

Volume I of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Roger M. Young, Circuit Court Judge

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S.C. Supreme Court

STANFORD BROWN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2013-000077

A P P E N D I X

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT
 COUNTY OF CHARLESTON) INDICTMENT NO.: 2007-GS-10-9933

STATE OF SOUTH CAROLINA)
)
 VS.)
)
 STANFORD BROWN,)
)
 DEFENDANT.)
 _____)

JURY TRIAL

VOLUME 1 OF 3

held before the Honorable Kristi L. Harrington
 Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
 in the Charleston County Courthouse
 Charleston, South Carolina
 on Monday, July 6, 2009, Commencing at 11:56 a.m.

SUSAN "MIA" PERRON, CCR, CVR-CM
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EXHIBITS

[State's Exhibits 1 through 7 are marked by Mr. Riesen prior to proceedings]

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PROCEEDINGS

- - - - -

JURY VOIR DIRE

THE COURT: Thank you. Good afternoon. Please
be seated.

Mr. Smiley, are you ready to proceed?

MR. SMILEY: The defense is ready, Your Honor.

THE COURT: Ready to call your case, solicitor?

MR. RIESEN: Yes, Your Honor. The State calls
Stanford Brown.

THE COURT: Ladies and gentlemen of the jury
panel, once again, I am Judge Kristi Harrington.

The case that we are selecting the jury for at
this time is the case of the State vs. Stanford Lavelle
Brown.

Mr. Smiley, does your client waive formal
arraignment?

MR. SMILEY: He does waive formal arraignment.

THE COURT: Ladies and gentlemen of the jury
panel, as I have already determined that you are
qualified to serve as jurors in this particular -- each
of you have been qualified as jurors for the jury
panel. I now have more specific questions to you as
with respect to this particular case.

Mr. Smiley, if you will please stand, introduce
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1 yourself and your client.

2 I am Jim Smiley. I'm a member of the Charleston
3 County private bar, and I've been practicing in the
4 area of criminal defense for about seventeen years now.

5 This is my client, Stanford Brown, who I've had
6 the pleasure to represent in this case.

7 I'll have another attorney sitting with me
8 during the trial. Her name will be Laree Hensley.
9 She's not here right now, but she's also in private
10 practice in the Charleston area and will be assisting
11 me with this case.

12 THE COURT: Ladies and gentlemen of the jury
13 panel, is there any person related by blood, marriage,
14 close personal friend, ever have any business, personal
15 or professional dealings with Mr. Stanford Brown? If
16 so, please stand.

17 [Whereupon, there is no response]

18 THE COURT: Thank you. There are none.

19 Is there any member of the jury panel related by
20 blood, marriage, close personal friend, or ever been
21 represented by Mr. Smiley or the attorney that will be
22 assisting him throughout the trial, Ms. Laree Hensley?
23 If so, please stand.

24 [Whereupon, there is no response]

25 THE COURT: Thank you. There are none.

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1 Mr. Riesen, if you will please stand, introduce
2 yourself and any persons that will be assisting you
3 throughout this trial.

4 MR. RIESEN: Thank you, Your Honor.

5 My name is Trip Riesen. I'm an assistant
6 solicitor with the Ninth Circuit Solicitor's Office and
7 this is my counterpart, Ms. Stephanie Linder, who will
8 be assisting me with this trial, as well.

9 THE COURT: Is there any member of the jury
10 panel related by blood, marriage, close personal
11 friend, ever had any business, personal, professional
12 dealings with either Mr. Riesen or Ms. Linder? If so,
13 please stand.

14 [Whereupon, there is no response]

15 THE COURT: Thank you. There are none.

16 Is there any member of the jury panel that is
17 related to, every been employed by, ever had any
18 business, professional or personal dealings, with
19 anyone in the solicitor's office? And the solicitor is
20 Scarlet Wilson and she has -- of course the office, as
21 I indicated to you, is the circuit, so it's Berkeley
22 and Charleston counties.

23 If you have had any business, professional,
24 personal dealings with anyone employed by or if you
25 yourself have been employed by the solicitor's office,

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1 please stand.

2 Yes, ma'am. Your jury number and name?

3 MS. CEDOTAL: Yes. Jo Ann Cedotal, 59.

4 THE COURT: Yes, ma'am.

5 MS. CEDOTAL: I worked with Dirk Van -- I can't
6 think of his last name.

7 MR. SMILEY: Walton. Dirk Van Walton
8 [phonetic]?

9 MS. CEDOTAL: Right. For about three weeks he
10 was an associate in a firm that I worked with. This
11 was way before he went to the solicitor's office.

12 THE COURT: Is there anything --

13 MS. CEDOTAL: A good many years ago.

14 THE COURT: Ma'am, is there anything about that
15 relationship that will affect your ability to be fair
16 and impartial in this case?

17 MS. CEDOTAL: None at all. I didn't really even
18 get to know him that well.

19 THE COURT: All right. And your jury number?

20 MS. CEDOTAL: 59.

21 THE COURT: Thank you, ma'am.

22 Is there anyone else?

23 Yes, ma'am. Please stand. Your juror number
24 and name.

25 MS. GLAZIER: 115, Rebecca Glazier.

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1 THE COURT: Yes, ma'am.

2 MS. GLAZIER: I used to work with the pre-trial
3 intervention program in drug and alcohol rehab, but
4 it's been many years ago.

5 THE COURT: And that was here in Charleston
6 County?

7 MS. GLAZIER: Yes, ma'am.

8 THE COURT: And about how long ago was it?

9 MS. GLAZIER: 1990.

10 THE COURT: Is there anything about you being
11 employed with the PTI Program that will affect your
12 ability to be fair and impartial in this case?

13 MS. GLAZIER: No, ma'am.

14 THE COURT: Thank you. Your juror number?

15 MS. GLAZIER: 115.

16 THE COURT: Thank you, ma'am.

17 Is there anyone else?

18 [Whereupon, there is no response]

19 THE COURT: Ladies and gentlemen, the State
20 alleges that on or about -- in Charleston County the
21 defendant, Stanford Lavelle Brown, did unlawfully
22 possess with the intent to distribute, dispense, sell,
23 purchase, or manufacture a quantity of cocaine base
24 within one half mile of North Charleston Academy. The
25 State further alleges that Mr. Brown did knowingly

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1 sell, manufacture, deliver, purchase, or bring into the
2 state or provide financial assistance or otherwise aid,
3 abet or conspire to sell, manufacture, deliver or bring
4 into the state a controlled substance or controlled
5 substance analog; to wit, cocaine base.

6 Ladies and gentlemen of the jury panel, is there
7 any member of the jury panel that has any previous
8 knowledge about what the State is alleging in those two
9 indictments? If so, please stand.

10 [Whereupon, there is no response]

11 THE COURT: Thank you. There are none.

12 Is there any member of the jury panel that has
13 ever been on the grounds of North Charleston Academy or
14 lives close to North Charleston Academy? If so, please
15 stand.

16 [Whereupon, there is no response]

17 THE COURT: Thank you. There are none.

18 Is there any member of the jury panel who has
19 ever been employed by or has any relatives employed by
20 or close personal friends employed by the Charleston
21 County Sheriff's Office, Hanahan Police Department, or
22 with the State Law Enforcement Division, otherwise
23 known as SLED? If so, please stand.

24 Yes, ma'am. Your jury number and name?

25 MS. WILLIAMS: Brittney Williams. I think I'm

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1 382.

2 THE COURT: I heard Ms. Mims. 182?

3 MS. WILLIAMS: Brittney Williams.

4 THE COURT: Williams. I'm sorry. And your jury
5 number?

6 MS. WILLIAMS: I think it's 382.

7 THE COURT: Yes, ma'am. You have a relative or
8 were employed by one of those law enforcement agencies?

9 MS. WILLIAMS: Yes. My father is employed at
10 the North Charleston Detention Center.

11 THE COURT: He's employed at the Charleston
12 County Detention Center?

13 MS. WILLIAMS: Uh-huh.

14 THE COURT: All right. And what is your
15 father's name?

16 MS. WILLIAMS: Bruce Washington.

17 THE COURT: And how long has he been employed
18 there?

19 MS. WILLIAMS: I think for about ten years. I'm
20 not sure.

21 THE COURT: Is there anything about your
22 father's employment at the Charleston County Detention
23 Center that will affect your ability to be fair and
24 impartial in this case?

25 MS. WILLIAMS: No, ma'am.

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1 THE COURT: All right. Thank you. And you are
2 juror number 384?

3 MS. WILLIAMS: Okay.

4 THE COURT: Thank you, Ms. Williams.

5 Is there anyone else?

6 [Whereupon, there is no response]

7 THE COURT: Thank you. There are none.

8 Ladies and gentlemen, I'm going to call out now
9 a list of potential witnesses that may be called in
10 this case. If you are related by blood, marriage,
11 close personal friend, have any business, personal or
12 professional dealings with any of these individuals,
13 please stand. Marvin Hancock, Keith Hair, Detective
14 John Nice, Detective Mark Brown, Detective Tom
15 Constanza, Cory Hart, Kathy Kjellman, Investigator
16 David Owen, III, Carmen Tucker, Lashaunda Williams.

17 If there is any member of the jury panel related
18 by blood, marriage, close personal friend, ever have
19 any business, personal, professional dealings with any
20 of those individuals, please stand.

21 [Whereupon, there is no response]

22 THE COURT: Thank you. There are none.

23 Is there any member of the jury panel that is a
24 former law enforcement employee? If so, please stand.

25 [Whereupon, there is no response]

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1 THE COURT: Thank you. There are none.

2 Is there any member of the jury panel that has
3 already formed an opinion about this case? If so,
4 please stand.

5 [Whereupon, there is no response]

6 THE COURT: Thank you. There are none.

7 Is there any member of the jury panel that
8 is a -- or a close family member or friend that is a
9 member of a victims' rights law enforcement
10 organization such as Citizens Against Violent Crime,
11 People Against Rape, Mothers Against Drunk Driving, any
12 of those organizations? If so, please stand.

13 [Whereupon, there is no response]

14 THE COURT: Thank you. There are none.

15 Ladies and gentlemen of the jury panel, is there
16 any member of the jury that has had an experience with
17 law enforcement, the legal system, or the penal system
18 that would render you unable to be fair and impartial
19 in this case? If so, please stand.

20 [Whereupon, there is no response]

21 THE COURT: Thank you. There are none.

22 Ladies and gentlemen, I am now going to ask a
23 series of questions, just like we did in the general
24 qualification. I'm going to -- I have determined that
25 these are somewhat personal questions that you may

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1 not --

2 [Whereupon, Ms. Hensley enters the courtroom at
3 12:11 p.m.]

4 THE COURT: -- although now you have been
5 spending about three hours with your neighbors also on
6 the jury panel, these are questions that you do not
7 wish to answer in front of your other panel members.

8 Ladies and gentlemen, that was Ms. Hensley that
9 just walked in.

10 MR. SMILEY: I apologize, Your Honor --

11 THE COURT: Ms. Hensley, you have already been
12 introduced.

13 Is there any member of the jury panel, now
14 that you have seen Ms. Hensley, that you realize that
15 you were represented by or you have a personal,
16 professional, or business dealing with Ms. Hensley?
17 If so, please stand.

18 [Whereupon, there is no response]

19 THE COURT: Thank you. There are none.

20 Ladies and gentlemen of the jury, does any
21 member of the jury -- and these are the series of
22 personal questions, so you do not have to stand at this
23 time. I'm going to give you the opportunity to come
24 forward.

25 Does any member of the jury panel have criminal

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1 charges pending against them in any jurisdiction?

2 Does any member of the jury panel believe in the
3 legalization or decriminalization of any current
4 illegal drug or substance?

5 UNIDENTIFIED: I'm sorry. Could you repeat
6 that?

7 THE COURT: I could.

8 Is there any member of the jury panel who
9 believes in the legalization or decriminalization of
10 any current illegal drug or substance?

11 Is there any member --

12 Okay. Sir, you can -- I'm going to give you the
13 catch-all question, and come forward at the time, so
14 you just -- you can come forward. And you can remain
15 standing, if you wish.

16 UNIDENTIFIED: I'm sorry. I'm sorry. I don't
17 understand, Your Honor.

18 THE COURT: You don't understand the question,
19 or the procedure?

20 UNIDENTIFIED: No.. The procedure. Do you want
21 me to sit back down again?

22 THE COURT: Yes, sir. Or you can remain
23 standing, whatever you wish. I'm just going to speak
24 with you privately concerning your answer to this
25 question.

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1 UNIDENTIFIED: Thank you.

2 THE COURT: All right. Thank you.

3 Is there any member of the jury panel that holds
4 a social, ethnic or racial view that would render you
5 incapable of being fair and impartial in this case?

6 Is there any member of the jury panel who holds
7 a moral or religious view that would render you
8 incapable of rendering or passing judgment on another
9 individual?

10 Is there any member of the jury panel who has a
11 family member who has been arrested for any charge
12 involving drugs or violence?

