's Exhibit Number 1.

10 THE COURT: Any objection?

11 MR. MARSHALL: No, ma'am. Thank you.

12 THE COURT: State's 1 into evidence without objection.

13 (State's Exhibit Number 1, an audio/video recording,
14 was admitted into evidence.)

15 THE COURT: You may publish at this time.

16 MS. MULKEY: I would like to ask a few more questions,
17 if I may, Your Honor.

18 BY MS. MULKEY:

19 Q. Mr. Drayton, did you -- you -- you testified you did a
20 buy with Charleston Police Department on June 20, 2012.

21 What drug did you purchase?

22 A. Cocaine.

23 Q. And where did you purchase that from?

24 A. Over on Ashton Street.

25 Q. Where on Ashton Street? Do you remember the address?

1 A. No, ma'am.

2 Q. And what about where in a -- was it inside the house
3 or outside the house?

4 MR. MARSHALL: Your Honor, I'm sorry to interrupt, but
5 I -- I might -- I might have misunderstood her. I thought
6 that State's 1 is a video. Is that not the case?

7 THE COURT: It is.

8 MR. MARSHALL: Okay. All right. Because I was
9 looking -- I apologize, but I'm looking at an exhibit list
10 that was given to me by the Solicitor and State's 1 is not
11 a video, so I --

12 THE COURT: I'm not -- I'm not sure what that is, but
13 the Court's list is State's 1 is the video --

14 MR. MARSHALL: Okay.

15 THE COURT: -- and that's what we're going by. Thank
16 you.

17 MR. MARSHALL: Thank you.

18 BY MS. MULKEY:

19 Q. Thank you, Mr. Drayton. Where on Ashton Street? Was
20 it a house or a field?

21 A. A house.

22 Q. And where in the house did you buy those drugs from?

23 A. Outside.

24 Q. And where outside?

25 A. By a window downstairs.

1 Q. How did you get the drugs?

2 A. Someone lowered it down to me.

3 Q. And who did you buy --

4 MR. MARSHALL: I'm sorry, I couldn't hear that
5 response.

6 THE COURT: Could you repeat your last response,
7 Mr. Drayton?

8 THE WITNESS: Someone lowered it down to me.

9 MR. MARSHALL: Okay. Thank you, sir.

10 BY MS. MULKEY:

11 Q. Was it lowered to you using a -- a hand?

12 A. Like a string.

13 Q. And was the string attached to anything?

14 A. A jar.

15 Q. And who did you buy drugs from that day?

16 A. Baby Dean.

17 Q. And did you personally see with your own eyes the man
18 that you call Baby Dean that day?

19 A. Uh-huh.

20 Q. Where did you see him that day?

21 A. In the window.

22 Q. And what story was that window on? The first story or
23 second story?

24 A. Second story.

25 Q. And did you see him lower the drugs to you?

1 A. No.

2 Q. Did you --

3 A. I just see the string come down.

4 Q. And just before you saw the string come down, did you
5 see Baby in the window?

6 A. Afterward, but -- I didn't see who lowered down the
7 string.

8 Q. Okay.

9 A. Because there was three people in the house. It was
10 some other people in the house.

11 Q. Okay. And -- but you saw Baby afterwards?

12 A. (Nods head.)

13 Q. Okay. And Baby is Dean Seagers?

14 A. Uh-huh.

15 Q. And who did you call to arrange this purchase?

16 A. Burke.

17 Q. And did Burke -- did you use your phone to set up who
18 to buy from?

19 A. Uh-huh.

20 Q. And who did you call?

21 THE COURT: Is that a "yes"? Is that a "yes"?

22 THE WITNESS: Yes, ma'am.

23 THE COURT: Thank you.

24 BY MS. MULKEY:

25 Q. And who did you call?

1 A. Baby Dean.

2 Q. And after this was done, who did you -- what did you
3 do with the drugs?

4 A. I -- I gave them back to Detective Burke.

5 Q. And did Detective Burke search you again?

6 A. Yeah, he searched me.

7 Q. Does he do a pretty detailed search of you?

8 A. Uh-huh.

9 Q. And did he give you the money to buy the drugs?

10 A. Yes, ma'am.

11 Q. And when you got back to Detective Burke and you
12 handed him the drugs, did you provide a written statement?

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

14 Q. And was that statement the truth?

15 A. Yes, ma'am.

16 Q. And -- now, Mr. Drayton, have you ever been in trouble
17 with the law?

18 A. A long time ago.

19 Q. But you were truthful with detectives during this
20 investigation?

21 A. Yes, ma'am.

22 Q. And, Mr. Drayton, were you ever approached to write
23 another statement?

24 A. I was approached, but I didn't wrote it.

25 Q. Yes, sir. Who -- who approached you to write a

1 statement?

2 A. Some lawyer. A lawyer from James Island. I don't
3 know the lawyer's name.

4 Q. Okay. Did he call you?

5 A. No.

6 Q. How did you get to his office?

7 A. By a friend.

8 Q. And did you drive to his office?

9 A. No, ma'am.

10 Q. Your friend drove you?

11 A. Uh-huh.

12 Q. Who's that friend?

13 A. I don't want to call his name in here.

14 Q. Is that friend a friend of Baby Dean?

15 A. I don't know. I guess so.

16 Q. And so he picked you up?

17 A. Uh-huh.

18 Q. And he drove you to a lawyer's office?

19 A. (Nods head.)

20 Q. And did he tell you where you were going?

21 A. No.

22 Q. And when you got there, did he -- did this friend wait
23 in the car for you?

24 A. No.

25 Q. Did he come into the office?

1 A. Yeah.

2 Q. And when you got into the lawyer's office, did you go
3 into a room to talk to the lawyer?

4 A. I talked to a man, yes, ma'am.

5 Q. And did this friend follow you in that room?

6 A. Uh-huh.

7 Q. And did you pay the lawyer for this document that was
8 written?

9 A. No. I didn't have no money, no.

10 Q. I'd like to -- to show you what's been premarked as
11 State's Exhibit Number 4.

12 MS. MULKEY: Your Honor, may I approach the witness?

13 THE COURT: You may.

14 BY MS. MULKEY:

15 Q. I just need you to look at this, Mr. Drayton. Have
16 you ever seen that before?

17 A. No.

18 Q. Did you write that statement?

19 A. No, that's not even my handwriting.

20 Q. Is this statement the truth?

21 A. No.

22 Q. Is the statement that you gave Detective Burke right
23 after this incident occurred the truth?

24 A. Yes, ma'am.

25 Q. Is everything that you have told us here today the

1 truth?

2 A. Yes, ma'am.

3 MS. MULKEY: Thank you, Mr. Drayton.

4 Your Honor, at this time I would like to publish the
5 video to the jury.

6 THE COURT: All right. You may.

7 MR. MARSHALL: Judge, I was remiss and should have
8 -- that went so quickly in the beginning, I should have
9 renewed my -- for the record, my objections to the
10 identification testimony that we had had a hearing on
11 previously.

12 THE COURT: All right. Overruled. Thank you.

13 MR. MARSHALL: Thank you.

14 MS. MULKEY: Your Honor, I apologize for the delay.
15 It's opening. It's just taking a minute.

16 Your Honor, I do apologize. We did this this morning
17 and it was working. We can get someone over here if you'd
18 like or in the meantime we can keep trying.

19 THE COURT: Do you know what's wrong with it?

20 MS. MULKEY: I do not claim to -- to know much about
21 technology. I know it worked this morning, but we can get
22 someone over here.

23 THE COURT: All right. Let's do that.

24 (Discussion off the record.)

25 (Whereupon, State's Exhibit Number 1, an audio/video

1 recording, was played for the Court and jury.)

2 BY MS. MULKEY:

3 Q. Let me give you State's Exhibit Number 2. Is that the
4 document you're referring to? Take a minute to look that
5 over.

6 A. Yes, ma'am.

7 Q. And that's the statement you gave to Burke after you
8 guys finished up there on the video?

9 A. Yes, ma'am.

10 Q. And you signed this statement?

11 A. Yes, ma'am.

12 MS. MULKEY: Your Honor, at this time the State would
13 move to introduce State's Exhibit 2 in evidence and publish
14 it to the jury.

15 MR. MARSHALL: No objection.

16 THE COURT: State's 2 into evidence without objection.
17 You may publish.

18 MS. MULKEY: Thank you, your Honor.

19 (State's Exhibit Number 2, a statement dated 6/20/21,
20 was admitted into evidence and published to the jury.)

21 MS. MULKEY: At this time I have no further questions.
22 Please answer any questions the defense may have,
23 Mr. Drayton.

24 CROSS-EXAMINATION

25 BY MR. MARSHALL:

1 Q. Good evening, Mr. Drayton.

2 A. Good evening.

3 Q. I'm Cameron Marshall and we met earlier. I'm
4 representing Dean Seagers. We all need to get clear, with
5 your help, on what it is that you're saying because there's
6 some different statements from you. And I guess I'd like
7 to get you to help us understand what it is you're saying
8 right here this evening and then maybe we can talk about
9 some of the other things and -- and you can tell us your
10 thoughts on those and whether those are things that you've
11 said or not, okay?

12 If -- if you don't mind, I thought I understood you to
13 say here this evening that you don't know who lowered down
14 drugs on a string in a cup to you. Did I understand you
15 correctly?

16 A. Uh-huh.

17 Q. Is that a "yes", sir?

18 A. Yes, sir.

19 Q. Okay. And you did seem certain that there were
20 several people in this location, this dwelling; is that
21 correct?

22 A. Uh-huh.

23 Q. So can you be -- so that we're all clear, can you
24 just tell us again how many people you know were in that
25 apartment?

1 A. It was three.

2 Q. A total of three?

3 A. Uh-huh.

4 Q. Okay. And then I think I heard you say that you
5 believe that you saw Dean Seagers in the window after
6 some drugs you say had been lowered down to you; is that
7 correct?

8 A. Yes, sir.

9 Q. All right. And what was your -- so the jury can make
10 a determination on your testimony, tell us about your
11 ability to see whom you say you believe to be Dean Seagers
12 in the window. In other words, for instance, how far away,
13 how long do you believe that you saw Mr. Seagers in the
14 window, what was the lighting --

15 A. It was a glimpse seeing, that's all. Just a little
16 glimpse.

17 Q. A glimpse?

18 A. Yeah.

19 Q. Well, as I look at that video, and I don't know
20 because I wasn't there and it's really hard to see that
21 upstairs window, but it appears to me there's some sort of
22 blind or curtains or covering. Am I correct in that?

23 A. No.

24 Q. There was nothing covering the window?

25 A. No, sir.

1 Q. Okay. Do you know -- well, tell us what -- what you
2 remember, if you remember, about what -- what the lighting
3 conditions were like. Now we can see basically outside,
4 but if someone were in the window, do you know whether they
5 were -- could you tell whether there were lights on inside
6 the apartment, for instance?

7 A. It was daytime. I don't believe the lights was on.

8 Q. You don't think so?

9 A. No, sir.

10 Q. And about what is the distance from which you believe
11 that you saw Mr. Seagers? Can you gauge that distance?

12 A. No, sir.

13 Q. All right. And you say it was just for a split second
14 that you believe you saw him?

15 A. (Nods head.)

16 Q. Is it possible that you could be mistaken in believing
17 that you saw him?

18 A. I could be, I don't know, but I just saw his head.

19 Q. Now let's try to maybe sort of finish up with this
20 issue on the statements and -- and you talked about it a
21 little bit on your direct examination, but there's evidence
22 in the case that you gave a prior statement. And this has
23 been marked as State's Exhibit 4. Did you look at this on
24 direct? I'm sorry. Did you look at this statement?

25 A. Uh-huh.

1 Q. You did?

2 A. Uh-huh.

3 Q. So you know what it says? You just read it?

4 A. Uh-huh.

5 Q. You read okay, correct?

6 A. Yeah.

7 MR. MARSHALL: All right. Has this been admitted?

8 I'm sorry.

9 THE COURT: It -- 4 has not.

10 MR. MARSHALL: It has not? I move to admit State's 4.

11 MS. MULKEY: I would object.

12 THE COURT: All right. What -- please approach.

13 (Proceedings held at the bench; not reported.)

14 BY MR. MARSHALL:

15 Q. All right. Mr. Drayton, this is a -- this one's been
16 marked as a State's exhibit, so we're gonna have the -- the
17 identical one. If you want to look at this --

18 THE COURT: I thought you were just gonna mark it as
19 Defendant's 1.

20 MR. MARSHALL: All right. Let me do that.

21 Defendant's 1. You can mark it as ID.

22 (Defendant's Exhibit Number 1 was marked for
23 identification.)

24 BY MR. MARSHALL:

25 Q. Now let me let you hold this other one and so that as

1 we talk about it, if you need to refer to it, okay, but as
2 I read this statement it appears to be dated February 23rd
3 of this year, 2015. Is that right, sir?

4 A. Yes, sir.

5 Q. Okay. And this is a statement that was taken at an
6 attorney's office, an attorney named Mark Evans; is that
7 correct?

8 A. Yes, sir.

9 Q. You remember going to Mr. Evans' office?

10 A. Yeah.

11 Q. Okay. And it's also -- it's also notarized by a
12 notary public named Lucille Browder. Do you remember a
13 woman being --

14 A. A short lady with blond hair?

15 Q. I believe that is what she looks like.

16 A. Yes, sir.

17 Q. Do you recall her?

18 A. Uh-huh.

19 Q. Okay. Well, do you recall her coming in -- do you
20 know what a notary public is, first of all?

21 A. Yes, sir.

22 Q. Okay. That's somebody that you can go and swear the
23 truth of something in front of, right?

24 A. (No verbal response.)

25 Q. Okay. Do you remember Ms. Browder coming into a room

1 and asking you if this was the statement that you had given
2 on February 22nd?

3 A. She didn't ask me nothing. All -- all -- she just
4 came in the room and then Mark told her something and she
5 just looked at me and just went on out the room. She
6 didn't say nothing to me.

7 Q. She -- she did not say --

8 A. She didn't say nothing to me.

9 Q. All right. Okay. Well -- and I'm gonna -- I'm gonna
10 -- I'm gonna wait on that. Okay. No more -- no more
11 questions about that.

12 Now in this -- in this very courtroom you've given
13 some sworn testimony concerning this case, right? Earlier
14 today, in fact. And if I understood you correctly, at that
15 time you said -- well, I want to see what your recollection
16 is. If we need to, we'll play back the transcript --

17 A. No, we don't -- no, just ask me.

18 Q. Well --

19 A. I remember what I told you here this morning.

20 Q. Okay. Well, what is it that you said about whether or
21 not anyone, and in particular, Mr. Seagers, sold you any
22 drugs on June 20th of 2012?

23 A. Okay. Let me clarify that. The reason why I said
24 that this morning because I got a threatening phone call,
25 okay, and they threatened my family.

1 Q. Well, let me -- let me -- let me stop you for a minute
2 and -- and object and take up an issue with the judge, if
3 we might.

4 THE COURT: You can approach.

5 MR. MARSHALL: May we approach?

6 (Proceedings held at the bench; not reported.)

7 BY MR. MARSHALL:

8 Q. Well, let's talk about it. You -- you have said --
9 okay. So I guess, and this was elicited from you on
10 direct, that -- did you say something in court earlier
11 today that was not true while you were under oath?

12 A. What was your question?

13 Q. Well, that's my --

14 A. It's confusing. You got me confused.

15 Q. That's -- okay. That's my current question. Well,
16 first of all, I'd asked you what is it that you said
17 earlier and you didn't really tell us, but you said that
18 you were scared because you believe a threat had been
19 issued.

20 A. I got a threatening phone call on my phone this
21 morning.

22 Q. Okay. Well, not from Dean Seagers, correct?

23 A. No.

24 Q. Okay. So what is it that you testified to under oath
25 right in that chair earlier today regarding whether or not

1 you bought drugs on the 20th and whether or not you got
2 drugs from Dean Seagers?

3 A. I told them I didn't -- that day on the 12th, I didn't
4 do nothing that day on the 12th. What I told you earlier
5 this morning --

6 Q. On the 20th now. Let's be clear on the date.

7 A. On the 20th, yeah.

8 Q. June 20th of 2012.

9 A. Yeah.

10 Q. Okay.

11 A. You asked me and I told you -- I said -- you say what
12 did I did on June the 20th --

13 Q. Uh-huh.

14 A. -- and I said I did all sorts of things on June the
15 20th.

16 Q. Right. I remember that.

17 A. Okay?

18 Q. Right.

19 A. And you asked me something else about Dean and I told
20 you "no" because I was afraid at the moment, you know. I
21 got a threatening phone call.

22 Q. Okay. So earlier you had said that you didn't get any
23 drugs from Dean, but really if -- if I'm understanding you
24 correctly, that's not any different than what you're saying
25 right here this evening, is it? Because you just said it

1 on direct and said it talking to me that you don't know
2 whether Dean Seagers delivered any drugs to you or not; am
3 I correct?

4 A. You're right.

5 Q. Okay. Let's talk a little bit, if -- if you will,
6 please, about the procedure that the City of Charleston
7 Police Department uses when they employ a confidential
8 informant. And you agree you were a confidential informant
9 for them?

10 A. Uh-huh.

11 Q. And were you -- you were being paid, correct?

12 A. Yes, sir.

13 Q. Were you also working off any charges?

14 A. No, sir.

15 Q. No?

16 A. No, sir.

17 Q. So do you have any -- do you know why -- well, you
18 wouldn't know because that's not your -- your form, so I
19 withdraw that question.

20 Now when you were prepared to go to the location on
21 the 20th of June of 2012, you -- you testified you were
22 prepared for that by Mr. Burke. And when I say prepared,
23 what I mean is searched and wired up; is that right?

24 A. Yes, sir.

25 Q. Okay. Was anyone else involved in that process?

1 A. (Shakes head.)

2 Q. Were any other officers around --

3 A. No, sir.

4 Q. -- while the process was taking place?

5 A. No, sir.

6 Q. Did Officer Burke search you during that process of
7 preparing?

8 A. Yes, sir.

9 Q. Can you describe that search? And sort of what I'm
10 particularly interested in --

11 A. Afterward or before?

12 Q. Prior. Prior. So not to be too personal, but we're
13 sort of interested -- did he search your buttocks area, did
14 he search your --

15 A. My what?

16 Q. Your buttocks area.

17 A. What's that got to do with it?

18 Q. Well, it has something to do with --

19 A. No, no, no, no.

20 Q. Well, could you answer whether he did or not and --

21 A. Yes, he -- he searched me thoroughly. He searched me
22 down, pat me down, take all my shoes off, empty all my
23 pants pockets, went in my drawers and everything, all
24 right? But back there, no, sir.

25 Q. Okay. Well, did -- did you say that he did search

1 your underpants?

2 A. Yeah. He searched me thoroughly, yeah. I just take
3 my belt and just flap it out, you know. That's all.

4 Q. What sort of clothing were you wearing?

5 A. Like short pants. Short pants and a T-shirt.

6 Q. Because it was hot?

7 A. Uh-huh.

8 Q. And then, again, I'm sorry to be personal, but did you
9 have boxers or briefs?

10 A. Boxers.

11 Q. Did he ask you to take your --

12 A. No.

13 Q. -- your shorts off? Did -- did he check in the
14 waistband?

15 A. Yeah, he stick his hand this far in mine.

16 Q. All right. But he didn't ask you to lower your outer
17 shorts and touch your underpants, did he?

18 A. All I had was one shorts on. I had my underwears on
19 and my short pants. He went down my pants and he grabbed
20 my boxers and go around the edges and -- and, you know,
21 flip it out --

22 Q. Okay.

23 A. -- bring it out.

24 Q. All right.

25 A. It was a thorough search.

1 Q. Where were you when this occurred?

2 A. I think I was by -- I can't remember. I can't
3 remember.

4 Q. All right.

5 A. I think it's by Dominos, if I'm not mistaken.

6 Q. Down there by the Crosstown?

7 A. Yes, sir.

8 Q. All right. But no other officers were around during
9 that process?

10 A. No, sir.

11 Q. Did any other officers become involved in this -- this
12 video? I don't know if you timed it. It's -- it's nearly
13 twenty minutes. It's about nineteen and change.

14 A. No, sir.

15 Q. Were any other --

16 A. No, sir.

17 Q. Well, let me -- let me finish the question so we have
18 a clear record, okay? I know you know what I'm gonna ask
19 you, but she's trying to take it down and if we're talking
20 at the same time, we're cutting each other off and she
21 can't do that, okay?

22 So during that entire process of the time of this
23 video and the time immediately prior when you were
24 preparing to do what you were gonna do and immediately
25 thereafter when you were disengaging from Officer Burke,

1 so however long that took, including this twenty minutes,
2 did any other officers become involved in what you and
3 Officer Burke were doing?

4 A. At that day?

5 Q. On that day of the 20th.

6 A. No, sir. Not no other officer, no, sir.

7 Q. You believe it was just you and -- and Officer Burke?

8 A. Yes, sir.

9 Q. You didn't see any other officers around?

10 A. No, sir.

11 Q. What -- now on the way over to [REDACTED] Ashton, on the video
12 we can see you speaking on the phone, all right? I think
13 twice, if I'm not mistaken, but I could be. But do you
14 remember having phone conversations on the way over to the
15 Ashton Street location?

16 A. Excuse me?

17 Q. Do you remember having a phone -- because you had a
18 phone with you, right, on your bike?

19 A. Yeah.

20 Q. Do you remember having conversations with anybody on
21 that phone while you were on the way over --

22 A. I was talking to my lady friend on the phone --

23 Q. Okay.

24 A. -- because you heard me use it on the radio.

25 Q. Okay.

1 A. So I was having a conversation on it with my lady
2 friend.

3 Q. On the way over?

4 A. Yeah, when I used the profanity.

5 Q. Okay. But wasn't there another conversation, and
6 maybe I'm misinterpreting it or misremembering, but it
7 sounded like you were telling somebody that you were just
8 getting ready to make a phone call, I think. Do you
9 remember that?

10 A. Unh-unh.

11 Q. All right. Well, we'll look at it -- the jury can
12 look at it for themselves. I could -- I could be
13 misremembering.

14 Did -- so on -- on either the way over to Ashton, is
15 it -- and is that the location where we see you stop in
16 front of that house? Is that Ash -- Ashton?

17 A. (Nods head.)

18 Q. Okay. But -- but either on the way over or on the way
19 back, did you have any conversations with any -- with --
20 with Officer Burke?

21 A. No. Not to my knowledge, no.

22 Q. One second. All right. So you don't remember
23 something where you're telling somebody where -- where you
24 are? You don't remember that on it?

25 A. No, sir.

1 Q. Well, what -- are you claiming that you did receive a
2 substance, a drug substance, at that location?

3 A. Yes, sir.

4 Q. All right. And what substance is it that you went
5 over there with the intent --

6 A. Cocaine.

7 Q. Cocaine --

8 A. Yes, sir.

9 Q. -- powder? Is that what you got?

10 A. Yes, sir.

11 Q. Just beg your pardon for a minute. I'm just trying
12 to make sure I hit the relevant points and don't leave
13 anything out that would be important.

14 Oh, let me ask you this, please. Can you -- can you
15 tell the jury the number of times that you've met with any
16 agents of the State, that being either police officers or
17 people in the prosecutor's office regarding the trial of
18 this case?

19 A. No, this is my first time.

20 Q. You never -- you've never spoken with any of the
21 police officers or the prosecutors in preparation for the
22 trial?

23 A. This is before the trial.

24 Q. Right. That's what I'm saying.

25 A. Yeah, yeah.

1 Q. Prior -- prior to the trial. Can you tell us, if you
2 remember, when and where and how many times you've met with
3 police officers, first of all, in preparation for the
4 trial?

5 A. I know one time. Just one time.

6 Q. Just one time?

7 A. Yeah.

8 Q. Where was that?

9 A. A court case coming up. That's it.

10 Q. I'm sorry, say it again so she can get it down.

11 A. They let me know when this court day was coming up.

12 Q. All right.

13 A. That's the only time.

14 Q. The -- the police did?

15 A. Uh-huh.

16 Q. All right. And then in terms of meeting with
17 prosecutors or people that work in the prosecutor's office,
18 the Solicitor's Office, do you know how many times you've
19 met with them regarding this trial?

20 A. Met two times.

21 Q. And do you know when that was?

22 A. I think it was about -- about two weeks ago or three
23 weeks ago.

24 Q. I think I forgot -- regarding this statement we were
25 talking about that's marked as State's 4 and Defendant's

1 ID Number 1, who -- who do you say wrote this statement?

2 A. His attorney.

3 Q. Okay. And who is -- who is he? When you say "his"
4 attorney, who is that?

5 A. Baby Dean's attorney.

6 Q. Well, I'm -- I'm Dean's attorney.

7 A. The one they have at James Island, Mark.

8 Q. Right.

9 A. I say Mark.

10 Q. Mark Evans?

11 A. Yeah. Yeah, Mark. He wrote the statement, not me.

12 Q. All right.

13 A. He was just asking questions and just writing things
14 down.

15 Q. Well, why do you say that Mark is Dean's attorney?

16 A. What's the lawyer's name there, the office there that
17 we went over to?

18 Q. You went, as I understand it -- I don't know. I
19 didn't know about this statement until after it was sent to
20 me by Attorney Mark Evans.

21 A. Okay. That's the -- that's -- that's the -- that's
22 his lawyer, right?

23 Q. No, I'm his lawyer.

24 A. I'm talking about -- the lawyer office where we went
25 to in Johns Island was the name of his attorney friend,

1 too. That's what he told me.

2 Q. Not to my knowledge.

3 A. Well, then that's what he told me and then he wrote
4 the statement, not me.

5 Q. Well, at the time that this statement --

6 A. Because he had wanted to charge us -- he had wanted
7 to charge our friend a hundred dollars for that -- for the
8 statement. I didn't wrote the statement.

9 Q. Well, who's your friend? Who did you go there with?

10 A. I'm not calling his name.

11 Q. Oh, okay. That's right. You don't want to call his
12 name.

13 A. I don't want to call his name.

14 Q. All right. And at the time this statement was -- was
15 made, I don't know if you have any knowledge of this, do
16 you know whether Dean Seagers was in jail on this charge or
17 out of jail?

18 A. I don't know.

19 Q. You don't even know?

20 A. No.

21 Q. All right. Let me check a couple of things, please.

22 When -- when you got back on your bicycle and -- and
23 it's seen in the video where -- that's Officer Burke,
24 right, who has a van and you ride up and you-all put the
25 bike in the van?

1 A. Yes, sir.

2 Q. Okay. When was it that -- did you hand a package to
3 him of -- of a substance you believed to be powder cocaine
4 at that time?

5 A. Yes. Yes, sir.

6 Q. Did it occur -- because we don't see that on the
7 video. Did it occur right after you put the bike in the
8 van or when did it occur?

9 A. Right after I put the bike in the van I give it to
10 him.

11 Q. Okay. Before you-all move the van? Right there in
12 the parking lot?

13 A. Uh-huh.

14 Q. And that's -- is it true that -- that you-all were in
15 the parking lot of the Best Western there on the Crosstown?

16 A. Yes, sir.

17 Q. Okay. So is Spring Street -- does -- does that
18 property face on --

19 A. Yeah.

20 Q. -- Spring on one side and is it Lock -- Lockwood --
21 help me out. Is it Lockwood on the other side?

22 A. It's Lockwood on the same side.

23 Q. Okay. Are there any other boundary streets other than
24 Spring and Lockwood?

25 A. That's the only streets.

1 Q. Those are the only boundary streets, right?

2 A. Uh-huh.

3 Q. In terms of what you told Officer Burke when you got
4 back to the van -- well, where was it that you wrote the
5 statement that -- that you gave? Where were you located
6 when -- when you wrote that statement?

7 A. The Best Western parking lot.

8 Q. Okay. You gave him the drugs and wrote the statement
9 before you-all even moved the van?

10 A. Uh-huh.

11 Q. All right. Thank you for the clarification. And I
12 think that statement's in -- in evidence. We admitted that
13 one, didn't we? We did?

14 In that statement, I think you say that you were
15 shown a photograph and you said yeah, that's -- that's
16 Dean Seagers --

17 A. Uh-huh.

18 Q. -- correct? Did you say anything else after being
19 shown --

20 A. No, sir.

21 Q. Do you remember exactly what you said? What I'm
22 trying to determine is did you say just "yes, that's Dean
23 Seagers" or did you say anything in addition to that to
24 Officer Burke?

25 A. No, sir.

1 Q. No, sir, you didn't say anything in addition to
2 "that's Dean Seagers"?

3 A. That's it.

4 Q. Do you remember what that photo of Dean looked like?

5 A. No.

6 Q. Was it just a head shot?

7 A. Just a face shot.

8 Q. Just the face?

9 A. Yeah.

10 Q. Okay. And nobody else in the photo, just one face?

11 A. (Nods head.)

12 Q. At the time that you became involved with the City
13 police department, were you actively using drugs at that
14 time?

15 A. Yes, sir.

16 Q. You were?

17 A. (Nods head.)

18 Q. And was powder cocaine your choice of -- of drug?

19 A. Yes, sir.

20 Q. Now I know -- it appears you were convicted of the
21 crime of giving false information to the police at one
22 point; is that correct?

23 A. Yes, sir. That happened a long time ago.

24 Q. 2009, does that sound right?

25 A. Uh-huh. Yes, sir.

1 Q. Okay.

2 MR. MARSHALL: May we approach, Judge, on -- with a
3 quick question on admissibility of something? Thank you.

4 (Proceedings held at bench; not reported.)

5 MR. MARSHALL: I think I'm almost through,
6 Mr. Drayton. Let me just speak with my client for a moment
7 and I may be finished, okay?

8 (Discussion between Mr. Marshall and the Defendant.)

9 MR. MARSHALL: Nothing further, sir. Thank you.

10 MS. MULKEY: Real briefly, Your Honor.

11 REDIRECT EXAMINATION

12 BY MS. MULKEY:

13 Q. Mr. Drayton, you mentioned three people in the house,
14 correct?

15 A. Yes, sir. I mean, yes, ma'am.

16 Q. And you said that you knew the Defendant prior to this
17 buy on June 20th?

18 A. (Nods head.)

19 Q. And I'm not asking you who was in there, but can you
20 tell the difference between the other two gentlemen and --
21 and Baby or the Defendant?

22 A. Somewhat like.

23 Q. You knew them beforehand?

24 A. Excuse me?

25 Q. I'm sorry. Did you know them beforehand as well?

1 A. Know who?

2 Q. The other two individuals in the house --

3 A. Yeah.

4 Q. -- before June 20th?

5 A. Yeah. Uh-huh.

6 Q. Okay. And just so we're clear, you gave a statement
7 afterwards to Burke in the car and --

8 MS. MULKEY: May I approach the witness?

9 THE COURT: You may.

10 BY MS. MULKEY:

11 Q. And that -- here is the -- State's Exhibit Number 2
12 that you looked at.

13 A. Uh-huh.

14 Q. This is the truth. You wrote this, you signed it, and
15 you gave this immediately after the incident?

16 A. Yes, ma'am.

17 Q. And you also testified that you received a call this
18 morning with threats?

19 A. Uh-huh.

20 Q. And you don't want to be here today, do you?

21 A. No.

22 Q. And there was a subsequent document, another document,
23 the one that you have in front of you. Is that the truth?

24 A. No.

25 MS. MULKEY: Thank you. I have no further questions,

1 Your Honor.

2 THE COURT: Mr. Marshall.

3 MR. MARSHALL: Nothing further, Judge. Thank you.

4 THE COURT: All right.

5 Ladies and gentlemen, we've reached an appropriate
6 time for us to break for the evening. Please remember all
7 my admonitions. Do not begin your deliberations, do not
8 discuss this case amongst yourselves. If you'll take your
9 notepads with you, we're gonna lock those up over the
10 evening hour and hand those back to you in the morning.
11 Please be in your jury room and ready to begin at 9:30 in
12 the morning. 9:30 in the morning. Please, if there's --
13 please be respectful. We can't get started until all
14 fourteen of you are back.

15 Please rise for the jury. Mr. Drayton, stay seated.

16 (Whereupon, the jury retires to the jury room to be
17 excused for the evening at 6:02 PM.)

18 THE COURT: Thank you. Be seated.

19 Mr. Drayton, you may step down. Thank you. You are
20 excused.

21 (Witness excused.)

22 THE COURT: Anything before we break for the evening?

23 MR. SOWARDS: Nothing from the State.

24 MR. MARSHALL: I know you don't want to hear any more
25 arguments or motions, Judge, so I won't make any at this

1 point. It's too late.

2 THE COURT: What -- what motions?

3 MR. MARSHALL: Well, I -- I'd like to, again, renew
4 my motion to dismiss the case. He's now testified in this
5 court twice that he doesn't know who sold him any cocaine.
6 He's given a third sworn statement saying the same thing.
7 So three times under oath this witness has now said he
8 doesn't know who delivered cocaine to him.

9 THE COURT: All right. This is not the appropriate
10 time for the -- for that motion again.

11 MR. MARSHALL: Well, I --

12 THE COURT: I've already ruled on it, so thank you.

13 MR. MARSHAL: All right.

14 THE COURT: Any -- other than that, Mr. Marshall,
15 anything?

16 MR. MARSHALL: No. No thank you, Judge.

17 THE COURT: All right. And just for scheduling --

18 MR. SOWARDS: We're ready to start whenever. 9:30?

19 THE COURT: How many more witness do you have?

20 MR. SOWARDS: We have Detective Burke and probably
21 five to six more, several of which are chain.

22 THE COURT: All right. How long do you anticipate on
23 -- not Detective Burke, but how long do you anticipate the
24 others?

25 MR. SOWARDS: Probably accumulative two to three

1 hours.

2 THE COURT: I'm trying to make a determination on are
3 we arguing and charging tomorrow?

4 MR. SOWARDS: I think that we can finish our case
5 tomorrow. It certainly depends on whether he intends to
6 call witnesses, but we will be finished tomorrow probably
7 shortly after lunch, if not before.

8 THE COURT: All right. And you are not stipulating to
9 the chain?

10 MR. MARSHALL: No, that's correct, Your Honor.

11 THE COURT: All right. I'm gonna go ahead -- if
12 you'll speak to your client, I need to go ahead and advise
13 him of his right to testify.

14 Please stand. Please place Mr. Seagers under oath.

15 CLERK: Stand and raise your right hand to be sworn.

16 (Whereupon, Dean Nelson Seagers was duly sworn by the
17 Clerk of Court.)

18 THE COURT: At this time I'm going to explain to you
19 certain of your rights. If you do not understand anything
20 that I say, please let me know. And if you need me to
21 explain anything in further detail, please let me know.

22 Do you understand?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: So we're gonna break for the evening and
25 then come back in the morning, but I find this is an

1 appropriate time for you -- Mr. Marshall will have some
2 time to meet with you about your decision to testify. I do
3 not expect an answer at this time. I just want to advise
4 you. Do you understand?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: We will reach the stage of the trial at
7 some point tomorrow where you may present your defense.
8 You have the right to claim the protections given to you
9 by the Fifth Amendment of the Constitution to the United
10 States. This amendment states, in part, that no person
11 shall be compelled in any criminal case to be a witness
12 against himself. That means that you cannot be required
13 to testify. You do have the right to testify on your own
14 behalf; however, no one can make you testify. This is a
15 personal right and no one can waive this right except for
16 you. If you decide to testify, you will be subject to
17 the same rules that govern other witnesses and you may be
18 examined and cross-examined on any relevant issue in this
19 case.

20 In addition, if you have any convictions involving
21 dishonesty or a false statement or for crimes punishable by
22 imprisonment for more than one year and I determine that
23 the probative value of admitting that evidence outweighs
24 its prejudice to you, the Solicitor will be able to
25 introduce the convictions to attack your credibility.

1 Prior convictions?

2 MR. SOWARDS: He does have a few, Your Honor. For
3 credibility purposes, Your Honor, he has a prior --

4 THE COURT: Well, just tell me what his prior -- just
5 so that he has the full scope. I'll make the ruling on the
6 admissibility at some other point.

7 MR. SOWARDS: Your Honor, he has a 1999 assault while
8 resisting arrest, a 2000 PWID, a 2000 proximity charge, and
9 2000 resisting arrest. He has a 2001 marijuana conviction
10 and trespassing conviction. He has two PWID convictions
11 in 2003, one with a proximity. He has in 2007 a Federal
12 gun conviction, possession with intent to distribute
13 marijuana, possession with intent to distribute cocaine,
14 and then maintaining a residence for the purpose of drug
15 distribution.

16 THE COURT: All right. Mr. Seagers, I have not ruled
17 on the admissibility of those, but do you agree that you
18 have some of those convictions?

19 THE DEFENDANT: Some of those.

20 THE COURT: All right. So if they are involving
21 dishonesty or a false statement or for a crime punishable
22 by imprisonment for more than one year, within certain
23 restrictions, the Solicitor may be able to use some, if
24 not all of those, for impeachment. Do you understand that?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: If you decide to testify, this decision
2 on your part must be freely, voluntarily, knowingly and
3 intelligently made with the knowledge of the protections
4 given to you by the Fifth Amendment and the consequences
5 of your decision to testify.

6 If you decide not to testify, I will instruct the
7 jurors that they cannot give the fact that you did not
8 testify any consideration whatsoever and there's to be
9 absolutely no prejudice to you because you did not testify.
10 It is left entirely up to you whether or not you testify.
11 You may talk with your attorney, your friends, your family
12 members or anyone else, but the final decision is left
13 entirely up to you.

14 Do you understand what I have explained to you?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Do you need me to explain anything in
17 further detail?

18 THE DEFENDANT: No, ma'am.

19 THE COURT: Do you have any questions?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: All right. Thank you. You may have a
22 seat.

23 And I'm sure you're fairly clear on what would and
24 would not be admissible out of that --

25 MR. MARSHALL: I am, and I don't know why, but -- I

1 don't have a copy of Dean's rap sheet, and I've obviously
2 got to do my job competently, and I've got to review it. I
3 don't know if you've got an extra one with you. I thought
4 it was a part of this discovery you-all --

5 THE COURT: Mr. Sowards, if you could just go ahead
6 since we're breaking for the evening.

7 MR. MARSHALL: I've -- I've got it.

8 THE COURT: You have it?

9 MR. MARSHALL: I think I've got it now. Thank you.

10 THE COURT: All right. Thank you.

11 MR. MARSHALL: And I'll -- I'll cover this --

12 THE COURT: Do you see it? I want you to have a
13 complete --

14 MR. MARSHALL: I do. I see it.

15 THE COURT: All right. Thank you.

16 MR. MARSHALL: I thought it was here, but --

17 THE COURT: All right.

18 MR. MARSHALL: -- senility got the best of me, Judge.
19 But I'll cover this with him and he'll make a -- make a
20 decision.