13 And, ladies and gentlemen, this is also the
14 opportunity that if you needed to speak with me
15 concerning any matter -- if there was something that
16 has been relayed, or perhaps you got a phone call on
17 your way up to this courtroom and your significant
18 other has just won two tickets to Tahiti but the plane
19 leaves in the morning and you now have determined that
20 this week is not going to be a good week for you to
21 serve on the jury panel -- or for whatever reason, for
22 those of you who need to answer the questions that I
23 have just asked of you, or if you need to speak with me
24 privately concerning any of those questions, or for any
25 reason, please come forward at this time.

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1 [Whereupon, personal issues are discussed with
2 members of the jury panel]

3 [Whereupon, an off-the-record bench conference
4 is held]

5 - - - - -

6 STRIKING OF THE JURY

7 THE COURT: Any objection to the clerk drawing
8 the panel? From the State?

9 MR. RIESEN: None, Your Honor.

10 THE COURT: From the defense?

11 MR. SMILEY: No, Your Honor.

12 THE COURT: Madam Clerk.

13 THE CLERK OF COURT: Ladies and gentlemen, if I
14 call your name if you would please gather all of your
15 belongings, come and stand in front of the podium.

16 Juror number 115, Rebecca Glazier.

17 [Whereupon, Ms. Glazier comes forward]

18 THE CLERK OF COURT: Right here, ma'am.

19 THE COURT: Here. Right in between the two
20 tables.

21 MS. GLAZIER: Right here? Okay.

22 THE COURT: Yes, ma'am.

23 THE CLERK OF COURT: What say ye for the State?

24 MR. RIESEN: Please present this witness [sic].

25 THE CLERK OF COURT: What say ye for the

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1 defendant?

2 MR. SMILEY: Please excuse this juror.

3 THE CLERK OF COURT: Please, ma'am, have a seat
4 back in the audience. You've been excused from the
5 trial of this case.

6 [Whereupon, Ms. Glazier returns to the audience]

7 THE CLERK OF COURT: Juror number 368, Paris
8 Greer.

9 [Whereupon, Mr. Greer comes forward]

10 [Off the record momentarily]

11 THE COURT: Thank you. Sir, I apologize.

12 MR. GREER: Oh. No problem.

13 [Whereupon, Mr. Greer, having been previously
14 excused from the trial of this case, returns to the
15 audience]

16 THE CLERK OF COURT: Juror number 5, Susan
17 Aiello.

18 [Whereupon, Ms. Aiello comes forward]

19 THE CLERK OF COURT: What say ye for the State?

20 MR. RIESEN: Court's indulgence one second,
21 please.

22 THE COURT: Yes, sir.

23 [Whereupon, Mr. Riesen and Ms. Linder confer]

24 MR. RIESEN: Please present this witness [sic].

25 THE CLERK OF COURT: What say ye for the

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1 defendant?

2 MR. SMILEY: Please seat the juror.

3 THE CLERK OF COURT: Please, ma'am, have a seat
4 in the jury box. You've been -- you've been selected
5 for the trial of this case.

6 [Whereupon, Ms. Aiello is seated in the jury box
7 as a juror]

8 THE CLERK OF COURT: Juror number 158, Jennifer
9 Huston.

10 [Whereupon, Ms. Huston comes forward]

11 MR. RIESEN: Please present this witness [sic].

12 THE CLERK OF COURT: What say ye for the
13 defendant?

14 MR. SMILEY: Please seat the juror.

15 THE CLERK OF COURT: Please, ma'am, have a seat
16 in the jury box. You've been selected for the trial of
17 this case.

18 [Whereupon, Ms. Huston is seated in the jury box
19 as a juror]

20 THE CLERK OF COURT: Juror number 59, Jo
21 Cedotal.

22 [Whereupon, Ms. Cedotal comes forward]

23 THE CLERK OF COURT: What say ye for the State?

24 MR. RIESEN: Please excuse this juror.

25 THE CLERK OF COURT: Please, ma'am, have a seat

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1 back in the audience. You've been excused from the
2 trial of this case.

3 [Whereupon, Ms. Cetotal returns to the audience]

4 THE CLERK OF COURT: Juror number 379, Caroline
5 Rucker.

6 [Whereupon, Ms. Rucker comes forward]

7 THE CLERK OF COURT: What say ye for the State?

8 MR. RIESEN: Please present this juror.

9 THE CLERK OF COURT: What say ye for the
10 defendant?

11 MR. SMILEY: Please excuse the juror.

12 THE CLERK OF COURT: Please, ma'am, have a seat
13 back in the audience. You've been excused from the
14 trial of this case.

15 [Whereupon, Ms. Rucker returns to the audience]

16 THE CLERK OF COURT: Juror number 384, Brittany
17 Williams.

18 [Whereupon, Ms. Williams comes forward]

19 THE CLERK OF COURT: What say ye for the State?

20 MR. RIESEN: One second, please.

21 THE COURT: Yes, sir.

22 [Whereupon, Mr. Riesen and Ms. Linder confer]

23 MR. RIESEN: Please excuse this juror.

24 THE CLERK OF COURT: Please, ma'am, have a seat
25 back in the audience. You've been excused from the

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1 trial of this case.

2 [Whereupon, Ms. Williams returns to the
3 audience]

4 THE CLERK OF COURT: Juror number 385, Amanda
5 Wood.

6 [Whereupon, Ms. Wood comes forward]

7 THE CLERK OF COURT: What say ye for the State?

8 MR. RIESEN: Please present this juror.

9 THE CLERK OF COURT: What say ye for the
10 defendant?

11 MR. SMILEY: Please seat the juror.

12 THE CLERK OF COURT: Please, ma'am, have a seat
13 in the jury box. You've been selected for the trial of
14 this case.

15 [Whereupon, Ms. Woods is seated in the jury box
16 as a juror]

17 THE CLERK OF COURT: Juror number 351, Bradley
18 Ames.

19 [Whereupon, Mr. Ames comes forward]

20 THE CLERK OF COURT: What say ye for the State?

21 MR. RIESEN: Please seat this juror.

22 THE CLERK OF COURT: What say ye for the
23 defendant?

24 MR. SMILEY: Please excuse the juror.

25 THE CLERK OF COURT: Please, sir, have a seat

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1 back in the audience. You've been excused from the
2 trial of this case.

3 [Whereupon, Mr. Ames returns to the audience]

4 THE CLERK OF COURT: Juror number 371, Laura
5 Knight.

6 [Whereupon, Ms. Knight comes forward]

7 THE CLERK OF COURT: What say ye for the State?

8 MR. RIESEN: Please present this juror.

9 THE CLERK OF COURT: What say ye for the
10 defendant?

11 MR. SMILEY: Beg the Court's indulgence.

12 THE COURT: Yes, sir.

13 [Whereupon, Mr. Smiley reviews documents]

14 MR. SMILEY: Please seat the juror.

15 THE CLERK OF COURT: Please, ma'am, have a seat
16 in the jury box. You've been selected for the trial of
17 this case.

18 [Whereupon, Ms. Knight is seated in the jury box
19 as a juror]

20 THE CLERK OF COURT: Juror number 11, Dvante
21 Alston.

22 [Whereupon, Ms. Alston comes forward]

23 THE CLERK OF COURT: What say ye for the State?

24 MR. RIESEN: Please seat this juror.

25 THE CLERK OF COURT: What say ye for the

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1 defendant?

2 MR. SMILEY: Please seat the juror.

3 THE CLERK OF COURT: Please, ma'am, have a seat
4 in the jury box. You've been selected for the trial of
5 this case.

6 [Whereupon, Ms. Alston is seated in the jury box
7 as a juror]

8 THE CLERK OF COURT: Juror number 94, Jerome
9 English.

10 [Whereupon, Mr. English comes forward]

11 THE CLERK OF COURT: What say ye for the State?

12 MR. RIESEN: Please seat this juror.

13 THE CLERK OF COURT: What say ye for the
14 defendant?

15 MR. SMILEY: Please excuse the juror.

16 THE CLERK OF COURT: Please, sir, have a seat
17 back in the jury box -- excuse me -- a seat back in the
18 audience. You've been excused from this case.

19 [Whereupon, Mr. English returns to the audience]

20 THE CLERK OF COURT: Juror number 86, Arnetha
21 Drayton.

22 [Whereupon, Ms. Drayton comes forward]

23 THE CLERK OF COURT: What say ye for the State?

24 MR. RIESEN: Please seat this juror.

25 THE CLERK OF COURT: What say ye for the

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1 defendant?

2 MR. SMILEY: Please seat the juror.

3 THE CLERK OF COURT: Please, ma'am, have a seat
4 in the jury box. You've been selected for the trial of
5 this case.

6 [Whereupon, Ms. Drayton is seated in the jury
7 box as a juror]

8 THE CLERK OF COURT: Juror number 299, Caroline
9 Smith.

10 [Whereupon, Ms. Smith comes forward]

11 THE CLERK OF COURT: What say ye for the State?

12 MR. RIESEN: Please seat this juror.

13 THE CLERK OF COURT: What say ye for the
14 defendant?

15 MR. SMILEY: Please seat the juror.

16 THE CLERK OF COURT: Please, ma'am, have a seat
17 in the jury box. You've been selected for the trial of
18 this case.

19 [Whereupon, Ms. Smith is seated in the jury box
20 as a juror]

21 THE CLERK OF COURT: Juror number 148, Shirley
22 Hines.

23 [Whereupon, Ms. Hines comes forward]

24 THE CLERK OF COURT: What say ye for the State?

25 MR. RIESEN: The Court's indulgence one moment,

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1 please.

2 [Whereupon, Mr. Riesen and Ms. Linder confer]

3 MR. RIESEN: Please seat this juror.

4 THE CLERK OF COURT: What say ye for the
5 defendant?

6 MR. SMILEY: Please seat the juror.

7 THE CLERK OF COURT: Please, ma'am, have a seat
8 in the jury box. You've been selected for the trial of
9 this case.

10 [Whereupon, Ms. Hines returns to the audience]

11 THE CLERK OF COURT: Juror number 152, Martha
12 Hodges.

13 [Whereupon, Ms. Hodges comes forward]

14 THE CLERK OF COURT: What say ye for the State?

15 MR. RIESEN: Please excuse this juror.

16 THE CLERK OF COURT: Please, ma'am, have a seat
17 back in the audience. You've been excused from the
18 trial of this case.

19 [Whereupon, Ms. Hodges returns to the audience]

20 THE CLERK OF COURT: Juror number 359, Shanika
21 Brown.

22 [Whereupon, Ms. Brown comes forward]

23 THE CLERK OF COURT: What say ye for the State?

24 MR. RIESEN: Please seat this juror.

25 THE CLERK OF COURT: What say ye for the

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1 defendant?

2 MR. SMILEY: Please seat the juror.

3 THE CLERK OF COURT: Please, ma'am, have a seat
4 in the jury box. You've been selected for the trial of
5 this case.

6 [Whereupon, Ms. Brown is seated in the jury box
7 as a juror]

8 THE CLERK OF COURT: Juror number 40, Carole
9 Bridges.

10 [Whereupon, Ms. Bridges comes forward]

11 THE CLERK OF COURT: What say ye for the State?

12 MR. RIESEN: Please seat this juror, please.

13 THE CLERK OF COURT: What say ye for the
14 defendant?

15 MR. SMILEY: Please seat the juror.

16 THE CLERK OF COURT: Please, ma'am, have a seat
17 in the jury box. You've been selected for the trial of
18 this case.

19 [Whereupon, Ms. Bridges is seated in the jury
20 box as a juror]

21 THE CLERK OF COURT: Juror number 132, Donald
22 Gugel.

23 [Whereupon, Mr. Gugel comes forward]

24 THE CLERK OF COURT: What say ye for the State?

25 MR. RIESEN: Please seat this juror.

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1 THE CLERK OF COURT: What say ye for the
2 defendant?

3 MR. SMILEY: Pardon me. I didn't catch the
4 name.

5 THE CLERK OF COURT: Juror number 132.

6 MR. SMILEY: 132.

7 [Whereupon, Mr. Smiley reviews documents]

8 MR. SMILEY: Please excuse the juror.

9 THE CLERK OF COURT: Please, sir, have a seat
10 back out in the audience. You've been excused from the
11 trial of this case.

12 [Whereupon, Mr. Gugel returns to the audience]

13 MR. SMILEY: I believe I have exhausted my
14 strikes.

15 THE CLERK OF COURT: Juror number 266, Dionne
16 Roney.

17 [Whereupon, Ms. Roney comes forward]

18 THE CLERK OF COURT: What say ye for the State?

19 MR. RIESEN: Please excuse this juror.

20 THE CLERK OF COURT: Please, ma'am, have a seat
21 back in the audience. You've been excused from the
22 trial of this case.

23 [Whereupon, Ms. Roney returns to the audience]

24 THE CLERK OF COURT: Juror number 65, John
25 Colbert.

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1 [Whereupon, Mr. Colbert comes forward]

2 THE CLERK OF COURT: What say ye for the State?

3 MR. RIESEN: The Court's indulgence one moment,
4 please.

5 THE COURT: Yes, sir. You have one remaining,
6 Mr. Riesen.

7 MR. RIESEN: Yes, ma'am.

8 [Whereupon, Mr. Riesen and Ms. Linder confer]

9 MR. RIESEN: Please strike this juror.

10 THE CLERK OF COURT: Please, sir, have a seat
11 back in the audience. You've been excused from the
12 trial of this case.