21 THE COURT: All right.

22 MR. MARSHALL: Thank you.

23 THE COURT: I have unrelated matters at 9 AM, so
24 please be back ready to go at 9:25. 9:25. If any -- if
25 you have any additional charges that you think that I --

1 will not be include, I'm gonna work on -- on the charges
2 over the evening hour so that they will be done in -- in
3 anticipation that you may not present any further case.

4 MR. MARSHALL: I do anticipate, I guess, calling Mark
5 Evans and Lucy Broward.

6 THE COURT: All right. I would indicate and have you
7 have them here around noon then.

8 MR. MARSHALL: Okay.

9 MR. SOWARDS: We intend to call Mark Evans, so he'll
10 be here.

11 THE COURT: All right.

12 I show, Madam Court Reporter, that just State's 1 and
13 2 have been admitted into evidence; is that correct?

14 THE COURT REPORTER: That's correct.

15 THE COURT: Okay. All right.

16 THE COURT REPORTER: Your Honor, I also need
17 Defendant's 1 back from Mr. Marshall.

18 THE COURT: We need Defendant's 1.

19 MR. MARSHALL: Right. I've got it right here.

20 THE COURT: Thank you.

21 All right. Anything else you need, Madam Court
22 Reporter?

23 THE COURT REPORTER: Just to get 1 and 2 off the table
24 up there. I have 4.

25 THE COURT: Okay.

1 MR. MARSHALL: There's 2. And 1 is the video, I
2 believe.

3 MS. MULKEY: I've got it.

4 THE COURT: Okay. You have the video?

5 MR. SOWARDS: Yes, Your Honor. I'm getting it right
6 now.

7 THE COURT: All right. We'll need it.

8 THE COURT REPORTER: And they're gonna take these
9 back. They haven't been marked for me. I haven't marked
10 them.

11 THE COURT: All right. So they just go back --

12 Ms. Mulkey, are those your exhibits on the table that
13 haven't been marked?

14 MS. MULKEY: They have been pre-marked, but not
15 entered. Just 1 and 2.

16 THE COURT REPORTER: I don't have them on my list, so
17 I'll just have to go around the table and get them then.

18 THE COURT: All right. Let's go ahead and get them
19 marked so that we can begin promptly at 9:25 or 9:30.

20 MS. MULKEY: Thank you, Your Honor.

21 THE COURT: All right. Anything else before we break
22 for the evening?

23 MR. SOWARDS: Nothing from the State, Your Honor.

24 MR. MARSHALL: No, ma'am. Thank you.

25 THE COURT: All right. See you in the morning,

1 Mr. Seagers.

2 (Whereupon, the proceedings were concluded for
3 July 7, 2015.)

4 (Whereupon, the following proceedings were held on
5 July 8, 2015.)

6 MR. SOWARDS: Your Honor, may we approach about one
7 quick matter?

8 THE COURT: You may.

9 (Proceedings held at the bench; not reported.)

10 MR. MARSHALL: Well, to let the Court know, pursuant
11 to your instructions, this morning at 8:30 I called and
12 the office wasn't open yet and I left a message with the
13 answering service. I also asked my assistant when they
14 open at 9 to please call that office -- Mr. Evans and
15 Ms. Broward are in the same office -- and please let them
16 know to be here at -- at noon.

17 THE COURT: All right.

18 You may --

19 MR. SOWARDS: We did have two -- I e-mailed this
20 morning about two possible jury instructions.

21 THE COURT: Okay. I'm -- I'm just worried about
22 keeping the trial moving.

23 MR. SOWARDS: Okay. Thanks.

24 THE COURT: How many more witnesses do you have?

25 MR. SOWARDS: We have six or seven.

1 THE COURT: How long do you think those witnesses are
2 gonna take?

3 MR. SOWARDS: Well, I think Detective Burke will take
4 the longest and then --

5 THE COURT: Just total time.

6 MR. SOWARDS: -- we should be able to move through.
7 Three hours in total max is what I would expect.

8 THE COURT: Mr. Marshall, you need to make sure those
9 witnesses can be here earlier, if needed.

10 All right. Thank you.

11 MR. MARSHALL: All right.

12 THE COURT: We're still waiting -- we're still waiting
13 on two jurors, so let's go ahead and take -- take your
14 comfort break. We're going straight through.

15 MR. MARSHALL: Well, Judge, I guess then revise my
16 request for their appearance to what, 11 maybe? Or --

17 THE COURT: Why don't you just have them here at 11,
18 then that way -- out of an abundance of caution. Sometimes
19 things don't go as long as we anticipate, all right?

20 MR. MARSHALL: Yes, ma'am.

21 THE COURT: Thank you.

22 (Recess taken.)

23 THE COURT: Anything before we bring in the jury?

24 MR. SOWARDS: Nothing from the State.

25 MR. MARSHALL: No, ma'am.

1 THE COURT: Let's have the jury in, please.

2 (Whereupon, the jury enters the courtroom at 9:46 AM.)

3 BAILIFF: Jurors all present, Your Honor.

4 THE COURT: Thank you. Please be seated.

5 Good morning, ladies and gentlemen. Did every member
6 of the jury panel comply with my instructions? If you
7 complied with my instructions over the evening hour, please
8 raise your right hand.

9 Thank you. All fourteen jurors have complied with the
10 Court's instructions.

11 Oh, we're passing out the notebooks. Call your next
12 witness.

13 MR. SOWARDS: Thank you. The State calls Mike Burke.

14 MICHAEL BURKE,

15 having been duly sworn, testified as follows:

16 CLERK: You may be seated. Sir, once seated if you
17 could please state your first and last name and then spell
18 your last loudly and clearly into the microphone for the
19 record.

20 THE COURT: If you'll wait until all the jurors have
21 their notepads so if they want to write your name down,
22 they'll -- they'll have their notepad.

23 THE WITNESS: Yes, ma'am.

24 THE COURT: Thank you.

25 All right. Please state your name for the record and

1 spell your last name.

2 THE WITNESS: Yes, ma'am. Michael Burke, B-U-R-K-E.

3 DIRECT EXAMINATION

4 BY MR. SOWARDS:

5 Q. Good morning, Detective Burke.

6 A. Good morning.

7 Q. Who is your current employer?

8 A. Currently I work for the Indianapolis Metropolitan
9 Police Department in Indianapolis, Indiana.

10 Q. And what are your duties with the Indianapolis Police
11 Department?

12 A. I'm currently assigned to the uniformed patrol
13 division.

14 Q. Detective Burke, were you ever employed by the City of
15 Charleston Police Department?

16 A. Yes, sir, I was from July 2007 until June 2014.

17 Q. And why did you leave the Charleston Police
18 Department?

19 A. My wife's originally from Indiana. When we found out
20 she was pregnant with our second son, we decided we wanted
21 to be closer to family and so I applied with the department
22 up there and we moved our family in June of last year.

23 Q. And what were your duties with the Charleston Police
24 Department?

25 A. I spent several years in the uniformed patrol division

1 and I spent my last three and half years as a narcotics
2 detective with the Special Investigations Unit.

3 Q. And I think you may have said, but I just want to
4 be clear, were you employed by the Charleston Police
5 Department on June 20, 2012?

6 A. Yes, sir.

7 Q. Could you, please, tell the jury your education,
8 training and experience?

9 A. Yes, sir. I have a bachelor's degree in criminal
10 justice from Fairmont State University, located in
11 Fairmont, West Virginia. I attended the South Carolina
12 Criminal Justice Academy in 2007. While I was assigned as
13 a narcotics detective and in patrol, I attended numerous
14 training classes, including the DEA ACE Investigator
15 Course. I've since been through the Indianapolis
16 Metropolitan Police Department Police Academy and I also
17 spent six years in the Marine Corps Reserves.

18 Q. Thanks. Did you have the occasion to be working on
19 June 20, 2012?

20 A. Yes, sir.

21 Q. And did you have the occasion to become involved in
22 the investigation of this case, State versus Dean Seagers,
23 in any way on that date?

24 A. I did. I was the case agent for the controlled
25 purchase of the drugs.

1 Q. Now you just mentioned case agent. What do -- what
2 do you mean by a case agent?

3 A. As the case agent, I'm responsible for setting up
4 the operation. That includes planning the operation,
5 controlling and managing the informant, searching the
6 informant, equipping him with the audio and video recording
7 devices, assigning tasks to the others that's involved,
8 writing the initial case report and writing the follow-up
9 arrest warrants and things of those nature.

10 Q. Now you mentioned a controlled buy. What is a
11 controlled buy?

12 A. A controlled buy is -- essentially what it is it's
13 controlled by us, the police department. We utilize an
14 informant, we -- we utilize pre-recorded U.S. currency.
15 From the time the informant meets at our staging area until
16 the time he gets back, he's under as much control as we
17 could possibly have. Again, like I said, he's equipped
18 with an audio transmitting device and an audio/video
19 recording device as well.

20 Q. And you've talked about a confidential informant or a
21 CI. What is a confidential informant?

22 A. A confidential informant is an individual who's
23 working on behalf of the police department. He's not a
24 sworn police officer, but he is working on behalf of the
25 police department.

1 Q. And in -- in this case, State versus Dean Seagers,
2 did you use a confidential informant as part of your
3 investigation?

4 A. Yes, sir, I did. Robert Drayton was the confidential
5 informant utilized in this case.

6 Q. And just by way of background as far as a confidential
7 informant goes, what type of confidential informant was
8 Mr. Drayton?

9 A. Mr. Drayton was a paid confidential informant.

10 Q. Could you explain exactly what that means?

11 A. He was paid for his services. Information -- if he
12 provided information that we were able to deem reliable
13 and accurate, he would be compensated for that. If he
14 conducted a controlled purchase for us, he would be
15 compensated for that as well.

16 Q. Do you take precautionary measures in controlled buy
17 investigations where you're using a CI to ensure the
18 integrity of the investigation?

19 A. Yes. The -- the first thing we do once we pick them
20 is we search them just to make sure they do not have any
21 drugs on them or weapons. We also -- and if they bring any
22 of their personal money, we hold onto that for them so it
23 doesn't get mixed in with our pre-recorded funds. And,
24 again, like I said, we search them very thoroughly and
25 while the informant is conducting the operation, he's

1 equipped with an audio recording device -- or audio
2 transmitting device. He also has a cell phone on him as
3 well so if for some reason we were to lose the -- the feed
4 on the audio transmission we could reach him by cell phone
5 and be updated that way.

6 Q. I think we'll get into some more detail on this later,
7 but did you take those precautionary measures in this case?

8 A. Yes.

9 Q. Where did the controlled buy in this case occur?

10 A. The controlled purchase occurred at [REDACTED] Ashton Street.

11 Q. Is that located in Charleston County?

12 A. Yes, sir.

13 Q. Now you stated that as part of the case agent's
14 duties, he or she is responsible for setting up and
15 managing the operation. What planning and preparation
16 did you do to prepare for this operation, this controlled
17 buy?

18 A. Are you asking me about the initial --

19 Q. This specific -- right. What did you do in
20 preparation for this controlled buy?

21 A. I -- the same thing we always do. I -- I picked up
22 the informant. We met at a secure location. At that time
23 I searched him. I equipped him with all the equipment,
24 provided him with pre-recorded funds and I briefed the rest
25 of the narcotics unit as to planning the operation.

1 Q. And did you do a buy-walk or a buy-bust?

2 A. We did -- we did a buy-walk. That's essentially you
3 buy drugs and you walk away with the -- with the hope of
4 continuing the investigation in the area.

5 Q. Are there any other reasons why you might conduct a
6 buy-walk rather than a buy-bust?

7 A. Well, other than continuing the investigation, it's
8 for the safety of the informant. If we go in right away,
9 he's gonna know immediately what happened and who the
10 informant was and it could be a safety concern.

11 Q. Now we've heard about a debriefing. What happens at
12 the debriefing?

13 A. At -- during the debriefing that's where we assign
14 all the tasks to the other narcotics detectives that are
15 involved. They're told where the investigation is gonna
16 take place, they're all given assignments. Generally --
17 generally we try to circle the area as -- as far as
18 distributing people in certain places so we can try to keep
19 an eye on the CI the duration of the controlled purchase.
20 Sometimes it's not always possible just depending on the
21 area or the location of the investigation just based on how
22 the roads are set up, things of those natures -- nature,
23 but all that stuff's explained and everybody knows what
24 the informant looks like and we all confer -- confirm
25 that we're on the same radio channel so if one detective

1 does lose the live feed another detective can relay the
2 information over the radio.

3 Q. Now were there any calls made to set up the -- the
4 controlled buy in this case?

5 A. Yes, there was. There was a -- the initial phone
6 call was made to a separate target that was involved in
7 the investigation; however, there was -- he was unable
8 to sell -- sell the drugs. It wasn't known until the
9 informant had left the staging area that he wasn't gonna
10 be able to get the drugs from the other individual. Then
11 the second phone call was made as the CI arrived at the
12 location and he was able to arrange the purchase. There
13 was also phone calls made to me during -- while he was on
14 his way to the location and then immediately following as
15 he was on his way back, he placed a phone call again.

16 Q. I want to go back just to before the buy actually --
17 before the CI left the staging area. Was the CI searched?

18 A. He was.

19 Q. And who searched the CI?

20 A. I searched him.

21 Q. And could you describe how you searched him?

22 A. It's as close to a strip search as you can get. I'm
23 trying to think of not being graphic as I describe it, but
24 there -- there's no -- I -- I don't penetrate any orifices,
25 if that makes sense, but it's as close to a strip search as

1 you can get. Everything is checked.

2 Q. And is that what happened in this case?

3 A. It happens every time.

4 Q. Have you seen the video in the case?

5 A. I have.

6 Q. It looked like the CI proceeded to the target
7 location, [REDACTED] Ashton Street, and then came back to you on a
8 bicycle. Do you recall that?

9 A. I do.

10 Q. Whose bicycle was that?

11 A. It was the informant's bicycle. He --

12 Q. Now was -- I'm sorry. Go ahead.

13 A. He lived in the immediate area so it was easier for
14 him to just ride his bicycle. He'd be -- he wouldn't be
15 very far away, so it was just easier for him to ride his
16 own bike as opposed to me bringing a bike. And on top of
17 that he is missing half of his foot from medical issues,
18 so walking wasn't really an option.

19 Q. Now specifically about the bike, was the bike
20 searched?

21 A. Yes.

22 Q. And who searched the bike?

23 A. I did.

24 Q. So after you've searched the CI and his bike, what is
25 he left with?

1 A. He's left with his cell phone and other than that he
2 -- he would never show up with anything other than his
3 phone.

4 Q. And were you able to monitor the CI as he proceeded to
5 the target location?

6 A. Yes, we have a live audio feed throughout the entire
7 transaction.

8 Q. Could you describe the process of wiring a CI with a
9 live audio feed?

10 A. Sure. It's a -- it's a small device. It's a --
11 basically a radio transmitter. It transmits on a certain
12 frequency. I don't know the technology behind it. We
13 use -- essentially use NASCAR scanners and we have the
14 frequency set up in the scanner and if you're in a -- if
15 you're within a certain range, you can hear the feed. And
16 it's not very far. I mean, depending on buildings and
17 things of those nature, you may be able to hear a quarter
18 of a mile, but it's -- it's placed on his body. The
19 microphone is wired underneath the shirt and we try to get
20 it as close to his mouth as we can while it still being
21 concealed. It's a small little microphone. The wires --
22 the rest of -- the rest of the device is attached to his
23 chest and a small strap with a pocket in it is slid
24 around his back and the wires are taped down so they don't
25 protrude while he's wired -- while he's heading to the

1 target location and so it doesn't fall off.

2 Q. And what is the purpose of the live audio wire?

3 A. It's so we have a realtime audio of what he's doing
4 and it's -- it's a safety net. If something were to
5 happen, he -- the informants are always instructed to yell
6 out and at that time we would break our undercover status
7 and go in and retrieve the informant.

8 Q. And you also talked about a video. How were you able
9 to make a video recording of this -- this controlled buy?

10 A. The -- the informant was attached -- or equipped with
11 a -- essentially a webcam. The recording device is very
12 small. The same -- the same kind of setup wired to a
13 little camera that's attached to the shirt, typically a
14 button that either -- usually the second or third button
15 down just trying to get the best picture, but the same way,
16 it's taped to his body and strapped into the -- strapped
17 around.

18 Q. What is the viewing angle of the camera?

19 A. The viewing angle is gonna be directly in front. It's
20 not like it's hooked up to your face. When you move around
21 and you look, it's not gonna see that angle. It's only
22 gonna see what's directly in front of it, not behind it.
23 And as you saw on the video, it's not -- you don't really
24 get a good 180 degree perspective. It's really just
25 whatever's in front of you, so it's only gonna move when

1 the -- when the body moves.

2 Q. So what funds do the -- does the CI use to purchase
3 cocaine base in this operation?

4 A. The funds were obtained from the Official Narcotics
5 Fund. They were signed out by me and a voucher was turned
6 in by me following the buy documenting where the funds were
7 used, what case it was used for and how much were used.

8 Q. And how much money did you give the CI in this
9 investigation?

10 A. \$100 was used for the controlled purchase.

11 Q. So the CI's been searched, he's been wired, he has the
12 pre-recorded funds. What happens next?

13 A. Right after that, that's when I would give all the
14 assignments out and turn the camera on and say, you know,
15 go ahead. I'm sorry, let me backtrack. Before he leaves,
16 I give him the final instructions and they're typically
17 yell for help if you need us and we'll come in and get
18 you, make sure you don't stop and talk to anybody for any
19 significant amount of time, make sure you answer the phone
20 when I call and have the ringer on because if -- in the
21 event we lose the audio feed, I'm gonna need to get into
22 contact with you because either, one, to get you back and
23 we'll just -- we'll just cancel the operation or, two, to
24 get you back so we can try to fix it so we can have a live
25 feed. And obviously they're told not to use any of the

1 drugs from the time they buy them until -- until they come
2 back.

3 Q. Now did you give the instruct -- the CI any
4 instructions in this case on keeping you updated?

5 A. Sure, at -- I'm sorry. Yes. At -- one of the other
6 instructions is that as they're riding all they really need
7 to do is use street names. You know, they could be singing
8 a song like he was doing and he could say something like
9 Ashton Street, and I would know what he was talking about,
10 just to kind of give us an idea where he is if for some
11 reason while he was riding to the target location we
12 weren't able to keep a visual on him.

13 Q. And whose phone did the CI use in this case?

14 A. It was his phone.

15 Q. And -- and why did you let him use his phone?

16 A. He already had the phone number and, you know, just
17 for me I -- I know I don't answer phone calls if I -- if
18 the number's not saved in my phone, I'm not gonna answer
19 it, so I -- you know, I -- I would imagine drugs dealers
20 operate in the same sense and since the informant already
21 had his phone there was no -- no reason to give him a
22 different phone. And, quite frankly, we -- we typically
23 just allow them to use their own phone because that's just
24 normal operation.

25 Q. Now prior to your testimony the Court published the

1 video, which is the -- the video of the controlled buy in
2 this case, and I think you testified you've seen that
3 video?

4 A. Yes, sir.

5 Q. I just want to ask you a few questions about that.
6 Are you aware of -- I think we kind of touched on this, but
7 phone calls that the CI made during the -- the buy as it
8 unfolded?

9 A. Yes, sir.

10 Q. And who were those calls to?

11 A. There was a -- there was a phone call made to the
12 original target that confirmed that we weren't gonna be
13 able to purchase narcotics from him. There was a phone
14 call to the Defendant and there was two phone calls to me.

15 Q. Now when -- as the -- the buy was unfolding, you had
16 testified that you had a live audio feed. Did you hear any
17 voices on that feed that you were able to identify?

18 A. Not that I could personally identify, no, sir.

19 Q. And the -- you testified that the CI called the
20 Defendant when he arrived at the location. How do you know
21 that happened?

22 A. I took a photograph of the informant's phone that had
23 the time, the nickname associated with the phone number
24 and the duration of the phone call and noted that the time
25 corresponded with the time that was on the video.

1 MR. SOWARDS: Your Honor, may I approach?

2 THE COURT: You may.

3 BY MR. SOWARDS:

4 Q. Let me show you what's been marked as State's Exhibit
5 Number 3. Do you recognize that photograph?

6 A. I do.

7 Q. And how do you recognize it?

8 A. I was the one that took the photo.

9 Q. And is that a fair and accurate depiction of what you
10 saw when you took that picture -- that photograph?

11 A. Yes, sir.

12 MR. SOWARDS: Your Honor, at this time the State would
13 like to move Exhibit Number 3 into evidence.

14 THE COURT: Any objection?

15 MR. MARSHALL: No, ma'am. No objection. Thank you.

16 THE COURT: State's 3 into evidence without objection.
17 (State's Exhibit Number 3, a photograph, was admitted
18 into evidence.)

19 MR. SOWARDS: Your Honor, the State at this time would
20 like to publish the exhibit to the jury.

21 THE COURT: You may.

22 (Whereupon, State's Exhibit Number 3 was published to
23 the jury.)

24 BY MR. SOWARDS:

25 Q. Detective Burke, could you tell us what we see in this

1 picture?

2 A. Sure. At the very top you see the name "Baby" and
3 you see a phone number, [REDACTED]. You can see the time of
4 6:19, Wednesday, June 20th, and then the duration of the
5 phone call, 33 seconds.

6 Q. And does the time in -- that's depicted on the phone
7 when this phone call was made, does that correspond with
8 when this investigation was occurring?

9 A. Yes, sir, it corresponds with the time that the
10 informant was at the rear of the residence.

11 Q. Do you -- do you know the Defendant to have any
12 aliases?

13 A. I do.

14 Q. And what is that alias?

15 A. Baby Dean.

16 Q. Now at a few points in the video the quality of the
17 -- the video kinds of dips and looks like the camera's
18 obscured. Could you explain why that might happen?

19 A. Sure. There's several things that affect the camera.
20 One is the sunlight. If it's looking directly at the
21 sunlight, it blacks it out. It's just part of the
22 technology. On the video, you can see several times when
23 the informant's going to use his phone his arm crosses over
24 in front of the camera. That's another obstructed view.
25 The way it's set up on his shirt is -- I don't have a

1 pocket on my shirt, but imagine a baggy shirt and the
2 camera here from the action of riding a bicycle and turning
3 because the shirt's gonna naturally swing over and block
4 the camera, but at no point is there a break in the -- the
5 recording. It's just the camera was covered.

6 Q. Now at the conclusion of the video we see the CI
7 approach a vehicle in the parking lot and there's a man
8 inside the van. Do you know who that person was?

9 A. Yes, sir. That was me with a beard.

10 Q. And what happened when the CI returned to the car?

11 A. When the CI returned to the car, I placed his bicycle
12 in the -- in the vehicle, he jumped in and I -- I turned
13 off the camera and then we drove back to the -- the
14 location where we -- where we set up for the buy.

15 Q. And at -- at any point after the -- the CI returned
16 to the vehicle, did he -- was he able to identify who
17 distributed the cocaine base?

18 A. After he returned to the vehicle?

19 Q. Correct.

20 A. Yes, sir, he was.

21 Q. And who did he identify?

22 A. The Defendant.

23 Q. And do you see the Defendant in the court --

24 A. I do.

25 Q. -- or do you see that individual?

1 A. Yes, he's sitting at the table right there in the
2 green shirt.

3 Q. And who do you know that Defendant to be?

4 MR. MARSHALL: Judge, just for the record I'm
5 gonna renew my previous pre-trial objection on the
6 identification.

7 THE COURT: All right. Thank you, Mr. Marshall.

8 BY MR. SOWARDS:

9 Q. And who do you know that -- that individual to be?

10 A. That's Dean Seagers, also known as Baby Dean.

11 Q. So who received the cocaine base from the CI in this
12 case?

13 A. I did.

14 MR. SOWARDS: May I approach?

15 THE COURT: You may.

16 BY MR. SOWARDS:

17 Q. I want to show you what's been marked as State's
18 Exhibit 8. Do you recognize that?

19 A. I do.

20 Q. And how do you recognize that?

21 A. That is the drugs from the controlled purchase on
22 June 20th. And I -- I can tell that by the case number
23 that's written on that. That's my handwriting on the -- on
24 the evidence tag, which is the attached to the bag, and the
25 case number that's associated written in permanent marker

1 and those are my initials at the top and bottom.

2 Q. And what did you do with the cocaine base after you
3 received it from the CI?

4 A. The first thing I did was test it to ensure that there
5 was actually cocaine inside of it. The -- the same test
6 we use for cocaine, we also use for cocaine base. I'm not
7 a chemist and I don't know how it does it, but when you
8 place a little drop of this chemical on it, it turns blue,
9 and the substance turned blue indicating that it was
10 presumptive positive for the presence of cocaine, but it
11 was -- it was sent to the lab to be further analyzed.

12 Q. Was there anything else that led you to believe that
13 it was cocaine, powder cocaine, and not cocaine base?

14 A. Sure. Just the consistency of it. It's -- it's a
15 little bit lighter in color than cocaine base usually is.
16 Cocaine base usually comes in a rock form. This is -- it
17 is in a slight rock form; however, it's very crushed up
18 and just -- I've seen cocaine where it -- it comes off,
19 say, a -- a bigger chunk of cocaine, like a kilo or
20 something like that, and it still would be in a compressed
21 form and then when you pack -- when you package it it's not
22 a true powder, like sugar, it's still kind of clumpy.
23 Prior to using it you would need to crush it up a little
24 bit more.

25 Q. So just to be clear, at the time you received this,

1 this baggy, it was your understanding that it was powder
2 cocaine?

3 A. There was -- it was on the order of powder cocaine.
4 It came -- it consisted -- it -- I received it the same way
5 I'd seen cocaine in the past, so I didn't really believe
6 that it was anything other than cocaine until the lab test
7 was conducted.

8 Q. And what did you do when you learned that it was
9 cocaine base?

10 A. Well, when I -- when I got the arrest warrant, instead
11 of charging distribution of cocaine, I charge him with
12 distribution of cocaine base.

13 Q. So you've received the drugs, you've conducted the
14 field test, we've discussed kind of the -- what these
15 stickers on the bag mean. What did you do next with --
16 with the drugs?

17 A. After I was done with the informant, I went to CPD
18 headquarters, I bagged the drugs as you see them there,
19 and I logged them into the evidence computer, created a
20 voucher form, and then the evidence was dropped on a locked
21 computer that only the evidence technicians have access to.

22 Q. Could you just briefly describe for the jury the
23 process of submitting something, specifically drugs --

24 A. Sure.

25 Q. -- to CPD evidence?

1 A. As I said, I -- I bagged the drugs, I labeled the
2 drugs. I made sure that I, in fact, was the individual
3 dropping the drugs. There's a computer software program
4 that we utilize to enter the drugs into evidence. It
5 creates a digital track of the chain of custody evidence
6 and then, like I said, I dropped it in the box, the mailbox
7 that only the evidence technicians have access to.

8 Q. So you don't have access to it after you've dropped it
9 in the box?

10 A. No. There's only two or three other people that have
11 access to that.

12 Q. Now from the time that you received the drugs from the
13 -- the CI to when they were submitted to the -- the box at
14 the CPD, did you have the sole care, custody and control of
15 the drugs that we see in that bag?

16 A. Yes, they -- it never left my possession.

17 Q. Now I want to ask you a -- a few questions about
18 August 29, 2012. Were you present when the Defendant,
19 Dean Seagers, was arrested and charged with distribution
20 of cocaine base?

21 A. Yes, I was.

22 Q. And where did that arrest take place?

23 A. It occurred at [REDACTED] Ashton Street inside the
24 residence.

25 Q. You said [REDACTED]. Could you be more specific?

1 A. Sure. In the upstairs apartment. And as far as where
2 he -- he was located, he was located in the kitchen, which
3 corresponded with the rear window of the residence where
4 the controlled purchase took place from.

5 Q. Now did you -- did you recover a phone?

6 A. A phone was recovered, yes, sir.

7 Q. And do you recall who recovered the phone?

8 A. I believe it was Detective Olson to the best of my
9 knowledge.

10 Q. And did you -- do you recall also whether a cup was
11 recovered?

12 A. I -- I do recall that and that cup was recovered by
13 the crime scene tech and the reason I know that is I was
14 the one that requested them to come pick it up, log it in
15 and to try to get fingerprints off of it.

16 Q. And who was that crime scene tech?

17 A. The last name's Miller.

18 Q. I want to show you what's been marked as State's
19 Exhibit 6. Do you recognize this cup?

20 A. I do.

21 Q. And how do you recognize it?

22 A. That is the cup that was taken from the kitchen of the
23 upstairs apartment on Ashton Street, [REDACTED].

24 Q. And where was this cup located?

25 A. It was located on the kitchen counter within four feet

1 of the Defendant.

2 MR. SOWARDS: I beg the Court's indulgence.

3 Q. Now just going kind of back to your -- your background
4 and experience, you mentioned that you were in the Marines?

5 A. Yes, sir.

6 Q. And what were your -- what were your duties with the
7 Marine Reserves?

8 A. I was in a detail.

9 Q. And you also said something to the effect of the CI's
10 under as much control as we have.

11 A. Yes, sir.

12 Q. Could you elaborate on that?

13 A. Sure. There's -- there's always unknowns. We try
14 to keep the operation as safe as possible, keep the
15 informant's safety in mind. There's really no amount of
16 drugs worth getting somebody hurt over, especially somebody
17 that's working for us. I -- I would take that very
18 personally if he were to get hurt. And to -- just to
19 elaborate, he being not an employee, as I said earlier we
20 set up detectives in the area to try to surround him and
21 keep our eyes on him as best as we can, and, you know,
22 again, with the audio recording devices, cell phones, and
23 all the detectives in the area. We also have a uniformed
24 presence as well in case things got really bad. We would
25 have a police car and have the officer in full uniform to

1 assist us in -- in the event of -- of an emergency.

2 Q. And you said you like to keep eyes on him as best you
3 can.

4 A. Yes, sir.

5 Q. Is it always possible to maintain a visual on the CI
6 as he, you know, leaves your -- your staging area and then
7 comes back, throughout that whole buy?

8 A. No, and especially in that particular location because
9 it backed up to the Crosstown Road. If you park a car on
10 the Crosstown and had to stop to -- to watch, so, you know
11 -- do we have a map of the area? And I -- I can give an
12 idea of where we would typically set up.

13 MR. SOWARDS: Your Honor, may I approach?

14 THE COURT: You may.

15 BY MR. SOWARDS:

16 Q. Do you recognize that area?

17 A. I do. It's -- it's the location where the arrest
18 occurred, [REDACTED] Ashton Street.

19 Q. I'll place it on the monitor so the jury can see.

20 A. Sure.

21 Q. This might help a little bit. Could you describe on
22 the map where this buy occurred?

23 A. Sure. It occurred at the red dot.

24 Q. And do you see on the map where the -- the staging
25 area was?

1 A. You can --

2 Q. Or generally was.

3 A. -- you cannot see the staging area. It's farther up.
4 It was at the Alumni Center at the Citadel. Basically
5 directly across the street from the football stadium off of
6 Congress -- Congress and Hagood. You can't see the staging
7 area.

8 Q. And where was your perimeter team while the buy was
9 unfolding?

10 A. Okay. So if -- since it occurred on Ashton Street, we
11 would have had somebody -- you can see where the Subway is
12 marked. It's kind of hard to read, but just to the left --
13 to the left of the red dot there's a parking lot there with
14 a parking garage. We would have one or two detectives in
15 there. The area of -- to the right up Ashton Street was
16 really our only blind spot because that area is so
17 condensed and if -- if we were sitting there we'd be seen,
18 but there's the Hardee's -- I believe it's a Hardee's right
19 across the street or right on the other side of the
20 Crosstown where we would have a detective and then we
21 probably had somebody in the McDonald's as well. And then
22 those -- as the informant was heading to the area, the
23 officers would be heading to those general areas. They
24 wouldn't go in there and sit, but would try to keep an eye
25 on them the entire way there. They may only lose sight of

1 him for at the most thirty, forty-five seconds.

2 Q. Thank you. Did the CI make a statement after he
3 arrived back at the staging area?

4 A. He did. He -- he made a written statement in the car
5 as to what had occurred.

6 Q. And -- and why do you have the CI make a written
7 statement?

8 A. While it's fresh in his mind immediately afterwards so
9 it's a good memorialization of what had occurred.

10 Q. And who wrote this statement?

11 A. He wrote the statement.

12 MR. MARSHALL: Judge, I've got to put up an objection
13 that.

14 THE COURT: All right. It will be noted. Thank you.
15 You may answer, Detective.

16 THE WITNESS: I believe the informant wrote the state
17 -- statement.

18 MR. SOWARDS: May I approach, Your Honor?

19 THE COURT: You may.

20 BY MR. SOWARDS:

21 Q. I want to show you State's Exhibit 2. Do you
22 recognize that?

23 A. I do.

24 Q. And what is that?

25 A. This is the statement of -- it's signed Bunk Moreland.

1 That was a code name given to the informant in this case
2 and it's a statement in regards to what occurred the day of
3 June 20th.

4 Q. And do you see anything at the -- on the statement
5 that's inaccurate?

6 A. I do.

7 Q. And what is that?

8 A. Here on the top portion where it says "which occurred
9 at [REDACTED] Norman Street". That was my -- I wrote Norman
10 Street instead of Ashton Street. It was a mistake on my
11 part.

12 Q. So you wrote that part?

13 A. Yes, the -- the top -- the top part of the statement
14 is filled out -- was filled out by me. The narrative and
15 the signatures -- the two pages of narratives, a page and
16 a quarter, were written by the informant. His signature
17 is on both -- both pages as well as my signature as a
18 witness.

19 Q. And you say his signature. You just testified that
20 Bunk Moreland was the CI in this case. Just to be clear,
21 who is Bunk Moreland?

22 A. Robert Drayton. It's just -- like I said, it's just
23 a code name that we gave to him. It's just to keep track
24 of our informants.

25 Q. And I just have one more question about the cup that

1 we just talked about.

2 A. Yes, sir.

3 Q. Where exactly did you -- or was the cup located?

4 A. It was located in the kitchen of the upstairs
5 apartment, [REDACTED] Ashton Street.

6 Q. And -- and inside the kitchen, where was it located?

7 A. It was located on the counter.

8 Q. So you were present in the -- in the kitchen. Was
9 there a window in the kitchen?

10 A. There was. There was a -- there was a window that
11 overlooked the backyard.

12 Q. And where in relation to the window was the cup?

13 A. It wasn't a very big kitchen, so less than five feet.

14 MR. SOWARDS: I beg the Court's indulgence.

15 Q. And I just have one more question about the statement.
16 In the statement, who did Robert Drayton identify as the
17 person who sold him cocaine base?

18 A. The Defendant --

19 MR. MARSHALL: I renew the objection for the record.
20 Thank you.

21 THE COURT: It will be noted. Thank you.

22 A. The Defendant, Dean Seagers. I -- I believe he wrote
23 Baby Dean in parentheses.

24 MR. SOWARDS: Thank you. No further questions at this
25 time.

1 THE COURT: Mr. Marshall.

2 MR. MARSHALL: Thank you, Judge.

3 CROSS-EXAMINATION

4 BY MR. MARSHALL:

5 Q. Good morning, Officer Burke.

6 A. Good morning.

7 Q. While it's fresh on our minds, the subject of this
8 cup, let me -- if I might cover that first. That cup that
9 was shown to the jury, it's true, is it not, that it was
10 dusted for fingerprints?

11 A. To the best of my knowledge, yes, sir.

12 Q. Okay. And it's true, is it not, that Mr. Seagers'
13 fingerprints were not on the cup?

14 A. I don't -- from my recollection of the report, there
15 was no identifiable -- there was one fingerprint removed;
16 however, it lacked sufficient -- I -- I don't know the
17 proper terminology, but it -- it wasn't a good fingerprint
18 to be compared to anything.

19 Q. So Mr. Seagers' print, to be quite clear, was not
20 identified on the cup?

21 A. Correct, there was no -- no prints identified on the
22 cup.

23 Q. Now I heard your impressive resume of your education
24 and your employment history in law enforcement. Do you
25 agree that throughout your education you have been taught

1 that recordkeeping is very important in criminal
2 investigations?

3 A. Yes.

4 Q. And you agree, I assume, that recordkeeping can be
5 particularly important in criminal investigations which
6 involve fungible goods, for instance, drugs, things that
7 could look the same and be easily confused?

8 A. Yes, sir.

9 Q. And do you agree that there are legal policies in this
10 state which control the handling specifically of drugs?

11 A. Yes, I'm aware that SLED has policies, but I do not
12 know them.

13 Q. You do not know those policies and --

14 A. I don't know SLED's policies.

15 Q. Have you never been trained on them when you went to
16 the criminal justice academy or any SLED courses?

17 A. I'm sure I've received some training in regards to it,
18 but I -- I don't know how the City of Charleston Police
19 Department's policies correspond to SLED's policies.

20 Q. Well, do you know whether or not -- well, let's --
21 let's back up. Are you familiar with a couple of statutes
22 in this state which control the handling of drug evidence?

23 MR. SOWARDS: Objection, Your Honor. Relevance.

24 THE COURT: Counsel approach.

25 (Proceedings held at the bench; not reported.)

1 BY MR. MARSHALL:

2 Q. All right. Let me try to cover -- while the judge
3 looks at -- at some law there, let's maybe return to this
4 issue. I want to see if we can cover a little bit more
5 ground, okay?

6 Now in this case, Officer Burke, you were the affiant,
7 the person that swore in front of a magistrate --

8 MR. SOWARDS: Objection; relevance.

9 THE COURT: He may answer.

10 BY MR. MARSHALL:

11 Q. You were the person that swore in an affidavit, a
12 written statement, as to what you believed the probable
13 cause to arrest Mr. Seagers was, correct?

14 A. I did. However, there was more than just the written
15 statement.

16 Q. Okay. When you went to see the magistrate, you --
17 you presented additional evidence other than the written
18 statement?

19 A. Yes, sir. It was supplemented by verbal testimony.

20 Q. Okay. Well, let's talk about the written statement,
21 the affidavit, sir, the arrest warrant affidavit for a
22 moment.

23 MR. MARSHALL: Let's mark this one, the arrest
24 warrant.

25 THE COURT REPORTER: It will be Defendant's 2.

1 MR. MARSHALL: All right. Thanks.

2 (Defendant's Exhibit Number 2 was marked for
3 identification.)

4 BY MR. MARSHALL:

5 Q. All right. Let me show you what's been marked as
6 Defendant's Exhibit Number 2, and if you -- so this --
7 this, sir, is -- is the arrest warrant for Dean Seagers in
8 this case; is it not?