13 MR. SMILEY: And that's five for the State, Your
14 Honor.

15 [Whereupon, Mr. Colbert returns to the audience]

16 THE CLERK OF COURT: Juror number 308, Geraldine
17 Sudina.

18 [Whereupon, Ms. Sudina comes forward]

19 THE CLERK OF COURT: Any challenge from the
20 State?

21 MR. RIESEN: None, Your Honor.

22 THE CLERK OF COURT: Any challenge from the
23 defendant?

24 MR. SMILEY: Please seat the juror.

25 THE CLERK OF COURT: Please, ma'am, have a seat

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1 in the jury box. You've been selected for the trial of
2 this case.

3 [Whereupon, Ms. Sudina is seated in the jury box
4 as a juror]

5 THE CLERK OF COURT: Juror number 362, Michael
6 Copelin.

7 [Whereupon, Mr. Copelin comes forward]

8 THE CLERK OF COURT: Any challenge from the
9 State?

10 MR. RIESEN: None.

11 THE CLERK OF COURT: Any challenge from the
12 defendant?

13 MR. SMILEY: Beg the Court's indulgence.

14 THE COURT: Yes, sir.

15 [Whereupon, Mr. Smiley and Ms. Hensley confer]

16 MR. SMILEY: No challenge.

17 THE CLERK OF COURT: Please, sir, have a seat in
18 the jury box. You've been selected for the trial of
19 this case.

20 [Whereupon, Mr. Copelin is seated in the jury
21 box as a juror]

22 [Off the record momentarily]

23 THE CLERK OF COURT: Juror number 292, Joshua
24 Skidmore.

25 [Whereupon, Mr. Skidmore comes forward]

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1 THE COURT: Mr. Riesen, we are selecting for the
2 alternate.

3 THE CLERK OF COURT: What say ye for the State?

4 MR. RIESEN: Please seat this juror.

5 THE CLERK OF COURT: What say ye for the
6 defendant?

7 MR. SMILEY: Please seat the juror.

8 THE CLERK OF COURT: Please, sir, have a seat in
9 the jury box. You've been selected for the trial of
10 this case.

11 [Whereupon, Mr. Skidmore is seated in the jury
12 box as an alternate juror]

13 THE CLERK OF COURT: Your Honor, the jury is
14 seated.

15 THE COURT: Thank you.

16 Any motions or matters pertaining to the
17 selection process or to the selected jury? From the
18 State?

19 MR. RIESEN: None, Your Honor.

20 THE COURT: From the defense?

21 MR. SMILEY: None from the defense.

22 THE COURT: Ladies and gentlemen of the jury,
23 you have been selected as the jury to try the case of
24 the State vs. Stanford Brown.

25 You are going to take your lunch hour, your

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1 lunch recess, at this time. Before you leave you will
2 be shown your jury room, and that will be where you
3 return to at 2:30. So please be back in your selected
4 room at 2:30 and we will promptly begin the trial of
5 the case of the State vs. Stanford Brown. Thank you.

6 [Whereupon, the jury exits the courtroom at
7 12:53 p.m.]

8 THE COURT: Please be seated, counsel. Thank
9 you.

10 Now that the jury is outside of the courtroom,
11 are there any additional matters pertaining to the jury
12 selection process? Any motions?

13 MR. RIESEN: None, Your Honor.

14 THE COURT: From the defense?

15 MR. SMILEY: None, Your Honor.

16 THE COURT: All right.

17 MR. SMILEY: Oh. Note my --

18 THE COURT: Yes, sir. I'll note your objection
19 to --

20 MR. SMILEY: Exception to not asking voir dire
21 number 3 or 10 from my submitted voir dire --

22 THE COURT: I will note that. Once the
23 remaining panel has been released, I will allow
24 you to articulate fully --

25 MR. SMILEY: Thank you.

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1 THE COURT: -- Mr. Smiley. Thank you.
2 Anything before we recess in this matter?

3 MR. RIESEN: No, ma'am.

4 THE COURT: Mr. Smiley?

5 MR. SMILEY: No, Your Honor.

6 THE COURT: Madam Clerk, this panel is --

7 THE BAILIFF: Call back after 6:00.

8 THE COURT: Call back after 6:00 today.

9 Ladies and gentlemen of my remaining panel, you
10 have not been selected for the trial of this particular
11 case. You are still on call, but we are going -- you
12 are going to be released for the afternoon. You are to
13 call back the number that you have been given after
14 6:00 p.m. today to receive your instructions for the
15 remainder of the week.

16 Once again, I thank you for your service to
17 Charleston County. Have a wonderful afternoon. Thank
18 you.

19 [Whereupon, the remaining jury panel exits the
20 courtroom at 12:54 p.m.]

21 THE COURT: Anything further? I'm going to go
22 ahead and select a jury for number 2.

23 [Off the record momentarily]

24 THE COURT: We'll be back at 2:15 and address as
25 many pretrial matters as we can get through and so if

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1 you can be here at 2:10, that should allow you some
2 time to begin marking exhibits, as well.

3 MR. RIESEN: Thank you, Your Honor.

4 THE COURT: Thank you, Your Honor.

5 MR. SMILEY: Thank you.

6 [Whereupon, a recess is taken from 12:55 p.m. to
7 2:27 p.m.]

8 [Whereupon, State's Exhibit Numbers 1 through 7
9 are pre-marked by Mr. Riesen]

10 - - - - -
11 PRETRIAL MOTIONS

12 THE COURT: All right. We are back on the
13 record with State vs. Stanford Brown. Are you prepared
14 to go forward at this time, Mr. Riesen?

15 MR. RIESEN: Yes, I am, Your Honor.

16 THE COURT: Mr. Smiley?

17 MR. SMILEY: Yes, ma'am.

18 THE COURT: We have -- Mr. Smiley had filed a
19 motion to sequester witnesses. I indicated I would be
20 granting that motion.

21 We have a Jackson v. Denno hearing? Do we --

22 MR. SMILEY: Yes, ma'am. On Jackson v. Denno I
23 don't believe the State intends to offer any statements
24 made by my client once he was placed into custody
25 subject to interrogation.

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1 MR. RIESEN: That is correct, so there's no need
2 for a Jackson v. Denno.

3 THE COURT: No need for that hearing?

4 MR. RIESEN: That is correct, Your Honor.

5 THE COURT: And then you have filed a motion to
6 exclude testimony and prior bad acts?

7 MR. SMILEY: Prior subsequent, yes, ma'am. In
8 this case my client was arrested approximately five
9 days later in Dorchester County, was subject to a
10 search warrant, and charges were brought in Dorchester
11 County. I don't want any -- I would make a motion to
12 limit any mention of the Dorchester County charges
13 and/or the search warrant.

14 THE COURT: Mr. Riesen, my understanding in my
15 in-chambers conference was that you were not planning
16 on doing so.

17 MR. RIESEN: That is correct.

18 And just out of an abundance of caution, Your
19 Honor, one thing that I will be mentioning is that he
20 was arrested on that date at that address, and some of
21 the things from the detective were -- nothing that was
22 confiscated there will be mentioned. There will be
23 mention of a vehicle that was located at that house.
24 That's the only reason we will be even mentioning the
25 date he was arrested.

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1 MR. SMILEY: I don't have a problem with that.

2 THE COURT: All right. Mr. Smiley, I will grant
3 your motion to exclude testimony of prior bad acts.

4 Anything additional?

5 MR. RIESEN: Just out of an abundance of
6 caution, I don't know what we want we want to do,
7 whether we want to do this now with the rap-sheet
8 question that we had, whether or not to even talk about
9 sentencing, the amount of time. That's one issue we
10 need to discuss before swearing the jury.

11 And the second is there's going to be a jail
12 tape, and I don't know how Your Honor -- prefer to
13 swear the jury and then go through it there, or do it
14 preliminary. I have the custodian of records who's
15 going to come in and testify that certain tapes were
16 made in the ordinary course of business. But he's
17 going to be the first witness, so either we can -- I
18 don't know whether you want to do that before we swear
19 the jury, because I don't want to mention it in the
20 opening if for some reason you were excluding
21 something, or if you want to wait --

22 THE COURT: Mr. Smiley, you are objecting to the
23 jail tapes?

24 MR. SMILEY: Well, not necessarily. It depends
25 whether he can establish the foundation or not -- we

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1 brought up some preliminaries on that -- and how he
2 intends to introduce them.

3 THE COURT: Do you request a hearing to have the
4 custodian come in, or can we do it -- you make your
5 objection to it at the time he's on the stand?

6 MR. SMILEY: We can do it while he's on the
7 stand. I don't think the custodian, by himself, gets
8 the tapes into evidence, Your Honor.

9 MR. RIESEN: I disagree. I think the law is
10 clear. But I'm going to bring the custodian in and
11 he's going to authenticate basically how that system
12 is. It's a business record exception. He'll be able
13 to say there's a unique pin number that's assigned to
14 each person. And then that's up to the jury. If they
15 want to present that that's not -- or something like
16 that, try to challenge it, then they're welcome to do
17 it. But as long as he can come in and testify that
18 these were subpoenas that were received from our office
19 on such and such date -- he is the custodian of
20 records, this is done in the ordinary course of
21 business, on such and such a date these calls were
22 made, I think we're find.

23 MR. SMILEY: But then --

24 MR. RIESEN: Quite frankly, we had this issue in
25 front of you before --

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1 MR. SMILEY: Well, I wasn't --

2 THE COURT: Hold on. Hold on one second.
3 Please let Mr. Riesen finish his argument.

4 MR. SMILEY: Yes, ma'am.

5 MR. RIESEN: And so under authentication, all it
6 has to do is -- someone with knowledge can testify to
7 what it purports to be, plain and simple. And he can
8 testify that a pin number is given when people come in,
9 this pin number is linked with an inmate number, and
10 those calls are recorded in the ordinary course of
11 business.

12 MR. SMILEY: And I guess that's going to be my
13 argument, Your Honor, is I would say they were not made
14 in the ordinary course of business, that they were made
15 for the specific purpose of anticipation of litigation.
16 They're not even reviewed unless they're reviewed by
17 the solicitor's office. But I'll be glad to ask the
18 custodian about that.

19 THE COURT: All right. When he's on the stand
20 we'll address those issues and once it becomes
21 pertinent, I'll make my ruling.

22 Anything before we bring in the jury that you
23 anticipate or would like to have the Court rule on for
24 your opening? Mr. Riesen?

25 MR. RIESEN: Not to my opening.

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1 I guess just whether or not the rap sheet -- are
2 we going to have that issue?

3 THE COURT: Are you asking specifically about
4 the rap sheet? Are you asking specifically about
5 certain charges, or whether or not Mr. Smiley can
6 inquire or state the length of time that Mr. Hart was
7 facing?

8 MR. RIESEN: The latter, Your Honor. I want to
9 make sure that in opening or anything else that,
10 depending on your ruling, that he doesn't mention that
11 your charge -- he can mention your charge in
12 trafficking, but you're -- you are looking at x amount
13 of years.

14 As I stated earlier, I looked at -- reviewed the
15 case law and all I found on it, Your Honor, is that it
16 is in your discretion. And basically, you need to look
17 at the probative value versus the prejudice.

18 And in this situation it's the State's position
19 that you can -- he can show plenty of bias on the fact
20 that he was charged with trafficking. His case --
21 those cases were dismissed. Most importantly, he
22 wasn't even convicted of it. So to bring up a charge
23 when he wasn't even convicted -- excuse me -- to bring
24 up the amount of time, when he wasn't even convicted,
25 is highly prejudicial.

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1 Additionally, as for the second or third,
2 trafficking second or third, that's for the State to
3 decide. The indictment says trafficking. He has
4 never pled to any type of trafficking second or third.
5 So it is the State's position that he can say, you were
6 charged with trafficking, you basically cut a deal,
7 you were trying to protect yourself. And that was
8 plenty -- shows plenty of bias.

9 MR. SMILEY: I'm glad --

10 MR. RIESEN: -- we're not allowed to get into
11 the numbers.

12 THE COURT: Mr. Smiley.

13 MR. SMILEY: Starting to get a little --

14 THE COURT: I understand, Mr. Smiley, you're a
15 very passionate advocate for your client, but --

16 MR. SMILEY: I don't like words --

17 THE COURT: -- well, it's very difficult --

18 MR. SMILEY: -- being put in my mouth, either.

19 THE COURT: -- one, for me to listen to two of
20 you speak --

21 MR. SMILEY: Yes, ma'am.

22 THE COURT: -- at the same time, as well as to
23 get a completely clean and accurate record.

24 MR. SMILEY: I apologize, Your Honor.

25 THE COURT: Thank you, Mr. Smiley. Your turn,

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1 Mr. Smiley.