9 A. It is.

10 Q. All right. And if you turn to the second page, that's
11 the affidavit portion, correct?

12 A. Yes, sir.

13 Q. All right. And you typed this up, correct?

14 MR. SOWARDS: Objection, Your Honor. Relevance. Also
15 based on the Court's prior ruling.

16 THE COURT: All right. Counsel approach.

17 (Proceedings held at the bench; not reported.)

18 THE COURT: Ladies and gentlemen, I have something
19 I must take up outside of your presence. Do not begin
20 your deliberations and do not discuss this case amongst
21 yourselves. You may leave your notepads right where they
22 are or take them with you.

23 Please rise for the jury. Detective Burke, stay
24 seated.

25 THE WITNESS: Yes, ma'am.

1 (Whereupon, the jury retires to the jury room at
2 10:36 AM.)

3 THE COURT: Thank you. Be seated.

4 All right. We've had several conversations at the
5 bar -- at the bench, but I just wanted to put on the record
6 Mr. Marshall has handed me what he has handwritten at the
7 top, quote, Section 44.53.12 and 44.53.485, and Article 6,
8 73-70, Uniform Procedures for Handling of Controlled
9 Substance.

10 Mr. Marshall, I've -- Detective Burke, you can stay
11 there or you can step down, whatever's more comfortable for
12 you.

13 THE WITNESS: Whichever you prefer, Your Honor.

14 THE COURT: It's up to you.

15 THE WITNESS: I'll just stay here, if that's okay.

16 THE COURT: All right. Thank you.

17 What is it that you think this witness did not do that
18 -- that does not comply with CPD and/or SLED regulations?
19 What is -- what -- what's the issue?

20 MR. MARSHALL: Well, the -- the basic issues goes to
21 -- to chain of custody. Now the statute authorizes SLED to
22 promulgate regulations for the Uniform --

23 THE COURT: Okay. This witness has just testified
24 that he took the evidence and he placed it into the box.

25 MR. MARSHALL: Right. The -- the law of the State

1 requires that a -- that a Form B under Rule 6 be filled out
2 if there are affidavits and each --

3 THE COURT: What -- what Rule 6 are you referring to?

4 MR. MARSHALL: The rule -- Rule 6 in the --

5 THE COURT: Rule 6 in the Rules of Criminal Procedure?

6 MR. MARSHALL: -- of criminal procedure, right.

7 THE COURT: All right. And so that's your challenge?

8 Then why are you handing me all this -- all these other
9 statutes?

10 MR. MARSHALL: Well, they -- they require these
11 affidavits as is -- a copy of one is -- is attached to
12 Rule 6, and I can hand one up, but what I want to
13 cross-examine him about is why the SLED procedures, which
14 are mandatory, they're State law, weren't followed in the
15 case.

16 THE COURT: Rule 6 requires that it be tested by --
17 by somebody under the rules of SLED. He didn't do a test.
18 He did a field test, which is totally different from the
19 chemical analysis.

20 MR. MARSHALL: I understand, but -- but he was --
21 under the law of the State, he's required to fill out an
22 additional --

23 THE COURT: I just need to know what your argument is
24 because I'm failing to understand it and I just want to
25 make sure that I'm allowing in what needs to be allowed and

1 not allow in what shouldn't be allowed.

2 MR. MARSHALL: Yes, ma'am. So this initial custody
3 form -- I can show a copy of one to the Court -- is what
4 the law requires that this officer have filled out and he
5 apparently did not do that.

6 THE COURT: Have we even gotten there in his
7 testimony? What -- all right. Step back.

8 Now, Mr. Marshall, what is it -- what was the other
9 issue that just arose? About the arrest warrant.

10 MR. MARSHALL: Oh, yeah.

11 THE COURT: Tell me why the arrest warrant comes in.

12 MR. MARSHALL: Well, I think that -- you know,
13 obviously the affidavit is --

14 THE COURT: Under what rule does the arrest warrant
15 come in?

16 MR. MARSHALL: Under 613, Judge, it's a prior
17 statement and it's inconsistent with his testimony
18 because today he testified that the entire transaction --
19 transaction was not recorded, that there were -- there
20 were gaps in it, and that's not what he stated to the
21 magistrate.

22 THE COURT: Mr. Sowards.

23 MR. SOWARDS: Your Honor, our position is that an
24 affidavit is not admissible. It's also our position that
25 the tack he's taking is -- it will confuse the jury and

1 it also addresses an issue that Your Honor addressed
2 yesterday, which is at -- or in the -- the Delaware versus
3 Franks hearing. I don't think you can bring to the Court's
4 attention an argument that the affidavit, one, that he
5 either lied in it or deliberately mislead, have that ruled
6 on, and then come in and tell the jury that he lied. I
7 mean, I thought that's what we addressed yesterday.

8 MR. MARSHALL: I don't know -- I mean, Mr. Sowards
9 says that an affidavit is not admissible. I don't know
10 what rule he's relying on for that.

11 THE COURT: What are you wanting to do?

12 MR. MARSHALL: I'm wanting to show that previously
13 under oath, Judge, he has sworn to a judge something
14 different than what he says here today.

15 THE COURT: I don't know that that's what he said
16 today.

17 MR. MARSHALL: He said there are gaps.

18 THE COURT: And just because -- even -- you haven't
19 laid the proper foundation. Even assuming that it would
20 come in under Rule 613, you haven't laid the proper
21 foundation.

22 MR. MARSHALL: Well --

23 THE COURT: We'll take five minutes. Thank you.

24 MR. MARSHALL: Well, respectfully, the foundation was
25 laid on direct.

1 THE COURT: Rule 19, Mr. Marshall. Five minutes.

2 Thank you.

3 You may step down, Detective Burke.

4 THE WITNESS: Yes, ma'am.

5 (Recess taken.)

6 (Whereupon, the witness return to the witness stand.)

7 THE COURT: And I'll remind you that you're still
8 under oath.

9 THE WITNESS: Yes, ma'am.

10 (Whereupon, the jury returns to the courtroom at
11 10:58 AM.)

12 BAILIFF: Jurors all present, Your Honor.

13 THE COURT: Thank you. Please be seated.

14 Mr. Marshall, you may continue.

15 MR. MARSHALL: Thank you, Your Honor.

16 BY MR. MARSHALL:

17 Q. Officer Burke, so we agree that on August the 29th of
18 2012 you went to Judge Koontz and made a sworn statement to
19 her, commonly referred to as an affidavit, and it was for
20 the purpose of getting an arrest warrant for Mr. Seagers,
21 correct?

22 A. Yes, sir. Among other things, yes, sir.

23 Q. All right. And do you agree that in that sworn
24 statement to the judge you stated to her, quote, that the
25 entire transaction was recorded?

1 A. I didn't state that to her, sir. She read it.

2 Q. But you stated it in writing in your --

3 A. Yes, sir.

4 Q. -- in your affidavit?

5 A. Correct.

6 Q. All right. And let me back up just to give the whole
7 sentence, but do you agree that you wrote in your affidavit
8 "Prior to the transaction the CI was equipped with an audio
9 slash video recording device and the entire transaction was
10 recorded"?

11 A. Yes, sir, that's what I wrote.

12 Q. Okay. Now you've looked at the video and I think you
13 acknowledged on direct examination that there are some gaps
14 in it, correct?

15 A. There's no gaps in the video. The video never stopped
16 recording. There's gaps in the visual, but the video never
17 stopped recording during the entire operation.

18 Q. On that video when you reviewed it, did you see a drug
19 transaction conducted?

20 A. You could not see the drugs being lowered down, no.

21 Q. And to try to wrap up this issue about the handling
22 of drugs in this case by the City of Charleston Police
23 Department, you acknowledge, do you not, that SLED has prom
24 -- promulgated pursuant to statute, SLED being the South
25 Carolina Law Enforcement Division, they have promulgated

1 regulations that mandate that drugs in prosecutions be
2 handled according to certain protocols?

3 MR. SOWARDS: Objection; ask -- asked and answered.

4 THE COURT: I'm gonna allow him to answer.

5 A. I'm aware that there are, but I -- I couldn't tell you
6 what they are.

7 Q. Well, do you know the most basic -- one of the most
8 basic parts of those regulations, do you know that that
9 mandates that when drugs are passed --

10 MR. SOWARDS: Objection, Your Honor, based on the
11 Court's prior ruling.

12 THE COURT: All right. Asked and answered. Move on,
13 Mr. Marshall.

14 BY MR. MARSHALL:

15 Q. All right. Now I think you already covered this in
16 direct, but just to make sure, you agree that in several
17 reports you identified the substance that you allege that
18 Mr. Seagers distributed, that you identified it as cocaine
19 and at other times also as powder cocaine; is that correct?

20 A. I'm confused by your question.

21 Q. Okay. In the reports in this case -- and you're the
22 case agent, right?

23 A. Yes, sir.

24 Q. You were in charge of the -- this case. Have you
25 reviewed the file prior to this trial?

1 A. I have.

2 Q. Do you recall seeing on at least three occasions that
3 the substance that -- that you allege was distributed on
4 the 20th of June of 2012 is referred to as cocaine and
5 powder cocaine?

6 A. Yes, sir. That was all -- and all those reports were
7 written before the forensic analysis came back from the lab
8 that confirmed that it was cocaine base.

9 Q. And do you recall the date that the -- that the lab
10 report -- let me see. I've got it right here. Well, this
11 has been marked as -- as State's Number 7.

12 To make sure that this is -- that I'm interpreting
13 this correctly, could you tell us the date that you believe
14 that this report was generated? It appears to me to be
15 June 25th of 2012. Do you agree with that?

16 A. Yes, sir.

17 Q. Well, are you aware of the fact that as late as
18 August the 25th of 2012 you generated a -- a report
19 identifying the substance in this case as cocaine?

20 A. I'd have to see the report, but in regards to the
21 lab report, even though it's dated June 25th, it doesn't
22 mean I got it on June 25th. At the time our -- prior to my
23 leaving CPD, they had changed the system to gain access to
24 lab reports. We were able to go to the computer and just
25 print it off at our office. Prior to that, the lab reports

1 had to be delivered and the case -- the investigation had
2 not been concluded, so I wouldn't have done anything with
3 the lab report other than put it in the case file until I
4 was ready to present a warrant to the judge.

5 Q. Well, let me -- since you asked to see the document,
6 I'm happy to show it to you.

7 MR. MARSHALL: If I could have it marked, please.

8 (Defendant's Exhibit Number 3 was marked for
9 identification.)

10 MR. SOWARDS: Your Honor, the State would just request
11 which page are we talking about?

12 MR. MARSHALL: Let me show you. I'm sorry. I should
13 have shown it to you.

14 THE COURT: What number is that, Madam Court Reporter?

15 THE COURT REPORTER: 3.

16 MR. SOWARDS: Okay.

17 BY MR. MARSHALL:

18 Q. All right. This one's marked -- we just had it marked
19 as ID Exhibit Number 3. If you could look at this, sir,
20 and I direct your attention to -- under substance and then
21 up in the upper right if you can tell me -- it appears to
22 me that it's indicating -- it's got Burke, M. That's you,
23 right?

24 A. Uh-huh.

25 Q. And then it's got a date of August the 25th of 2012;

1 is that correct?

2 A. Yes, sir. And that would have been the date that it
3 was printed on the computer.

4 Q. Do you know the date that it was generated?

5 A. I would need to see the other pages of the -- the
6 complete report, it would say it on there, but this -- this
7 number at the top is when it was printed --

8 Q. Okay.

9 A. -- on August 25th at 12:43 in the afternoon.

10 Q. All right. Thank you for the clarification.

11 Well, let me see if I can quickly access -- you
12 mentioned the other pages. Let me see if I can quickly
13 access that.

14 A. In fact, sir, without you even accessing, I can tell
15 you -- if I can see it again, I can tell you when it was
16 written.

17 Q. Okay. Good. That's -- that's what I want to know.

18 A. And I can tell you exactly what's it's from. This
19 would have been the -- the original narrative from the case
20 file. When we pull the case number, you have to do an
21 original narrative. In narcotics, our original narratives
22 were very generic as basically you just said, we did -- we
23 did a controlled purses -- purchase of drugs, and then we
24 would go into more detail on the supplemental report after
25 we reviewed the video, but prior to us being able to drop

1 the drugs into evidence, we had to generate a case number
2 and we would have to have a case number -- or, I'm sorry,
3 a -- a report approved, which is why there's the very
4 generic -- I mean, I -- I can read it, if you'd like.

5 Q. No, just can you tell us the date? I'm just seek --
6 seeking clarification.

7 A. This -- this would have been made on the day that the
8 drugs were dropped.

9 Q. Okay. Thank you. All right.

10 A. June 20th.

11 Q. Now at the time that you began working with
12 Mr. Drayton, the confidential informant in the case, at
13 that time were you aware that he had a conviction for
14 giving false information to police?

15 A. I would have ran his rap sheet before he got approved
16 to work as a confidential informant. So, yes, sir, I was.

17 Q. Did you count -- in the video, did you count the
18 number of what I'll refer to as "blackouts", meaning the
19 periods where you can't see what's happening? Did you
20 count the number of times in the video that that occurred?

21 A. No, sir, I didn't.

22 Q. Did you time any of those blackout periods?

23 A. No, sir. None of them were of any significant length
24 of time, so there was no need to time them. It -- it
25 wasn't uncommon for that to happen, so it was of no concern

1 to me.

2 Q. Now the City of Charleston Police Department has
3 policies regarding the handling by officers of confidential
4 informants, correct?

5 A. Yes, sir.

6 Q. All right. And if I'm reading it correctly, it says
7 it's Number 41, confidential informants. I'll give you --
8 show you.

9 MR. MARSHALL: Let me have it marked so -- for
10 clarification, please.

11 (Defendant's Exhibit Number 4 was marked for
12 identification.)

13 BY MR. MARSHALL:

14 Q. All right, sir. That's been marked as Defendant's
15 Number 4 for ID.

16 Now tell us, please, what degree, if any, familiarity
17 you have with this policy on the handling of confidential
18 informants as promulgated by the City of Charleston Police
19 Department.

20 A. Currently or at the time?

21 Q. Well, I -- I guess both would be relevant, but let's
22 start with at the time that -- that this case was being
23 investigated, June 20th of 2012.

24 A. I -- I wouldn't have known them ver -- verbatim, but I
25 would have had a pretty good understanding of the policies.

1 Q. All right. What -- what documents does this policy
2 mandate be maintained concerning the handling of an
3 confidential informant?

4 A. I would have to read it to answer that question.

5 Q. Well, let me see if I can get the list of the ones I
6 want to ask you about and you tell me if -- if you agree
7 that the policy requires maintenance of these records on
8 confidential informants. Do you know whether the policy
9 requires CI cover sheets?

10 A. Cover sheets?

11 Q. If you don't know, just --

12 A. I --

13 Q. -- say you don't know.

14 A. I don't know what a cover sheet is. I'd have to --

15 Q. Okay. Do you know whether the policy requires
16 maintenance of CI activity file folders?

17 A. Yes, it does.

18 Q. All right. And what -- what is that document?

19 A. It's a log of all the activity that the -- the
20 informant's participated in. You keep details, dates,
21 times, locations, how much monies and what kind of drugs
22 were used -- or drugs were purchased, I'm sorry. And
23 there's a -- also a page for how much the informant was
24 paid. It's just a log to keep track of what they do.

25 Q. Okay. And was that maintained on Mr. Drayton?

1 A. It was.

2 Q. All right. And you're aware as the case agent that I
3 -- I subpoenaed those records, correct?

4 A. My understanding is you -- you received a redacted
5 version, yes, sir.

6 Q. Well, how about a document called Informant Conduct
7 Agreement?

8 A. Yes, sir, I'm familiar with that.

9 Q. Okay. And CPD's policy requires maintenance of that?

10 A. Yes, sir. The initial package, including the
11 agreement form, a personal data form, as well as -- so
12 there's three pages, we're required to provide that, all
13 those documents, a photograph of the informant, as well as
14 a rap sheet, which was reviewed by a supervising duty
15 sergeant and then my commanding officer, who was a
16 lieutenant. Once the informant was approved, that file is
17 -- was sealed and placed in the lieutenant's -- I guess a
18 big safe in his office that only he knew the combination to
19 and all the files were kept in there. But those files are
20 kept separate from the informant activity log.

21 Q. Well, do you know why -- why the Informant Conduct
22 Agreement wasn't provided pursuant to the subpoena?

23 A. I can't say. I have no idea.

24 Q. And do you know whether or not CPD's policy on the
25 handling of CI's requires maintenance of an informant

1 activity log? I think you said you believe it does,
2 correct?

3 A. It does and I told you that.

4 Q. Now this location of [REDACTED] Ashton Street, [REDACTED]
5 specifically, which designates the upstairs part of that
6 -- that building, correct?

7 A. Yes, sir.

8 Q. It's not -- it's not claimed -- it's uncontroverted
9 that Mr. Seagers did not live there; isn't that correct?

10 A. I would say it's uncontroverted that nobody lived
11 there.

12 Q. Oh, nobody lived there?

13 A. Nobody lived there.

14 Q. And when Mr. Seagers was arrested, you agree that no
15 drugs were found on him, correct?

16 A. On his person?

17 Q. On his person.

18 A. No, sir.

19 Q. And you agree that no cell phone was found on his
20 person?

21 MR. SOWARDS: Objection, Your Honor. Relevance.

22 THE COURT: Overruled. You may answer.

23 A. I would have to look at the documentation to answer
24 that question of whether a phone was found on his person or
25 not.

1 Q. You're just not sure on that?

2 A. No, sir.

3 Q. Well, if I showed you the search warrant --

4 MR. SOWARDS: Objection, Your Honor, based on the
5 Court's prior ruling.

6 THE COURT: Overruled. Let him finish his question.

7 BY MR. MARSHALL:

8 Q. If I showed you the search warrant return and it says
9 that no cell phone was found on Mr. Seagers' person, you
10 wouldn't have a reason to disagree with that, would you?

11 A. I would have to see it before I could answer that
12 question.

13 Q. The -- you identified -- okay. You took this photo
14 you say after you made contact with Mr. Drayton after this
15 alleged sale and -- this is State's Exhibit 3 that's --
16 that's already been put up for the jury. It's a photo you
17 took of the phone that the CI was -- had in his possession
18 around the time of this alleged offense, correct?

19 A. Yes, sir.

20 Q. All right. When was this entry of the word "Baby" put
21 into that phone?

22 A. I have no idea.

23 Q. Well, you would agree, would you not, that it could
24 have been put in at any time prior to your reconnection
25 with the CI?

1 A. I would disagree with that.

2 Q. Why is that?

3 A. Because I'd seen it before.

4 Q. You saw the entry of -- of "Baby"?

5 THE WITNESS: Your Honor, my question's gonna -- or my
6 response is gonna bring up --

7 THE COURT: All right.

8 MR. MARSHALL: Well, we'll move on from it.

9 THE COURT: Thank you.

10 BY MR. MARSHALL:

11 Q. Let's talk about the number that's on here, which is
12 this 642-2885. Is there any evidence through a reliable
13 source, such as phone company records, showing that that
14 number is associated with Mr. Seagers?

15 A. No.

16 Q. Now I'm -- I'm sorry if I'm not remembering your
17 testimony, but did you testify on direct about showing a
18 photograph to Mr. Drayton, the CI, after you reconnected
19 with him --

20 A. I did show him a photograph, yes, sir.

21 Q. -- at the van? Okay. Where is that photo?

22 A. You want the actual photo?

23 Q. Yes, sir.

24 A. I never put it in the case file. He had already
25 previously identified him. It was just a formality for

1 when he wrote the statement.

2 Q. So this is a single -- can you describe this photo to
3 the jury?

4 A. Sure. It was -- it was his driver's license photo.
5 Just -- and it was only a photo. It wasn't -- there was
6 no name or any biographical information. Just I would
7 fold the paper over, do you know who this is, and he would
8 answer.

9 Q. Okay. And the photo that you showed Mr. Drayton, when
10 was that photo taken?

11 A. I'd have -- I couldn't tell you. I have no idea.
12 When -- whenever Mr. Seagers got his ID card.

13 Q. You agree, do you not, from your review of the video
14 that Mr. Seagers is not seen on that video?

15 A. That's correct.

16 Q. And I think you've ready stated on cross-exam that you
17 agree further that a drug transaction is not seen on the
18 video?

19 A. You cannot -- you cannot see the exchange of the
20 drugs, no, sir.

21 Q. There's an issue in this case, as you know because
22 you've been sitting here, as to what the alleged substance
23 was that was allegedly bought by Mr. Drayton. Did you
24 photograph the substance that he brought back to you at
25 your van?

1 A. No, I did not, but honestly that's not a -- a common
2 practice to do that.

3 Q. Is it a common practice to photograph shots on cell
4 phones?

5 A. Well, in this case I believed that it was pertinent to
6 the investigation --

7 Q. But --

8 A. -- and it was an important piece of information to
9 document.

10 Q. But the appearance of the substance which is the
11 subject of this case was not important enough to
12 photograph?

13 A. Well, it was placed into evidence, so I -- I knew that
14 that -- there was no chance of losing that. A phone -- a
15 phone could be lost, the data could be erased. It was --
16 that photo -- that photo was a memorialization of that
17 exact moment when I took it.

18 Q. And, again, you don't -- you don't know exactly when
19 that entry of "Baby" was put into that phone?

20 A. It was put in prior to my initial meeting with
21 Mr. Drayton.

22 Q. And you agree, don't you, that -- that anybody can
23 make an entry in a period of about five seconds on a cell
24 phone under the contact, if you have a contact, to make
25 a new contact, that that can be done extremely quickly,

1 right?

2 A. Sure it can.

3 Q. Are you aware of there having ever been -- well, let
4 me say problems, and I know you need probably a further
5 definition, but -- but what I'm trying to ask you is are
6 you aware of there ever having been any problems, for want
7 of a better term at this stage, with the handling of any
8 evidence at the CPD evidence department?

9 A. Not on any of my cases, no. I'm not aware of any.

10 Q. Are you aware of any -- of any issues with proper
11 handing of evidence at the locker on any other cases?

12 A. No. My understanding is there's a camera that watches
13 the locker to make sure that the evidence is safe.

14 Q. So you weren't aware of an incident in June of 2011
15 where a scale for the purposes of weighing drugs went
16 missing and the evidence custodian was told to -- to leave
17 it from the evidence list?

18 MR. SOWARDS: Objection, Your Honor. Lack of personal
19 knowledge.

20 THE COURT: If he knows, he may answer.

21 A. I -- I have no idea.

22 Q. You don't know about that?

23 A. No, sir.

24 Q. Let's talk for a minute about the handling of funds
25 that are used to pay CI's. And you're -- you're familiar,

1 I assume, correct me if I'm wrong, you're very familiar
2 with the policies and procedures that govern the handling
3 of these funds at CPD; is that correct?

4 A. Yes, sir.

5 Q. Are you aware of there ever having been issues at
6 City of Charleston Police Department with those funds being
7 improperly handled?

8 A. I do know that there's an audit and that is done to
9 ensure that there is no problems on the books, but as far
10 as personal knowledge of the books being messed up on the
11 audit, no, I have no knowledge of that. I know an audit's
12 done fairly frequently to ensure that there's no mistakes.

13 Q. Are you aware that a May 2015 -- of 2014 audit found
14 no fewer than seven errors in the handling of these funds?

15 MR. SOWARDS: Objection, Your Honor.

16 THE COURT: All right. Counsel approach.

17 (Proceeding held at the bench; not reported.)

18 THE COURT: I'm gonna sustain that objection,
19 Mr. Sowards. This witness has not been qualified in that
20 area and he indicates he has no basis of knowledge. You
21 may --

22 MR. MARSHALL: Thank you.

23 THE COURT: -- move on.

24 MR. MARSHALL: Thank you.

25 BY MR. MARSHALL:

1 Q. Now on direct, Officer Burke, you testified about
2 searching the bicycle that Mr. Drayton rode that day, the
3 day of this inci -- alleged incident, correct?

4 A. Yes, sir.

5 Q. And could you be a little more specific though? Could
6 you tell us how you did that exactly, what parts of the
7 bike you searched?

8 A. I would have check anywhere that there was an opening
9 that something could be concealed in, the handlebars
10 specifically. And there are a couple of parts underneath
11 the seat where it comes together underneath, I would have
12 felt around there. I would have felt the seat to make
13 sure there was nothing concealed in the seat. I didn't
14 dismantle the bike or anything, but I checked it as
15 thoroughly as I could.

16 Q. Thank you. A previous officer involved in the case
17 testified about a couple of issues which appear nowhere
18 in the reports and he seemed to indicated that all report
19 making in this case would have been your responsibility; is
20 that correct?

21 A. Correct.

22 Q. And did you at -- at what point did you become aware
23 that a witness in this case was gonna come into court under
24 oath with a jury present and state that he was able to
25 voice-identify Dean Seagers?

1 A. When -- when was I --

2 Q. When did you become aware of that?

3 A. That he was gonna testify to that?

4 Q. Yes.

5 MR. SOWARDS: Objection, Your Honor. Relevance.

6 THE COURT: Counsel approach.

7 (Proceedings held at the bench; not reported.)

8 THE COURT: Sustained.

9 BY MR. MARSHALL:

10 Q. Do you agree or disagree that that could be important
11 evidence -- voice identification could be important
12 evidence in any criminal investigation?

13 A. Sure.

14 Q. And all parts of -- important parts of evidence in a
15 criminal investigation should be documented, should they
16 not?

17 A. Anything deemed important I would say should be
18 documented.

19 Q. Do you deem the alleged voice identification of Dean
20 Seagers as important in this case?

21 A. I would say it's important.

22 Q. Was the alleged voice identification of Dean Seagers
23 documented in this case?

24 A. Not to my knowledge.

25 Q. Why not, sir?

1 A. I don't know.

2 Q. Are you aware that evidence has been presented to
3 this jury that a car, specifically I believe a -- it was
4 described as a gray Dodge Charger, is alleged to have been
5 seen in fairly near proximity to [REDACTED] Ashton Street on
6 June 20th of 2012?

7 A. I'm aware of that, yes, sir.

8 Q. And you actually heard that testimony being given,
9 correct?

10 A. Yes, sir.

11 Q. Is that a piece of potential evidence which you would
12 deem significant?

13 A. I would say it depends how you look at it.

14 Q. Okay. Well, tell us how you look at it.

15 A. Well, from the totality of the investigation, that
16 specific vehicle was deemed by me to not be of any
17 significance. There was no intention to placing a GPS
18 tracking device on it. The vehicle didn't come back to the
19 Defendant. It was more just for my knowledge that if that
20 vehicle was there, he was probably gonna be there.

21 Q. Did you take any steps to try to determine the owner
22 of that vehicle?

23 A. I did, but it -- in regards to this -- this specific
24 case it wasn't relevant.

25 Q. I'm sorry, you did or you did not take any steps to

1 try to identify the owner?

2 A. I -- I did, but it -- it came back to -- it wasn't the
3 Defendant, so it wasn't of significance.

4 Q. In this case, sir, was the confidential informant --
5 well, you would agree he was being paid, correct?

6 A. Yes, sir.

7 Q. Was he also working off any charges?

8 A. No, sir.

9 Q. You're certain?

10 A. I'm certain.

11 Q. Are you familiar with a form -- the only form that's
12 been provided to me concerning a CI in this case.

13 A. Yes, sir, and if you'd like me to elaborate on how I
14 developed --

15 Q. Well, let me please finish my question.

16 You're familiar with a form called Confidential
17 Payment Form --

18 A. Correct.

19 Q. -- pertaining to Bunk Moreland, an alias for Robert
20 Drayton, correct?

21 A. Correct.

22 MR. SOWARDS: Your Honor, may we approach?

23 THE COURT: You may.

24 (Proceedings held at the bench; not reported.)

25 BY MR. MARSHALL:

1 Q. So are you familiar with the fact -- and this is a
2 standard form that you-all use with CI's, correct?

3 A. Correct.

4 Q. All right. And at the top, the second line, you are
5 familiar with the fact that it says "informant type" --

6 A. Correct.

7 Q. -- T-Y-P-E, the type of informant, colon, and then it
8 says "charges or paid"?

9 A. Correct.

10 Q. All right. So what I'm asking you is are you -- are
11 -- are you aware that in -- in this particular case both of
12 those words "charges" and "paid" are circled?

13 A. Correct.

14 Q. All right. So I'm gonna ask you to explain that,
15 but, first of all, just to make sure we understand your
16 testimony, when it says "charges", I'm assuming, I don't
17 know that I'm right on this, I want to hear it from you,
18 please, but I'm assuming that means is this confidential
19 informant is working off charges or being paid; is that
20 right?

21 A. Not necessarily.

22 Q. Okay. Well, just tell us because I need to be
23 educated.

24 A. Well, there's -- for them to be officially working
25 off charges, that has to be done through the Solicitor's

1 Office. You have to get -- first they had to be charged
2 with a crime and then you need to get approval from the
3 Solicitor's Office before you can use them and before any
4 agreement can be gained in regards to having charges
5 reduced because as police officers we don't have that
6 authority.

7 Q. Okay.

8 A. Does that answer your question?

9 Q. Well, no, sir. I'm -- I'm wondering why both of those
10 words are circled on Robert Drayton's form.

11 A. Well, he was -- he was the target of an investigation
12 and prior to any formal charges being filed, he was brought
13 in and debriefed and at which point he agreed to cooperate.
14 The value of his information completely outweighed anything
15 -- any potential charges he could face, so I conferred with
16 my lieutenant and we decided that we were gonna have him as
17 a paid informant.

18 Q. So what -- what were you contemplating charging him
19 with?

20 MR. SOWARDS: Objection, Your Honor. Relevance.

21 THE COURT: You may -- overruled. You may answer.

22 A. It was a nar -- narcotics-related offense.
23 Specifically, I -- I don't remember.

24 Q. Okay. So you've testified that he was not working off
25 charges, correct?

1 A. Correct. He was never charged.

2 Q. Is it fair to say he was working off potential
3 charges? Charges that you were contemplating?

4 A. No, because he -- after the initial debriefing, he was
5 paid immediately. He -- he went from anything dealing with
6 charges to a paid informant and that was within a matter of
7 an hour.

8 Q. Uh-huh. And you think that explains why you circled
9 "charges" on this form?

10 A. Well, had he not continued to cooperate, we would have
11 -- we could have possibly readdressed it, but I did not
12 want to falsify documents, so I circled both.

13 Q. Now while Robert Drayton, the CI, was out on his
14 bicycle at the time in question, you and/or other officers
15 did not have constant visual contact with him, did you?

16 A. I can't say one way or the other if we did. And it
17 would have only been an issue had something in regards to
18 his safety occurred would that have been noted.

19 Q. Well, it -- it appears, and this is for the jury
20 obviously to -- to decide, but it appears from my review of
21 the video that someone official, maybe you most likely I
22 would assume, has a conversation with him and, in fact, I
23 think you said that you did have a couple of conversations
24 with him.

25 A. Correct.

1 Q. Did you say that you had one phone conversation with
2 Mr. Drayton on -- on the way to [REDACTED] Ashton and one when he
3 was returning to your van?

4 A. Correct.

5 Q. Okay. And at any point in those conversations, did
6 you ask him where he was?

7 A. I didn't need to. I knew where he was.

8 Q. So the purpose of the conversations was what?

9 A. Just to check on him and make sure everything was
10 gonna go. As to the other phone calls on the tape, I'm
11 only hearing Mr. Drayton's voice. I'm not hearing what's
12 being relayed to him, so phone calls were made to try to
13 gain that -- that knowledge.

14 Q. Are there any -- during those blackout periods that we
15 see on the video, do you know whether there was any lapse
16 in audio as well?

17 A. No, the recording is from the time he left me until
18 the time he got back to me.

19 Q. Excuse me one minute while I review these notes.

20 Okay. The drugs -- just to make sure that the
21 record's clear on this, and I know you've already testified
22 to it, but if you could quickly tell us -- once you said
23 you received this package containing this substance from
24 Mr. Drayton, please tell us what you did with it exactly.

25 A. Well, the first thing I did was put it in my pocket

1 and completed a search of him and then following the search
2 I would have taken his statement and I would have arranged
3 for him to get home, paid him his -- well, prior to him
4 leaving, I would have paid him his money, I'd get him to
5 sign the proper forms and he would have got on his bike and
6 went home. I would have went down to CPD headquarters and
7 -- I'm sorry. I would have field-tested it prior to going
8 back to CPD headquarters after Mr. Drayton left to confirm
9 that the substance was, in fact, presumptive positive for
10 cocaine and then I would have taken it to CPD headquarters
11 to place it into evidence.

12 Q. And -- but -- but in this case, when -- is it
13 indicated on here exactly when -- you say you sealed it,
14 correct?

15 A. Yes, sir.

16 Q. All right. When you got back to the station?

17 A. Yes, sir.

18 Q. All right. And would it -- would you have sealed it
19 in a -- in a bag sim -- just exactly like this or similar
20 or --

21 A. That is the bag.

22 Q. This is the same bag?

23 A. The same bag.

24 Q. All right. So is there a time -- is there a time
25 written on here anywhere that -- that you sealed it and

1 dropped it?

2 A. No, sir, that would be on the evidence voucher that
3 was created on the computer.

4 Q. So you sealed it in there with some sort of heat seal
5 and -- and --

6 A. Yes, sir.

7 Q. And I just want to make sure that we're clear on whose
8 writing is where. Can you tell us on this package, please,
9 where you have marked?

10 A. Sure. I would have marked on the top and the bottom.
11 This seal would not have been there when I initially turned
12 it in because it's a solid bag. I double-seal it at the
13 top and bottom, my initials.

14 Q. Okay. So M-E-B, that's you?

15 A. That's correct.

16 Q. At the top and bottom?

17 A. Correct.

18 Q. All right. And then who did the writing on these two
19 labels, one on the back and one on the front?

20 A. That looks like Officer Tugis' handwriting.

21 Q. Okay. Tugis filled out the larger --

22 A. Correct.

23 Q. -- label --

24 A. Uh-huh.

25 Q. -- with the case number?

1 A. And that would have been filled out prior to the drugs
2 being placed and sealed by me. So there's a -- at that
3 point it's just a plastic bag with a sticker on it.

4 Q. And what -- what is the role of Tugis? Why would
5 Tugis fill this one out?

6 A. I don't have any -- I don't remember why he was there,
7 but, I mean, it's not uncommon for somebody to fill out a
8 sticker for you. I would -- prior to dropping it, I would
9 verified everything and had there been a mistake I would
10 have pulled the sticker off and put a different one on.

11 Q. Well, how do you know that Tugis filled this out?

12 A. It looks like his handwriting.

13 Q. Well, there's nothing on there that indicates Tugis,
14 is there?

15 A. No. I just -- he was my partner for a while. I know
16 his handwriting.

17 Q. How about this little smaller label on the back?
18 Would you tell us what you know, if anything, about that?

19 A. It looks like the forensics lab sticker. That would
20 have been place on after I dropped the drugs in the lockbox
21 by whoever had then possession of it.

22 Q. All right. So you're saying that you -- you sealed it
23 up and then immediately, within an extremely short time,
24 dropped it into the secure drop box, correct?

25 A. Correct.

1 Q. You were present, were you not, when Mr. Seagers was
2 arrested?

3 A. I was.

4 Q. And as the case agent and having reviewed the file
5 prior to trial, you're aware of the fact, aren't you, that
6 in his pocket when he was arrested he had four paychecks
7 from his employer?

8 MR. SOWARDS: Objection, Your Honor. Relevance.

9 THE COURT: He may answer.

10 A. I don't know if they're from an employer or not, but
11 there were checks.

12 Q. Okay. Well, they were -- they were placed into a
13 sealed bag and -- and do you agree that it was -- it looks
14 like Officer Olson that -- that recovered these from my
15 client's pocket.

16 A. That's what the tag says, yes, sir.

17 Q. All right. And you say you don't know what they are
18 and -- and I certainly can't fault you for that because
19 they've been sealed when we opened them this morning, so I
20 had never seen them either. But, if you will, I'm gonna
21 tell you what I believe they say and let you tell me if you
22 agree or not.

23 MR. SOWARDS: Objection, Your Honor.

24 THE COURT: Sustained.

25 BY MR. MARSHALL:

1 Q. Well, then let me have you, please, look at these and
2 tell the jury what they are.

3 MR. SOWARDS: Objection, Your Honor.

4 THE COURT: Sustained.

5 MR. MARSHALL: I thought -- I think -- just one moment
6 while I confer with Mr. Seagers. I don't have any more
7 questions, sir. Thank you.

8 MR. SOWARDS: Nothing further from the State.

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

10 (Witness excused.)

11 THE COURT: Call your next witness.

12 MR. SOWARDS: Your Honor, the State calls William
13 Olson.

14 CLERK: Place you left hand here and raise your right
15 hand.

16 WILLIAM OLSON,

17 having been duly sworn, testified as follows:

18 CLERK: You may be seated. Sir, once seated if you
19 could please state your first and last name and then spell
20 your last loudly and clearly into the microphone for the
21 record, please.

22 THE WITNESS: Master Police Officer William Olson,
23 O-L-S-O-N.

24 THE COURT: Mr. Sowards.

25 MR. SOWARDS: Thank you.

1 DIRECT EXAMINATION

2 BY MR. SOWARDS:

3 Q. Officer Olson, who is your current employer?

4 A. City of Charleston Police Department.

5 Q. And what are your current duties with the City of
6 Charleston Police Department?

7 A. I'm currently a downtown supervisor with the Community
8 Action Team.

9 Q. And how long have you been employed by CPD?

10 A. Since 2005. A little over ten years.

11 Q. Okay. Were you working on August 29th of 2012?

12 A. Yes.

13 Q. And did you have the occasion to become in the
14 investigation of this case, State versus Dean Seagers, on
15 that date?

16 A. Yes, sir.

17 Q. And were you loc -- were you present when the
18 Defendant was arrested?

19 A. Yes, sir.

20 Q. And do you recall the location?

21 A. ■ Ashton Street.

22 Q. And did you have the opportunity to retrieve any
23 evidence from ■ Ashton Street on August 29, 2012?

24 A. Yes, sir. A cell phone.

25 Q. And where was that phone located?

1 A. It was located in the kitchen on the counter.

2 Q. And what was done with the phone after it was
3 recovered?

4 A. I took it and submitted it into evidence.

5 Q. And -- well, first of all, let me show you what's been
6 marked for identification as State's Exhibit 5. Do you
7 recognize that, sir?

8 A. Yes.

9 Q. And how do you recognize it?

10 A. Through my documentation that is the bag that I put
11 into evidence.

12 Q. And how do you know that that's the bag that you put
13 into evidence?

14 A. Because it's my initials. I heat-sealed the bag and I
15 put my initials on the bag.

16 Q. And what did you do with that after you put it in the
17 bag?

18 A. I put it into evidence.

19 Q. Did you maintain care, custody and control over
20 that --

21 A. Yes.

22 Q. -- that item?

23 A. Yes, up until I transferred it to evidence.

24 Q. And could you just briefly describe the process of
25 submitting something into evidence?

1 A. We take the evidence like you saw in that bag and
2 heat-seal it, put our initials on it and we then do an
3 evidence voucher and then if the custodian of evidence is
4 there, we give that evidence to them. If they're not
5 there, we put it in a secured locker.

6 Q. And were you able to recover -- or did you see any
7 other evidence that was recovered during the -- the -- at
8 [REDACTED] Ashton Street?

9 A. Did I see any evidence?

10 Q. Did you locate anything else?

11 A. Yes.

12 Q. I want to show you what's been marked as State's
13 Exhibit 6. I'll show you the bag and then -- do you
14 recognize this, sir?

15 A. Yes.

16 Q. And how do you recognize it?

17 A. That was at [REDACTED] Ashton Street.

18 MR. SOWARDS: I beg the Court's indulgence.

19 Nothing further from the State, Your Honor.

20 THE COURT: Mr. Marshall.

21 MR. MARSHALL: Thank you, Judge.

22 CROSS-EXAMINATION

23 BY MR. MARSHALL:

24 Q. Hello, Officer Olson. I'm Cameron Marshall.

25 A. Hello. How are you?

1 Q. Fine, sir. Thank you. I'll be very brief, I hope.

2 May I, please, show you --

3 MR. MARSHALL: I need to get -- I need to get this
4 marked, please.

5 (Defendant's Exhibit Number 5 was marked for
6 identification.)

7 MR. MARSHALL: Thank you.

8 BY MR. MARSHALL:

9 Q. All right. We've marked this as Defendant's
10 Exhibit 5, and I'd like for you to look at it and tell me
11 if you can identify this.

12 A. Can I take it out?

13 Q. Sure.

14 A. They are checks.

15 Q. All right. And did you recover them?

16 A. I did recover them.

17 Q. Okay. And where -- from where did you recover them?

18 A. I -- I would need the documentation to see.

19 Q. All right. You haven't had a chance to review the
20 file --

21 A. No.

22 Q. -- before coming today?

23 A. No. Not that portion, no, sir.

24 Q. Okay. Do you know if they're relevant to this
25 investigation?

1 MR. SOWARDS: Objection, Your Honor.

2 THE COURT: What's the basis?

3 MR. SOWARDS: It calls for a legal conclusion.

4 THE COURT: Overruled. You may answer.

5 THE WITNESS: Can you repeat the question?

6 BY MR. MARSHALL:

7 Q. I just asked if you know if those checks are -- have
8 anything to do with this case?

9 A. I was simply there to recover evidence that day.

10 Q. And do you have -- do you have any independent
11 recollection of those checks?

12 A. No, just that I recovered them.

13 Q. All right. Well, can you read those checks to the
14 jury, please?

15 MR. SOWARDS: Objection, Your Honor.

16 THE COURT: What's the objection?

17 MR. SOWARDS: I think before he reads them they
18 need to be admitted into evidence. There's a lack of
19 foundation.

20 MR. MARSHALL: Well, I -- I'll agree to move it into
21 evidence.

22 THE COURT: All right. What's the number?

23 THE COURT REPORTER: 5.

24 THE COURT: Any objection?

25 MR. SOWARDS: Your Honor, relevance.

1 THE COURT: Counsel approach.

2 (Proceedings held at the bench; not reported.)

3 THE COURT: Defendant's 5 into evidence noting your
4 objection.

5 (Defendant's Exhibit Number 5, paychecks, were
6 admitted into evidence.)

7 BY MR. MARSHALL:

8 Q. All right, sir. Could you, please, look at those and
9 -- I took the liberty of arranging them correctly. There's
10 -- there's four checks. Do you agree?

11 A. Yes, sir.

12 Q. Okay. And I was gonna say I had them in chronological
13 order, but it doesn't matter. But if you'll -- if you'll
14 read each of those checks to the jury, I'd appreciate it.

15 A. The check is in the name of Michael Brown, paid to the
16 owner -- order of Dean Seagers. The first one is \$350, the
17 second one is \$400, the third one is \$400, and the fourth
18 one is \$400.

19 Q. Okay. And what are the dates on them, please?

20 A. The first one is July 13, 2012; July 20, 2012;
21 July 27, 2012, and August 3, 2012.

22 Q. All right. Is there anything on any of those written
23 in the memo portion?

24 A. Yes.

25 Q. Could you identify by date and then the corresponding

1 memo?

2 A. July 13th the memo says "mechanic helper". July 20th
3 says "helper". July 27th says "mechanic helper". And
4 August 3rd says "mechanic helper".

5 Q. Okay. Thank you, sir.

6 Do you know whether you recovered any other evidence
7 at the time of Mr. Seagers' arrest other than what we've
8 just covered here.

9 A. Yeah, we recovered quite a bit of --

10 Q. Some other stuff?

11 A. Yes, sir.

12 MR. MARSHALL: All right. Well, I don't have any more
13 questions. Thank you.

14 THE COURT: Mr. Sowards.

15 MR. SOWARDS: Nothing from the State, Your Honor.

16 THE COURT: All right. You may step down. Thank you.

17 (Witness excused.)

18 THE COURT: Call your next witness.

19 MR. SOWARDS: Your Honor, the State calls Mary
20 Phillips.

21 CLERK: Place your left hand here and raise your
22 right.

23 MARY KATHRYN PHILLIPS,

24 having been duly sworn, testified as follows:

25 CLERK: You may be seated. Ma'am, once seated if you

1 could please state your first and last name and then spell
2 your last name loudly and clearly into the microphone for
3 the record, please.

4 THE WITNESS: Mary Kathryn Phillips. First name Mary,
5 M-A-R-Y; last name Phillips, P-H-I-L-L-I-P-S.

6 DIRECT EXAMINATION

7 BY MR. SOWARDS:

8 Q. Good afternoon, Ms. Phillips.

9 A. Good afternoon.

10 Q. Where do you currently work?

11 A. I work for the City of Charleston Police Department
12 within the Crime Scene Unit.

13 Q. And how long have you been with the City of Charleston
14 Police Department?

15 A. Since October of 2006.

16 Q. And could you describe for the jury, please, your
17 current duties with the Charleston Police Department?

18 A. Well, we respond to a variety of different crimes for
19 the purpose of collecting evidence, whether to preserve it
20 or for future analysis. Currently I'm assigned in our
21 Latent Recovery Unit of the Crime Scene Unit, so I process
22 all evidence for fingerprints.

23 Q. And how long have you been with the forensics
24 department?

25 A. Since October of 2006.

1 Q. Now have you ever testified on fingerprinting in
2 either State or Federal court?

3 A. I have testified to it in State court.

4 Q. And approximately how many times have you testified?

5 A. Thirty or forty times.

6 Q. Have you ever been admitted as an expert in the area
7 of latent recovery?

8 A. I have.

9 Q. And approximately how many times have you been
10 admitted?

11 A. I'd say maybe ten or fifteen times.

12 MR. SOWARDS: Your Honor, at this time the State would
13 like to have Ms. Phillips admitted as an expert on latent
14 recovery.

15 THE COURT: Mr. Marshall.

16 MR. MARSHALL: No objection. That's fine.

17 THE COURT: She will be so qualified. Mr. Sowards.

18 MR. SOWARDS: Thank you.

19 BY MR. SOWARDS:

20 Q. Could you, please, describe the process of lifting a
21 fingerprint?

22 A. All right. Well, fingerprints -- whenever we get
23 an object or even on a scene to process it, it -- the
24 technique that we use to process the item for a fingerprint
25 varies depending on what it is. If it's something porous,

1 like paper, the oils from your skin seep right in and we
2 use a chemical processing. If it's something hard like
3 plastic, we use what everybody sees on TV, the fingerprint
4 powder. On a hot -- on a hard item once we put the powder
5 down, the powder will adhere to the oils and then we can
6 use just tape, just clear tape, and you can lift it off
7 and you can put it on a white surface so that it can be
8 analyzed by a fingerprint examiner.

9 Q. I just take it from your testimony that some surfaces
10 hold a fingerprint better than others. What --

11 A. Correct.

12 Q. What -- what is -- what is a characteristic of a
13 surface that might make it less susceptible to holding a
14 print?

15 A. Well, there's lots of things that can go into whether
16 or not you can get a good fingerprint. If you don't put
17 enough pressure on the time to actually have good contact
18 on that surface, that can get in the way. If the surface
19 is really dirty or there's grime or anything on it, oil,
20 whatever, if you touch it, you've basically taken away the
21 dirt, whatever dust, whatever's there, and you've removed
22 that, but you haven't left your oils on the actual surface.
23 And then there's also if your hands are sweaty, when you
24 touch them there's too much liquid there, and when we
25 either powder process that or even chemically process that

1 we just get a saturation of either powders or chemic --
2 excuse me, or chemicals.

3 Q. And could the fact that multiple people -- multiple
4 people are touching an item affect whether it can hold a
5 print or whether you can recover a latent print?

6 A. Absolutely. Because all your fingerprints are is a
7 combination of oil and water, so if numerous people are
8 touching it over and over you're just getting a com --
9 you're just getting a huge deposition or de -- deposit of
10 oils on that item, so it would just be a buildup of oils on
11 that item.

12 Q. Now I want to ask you specifically about this case.
13 Did you have the occasion to become involved in the
14 investigation of this case, State versus Dean Seagers?

15 A. I did.

16 Q. And how did you become involved in the investigation
17 of this case?

18 A. A small plac -- a small plastic bottle or cup was
19 submitted to me for fingerprint processing.

20 Q. And did you, in fact, process that cup?

21 A. I did.

22 Q. And what was -- what was the result or what were the
23 results?

24 A. I was able to find an area that appeared to have some
25 fingerprint ridges in it that I recovered.

1 Q. So you were able to recover a latent print; is that
2 correct?

3 A. Correct.

4 Q. And I want to show you what's been marked as State's
5 Exhibit 6. Do you recognize this package?

6 A. I do.

7 Q. And how do you recognize it?

8 A. It has -- when it's originally packaged to me, it
9 wouldn't have been opened, but then when I open it, I open
10 it at a different location and then I reseal it with my
11 initials on.

12 Q. And inside the package is a cup. If you could take it
13 out real quick. Do you recognize that cup?

14 A. I do.

15 Q. And how do you recognize that cup?

16 A. This also has my initials on it. We mark all of our
17 evidence once we've processed it.

18 Q. Now I want to ask you about how that came into your
19 possession. From whom or from where did you receive that
20 cup?

21 A. I actually -- a crime scene technician, Jeffrey
22 Miller, responded to the scene and he would have collected
23 it and packaged it and then we have secured lockers that he
24 would have dropped it in, kind of like dead-drop locker.
25 He can drop it, but he can't pull anything out of it. I'm

1 the only one with access to the locker, so I then would
2 have pulled that evidence out for processing.

3 Q. And from the time you received it from the locker to
4 when the next person handled the cup, did you have sole
5 care, custody and control of that cup?

6 A. I did.

7 MR. SOWARDS: I beg the Court's indulgence.

8 Nothing further.

9 THE COURT: Mr. Marshall.

10 MR. MARSHALL: Thank you, Judge.

11 CROSS-EXAMINATION

12 BY MR. MARSHALL:

13 Q. Good afternoon, Ms. Phillips. I'm Cameron Marshall.

14 A. Hi.

15 Q. Ms. Phillips, you didn't recover Dean Seagers'
16 fingerprint off of that cup, did you?

17 A. To the best of my knowledge, no. I did not analyze
18 the print that was recovered from it.

19 Q. Oh, okay. I -- I missed -- I missed a link there.
20 All right. You -- you lifted it?

21 A. Correct.

22 Q. But you didn't do the analysis to -- you can't say
23 with certainty whether any identifiable print was --

24 A. Correct.

25 Q. -- taken off?

1 A. Correct.

2 Q. Okay.

3 MR. MARSHALL: Thank you. I don't have any more
4 questions.

5 THE COURT: Redirect?

6 MR. SOWARDS: Nothing from the State.

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

8 (Witness excused.)

9 THE COURT: Call your next witness.

10 MR. SOWARDS: The State calls Kathleen Butler.

11 CLERK: Place your left hand here, ma'am, and raise
12 your right.

13 KATHLEEN BUTLER,

14 having been duly sworn, testified as follows:

15 CLERK: You may be seated. Ma'am, once seated if you
16 could please state your first and last name and then spell
17 your last loudly and clearly into the microphone for the
18 record, please.

19 THE WITNESS: My name is Kathleen Butler. Last name
20 B-U-T-L-E-R.

21 DIRECT EXAMINATION

22 BY MR. SOWARDS:

23 Q. Good afternoon, Ms. Butler. Where do you currently
24 work?

25 A. I work for the Charleston Police Department.

1 Q. And what are your duties with the Charleston Police
2 Department?

3 A. Currently I'm assigned as the supervisor for the
4 Latent Print Division.

5 Q. And could you describe what those duties entail?

6 A. I -- I look at latent fingerprints directed by crime
7 scene and either identify them to known prints of a suspect
8 or a victim and I identify them or eliminate them. I not
9 only do the matching of fingerprints, I also handle the
10 administrative duties within the unit.

11 Q. And could you describe your training and experience
12 as it relates to fingerprint analysis?

13 A. Yes. I have over three hundred hours in
14 fingerprint-type schools. I started off with Pattern
15 Recognition and Basic Fingerprint, which was held at the
16 South Carolina Law Enforcement Division. I've done
17 ridgeology, I've done advanced fingerprint symposiums and
18 a palm print symposium. Recently I'm doing the online
19 courses that are through NIJ and West Virginia University.
20 I've taken online courses with Fundamentals of Latent
21 Prints, Roles in Forensic Science and one that was called
22 A Guide to Latent Print Testimony. Altogether that --
23 that's over three hundred hours. Then I have crime scene
24 as well. And I -- I keep up with certifications because I
25 am both certified in latent fingerprints and crime scene.

1 Q. Ms. Butler, have you ever had the opportunity or have
2 you ever been called to testify in State or Federal court?

3 A. I've testified in both, nineteen in total. Three of
4 those are Federal court.

5 Q. And have you ever been admitted as an expert in
6 either State or Federal court as an expert in fingerprint
7 analysis?

8 A. Yes, I have.

9 Q. And how many times?

10 A. Nineteen times.

11 MR. SOWARDS: Your Honor, at this -- at this time,
12 the State moves to admit Ms. Butler as an expert in
13 fingerprint analysis.

14 MR. MARSHALL: No objection, Judge.

15 THE COURT: She will so qualified. You may continue.

16 BY MR. SOWARDS:

17 Q. And could you describe the process of fingerprint
18 analysis or what tools you use?

19 A. The tools used by a latent examiner are fingerprint
20 pointers, magnification and light. Very simple. As far
21 as the comparison process, you take -- we use what they
22 call the ACE-V methodology, analyze, compare, evaluate
23 and verify. When you're doing a comparison, you do a
24 side by side under magnification and you start with the
25 latent, you look for the first level, which is what -- is

1 there a pattern type discernable? If not, then you take
2 and look for an area of the print that you can start with,
3 whether it be the very tip or a side of a finger, and you
4 -- you pick out points and go back and forth from the
5 latent to the known fingerprint and keep going back and
6 forth until you come to a conclusion of whether that
7 fingerprint, the latent fingerprint is, indeed, a match to
8 that individual.

9 Q. Now specifically as to this case, did you perform an
10 analysis of a latent print in this case?

11 A. Yes, I did.

12 Q. And what was the result of that analysis?

13 A. Upon receiving it, it had no -- very little to no
14 ridge detail, so it was what we call non-comparable.
15 There wasn't enough information there to identify to an
16 individual.

17 Q. And did you attempt any other methods for identifying
18 -- "owner's" probably not the right word, but that -- the
19 fingerprint that you recovered?

20 A. The fingerprint is recovered by crime scene. They do
21 a chemical processing or powder. What I do is I look at
22 that fingerprint and determine whether it has enough value
23 to be individualized to an ind -- another person, and at
24 this point that -- it did not. It didn't have enough
25 characteristics to identify.

1 Q. I think it's actually right there on the table. Do
2 you recognize that cup?

3 A. No.

4 Q. So just to be clear, you didn't actually analyze the
5 cup, you analyzed a latent print that was recovered from
6 the cup; is that correct?

7 A. Correct.

8 MR. SOWARDS: I beg the Court's indulgence. Your
9 Honor, at this time the State moves to admit State's
10 Exhibit 6 based on the analysis that occurred and also
11 based on the prior testimony of Officer Olson.

12 THE COURT: Thank you. Any objection?

13 MR. MARSHALL: No objection to that, Judge. Thank
14 you.

15 THE COURT: No objection? Is that what I --

16 MR. MARSHALL: Well --

17 THE COURT: I didn't hear you. Did you say "yes" or
18 "no"?

19 MR. MARSHALL: I said we don't have an objection,
20 no.

21 THE COURT: All right. State's 6 into evidence
22 without objection.

23 (State's Exhibit Number 6, a cup, was admitted into
24 evidence.)

25 MR. SOWARDS: Nothing further from the State.

1 THE COURT: Mr. Marshall, your witness.

2 CROSS-EXAMINATION

3 BY MR. MARSHALL:

4 Q. Ms. Butler, good afternoon. I'm Cameron Marshall.

5 A. Hello.

6 Q. I've just got one question. Obviously -- you've
7 covered it, but you didn't get Dean Seagers' fingerprint
8 off of that cup, did you?

9 A. No, I did not process a cup.

10 Q. All right. That -- that's a "no", that you did not
11 identify --

12 A. No.

13 Q. -- my client's fingerprint on the cup, correct?

14 A. I did not identify it, no.

15 MR. MARSHALL: Thank you.

16 THE COURT: Redirect?

17 MR. SOWARDS: Nothing from the State.

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

19 (Witness excused.)

20 THE COURT: Call your next witness.

21 MR. SOWARDS: The State calls Lori Roe.

22 CLERK: Place your left hand here, ma'am, and raise
23 your right.

24 LORI ROE,

25 having been duly sworn, testified as follows:

1 CLERK: You may be seated. Ma'am, once seated, if you
2 could please state your first and last name and then spell
3 your last loudly and clearly into the microphone for the
4 record.

5 THE WITNESS: My name is Lori Roe, L-O-R-I R-O-E.

6 DIRECT EXAMINATION

7 BY MR. SOWARDS:

8 Q. Good afternoon. Ms. Roe, where are you presently
9 employed?

10 A. City of Charleston.

11 Q. And were you at one time employed by the City of
12 Charleston Police Department?

13 A. Yes, sir.

14 Q. And how long did you work there?

15 A. Three years.

16 Q. Were you employed there on June 20, 2012?

17 A. Yes, sir.

18 Q. And what was your position at that time?

19 A. I was evidence custodian.

20 Q. Now could you just briefly describe what that is,
21 evidence custodian?

22 A. We take in evidence that's turned in by officers or
23 detectives and we store it for safekeeping.

24 Q. Now as the evidence custodian, how do you receive
25 evidence?

1 A. We receive it in a secure area that is locked in a
2 mailbox or a locker.

3 Q. The mailbox, could you briefly describe what exactly
4 that is and how that works?

5 A. It is a mailbox that has a lock on it on the outside
6 and you can open it up just like a regular mailbox and
7 deposit items in it.

8 Q. And who has access to the -- the mailbox? I mean, as
9 far as retrieving items that have been submitted to it.

10 A. Any evidence custodian.

11 Q. Now on June 20, 2012, did you receive evidence from
12 Officer Michael Burke regarding this case, State versus
13 Dean Seagers?

14 A. Yes, sir.

15 Q. And -- and what item was it?

16 A. It was Bag 1, Item 1.

17 Q. Now I want to show you what's been marked as State's
18 Exhibit 8. Do you recognize that?

19 A. Yes, sir.

20 Q. And how do you recognize it?

21 A. It has the initials on the top of it where it was
22 sealed by the officer.

23 Q. And how do you now exactly that you were the evidence
24 custodian who retrieved that item?

25 A. I had a chain of custody.

1 Q. And what do you mean by a chain of custody?

2 A. It shows where the officer put it in, the location
3 he put it in, and then it shows that I am the one that
4 received it.

5 Q. Thank you. Now when an item has been submitted to --
6 to evidence at CPD, who has access to those items?

7 A. The evidence custodians.

8 Q. And does anyone else have access to those items?

9 A. No, sir.

10 Q. And is that item in the -- substantially the same
11 condition it appears now as when you first saw it?

12 A. Yes, sir.

13 Q. And can you tell me if anything happened to that
14 subsequent to when it was received by you as the evidence
15 custodian?

16 A. I'm not sure of your question.

17 Q. I'm sorry. It's okay.

18 MR. SOWARDS: Nothing further from the State.

19 THE COURT: Mr. Marshall.

20 MR. MARSHALL: Thank you, Judge.

21 CROSS-EXAMINATION

22 BY MR. MARSHALL:

23 Q. Good afternoon, Ms. Roe. I'm Cameron Marshall. Did I
24 understand you correctly, you're not with CPD anymore?

25 A. Correct.

- 1 Q. When did you leave them?
- 2 A. It's been two years.
- 3 Q. All right. What was your reason for leaving?
- 4 A. I took another job with the City.
- 5 Q. With the City?
- 6 A. Yes, sir.
- 7 Q. Okay. So when you received this item that you're here
- 8 to testify about, this -- this drug evidence, it was -- it
- 9 was like this? Is this the way it appeared? Was it in
- 10 this bag, do you know?
- 11 A. It was in a bag and then it was -- it had the initials
- 12 on it.
- 13 Q. Okay. On the -- on the front, the big -- the big
- 14 sticker? Is that what was on there when you got it?
- 15 A. No, sir.
- 16 Q. Okay.
- 17 A. That's what we put on there.
- 18 Q. That's what you --
- 19 A. Well, he puts that on there. We put -- we put our own
- 20 evidence sticker on it.
- 21 Q. Are you talking about this one on -- on the back?
- 22 A. No, sir.
- 23 Q. All right. Well, I'm a little confused. Where --
- 24 where -- tell me what -- where you marked on the evidence.
- 25 A. We don't actually mark on the object.

1 Q. Okay.

2 A. We just take it in and we store it.

3 Q. All right. So you -- you make no -- you made no marks
4 on this as having been evidence that -- that you in any way
5 handled it, correct?

6 A. No, sir, not me.

7 Q. But you retrieved it from the locker?

8 A. Yes, sir.

9 Q. And then you -- tell me what you did with it next
10 without me trying to put words in your mouth.

11 A. When our -- when I took it out of the mailbox, I take
12 it in and I make sure that the label is correct and it
13 matches what's in the system.

14 Q. All right.

15 A. Then I store it.

16 Q. So to your understanding, you would have been the
17 second person to handle this package?

18 A. Correct.

19 Q. All right. When was it dropped in -- it was dropped
20 in the locker; is that right?

21 A. It was dropped in the -- it was dropped in the
22 mailbox.

23 Q. The mailbox. And when was that done?

24 A. It was on 6-20-12 at 1900 hours.

25 Q. By Mr. Burke -- Officer Burke?

1 A. Correct.

2 Q. And how do you know that? I just -- just explain to
3 the jury how you know that, that that's when he dropped it.

4 A. I have a sheet that has the chain of custody and it
5 shows that time.

6 Q. But what I'm trying to get at, just so the jury has a
7 clear understanding of this, would Officer Burke have made
8 a computer entry saying that that's what he did and went to
9 some computer you-all all share or --

10 A. He put it in our RMS system.

11 Q. Okay. What is that?

12 A. That is the system that shows how we -- what's been
13 put into evidence, what they've entered into evidence, and
14 that shows us that we know that that item or items -- what
15 was in it.

16 Q. All right. Well, was that done by -- when he dropped
17 it in the locker in this computer right there and he made
18 an entry or how is it done?

19 A. He made an entry in the room that's down the hallway
20 from the locker.

21 Q. Okay. So the -- the procedure in which you believe
22 happened here is he drops it in the locker, walks down to
23 another room and makes a computer entry?

24 A. No, sir. He makes the entry and then he brings the
25 evidence as far as I know.

1 Q. All right. Okay.

2 A. I was not there at the time.

3 Q. Are you -- are you familiar at all with -- with South
4 Carolina Law Enforcement Division's Uniform Procedures for
5 the Handling of Drug Evidence?

6 A. I'm not an officer.

7 Q. All right. Have you ever received any training on
8 SLED policies for handling drug evidence?

9 A. I know how to handle it, yes, sir. I have received
10 some training.

11 Q. Okay. Does the City of Charleston Police Department's
12 procedures and policies for the handling of drug evidence
13 differ in any way from those promulgated by SLED?

14 MR. SOWARDS: Objection, Your Honor.

15 THE COURT: What's the basis?

16 MR. SOWARDS: Relevance.

17 THE COURT: Overruled. You may answer.

18 THE WITNESS: Could you repeat the question?

19 MR. MARSHALL: Yes, ma'am.

20 BY MR. MARSHALL:

21 Q. Yes, ma'am. Does the City of Charleston Police
22 Department's policy and procedure for the handling of drug
23 evidence differ in any way, to you knowledge, from the
24 Uniform Procedures for Handling Drug Evidence which are
25 promulgated by SLED through State regulation?

1 A. I'm not sure about that.

2 Q. You don't know?

3 A. No.

4 Q. Have -- have you ever handled any evidence in which
5 affidavits -- just talking about drug cases now, okay?
6 Let's just limit it because that's what this is. Have you
7 ever been involved in handling evidence, drug evidence, in
8 which affidavits have been filled out by the people in the
9 chain of custody who handle that evidence?

10 A. I don't recall, but I could have because it's been a
11 couple of years since I've worked there.

12 Q. Okay. Are you familiar with a form that -- that SLED
13 gives to all police departments called a -- an Initial
14 Chain of Custody Form and it's -- it's for the person
15 handing the drugs to fill it out and swear to the condition
16 the drugs were in when they got them, what they did with
17 them and when they did that?

18 MR. SOWARDS: Objection, Your Honor. Relevance.

19 THE COURT: Move on, Mr. Marshall.

20 MR. MARSHALL: Well, may she answer that question?

21 THE COURT: No, she may not. Sustained.

22 BY MR. MARSHALL:

23 Q. What -- what happened with that exhibit after you
24 handled it? You -- you took it -- you took it to the
25 analyst, correct, in the same building, the City of

1 Charleston Police Department?

2 A. No, sir.

3 Q. Okay. Well, tell me -- tell me what you did with it.

4 A. When I took it in, I stored it in our drug locker.

5 Q. Who was the next person though that handled it?

6 A. After me, there was somebody from the lab that picked
7 it up.

8 Q. Okay. Did you ever handle it again?

9 A. Not to my knowledge. Not by the chain of custody that
10 I have.

11 Q. All right. And your knowledge of your handling of
12 this is based upon the computer entry that you made; is
13 that correct?

14 A. Well, it's based on that I took it in and -- and I got
15 it out of the locker that it was in.

16 Q. Right. And you know that you performed those actions
17 because you made a computer entry to document it, correct?

18 A. Yes, sir.

19 Q. Okay. But to your knowledge there were no affidavits
20 filled out concerning the handling of this evidence?

21 A. I don't know that there is.

22 Q. Okay. Do you know whether or not evidence has ever
23 been -- drug evidence has ever been mishandled at the City
24 of Charleston Police Department evidence locker and whether
25 anyone's ever been disciplined as a result thereof?

1 A. I would not know that.

2 Q. Have you ever heard of that occurring?

3 MR. SOWARDS: Objection, Your Honor. Asked --

4 THE COURT: Sustained.

5 MR. SOWARDS: -- and answered.

6 THE COURT: Sustained.

7 BY MR. MARSHALL:

8 Q. Well, is it true that you were a witness in the
9 mishandling of evidence on June 23rd of 2011 involving
10 Officer Dutton?

11 A. Do you have some paperwork to show me?

12 Q. Sure. Sure, I can show you the disciplinary report,
13 but -- and maybe this is a different person, but I see
14 where it says evidence clerk, Lori Roe -- well, you can
15 read that for yourself.

16 MR. SOWARDS: Your Honor, I'm gonna object to this
17 line of questioning on relevance.

18 THE COURT: All right. Counsel approach.

19 (Proceedings held at the bench; not reported.)

20 THE COURT: Overruled.

21 BY MR. MARSHALL:

22 Q. Ms. Roe, have you had a chance to look at that
23 disciplinary report?

24 A. Yes, sir.

25 Q. All right. Does that refresh your recollection on any

1 incident of the mishandling of evidence at the CPD evidence
2 locker?

3 A. Yes, sir.

4 Q. Okay. And what occurred on that occasion?

5 MR. SOWARDS: Objection, Your Honor.

6 THE COURT: Reframe your question, Mr. Marshall.

7 BY MR. MARSHALL:

8 Q. You agree that that report is evidence of the
9 mishandling of evidence in a drug-related case?

10 A. It could be. I've never seen this report before.

11 Q. Huh. Well, what -- why does your name appear in the
12 report?

13 MR. SOWARDS: Objection, Your Honor. Lack of personal
14 knowledge.

15 THE COURT: Rephrase your -- sustained. Rephrase your
16 question.

17 BY MR. MARSHALL:

18 Q. Did you have any involvement in that disciplinary
19 action against Officer Dutton?

20 A. Against him?

21 Q. Well, he was disciplined; was he not?

22 A. I don't know if he was or was not. I don't know.

23 MR. SOWARDS: Objection, Your Honor.

24 THE COURT: She's answered the question.

25 Mr. Marshall, move on.

1 MR. MARSHALL: Okay.

2 THE COURT: Thank you.

3 BY MR. MARSHALL:

4 Q. So you don't see the words "disciplinary report"
5 written on there, ma'am?

6 THE COURT: She's testified that she doesn't know what
7 that report is, Mr. Marshall.

8 MR. MARSHALL: All right. I'll take it back.

9 THE COURT: Please move on.

10 MR. MARSHALL: Just one moment, ma'am. I'm gonna
11 confer with my client, okay?

12 THE COURT: Take your time, Mr. Marshall.

13 No more questions. Thank you, ma'am.

14 MR. SOWARDS: I just have a few questions, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. SOWARDS:

17 Q. I may be able to clear up some confusion. Do you
18 recognize this envelope?

19 A. Yes, I do.

20 Q. And how do you recognize that envelope?

21 A. It's got the label on it that I printed out for the
22 evidence after it was received in and it has my handwriting
23 at the top.

24 Q. And could you read for -- does it state on there what
25 case number that's related to?

1 A. Yes, sir.

2 Q. And could you read that to me, please?

3 A. Case Number 1210170.

4 Q. And does that right there, the -- the drug evidence,
5 does that have the case number on it?

6 A. Yes, sir, it does.

7 Q. And what is that case number?

8 A. 1210170.

9 Q. So we -- well, first of all, who affixes that sticker
10 to that manila envelope?

11 A. To this one?

12 Q. Yes, ma'am.

13 A. The evidence custodian that takes it in.

14 Q. And who was the evidence custodian that took the drug
15 evidence in in this case?

16 A. I was.

17 Q. And just -- there were some questions about how you're
18 able to track evidence in the computer and how are you able
19 to track how the evidence is collected and stored?

20 A. Well, it gives you a barcode. Once we print out this
21 label that's on the envelope, it gives you a barcode and
22 when you scan that barcode it brings up this file.

23 Q. And does that manila envelope have a barcode on it?

24 A. Yes, sir.

25 MR. SOWARDS: Thank you.

1 MR. MARSHALL: I don't have any more questions. Thank
2 you, Judge.

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

4 (Witness excused.)

5 THE COURT: Call your next witness.

6 MR. SOWARDS: The State calls Susan Payne.

7 THE COURT: Counsel, just for scheduling, we're
8 getting into the lunch hour --

9 MR. MARSHALL: Oh, I'm sorry, Judge.

10 (Proceedings held at the bench; not reported.)

11 CLERK: Place your left hand here and raise your right.

12 SUSAN PAYNE,

13 having been duly sworn, testified as follows:

14 CLERK: You may be seated. Ma'am, once seated if you
15 could please state your first and last name and spell your
16 last loudly and clearly into the microphone for the record.

17 THE WITNESS: Susan Payne, P-A-Y-N-E.

18 THE COURT: Mr. Sowards, your witness.

19 MR. SOWARDS: Thank you.

20 DIRECT EXAMINATION

21 BY MR. SOWARDS:

22 Q. Ms. Payne, where are you presently employed?

23 A. City of Charleston Police Department.

24 Q. And how long have you been with the City of Charleston
25 Police Department?

1 A. Ten years.

2 Q. And what is your position there?

3 A. I'm the loans administrator and evidence custodian for
4 the Forensic Services Division.

5 Q. And could you describe an evidence custodian? Could
6 you describe your -- your duties as relates to that job.

7 A. Yes, sir. I'm responsible for picking up evidence
8 from the station as relates to different disciplines within
9 our division.

10 Q. And on June 20th of 2012, did you retrieve any
11 evidence from the City of Charleston Police Department
12 evidence storage room?

13 A. June 20th? Yes, sir.

14 Q. And what did you retrieve?

15 A. I retrieved a drug case.

16 Q. It might be easier if I show you.

17 A. Thank you.

18 Q. Do you recognize that item?

19 A. Yes, sir.

20 Q. And how do you recognize it?

21 A. It's got our case number, our sticker and the evidence
22 -- the analyst's initials on it.

23 Q. And when you say you retrieved it, what exactly --
24 what exactly does that process entail?

25 A. I go to the station and I go to our evidence room

1 where I pick up our evidence and make sure it's packaged
2 correctly and then take it into my custody.

3 Q. And this evidence, was it packaged correctly?

4 A. Yes, sir.

5 Q. And did you take it into your custody?

6 A. Yes, sir.

7 Q. And what did you do with it then?

8 A. I brought it over to the lab, entered it into our
9 system and placed it into the safe.

10 Q. And when you say the safe, could you describe that
11 process of entering it into your system and placing it in
12 the safe?

13 A. Yes, sir. I enter it into our database, which is
14 where we keep track of everything, and then I place it into
15 a safe.

16 Q. And while it's being transported from the CPD evidence
17 to the lab, who has care, custody and control of that
18 evidence?

19 A. I do.

20 Q. And does anyone else have access to it?

21 A. No, sir.

22 Q. And is that in the -- substantially the same condition
23 as when you had custody of it?

24 A. Yes, sir.

25 Q. And I want to ask you about another item. Did you --

1 or were you involved in the -- well, I'll rephrase that.
2 I'm sorry.

3 Did you have the occasion to take any evidence on
4 Aug -- and I'm not sure of the exact date off the top of
5 my head, but there was a -- a phone that was taken from
6 CPD evidence and it was taken to the forensics division.
7 Do you know who took that?

8 A. I did.

9 Q. And how do you know that?

10 A. The chain and it's got our stickers on it.

11 Q. What -- what do you mean by "our stickers"?

12 A. The -- our division's sticker's on it from the
13 database.

14 Q. And do you know had -- who had custody of that phone
15 prior to your having custody of it?

16 A. I received it from Linda Wilson.

17 Q. And what did you do with it after you retrieved it
18 from Linda Wilson?

19 A. I brought it over to our Digital Evidence Unit,
20 entered it into our system and placed it into the evidence
21 room.

22 Q. And while it was in your possession, was that in your
23 sole care, custody and control?

24 A. Yes, sir.

25 Q. And did anyone else have access to it?

1 A. Not while in my custody, no, sir.

2 Q. And is that item in substantially the same condition
3 as it was when you retrieved it from the evidence?

4 A. Yes, sir.

5 MR. SOWARDS: No further questions, Your Honor.

6 THE COURT: Mr. Marshall.

7 MR. MARSHALL: Thank you.

8 CROSS-EXAMINATION

9 BY MR. MARSHALL:

10 Q. Good afternoon, Ms. Payne. I'm Cameron Marshall. You
11 just testified a little bit about the phone and you said
12 you got the phone from Linda Wilson.

13 A. Yes, sir.

14 Q. Who is Linda Wilson, please?

15 A. She works in our evidence room.

16 Q. All right. And you know that you got the phone from
17 her how? Based on computer entries?

18 A. Based on the chain of custody.

19 Q. All right. And -- and the chain, is that created by
20 people entering -- making entries into a computer system?

21 A. Yes, sir.

22 Q. And regarding that phone, you got it from Ms. Wilson
23 where and when?

24 A. I got it from Linda Wilson at the station at
25 September 17, 2012, at 12:13.

1 Q. Okay. And you took it to some other room within the
2 police department or --

3 A. I took it to our Digital Evidence Unit, which is off
4 of Wappoo Road.

5 Q. Where they analyze phones --

6 A. Yes, sir.

7 Q. -- and electronics, computers, that kind of thing,
8 right?

9 A. Yes, sir.

10 Q. Okay. And then did you transport it back to the
11 police station at some later date?

12 A. Yes, sir.

13 Q. Have you ever -- now have you been working in the
14 evidence department for the whole ten years?

15 A. I've worked in forensic services for ten years, yes,
16 sir.

17 Q. All right. And the whole time that you've been there,
18 have you ever become aware of an instance where somebody
19 in a chain of custody has failed to make a computer entry
20 documenting that segment of the chain?

21 A. Not that I'm aware of.

22 Q. You've never know of that to happen? Have you ever
23 become aware of any what you would consider to be
24 mishandling of evidence in any other regard during your
25 ten years?

1 A. No, sir.

2 MR. MARSHALL: I don't have any more questions. Thank
3 you, ma'am.

4 MR. SOWARDS: Nothing from the State.

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

6 (Witness excused.)

7 THE COURT: Ladies and gentlemen, we've reached an
8 appropriate time for us to take our lunch break. Do not
9 begin your deliberations, do not discuss this case amongst
10 yourselves. Please be back in your jury room ready to
11 begin promptly at 2 PM. 2 PM. And please be respectful of
12 each other's time so that we can begin promptly at 2 PM.

13 Please rise for the jury. Please rise for the jury.

14 (Whereupon, the jury retires to the jury room to be
15 excused for lunch at 12:36 PM.)

16 THE COURT: Thank you. Be seated.

17 Anything before we break for lunch from the State?

18 MR. SOWARDS: Nothing from the State.

19 THE COURT: How many more witnesses do you have?

20 MR. SOWARDS: Three.

21 THE COURT: You have three more witnesses?

22 MR. SOWARDS: We have --

23 THE COURT: All right. Thank you. Anything?

24 MR. MARSHALL: No, ma'am.

25 THE COURT: All right. Have you discussed with your

1 client whether or not he's gonna testify?