2 MR. SMILEY: Your Honor, the very fact that the
3 charges were dismissed was part of the deal of
4 cooperation, number one. Number two, the amount of
5 exposure certainly would establish bias, prejudice, and
6 go against his credibility. This is my client's right,
7 sixth amendment right, the right to confrontation. Our
8 rules are made that the scope of cross-examination of
9 the witness; not a defendant be brought. That I be
10 able to explore all avenues of prejudice and bias and
11 to limit the scope of how much I could ask on that
12 is -- would be -- violate both the South Carolina and
13 the United States Constitution.

14 This case, the only identification that's going
15 to be made in this case, eye to eye, is going to be
16 from the CI, is my anticipation. I could be wrong. I
17 haven't seen the facts come out.

18 THE COURT: Which is Mr. Hart?

19 MR. SMILEY: Mr. Hart.

20 And so my ability to ask him about what he was
21 facing in another county, for which he cut a deal in
22 exchange for working as a CI. He only worked on one
23 case. He only made one buy for them, and that was in
24 this case. I think it's very, very probative. I think
25 it's very important to the core of his testimony, the

MIA PERRON, CCR, CVR-CM

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1 credibility of his testimony, any bias that he might
2 have, any prejudice, for making sure that he -- I'll
3 stop there.

4 But I need to be able to fully explore it. To
5 say that I cannot ask him what he was potentially
6 facing would limit the scope of my ability to cross-
7 examine, which would violate our rules of evidence, the
8 United States Constitution and the South Carolina
9 Constitution.

10 THE COURT: Mr. Smiley, how would it not be just
11 as probative if you were allowed only to inquire as to
12 the charge that he was facing and that it is a felony
13 carrying jail time?

14 MR. SMILEY: There's a lot -- I would argue,
15 Your Honor, that when you are facing a twenty-five-year
16 sentence versus a whatever jail time means -- that
17 could be a day -- there's a big -- there's a lot more
18 impetus, there's a lot more bias being explored, in
19 asking that question as to what his potential exposure
20 was. And actually, if you add them up, he's looking at
21 twenty -- up to twenty-five years, if you go by the
22 second offense for trafficking, plus ten years for the
23 proximity, plus ten years for the -- ten years for
24 proximity, ten years for the ill treatment or neglect
25 of a child. He was looking at a second offense of

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1 manufacturing. That's ten years. We're looking at a
2 gun charge, that's another five years. Run them
3 consecutive, I should be able to ask him if he was -- I
4 should be able to ask him did he not know that he was
5 looking at seventy-five years, or whatever they added
6 up to, Your Honor. And I would add them up and ask him
7 correctly.

8 THE COURT: Mr. Smiley, what did Mr. Hart plead
9 to?

10 MR. SMILEY: He pled guilty to manufacturing
11 marijuana first offense, and he pled guilty to neglect
12 of a child, received a probationary sentence. As a
13 result of that plea and his cooperation, a trafficking
14 and cocaine was dismissed, a possession of a gun during
15 a crime of violence was dismissed, and a proximity to a
16 school was dismissed. Correct?

17 MR. RIESEN: I'm not sure about --

18 THE COURT: Is that correct, Mr. Riesen?

19 MR. RIESEN: I'm not sure about the proximity.
20 But that's the gist of it, yes. He basically did have
21 certain charges dismissed.

22 And I just want to reiterate that it is in your
23 discretion, Your Honor, and we do believe that by him
24 saying substantial time without getting into seventy-
25 five years, I mean, that is prejudicial to the State in

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1 itself. You can accomplish the same goal by saying you
2 were charged with trafficking and you cut a deal and
3 you got probation. I mean, that right there shows the
4 bias. That accomplishes the goal without him confusing
5 -- because they're automatically going to think this
6 guy got trafficking. The defendant now has
7 trafficking; he's looking at x amount of years now.
8 That's our concern, and that's what we're worried
9 about. That's why I think the rules allow for your
10 discretion in weighing probative versus prejudicial
11 value.

12 THE COURT: Mr. Smiley, were you able to provide
13 the Court any case law?

14 MR. SMILEY: I don't know that I have a burden
15 to be able to do it. I think he has a burden to show
16 otherwise.

17 I'm looking up some case law now to show that
18 there's some case law that says my cross-examination
19 should be limited. But we're looking. I've got a
20 case, I'm trying to pull it up, that says that the
21 sixth amendment guarantees a open and full cross-
22 examination.

23 THE COURT: Mr. Riesen, you agree that should --
24 that the possible punishment for the trafficking second
25 is twenty-five to thirty years; is that correct?

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1 MR. RIESEN: No, ma'am. Under -- it would be I
2 think five to thirty years, because it was -- the
3 weight was twenty-six grams, I think, and so
4 trafficking second under that weight class I believe is
5 five to thirty.

6 THE COURT: Mr. Smiley, I'm just -- where are
7 you getting twenty-five?

8 MR. RIESEN: I think he was confusing that with
9 a third.

10 MR. SMILEY: On the NCIC it says that he was
11 charged with trafficking in cocaine, 100 to 200 grams.
12 All right? By my count, it would have been a third
13 offense where he would have looked at twenty-five to
14 thirty. However, Mr. Riesen told me that's wrong.
15 I've got an -- the affidavit that says it's less than
16 that and so I went down and said, okay, I'll say he
17 wasn't looking at a maximum of twenty-five. But if
18 it's thirty, I'll be glad to say that.

19 THE COURT: Mr. Riesen, your position is it was
20 a trafficking third, or trafficking second?

21 MR. RIESEN: My position, it was a trafficking
22 second. He had one prior, which was a possession of
23 cocaine first. He also had a simple possession of
24 marijuana, which I think was magistrate's level, so
25 that didn't count as an enhancement. So it's our

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1 position it was a second.

2 And based upon the weight, Mr. Smiley is correct
3 that the sentencing sheet does -- excuse me -- the rap
4 sheet does say 100 to 200. That is a mistake. I've
5 shown it to him. I pulled the original affidavit of
6 where it was twenty-six grams. It just had a typo.
7 Also the indictment. And I've also spoken with the
8 officer, who will be -- if you deem it necessary will
9 testify that when he arrested him, it was twenty-six
10 grams. So that was a typo on the rap sheet.

11 THE COURT: And based upon twenty-six grams and
12 a trafficking second, it would be five to thirty; is
13 that correct?

14 MR. RIESEN: Yes, ma'am. That is what I think
15 we found in here -- we had looked that up earlier.

16 THE COURT: All right. Mr. Smiley?

17 MR. SMILEY: Okay. Trafficking second, five to
18 thirty. Then I would ask him instead of are you facing
19 a maximum of twenty-five years on that one, do you
20 understand you were facing a maximum of thirty years
21 for a trafficking second offense. I would ask, do you
22 understand that you were looking at an additional five
23 years for possession of a weapon during a crime of
24 violence, in other words, having a gun; do you
25 understand that you were looking at a manufacturing

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1 marijuana second offense, zero to ten years; do you
2 understand you were looking at the unlawful neglect of
3 a child, in connection with that drug deal -- or that
4 drug offense that you were looking at an additional ten
5 years; and out of that, you pled to the manufacturing
6 of marijuana and to the unlawful neglect, received a
7 probationary sentence. That would be how I -- a
8 partial of asking those questions.

9 THE COURT: Anything further, Mr. Riesen?

10 MR. RIESEN: I just -- the State's position is
11 it accomplish -- a middle ground would be, Your Honor,
12 from the State's perspective, if you were charged with
13 all of this and you got probation, you had substantial
14 time you were looking at and you got probation, to me
15 that accomplishes the bias without basically throwing
16 numbers at the jury during the main part of the case
17 and then automatically assuming that the defendant is
18 charged with trafficking and is looking at the same
19 thing. That's the State's position, Your Honor.

20 MR. SMILEY: If I could direct you to a case,
21 Your Honor.

22 [Whereupon, Mr. Smiley and Ms. Hensley confer]

23 MR. SMILEY: If I could, Your Honor, if I could
24 refer --

25 THE COURT: Yes, sir.

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1 MR. SMILEY: -- you to a case, State v. Jenkins.
2 It's 322 South Carolina S.E. 360, or 474 S.E.2nd 812,
3 South Carolina Appeals Court of 1996. It was decided
4 July 9th, 1996. And in that it says: [reading] before
5 the defendant can be prohibited from attempting to
6 demonstrate bias on the part of the prosecution's
7 witness, the record must clearly show that the cross-
8 examination is somehow inappropriate, number one.

9 And, number two: [reading] factors to consider
10 when determining whether a violation of the criminal
11 defendant's right to confrontation is a harmless error
12 include importance of the witness' testimony in the
13 prosecution's case, number one.

14 But in here he's the guy that's going to say
15 it's my guy, number one.

16 [Reading] Whether the testimony was cumulative.

17 It's certainly not going to be cumulative, my
18 cross-examination.

19 [Reading] Presence or absence of evidence
20 corroborating or contradicting the testimony of the
21 witness on material points.

22 He's the witness, the CI

23 [Reading] The extent of the cross-examination
24 otherwise permitted and the overall strength of the
25 prosecution's case are some of the factors to be

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1 considered.

2 And when limiting my cross-examination --
3 because we start from the subset or from the premise
4 that my cross-examination should not be limited. Only
5 if they can show that in some way it should be limited,
6 that it would be improper otherwise.

7 THE COURT: All right. One more time, Mr.
8 Riesen.

9 MR. RIESEN: And the State's position on that is
10 normally sentencing ranges are not -- we don't use
11 those during the case-in-chief, number one.

12 Number two, when they're charged with the same
13 crime, a trafficking, the State -- the jury is
14 improperly going to -- that's a way to bootstrap him to
15 the jury to what the defendant is looking at, and it's
16 prejudice. So that would be our position. It does
17 show prejudice, and that is improper, because you can
18 accomplish the same goal without getting into x amount
19 of years and making them think that that's what the
20 defendant is looking at, as well.

21 MR. SMILEY: To call --

22 THE COURT: Last time, Mr. Smiley.

23 MR. SMILEY: To say bootstrapped: I don't call
24 this witness; the State calls the witness. They choose
25 their witness. They put them up there. I didn't pick

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1 which charges there were there to negotiate with them.
2 But I can tell you what, I should be able to cross-
3 examine the witness to show his bias. He certainly has
4 a lot hanging out there when you count up the years he
5 was facing, has incentive to cut a deal with the State
6 in this case, and I should be able to explore that
7 fully.

8 THE COURT: Mr. Riesen, you indicated during our
9 in-chambers conference that the Status Change Form
10 indicated that this particular charge, the trafficking
11 charge, was dismissed because of Mr. Hart's
12 cooperation; is that correct?

13 MR. RIESEN: That is correct.

14 THE COURT: Is that your understanding, Mr.
15 Smiley?

16 MR. SMILEY: That's my understanding.

17 THE COURT: Based upon the argument of counsel,
18 the Court finds that the information is directly
19 relevant as to the bias of Mr. Hart. On cross-
20 examination, there needs to be open and full
21 examination. The State did not show that this cross-
22 examination would be inappropriate. I am going to
23 allow the examination of Mr. Hart as stated by Mr.
24 Smiley to be articulated along those lines, indicating
25 the punishment range.

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1 Mr. Smiley, based upon what Mr. Riesen has
2 indicated, the trafficking is a five to thirty so
3 please be careful during your inquiry that you also
4 indicate that it's a five- to thirty-year punishment.

5 The evidence presented was that Mr. Hart pled
6 and that the statements were -- or that the charges
7 were dropped and pursuant to his cooperation.

8 The Court will in the final charge on the law,
9 indicate to -- and this will be the limiting
10 instruction that I give: [reading] you have heard
11 testimony in this case as to the potential penalty for
12 the crimes with which the defendant has been charged.
13 This evidence was admitted for the sole purpose of
14 allowing you to assess the credibility of the witness
15 who testified to the potential penalties and it may not
16 be considered by you for any other purpose. The proper
17 punishment for a crime is a matter for the Court to
18 determine. Other than as I just explained, you may not
19 consider the penalty the defendant faces with the
20 crimes with which he has been charged in any way in
21 determining whether or not the State has met its burden
22 of proof.

23 Anything further from the State, Mr. Riesen?

24 MR. RIESEN: No, ma'am.

25 THE COURT: Mr. Smiley?

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1 MR. SMILEY: No, ma'am.

2 THE COURT: All right. Bring in the jury.

3 Thank you.

4 [Whereupon, the jury enters the courtroom at
5 2:52 p.m.]

6 THE COURT: Please be seated.

7 Mr. Skidmore, you are the alternate so I need
8 you to have a seat up in the chair right there. Thank
9 you.

10 I'm sorry. Please be seated.

11 Ms. Drayton, you have been chosen as the
12 foreperson in this trial. Thank you.

13 Ladies and gentlemen, the case that we are,
14 again, about to try is the case of the State vs.
15 Stanford Brown. Before we begin this trial, I just
16 want to tell you that this trial probably will be
17 different from what you may expect. Most people do not
18 often have the chance to attend actual court sessions
19 as you are doing now and many think from watching
20 television or movies or reading in books that trials
21 are full of high drama, intense action and riveting
22 circumstances. While all of these things may be true
23 at times during this trial, it is important that you
24 understand that this trial is not for your
25 entertainment.

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1 It is not for entertainment. It is a
2 fundamental part of our democracy. It is a search for
3 the truth in an effort to make sure that justice is
4 done between the parties before the Court. Searching
5 for the truth is often slow, deliberate and repetitive,
6 the opposite of what you may have seen on television or
7 in movies or have read in books.

8 This courtroom is a place of honor dedicated to
9 the protection and preservation of citizen's rights
10 through what many have called the greatest justice
11 system ever created. The attorneys appearing before
12 you are advocates for the parties they represent, but
13 first and foremost they are officers of this Court.
14 They are sworn to uphold the integrity and fairness of
15 our judicial system and to help you in your search for
16 the truth. You should expect the attorneys to be
17 professional, competent, and ethical in the
18 representations of their clients' interests.

19 Madam Clerk, please swear the jury.

20 THE CLERK OF COURT: Defendant, please rise.

21 [Whereupon, Mr. Brown complies]

22 THE CLERK OF COURT: Ladies and gentlemen of the
23 jury, would you please stand and raise your right hand
24 to be sworn.

25 [Whereupon, the jury is duly sworn by the clerk.

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1 of court as follows: do you swear or affirm that you
2 shall well and truly try and a true deliverance make
3 between the State of South Carolina and the defendant
4 at the bar who you shall have in charge, and a true
5 verdict render according to the evidence and the law,
6 so help you God]

7 THE CLERK OF COURT: You may respond by saying,
8 I will.

9 [Whereupon, jurors comply]

10 THE CLERK OF COURT: You may be seated.

11 THE COURT: Under the oath that you just took,
12 you are also expected to be professional, reasonable
13 and ethical. And, again, thank you for accepting the
14 most important responsibility of jury service, as well
15 as for your contribution today to our justice system.

16 What I will now say is intended to serve as an
17 introduction to the trial of this case. These remarks
18 are not a charge on the law. I will instruct you on
19 the law applicable to this case at the end of the trial
20 before you retire to consider your verdict. This is
21 merely an explanation of the procedure that we will
22 follow in this trial so that you may better understand
23 what will be happening.

24 The defendant is charged with an indictment. He
25 is charged with trafficking cocaine base and

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1 distribution of cocaine base within a proximity of a
2 school, the elements which will be explained to you
3 later. The indictment is simply the charge by which
4 the case is brought into court. It is not in any sense
5 evidence of the allegations it contains. The defendant
6 has pled not guilty to this indictment. The State
7 therefore has the burden of proving each of the
8 elements of the indictments beyond a reasonable doubt.
9 It will be your duty, ladies and gentlemen, to decide
10 whether the State has met that burden.

11 Your purpose as jurors here today is to find and
12 to determine the facts. You are the sole judge of the
13 facts. And, ladies and gentlemen, as you noticed when
14 you walked in, just as when I walk into the courtroom
15 everybody stood: when you walk into the courtroom, in
16 respect to your new position as judge of the facts, the
17 attorneys and members of the audience will rise. So
18 please come in, have a seat, because they will remain
19 standing until you are all seated.

20 If at any time -- please understand that if I
21 make a comment regarding the facts, you must disregard
22 it. You are to determine the facts from the testimony
23 you hear and any other evidence that is introduced in
24 court. It is up to you to determine the inferences
25 which you feel may be properly drawn from the evidence.

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1 It is especially important that you perform your duty
2 of determining the facts diligently and conscientiously
3 because ordinarily there is no way to correct an
4 erroneous determination of facts by a jury.

5 On the other hand, and with equal emphasis, the
6 same law that makes you the judges of the facts makes
7 me the judge of the law. The law as given by this
8 Court is the only law that you may consider. You must
9 accept it and follow it even though you may disagree
10 with it. I cannot tell you what I think the facts are
11 and you cannot disagree with me about what the law is
12 or what the law should be.

13 Your job is to take the law as I give it to you,
14 apply the facts as you find them from the testimony of
15 the witnesses and any other evidence that is
16 introduced. After doing that, you will render your
17 verdict, a true and just verdict, under the solemn oath
18 that you just took as jurors.

19 Until I advise you to begin your deliberations,
20 you must not discuss this case with anyone. That
21 includes your fellow jurors, friends, family members,
22 and anyone involved in this case. After this case is
23 submitted to you, you must discuss it only in the jury
24 room and only with your fellow jurors. The attorneys
25 and the parties in this case have been advised that

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1 they are not to talk to you at all. If you see anyone
2 involved in this case and they do not even say hello,
3 they are not being unfriendly, they are just following
4 my instructions.

5 During the trial do not read, listen to, or
6 watch any news reports about this case. This includes
7 anything that may be in newspapers, on the Internet,
8 radio or television. You do not do any independent
9 investigations. You must not consider anything that
10 you may have read or heard about this case outside of
11 the courtroom, whether before or during this trial.

12 It is very important that you keep an open mind
13 and not decide any issue in this case until all of the
14 evidence has been presented, the parties have made
15 their closing arguments, and I have instructed you on
16 the law in this case. It is your solemn responsibility
17 to determine guilt or innocence of the defendant, and
18 your verdict must be based solely on the evidence that
19 is presented during this trial and on the law as I
20 instruct you during and at the close of the trial.

21 In just a moment the solicitor will make what is
22 called an opening statement in which the solicitor will
23 explain to you the issues in this case, or at least
24 what the solicitor thinks the issues are. The attorney
25 for the defendant may also make an opening statement,

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1 although he is not required to do so. What the
2 attorneys tell you during their opening statements is
3 not evidence in this case. It is only their contention
4 as to what they think the issues are.

5 The evidence in this case will be presented to
6 you by the testimony of sworn witnesses from the
7 witness stand and by any exhibits that may be
8 introduced into evidence. From time to time you may
9 hear one of the lawyers say something like, Your Honor,
10 I believe we have a question of law or a matter of law
11 to discuss with you. Or sometimes I might find it
12 necessary to excuse you from the courtroom for a while
13 so the attorneys and I can discuss a matter of law.
14 The reason for this is because you are the judges of
15 the facts and I am the judge of the law. Sometimes it
16 is necessary for me to make a comment regarding the
17 facts of this case in order to issue my ruling. I am
18 not supposed to tell you what I think the facts are, so
19 I will excuse you from the courtroom while these
20 discussions take place so that in no way will you be
21 influenced by anything that I might say or do in
22 connection with the facts.

23 In determining what the true facts are in this
24 case, you must decide whether or not the testimony of
25 the witnesses is believable. It will be my

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1 responsibility to rule as a matter of law whether
2 certain testimony is admissible at all or whether it is
3 not admissible, but once the testimony is admitted,
4 whether or not you believe it is solely for you to
5 determine. In deciding whether to believe a witness,
6 you have the right to consider the interest of any
7 witness, the bias of any witness, the prejudice of any
8 witness, the opportunity for the witness to have seen
9 the matters and things about which the witness may
10 testify, as well as the way the witness acts on the
11 witness stand. You have a right to consider anything
12 that is in the record that will help you evaluate the
13 testimony of the witnesses. That means it's your duty,
14 ladies and gentlemen, to pay close attention to these
15 witnesses, to observe the witnesses, to listen to the
16 witnesses, and to pay close attention to the attorneys
17 and to the Court. Please do not let your thoughts
18 wander but your strict attention to the testimony so
19 that at the end of the testimony after the arguments of
20 counsel and the charge of the law by the Court, you
21 will then be in a position to determine what the true
22 facts are and to apply the law to those facts, thus
23 rendering a true and just verdict.

24 It will be your added duty, Madam Foreperson, to
25 preside in the jury room, as well as be the jury

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1 spokesperson here in court. It will also be your duty
2 to write the verdict, but I will give you further
3 instructions on that at the conclusion of the case.

4 Ladies and gentlemen, we typically will run
5 until about 5:00, 5:15, and recess for the evening,
6 resuming back about 9:15. We will take our lunch -- we
7 will take a midmorning break and a mid-afternoon break,
8 and we will break as close to noon as possible, keeping
9 in mind that if there's a witness on the stand we will
10 -- I will allow that witness to finish. And that is,
11 of course, always subject to change. But just to give
12 you some idea, we will not be going late into the
13 evening this evening, and we will -- again, before we
14 recess, I will let you know what time. We, of course,
15 will be back in the morning.

16 And so please now give attention. The solicitor
17 will make his opening statement.

18 Mr. Riesen?

19 MR. RIESEN: Thank you, Your Honor. May it
20 please the Court.

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OPENING STATEMENT

MR. RIESEN: Ladies and gentlemen, as you heard earlier, this case is about drugs. It's not about a simple possession or someone getting caught using them. It's about dealing. More importantly, it's about trafficking drugs.

You're going to hear from someone by the name of Detective Mark Brown, who is with the Hanahan Police Department. And Mark Brown is going to tell you about he arrested someone by the name of Cory Hart and he arrested him in early 2007. He arrested him on trafficking charges, as well, and he made an offer to him that if you cooperate and help us make a buy, we'll work with you on the charges.

Detective Brown is going to explain that this happens all the time. This is how officers get the bigger fish. They start down at the bottom, they bust the lower-level people and they slowly work their way up, and not just in this police department but in police departments across the country. That's how it was done. That's what was done in this case.

Initially, the person who was busted -- again, his name is Cory Hart. He is known as a confidential informant. Cory was afraid to testify for us. He didn't want to be labeled a snitch, he didn't want

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1 people to find out, but eventually he decided he would.
2 And on May 4th, 2007, he agreed to make a buy. He
3 decided to make a buy from someone he knew well,
4 someone he grew up with on the street. That person was
5 the defendant, Stanford Brown. His nickname is Boobie.
6 All right?

7 On May 4th, 2007, Cory, the CI, met with
8 Detective Brown and Detective Tom Constanza, and they
9 met at a predetermined location and they fitted him
10 with a wire, which is what they do. They put this
11 audio transmission on him, and they gave him some
12 marked money. Okay?

13 They then took him to another spot where he got
14 into a cab. And this was being driven by an undercover
15 officer. However, Cory didn't know it was an
16 undercover officer. He got into the back, and he drove
17 to where the buy was going to take place. The buy was
18 going to be taking place in North Charleston. It's the
19 Hess location, which is on Remount and North Rhett.
20 I'm not too familiar with that area. But Detective
21 Brown and Constanza followed the defendant in this cab
22 to there and they set up surveillance about fifty yards
23 away in a parking lot.

24 Now, Detective Brown is going to testify to what
25 he saw that day, and he's going to testify that he sat

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1 there and as Cory sat in the back seat of the car his
2 phone ran. It was a call -- it was a call from the
3 defendant, said he was there. Detective Brown is going
4 to say that a white 2003 Chevy Impala pulled up and
5 pulled around. Immediately Cory, who recognized that
6 car -- because he's going to testify he had been in
7 that car numerous times before -- immediately got out
8 and walked across the parking lot. He then got into
9 the back seat. Okay? Detective Brown, because the
10 windows were tinted, couldn't see what was going on in
11 there so we've got to go by what the confidential
12 informant said.

13 The confidential informant is going to tell you
14 that when he got to the car, got in the back seat and
15 Boobie -- that's how he knows him -- was driving.
16 Boobie basically pulled out a piece of crack cocaine
17 and he broke it off and he put it on a digital scale
18 and weighed it -- it weighed out to about thirteen,
19 fourteen grams -- and he went to hand it to him. Cory
20 said, I need a plastic bag. He then gave him a plastic
21 bag. He took it in exchange for \$340 in prerecorded
22 money, and then he walked back to the vehicle, the
23 vehicle that he was in, the cab. Got back in the back
24 seat.

25 Now, at this point, Detective Brown could have

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1 made an arrest. But they didn't. This is what he's
2 going to describe as a buy-walk. The reason he didn't
3 is he didn't want to compromise the identity of the CI
4 He didn't want him to know what it was. Plus, he
5 needed to test the drugs and make sure they were, in
6 fact, crack cocaine. People sell fake stuff all the
7 time.

8 He then followed him to another predetermined
9 location, which was a school nearby, immediately
10 searched him, and got the drugs. Now, Detective Brown
11 is going to tell you he searched him high and low,
12 before he got in the cab and afterwards. There was no
13 way he couldn't have gotten the dope from anywhere but
14 in that cab. Okay?

15 Now, after that, the police five days later
16 decided they were going to make their arrest. So they
17 went to the defendant's home at [REDACTED] -- I've forgotten
18 the name of the street, but basically in North
19 Charleston. Okay? They went to his home and they
20 arrested him. And low and behold, what was there? A
21 2003 Chevy Impala. The officer did a search. Who was
22 it registered to? A Lashaunda Williams. She's the
23 defendant's common-law wife.