2 MR. MARSHALL: We have and he's not intending to
3 testify.

4 THE COURT: All right. And you have two witnesses
5 that you plan to call?

6 MR. MARSHALL: Yes, ma'am. I expect them to be very
7 brief. They just concern --

8 THE COURT: All right. Thank you.

9 All right. Please be back at 2.

10 (Whereupon, a luncheon recess was taken.)

11 THE COURT: Any other matters before we bring in the
12 jury?

13 MR. SOWARDS: Nothing from the State.

14 MR. MARSHALL: No, ma'am.

15 THE COURT: Okay. Let's bring in the jury.

16 Who's your next witness?

17 MR. SOWARDS: It's Linda Wilson.

18 THE COURT: If you'd just wait, we'll call you when
19 the jury comes back in. Thank you.

20 (Whereupon, the jury returns to the courtroom at
21 2:02 PM.)

22 BAILIFF: The jury's all seated, Your Honor.

23 THE COURT: Thank you. Please be seated.

24 Has every member of the jury panel complied with my
25 instructions? If you did not comply with my instructions

1 over the lunch hour, please stand.

2 All fourteen jurors have indicated they've complied
3 with the Court's instructions over the lunch hour.

4 Call your next witness.

5 MR. SOWARDS: The State calls Linda Wilson.

6 CLERK: Place your left hand here and raise your
7 right.

8 LINDA WILSON,

9 having been duly sworn, testified as follows:

10 CLERK: Ma'am, once seated if you could please state
11 your first and last name and spell your last loudly and
12 clearly into the microphone for the record, please.

13 THE WITNESS: Linda Wilson, W-I-L-S-O-N.

14 DIRECT EXAMINATION

15 BY MR. SOWARDS:

16 Q. Ms. Wilson, who is your current employer?

17 A. City of Charleston Police Department.

18 Q. And how long have you been with the City of Charleston
19 Police Department?

20 A. A little over seven years.

21 Q. And what is your position there?

22 A. I am an evidence technician.

23 Q. And could you describe those duties for the jury,
24 please?

25 A. I receive and store evidence that officers turns into

1 the evidence division. I also keep the chain of custody,
2 and that's about it.

3 Q. And how do you receive evidence as the evidence
4 custodian?

5 A. How do I --

6 Q. Receive it.

7 A. Usually either it's dropped off in the mailbox after
8 hours or either it's delivered to us in hand.

9 Q. And can anyone access those items once the officers
10 have submitted them into evidence?

11 A. No, sir.

12 Q. And does all of this occur in a secure area?

13 A. Yes, sir.

14 Q. And on August 29, 2012, did you receive evidence from,
15 at the time, Detective Olson, specifically, a cell phone
16 from this case, State versus Dean Seagers?

17 A. Yes, sir.

18 Q. And where was the item in that case dropped off?

19 A. This was dropped off in Locker 42.

20 Q. I'd like to show you what's been identified as -- or
21 marked for identification purposes as State's Exhibit 5.
22 Do you recognize that?

23 A. Yes, sir.

24 Q. And how do you recognize it?

25 A. By our evidence label and the officer's evidence slip.

1 Q. And when did you first see that item?

2 A. On Oct -- I'm sorry. On August the 30th, 2012, at
3 about 7 -- about 7:25.

4 Q. And how do you know precisely when you first saw it?

5 A. By the chain of custody.

6 Q. And is that item in the same or substantially the same
7 condition and appearance now as when you first saw it?

8 A. Yes, sir.

9 Q. And I think we -- we've established this, but I just
10 want to ask again, is there a way for you to determine who
11 submitted the evidence?

12 A. Yes, sir. It's -- the officer's name is on the
13 evidence submittal. That's when he creates the voucher.
14 His name appears on the voucher.

15 Q. And can you tell on there who -- on that chain sheet
16 that you referred to who received and logged in the
17 evidence?

18 A. Detective Olson logged in the evidence and I received
19 it on, let's see, October {sic} the 30th, 2012, at 7:25.

20 MR. SOWARDS: No further questions.

21 THE COURT: Mr. Marshall.

22 CROSS-EXAMINATION

23 BY MR. MARSHALL:

24 Q. I may have misunderstood you, Ms. Wilson. I'm Cameron
25 Marshall. I probably did, but if you could just clarify,

1 I thought I heard you at first testify that -- that you
2 received it on August 29th of 2012 and then I thought I
3 just heard you say August 30th.

4 A. No, sir. I received it on August the 30th, 2012, at
5 7:25 from the locker.

6 Q. Okay. My mistake. Thank you.

7 MR. MARSHALL: No more questions. Thank you.

8 THE COURT: Redirect?

9 MR. SOWARDS: Nothing from the State.

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

11 (Witness excused.)

12 THE COURT: Call your next witness.

13 MS. MULKEY: The State calls Renee Hilton.

14 CLERK: Place your left and here and raise your right
15 hand.

16 RENEE HILTON,

17 having been duly sworn, testified as follows:

18 CLERK: You may be seated. Ma'am, once seated if you
19 could please state your first and last name and then spell
20 your last loudly and clearly into the microphone for the
21 record.

22 THE WITNESS: Renee Hilton, H-I-L-T-O-N.

23 DIRECT EXAMINATION

24 BY MS. MULKEY:

25 Q. Good afternoon, Ms. Hilton.

1 A. Good afternoon.

2 Q. Could you, please, tell the jury what your current
3 occupation, your profession, is?

4 A. I'm a forensic chemist.

5 Q. And who was your employer in the summer of 2012?

6 A. Charleston Police Laboratory.

7 Q. How long have you been with the Charleston Police
8 Department -- or Laboratory?

9 A. Four and a half years.

10 Q. And are you still currently with them?

11 A. Yes.

12 Q. And what is your -- your title there in the lab?

13 A. I'm the laboratory manager.

14 Q. And what kind of duties do you have as a lab manager?

15 A. I oversee the daily operations of the lab to include
16 oversight of personnel, as well as our instrumentation,
17 and I also perform controlled substance analysis, fire
18 debris analysis and serology analysis.

19 Q. Thank you. What type of training, education and
20 experience do you have?

21 A. I have a bachelor's of chemistry from the University
22 of South Carolina. I've completed the Charleston Police
23 Laboratory's in-house training. I've gone to numerous
24 controlled substance trainings on-site as well as on-line.

25 Q. And have you had the occasion to chemically analyze

1 substances to determine whether or not that substance
2 contains a narcotic or a narcotic-type drug?

3 A. Yes.

4 Q. And about how many times?

5 A. I've completed over 3,680 cases.

6 Q. And do you make these analyses as a regular part of
7 your duties?

8 A. Yes.

9 Q. How many would you say that you do in a given week?

10 A. Probably between ten to fifteen, maybe even twenty,
11 depending on how many cases we get in a week.

12 Q. And do you analyze substances just for the City of
13 Charleston Police Department?

14 A. We do it for the -- for our agencies, those agencies
15 that are within the Ninth Judicial Circuit.

16 Q. And please explain to the jury what kind of equipment
17 you use to -- to perform these analyses and the testing.

18 A. First we do a wet chemical test or a color test.
19 Based on the color that this chemical test turns, it could
20 indicate what we might have. Next we -- or the next
21 instrument that we could use is a Fourier transform
22 infrared spectrometer, or FTIR for short, and that is a --
23 it shoots an infrared laser onto the substance and based
24 on how that substance reacts in that laser it gives me a
25 printout and I can verify the substance next to a reference

1 material or a control that is something that I already
2 know what it is. The next instrument is a gas spectro --
3 excuse me, gas chromatograph-mass spectrometer, or GC-MS
4 for short. That is two instruments in one. The first part
5 of it is the gas chromatograph and it separates a compound
6 into its different components and then the second part of
7 the instrument is the mass spectrometer and that shoots
8 high energy onto the compound and breaks it down and based
9 on the information from there I can read it and also
10 compare it to controls or reference materials.

11 Q. And is this equipment that -- that you've referenced
12 precise and accurate in its testing ability?

13 A. Yes.

14 Q. Are there periodic calibrations or checks run on this
15 equipment to ensure that it is up-to-date and there's no
16 issues?

17 A. Right. Yes, we have daily checks, we have monthly
18 checks, and we have yearly checks.

19 Q. And are you accredited by someone outside of CPD, the
20 Charleston Police Department?

21 A. Yes, we're accredited by the American Society of Crime
22 Laboratory Directors/Laboratory Accrediting Board, or
23 ASCLD/LAB for short.

24 Q. And you -- you testified you do analyses for several
25 different departments, correct?

1 A. Yes.

2 Q. And after making these analyses, do you produce a
3 report?

4 A. Yes.

5 Q. And have you previously been admitted as an expert in
6 drug analysis in the State courts?

7 A. Yes.

8 Q. Do you know about how many times?

9 A. I've testified seven times.

10 MS. MULKEY: And, Your Honor, at this time the State
11 would move to introduce Ms. Hilton as an expert in the
12 field of drug analysis.

13 MR. MARSHALL: No objection, Judge.

14 THE COURT: She will be so qualified.

15 BY MS. MULKEY:

16 Q. Ms. Hilton, I would like to show you what has been
17 marked as State's Exhibit Number 7. If you could, please,
18 review that. Have you seen this document before?

19 A. Yes.

20 Q. Can you tell us what that is?

21 A. It's my lab report for Case Number 1210170.

22 Q. And who prepared that report?

23 A. I did.

24 Q. And when did you prepare that report?

25 A. On June 22, 2012.

1 Q. And is that report signed by you?

2 A. Yes.

3 Q. Who was the subject of this drug report?

4 A. The subject's under investigation, so there's not a
5 suspect's name.

6 Q. And is that common to see?

7 A. Yes.

8 MS. MULKEY: At this time, Your Honor, the State would
9 ask that State's Exhibit Number 7 be admitted into evidence
10 and published to the jury.

11 THE COURT: Any objection?

12 MR. MARSHALL: No, ma'am. Thank you.

13 THE COURT: State's 7 into evidence without objection.
14 (State's Exhibit Number 7, a lab report, was admitted
15 into evidence.)

16 THE COURT: You may publish.

17 MS. MULKEY: Thank you.

18 (State's Exhibit Number 7 was published to the jury.)

19 BY MS. MULKEY:

20 Q. Ms. Hilton, I'd like to direct your attention to the
21 monitor behind you. I'd like to go over this report. If I
22 can just zoom in here.

23 Now is this the report that you just reviewed?

24 A. Yes.

25 Q. And is this report typical in your line of work?

1 A. Yes.

2 Q. What was the results of your analysis in this case?

3 A. Cocaine base.

4 Q. Is that considered an illegal substance in the state
5 of South Carolina?

6 A. Yes.

7 Q. And please tell the jury specifically what tests you
8 performed on this drug, this sample.

9 A. This drug I performed -- to confirm the cocaine base,
10 I performed the wet color test, I performed a cobalt
11 thiocyanate and a stannous chloride color test that tested
12 presumptive as cocaine base, as well as GC-MS, and that
13 also came back cocaine base.

14 Q. And did you perform these tests yourself?

15 A. Yes.

16 Q. And what did those tests determine?

17 A. That the substance was cocaine base.

18 Q. Were you able to determine that this was cocaine base
19 strictly from those tests?

20 A. Yes.

21 Q. And were you able to determine an amount for that
22 cocaine base?

23 A. Yes.

24 Q. And what was that amount?

25 A. 2.03 grams.

1 MS. MULKEY: Your Honor, may I approach the witness?

2 THE COURT: You may.

3 BY MS. MULKEY:

4 Q. At this time I would like to show you what has been
5 identified as State's Exhibit Number -- or State's
6 Identification Number 8.

7 Can you, please, take a look at that and tell me if
8 you have seen that before.

9 A. Yes.

10 Q. What is that?

11 A. It's the evidence for Case Number 1210170.

12 Q. And how do you recognize that?

13 A. It has my initials on the seal, my handwriting is on
14 the evidence, as well as our Charleston Police forensic lab
15 case sticker is on that matches.

16 Q. And does it appear to be in substantially the same
17 condition as when you received it?

18 A. Yes.

19 Q. Per your internal policies and procedures, would you
20 have accepted that into the lab if you saw any evidence of
21 tampering?

22 A. No.

23 MS. MULKEY: Your Honor, at this time the State would
24 like to offer State's Exhibit Number 7 -- I'm sorry, excuse
25 me, 8 into evidence and publish it to the jury.

1 THE COURT: Any objection?

2 MR. MARSHALL: I'd renew my objection that I put on
3 the record earlier, Judge, based on what we believe to be
4 a defective chain of custody based on --

5 THE COURT: All right. Thank you.

6 MR. MARSHALL: -- the CI's testimony.

7 THE COURT: It's noted in the -- in the record.

8 State's 8 into evidence noting your previous
9 objection.

10 (State's Exhibit Number 8, cocaine base, was admitted
11 into evidence.)

12 THE COURT: You may publish.

13 MS. MULKEY: Thank you, Your Honor. May I approach
14 the witness?

15 THE COURT: You may.

16 (State's Exhibit Number 8 was published to the jury.)

17 MS. MULKEY: The Court's indulgence, Your Honor?

18 THE COURT: Yes, ma'am.

19 MS. MULKEY: I have no further questions right now.

20 Ms. Hilton, please answer any the defense may have.

21 THE COURT: Mr. Marshall.

22 MR. MARSHALL: Thank you, Judge.

23 CROSS-EXAMINATION

24 BY MR. MARSHALL:

25 Q. Good afternoon, Ms. Hilton. I'm Cameron Marshall.

1 A. Good afternoon. It's nice to meet you.

2 Q. Are -- are you familiar, Ms. Hilton, with SLED, South
3 Carolina Law Enforcement Division, their policy on what's
4 called Uniform Procedures for the Handling of Controlled
5 Substances?

6 A. I'm not familiar with SLED's policies.

7 Q. And did you ever receive any training concerning their
8 policies, how they handle -- how they mandate that evidence
9 be handled?

10 A. No. We are not qualified by SLED. We don't have
11 anything to do with the State lab. We just have to follow
12 the same South Carolina law that they do.

13 Q. All right. Are you aware that there are regulations
14 under State law which -- which are promulgated by SLED
15 through the Legislature which mandate certain procedures
16 for the handling of drug evidence?

17 A. Yes.

18 Q. Do you know whether those required procedures mandated
19 by SLED vary in any way from the City of Charleston Police
20 Department's procedures for handling drug evidence?

21 A. I would assume not, but I have not read their policies
22 and procedures so I couldn't answer that without looking at
23 their policies.

24 Q. Okay. Have you ever been involved in a drug case --
25 the chain of evidence in a drug case in which written

1 affidavits signed by each person who handles the evidence
2 have been a part of the chain paperwork?

3 A. No.

4 Q. You never have?

5 A. Unh-unh.

6 Q. So the only cases you've handled are ones where the
7 chain is documented through computer entries; is that
8 correct?

9 A. Yes.

10 Q. So the system CPD is employing currently doesn't
11 require any signature of -- of anyone who handles the
12 evidence in the chain of custody; is that correct?

13 A. No, CPD has written signatures for people who take
14 evidence.

15 Q. Do they -- are those sworn affidavits?

16 A. No, it's an electronic signature pad that when
17 evidence is taken from the evidence room it's signed by
18 the person who's taking it out of evidence.

19 Q. Oh, there's actually a handwritten signature?

20 A. Yes, on an evidence -- it's a -- it records it in the
21 RMS system.

22 Q. Okay. Well, do we have any of the handwritten
23 signatures concerning the chain of custody in this case?

24 A. I -- I mean, I would assume. My -- I went -- within
25 the laboratory we have a computer system that once the

1 evidence is in the laboratory our chain starts and with
2 that we have -- we have a certain password that we have to
3 put in whenever we remove evidence from any location. So
4 our lab -- our chain is separate, but also adheres to the
5 CPD or the evidence room's chain.

6 Q. Okay. But aside from this code that you put in to
7 identify yourself -- and that would be the purpose of it,
8 correct?

9 A. Yes, sir.

10 Q. You're -- you're stating that you're certain that at
11 least in -- in your laboratory the people that handle the
12 evidence also do a handwritten signature; is that right?

13 A. For the -- taking it from the evidence room at CPD
14 there is a handwritten signature, but once it gets into
15 our laboratory the way we maneuver it in our system is the
16 electronic -- our username as well as our unique password
17 that we only know.

18 Q. Okay. But in -- in this particular case concerning
19 the chain the custody, if I understood you correctly, you
20 haven't seen any handwritten signatures that pertain to the
21 handling of the evidence in this case; is that right?

22 A. Personally, no, I have not seen the signatures.

23 Q. Are you -- on that same topic, and I know you said
24 you're not very familiar with SLED's policy, if at all, but
25 have you ever in your line of work come across a -- what

1 SLED calls an Initial Chain of Custody Form? And it's an
2 -- it's an affidavit. I can show you one, if you'd like.
3 Do you know what I'm talking about?

4 A. Not offhand. If you could show it to me, I could tell
5 you if I've seen it before.

6 MS. MULKEY: Objection, Your Honor.

7 THE COURT: What's the basis?

8 MS. MULKEY: Relevance.

9 THE COURT: I'm gonna allow it.

10 MR. MARSHALL: All right. Let me mark actually two
11 things, please. This will be the chain and then I'd like
12 to mark this one also, which is labeled Affidavit of
13 Chemist or Chemical Analyst Pursuant to Rule 6. It's
14 Form A.

15 (Defendant's Exhibit Numbers 6 and 7 were marked for
16 identification.)

17 MR. MARSHALL: Thank you.

18 BY MR. MARSHALL:

19 Q. All right. Now I'm gonna go ahead and show you what
20 we were just talking about and see if -- just take a look
21 at this. Take your time and read it and tell me if -- if
22 that's something that you're at all familiar with. This
23 has been marked as Defendant's Exhibit Number 6 for ID.

24 A. Okay.

25 Q. Thank you.

1 A. I've -- yes, I've seen this because I'm familiar with
2 Rule 6.

3 Q. Okay.

4 A. So I've seen this before, but it's not a custom for us
5 to --

6 Q. Okay.

7 A. -- fill this out.

8 Q. I'll take it back from you, if you don't mind.

9 A. (Handing.)

10 Q. Do you know the reason that CPD doesn't follow the
11 SLED-mandated policy for all law enforcement agencies
12 concerning these affidavits and the -- as they pertain to
13 the chain of custody?

14 A. I wasn't asked to fill one out because I'm coming to
15 give live testimony, so there would be no reason for me to
16 fill that out.

17 Q. Okay. The other document I just had marked for
18 identification as Defendant's Exhibit 7, and this one is
19 pursuant to the same rule, Rule 6 of the Rules of Criminal
20 Procedure in South Carolina, it's called a Form A, and it's
21 entitled Affidavit of Chemist or Chemical Analyst. May I
22 show you this?

23 A. Yes, sir.

24 MS. MULKEY: Can we see it?

25 MR. MARSHALL: Sure.

1 BY MR. MARSHALL:

2 Q. Take a look at this and see if this is something that
3 you have any familiarity with, please.

4 A. Yes, sir, I am familiar with this. It's also part of
5 the Rule 6.

6 Q. Okay. Is that -- that SLED-mandated form and
7 affidavit, is that something that you've ever used in your
8 job?

9 A. No, sir. Again, I wasn't asked to fill it out because
10 I'm here to give live testimony.

11 Q. Well, you did though -- you did do an affidavit, if
12 I'm not mistaken. Now your -- where is that report that
13 you generated in this case? Do you have it up here still?

14 A. No, sir, I don't have it up here.

15 Q. Let me --

16 A. Could it be on the projector?

17 Q. There it is. Thank you. All right. The one I was
18 referring to is State's Exhibit 7 that you've already
19 testified about.

20 Now so is it fair to say that in -- instead of
21 Defendant's Exhibit Number 7, the Form A Rule 6 Affidavit
22 of Chemist or Chemical Analyst, instead of that, the City
23 of Charleston Police Department uses State's Exhibit 7,
24 which is entitled Charleston Police Department Forensic
25 Services Division Drug Analysis and contains your signature

1 at the bottom?

2 A. All right. Now that's my report, which I'm sure SLED
3 also gives a report. The affidavit that you have in your
4 hand is for testimony, the Rule 6, so --

5 Q. All right. So your understanding is that -- that the
6 SLED affidavit you believe would only be necessary --

7 A. In lieu of not coming to testify.

8 Q. -- in -- in lieu of testimony?

9 A. Yes, sir.

10 Q. Okay. Fair enough.

11 So on the Charleston Police Department property report
12 printout, does your name as the analyst typically appear on
13 that report or is the only place your name would appear on
14 the drug analysis report?

15 A. My name would appear in our chain of custody, which is
16 the chain that we produce in our system. My name would
17 appear in there.

18 Q. Okay. All right. Did you undergo a name change at
19 some point?

20 A. Yes, sir. I used to be Renee Carter.

21 Q. All right. So I'm looking at the chain of custody
22 report and this -- tell me if -- if -- do you have a copy
23 of it?

24 A. I have my folder right here. Yes, sir.

25 Q. Okay. So the report's indicating that on June the

1 22nd of 2012 -- can you follow along with me --

2 A. Yes, sir.

3 Q. -- just to make sure I'm interpreting this correctly?

4 A. Yes, sir.

5 Q. All right. Thank you. It -- it appears to indicate
6 that on June the 22nd of 2012 at 11:09, you, Renee Hilton,
7 removed the substance for analysis, correct?

8 A. Yes, sir.

9 Q. That was your first contact with the substance?

10 A. Yes, sir.

11 Q. And it looks like you kept it for nearly three days,
12 just a couple of hours shy of three days, and returned it
13 to storage on June 25th of 2012 at 9:09 and 28 seconds,
14 correct?

15 A. Yes, sir.

16 Q. And that was -- that's the extent of your involvement
17 in -- in handling this evidence, right?

18 A. Yes, sir.

19 Q. Would it -- would it be possible for -- and you're an
20 expert, so you can give an opinion on this question, but
21 would it be possible in your experience for someone to make
22 a false computer entry in a -- in a chain of custody? Is
23 that possible?

24 A. Within our system, no. When we perform analyses and
25 we perform a report, it has to go for a review to someone

1 else and prior to that review I look over my cases
2 thoroughly before it ever gets sent to a review, so if I
3 saw a false entry with -- within the time that I have the
4 sample, I would have caught it immediately.

5 Q. Uh-huh. And outside of your laboratory division,
6 which is part of the chain, if someone were to gain the
7 computer access code --

8 MS. MULKEY: Objection, Your Honor. Personal
9 knowledge.

10 THE COURT: Let him finish his question.

11 BY MR. MARSHALL:

12 Q. If someone were to have the personal computer access
13 code of a different individual, would they then be able to
14 go in and make a -- a false entry?

15 A. If they had someone's personal access code, yes, sir,
16 they could.

17 Q. Right. Do you agree that for that reason, in part,
18 that SLED mandates sworn personal signatures to constitute
19 a reliable chain of custody for drug evidence?

20 A. I'm sorry. Can you repeat that?

21 Q. Do you agree that for that reason -- because there is
22 a possibility that someone could gain another police
23 officer or a lab technician or evidence custodian's code,
24 do you believe that it's for -- in part for that reason
25 that SLED mandates that personal signatures in the form of

1 an affidavit, sworn in front of a notary, are required to
2 maintain a proper chain of custody for drug evidence?

3 MS. MULKEY: Objection, Your Honor.

4 THE COURT: Sustained.

5 BY MR. MARSHALL:

6 Q. Are you familiar with -- with what's referred to as --
7 by SLED as a BEST kit? Are you familiar with that at all?

8 A. Yes, sir, I've heard of it before.

9 Q. And I believe it's an acronym, B-E-S-T, for -- from
10 what I understand, for Best Evidence Sample Testing. Is
11 that your belief as well?

12 A. Yes, sir.

13 Q. Do you know whether the City of Charleston Police
14 Department's policy for handling drugs -- drug evidence
15 includes the BEST protocol?

16 A. I believe if -- if it's going to SLED, then, yes,
17 they have to perform a BEST kit, but when it comes to our
18 laboratory we don't need the BEST kit.

19 Q. All right. Does -- so is it correct that y'all have
20 your own lab and that y'all do all of your own analyses or
21 are there some drug analysis -- analyses which were sent to
22 SLED?

23 A. We perform all of Charleston Police Laboratory's drugs
24 unless it's taken over by SLED and then they would handle
25 all evidence from there.

1 Q. Okay. So if SLED takes over one of your cases and
2 it's a drug case --

3 A. They most likely would have, yes.

4 Q. -- then they're gonna use their procedures and their
5 laboratory, correct?

6 A. Yes, sir.

7 Q. The -- the checks that y'all do on your machinery, you
8 referenced it, and I think you said you do daily -- did you
9 say daily, weekly, monthly or daily, monthly, annual? I
10 can't -- I can't recall.

11 A. Yes, sir, we do daily and monthly, as well as yearly.
12 And the yearly is done by a technician.

13 Q. Okay. How are the -- the daily and monthly done?

14 A. They're done by myself or any of my other personnel
15 within the laboratory.

16 Q. And -- and is there a difference between daily and
17 monthly, what you do when you conduct that testing?

18 A. Yes, sir. They're a little bit more extensive. The
19 monthly are a little bit more extensive than the daily.

20 Q. Are you -- would you mind explaining to us first how
21 you do a daily check to make sure that your equipment is
22 working properly?

23 A. Yes, sir. We do a daily check on our FTIR, as well
24 as our GC-MS, and both of them are -- with the FTIR we
25 look at an interferogram and we make sure that it's within

1 the acceptable limits for that particular instrument and
2 if it is, then we record that it has passed it. The daily
3 check for our GC-MS is what we call a tune evaluation and
4 the instrument performs a self-check and has to pass
5 certain parameters and if it passes the certain parameters,
6 then the tune evaluation is ver -- they are valid. And
7 then we also record that that has happened. And that's our
8 daily.

9 Our monthly is a little bit more extensive in the fact
10 that our FTIR we run what we call a ValPro, which is an
11 extensive test of the instrument that also does checks and
12 balances, and as long as it's within the required limits,
13 it passes off, and we print a report for that and then
14 attach it into our system.

15 And then for the GC-MS, the monthly checks, we have
16 to run a standard on a reference material that has known
17 drugs in it and we have to be able to see the nice peak
18 clarity in our GC, our chromatograph, and then we also have
19 to be able to find and locate the -- those drugs within
20 that reference material and make sure that the mass spec
21 or the fingerprint is matching a known library that those
22 drugs came out in the mass spec section.

23 And for our wet chemical test, we -- every month we
24 perform -- we have a known drug and we make sure that the
25 color test is performing properly, so it's changing to the

1 correct color for the particular drug that we are testing
2 it against.

3 Q. Okay. And after those tests are -- well, then, you --
4 if you don't mind just to complete the total picture, you
5 said there was an annual test that is more extensive --

6 A. Yes, sir.

7 Q. -- and involves somebody else? Could you explain
8 that.

9 A. Right. We have a -- a technician for both of our
10 instruments and there are two separate technicians because
11 there are two separate companies that manufacture the
12 instruments, so we have two technicians that come in and
13 do what we call a PM, or preventative maintenance, so
14 they'll go -- they'll go in and check the instrument and --
15 and make sure the fittings are proper, that the tests
16 are passing as well, and they just do a little bit more
17 in-depth inside the instrument than -- than we do on our
18 daily and monthly checks.

19 Q. Okay. And after those checks are completed, is it
20 true that you keep records documenting those checks?

21 A. Yes, sir. They're documented in our system and any
22 paperwork that they give us goes in our system as well.

23 Q. And do you maintain those records of -- of compliance
24 checks for a certain period of time or --

25 A. Yes, sir. Our accreditation requires that we hold

1 onto them for about five years.

2 Q. Okay. Do you have any of the reports concerning the
3 machinery that you used in this case with you showing that
4 the checks were compliant with standards?

5 A. I do not have them with me, but I -- I could get them
6 for you if you need them.

7 MR. MARSHALL: Just one moment if I may confer with
8 my client.

9 (Discussion between Mr. Marshall and the Defendant.)

10 MR. MARSHALL: Okay. I do not have any more
11 questions. Thank you.

12 MS. MULKEY: Just briefly, Ms. Hilton.

13 REDIRECT EXAMINATION

14 BY MS. MULKEY:

15 Q. If -- if a daily check was to show any discrepancy,
16 would you perform any tests that day?

17 A. No, sir -- no, ma'am.

18 Q. So these daily checks are done when?

19 A. In the morning before any analysis happens.

20 Q. And are you familiar as a chemist and in your training
21 and experience with field tests?

22 A. Yes.

23 Q. And what can you tell the jury about field tests?

24 A. They're performed by officers on the street and if --

25 MR. MARSHALL: Your Honor, I'm just gonna object based

1 on the -- I think it's outside the scope of --

2 THE COURT: I'm gonna allow it. You may answer.

3 A. They are tests that are performed on the street that
4 the officers have access to and it gives them a presumptive
5 indication what -- the substance they may have, so there's
6 a heroin test kit, there's a methamphetamine test kit.
7 It's just like our wet color sample test in our labs -- in
8 our laboratory, but they're not as sensitive as ours are,
9 and they would help the officer figure out maybe which way
10 -- or which substance the -- the suspect might have on them
11 based on a presumptive test.

12 Q. And so as a chemist -- chemist with your -- your
13 background and -- and your education, is it possible for a
14 quantity of cocaine base to test positive for cocaine on a
15 field test?

16 A. Yes.

17 Q. And then is it possible for that same substance to
18 come into your lab and be confirmed by you as cocaine base?

19 A. Yes.

20 MS. MULKEY: No further questions, Your Honor.

21 MR. MARSHALL: I don't have any more. Thank you.

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

23 THE WITNESS: Thank you.

24 (Witness excused.)

25 THE COURT: Call your next witness.

1 MR. SOWARDS: The State calls Rodney Van Horn.

2 CLERK: Place you left hand here, sir, and raise your
3 right.

4 RODNEY VAN HORN,

5 having been duly sworn, testified as follows:

6 CLERK: Thank you, sir. You may be seated. Sir,
7 once seated if you could please state your first and last
8 name and then spell your last loudly and clearly into the
9 microphone for the record, please.

10 THE WITNESS: Rodney Van Horn. Last name spelling,
11 V-A-N, capital H-O-R-N.

12 DIRECT EXAMINATION

13 BY MR. SOWARDS:

14 Q. Good afternoon, Mr. Van Horn. Who is your current
15 employer?

16 A. City of Charleston Police Department.

17 Q. And how long have you been with the City of Charleston
18 Police Department?

19 A. Since October of 1993.

20 Q. And what are your current duties with the CPD?

21 A. I'm currently assigned to the Digital Evidence Unit
22 that is located within the Forensic Division.

23 Q. And what other assignments have you had while at CPD?

24 A. I was in patrol for a while. I've been in narcotics
25 for a time. I've been with the DEA Task Force for a

1 period, and I am currently in the Digital Evidence Unit.

2 Q. And could you describe for the jury, please, what your
3 current duties are as -- in the digital forensic analysis
4 department?

5 A. Sure. We have -- we take in digital media to include
6 computers, laptops, cell phones, any kind of storage
7 media, and then we forensically either acquire, extract or
8 evaluate and examine that media for its contents and then
9 return the results back to the investigators or detectives
10 for further analysis.

11 Q. And how many times would you say have you performed
12 digital forensic analysis on a cell phone?

13 A. On a cell phone? Roughly maybe thirty to thirty-five
14 per year since I've been in it.

15 Q. And have you ever testified in either State or Federal
16 court as -- as to digital forensic analysis?

17 A. Yes, sir.

18 Q. And how many times would you say you've testified?

19 A. Since 2009 it's been seven times.

20 Q. Have you ever been admitted as an expert on the --

21 A. Yes, sir.

22 Q. -- in the area of digital forensic analysis?

23 A. Yes, sir.

24 Q. And how many times?

25 A. Seven times.

1 MR. SOWARDS: Your Honor, at this time the State moves
2 to have Mr. Van Horn admitted as an expert in the area of
3 digital forensics.

4 THE COURT: Any objection?

5 MR. MARSHALL: We ask for formally --

6 THE COURT: Well, do you have any additional voir
7 dire?

8 MR. MARSHALL: I would like to ask him more on the
9 order of what the Solicitor did just about his background
10 and training.

11 THE COURT: You're allowed additional voir dire.

12 Let -- let Mr. Marshall do it.

13 MR. SOWARDS: Okay.

14 THE COURT: Thank you. Mr. Marshall, you may have
15 additional voir dire.

16 MR. MARSHALL: Thank you, Judge.

17 THE COURT: Mr. Sowards, if you'd just sit down, I'll
18 let you know when he's done. Thank you.

19 VOIR DIRE EXAMINATION

20 BY MR. MARSHALL:

21 Q. Mr. Van Horn, I'm Cameron Marshall. Just to assist
22 the jury in knowing a little bit more about your training,
23 because this is a specialized area, would you mind, please,
24 just filling in a little bit about your -- your training
25 and background in this. And I think you just said how

1 many analyses on average you do, but tell us what sort of
2 specialized training because I'm sure you must have some.

3 A. Yes, sir. When I came into the unit in October of
4 2006, some of the training -- training related specifically
5 to computers, digital media, cell phones. I attended the
6 NW3C, which is the National White-Collar Computer Crime
7 Center, Cybercop 101, 201, 301. I've had training in the
8 AccessData Software Image Scan put on by the FBI. I've
9 done the DEU in-house training program, which was a year
10 long. I've had training in Cyber War and Cyber Crime,
11 manipulation of digital evidence in investigations,
12 intrusion detections, Mac operating systems as opposed to
13 Windows, Bluetooth hacking. Recently -- there's several
14 more, but I've had Cellebrite UFED training, Finding
15 Evidence in an On-Line World, Defeating Windows Registry,
16 Artifacts, Digital Forensics with a FRED, a recovery
17 device, and then F-Response, Agile Risk Management, among
18 others.

19 Q. It sounds like, it's fair to say, hundreds of hours
20 of training in the -- the recovery of digital evidence; is
21 that a fair statement?

22 A. Right.

23 Q. Now of that, do you have an estimate as to
24 approximately how much pertained specifically to recovering
25 evidence from cell phones?

1 A. I don't have an estimate of that.

2 Q. Have you --

3 A. It's part of the -- the digital media. We -- we use
4 the Cellebrite UFED to extract the data and place into a
5 report form.

6 Q. Could you tell us -- I -- I know I don't know exactly
7 what you mean by that and some of the jurors may not
8 either. Could you tell us what that means?

9 A. Extracting the data?

10 Q. That -- that -- the term you just used. You said we
11 use this to extract the --

12 A. Oh, Cellebrite is the company. The UFED is a -- is
13 the device that's put out by that company and what it --
14 what it does is you -- you take the cell phone, you connect
15 it to the device, basically enter the parameters for your
16 search or for your extraction, and then it takes and goes
17 in, recovers the data and brings it out and puts it into a
18 -- a report form.

19 Q. All right, sir. So if I'm -- I may be oversimplifying
20 it, but basically there you're simply connecting a cell
21 phone to a computer program and it does the work?

22 A. Yeah, it's a hardware device. Yes.

23 Q. I see.

24 A. There are some caveats to it that you get as you go
25 that will dump it out to an on-line training to cover --

1 cover issues or cover updates or whatever that comes out
2 and you -- and you review that and then apply it.

3 Q. Thank your, sir.

4 MR. MARSHALL: I don't have any objection to his
5 qualifications, Judge.

6 THE COURTS: All right. You may continue.

7 CONTINUED DIRECT EXAMINATION

8 BY MR. SOWARDS:

9 Q. Mr. Van Horn, did you have the occasion to become
10 involved in the investigation of this case, State versus
11 Dean Seagers?

12 A. I did.

13 Q. And as part of your involvement in this case, did you
14 do a -- perform a digital forensic analysis on a cell
15 phone?

16 A. On several.

17 Q. And I'm gonna show you what's been marked as --

18 MR. SOWARDS: May I approach, Your Honor?

19 Q. -- for identification as -- it's already up there --
20 State's Exhibit 5. Do you recognize that item?

21 A. I do.

22 Q. And how do you recognize that item?

23 A. Once it's opened and analyzed, it's sealed again and
24 my initials are on the seal.

25 Q. And how did that cell phone come into your custody?

1 A. It was submitted via a Digital Evidence Forensic
2 Request Form.

3 Q. And did you maintain care, custody and control of that
4 phone while it was being processed?

5 A. Yes.

6 Q. And is that phone in the same or substantial condition
7 as when it first came into your custody?

8 A. Yes. The only exception would be the battery is
9 probably still in place with the back cover on it.

10 Q. Now as -- as part of your analysis of this cell phone,
11 did you generate a report?

12 A. I did.

13 Q. I think Mr. Marshall talked about or asked you about
14 the Cellebrite technology and you explained that it's a
15 piece of hardware that extracts data from a cell phone and
16 that you're trained to do that.

17 A. Correct.

18 Q. Are you trained to analyze and interpret the data
19 that's recovered from the cell phone?

20 A. I am.

21 Q. And I want to ask you specifically about this phone.
22 Were you -- were you able to tell what phone number is
23 assigned to this phone?

24 A. There are two numbers generally assigned to a phone
25 with a CDMA carrier and the MDN, which is a mobile

1 directory number, would be the number that you would dial
2 when you are calling the phone. The MSIN is also assigned
3 to the number, and that's a unique 10-digit identifier that
4 the carrier has in the carrier system, and in order to make
5 or -- or receive calls, those two numbers have to -- to
6 match the phone.

7 Q. So the MDN -- the MDN number is the number that if I
8 wanted to reach that phone, that's the number I would call?

9 A. Correct.

10 Q. And what was the number?

11 A. The MDN on this phone is 843-642-2885.

12 MR. SOWARDS: May I approach, Your Honor?

13 THE COURT: You may.

14 BY MR. SOWARDS:

15 Q. I'd like to show you what's been previously admitted
16 as State's Exhibit Number 3. Could you read the number
17 that's -- that's visible on the screen of that phone?

18 A. 642-2885.

19 Q. And is that the same number of the phone that you
20 analyzed?

21 A. With the exception of the area code, yes. The area
22 code being 843.

23 Q. Thank you, sir. Now were you able to tell -- you
24 mentioned the carrier. Were you able to tell who the
25 carrier is for this specific phone?