24 Basically, because of that the defendant -- and
25 the judge has already told you -- was charged with two

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1 things. And she is going to instruct you on the law.
2 She's the expert. But I'm just going to go over
3 briefly on what the charges are and what we require for
4 trafficking crack cocaine. Now, when you hear that,
5 what do you think of? You think of Miami Vice, Scar
6 Face, CSI, all this Hollywood stuff, mounds and piles
7 of crack cocaine. That's not reality, that's
8 Hollywood. Okay? Again, you're going to see a piece
9 that's broken off. But the State -- not me, not us,
10 but the legislature has mandated that if you are caught
11 with more than ten grams of crack cocaine, that is
12 considered trafficking. We didn't make that up.
13 That's what the legislature did. You're going to hear
14 from a chemical analyst up at SLED who tested the drugs
15 and said it weighed thirteen grams.

16 He was also charged with possession with the
17 intent to distribute within a half a mile of a school.
18 Again, the legislature has come up with this to prevent
19 dealing around schools. Okay?

20 You're going to hear from Detective Mark Brown
21 who testified that he did a MapQuest, he's driven it,
22 he's familiar with that area, he's been all over it, it
23 was less than a half a mile. That's why he was
24 charged.

25 Ladies and gentlemen, all I ask is that you

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1 listen to the testimony with your common sense. Judge
2 the credibility of the witnesses. Okay? Judge the
3 credibility of the CI, Judge -- and, most importantly,
4 listen to the officers. And if you do that, I am
5 convinced that you will find that the defendant is
6 guilty on both counts, trafficking crack cocaine and
7 possession with intent to distribute within a half a
8 mile of a school. Thank you.

9 MR. SMILEY: Please the Court?

10 THE COURT: Mr. Smiley.

11 - - - - -

12 OPENING STATEMENT

13 MR. SMILEY: I'm glad we don't have to convince
14 Mr. Riesen, because I don't think I would ever win a
15 case here.

16 This case is up to y'all. The State, the
17 government, has promised you a whole lot here. They
18 told you that Cory Hart got arrested, you're going to
19 hear about what he was arrested for, and the deal he
20 got, and that he agreed to get a bigger fish.

21 So, first, Stanford Brown was supposedly going
22 to be the bigger fish. So see if that's true. And
23 that he was afraid. See if that's true. And that he
24 finally agreed to do it and that he had known Stanford
25 a long, long time. That's what -- the CI is really

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1 going to be the heart of this case, this fellow,
2 criminal history, that you're going to hear from. He's
3 the only person that's going to call Stanford Brown's
4 name in this case. Nobody else is going to.

5 They said they've got an audio, so see if you
6 hear my client on that audio. See if you hear his
7 named called on that audio. They say they've got
8 marked money. See where that marked money is. They
9 told you that possessing more than ten grams of crack
10 cocaine is trafficking. See how much drugs they find
11 on Mr. Stanford Brown in this case.

12 They've got a video. You'll get to see it. You
13 see my client. Look for him on that video. Take a
14 good look at what's going on in that video, because I
15 think it will show you things don't match up.

16 This case is I guess -- you know, I like to
17 title a case in my mind, which is a good way to get
18 started. I think this case is full of assumptions. We
19 just go along and assume. Assume? We don't need to,
20 because the State is always going to assume they're
21 right. But that's not how it works here. In this case
22 y'all are the judges of the facts. The government's
23 job is to seek justice. The judge's job is to make
24 sure I don't mess up, but also to be the judge of the
25 law. My job is to take someone who has been accused of

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1 a crime -- in this case Mr. Stanford Brown, who's
2 presumed innocent, and to zealously represent him, keep
3 that presumption of innocence around him until and if
4 the State of South Carolina, the government, can remove
5 it.

6 This isn't assumptions. This is facts. This is
7 evidence. What can they put in front of you. I mean,
8 I'll show you assumption. See if they can prove that
9 white Impala is his wife's. How are they going to do
10 that? See who testifies about it. Just little things.
11 I don't know if that's important in this case. You'll
12 be the ones to determine. But the little things. Just
13 don't assume.

14 You are picked because you don't know anything
15 about this case. So you have a clean slate. Y'all
16 start off with a clean slate. You actually start off
17 sitting over there next to my client, because he's
18 presumed innocent. He's a citizen, just like you. And
19 the State has the burden and so y'all come over here,
20 figuratively, and y'all sit with him in his
21 presumption, in his innocence. He says he didn't do
22 it. They have to prove he did, and they have to prove
23 that beyond a reasonable doubt. They have to take the
24 assumptions out of it. They don't have to prove it to
25 half way like in civil court. They've got to prove it

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1 beyond a reasonable doubt. They've got to move it all
2 the way over. Not beyond any doubt. That's -- you
3 know, I'm not saying anything is certain. Beyond a
4 reasonable doubt.

5 Stanford Brown is an innocent man, and I don't
6 believe the State is going to be able to produce the
7 evidence in this case to remove any presumption. It's
8 not possible. He didn't do the deal.

9 Thank you for your attention. It's not going to
10 be a long trial. It probably won't be one to sleep in,
11 either. It's going to be happening pretty quick. And
12 at the end of it, weigh that evidence and see if the
13 State has met their burden. I submit to you that there
14 won't be but one verdict in this case, and that verdict
15 is going to be not guilty. Thank you.

16 THE COURT: Mr. Riesen?

17 MR. RIESEN: Thank you, Your Honor.

18 The State calls Marvin Hancock.

19 [Whereupon, Mr. Hancock enters the courtroom]

20 THE CLERK OF COURT: Place your left hand on the
21 Bible, raise your right hand.

22 [Whereupon, Mr. Hancock is duly sworn by the
23 clerk of court as follows: do you swear or affirm that
24 the testimony that you shall give this Court and jury
25 in the trial of this case shall be the truth, the whole

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1 truth, and nothing but the truth, so help you God]

2 THE WITNESS: I do.

3 THE CLERK OF COURT: Thank you, sir. Please be
4 seated.

5 [Whereupon, Mr. Hancock takes the witness stand]

6 THE CLERK OF COURT: For the record, please
7 state your name and spell your last name.

8 THE WITNESS: Marvin Nicholas Hancock, H-A-N-C-
9 O-C-K.

10 THE COURT: Mr. Riesen.

11 MR. RIESEN: Thank you. Good afternoon, Mr.
12 Hancock.

13 - - - - -

14 MARVIN N. HANCOCK,

15 Having Been First Duly Sworn,
16 was Examined and Testified as Follows:

17 DIRECT EXAMINATION

18 BY MR. RIESEN:

19 Q. Where are you employed?

20 A. The Charleston County Detention Center.

21 Q. And how long have you been with the Charleston
22 County Detention Center?

23 A. About seven and a half years.

24 Q. And can you please describe for the jury what
25 your duties are there.

MIA PERRON, CCR, CVR-CM

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1 A. I am the head cashier.

2 Q. When you say head cashier, what does that
3 entail? What all do you do?

4 A. Well, a primary part of my duties is collating
5 the cash intake from the various sources in the jail and
6 depositing them in the bank; I do a lot of other
7 paperwork; and I'm also the custodian of the telephone
8 records system.

9 Q. Now, as custodian of records, do you handle all
10 the subpoenas that are sent to you for those records?

11 A. Yes.

12 Q. And as part of the records system there at the
13 detention center, does the detention center have a
14 recording system in place that records all the calls made
15 by inmates that are housed there?

16 A. Yes.

17 Q. And could you explain to the jury how that
18 recording system works.

19 A. When an inmate is booked into the facility as
20 part of the identification process where their
21 fingerprints and photos are done, they are given a pin
22 number on a piece of paper that tells them how to use the
23 telephone system. And that pin number is associated with
24 that inmate, while they're at the facility, and their
25 inmate number. Whenever they attempt to make a phone

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1 call, the system will record the date and time of the
2 phone call attempt and the results. If it's a phone call
3 to someone -- if the phone call is completed, and it's not
4 to their attorney, the phone call is recorded.

5 Q. Okay. And for the people that are housed at the
6 same time, is that a unique pin number?

7 A. It is unique within all of the inmates within
8 the facility at that time.

9 Q. On May 11th was the defendant, Stanford Brown,
10 in the detention center?

11 A. Yes.

12 Q. And do you know his inmate number?

13 A. 70907, I believe.

14 Q. Okay. Now, are inmates advised that their calls
15 are going to be recorded when they place their calls?

16 A. Yes. When they receive their pin number, right
17 above where the number is written on that instruction
18 sheet, in large bold print it says that their phone calls
19 will be recorded. They receive a set of rules and
20 regulations for the facility for inmates, and it describes
21 the telephone system and that the calls are being
22 recorded. That's posted within the units near the
23 telephones, or right above the telephones, that their
24 calls are being recorded. And in addition, when they make
25 a telephone call, before they're even allowed to speak, it

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1 announces that the telephone call will be recorded and
2 then later in the call it also announces it again.

3 Q. Now, does the detention center -- these
4 recordings that you speak of, are they maintained in the
5 ordinary course of business?

6 A. Yes.

7 Q. And are the recordings made at a time when the
8 conversations actually take place?

9 A. Yes.

10 Q. And did you receive a subpoena from my office in
11 February of this year in relation to Stanford Brown's
12 calls?

13 A. Yes.

14 Q. And were you the custodian of records at the
15 jail during that time?

16 A. Yes, I was.

17 Q. And did you comply with that subpoena?

18 A. Yes, I did.

19 Q. And what type of -- when we request these calls
20 from you, I assume you retrieve them from a computer
21 system; is that correct?

22 A. Yes.

23 Q. And how do you retrieve them?

24 A. Well, I log into the system. It's a secure
25 system. Essentially, what I create is an inquiry into the

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1 database based on an inmate's unique inmate number -- not
2 their pin number but their name and their unique number,
3 and the dates that the telephone calls are being requested
4 for. It will download a call log of all the calls. And
5 once that's done, I print out the log and I also download
6 the telephone calls and burn them onto a CD ROM.

7 Q. Okay. And this CD ROM that you burn them onto,
8 can it be altered or tampered with?

9 A. No, it cannot.

10 MR. RIESEN: May I approach, Your Honor?

11 THE COURT: You may.

12 Q. [Mr. Riesen] I'm handing you what's been marked
13 as State's Exhibit Number 1 for identification. Tell me
14 if you recognize this.

15 A. This is the CD ROM that I put Stanford Brown's
16 phone calls onto.

17 Q. And how do you -- how do you know that that's
18 the one you put his phone calls onto?

19 A. It's my handwriting and my initials down at the
20 bottom.

21 Q. Are the conversations recorded on that CD a true
22 and exact copy of the original recordings maintained at
23 the detention center?

24 A. Yes.

25 Q. Did you alter or edit those recordings in any

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1 way?

2 A. No.

3 MR. RIESEN: Your Honor, I think at this time we
4 would like to offer State's Exhibit 1 into evidence.

5 MR. SMILEY: A matter for the Court, Your Honor.

6 THE COURT: All right. Counsel approach.

7 [Whereupon, an off-the-record bench conference
8 is held]

9 THE COURT: State's 1 into evidence over your
10 objection, Mr. Smiley.

11 [State's Exhibit Number 1, CD of phone calls, is
12 admitted into evidence by the Court]

13 THE COURT: Mr. Riesen.

14 MR. RIESEN: Thank you, Your Honor.

15 Q. [Mr. Riesen] Now, I think you mentioned this
16 earlier, but I just want to clarify. When you burned the
17 CD, did you prepare a computer printout which itemizes the
18 recorded calls made by the defendant?

19 A. Yes.

20 MR. RIESEN: And may I approach, Your Honor?

21 THE COURT: You may.

22 [Whereupon, Mr. Riesen and Mr. Smiley confer]

23 Q. [Mr. Riesen] I'm handing you what's been
24 previously marked as State's Exhibit Number 2 for
25 identification. Do you recognize that?

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1 A. Yes.

2 Q. And what is that?

3 A. This is a printout of the inmate's call records.

4 Q. Okay. And could you just describe for the jury
5 briefly what that is? I'll put it up on the Elmo in a
6 second. But can you describe what that entailed? what
7 you're looking at there?

8 A. Well, each line on this report lists an attempt
9 to use the telephone system by the inmate. It lists the
10 date and time of the phone call, where the phone call came
11 from in the jail, his inmate ID, 70907, the telephone
12 number that he called, when he started attempting to use
13 the phone system. If the call was completed, it does list
14 how long the call lasted.

15 Q. Okay. And is that a true and exact copy of the
16 printout you made at the time you burned that CD?

17 A. Yes.

18 Q. And does the detention center also maintain
19 these within the regular course of business?

20 A. Yes.

21 MR. RIESEN: Your Honor, at this time we would
22 move State's Exhibit Number 2 into evidence, and ask
23 that it be published.

24 MR. SMILEY: Subject to the same objection, Your
25 Honor.

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1 THE COURT: State's 2 into evidence over your
2 objection. Thank you.

3 [State's Exhibit Number 2, call log, is admitted
4 into evidence by the Court]

5 MR. RIESEN: I'm just going to direct your
6 attention to it.

7 [Off the record momentarily]

8 Q. [Mr. Riesen] All right. Now, at the top there,
9 can you just -- I know you explained this to the jury, but
10 so they can see it now. I know it's kind of hard because
11 it's small, but I'll try to zoom in a little more. Can
12 you just explain to them what the categories are?

13 A. Okay. It is really hard to read.

14 Q. Is it hard to see from there?

15 MR. RIESEN: Your Honor --

16 A. This is the inmate ID.

17 Q. [Mr. Riesen] Okay.

18 A. This is the telephone number that was called,
19 this is the start date and time, and this is the length of
20 the telephone call.

21 Q. Okay. And who is that associated with, that
22 call? Who made that call?

23 A. Stanford Brown. You can just read it here.

24 Q. Now, there's three other highlighted areas. Is
25 that the same -- all made by the same person?

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1 A. Yes.

2 Q. And were they made on the same day?

3 A. That I can't tell from this.

4 Q. You can't?

5 [Whereupon, the witness reviews documents]

6 A. Okay. Yes. They were all -- they were all made
7 on the 11th of -- I can't read the month.

8 Q. [Mr. Riesen] Okay. Anyway, that's basically --
9 it says '07; is that correct? May 11th of 2007?

10 A. Yes.

11 MR. RIESEN: Your Honor, I believe that's all I
12 have for this witness.

13 Please answer any questions Mr. Smiley may have.

14 THE COURT: Mr. Smiley?

15 CROSS-EXAMINATION

16 BY MR. SMILEY:

17 Q. Now, the business of the jail is not collecting
18 phone records, it's housing inmates; right?

19 A. Yes.

20 Q. Okay. But y'all report every phone call that
21 goes out; right?

22 A. Yes, we do.

23 Q. Okay. And, now, he showed you what's been
24 marked State's Exhibit Number 2. And this is just one
25 page of calls; right?

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1 A. Yes.

2 Q. Do you -- did you give them all the calls he
3 made?

4 A. I don't remember the exact dates that he asked
5 for. I gave him the date period listed in the subpoena.

6 Q. It was a lot more than that; right?

7 A. Well, it should say how many pages, but it
8 doesn't.

9 Q. It doesn't say how --

10 A. But there would be more pages to it. That's
11 definitely not the first page.

12 Q. Okay. And so these calls are collected and put
13 in some kind of digital media? A computer?

14 A. They're in the database, yes.

15 Q. All right. And they just stay there, right,
16 unless they are requested by some agency to be listened
17 to; right?

18 A. Either by an agency, or we listen to them
19 internally for security reasons.

20 Q. Okay. Most often they're used in the courtroom,
21 though; correct?

22 A. Most of the time that I know of. I mean, most
23 of my contact with the phone system is for court
24 subpoenas.

25 Q. Attorneys, prosecutors, asking for those?

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1 A. Attorneys, defense attorneys, prosecutors,
2 police officers.

3 Q. For court; right?

4 A. Or investigations, yes.

5 Q. Or litigation. Yeah. Okay.

6 So as the custodian, once that pin number is
7 handed out, you get a subpoena and you pull it off the
8 computer. But you don't listen to them, you just pull it
9 off and it sends it off; right? You, yourself.

10 A. Correct. I'll look at the very first and last
11 one on the CD, just to make sure that it comes up and
12 starts tracking, but I don't hear any of the conversation.

13 Q. Okay. And you don't know how many phone
14 conversations you pulled off in regards to this case?

15 A. No. If you load the CD, it will tell you how
16 many phone calls are on the CD. That would be -- that
17 would be how many.

18 Q. Now, this pin number that you give to an inmate,
19 is it -- in your experience being there for seven years,
20 have inmates given their pin numbers to other inmates to
21 use?

22 A. It has happened, in which case we change their
23 pin number and they are disciplined.

24 Q. If you are aware of it, of course.

25 A. It does happen on occasion.

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1 Q. Okay. Now, on here, when you gave them this
2 sheet those three calls weren't highlighted? You just --
3 you didn't highlight anything; you sent the calls -- the
4 records, and that's all you did with it; right?

5 A. Correct. I don't highlight anything.

6 Q. I understand. I'm just making sure the jury
7 understood that.

8 Are you the only one with access?

9 A. No.

10 Q. Who else has access?

11 A. My lieutenant, Lieutenant Tice; my captain,
12 Captain Smith; and Major Baetty.

13 Q. All right. Whenever you log into the system, is
14 there a log made of everybody that's accessed the system?

15 A. Yes. There's -- it keeps a log of who accesses
16 the system and what they do. There are other people who
17 access the phone system, but they don't access the archive
18 records like I do; and, likewise, I don't have access to
19 the parts that they access.

20 Q. All right. When you're provided the subpoena,
21 did you provide a log of access to anyone?

22 A. No, I don't. I have no access to that.

23 Q. All right. Now, and lastly, when someone who
24 has the pleasure of staying at your facility is there and
25 they're given their pin number, you say that every time

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1 they make a phone call that they are told this phone call
2 is recorded, anything you say is going to be recorded,
3 something to that effect; right?

4 A. Uh-huh.

5 Q. So if you're there for a little while, every
6 time you use the phone you're reminded this phone call is
7 being recorded; right?

8 A. Correct. Yes.

9 Q. So there's no doubt. You know everything you're
10 saying is going to be recorded somewhere; right?

11 A. Uh-huh.

12 Q. Unless it's to an attorney?

13 A. If it's to an attorney, the phone call is not
14 recorded. That recording does not come up.

15 Q. Because the attorney has sent in something ahead
16 of time that blocks that number so it won't record --

17 A. Yes. If --

18 Q. -- is that right?

19 A. If an attorney sends us a request on their own
20 letterhead saying that, I'm an attorney, these are my
21 numbers, those numbers are entered into the system and it
22 automatically knows when those numbers are called, don't
23 record the phone call.

24 Q. But otherwise, the person making that phone call
25 knows that everything he is saying is going to be

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1 recorded; right?

2 A. Yes.

3 MR. SMILEY: Beg the Court's indulgence.

4 THE COURT: Yes, sir.

5 [Whereupon, Mr. Smiley and Ms. Hensley confer]

6 MR. SMILEY: Nothing further.

7 THE COURT: Mr. Riesen?

8 MR. RIESEN: Yes, ma'am. Just one follow up.

9 REDIRECT EXAMINATION

10 BY MR. RIESEN:

11 Q. You said that other people can use the --
12 potentially sometimes use the pin number?

13 A. If they share the pin number with someone else,
14 yes.

15 Q. And that means throughout the jail? Can you go
16 do that throughout the jail?

17 A. No. When an inmate is assigned to a specific
18 unit within the jail management system, it ties in with
19 the phone system and that -- then they can no longer go
20 somewhere else and make a phone call.

21 Q. So it has to be in that specific location where
22 they have to make the call from?

23 A. Yes. If you're in unit 1-B and you somehow are
24 down in the booking department, you can't pick up a
25 booking phone and use it --

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1 Q. Okay. Thank you.

2 A. -- and vice versa.

3 MR. RIESEN: Thank you.

4 MR. SMILEY: I've got a question now.

5 RECROSS-EXAMINATION

6 BY MR. SMILEY:

7 Q. But you have a lot of people in 1-C, right,
8 or -- it's not like there's two or three --

9 A. Correct.

10 Q. -- right?

11 A. Yes.

12 Q. And so it could be, what, a couple hundred
13 people in those pods --

14 A. Not -- no, not quite that many.

15 Q. But there are certainly at least a hundred;
16 right?

17 A. Certainly currently at least 150 people.

18 Q. Yeah. There's a bunch of people, in other
19 words; right?

20 A. Yes.

21 MR. SMILEY: Okay. That's all I have.

22 THE COURT: You may step down.

23 [Whereupon, Mr. Hancock is excused and exits the
24 witness stand]

25 THE COURT: May he be excused from the

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1 courthouse? Any objections?

2 MR. SMILEY: Unless he needs to be called in
3 relation to my motion.

4 THE COURT: Deputy, if you will please have a
5 seat in the courtroom --

6 MR. SMILEY: Yeah.

7 THE WITNESS: Okay.

8 THE COURT: -- until I release you. Thank you.
9 Mr. Riesen, call your next witness.

10 MR. RIESEN: The State calls Detective Mark
11 Brown.

12 [Whereupon, Mr. Brown enters the courtroom]

13 THE CLERK OF COURT: Place your left hand on the
14 Bible and raise your right hand.

15 [Whereupon, Mr. Brown is duly sworn by the clerk
16 of court as follows: do you swear or affirm that the
17 testimony that you shall give this Court and jury in
18 the trial of this case shall be the truth, the whole
19 truth, and nothing but the truth, so help you God]

20 THE WITNESS: I do.

21 THE CLERK OF COURT: Thank you, sir. Please be
22 seated.

23 [Whereupon, Mr. Brown takes the witness stand]

24 THE CLERK OF COURT: For the record, please
25 state your name and spell your last name.

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1 THE WITNESS: Detective Mark Brown. Last name
2 spelling, B-R-O-W-N.

3 THE COURT: Mr. Riesen.

4 MR. RIESEN: Thank you, Your Honor.

5 - - - - -

6 MARK BROWN,

7 Having Been First Duly Sworn,
8 was Examined and Testified as Follows:

9 DIRECT EXAMINATION

10 BY MR. RIESEN:

11 Q. Detective Brown, where are you employed?

12 A. Hanahan Police Department.

13 Q. And how long have you been with the Hanahan PD?

14 A. Four years.

15 Q. Can you please describe your duties with the
16 Hanahan Police Department?

17 A. My duties with the Hanahan Police Department are
18 to investigate narcotics complaints within the city of
19 Hanahan as well as Charleston County.

20 Q. And can you just let the jury know briefly what
21 your educational background is, whatever training and
22 experiences you have.

23 A. I graduated with my bachelor's degree from
24 Hampton University; I also have my master's degree in
25 criminal justice from Charleston Southern University; I

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1 have training certificates for undercover operations,
2 practical issues for narcotics officers -- for narcotics
3 officers, as well as surveillance operations.

4 Q. And with the Hanahan Police Department do you
5 have the opportunity to work with the Charleston County
6 Sheriff's Department?

7 A. Yes. We have a metro agreement with the
8 Charleston County Sheriff's Office.

9 Q. And just can you explain for the jury what this
10 -- what you mean by a metro agreement, so they understand.

11 A. A metro agreement with the Charleston County
12 Sheriff's Office allows a representative from Hanahan,
13 myself, to go over to the Charleston County Sheriff's
14 Office and investigate and work narcotics cases within
15 the -- within Charleston County, and it allows the
16 Charleston County Sheriff's Office deputies to investigate
17 and work narcotics cases in the city of Hanahan.

18 Q. Let's go back to May 4th, 2007. Were you
19 employed by the Hanahan Police Department on that day?

20 A. Yes.

21 Q. And did you work with the CCSO, or the
22 Charleston County Sheriff's Office metro unit that day?

23 A. Yes.

24 Q. Were you involved in a controlled purchase of
25 some crack cocaine from the defendant on May 4th of '07?

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1 A. Yes.

2 Q. Where did this purchase take place?

3 A. 1201 Remount Road, the Hess station at the
4 corner of Remount Road and North Rhett Avenue.

5 Q. Is that in Charleston County?

6 A. Yes.

7 Q. And who made the controlled purchase?

8 A. Confidential informant number 1010.

9 Q. Okay. And we're going to go in a second to
10 1010. But what is that CI, confidential informant's,
11 name?

12 A. Cory Hart.

13 Q. Now, how did you come to work with Cory?

14 A. In May of two thousand and -- correction. In
15 March of 2007, I arrested Mr. Hart for drug charges.

16 Q. And did you meet with him -- prior to the
17 controlled purchase --

18 A. Yes.

19 Q. -- did you meet with him?

20 A. Yes.

21 Q. And approximately how many times?

22 A. Approximately six times.

23 Q. Now, is it uncommon to use someone you've
24 arrested, and has pending charges with, in a subsequent
25 buy?

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1 A. No.

2 Q. Why not just use an undercover officer?

3 A. It's hard to use undercover officers to purchase
4 substantial weight from drug dealers.

5 Q. Why is that?

6 A. Because drug dealers tend to trust other drug
7 dealers. They trust somebody they known -- they've known,
8 they've dealt with several times before, and an undercover
9 officer doesn't have that advantage right off the bat.

10 Q. Okay. So when you arrest someone and you ask
11 them to cooperate, what's your goal? Why are you asking
12 them to cooperate?

13 A. My goal is to get to their supplier, and then to
14 get to their supplier's supplier, and work my way up
15 through the chain.

16 Q. Okay. And is that what you were doing in this
17 case?

18 A. Yes.

19 Q. Now, initially did Cory, the CI, want to
20 cooperate with you?

21 A. No.

22 Q. Why not?

23 A. Scared for the -- scared for his own safety.

24 MR. SMILEY: Objection, Your Honor.

25 THE COURT: Basis?

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1 MR. SMILEY: Hearsay, speculation, either way.