1 A. On this it was Cricket.

2 Q. And are you familiar with Cricket?

3 A. I know of Cricket.

4 Q. And what is Cricket?

5 A. Cricket is just a -- is a service provider for -- just
6 like AT&T or just like T-Mobile or Verizon.

7 Q. And just in general, were you able to pull a call
8 history from this phone?

9 A. The call logs on this phone -- there were no call logs
10 extracted from this phone.

11 Q. And is that because you didn't try to extract them or
12 you were unable to extract them?

13 A. In this case, the -- the call logs were not compatible
14 for extraction.

15 MR. SOWARDS: Your Honor, at this time the State moves
16 to admit what's been marked as State's Exhibit 8 into
17 evidence.

18 THE COURT REPORTER: No.

19 MR. SOWARDS: Just --

20 THE COURT: Hold on one second. Let's just look at
21 the number again, Madam Court Reporter.

22 THE COURT REPORTER: Yeah, 8's in.

23 MR. SOWARDS: I'm sorry.

24 THE COURT REPORTER: Is it 5? Are you talking about
25 the phone?

1 MR. SOWARDS: I apologize. It's 5.

2 THE COURT: Any objection to 5?

3 MR. MARSHALL: Just one point of clarification. Sir,
4 can you tell us --

5 THE COURT: Mr. Marshall --

6 MR. MARSHALL: I do have -- I do have an objection.

7 THE COURT: All right. Then please approach.

8 (Proceedings held at the bench; not reported.)

9 MR. SOWARDS: Nothing further at this time.

10 THE COURT: Mr. Marshall, do you still have an
11 objection as to State's 5?

12 MR. MARSHALL: No, ma'am. I think it comes into
13 evidence.

14 THE COURT: All right.

15 MR. MARSHALL: I'll ask him now on cross-examination.

16 THE COURT: All right. State's 5 into evidence
17 without objection.

18 (State's Exhibit Number 5, a cell phone, was admitted
19 into evidence.)

20 THE COURT: Mr. Marshall, your witness.

21 MR. MARSHALL: Thank you, Judge.

22 CROSS-EXAMINATION

23 BY MR. MARSHALL:

24 Q. Mr. Van Horn, as part of this investigation, the
25 work that you did in this case, did -- did you ever examine

1 a phone that's alleged to have been possessed by the
2 confidential informant in this case, a fella named Robert
3 Drayton?

4 A. I'm not privy to that information when the phone comes
5 in. It's simply the phone with the request sheet. We
6 typically have no background on the case. We're -- we're
7 a neutral lab, so to speak, so when it comes in we're
8 strictly dealing with the -- the analysis of the phone and
9 not the investigation.

10 Q. Okay. Is it fair to say then that you can't offer the
11 jury any evidence that Dean Seagers and Robert Drayton ever
12 spoke on the phone on June 20th of 2012?

13 A. I -- I have no rec -- I have no information regarding
14 the investigation. I just have the examination and the --
15 well, the analysis.

16 Q. And if -- if someone wanted to -- and I believe this
17 is common knowledge, but I'll just get you to give us your
18 expertise, but if someone wanted to create something which
19 is depicted as here in State's Exhibit 3 where there's
20 alleged to be a -- a name, a word, "Baby", written --

21 A. Uh-huh.

22 Q. -- if they wanted to put that onto a cell phone
23 screen, that could be a very fast process, correct, sir?
24 No longer than just how long it takes to type B-A-B-Y; is
25 that correct?

1 A. I'm not understanding your question.

2 Q. Okay. Well, you understand that this State's
3 Exhibit 3 is purporting to depict, I guess, a Samsung
4 phone --

5 A. Okay.

6 Q. -- and do you agree that -- that would be the alleged
7 destination of the call in this exhibit or do you --

8 A. I'm saying in that picture that that's an outgoing
9 call. That would be the recipient of the call.

10 Q. Okay. And that entry could be created in just a
11 matter of seconds at any time on a cell phone just by
12 creating a new contact, correct?

13 A. It would have to be created before Wednesday,
14 June 20th, at 6:15 PM.

15 Q. Right. That's -- that's correct. But it would be
16 a very fast process to -- to -- to create that and you
17 can't offer any evidence as to whether this phone number,
18 [REDACTED], was in any way associated with Dean Seagers,
19 can you?

20 A. No.

21 MR. MARSHALL: I don't have any more questions. Thank
22 you, sir.

23 THE COURT: Redirect?

24 MR. SOWARDS: Nothing further from the State.

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

1 (Witness excused.)

2 THE COURT: Call your next witness.

3 MR. SOWARDS: The State rests.

4 THE COURT: All right. Thank you.

5 Ladies and gentlemen, that signifies to the Court that
6 there's a matter of law that I must take up outside of your
7 presence. Do not begin your deliberations, do not discuss
8 this case amongst yourselves. Please leave your notepads
9 or take them with you. You are excused. We'll receive you
10 back in just a few moments.

11 (Whereupon, the jury retires to the jury room at
12 3:19 PM.)

13 THE COURT: Thank you. Please be seated.

14 All right. Mr. Marshall, I understand you have some
15 motions, but I'll allow you this time to articulate your
16 thoughts.

17 MR. MARSHALL: Oh, sure.

18 THE COURT: Thank you.

19 MR. MARSHALL: Thank you, Judge. May we -- may I be
20 -- my client and I be at ease for a few minutes or do you
21 have --

22 THE COURT: That's what I just said.

23 MR. MARSHALL: Oh, I'm sorry.

24 THE COURT: Thank you.

25 (Recess taken.)

1 THE COURT: All right. Any motions or matters at the
2 close of the State's case?

3 MR. MARSHALL: Yes. Yes, ma'am.

4 We request that the Court consider our Motion for
5 Directed Verdict. As I look back on the -- the evidence
6 that's been introduced, the testimony in the case, Judge,
7 honestly I'm having a hard time pinpointing any -- any
8 piece of evidence which might -- which might indicate
9 that the case should be submitted to the jury.

10 It is the trial judge's duty, as I understand it,
11 to submit the case to the jury if there is substantial
12 evidence which reasonably intends to prove the guilt of
13 the accused or from which his guilt may be fairly and
14 logically deduced. That's State versus Rayfield,
15 101 S.E.2d 505, and State v. Littlejohn, 89 S.E.2d 924,
16 State versus Smith, 415 S.E.2d 409.

17 Our appellate courts have stated that the issue on
18 a Motion for Directed Verdict is whether there is any
19 evidence reasonably intending to establish guilt. That's
20 State versus Fleming, 133 S.E.2d 800, State versus Green,
21 200 S.E.2d 74.

22 So I guess the argument by the State's gonna be
23 well, this CI said on June 20th of 2012 shortly after the
24 alleged transaction that it was Dean Seagers, and that's
25 undisputed. He did say that. The question is does that

1 put the evidence in the -- at the needed level of strength
2 that it should be submitted to the jury, and I submit to
3 the Court that that statement doesn't. Although it is,
4 I concede, some -- it is -- it is evidence and it's in
5 evidence and the jury's gonna consider it, but I don't
6 think -- I think there is a threshold level here. I don't
7 think that the Court's have interpreted --

8 THE COURT: And what's that threshold under Rule 19,
9 Mr. Marshall?

10 MR. MARSHALL: Right. Well, I think it's more than
11 -- more than a scintilla, which I submit is all that there
12 is that's been offered, when you consider the fact that
13 that statement that the CI made on June 20th wasn't sworn,
14 admittedly by the witnesses contains some inaccuracies,
15 when you take the fact that as the evidence that's been
16 presented to the Court to this point, and there'll be
17 more coming if our motion is not granted, there will be
18 a third sworn statement by the CI saying that he did not
19 -- unequivocally did not purchase drugs from Mr. Seagers
20 on June 20th. You haven't heard all that yet, so I'm
21 just basing it on the evidence to this point, but to this
22 point -- to this point there are two sworn statements by
23 the CI, they were both delivered right here in this
24 courtroom. And the first statement was that he doesn't
25 know anything about June 20th. The second statement was

1 that he doesn't know who delivered drugs to him on June
2 20th of 2012. So those are both sworn statements and I
3 submit to the Court that they mandate the grant of a
4 directed verdict of acquittal.

5 I guess you could -- maybe the State's gonna say
6 well, Judge, that statement that's unsworn from June 20th
7 is not the only evidence we have. We also have cell phone
8 evidence. I submit to you that the cell phone evidence
9 carries no weight and the expert just testified that he
10 can in no way link the cell phone to Mr. Seagers.

11 The video, I don't know whether they're claiming that
12 the video is evidence of guilt or not, but it's the other,
13 as I interpret it, major piece of evidence in the case, and
14 the Court has seen it and witnesses have testified that it
15 does not depict a drug transaction and that it does not
16 depict Dean Seagers.

17 So those are the reasons for our motion, Judge, and
18 I firmly believe that it's appropriate to grant it.

19 MR. SOWARDS: Thank you. Your Honor, when viewing the
20 evidence in the light most favor -- most favorable to the
21 State and looking at the existence or nonexistence of the
22 evidence and not its weight, the State has presented enough
23 evidence to proceed past a directed verdict and get this
24 case to the jury.

25 Your Honor, the charge in this case was distribution

1 of cocaine -- cocaine base. That -- that charge carries
2 -- or requires proof that the Defendant delivered,
3 distributed or dispensed the drug. The -- the CPD analyst,
4 Renee Hilton, she testified that the drug that she received
5 from the lab tested positive for cocaine base. We heard
6 testimony from Detective Grill, Detective Burke and the CI
7 that a distribution did, in fact, occur. That the CI was
8 searched prior to leaving the staging area and he did not
9 have drugs on his person. He proceeded to [REDACTED] Ashton
10 Street where he had -- he testified on the stand that he
11 spoke to the Defendant, that he saw the Defendant, caught
12 a glimpse of the Defendant in the window. He then ordered
13 up the drugs, two grams of soft, he received drugs and
14 proceeded back to the location and while he was on the way
15 back to the location we heard on the video that he said
16 Baby Dean served me.

17 Your Honor, as to the cup and the phone, that -- the
18 cup was a unique method of -- of service in this case.
19 It was used on December {sic} 20th. The CI testified
20 that the drugs were lowered, but when the Defendant was
21 arrested on August 29th that cup was right there next to
22 the window. As for the cell phone, that's the number
23 that the CI dialed. There was a car on the scene which
24 Detective Grill testified about.

25 And as for the Defendant's identity, like I said, the

1 CI said he spoke to the Defendant through the window.
2 Detective Grill identified the Defendant's voice based on
3 this prior history and any other questions such as the
4 credibility of the witnesses are left up for the jury.

5 Thank you.

6 THE COURT: Any response?

7 MR. MARSHALL: Just -- just briefly, Judge.

8 If -- if the issue were whether a distribution of
9 drugs occurred, I would readily concede that the burden
10 that's upon the State to survive a directed verdict motion
11 has been met. That obviously is not the issue. The issue
12 is -- well, that's part of it, did a distribution occur,
13 but the major part of it is, is this the person who -- who
14 allegedly distributed drugs? And the evidence is abundant
15 that -- well, there -- there's a complete -- there is no
16 evidence in that regard. There is substantial evidence
17 which might reasonably tend to establish that a drug
18 transaction occurred, but not that Mr. Seagers is the one
19 that distributed the drugs. The CI having given now --
20 well, if this motion's not granted, having given three
21 sworn statements that he doesn't -- well, one unequivocally
22 it wasn't -- he didn't get drugs from Dean Seagers. A
23 second that he doesn't know what happened on the 20th,
24 and a third that he got a glimpse of Dean Seagers, but
25 there -- he didn't equivocate on whether he knew whether

1 Dean distributed drugs to him. He said I don't know.
2 There were three people up there. You know, this is a --
3 a person -- I think it is appropriate to consider his
4 credibility. He's a person who's, for instance, been
5 convicted of giving false information to police officers.

6 So that's -- that's the basis for our argument that
7 there is not substantial evidence which reasonably tends
8 to prove Mr. Seagers guilty. Thank you.

9 THE COURT: All right. In ruling on a Motion for
10 Directed Verdict under Rule 19 of the Rules of Criminal
11 Procedure, I am concerned only with the existence or
12 nonexistence of the evidence and not as to the weight;
13 agreeing that as Mr. Sowards indicated during his
14 presentation for the Motion for Directed Verdict there
15 has been existence of evidence to meet every element of
16 the crime charged that the State needs to meet in the
17 light most favorable to the State. I deny your motion for
18 directed verdict.

19 Any other motions or matters?

20 MR. MARSHALL: No, ma'am. Thank you.

21 THE COURT: Mr. Seagers, please rise.

22 Please swear Mr. Seagers.

23 CLERK: Sir, please raise your right hand to be
24 sworn.

25 (Whereupon, the Defendant, Dean Nelson Seagers, was

1 sworn by Clerk of Court.)

2 THE COURT: Mr. Seagers, we've reached the stage of
3 the trial where you now may present your defense. Do you
4 remember me going over your right to testify or not to
5 testify last evening?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Do you have any questions about what I
8 explained to you yesterday?

9 THE DEFENDANT: No, ma'am.

10 THE COURT: Have you discussed with your attorney
11 whether or not you will testify?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: And have you made a decision?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: What is that decision?

16 THE DEFENDANT: I will not testify.

17 THE COURT: All right. Thank you.

18 MS. MULKEY: I apologize, Your Honor. Just before the
19 defense is going to put a case up, I would like to make a
20 motion to get some clarification on prior convictions for
21 their witness.

22 THE COURT: All right.

23 All right. Mr. Seagers, you may have a seat.

24 Who are you calling, Mr. Marshall?

25 MR. MARSHALL: It's just two witnesses, they should

1 be very brief, that were involved in the taking of this
2 statement in which Mr. Drayton said he didn't buy drugs
3 from Mr. Seagers on the day in question. One is an
4 attorney named Mark Evans. The other is a lady named
5 Lucy Browder, who's the notary, and --

6 THE COURT: All right. And which witness has --

7 MS. MULKEY: Your Honor, Attorney Mark Evans has a
8 criminal conviction from the past ten years. Would you
9 like specifics of it?

10 THE COURT: Certainly.

11 MS. MULKEY: On September 24th of 1996 he was
12 convicted of felony DUI resulting in death; sentenced to
13 25 years, suspended upon nine years with three years
14 probation. He was also disbarred as a result of the
15 conviction. And in addition to a false statement to his
16 insurance company that -- in the accident that resulted
17 in death --

18 THE COURT: Was he convicted of a false statement to
19 insurance?

20 MS. MULKEY: No, Your Honor. He was disbarred for
21 that.

22 THE COURT: All right. Counsel approach.

23 (Proceedings held at the bench; not reported.)

24 THE COURT: We'll be at ease.

25 (Recess taken.)

1 THE COURT: All right. Mr. Marshall, anything before
2 we bring in the jury?

3 MR. MARSHALL: I don't believe so, Judge.

4 THE COURT: All right. Let's bring back in the jury.
5 Have your next -- have your witness ready to walk on the
6 stand.

7 MR. MARSHALL: He's present, Your Honor.

8 Oh, may -- may we approach for one more thing?

9 THE COURT: You may.

10 (Proceedings held at the bench; not reported.)

11 (Whereupon, the jury returns to the courtroom at
12 3:53 PM.)

13 BAILIFF: Jurors all seated, Your Honor.

14 THE COURT: Thank you. Please be seated.

15 Call your first witness, Mr. Marshall.

16 MR. MARSHALL: Mark Evans.

17 CLERK: Place your left hand here and raise your
18 right.

19 MARK EVANS,

20 having been duly sworn, testified as follows:

21 CLERK: Thank you, sir. You may be seated. Sir,
22 once seated if you could please state your first and last
23 name and then spell your last loudly and clearly into the
24 microphone for the record, please.

25 THE WITNESS: Mark Evans, E-V-A-N-S.

1 THE COURT: Mr. Marshall.

2 DIRECT EXAMINATION

3 BY MR. MARSHALL:

4 Q. Mr. Evans, good afternoon. I'm Cameron Marshall and
5 you and I met today. Have we ever met previously?

6 A. No.

7 Q. Now you are employed in what capacity?

8 A. I'm an attorney.

9 Q. And where -- which part of the Charleston area do you
10 practice in?

11 A. My office is on James Island.

12 Q. All right. Are you in the Wappoo Center building over
13 there?

14 A. Uh-huh.

15 Q. That's where I thought. Okay.

16 A. Right next to the Crab House at the Wappoo Bridge.

17 Q. Yes, sir. What -- what I called you as a witness for
18 today concerns something which occurred on February the
19 23rd of this year. Do you recall someone named Robert
20 Drayton, Junior, coming to your office on that day?

21 A. Yes.

22 Q. All right. Can you tell the ladies and gentlemen
23 of the jury what you recall about that contact with
24 Mr. Drayton? And, first of all, when he came to your
25 office, did you -- well, how was this meeting set up, I

1 guess, first of all?

2 A. I was called about someone wanting to come in and make
3 a statement and then on that particular day Mr. Drayton
4 came in with another individual and gave a statement.

5 Q. And did you know Mr. Drayton prior to meeting him on
6 February 23rd? And this was at your office, correct?

7 A. It was at my office and I'd never met him before.

8 Q. All right. So when y'all met, what happened next?

9 A. He came in, like I said, with another individual. We
10 sat down in the conference room. He said he wanted to make
11 a statement and so I ask him what his statement was and I
12 understood that he may not have been able to clearly put it
13 down on paper for whatever reason, maybe he wasn't good at
14 writing, I don't know, but anyway he told me what his
15 statement was and I asked any questions I needed to ask to
16 clear it up so I understood. I wrote down exactly on a
17 piece of paper what he said his statement was and then I
18 called in an employee in the office where I rent office
19 space to come in and notarize his signature.

20 Q. All right. So you handwrote a short statement for
21 Robert Drayton?

22 A. Correct.

23 Q. All right. Let me show you what's marked as
24 Defendant's ID Exhibit Number 1, and ask that you, please,
25 to yourself, take just a minute and read each word of that,

1 and tell us if you can identify that document, please.

2 A. I can.

3 Q. All right. Well, take -- take just a moment, if you
4 will, and read it.

5 Is that the -- is that your handwriting?

6 A. It is.

7 Q. And that's the statement that you took from Robert
8 Drayton, Junior, on February 23rd of 2015; is that correct?

9 A. Yes.

10 Q. And this is the statement where you -- is -- this
11 information, was it given to you by Mr. Drayton from his
12 mouth?

13 A. Yes.

14 Q. This other person who was there, do you know anything
15 about that person?

16 A. The other person that was there said he was the nephew
17 of Mr. Seagers, Dean Sea -- Seagers.

18 Q. Are you sure he didn't say the nephew of Mr. Drayton
19 or do you have a specific recollection? Is it possible
20 you're confusing those two?

21 A. It's possible, but I believe --

22 Q. Uh-huh.

23 A. -- my recollection is that he said he was a nephew of
24 Mr. Seagers, but I could be wrong about that.

25 Q. Okay. Were you present when Lucille Browder notarized

1 the statement?

2 A. Yes.

3 Q. What, if anything, did you witness her do in the
4 notarization process, do and -- and/or say in the process
5 of notarizing it?

6 A. Well, when it was time for Mr. Drayton to sign his
7 statement, I summoned Ms. Browder to come in so she could
8 witness the signature and then place her notary on it.

9 Q. Do you recall if she said anything to Mr. Drayton
10 prior to placing her signature and -- and seal on it?

11 A. I believe she, you know, made sure that he was
12 Mr. Drayton and he said he was Mr. Drayton, and I recall
13 also before that asking Mr. Drayton to show me his ID so
14 that I knew that he was, in fact, Robert Drayton.

15 Q. Uh-huh. Did you witness Ms. Browder ask Mr. Drayton
16 if -- if this was his statement?

17 A. Yes.

18 Q. You witnessed Mr. Drayton sign the statement?

19 A. Yes.

20 Q. Along with Ms. Browder; is that correct?

21 A. Right.

22 MR. MARSHALL: Okay. Your Honor, at this point I move
23 that exhibit, which is Defendant's 1, into evidence.

24 THE COURT: Any objection?

25 MS. MULKEY: The State would object. The proper

1 foundation has not been laid.

2 THE COURT: All right. You can approach.

3 (Proceedings held at the bench; not reported.)

4 MR. MARSHALL: All right, sir. That's all the
5 questions I have. Thank you.

6 THE COURT: Okay. Ms. Mulkey, is this your witness?

7 MS. MULKEY: Yes, Your Honor.

8 CROSS-EXAMINATION

9 BY MS. MULKEY:

10 Q. Good afternoon, Mr. Evans.

11 A. Good afternoon.

12 Q. If I could get just a second here. How long have you
13 been practicing law?

14 A. A total of around seventeen years.

15 Q. And I'm gonna apologize in advance for the series of
16 questions that I'm gonna have to ask you, okay?

17 A. Yes, ma'am.

18 Q. Have you practiced law continuously for those
19 seventeen years?

20 A. No, ma'am.

21 Q. Why is that?

22 A. I practiced law until 1996 and I was disbarred after
23 being convicted of felony DUI.

24 Q. And what specifically was the reason for your
25 disbarment per the South Carolina courts?

1 A. Well, I have not reviewed that order in quite a while,
2 but I know that the main reason is because I pled guilty to
3 felony DUI.

4 Q. Were there any additional reasons why you were
5 disbarred?

6 MR. MARSHALL: Objection, Your Honor.

7 THE COURT: What's the basis?

8 MR. MARSHALL: Well, I think it goes outside the scope
9 of any im -- impeachable --

10 THE COURT: All right. Counsel just approach.

11 (Proceedings held at the bench; not reported.)

12 THE COURT: Sustained.

13 BY MS. MULKEY:

14 Q. Thank you, Mr. Evans. And during the course of your
15 employment, you just said that you had occasion to create a
16 document with Mr. Drayton?

17 A. Correct.

18 Q. And, if you could, I just kind of want to go through
19 how -- how that -- that came about. You said you received
20 a phone call?

21 A. Yes.

22 Q. Who called you?

23 A. I don't recall.

24 Q. Do you have a receptionist?

25 A. There is a receptionist who sometimes would take my

1 calls at -- at the switchboard at the receptionist's desk,
2 but most of my calls come straight through to my number
3 because the receptionist is -- really works for the law
4 firm that owns the suite where I rent office space.

5 Q. So do you -- did you field the phone call of somebody
6 wanting to come in and make this statement?

7 A. Yes.

8 Q. And -- and tell us a little bit about that phone call.
9 Did the person identify themselves?

10 A. They may have, but all I recall is someone wanting to
11 come in and make a statement so an appointment was made and
12 then the -- Mr. Drayton showed up at the appointment.

13 Q. And did they say why they wanted to create this
14 document?

15 A. Yes. It was stated that Mr. Drayton wanted to make a
16 statement and have it notarized.

17 Q. And did you discuss a cost for this?

18 A. No, not at that time.

19 Q. So who came into your office that day?

20 A. On that day of the appointment, Robert Drayton came
21 in with another individual and I believe his name was King
22 Wilson.

23 Q. And have you previously represented either person?

24 A. No.

25 Q. And how did you know who they were?

1 A. I did not know who they were.

2 Q. Were you able -- ever able to confirm their
3 identification?

4 A. Yeah, Mr. Drayton showed me his ID before he signed
5 the statement.

6 Q. Do you remember back on June 23rd of this year when
7 myself and my investigator and Mr. Sowards came to your
8 office to meet with you?

9 A. Yes.

10 Q. Do you remember telling us that during this you never
11 positively identified either subject?

12 A. No.

13 Q. Did you -- do you recall telling us who -- who you
14 think referred them to this office -- to your office?
15 Excuse me.

16 A. I remember discussing who may have referred them to my
17 office.

18 Q. Where was this document created other than in your
19 office generally?

20 A. The document was created in a conference room at my
21 office. In the same conference room where I met with you
22 and the other people from the Solicitor's Office.

23 Q. And -- and who was present in that office?

24 A. On the day of the statement?

25 Q. Yes, Your Honor -- or Mr. Evans. Excuse me.

1 A. It was myself, Mr. Drayton and Mr. Wilson.

2 Q. And is it typical to allow other people in the room
3 when you create a document like that?

4 A. I don't typically create documents like that and
5 like I told you when y'all met with me, everybody seemed
6 like they were on the same team. And the thing about it
7 is, I mean, the statement was words that came out of
8 Mr. Drayton's mouth; that he's the one that gave the
9 statement. My conversation was with him, he told me what
10 he wanted to say. If I had any questions to clear up in
11 my mind, I did that, and then I wrote down exactly what he
12 said and he signed it.

13 Q. Thank you. Did you -- did you inquire into the nature
14 of the relationship between Mr. Drayton and Mr. Wilson?

15 A. No, ma'am.

16 Q. But -- but your testimony here today is that you
17 believed Mr. Wilson was the nephew of the Defendant?

18 A. I believe he said that because I think that was in my
19 notes that -- my brief, half-page note of that appointment
20 that I gave you a copy of.

21 Q. Thank you. Now -- now who actually wrote or created
22 this document?

23 A. I wrote it.

24 Q. Did Mr. Drayton tell you he could not write?

25 A. From my conversation with him, I picked up that he was

1 not too good at writing.

2 Q. Would you be surprised if I told you he had actually
3 written a statement prior to this in this case?

4 A. Not really.

5 Q. Were there any other witnesses in the room when this
6 conversation between you and Mr. Drayton was taking place
7 outside of Mr. King?

8 A. No.

9 Q. Was this document signed by a notary?

10 A. Yes.

11 Q. And who is that notary?

12 A. The notary is Lucy Broward.

13 Q. What's the -- what's the point -- what's the purpose
14 of having a notary notarize a document like that?

15 A. It's to verify that the person making the statement
16 signed it.

17 Q. And just to be clear, was she actually in the room
18 while he was having the conversation with you?

19 A. No, she was -- she was in the room to watch his
20 signature. She verified only that he signed the document.

21 Q. Okay. And how long would you say this whole process
22 took that day?

23 A. I'd say roughly twenty minutes maybe.

24 Q. Now did you ask Mr. Drayton any specific questions
25 about the transaction?

1 A. Only enough so I could understand what the statement
2 was that he wanted to make.

3 Q. Did he reference a specific transaction?

4 A. Yes.

5 Q. And do you have the statement in front of you,
6 Mr. Evans?

7 A. No.

8 MS. MULKEY: Your Honor, may I approach?

9 THE COURT: You may.

10 BY MS. MULKEY:

11 Q. I'd like to show you what is -- I think it's State's
12 Exhibit -- or, excuse me, ID Number 4.

13 A. Thank you.

14 Q. Is there a date for the transaction that he is
15 referencing?

16 A. It just says in 2012.

17 Q. And based on your discussion with him, did you believe
18 that he had been -- and "him" being Mr. Drayton, did you
19 believe that he had been working with the police during the
20 course of a controlled buy?

21 A. It seemed like that that was apparent from the
22 conversation with him.

23 Q. And did you ever question Mr. Drayton as to why he was
24 now coming to you to make a statement when, in fact, he'd
25 been working with police as evidenced by his involvement in

1 that transaction?

2 A. Well, I don't know what had occurred from 2012 to
3 2015, but -- I'm sorry, could you repeat that again?

4 Q. You said that you believed he was working with -- as
5 in -- for part of a controlled buy?

6 A. Uh-huh.

7 Q. And would that lead you to believe that had been a
8 confidential informant with the police?

9 A. Yes.

10 Q. And based on him being a confidential informant, he
11 would have had the ability to -- to do any number of buys.

12 A. Uh-huh. Okay.

13 Q. Does he reference a specific buy in that statement?

14 A. Yeah, he's -- he's referring to a specific buy, it's
15 just not a specific date.

16 Q. And so if, hypothetically, there had been any other
17 buys done, is there a way to have --

18 MR. MARSHALL: I object.

19 THE COURT: What's the basis of your objection,
20 Mr. Marshall?

21 MR. MARSHALL: May we approach, please, Judge?

22 THE COURT: You may.

23 (Proceedings held at the bench; not reported.)

24 BY MS. MULKEY:

25 Q. Mr. Evans, I want you to -- to listen to the question

1 careful -- carefully. I'm not trying to trick you. I'm
2 asking you a hypothetical question, but based on your
3 understanding of what Mr. Drayton's role was, and that is
4 that he was a confidential informant, and they -- as a
5 confidential informant he would be working under the
6 direction and control of the police. Is that yes or no?

7 A. Yes.

8 Q. And so if during his career as a confidential
9 informant, hypothetically if he would have the ability to
10 do several buys, does that statement tell you the date of
11 the specific buy that he is referring to?

12 A. I wouldn't have any knowledge of Mr. Drayton being
13 involved in any other buys or working with police other
14 than this one incident we're talking about here. It seems
15 like that my rec -- recollection was that possibly this
16 statement was being created as part of a request for a bond
17 reduction by Mr. Seagers.

18 Q. But you agree with me that the -- he does not
19 reference the date that this buy occurred that he wants to
20 allegedly give a statement on?

21 A. He could not give me the exact date. He just said it
22 was sometime in 2012.

23 Q. Okay. Thank you. Would you say that this type of
24 transaction, this kind of document, is typical in your line
25 of work?

1 A. Well, I don't do a whole lot of criminal work. You
2 know, giving statements is kind of typical, but, like I
3 said, I wasn't really asking questions outside of just
4 accomplishing this task to take a statement.

5 Q. Did you record this transaction on a business ledger?

6 A. What do you mean? As far as --

7 Q. Were you paid for this transaction?

8 A. Yes, I charged a hundred dollars for the transaction.

9 Q. And who paid you that hundred dollars?

10 A. I don't know because Mr. Drayton did not have the
11 money at the time. I said -- because I said there would be
12 a charge for taking up time in this office and this -- I
13 left the statement in an envelope at the front desk to be
14 picked up upon payment.

15 Q. And do you know who picked up that document?

16 A. No, I don't.

17 Q. Do you know who paid for that document?

18 A. No, I don't.

19 Q. But you were paid?

20 A. Yes.

21 Q. A hundred dollars?

22 A. Yes.

23 Q. Was that cash?

24 A. Yes.

25 Q. Were you asked at any time to forward this document to

1 someone?

2 A. Yes.

3 Q. And who were you asked to forward it to?

4 A. To the attorney for Mr. Seagers.

5 Q. And who asked you to forward it to Mr. Marshall?

6 A. I don't recall.

7 MS. MULKEY: The Court's indulgence, Your Honor?

8 THE COURT: Yes, ma'am.

9 THE WITNESS: All I recall is it came up during the --
10 the meeting.

11 MS. MULKEY: I don't have any further questions, Your
12 Honor.

13 MR. MARSHALL: I've just got a few little follow-ups,
14 Mr. Evans.

15 REDIRECT EXAMINATION

16 BY MR. MARSHALL:

17 Q. To your knowledge, did I, Cameron Marshall, have any
18 knowledge that you were going to be or did take a statement
19 from Robert Drayton before the time that you, as I recall,
20 e-mailed it to me after it was taken?

21 A. No.

22 Q. Had you and I, to your knowledge, ever spoken with
23 each other prior to the time that I called you regarding my
24 receipt of a statement?

25 A. I don't believe we've ever spoken or ever met prior to

1 today.

2 Q. Do you have any information that Dean Seagers was in
3 any way involved in -- in the procurement of the statement
4 which you made?

5 A. I have no information on that.

6 Q. Are you able to describe Mr. Drayton's demeanor when
7 -- when you were in his presence getting -- well, let me
8 just leave it at that and see if you have any thoughts on
9 that.

10 A. He didn't seem unusual to me. He seemed kind of low
11 key. It just seemed like something he wanted to do.

12 Q. Do you have any reason to doubt the truthfulness of
13 the statement that you took?

14 A. No.

15 MR. MARSHALL: That's all I have. Thank you, sir.

16 MS. MULKEY: The Court's indulgence, Your Honor?

17 THE COURT: Yes, ma'am.

18 MS. MULKEY: Your Honor, we'd like to call a rebuttal
19 witness.

20 THE COURT: All right. Do you have any recross?

21 MS. MULKEY: No, we do not.

22 THE COURT: All right. You may step down. Thank you,
23 Mr. Evans.

24 THE WITNESS: Thank you, Judge Harrington.

25 (Witness excused.)

1 THE COURT: At the appropriate time.

2 Call your next witness.

3 MR. MARSHALL: Lucy Browder.

4 THE COURT: Thank you.

5 CLERK: Place your left hand here and raise your
6 right.

7 LUCILLE BROWDER,

8 having been duly sworn, testified as follows:

9 CLERK: You may be seated, ma'am. Ma'am, once seated
10 if you could please state your first and last name and then
11 spell your last loudly and clearly into the microphone for
12 the record, please.

13 THE WITNESS: Lucille Browder. Browder,
14 B-R-O-W-D-E-R.

15 DIRECT EXAMINATION

16 BY MR. MARSHALL:

17 Q. Ms. Browder, good afternoon. I'm Cameron Marshall.
18 You and I have known each other for some years; have we
19 not?

20 A. Yes, we have.

21 Q. How do we know each other?

22 A. I've worked for Grady Query for going on twenty years
23 and you used to work for Mr. Uricchio next door.

24 Q. Correct. And you and I, I consider you a friend and
25 you consider me a friend?

1 A. Yeah. How are the boys?

2 Q. They're big and crazy like their mother, but thank you
3 for asking.

4 All right. Let's get to some business here. I just
5 wanted to make sure the jury was aware that we know each
6 other.

7 Now we're here regarding a statement that was given
8 -- we just had testimony that was given to Attorney Mark
9 Evans on February the 23rd of 2015 and you work in close
10 proximity and with Mr. Evans in the same location, correct?

11 A. Yes.

12 Q. And you -- your capacity there is what?

13 A. I am the office manager, the receptionist, the Girl
14 Friday of the office, and he -- Mr. Evans leases from us.

15 Q. Okay. I'm gonna show you -- well, you are, as I
16 understand it, a notary public in the State of South
17 Carolina?

18 A. Yes, sir.

19 Q. Could you, please -- I'm sure the jurors probably
20 know, but could you just reiterate what that means?

21 A. I -- when someone comes in, it could be real estate,
22 it can be anything, all I do is they sign it and I notarize
23 that they signed whatever it is. It doesn't matter what
24 the piece of paper is. I'm notarizing their signature.

25 Q. So you are swearing that the signature that might

1 appear on a document actually was made by the person it
2 purports to --

3 A. Correct.

4 Q. -- the signature purports to represent?

5 A. Correct.

6 Q. Let me show you, please, what's marked as Defendant's
7 Exhibit 1 for ID. Take a moment and -- and look at that --

8 A. Uh-huh. I'm gonna have to have my bag so I can have
9 my glasses. Sorry.

10 Q. All right.

11 A. I'm sorry. Okay.

12 Q. All right. Please look at that and tell me if you're
13 able to identify that.

14 A. I can identify my signature on the bottom --

15 Q. Okay.

16 A. -- and the statement looks fine. I -- I honestly
17 didn't -- all I do is I look at his signature. I watched
18 him sign this and I signed it behind him.

19 Q. Okay.

20 A. He had given -- he had shown his ID, driver's license
21 or whatever, I saw the name was the same, and walked out
22 and went back to my desk.

23 Q. All right. And that's all I was gonna ask you to do
24 is explain that little process. So I assume you walked
25 into a room?

1 A. Correct.

2 Q. Who was in -- who was in the room?

3 A. Mr. Evans and Mr. Drayton.

4 Q. Okay. Do you recall anybody else in the room?

5 A. I do not.

6 Q. Okay. Do you know for certain there was not or is it
7 possible someone else was?

8 A. There could have been. I know that there were two
9 gentlemen that walked in, but I -- again, I -- I could have
10 been doing three things when Mr. Evans called me to the
11 back office --

12 Q. Right.

13 A. -- to his office.

14 Q. Right. Do you know if -- the two men that walked in,
15 if one was Robert Drayton, Junior, do you know who the
16 other one was?

17 A. No, sir.

18 Q. A white man or a black man?

19 A. A black gentlemen.

20 Q. So you walked in the room and Mr. Evans and
21 Mr. Drayton -- what happened next?

22 A. Mr. Evans asked me to notarize his statement and I
23 said okay and once Mr. Drayton signed it, I notarized it,
24 and that was it.

25 Q. And prior to Mr. Drayton signing it, you looked at his

1 photo --

2 A. His ID.

3 Q. -- identification?

4 A. Right.

5 Q. Did you have a seal with you? And I know notaries
6 typically --

7 A. I have a seal, but we didn't use it.

8 Q. Okay. But you --

9 A. Usually you use a seal if it's going out of state --

10 Q. All right.

11 A. -- when something's going out of state and you put a
12 seal on it.

13 Q. Okay.

14 A. It's usually real estate more than anything that I use
15 it for.

16 Q. Okay. On this date when -- when you notarized this,
17 you were an active notary, correct?

18 A. Correct. I've been an active notary for 30-some-odd
19 years.

20 Q. Un-huh. To your knowledge, did Mr. Seagers or I have
21 any involvement in getting Mr. Drayton and this other
22 person to your office for the giving of a statement?

23 A. I have no knowledge of that whatsoever.

24 Q. Do you know whether was any relationship -- whether
25 there was a -- an uncle/nephew relationship between

1 Mr. Drayton and the man he came into the office with?

2 A. No, sir.

3 Q. Do you recall anything about Mr. Robert Drayton,
4 Junior's demeanor when you were in brief contact with him?

5 A. No. I'm -- I just -- you know, like I said, I walked
6 in, he signed it and had shown me his ID, I notarized it
7 and walked out. I notarize things all the time.

8 Q. Okay. Well, a final question. Do you have any reason
9 to doubt the truthfulness of what's in that statement?

10 A. I -- no, I have no reason. I never read the
11 statement. That's the first time I've read it.

12 Q. All right.

13 A. I have nothing -- I know nothing about it.

14 Q. Okay.

15 MR. MARSHALL: I move to introduce this -- I think
16 that's marked -- I believe it's Defendant -- Defendant's 1.

17 THE WITNESS: Yeah, 1.

18 MR. MARSHALL: I move to introduce that into evidence.

19 MS. MULKEY: The State would object.

20 THE COURT: Defendant's 1 into evidence over your
21 objection.

22 (Defendant's Exhibit Number 1, statement of 2/23/15,
23 was admitted into evidence.)

24 BY MR. MARSHALL:

25 Q. Okay. Are you able to read that? I'd like to go

1 ahead and let the jury -- they've had to hear a lot of
2 testimony --

3 THE COURT: Mr. Marshall, she testified she didn't
4 read it, so if you're going to publish it you can either
5 pass it to the jury and let them read it one by one,
6 they'll have it in the jury room, or I would prefer that
7 you just publish it on the ELMO.

8 MR. MARSHALL: Well, I'd like to go forward and read
9 it. I was -- could I read it to them? I just -- they've
10 had to hear a lot of testimony about it.

11 THE COURT: That's fine. I just don't think it's
12 appropriate for this witness --

13 MR. MARSHALL: Okay.

14 THE COURT: -- because she testified she did not write
15 it or read it.

16 MR. MARSHALL: All right. Let me go --

17 THE COURT: Thank you.

18 MR. MARSHALL: Thank you. I'm -- I'm gonna read it
19 with the Court's permission then.

20 THE COURT: Thank you.

21 MR. MARSHALL: All right. So it says "I -- at the top
22 it says "statement". "I, Robert Drayton, Junior, make this
23 statement concerning a drug transaction that occurred in
24 2012 on Ashton Street in the city of Charleston. On this
25 particular day, I called a phone number and asked for Dean

1 Seagers. I was told he was not there, but that I could
2 come to a house on Ashton Street". I'm sorry, I'm losing
3 my place. "...a house on Ashton Street. I called out -- I
4 called out to a window upstairs and a small jar was lowered
5 down for me to put money in. I put the money in and then a
6 small quantity of cocaine was lowered back down to me. I
7 do not know who was upstairs at the house on Ashton Street.
8 I was high on cocaine at the time and was afraid that I
9 would lose my housing, but I cannot identify anyone who
10 present on Ashton Street on this day". Signed Robert
11 Drayton, February 23, 2015, notarized by Lucille Browder.
12 The expiration on her notary is 2-15 of '17.

13 Thank you, ma'am. That's all the questions I have.

14 THE COURT: Ms. Mulkey.

15 CROSS-EXAMINATION

16 BY MS. MULKEY:

17 Q. Good afternoon, Ms. Browder. Now you said that three
18 men came -- or, excuse me, two men came into the office on
19 the day that this document was created, but your testimony
20 is that when you walked into the room to sign it, there
21 were only two of them in there?

22 A. My office, where I sit, I am at a desk that has two
23 elevators right here. I work with about six or seven
24 attorneys on that floor, okay? I'm the gatekeeper. No one
25 goes through those doors of Mr. Uricchio or Ms. Uricchio's

1 office or Mr. Query's office without me asking who they
2 need to see. The gentleman asked me for Mr. Evans, I took
3 him back to Mr. Evans' office. I know there was another
4 gentleman with him, but I really didn't pay attention to
5 him, you know. He went back there and I went back to my
6 desk. I answer the phone, I'm doing things on my computer.
7 I'm not looking up all the time, you know.

8 Q. But when -- but when you went into that room to sign
9 it --

10 A. Oh, in -- yeah.

11 Q. -- that's what I'm referring to.

12 A. Okay. No, I do not remember another person being in
13 that room.

14 Q. Okay. And were you present for any of the discussion
15 that resulted in the creation of that document?

16 A. No, ma'am.

17 Q. Do you have any knowledge about this -- this case
18 whatsoever?

19 A. No, ma'am.

20 Q. Did you actually see the Defendant {sic} sign the
21 document?

22 A. Yes.

23 Q. And how were you able to verify Mr. Drayton's
24 identity?

25 A. He showed me a -- I believe it was his driver's

1 license.

2 Q. And did you make a photocopy of that?

3 A. No, I did not. I just looked at it, saw his name, saw
4 him sign that name and I notarized it.

5 Q. And did you ever receive a -- a request to forward
6 this to another attorney?

7 A. I'm sorry?

8 Q. Did you ever receive a request to forward the document
9 to another attorney?

10 A. (Shakes head.) I never had the document in my hands.

11 Q. So your role in this was strictly to notarize the
12 signature of Mr. Drayton?

13 A. Correct.

14 Q. And you have no other knowledge about this case or the
15 statement itself?

16 A. No, ma'am.

17 MS. MULKEY: The Court's indulgence, Your Honor?

18 THE COURT: Yes, ma'am.

19 MS. MULKEY: I don't have any further questions,
20 Your Honor.

21 MR. MARSHALL: Nothing else. Thank you.

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

23 THE WITNESS: Thank you.

24 (Witness excused.)

25 THE COURT: Call your next witness.

1 MR. MARSHALL: The defense at this point rests,
2 Judge.

3 THE COURT: All right. Preserving all motions or
4 matters, you indicated you have a rebuttal witness; is
5 that correct?

6 MS. MULKEY: Just briefly, Your Honor.

7 THE COURT: All right. Call your rebuttal witness.

8 MS. MULKEY: The State would call Investigator Jack
9 Scarborough.

10 CLERK: Place your left hand here and raise you right
11 hand, sir.

12 JOHN L. "JACK" SCARBOROUGH,
13 having been duly sworn, testified as follows:

14 CLERK: You may be seated, sir. Sir, once seated if
15 you could please state your first and last name and spell
16 your last loudly and clearly into the microphone for the
17 record, please.

18 THE WITNESS: My name is John Lawrence Scarborough.
19 The spelling of the last name is S-C-A-R-B-O-R-O-U-G-H. I
20 go by "Jack".

21 DIRECT EXAMINATION

22 BY MS. MULKEY:

23 Q. Good afternoon, Mr. Scarborough.

24 A. Ma'am.

25 Q. Could you please tell the jury where you're employed?

1 A. I work for the Solicitor's Office, Ninth Circuit, for
2 Scarlett Wilson. I'm one of the investigators in our
3 office.

4 Q. And prior to being an investigator in our office, what
5 did you do?

6 A. I'm retired law enforcement. I had twenty-seven years
7 on the job. I had thirteen with the City of Charleston
8 and fourteen with the Charleston County Sheriff's Office
9 and retired from there as a lieutenant.

10 Q. And during the course of your employment with the
11 Solicitor's Office, if you could explain to them what your
12 role as an investigator is.

13 A. Basically as an investigator with the Solicitor's
14 Office, most of us are prior law enforcement. We basically
15 get a package, which is the case file, from the attorneys
16 and we basically put everything back together. We find
17 witnesses. Because some of the cases are fairly old, we
18 locate witnesses. We locate evidence, we interview people,
19 we do subpoenas. We do really whatever it takes to get to
20 where we're at today.

21 Q. As part of your -- your duties, Mr. Scarborough, do
22 you assist the assistant solicitors in meeting with
23 witnesses and taking notes from those meetings?

24 A. Yes, I do.

25 Q. And do you provide us with copies of those notes?

1 A. Yes, I do.

2 Q. Were you present for a meeting with Attorney Mark
3 Evans on June 23, 2015, in preparation for this case?

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

5 Q. And where did that meeting take place?

6 A. At Wappoo Center, which is right next to the Crab
7 House on James Island.

8 Q. Is that Mr. Evans' office?

9 A. Yes.

10 Q. And who -- who was present for that meeting with
11 Mr. Evans?

12 A. It was myself, you, Whit and one of the interns from
13 our office, and also Mr. Evans.

14 Q. And during the course of that meeting, was the
15 statement that has just been addressed a bit before,
16 was that brought up?

17 A. That's the -- the basic reason why we were there was
18 to investigate why that statement took place.

19 Q. And was -- with your career in -- in law enforcement
20 coupled with your experience here as an investigator, did
21 that statement have any -- did that arouse any suspicion on
22 your part?

23 A. Definitely. I thought it was bizarre the way it
24 surfaced.

25 Q. And during the course of meeting with Mr. Evans, did

1 we inquire as to the specifics of the actual discussion
2 that he had with Mr. Drayton?

3 A. We went into great detail with him in reference to
4 that and I also personally interviewed him.

5 Q. And during the course of our discussions with
6 Mr. Evans, did he tell us ever that he was able to verify
7 the identity of Mr. Drayton?

8 A. He said he could not.

9 Q. And did he tell us whether or not he obtained a
10 driver's license photo or verified his identity at all?

11 A. He said he did not.

12 Q. And during the course of that meeting, did Mr. Evans
13 reference any relationship between one of the individuals
14 that came in with Mr. Drayton and the Defendant?

15 A. Yes, he -- he made reference to them being related
16 somehow. He had notes in reference to that.

17 Q. And at the end of our -- our meeting, did we discuss
18 payment?

19 A. I asked him if he was paid for his services and he
20 stated that he was paid a hundred dollars in cash and I
21 asked him at that time, being that he's in -- in a law
22 firm, did he have a receipt so that we could make a copy
23 of it, and he just kind of chuckled and said no, that was
24 a cash -- cash deal is what -- the way he made it sound.

25 Q. And did Mr. Evans advise at that time whether he had

1 been instructed to send that document to anybody?

2 A. He was advised -- once they came in he stated to us
3 that an unknown person had come by and picked up the
4 statement because they did not have a hundred dollars on
5 them at the time and that once they got it he received
6 information that they wanted it scanned and sent to the
7 defense attorney.

8 Q. And --

9 MS. MULKEY: The Court's indulgence, Your Honor?

10 THE COURT: Yes, ma'am.

11 MS. MULKEY: No further questions at this time,
12 Mr. Scarborough. Please answer any the defense may have.

13 THE WITNESS: Sure.

14 THE COURT: Mr. Marshall.

15 MR. MARSHALL: Thank you, Judge.

16 CROSS-EXAMINATION

17 BY MR. MARSHALL:

18 Q. Good afternoon, Mr. Scarborough.

19 A. Good afternoon, sir.

20 Q. Is there -- do you know of any evidence that either
21 Dean Seagers or myself were in any way involved in the
22 procurement of this statement by Mark Evans?

23 A. Other than it being scanned and sent to you, that's
24 the only direct contact that I know of.

25 Q. Do you know who asked Mr. Evans to send me the

1 statement?

2 A. My understanding was the second subject that was not
3 identified was the person that asked for it to be sent to
4 you.

5 Q. Okay.

6 A. And that was the person that drove the CI to your --
7 to their -- Mr. Evans' office.

8 Q. Is that the person you believe to have been identified
9 by Mr. Evans by the name, I believe, of King Wilson?

10 A. Yes.

11 Q. And you don't have any evidence, do you, that Robert
12 Drayton is not the nephew -- is not the uncle of King
13 Wilson?

14 A. I do not know the relationship, no, sir.

15 Q. At the time that the statement was taken, February, I
16 believe, 23rd of 2015 -- you've been actively involved in
17 this case, correct?

18 A. Yes, sir.

19 Q. And you've been keeping abreast of Mr. Seagers and
20 where -- whether he's been in jail or out of jail, correct?

21 A. Yes, sir. I -- I work directly with Mr. Sowers -- or
22 Sowards.

23 Q. Right. And you would agree that at the time the
24 statement was taken Mr. Seagers was in jail because he
25 couldn't make bond on this charge, correct?

1 A. I'm aware, yes, sir.

2 Q. And you agree with that, that at the time the
3 statement was taken Mr. Seagers was in jail on this
4 charge?

5 A. Yes, sir. And the jail has phones, yes, sir.

6 MR. MARSHALL: That's all I have. Thank you, sir.

7 THE WITNESS: Yes, sir.

8 MS. MULKEY: Just briefly, Your Honor.

9 REDIRECT EXAMINATION

10 BY MS. MULKEY:

11 Q. Mr. Scarborough, do you remember any statements from
12 Mr. Evans during our conversation as to whether this was a
13 typical transaction for him?

14 A. No, he said it was not. He -- he -- these guys came
15 in -- in off the street and that was what we were stressing
16 to him while we were there that we thought it was bizarre
17 in our line of work that you would have two subjects that
18 are not identified, you didn't even check their ID's, and
19 you take a statement from them and then you have a person
20 come in and notarize a statement and notarizing basically
21 that -- what that statement is about on the notary also and
22 -- and we do -- I would never notarize something unless I
23 knew what that statement was.

24 MS. MULKEY: Thank you. I have no further questions.

25 THE COURT: Mr. Marshall.

1 MR. MARSHALL: Thank you, Judge.

2 RECROSS EXAMINATION

3 BY MR. MARSHALL:

4 Q. Mr. Scarborough, you don't have any evidence that
5 Notary Public Lucille Browder did any differently than she
6 testified to? In other words, you don't have any evidence
7 that she did not check the photo ID of Mr. Drayton before
8 she --

9 A. I have -- the only evidence that I have is what was
10 told to me by the attorney, Mark Evans, and they were -- he
11 -- his exact statement was "Neither one of those subjects
12 were ever identified". And she stated up here under oath
13 that she saw a driver's license and he also, I believe,
14 stated under oath that he saw a driver's license, and that
15 is not what he told us.

16 Q. But just a few minutes ago I thought I understood you
17 to testify that Mr. Evans told you that he did not check a
18 driver's license and now you're claiming that he said that
19 neither he nor Ms. Broward, the notary public, checked the
20 photo ID before the signature was made?

21 A. What I'm -- what I'm saying is that he stated to us
22 that he never saw any ID. How would she be able to say
23 that both of them -- she said under her statement up here
24 that she saw, along with him, the ID, which she thought was
25 a driver's license in reference to the signature that was

1 on that certificate that you have.

2 Q. You say "along with him". You're meaning Mr. --
3 Mr. Evans?

4 A. Yes.

5 Q. Well, we may just remember the testimony differently
6 because I don't remember her saying that. I thought that
7 her testimony was I checked his ID. That's my job as a
8 notary public. I didn't even read the statement, but all I
9 did was made sure it was the guy that he said he was.

10 MS. MULKEY: Objection, Your Honor.

11 THE COURT: What's the basis?

12 MS. MULKEY: He's testifying for another witness.

13 MR. MARSHALL: No, I'm asking --

14 THE COURT: Overrule --

15 MR. MARSHALL: Sorry, Judge.

16 THE COURT: Overruled. You may answer.

17 THE WITNESS: Say it again, sir.

18 BY MR. MARSHALL:

19 Q. So I thought I understood her -- her testimony to be
20 that she did check the ID and -- but she didn't read the
21 statement. She just checked the ID to make sure that the
22 person that was signing was, in fact, Robert Drayton.

23 A. I did hear her make that statement, but also I heard
24 him say they never checked any ID whatsoever.

25 Q. Oh, you're -- you're claiming that he made that

1 statement when you met -- met with him --

2 A. Yes.

3 Q. -- at his office? I understand.

4 A. Yes.

5 MR. MARSHALL: Okay. All right. Nothing further.

6 Thank you.

7 THE WITNESS: Yes, sir.

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

9 THE WITNESS: Thank you.

10 (Witness excused.)

11 THE COURT: Do you have another witness?

12 MS. MULKEY: The State has no other witnesses.

13 THE COURT: All right. And with that you now rest
14 again?

15 MR. SOWARDS: The State is resting.

16 THE COURT: All right.

17 Ladies and gentlemen, you have now heard all of the
18 testimony that you have -- will hear in this case and
19 received into evidence all of the exhibits that have been
20 made part of the record in this case. What is left now is
21 closing arguments on behalf of counsel and the instruction
22 on the law applicable to this case.

23 Ladies and gentlemen, that will take us way past
24 5:00 this evening and so we're going to re -- retire for
25 the evening and begin in the morning. Please take your

1 notepads with you. We will lock them up.

2 Please remember all of my admonitions. Do not read,
3 watch or listen to any news accounts regarding this case.
4 Do not do any independent investigations. Do not discuss
5 this case with anyone. Just because you have heard all of
6 the testimony in this case, you have not been given the
7 charge on the law, so please do not even begin deciding any
8 issue in this case.

9 Please be back -- we will begin promptly at 10 AM.
10 As you know, and I have said to you before, we cannot
11 begin until all fourteen of you are here. So please plan
12 accordingly. I know traffic sometimes is beyond your
13 control, but please plan accordingly so that we can begin
14 promptly at 10.

15 Please rise for the jury.

16 (Whereupon, the jury retires to the jury room to be
17 excused for the evening at 4:43 PM.)

18 THE COURT: Thank you. Please be seated.

19 Any motions or matters, Mr. Marshall?

20 MR. MARSHALL: I'd like to renew my motion for a
21 directed verdict of acquittal, Judge. I'm not gonna
22 belabor it since it's been a very short time since I made
23 an argument to you.

24 I just want to note that we now have -- when I -- when
25 I first argued for directed verdict, we had only two sworn

1 statements by the confidential informant stating that --
2 that he can't testify that Mr. Seagers sold drugs to him
3 on June 20, 2012. We have three sworn statements from the
4 CI stating -- if you combine them, they're all a little
5 different, but, in essence, stating that he can't say who
6 sold him drugs on June 20th of 2012, and for that reason we
7 don't believe that they've put forth sufficient evidence to
8 have this case sent to the jury.

9 THE COURT: I think Defendant's 1 speaks for itself
10 as to what it does or does not contain. I haven't heard
11 anything else that would make me change my ruling as to
12 the -- your motion for directed verdict at the close of
13 the State's case. Your motion is -- is still denied.

14 Anything further?

15 MR. MARSHALL: No, ma'am.

16 THE COURT: Anything further?

17 MR. SOWARDS: Nothing from the State, Your Honor.

18 THE COURT: All right. Counsel, let's just approach
19 quickly just for charges and then we'll get ready and do
20 Mr. Simmons.

21 (Proceedings held at the bench; not reported.)

22 THE COURT: Mr. Marshall, based upon my review, I have
23 included all of your Requests to Charge. The State is
24 objecting to mere presence. Is that correct, Mr. Sowards?

25 MR. SOWARDS: That is correct, Your Honor.

1 THE COURT: All right. And you are requesting hand of
2 one?

3 MR. SOWARDS: That's correct, Your Honor.

4 THE COURT: All right. And, Mr. Marshall, you would
5 object to the inclusion of hand of one?

6 MR. MARSHALL: Yes, ma'am.

7 THE COURT: All right. I will be charging hand of one
8 based upon the testimony that was presented. Note your
9 exception.

10 No lesser includeds?

11 MR. MARSHALL: No, ma'am.

12 THE COURT: No lesser includeds?

13 MR. SOWARDS: No, Your Honor.

14 THE COURT: All right. Please be back at 9:30. I
15 will go over -- again, I will tell you what the charge is.
16 I do not give a copy of my charge.

17 Good luck to you both. Have a good night.

18 Mr. Seagers, I'll see you in the morning at 9:30.

19 THE DEFENDANT: Yes, ma'am.

20 MS. MULKEY: Thank you, Your Honor.

21 MR. MARSHALL: Are there any additional charges other
22 than the ones I had submitted, Judge, or is it just those?

23 THE COURT: Those are, in essence, all of them.

24 MR. MARSHALL: Okay.

25 THE COURT: The ones that you need to be concerned

1 with. The others are duties of judge and jury and all of
2 that.

3 MR. MARSHALL: Yes, ma'am. Understood. Okay.

4 THE COURT: All right. Thank you.

5 (Whereupon, the proceedings were concluded for
6 July 8, 2015.)

7 (Whereupon, the following proceedings were held on
8 July, 9, 2015.)

9 (Court's Exhibit Number 6 was marked for
10 identification.)

11 THE COURT: Any objections or exceptions to the
12 charges?

13 MR. MARSHALL: No, ma'am. I just put my proposed
14 charges into the record.

15 THE COURT: That would be Court's -- what is that 6?

16 THE COURT REPORTER: 6.

17 THE COURT: Okay. Court's 6. And so you've had an
18 opportunity to review my charges; have you not?

19 MR. MARSHALL: Yes, ma'am.

20 THE COURT: Anything before we bring in the jury from
21 the State?

22 MS. MULKEY: Nothing from the State, Your Honor.

23 THE COURT: From the Defendant?

24 MR. MARSHALL: No, ma'am.

25 THE COURT: Thank you.

1 (Whereupon, the jury enters the courtroom at
2 10:04 AM.)

3 BAILIFF: All jurors present, Your Honor.

4 THE COURT: Thank you. Please be seated.

5 Good morning, ladies and gentlemen of the jury.

6 Did every member of the panel comply with the
7 Court's instructions? If you did comply with the Court's
8 instructions, please raise your right hand. Thank you.
9 All fourteen jurors have indicated they complied with the
10 Court's instructions.

11 Ladies and gentlemen, we've reached the stage of the
12 trial where you will hear closing arguments on behalf of
13 counsel. Just as I indicated to you what was contained in
14 opening statements is not evidence, neither is what is
15 contained in closing arguments. It's merely the attorney's
16 contention as to what the evidence has shown you. I will
17 instruct you on the law applicable to this case after the
18 State and the Defendant have given you their closing
19 arguments.

20 The way the closing arguments work is Ms. Mulkey
21 will give her opening on the law, Mr. Marshall will give
22 his closing in full, and then Ms. Mulkey will have an
23 opportunity for rebuttal. After that, I will instruct you
24 on the law applicable to this case and then you will retire
25 to consider your verdict. Please give you strict

1 attention.

2 Ms. Mulkey.

3 MS. MULKEY: Thank you, Your Honor. May it please
4 the Court?

5 THE COURT: Yes.

6 MS. MULKEY: Good morning, ladies and gentlemen.
7 We've come to the point where it's time to connect the
8 dots, if you will, for this case; put together the pieces
9 of evidence with the testimony that you have seen and
10 heard as they apply to the law as given to you by the
11 judge. Now if anything I say differs from what the judge
12 instructs you on, you must disregard what I say and follow
13 only the law as she gives it to you.

14 As I understand the law to be in the state of South
15 Carolina, it is illegal to do any one, or a combination,
16 of the following: To manufacture, distribute, dispense,
17 deliver, or purchase cocaine base. It is illegal to
18 otherwise aid in the manufacture, dispensing, delivery or
19 possession of cocaine base. You cannot otherwise aid,
20 abet, or attempt to distribute, or possess, or dispense, or
21 deliver cocaine base. And it is also illegal to conspire
22 to do any of the above.

23 Now my job is to prove to you as an Assistant
24 Solicitor that this Defendant did violate any one or all
25 of those laws on June 20, 2012, and I must do that beyond

1 a reasonable doubt. It's a legal term. What is beyond a
2 reasonable doubt? The defense referenced percentages of
3 doubt in his opening and I encourage you to listen
4 carefully to what the judge says on reasonable doubt and I
5 submit to you that you will not hear those same percentages
6 that Mr. Marshall has referenced.

7 Beyond a reasonable doubt, as I understand it, is
8 something that would leave you firmly convinced of the
9 Defendant's guilt. And if that doesn't clear anything up,
10 let me give you an example. For the past couple of days we
11 have been in this courtroom and there are no windows. We
12 have no ability to know what is going on in the outside
13 world. So let's say that while sitting here over the past
14 couple of days someone walked in during the course of --
15 of court with a rain jacket on, some raindrops, and -- and
16 brushed off some drops of rain. A few minutes after that
17 someone else comes in with an umbrella and just kind of
18 shakes out some raindrops. Now you've been in this
19 courtroom, you don't have any raindrops on you. You
20 haven't seen what's going on outside, but I submit to you
21 that if you saw two different people come in with two
22 different things that indicated it was raining outside,
23 you would be firmly convinced that it was raining or had
24 recently rained despite the fact that you had not seen it
25 yourself.

1 Another part of the law that the judge is going to
2 instruct you on is the difference between direct and
3 circumstantial evidence. Direct evidence is what you hear
4 and what you see come from people on that stand. It is
5 people who were there testifying to what they saw and heard
6 with their own eyes and ears.

7 Circumstantial evidence, on the other hand, is a
8 chain of circumstances that would lead you to a conclusion.
9 Defense referenced in his opening that you not bet --
10 base your judgment on uncorroborated and false testimony.
11 Well, ladies and gentlemen, I submit to you that the
12 direct evidence and the circumstantial evidence when taken
13 together will lead you to one conclusion, and that is the
14 Defendant is guilty of distribution of cocaine base.

15 Excuse me. You're also gonna receive an instruction
16 on the credibility of witnesses, from the people that you
17 heard testify here on the stand, and I think it's -- I
18 encourage you to -- to recall their testimony and take
19 into consideration their experience, their training, any
20 prior knowledge that they had of the Defendant, any prior
21 knowledge or familiarity with a person or place, as well
22 as their demeanor while testifying, what was their
23 motivation for being here, and I submit to you that a
24 witness's hesitation is not the same as an inconsistency.

25 When determining the credibility of witnesses, it's

1 also important to look and see if what they said is
2 corroborated through any other evidence, whether that be
3 direct or circumstantial; a video, a statement or the
4 testimony of another witness.

5 Now when this case began, the judge told you that a
6 trial is a slow and often repetitive process. It is not
7 Law & Order, it is not high drama and action. And I know
8 that you did not actually start with us until Tuesday
9 afternoon, but prior to your presence in this courtroom
10 there were several matters of law, legal issues, that were
11 brought before Your Honor and she ruled on those. She
12 also ruled on several things while in your presence. You
13 must follow these rulings. You must abide by these rulings
14 and you must not question Your Honor's rulings on those
15 matters. As she told you, she is the judge of the law and
16 you are the judge of the facts.

17 I appreciate your attention and I'll be back to speak
18 with you after Mr. Marshall.

19 THE COURT: Mr. Marshall.

20 MR. MARSHALL: Thank you, Your Honor.

21 Good morning, ladies and gentlemen.

22 Ladies and gentlemen, in this country people aren't
23 convicted of crimes they didn't commit based upon the
24 uncorroborated, false testimony of drug-addicted, proven
25 liars. That doesn't happen in this country. Not in the

1 greatest country in the world, not in the most just country
2 in the world, not in the United States of America.

3 In the great state of South Carolina where we've been
4 dispensing justice as long as any state, we don't convict
5 people of false allegations made by a drug addict who will
6 say anything to get money to feed his habit. We don't do
7 it, but that's exactly what the Solicitor's gonna ask you
8 to do in this case.

9 And when I made my opening comments to you, I -- I
10 recall saying that I anticipated a lot of reasonable doubt
11 in this case and I said I anticipated maybe trying to
12 bring something in and write it down, and I thought about
13 that as I was preparing my remarks to you for this morning
14 and I decided not to do that because I realized that I
15 would be doing nothing but writing the whole time and
16 taking up time that is not necessary. I think when I told
17 you I might write some things down in closing argument, I
18 also failed to realize, I believe, that y'all were taking
19 notes and I've noticed that y'all have all been diligent in
20 paying attention to the testimony in this case and have
21 been taking notes.

22 If I say anything which conflicts with your
23 recollection of the evidence in this case, you must take
24 your recollection because I may say some -- I may get some
25 things jumbled up. That's just part of being a trial

1 lawyer, you're trying to keep the testimony moving, and I
2 could misspeak. So if I do, and you find that I did, I
3 apologize in advance. I didn't do it on purpose, I made a
4 mistake, and I'm asking you to follow your recollection of
5 the testimony in the case.

6 Ladies and gentlemen, this is without question the
7 most important day in Dean Seagers' life. This is the
8 day which will forever alter his life. It is the day for
9 which he has waited nearly three long years to get his
10 case before a jury. That's all he's ever wanted. That's
11 all he's ever asked for. This is the day we believe he
12 will be vindicated of this false allegation, the day that
13 he will be returned to his family, his children, and to a
14 life of freedom he deserves, as we all do, in this greatest
15 country in the world.

16 Now, ladies and gentlemen, there is a lot -- there is
17 a mountain of reasonable doubt in this case and I won't be
18 able to cover it all in these closing remarks and I'm not
19 gonna try to. The beauty of having twelve of y'all is that
20 you can rely on each other. Y'all are gonna remember all
21 of the evidence once you get back and talk about it. And
22 you have your notes. And I thank Judge Harrington for
23 allowing that. Some judges don't. I've never understood
24 that. I think it's a good policy because all we want is
25 the truth. We're not here to hoodwink anybody and if you

1 were contemporaneously taking notes as the evidence has
2 come in, then that's the best you can do, and thank y'all
3 for doing that.

4 Let me talk briefly, please, about reasonable doubt.
5 And as I said in my opening remarks, courts have, judges
6 have, defined reasonable doubt in a lot of different ways
7 through the history of this country. It is reasonable
8 doubt, the bedrock, the foundation, the most important
9 thing in our criminal justice system. It is what the
10 entire system is built upon.

11 Some judges just tell juries well, take the ordinary
12 meaning of the words, and I've told you I've found that
13 not to be particularly helpful. I think of Ms. Mulkey's
14 remarks about it and rain. I don't take issue with that.
15 I think those are reasonable remarks, one way to try to
16 help guide you. Some judges have said reasonable doubt is
17 a doubt for which you have a logical reason. Some courts
18 have said a reasonable doubt is a doubt which would make
19 one hesitate to act in some important matter in life.
20 Judge Harrington's gonna tell you her advice to you on the
21 subject in her charge is that you must be firmly, firmly
22 convinced, of the Defendant's guilt before you may return a
23 guilty verdict, and that is certainly a proper instruction
24 and one that has been used throughout the history of this
25 issue.

1 So let me try to review some of the evidence, I know
2 I'll leave some out, but this case is based upon one
3 person. It's based upon the word of Robert Drayton, a
4 confidential informant. Well, who is Robert Drayton?
5 Well, we don't know a lot about his background. We do know
6 that he is a person who at the time of this, nearly three
7 years ago, was a -- by his own admission, a powder cocaine
8 addict. I submit to you that at that time, and I don't
9 know his current status of his drug usage, but I submit to
10 you at that time he would say anything to get paid to go
11 get his next powder fix, and that's what he did in this
12 case. He can't be believed at all.

13 This case is unusual and I've been involved in a lot
14 of trials in the last twenty-five years. I don't recall
15 seeing a case where the evidence in the case, in this case
16 Robert Drayton, has made four different statements about
17 what the truth is. He made the initial written statement
18 in which he told the police what they wanted to hear: Dean
19 Seagers sold me these drugs. Give me my money. Let me go
20 get a fix. The next thing that he said was, in a sworn
21 statement, that it was false. And I put it up there for
22 you yesterday and read it -- read it to you. You'll have
23 it back there. But he said no, what I said wasn't true.
24 i didn't have anything to do with that. Dean Seagers
25 didn't have anything to do with that. He was in jail.

1 Drayton asked his nephew to take him over there and give a
2 statement. You heard. You can decide whether you believe
3 Lucy Browder and Mark Evans. If they try to come up and
4 tell you that those two people are lying, I submit to
5 you that's totally false, that they're not lying. The
6 statement was taken just as they told you it was taken,
7 under those circumstances.

8 But since that sworn statement, which is unlike the
9 one given on June 20th when all Mr. Drayton was worried
10 about was getting paid to get a fix, that one was under
11 oath. In that one, he appeared to be sober, unlike in this
12 video when he's riding around singing. And is he high or
13 not? You decide. He says in that statement he was. He
14 sure kind of acts high riding along and singing, real
15 happy. Since that sworn statement when he says that what
16 he told the cops on the 20th was a lie, he's given two
17 more. And I asked him about the next one when he was on
18 the stand and that was one that he gave under oath from
19 this chair. Y'all weren't in here, but we talked about it
20 with him. He admitted that he made the statement, the
21 statement being: I don't know anything about what y'all
22 are talking about. I don't know anything about June the
23 20th. But we all know that's a lie. He knows something
24 about it. We're all firmly convinced he was involved in
25 something with the cops on June the 20th.

1 And then his third sworn statement, y'all were present
2 for that, and in his third sworn statement -- and to me he
3 appeared to be sober. He says, "Well, I can't say that
4 Dean Seagers distributed drugs to me". He said I did get
5 some drugs from that location. There were three people
6 there. He said he got a glimpse of Dean Seagers. It's
7 certain that he doesn't know if Dean delivered any drugs
8 to him. He says it's possible that it wasn't Dean. He's
9 not a hundred percent sure that he saw Dean. He said it
10 was a very brief glimpse of somebody who he told the cops
11 was Dean.

12 And keep in mind Robert Drayton has been under
13 tremendous pressure from the police and the prosecutors
14 to try to get him to get what they want, which is a
15 conviction against Dean Seagers. They've gone to great
16 expense housing him in the jail month after month after
17 month while he's trying to get a trial. They've gone
18 to great expense to bring Officer Burke down here from
19 Indianapolis and put him up and feed him and fly him back
20 and forth and pay his lost wages. They badly want to
21 convict Dean Seagers. They're not taking an objective
22 look at the evidence in this case as they should. That's
23 not happening. They are slanted as far as they can be.

24 There's a video. The first discussion of the video
25 in a formal context came when Officer Burke wrote an

1 affidavit, a written statement, swore to the truth of it
2 in front of a magistrate judge, Bonnie Koontz. And in
3 that affidavit he incorrectly told Judge Koontz that the,
4 quote, entire transaction was recorded on audio and video.
5 Let's hope he was thinking of another case. Let's hope he
6 was mistaken. I don't know whether he was badly, badly
7 mistaken when he wrote those words and swore to the truth
8 of them and gave them to Judge Koontz or whether it was
9 something much worse, but the words were false.

10 When -- something that just sort of amazes me in this
11 case, and I asked Officer Burke about it, is that you would
12 go out and choose a confidential informant who has been
13 convicted in the past, the recent past at that time, of
14 lying to the police. This is your case? Your case is
15 built upon a drug addict that you know has been convicted,
16 proved beyond a reasonable doubt to have lied to the
17 police? This is the person that you base your case on?
18 He said yeah, yeah, I knew that. He then, Officer Burke,
19 admitted that what he said in the affidavit wasn't true.
20 That, in fact, you don't see Dean Seagers conducting
21 any drug transaction. In fact, you don't see a drug
22 transaction at all in that video. That's not what he
23 told the judge under oath.

24 If you look at that video, there are numerous gaps.
25 And I was looking at it a couple of days ago and I went

1 through and timed them all, and I'm not gonna take up
2 your time because you'll see it, I counted eight, eight
3 blackouts. Some of them as long as about forty seconds.
4 What's Robert Drayton doing during that time? Officer
5 Grill told you Robert Drayton wasn't getting paid unless
6 he produced. Robert Drayton was under pressure that day
7 to make something happen so he could get paid so he could
8 get high. On that video Robert Drayton says he, quote,
9 talked to Baby Dean. He doesn't say he saw Baby Dean on
10 that video, he doesn't say he got drugs from Baby Dean on
11 that video.

12 And who is Baby Dean? They want you to believe Robert
13 Drayton that Baby Dean entered supposedly in his cell phone
14 as "Baby", not Baby Dean, as "Baby", is Dean Seagers. I
15 submit to you if that were true they would have brought
16 some credible witnesses in this courtroom to establish
17 that. That didn't happen and there's a reason it didn't
18 happen.

19 So much of the evidence in this case is frankly un --
20 so unbelievable as to be somewhat mind-boggling, but when
21 Officer Burke testified that he really wasn't too familiar
22 with -- as did, I submit to you, all -- most all of the
23 State wit -- State's witnesses had very little knowledge
24 of the law in this state concerning the proper handling of
25 drug evidence. It's mandated by statute and regulations.

1 It's not we suggest that the police agencies in this state
2 follow this. We think this will be the best procedure.
3 That's not what the law says. The law says the police
4 agencies in this state shall follow these procedures. And
5 somehow the City of Charleston Police Department witnesses
6 just thought -- they really weren't familiar with that,
7 they kind of maybe heard something about it, but it's not
8 the way they do it because they don't use the SLED lab so
9 they just kind of try to create their own little kingdom
10 down there for how they're gonna handle the drugs. Well,
11 if we don't use SLED's lab, then we don't have to be
12 bothered with following State law. We don't have to be
13 bothered with following proper procedure and that's why
14 we're gonna get our own lab so we don't have to do it wrong
15 or the way the law mandates that it be done.

16 And what that very poor and illegal decision by the
17 police department has done is it's put all drug evidence in
18 their cases into question because of instead of following
19 State law, which requires each witness in the chain of
20 custody to fill out an affidavit that's been formed by SLED
21 and sign their name, that's just too much trouble for the
22 City of Charleston police. They just give all of their
23 officers a code to get into the computer and make entries.
24 And maybe, I submit to you probably, that's why they don't
25 even know what drugs Officer Burke came into possession of

1 that day if, in fact, he did. They all believed it was
2 powder cocaine, the drug of choice for Robert Drayton, what
3 you will see on the video Robert Drayton supposedly order
4 up from somebody. Yeah, yeah, yeah, all the reports, they
5 admitted it, yeah, all the reports says that. It was just
6 an honest mistake. And then they get the lab results back
7 that says it's crack cocaine. Oh, okay. Well, all that
8 stuff we wrote in the reports about Dean Seagers selling
9 powder cocaine, we'll just forget all that. Dean Seagers
10 sold some crack cocaine. Is that because their chain of
11 custody's messed up because they won't follow State law?
12 Of course, it is. Is -- this little package of what they
13 say is drugs, is this what Detective Burke says he came
14 into possession of? Who knows. You can't know, but they
15 found some drugs and brought them in here and hey, y'all
16 should convict somebody because we've got some drugs here.

17 They admitted that Dean Seagers does not live at
18 [REDACTED] Ashton Street. They admitted that when he was
19 arrested Dean Seagers had paychecks from his employer in
20 his pocket for the last several weeks and in chronological
21 order we showed you he's getting paid very week for his
22 manual labor. It doesn't sound like somebody who sells
23 drugs. It just doesn't.

24 Officer Burke says that he showed a photograph of
25 Dean Seagers to Robert Drayton on June the 20th for an

1 identification. Okay. That's important if that happened.
2 Let's see the photograph. Was it really Dean Seagers? If
3 he showed a photograph, was it really a photograph of Dean
4 Seagers? Who knows. It wasn't important enough to keep
5 that. Or was there another reason that it wasn't produced
6 here? That kind of thing doesn't happen in a legitimate
7 prosecution. Not in this country. Maybe in Russia, maybe
8 in North Korea the government brings charges against
9 somebody that are not just thin but nonexistent evidence.

10 So Officer Burke told you no, no, he doesn't really
11 know too much about those SLED policies for how to handle
12 drugs. He heard something about it maybe. He doesn't know
13 too much about his own police department's policies for
14 properly handling CI's. He doesn't know why the documents
15 required by CPD's CI handling policy, which I requested by
16 subpoena, he doesn't know why they weren't produced.

17 But one document that was produced after Officer Burke
18 repeatedly stated that Robert Drayton was a paid informant
19 only, I gave him every chance to come clean on it, he
20 finally sort of did after some pushing and prodding and
21 after I presented him with the only document that they
22 presented to the defense on which he had circled -- I think
23 the term was "charges", but y'all heard the testimony if --
24 if the word was different. But he said yeah, that's what
25 -- yeah, I think it said charge -- it said charges or paid,

1 and he had circled both. And then I said, well, why did
2 you do that? Well, he didn't have any charges at the time.
3 He was trying to prevent some that we were threatening him
4 with and we told him if he produced some drugs we wouldn't
5 charge him. Is that an officer who testified truthfully to
6 you or not? That's not a hard question to answer.

7 I can't -- I'm sorry I can't recall the lady's name.
8 She was one of the chain of custody witnesses who got up
9 there, and I asked her. I said "Are you familiar with any
10 irregularities or disciplinary actions which have ever
11 happened as a result of the handling of evidence over at
12 the evidence locker?" Oh, no, sir. No, sir. And you're
13 sure about that, ma'am? Yes, sir. Then I pulled out a
14 disciplinary report and showed it to her from the year
15 2014, last year. Not nearly three years ago even when they
16 trumped up these charges on Dean Seagers, but last year,
17 2014, where her name's in it because evidence in a drug
18 case was mishandled. Is that a witness that testified
19 truthfully to you? It's not hard to answer that one.

20 This -- I found this one really interesting. Officer
21 Grill -- I don't see him here today. Officer Grill got
22 on the stand and he talked about voice identification.
23 Something that had never been raised as an issue in this
24 case. Something which appeared in no report. I submit to
25 you that the State recognized the absence of evidence in

1 this case and as they were preparing for trial thought boy,
2 it sure would be nice if we had any voice identification
3 and probably Officer Grill said well, I could probably
4 provide that for you. If that were true testimony, then
5 CPD and the Solicitor's Office would have taken the voice
6 on the video and they would have had an expert. That's not
7 hard to do. Y'all have probably seen it on TV. They take
8 two recordings from different times and an expert can
9 pretty easily determine if it's the same voice. That
10 wasn't done. That wasn't done because Grill's testimony
11 was fabricated. If we knew that the defense knew that
12 voice identification were an issue in this case, we would
13 have done it. We would have taken the voice on that video
14 and a sample of Dean Seagers' voice and we would have
15 submitted it to an expert for you. They deprived us of
16 that opportunity because as important as they want you to
17 think this voice ID is, they wanted to try to spring it at
18 trial, but it hadn't worked. You know that if there was a
19 legitimate voice identification they would have done it
20 with an expert.

21 And then another interesting thing about Grill in
22 deciding whether he's a truthful witness. He comes in
23 and talks about a gray Charger, I think he said, in close
24 proximity to [REDACTED] Ashton Street on 6-20 of '12. Important?
25 Oh, yeah, it was important, but it wasn't important enough

1 at the time to write it in a report. I submit to you it's
2 because it's not true. If it were true, it would be in a
3 report. If it had been in a report, if the Government
4 wasn't gonna do it, I sure would have tracked down that
5 car. I would have done it for my client. I would have
6 brought the owner of that car in here in front of y'all
7 and asked that witness: Dean Seagers, you know this guy?
8 Has he ever been in your car? I couldn't do that. They
9 deprived us of that opportunity by design.

10 That's kind of like we need some more evidence. Man,
11 come on, we need some more evidence. You got anything,
12 Grill? Oh, yeah, I think maybe a -- there was a -- yeah,
13 and there was a car, yeah. Yeah, we used to see Dean
14 Seagers in that car. Finally, Detective Burke testified
15 about this car and contradicted Grill. He said yeah, I
16 did check it out and we couldn't -- we couldn't make any
17 connection to Dean Seagers.

18 They brought in a fingerprint analyst to talk about
19 this cup and she said Dean Seagers' prints aren't on that
20 cup.

21 They brought in a phone that they allege was called by
22 Robert Drayton. Interesting to note, they didn't bring in
23 Drayton's phone. They brought in a picture of a phone that
24 they claim to be Robert Drayton's that has "Baby" written
25 on it as the contact. It doesn't say Baby Dean, it says

1 Baby. Robert Drayton testified that while he was on his
2 bike he was talking to his girlfriend. Is she "Baby"?
3 There's a good chance. They didn't bring Robert Drayton's
4 phone to the analyst, I think it was Van Horn, but Van Horn
5 put all the phone nonsense to rest when he said we don't
6 have any phone evidence establishing that Robert Drayton
7 ever talked to Dean Seagers. He said it and he told the
8 truth.

9 Ladies and gentlemen, this case should never have
10 been brought and I submit to you it would not have ever
11 been brought if Officer Burke had been truthful with Judge
12 Koontz when he went and got that arrest warrant.

13 Dean Seagers should not have lost nearly three years
14 of this life. This is a tragedy which is deeply shameful
15 and should make us as a community very remorseful. I've
16 been in a lot of trials in the last twenty-five years and
17 trials are -- they always work well at finding the truth.
18 That's why our system is the best. But sometimes, ladies
19 and gentlemen, trials just work magnificently at finding
20 the truth. This is one of those rare trials which has
21 magnificently revealed the truth.

22 Y'all's hard work is over. Y'all have done it
23 diligently. I know what an extreme disruption to your
24 lives it is. I know how hard it is just to physically
25 get up into this room every day and then get yourself out

1 of this garage. It is hard work. Y'all have done hard
2 work. Dean and I are deeply, deeply appreciative. And
3 now your hard work is over and what you have left is easy.
4 Delivering a just and true verdict in this case is easy.
5 It's two short words, nine letters, when put together is
6 as powerful and meaningful and important as anything that
7 can occur, delivering a true verdict of not guilty. The
8 evidence in this case compels it, the law requires it, and
9 justice demands it.

10 Thank you, ladies and gentlemen.

11 THE COURT: Ms. Mulkey.

12 MS. MULKEY: May it please the Court, Your Honor?

13 THE COURT: Yes.

14 MS. MULKEY: So here we go, ladies and gentlemen. I
15 ask that you hang in there with me as the negativity stops
16 and I review this testimony, the evidence you've seen and
17 heard, and how all of this corroborates with one another.

18 I first want to submit that this case is not just
19 about Mr. Drayton. We have more. We have more. We have
20 more witnesses and we have more evidence.

21 Well, let's start with our first witness, Detective
22 Grill, an expert in narcotics investigations. He's a
23 member of the DEA Task Force, he works with the Federal
24 Government. He has extensive experience not just in
25 drug conspiracies from everything from clandestine

1 methamphetamine labs, but to wiretaps and complex
2 conspiracies. He has learned and seen in his experience
3 the hierarchal organization from the low level drug dealer,
4 corner boys, as they're referred to, to the kingpins.

5 He spoke to you about the background and com -- and
6 the complexity of narcotics investigations and maybe it
7 seemed, you know, confusing, but it set the context for
8 this case. He said they are lengthy, they are detailed.
9 He described for you a game of adult hide-and-seek, if you
10 will, with drug dealers, and in doing that he described
11 burner phones. Burner phones that are not registered to
12 anybody. He described trap houses. Trap houses where
13 people do not actually live. Both of these to help aid a
14 drug dealer in deniability. Not my phone, not my house.
15 He talked about these methods of distribution from your
16 low level corner boys, hand-to-hand, to upper level
17 distribution, and I believe his words were you can tell
18 that upper level distributor when there are efforts to
19 thwart detection by law enforcement.

20 Ladies and gentlemen, I submit to you burner phones,
21 trap houses, higher level dist -- is evidence of high
22 distribution, higher level distribution. In fact, he said
23 you can gauge the level of a dealer based on their ability
24 to thwart law enforcement detection.

25 Detective Grill also talked to you about this special

1 equipment that they use. There is a live wire that is
2 retrofitted, placed on that CI, that criminal confidential
3 informant. In this case, it was a confidential informant.
4 He was paid. He -- Mr. Drayton, on June 20, 2012, was not
5 working off charges, but because they know the risk of
6 these people that they're using they put a live wire on
7 them. It records everything and he told you that the
8 informant cannot manipulate that once it is on them.

9 He also talked to you about these button cameras,
10 that they record limited footage. I believe his words were
11 they're not trying to make a motion picture, and I think
12 all of us would agree that while watching that it's -- it's
13 not what you would pay to see in a movie theater. However,
14 he also told you that you can't pause in the moment of a --
15 of a drug deal. You can't say oh, excuse me, Mr. Drug
16 Dealer, let me back out, we don't have you on camera right
17 here. They have limited means to do what they need to do.
18 These cameras, these wires, they need to be placed on an
19 individual in such a way that it doesn't scream hey, Drug
20 Dealer, I'm here to -- to get you in trouble.

21 And he said that they used both of those, the wire
22 and the camera, to corroborate one another. But guess
23 what they also corroborate? Anything that comes from that
24 informant's written statement and anything that those
25 officers observe on their own. We know you don't see

1 Mr. Seagers' face on that video. We've never said that
2 you do, but you heard the audio and video and you heard
3 Mr. Drayton place an order for drugs and you heard him
4 place that order over the phone and in the rear of
5 [REDACTED] Ashton Street. Somebody responds to him and that
6 conspiracy is enough.

7 Detective Grill also told you about the checks and
8 balances that they use when you -- when they have these
9 confidential informants. He readily acknowledged that
10 there is a risk, but he also told you that he couldn't
11 just go into certain neighborhoods or certain houses to
12 buy drugs. A drug dealer is not going to sell to someone
13 they don't know for fear of it being a police officer.

14 He said they try to control everything through these
15 checks and balances and he said, first and foremost, it is
16 to protect that informant. They have a relationship with
17 this individual. Their job is to protect them because
18 their job, in general, is to protect and serve us all, but
19 they had a duty and a responsibility to that informant to
20 keep them safe. That's another reason that they have that
21 wire. To hear the audio. They tell them you scream "help"
22 if you need it and we're coming in. That also maintains
23 the integrity of the investigation so that when we come to
24 court and when they testify you can watch the video, you
25 can listen to the audio, you can listen to their testimony

1 and you can take all of that back to make your decision.

2 He also told you that he knew the Defendant prior to
3 this investigation. He had an opportunity to speak with
4 him several times and he told you he recognized his voice
5 on the video.

6 Since Mr. Marshall has been involved in this case,
7 he has had access to the reports and the documents that
8 pertain to this investigation. Detective Grill's name
9 was listed in that report and I submit to you, ladies and
10 gentlemen, that if he had wanted to ask him the same
11 questions that we did, he could as long -- he had that
12 information. We talked to Detective Grill and that's what
13 he told us and that's what he told you.

14 Detective Grill also told you that based on his prior
15 knowledge of the Defendant, he knew him as Baby Dean. He
16 told you he doesn't make cases on hunches and so when he
17 saw this car that he had known the Defendant, who he knew
18 as Baby Dean, to drive on Ashton Street just down from
19 ■ Ashton on the day of the buy, immediately before the
20 buy, it struck a chord. It -- it was something he thought
21 of. He told you he didn't document it, but he told you he
22 doesn't make cases on hunches. That was something he saw
23 and he told you when these drugs dealers don't have things
24 registered to them, it wasn't something that he documented
25 you may disagree or agree with that, and that is your

1 perspective, but, ladies and gentlemen, we have more than
2 Detective Grill.

3 We have Mr. Drayton. Now Mr. Marshall said that
4 Mr. Drayton was under tremendous pressure from the police
5 to convict the Defendant. I'll let you decide how that
6 pressure stacks up to the pressure he may have felt when
7 he told you he received threats the morning before his
8 testimony. That's for you to decide.

9 Perhaps Mr. Drayton will not be on the guest list
10 for your next family barbecue, but Mr. Drayton did his job.
11 He was a paid informant on June 20th of 2012 when this
12 occurred and his job was to buy drugs and on June 20th
13 that's exactly what he did. He told you that he knew the
14 Defendant before this transaction. He told you he knew
15 the Defendant as "Baby". He knew him well enough to call
16 him by his nickname and, in fact, I believe his testimony,
17 and your recollection is -- is the best, but I believe
18 his testimony was that not only did he have the number
19 saved in his phone, but that he had received it from the
20 Defendant.

21 He told you that he watched that video in preparation
22 for this trial and that it was, in fact, a true and
23 accurate depiction of what happened on June 20th of 2012.
24 That was prior to the threats that he received this --
25 the morning of trial. Now you'll take that back and

1 you'll listen to it and you can watch it or you -- you may
2 have to come back out here to watch it, but you have the
3 opportunity to watch that video as many times as you need.
4 Listen to Mr. Drayton as he places that order. Listen to
5 when he tells Detective Burke as he was told to, following
6 the orders that Detective Burke gave him during that
7 debriefing, let me know what's going on and what you are
8 doing. Baby Dean served me. Listen to it.

9 He told you from that stand he saw the Defendant at
10 the window. Mr. Marshall asked him were there curtains
11 or was it daytime? It's daytime. You can see it on the
12 video. There were no curtains, there was nothing to
13 obstruct his view.

14 He also told you he was afraid. I believe his words,
15 as I wrote them down, "I got a call and someone threatened
16 me and my family". I submit to you that his hesitation,
17 reluctance, is not the same as an inconsistency. He told
18 you that he gave the drugs that he purchased to Detective
19 Burke. He also told you that immediately after this he met
20 with Dr. -- or Detective Burke, he gave him those drugs, he
21 wrote the statement. Mr. Drayton wrote a statement in his
22 own words with his own hands immediately after this buy.
23 He talks about a cup being lowered from the window. Read
24 that statement. It's going back with you.

25 He also told you that during this debriefing

1 afterwards Officer Burke, at the time Detective Burke,
2 asked him questions and because Officer Burke likes to do
3 a thorough investigation he wanted to confirm that the
4 individual that the -- Mr. Drayton was referencing was,
5 in fact, the same individual that he was understanding.
6 So Mr. Drayton talks to him about the investigation. He
7 knew this Defendant beforehand and so he shows him a
8 photograph and I believe what the Defendant said is "That's
9 Dean Seagers". That's Dean Seagers.

10 Mr. Drayton mentions something about a vehicle the
11 Defen -- that the Defendant was known to drive, a gray
12 Charger. Again, you can take that as you will. He
13 admitted his prior conviction when asked about it. He was
14 honest. As I said, he may not be at your next barbecue,
15 but you can't deny that the man did what he was supposed to
16 do that day, which was to buy drugs. That's what he told
17 you he did, but we have more than Mr. Drayton and this
18 video.

19 You heard from Detective Burke. I refer to him as
20 Detective Burke because at the time he was a detective
21 with the Special Investigations Unit. He's also been a
22 Marine. He is a veteran officer and he was the case agent
23 for this case. He was the one responsible for setting
24 everything up, for planning it, for controlling this --
25 Mr. Drayton, for managing his safety. He said we put the

1 -- Mr. Drayton under as much control as we possibly have.
2 These investigations, they're complex. We've -- we've
3 learned that at this point, but they're fluid. That's --
4 that's how it works. He said safety of a confidential
5 informant is paramount. That's why they used the buy-walk
6 method. The buy-walk method, as you heard from him and
7 Detective Grill, is something used to protect the
8 confidential informant so that they literally go up, make
9 the buy, come back, drop off the drugs and that arrest
10 warrant is not served until later so that their cover as
11 an informant is not blown so hopefully they can be safer.

12 Detective Burke told you that Mr. Drayton on June 20th
13 of 2012 was a paid informant for the City of Charleston
14 Police Department. He talked to you about the debriefing
15 process, the search, possibly uncomfortable for -- for
16 some. He said it is as close to a strip search as you can
17 get. He was up in Mr. Drayton's business because it is his
18 obligation to know that when he sends somebody out they are
19 not interfering, hindering or tamp -- tampering with that
20 investigation. He even searched the Defendant's bike.

21 He tells you he -- excuse me, he told you that the
22 instructions are given to the informant about giving a
23 location, you know, making phone calls. Don't stop and
24 talk to anybody for too long, but you've gotta -- you've
25 gotta go with the flow. You've gotta kind of be normal.

1 If this is -- this is a community where you're in, you
2 can't draw attention to yourself that you're doing
3 something suspicious. And he tells him if you need help,
4 you yell "help".

5 Now Detective Burkes tells you -- told you that
6 Mr. Drayton already had the Defendant's phone number in
7 his phone, told you he was aware of these other phone
8 calls that were made, and he told you that on that day
9 Mr. Drayton actually called someone else to set up a --
10 a deal first, but they weren't able to come through.
11 Well, Mr. Drayton's job was to buy drugs, so he called
12 the Defendant. He made that call while he was out and in
13 the interest of doing a thorough investigation, when the
14 informant, Mr. Drayton, arrived back at the van, which
15 you see on -- on the video, after the debriefing he took
16 the time to look at the Defendant's phone and corroborate
17 the phone number that was called, to take pictures to
18 memorialize that, and you'll have it, that's going back
19 with you, to confirm that the time and date stamp and
20 the duration of the conversation corroborated what is on
21 the video and what you hear, as well as the time when
22 Mr. Drayton is behind the residence of [REDACTED] Ashton Street
23 making his to-go-order of drugs.

24 Now Detective Burke also discussed the -- the button
25 camera and how it works. He said it's generally on your

1 second or third button, and I don't have on a full
2 button-down shirt, but you can imagine your second or
3 third button's right about here, and that he -- I don't
4 want to get lost in semantics here, but that the entire
5 transaction is recorded. The entire transaction being
6 from when Mr. Drayton left Detective Burke to when he
7 returned to Detective Burke there is a video. That is
8 not interrupted. What I believe Mr. Marshall to be
9 referring to is there are obscurities and he acknowledged
10 that there are. So did Detective Grill. We're not making
11 motion pictures, remember? He said that direct sunlight
12 when it hits can obscure the video. Motions, like if
13 you're riding your bike and you're moving, if your arm
14 comes across because you're turning, because you're lifting
15 your phone, because you're saying "hey" to somebody you
16 know, all of these things can obscure the view of this
17 tiny little button camera, but it doesn't mean that it's
18 not -- not recorded, it is just obscured.

19 Detective Burke told you that upon returning to his
20 van Mr. Drayton gave him the drugs, which he put in his
21 pocket, that there was a written statement taken. What was
22 the purpose of this written statement? We've got a video,
23 we've got audio. Well, ladies and gentlemen, I submit to
24 you that that statement corroborates Detective Burke and
25 corroborates what's on that video. It is taken then he

1 said not just for corroboration, but because it's fresh
2 in the informant's memory. It just happened. And in
3 that statement Mr. Drayton says Baby Dean sold to him.
4 To ensure that this investigation was still -- you know,
5 tying up all loose ends, he showed Mr. Drayton a photo and
6 Mr. Drayton said "That's Dean Seagers". Now Detective
7 Burke identified the Defendant in the courtroom as the man
8 that he showed Mr. Drayton a picture of and he also told
9 you that he's -- he knows him as Baby Dean.

10 Detective Burke explained a field test, and he's no
11 chemist, but late -- later we did have Ms. Hilton come in
12 and explain that, in fact, cocaine base has cocaine in
13 it. I'm not trying to trick you on that. I don't think
14 anyone is here. I submit to you, ladies and gentlemen,
15 spaghetti sauce has tomatoes. They're different, but
16 they're the same. He -- Detective Burke told you he
17 logged that evidence -- those drugs into evidence per
18 CPD policy and he also told you that the Defendant was
19 ultimately arrested two months later for the June 20th buy.

20 He told you that the Defendant was arrested at
21 [REDACTED] Ashton Street, which was the location of the purchase.
22 He told you it was apparent that no one was living there.
23 It was the upstairs apartment where the cup with a string,
24 which you will take back with you, ladies and gentlemen,
25 this cup with this string, was located when the Defendant

1 was arrested at [REDACTED] Ashton with this phone. He told you
2 that those pieces of evidence were located within feet
3 from the Defendant in the kitchen with a window that
4 overlooks the backyard.

5 He told you that he looked into the phone number of
6 the phone that -- the phone number that Mr. Drayton called
7 that day as part of his investigation, but guess what?
8 It doesn't come back to anybody. He tried. He was
9 diligent in his investigation, but the phone number was
10 not registered to anyone. He also told you that during
11 the course of this investigation, he looked into a gray
12 car that the Defendant was known to drive, and guess what?
13 It didn't come back to the Defendant either. But wait.
14 There's more.

15 You heard from a series of chain witnesses. Chain
16 witnesses are people in -- in the chain of custody, where
17 these drugs and these pieces of evidence, how they got
18 from where they were to where they are today. You heard
19 from Master Police Officer Olson, who was present when the
20 Defendant was arrested at [REDACTED] Ashton Street. He retrieved
21 the evidence. He was the evidence custodian for that
22 particular day and he took this cell phone and cup and
23 said that they were on the counter within feet from the
24 Defendant corroborating what Detective Burke said.

25 You heard from Ms. Mary Phillips who works for the

1 police department in their latent print division and she
2 explained how you go about lifting prints. She talked
3 about porous and nonporous surfaces and things that can
4 affect prints. She was asked to lift prints from this.
5 She talked about why -- or things that can affect why you
6 cannot lift prints. Now one of those was -- was pressure,
7 actually, you know, application of -- of pressure to some
8 -- a surface. You don't need much pressure to lower --
9 lower a string. She talked about dirt, oil, and grime as
10 being a way that -- something that interferes with your
11 ability to recover prints. Take it back, look at it,
12 touch it if you want. And she talked about sweaty hands
13 or fingerprints. That's another thing that interferes
14 with your ability to collect prints from something. I
15 submit to you, ladies and gentlemen, this was June in
16 Charleston. It was hot. It was June actually when it
17 occurred, but it was August when this was recovered, so
18 take your pick. It was still hot.

19 She also said that when multiple people touch an
20 item it affects your ability to collect prints. Now I --
21 I don't know what [REDACTED] Ashton Street is, but I don't
22 believe that it's the manufacturing company for this cup.
23 So somewhere between the manufacturing company, the
24 distributor and the seller and the purchaser, that cup
25 had been through more than one person's hands. So at the

1 end of her testimony she tells you she did print that cup.
2 They asked her to, the officers did, as part of their
3 investigation. She turned that print over to the latent
4 print division.

5 You heard from Ms. Butler. She has extensive training
6 in analyzing the print and she told you there is no ridge
7 detail, so it's not comparable. It is unable to -- that
8 print that she recovered was unable to be ID'd to anyone.
9 There's just not enough characteristics to identify
10 somebody, but I submit that when you look at that cup and
11 you think about the reasons that Ms. Phillips said you
12 can't pull a good print from it, perhaps that's why.

13 You heard from Ms. Roe and Ms. Wilson, who are
14 evidence custodians. They explained to you how evidence
15 is taken in and stored. They received evidence in this
16 case they -- they told you and they told you that only
17 the evidence custodians have access to this evidence.
18 And Mr. Marshall touched on an investigation in which
19 one of our chain witnesses was a witness. This was an
20 investigation subsequent to this -- to June 20, 2012, and
21 I -- I just note the fact that she -- she was a witness,
22 she was not the subject of that investigation.

23 You heard from Ms. Payne, the evidence courier, who
24 said she picks up and transports the evidence and while
25 she has that evidence it is in her sole care, custody and

1 control, and she took the drugs to the lab for testing
2 and she took the phone to the Digital Evidence Unit for
3 testing.

4 Mr. Marshall referenced a lot of SLED policies and
5 had questions and I just remind you to think about the
6 qualifications and experience and training of all of
7 these individuals, but particularly where they're employed.
8 None of them work for SLED.

9 You heard from Ms. Hilton, a chemist in an accredited
10 lab, routinely testing drugs that are routinely admitted
11 into evidence and used in cases throughout the Ninth
12 Circuit. She's a chemist, she's an expert in drug
13 analysis. She said she did over 3,000 analyses. She uses
14 highly scientific procedures and machines that are tested
15 daily for quality control. I'm not going to begin to go
16 into the explanation of that testing because it is way --
17 well beyond something that I can understand, but that's
18 why she's an expert.

19 She confirmed that the substance that Officer Burke
20 submitted into evidence was, in fact, cocaine base. She
21 said that that cocaine base weighed 2.03 grams and that
22 that cocaine base is illegal under the law in South
23 Carolina. She also gave us some insight with her chemist
24 background into why a field test that the officers use in
25 the field, just regular officers who aren't chemists, can

1 show cocaine presence when, in fact, the substance is
2 cocaine base. Well, that's why it's sent to a lab, ladies
3 and gentlemen. For that absolute official analysis.

4 You also heard from Officer Van Horn. He is an
5 officer and an expert in forensic analysis of phones. He
6 had extensive training, it went on for quite a while when
7 Mr. Marshall asked him, and he testified that he used a
8 specialized software known as Cellebrite that is -- they
9 download and extract and analyze the data from a phone.
10 He analyzed the phone, this phone, recovered at the time
11 of the Defendant's arrest at [REDACTED] Ashton Street where the
12 transaction on June 20th had taken place. He discussed
13 some technical stuff, but he said that there's this MDN
14 number associated with a phone that he through his analysis
15 was able to pull and that the MDN number is the dialing
16 number of the phone. The number, if you pick up to call
17 your parents, you know, the number you dial, that is a
18 MDN number. The MDN number that came back to this phone
19 with the Defendant at the time of his arrest had the same
20 seven digits as the phone number that Mr. Drayton called
21 on June 20th of 2012.

22 He was also able to determine that the provider for
23 that phone was Cricket. Guess what? That's where the
24 information stopped. There was nobody that had the phone
25 number registered to their name, so the phone can't be

1 tied to the Defendant, it can't be tied to anyone.

2 And the defense has put up -- put up Mr. Evans.

3 Mr. Evans was a lawyer who received a call a few months
4 ago to take a -- a statement regarding an incident. We
5 don't have an actual date on the document, you'll have it
6 back there with you to see, that occurred three years ago.
7 Mr. Evans testified that Mr. Drayton was brought to his
8 office by another man, who identified himself as the nephew
9 of the Defendant. This individual sat in the room while
10 this statement was created. He told you, Mr. Evans that
11 is, that he wrote this document. Now Mr. Drayton wrote
12 this, but Mr. Evans told you he wrote this a couple of
13 months ago in his office. And there's some discrepancy
14 as to whether the identity of the people in his office was
15 -- was verified and that's something that you can consider
16 in weighing your analysis. He told you that the man that
17 he believed to be Mr. Drayton did not, in fact, pay any
18 money for this statement. The man allegedly wanting to
19 make the statement did not pay for it. He told you this
20 was a cash transaction off the books. There's no record
21 of it. He told you this type of transaction is not
22 typical for him. He doesn't really do criminal law, but
23 he acknowledged that he could tell from the conversation
24 that there was a controlled purchase and somebody was
25 working with narcotics. He also told you that at the

1 conclusion of the meeting that he was asked to forward
2 this document to Mr. Marshall, the Defendant's attorney.
3 I believe he said to scan and send it.

4 Now I'd -- I'd like to get back to something
5 Mr. Marshall has referenced about the best evidence is
6 that which is contemporaneous to the transaction. As I
7 understand contemporaneous, it means something that is
8 either simultaneous to or during that same time period.

9 So let's put that into perspective. We're here
10 for a distribution of cocaine base that occurred on
11 June 20th of 2012, over three years ago. So as far as
12 this document that is alleging to be the statement of
13 Mr. Drayton, I submit to you that is not contemporaneous
14 to the transaction. You have the ability to determine
15 the weight that that statement, document as I call it,
16 carries along with all of the other evidence.

17 You heard from Ms. Broward as well. She testified
18 she used to work for Mr. Marshall. She did, in fact,
19 notarize this document that is alleged to be a statement,
20 but she didn't read it and she wasn't present for the
21 conversation or discussion that led to the creation of
22 this document.

23 So at the end, ladies and gentlemen, this is what
24 I submit that you have to take back with you in your
25 thoughts and here in evidence. Grill's testimony about

1 complex drug investigations, the different steps different
2 dealers take to insulate themselves to thwart detection
3 from law enforcement. You have testimony from Mr. Drayton
4 there on the stand of what he did on June 20th of 2012.
5 You have a video of a buy that recorded the entire time
6 from when Mr. Drayton left Officer Burke basically after he
7 was strip searched to when he returns and hands him the
8 drugs. We know you don't see the Defendant on the video.
9 Please watch it if you'd like to, but you hear Mr. Drayton
10 make a call to what we submit is Baby, the Defendant, to
11 place the order for the purpose of purchasing drugs.

12 Now at a minimum I submit to you, ladies and
13 gentlemen, that that alone is evidence of a facilitation
14 to do a drug deal, which is illegal under the law. That
15 taking of the to-go-order is illegal, but there -- there's
16 more. On that video you hear Mr. Drayton place his order
17 at the back of [REDACTED] Ashton Street to an upstairs window
18 for 2 grams of soft and you hear a voice talking back to
19 him. Detective Grill testified that he -- he recognized
20 that voice to be that of the Defendant and he testified
21 that he had prior interactions with the Defendant and
22 opportunity to hear his voice. Mr. Drayton told you that
23 he saw the Defendant in the window that day and that it
24 was daytime and you can see that for yourself on the
25 video. And he said he did, in fact, buy drugs.

1 We've got a photograph from Detective Burke
2 memorializing the phone number that Mr. Drayton called,
3 and he did that because Mr. Drayton was working and that
4 phone could not be kept. We have a statement made from
5 the Defendant -- excuse me, excuse me, from Mr. Drayton
6 contemporaneous with the event, immediately after the buy,
7 that he wrote, that he signed, and we have the Defendant
8 arrested at the same location where this transaction
9 occurred within feet from this same -- I don't know if
10 you'd say hi-tech, but this same unique method of
11 distribution utilized on June 20th, as well as a phone
12 bearing the same MDN dialing number that the informant,
13 Mr. Drayton, alleged to have called.

14 Now, ladies and gentlemen, I'll give it to the
15 Defendant. He's good. He is good at what he does. He
16 tried to distance himself. He didn't do a hand-to-hand
17 deal on the street. No, he's better than that. He used
18 this unique method of distribution; lowering a cup on a
19 string from a second-story window in the back of a house
20 not occupied by anyone, a trap house. The vehicles and
21 phones you've heard mentioned in this investigation, they
22 don't come back to him. Perhaps he's a trap king, but we
23 are not in this courtroom today to reward someone for
24 being good at dealing drugs. No, instead, I submit,
25 we're here for the justice of this case and for this great

1 country that we live in. I ask you not to reward the
2 Defendant. I ask you to instead review the testimony from
3 witnesses who came in here to tell you what happened, one
4 of which did so despite threats to him and his family, and
5 I ask that you hold this Defendant accountable for what he
6 did on June 20th of 2012.

7 When you retire to your deliberations, using the law
8 as the judge gives it to you, the evidence presented, as
9 well as your own opinions and common sense, I believe that
10 you will be firmly convinced that this Defendant, Dean
11 Seagers, is guilty of distribution of cocaine base.

12 Thank you, ladies and gentlemen.

13 THE COURT: All right, ladies and gentlemen. We're
14 gonna take a short recess before I instruct you on the law
15 applicable to this case. You can leave your notepads or
16 take them with you. Please rise for the jury.

17 (Whereupon, the jury retires to the jury room at
18 11:28 AM.)

19 THE COURT: Thank you. Be seated. We're just gonna
20 take a short recess so that we go ahead and order lunch
21 now, all right, so that's good that we take that break.

22 Thank you. Anything before we break?

23 MS. MULKEY: Nothing from the State.

24 MR. MARSHALL: No, ma'am.

25 THE COURT: We're just gonna take about five minutes

1 and let them order their lunch.

2 MR. MARSHALL: Yes, ma'am.

3 MS. MULKEY: Thank you, Your Honor.

4 THE COURT: Would you make sure all of the exhibits
5 are in a box ready to go for me?

6 THE COURT REPORTER: Yes, ma'am.

7 (Recess taken.)

8 THE COURT: Anything before we bring in the jury from
9 the State?

10 MR. SOWARDS: Nothing from the State.

11 MR. MARSHALL: No, ma'am. Thank you.

12 (Whereupon, the jury returns to the courtroom at
13 11:45 AM.)

14 BAILIFF: All jurors present.

15 THE COURT: Thank you. Please be seated.

16 Ladies and gentlemen, we've now reached the stage of
17 the trial where we will -- I will instruct you on the law
18 applicable to this case.

19 Ladies and gentlemen, I typically do not give a copy
20 of my instructions. I'm going to read the -- the charge on
21 the law, so please listen very carefully and take notes as
22 needed.

23 Mr. Foreman, it is your responsibility to complete
24 the verdict, but I will go over the verdict form before
25 you retire to consider the deliberations.

1 I remind you that during this trial you and I have
2 had certain duties to perform. As the trial judge, it is
3 my responsibility to -- to rule on the admissibility of
4 the evidence during this trial. You are to consider only
5 the evidence before you. If there was any testimony
6 ordered stricken from the record, you must disregard that
7 testimony. You are to consider only the testimony that
8 you heard from the witness stand, as well as the exhibits
9 that have been made part of the record in this case.

10 I also have the additional duty to charge you the law
11 applicable to this case. As the presiding judge, I am the
12 sole judge of the law in this case. You are not to infer
13 from anything that I have said or done throughout the
14 progress of this trial that I have any opinion about the
15 facts in this case. The law does not allow me to have an
16 opinion about the facts in this case. This is solely a
17 matter for you to determine.

18 The indictment in this case charges Mr. Seagers with
19 distribution of cocaine base. I remind you the fact that
20 Mr. Seagers was arrested, charged and indicted in this case
21 is not evidence and cannot be considered by you as evidence
22 of guilt, nor does it create any presumption or inference
23 of guilt. An indictment is simply the formal written
24 instrument which contains the charge made against the
25 Defendant. It is the formal document by which this case

1 is brought into court.

2 Mr. Seagers has pled not guilty to this indictment.
3 A person charged with committing a criminal offense in
4 South Carolina is never required to prove himself innocent.
5 I charge you it is an important rule of law that the
6 Defendant in a criminal trial, no matter what the
7 seriousness of the charge may be, will always be presumed
8 to be innocent of the crime for which the Defendant was
9 indicted unless guilt has been proven by evidence
10 satisfying you of that guilty beyond a reasonable doubt.

11 The presumption does not end when you begin your
12 deliberations, but it accompanies the Defendant throughout
13 the trial until you've reached a verdict of guilt based
14 upon the evidence satisfying the standard of guilt beyond
15 a reasonable doubt.

16 The presumption of innocence is not a mere legal
17 theory, it is not just a legal phrase. It is a substantial
18 right to which every defendant is entitled unless you, the
19 jury, are satisfied from the evidence of the Defendant's
20 guilt beyond a reasonable doubt.

21 The State has the burden of proving Mr. Seagers
22 guilty beyond a reasonable doubt. Some of you may have
23 served as jurors before in civil cases where you were told
24 that it is only necessary to prove that a fact is more
25 likely true than not true such as by a greater weight or a

1 preponderance of the evidence. Proof beyond a reasonable
2 doubt is proof that leaves you firmly convinced of the
3 Defendant's guilt.

4 There are very few things in this world that we do
5 know with absolute certainty and in criminal cases the law
6 does not require the burden of proof that overcomes every
7 possible doubt. If based upon your consideration of the
8 evidence you are firmly convinced that Mr. Seagers is
9 guilty of the crime charged, you must find Mr. Seagers
10 guilty. If, on the other hand, you think there is a real
11 possibility that Mr. Seagers is not guilty, you must give
12 Mr. Seagers the benefit of the doubt and find him not
13 guilty.

14 There are two types of evidence that are generally
15 presented throughout a trial, direct evidence and
16 circumstantial evidence. Direct evidence directly proves
17 the existence of a fact and does not require deduction.
18 Circumstantial evidence is proof of a chain of facts and
19 circumstances indicating the existence of a fact.

20 Crimes may be proven by circumstantial evidence. The
21 law makes no distinction between the weight or value to be
22 given either direct or circumstantial evidence. However,
23 to the extent that the State relies on circumstantial
24 evidence, all of the circumstances must be consistent with
25 each other and when taken together point conclusively to

1 the guilt of Mr. Seagers beyond a reasonable doubt. If
2 these circumstances merely portray Mr. Seagers' behavior
3 as suspicious, the proof has failed.

4 The State has the burden of proving Mr. Seagers guilty
5 beyond a reasonable doubt. This burden rests with the
6 State regardless of whether the State relies on direct
7 evidence, circumstantial evidence, or a combination of
8 both.

9 Necessarily, you must determine the credibility of the
10 witnesses who have testified in this case. Credibility
11 simply means believability. It becomes your duty as jurors
12 to analyze the facts and determine the evidence which
13 convinces you of its truth.

14 In determining the believability of the witnesses who
15 have testified in this case, you may believe one witness
16 over several witnesses or several witnesses over one
17 witness. You may believe a part of the testimony of one
18 witness and reject the remaining part of the testimony of
19 that same witness. You may believe the testimony of a
20 witness in its entirety or reject the testimony of a
21 witness in its entirety. You may consider whether the
22 witness has exhibited to you any interest, bias, prejudice
23 or other motive in this case, and you may also consider
24 the manner and demeanor and appearance of a witness while
25 he or she was on the witness stand.

1 A person who has committed a prior bad act or has a
2 past criminal record is competent to testify during a
3 trial. Prior bad acts or a past record does not affect
4 the ability of that witness to testify. The prior bad act
5 or past record may only be considered by you, if at all,
6 in determining the witness's believability. Remember, you
7 are the sole judges of the facts of this case and of the
8 believability of all or any of the witnesses.

9 As I indicated to you earlier, the rules of evidence
10 ordinarily do not permit witnesses to testify to opinions
11 or to conclusions. An exception to this rule exists for
12 witnesses we call expert witnesses. A witness who by the
13 education or experience has become expert in some art,
14 science, profession or calling, may state an opinion as to
15 relevant and material matter in which the witness claims
16 to be an expert and may also state the reasons for that
17 opinion. You should consider any expert opinion received
18 in evidence in this case and like any other evidence give
19 it the weight you think it deserves. If you decide that
20 the opinion of an expert witness is not based upon the
21 sufficient education and experience or if you conclude
22 that the reasons given in support of the opinion are not
23 sound or that the opinion is outweighed by other evidence,
24 you may disregard the opinion entirely. An expert
25 witness's testimony is to be given no greater weight than

1 that of any other witness simply because the witness is
2 an expert. Further, you are not required to accept an
3 expert's opinion even though it's not contradicted.

4 I instruct you, and emphasize, the fact that the
5 Defendant did not testify is not a factor to be considered
6 by you in any way in your deliberation and in your
7 consideration on the question of the guilt or innocence
8 of the Defendant. It must not be considered by you in any
9 manner whatsoever.

10 A defendant has a constitutional right to remain
11 silent and the assertion of this right must not be
12 considered by you in your deliberations. I repeat. Under
13 your oath you are to draw no conclusion whatsoever from
14 the fact that the Defendant in this case did not testify.
15 The fact that he did not testify should not even be
16 discussed in the jury room.

17 And that is one of your duties, Mr. Foreperson, to
18 make sure that this rule is followed.

19 The burden of proof, as I have stated to you, is on
20 the State. The Defendant is not required to prove his
21 innocence. The burden of proof remains on the State to
22 prove guilt beyond a reasonable doubt.

23 If a crime is committed by two or more people who are
24 acting together in committing a crime, the act of one is
25 the act of all. A person who joins with another to commit