2 THE COURT: Sustained as to hearsay.

3 MR. RIESEN: Okay.

4 Q. [Mr. Riesen] Why were you given -- why did you
5 give the confidential informant number 1010?

6 A. To protect their identity, initially.

7 Q. Any other reasons --

8 A. No.

9 Q. -- other than to protect their identity?

10 A. No.

11 Q. Can you explain to the jury what CI is and how
12 it works?

13 A. When we arrest somebody, we offer them the
14 opportunity to cooperate as a confidential informant.
15 Once they agree to cooperate as a confidential informant,
16 we meet with them with another detective, we take their --
17 we take down all their information, name, date of birth,
18 social security number, charges pending, vehicles, home
19 addresses, telephone numbers, thumb prints, as well as a
20 picture, and we put that into what's called a confidential
21 informant packet. Also, in this packet they have a code
22 of conduct for confidential informants. I can't quote it
23 verbatim but the gist of the code of conduct says that
24 they are not to carry weapons, they are not law
25 enforcement officers, they are subject to search any time

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1 they meet with law enforcement officers, also that their
2 vehicle is subject to search any time they meet with law
3 enforcement officers, they are not to set up innocent
4 people but only to act in -- only to deal with those
5 already committing criminal acts.

6 MR. SMILEY: Objection, Your Honor. May we
7 approach?

8 THE COURT: You may.

9 [Whereupon, an off-the-record bench conference
10 is held]

11 THE COURT: Overruled.

12 Q. [Mr. Riesen] Now, you stated earlier that Cory,
13 the CI, eventually cooperated; is that correct?

14 A. Yes.

15 Q. And what day -- is this May 4th of '07?

16 A. Yes.

17 Q. Can you explain how this controlled purchase
18 took place?

19 A. Yes, sir. On May 4th, 2007, at about 5:30 p.m.,
20 we had an operations briefing at our metro office. During
21 our briefing we assigned surveillance positions, a
22 reaction team, as well as undercover positions.

23 At about 6:05 that same day, myself and
24 Detective Constanza picked up Mr. Hart from the Hess
25 station at Dorchester Road and Kent Avenue. After we met

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1 with Mr. Hart there, we drove to Bushkirk Avenue and
2 Remount Road, at which time we searched Mr. Hart. After
3 we searched Mr. Hart very thoroughly, just shy of a strip
4 search, he was then given prerecorded funds, which about
5 \$340, and an audio transmitter, and placed into a taxicab,
6 which was driven by Detective Huper who was acting in an
7 undercover capacity.

8 Q. All right. Let's stop right there for a second
9 and kind of break this down a little bit. I know that's a
10 lot for the jury to digest.

11 First you said you searched him --

12 A. Yes.

13 Q. -- just short of a strip search.

14 A. Yes.

15 Q. Can you tell us exactly where you searched him?

16 A. We searched his crotch area, his belt line, all
17 the pockets on his pants, hair, hat, underneath his shirt,
18 in between his buttocks.

19 Q. Shoes?

20 A. Shoes, as well.

21 Q. Okay. Now, you also stated that he was given
22 prerecorded funds. What are prerecorded funds?

23 A. Prerecorded funds are money that we photocopy on
24 a copy machine to record their denomination and serial
25 number.

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1 Q. Okay. So basically just photocopying --

2 A. Yes.

3 Q. -- the money?

4 And I believe you said you -- did you equip him
5 with some audio?

6 A. Yes, sir.

7 Q. All right. And you said that he was driving
8 a -- he was placed in a taxicab driven by an undercover
9 officer?

10 A. Yes.

11 Q. Did he know that the driver of that taxicab was
12 an undercover officer?

13 A. No.

14 Q. Okay. What happened next?

15 A. After Cory was placed in the cab, myself and
16 Detective Constanza followed the cab to 1201 Remount Road,
17 on the opposite side of the Hess station closest to North
18 Rhett. We set up visual surveillance in the Food Lion --
19 in the adjacent Food Line parking lot near the Hardee's
20 restaurant.

21 Q. Okay. Now, how far away were you with your
22 surveillance from where Cory was in the taxicab?

23 A. About fifty yards. Maybe less.

24 Q. About a half a football field?

25 A. Maybe less.

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1 Q. Okay. So you're sitting there watching, and
2 he's in the back of the cab. How long -- what happened
3 next?

4 A. Well, next I heard through the audio
5 transmission -- transmitter, Mr. Hart placed a phone call.
6 I assumed he was talking to the defendant. He asked him
7 where he was. He said he was getting off on Montague.
8 About fifteen minutes after, that a white Chevy 2003
9 Impala pulled into the Hess gas station parking lot and
10 pulled around to the opposite side closest to Remount
11 Road.

12 Q. Okay. How long were you sitting there doing
13 your surveillance before the cab -- excuse me -- before
14 this 2003 Chevy Impala pulled up?

15 A. Thirty to forty-five minutes.

16 Q. Okay. After it pulled up, what did you observe
17 next?

18 A. I observed Mr. Hart exit the taxicab, walk
19 across the parking lot, get into the rear right passenger
20 seat of the Impala.

21 Q. All right. And how long was he in the back seat
22 of the Chevy Impala?

23 A. About two minutes.

24 Q. What did he do after that?

25 A. He returned to the taxicab, at which time the

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1 taxicab exited. Myself and Detective Constanza followed
2 the taxicab back to Hanahan Middle School.

3 Q. Before we get to Hanahan Middle School: when he
4 gets into the cab there, why didn't you arrest the
5 defendant right then and there?

6 A. We were hoping to make another controlled
7 purchase.

8 Q. Now, when -- could you see inside of this Chevy
9 Impala?

10 A. No.

11 Q. Why is that?

12 A. We were too far away, and it had very dark
13 tinted windows.

14 Q. Okay. Did you learn if anyone else was in that
15 vehicle?

16 A. Yes.

17 Q. Okay. Did you learn the identity of anyone
18 else?

19 A. No.

20 Q. Okay. How many other people were in the car
21 besides the defendant and the driver?

22 MR. SMILEY: Judge, requires hearsay in
23 response.

24 MR. RIESEN: I asked him what he learned in his
25 investigation.

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1 MR. SMILEY: May we approach?

2 THE COURT: You may.

3 [Whereupon, an off-the-record bench conference
4 is held]

5 THE COURT: Sustained as to hearsay.

6 Q. [Mr. Riesen] All right. After -- you said
7 after the defendant walked back to the Chevy -- excuse
8 me -- walked back to the taxicab, you followed him to
9 where?

10 A. Hanahan Middle School.

11 Q. Okay. And at Hanahan Middle School, what did
12 you do?

13 A. At Hanahan Middle School, Cory got back in the
14 car with myself and Detective Constanza. We drove to the
15 Highland Park Baptist Church on the other end of Murray
16 Drive closest to Rivers Avenue. At Highland Park Baptist
17 Church we searched Mr. Hart again, recovered an off-white
18 rock-like substance in a plastic bag, and he then
19 completed a written statement.

20 Q. Let's take a step back.

21 MR. RIESEN: May I approach, Your Honor?

22 THE COURT: You may.

23 Q. [Mr. Riesen] I'm showing you what's been
24 previously marked as State's Exhibit Number 4. Do you
25 recognize that?

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1 A. Yes.

2 Q. And it looks like the letters M.B. were marked
3 on it. Are those your initials?

4 A. Yes.

5 Q. What is it?

6 A. It's the VHS tape of the visual surveillance
7 from May 4th, 2007.

8 Q. Okay. And have you watched that tape-recorded
9 video surveillance?

10 A. Yes. Several times.

11 Q. And is this videotape a fair and accurate
12 representation of the actual events you witnessed that day
13 on May 4th of '07?

14 A. Yes.

15 Q. And is it an actual recording of the events you
16 witnessed that day?

17 A. Yes.

18 Q. Has the tape been altered or edited in any way?

19 A. No.

20 MR. RIESEN: Your Honor, the State would move
21 State's Exhibit Number 4 into evidence and ask that we
22 publish it to the jury.

23 THE COURT: Mr. Smiley, any objection?

24 MR. SMILEY: No objection, Your Honor.

25 THE COURT: State's 4 into evidence without

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1 objection.

2 [Whereupon, State's Exhibit Number 4, videotape,
3 is admitted into evidence by the Court]

4 THE COURT: And you may publish at this time.

5 MR. RIESEN: Okay. We need I guess a TV with a
6 VCR because --

7 May I approach?

8 THE COURT: You may.

9 [Off the record momentarily]

10 MR. RIESEN: May we approach?

11 THE COURT: You may.

12 [Whereupon, an off-the-record bench conference
13 is held]

14 MR. RIESEN: Is it all right if I --

15 THE COURT: Hold on one moment. Let the
16 equipment get set up, and then we will coordinate where
17 everyone can see.

18 [Off the record momentarily]

19 MR. RIESEN: I think I'm ready to put it in --

20 THE COURT: Mr. Riesen, you had indicated that
21 we were playing it one time, and then you had
22 questioned --

23 MR. RIESEN: Yes. Just so that the witness
24 could see it and then testify afterwards as to what he
25 observed.

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1 THE COURT: Detective, can you see the video
2 from where you are seated, or do you need to move?

3 THE WITNESS: I just need to slide around a
4 little bit.

5 THE COURT: All right. You may slide over.
6 Thank you.

7 Madam Foreperson, if you would indicate to the
8 Court that all the members of the jury panel can see
9 the television.

10 MR. RIESEN: Good to go? All right.

11 THE COURT: Mr. Riesen, if you could please keep
12 your comments directed to questions to the witnesses.
13 Thank you.

14 MR. RIESEN: Okay, Your Honor. Thank you. I
15 apologize.

16 [Off the record momentarily]

17 MR. RIESEN: It's not playing on the TV.

18 [Off the record momentarily]

19 THE COURT: Ladies and gentlemen of the jury,
20 we're going to go ahead and take our mid-afternoon
21 break, and we will get the equipment prepared before
22 you come back in.

23 Please do not discuss this case amongst
24 yourselves. Do not begin your deliberations.

25 Please rise for the jury.

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1 [Whereupon, the jury exits the courtroom at
2 3:56 p.m.]

3 THE COURT: Thank you. Be seated.

4 Detective, we're going to go ahead and take a
5 break. Please do not discuss your testimony with
6 either the State or the defense, nor with any of the
7 witnesses. All right? I'll remind you that the motion
8 to sequester has been granted. You may step down or
9 you may remain seated.

10 We're going to go ahead and take a seven-minute
11 break.

12 [Off the record momentarily]

13 THE COURT: We're going to go ahead and take our
14 mid-afternoon break and -- yes, sir?

15 MR. SMILEY: My client would like to be able to
16 see the video, too. Can he move over in this corner
17 with me?

18 [Off the record momentarily]

19 MR. SMILEY: Just my client -- we've watched
20 together once, but I think he's entitled, and I would
21 ask that he be able to see it.

22 [Off the record momentarily]

23 THE COURT: Mr. Smiley, if we move the
24 television here --

25 MR. SMILEY: Yes, ma'am.

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1 THE COURT: -- would your client be able to see?

2 MR. SMILEY: I won't know until he gets there.
3 But we could stay at this table if you want us to try
4 to get a better angle. Just he would like to be able
5 to see it --

6 THE COURT: All right. Let's attempt to
7 coordinate so that Mr. Brown may see, as well, and then
8 hopefully, Detective -- we can move the detective
9 around. So let's try to logistically coordinate that,
10 Mr. Riesen. Thank you.

11 We'll be in recess.

12 [Whereupon, a recess is taken from 3:57 p.m. to
13 4:08 p.m.]

14 THE COURT: Thank you. Be seated. Are we
15 ready, Mr. Riesen?

16 MR. RIESEN: Yes, ma'am. I believe so. It just
17 worked, so let's hope it continues to work.

18 MR. SMILEY: My client is going to sit where I
19 am, and I'm going to sit over there, and we ought to
20 all be able to see.

21 THE COURT: All right. We have a juror with a
22 childcare issue, so we cannot go tonight past -- no
23 later than 5:15. So just -- I don't know how long you
24 are going to be, Mr. Riesen, so we may break early just
25 to avoid any issue. Mr. Smiley, just so you know.

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1 MR. SMILEY: We won't get done with this
2 witness, I don't anticipate.

3 THE COURT: If y'all will go ahead and switch
4 before the jury starts coming in.

5 THE WITNESS: Your Honor?

6 THE COURT: Yes, sir?

7 THE WITNESS: Would it be okay if I stood here
8 so I can see the video?

9 MR. SMILEY: We've got empty chairs everywhere.
10 Do you want to put a chair up there?

11 THE COURT: Hold on one second. Mr. Riesen?

12 MR. RIESEN: Yes, ma'am? I'm sorry.

13 THE COURT: Your witness has asked if he could
14 just stand right in front and watch the video.

15 MR. RIESEN: That's fine with me, as long as the
16 jury can see, and I believe right there it will be
17 fine.

18 THE COURT: Can you not see the television from
19 your chair?

20 THE WITNESS: I have to like reach over and
21 lean.

22 THE COURT: Mr. Smiley, what is your position
23 about Detective Brown standing in front of --

24 MR. SMILEY: As long as the jury can see, he can
25 go anywhere he would like, as far as I'm concerned.

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1 THE COURT: Detective, it may be that you're
2 going to have to move over to this side in order to be
3 out of the jury's view. But we will make sure that the
4 foreperson has indicated that everyone can see. So,
5 Detective, if you will have a seat in the chair and
6 just -- when you are required to view the video, you
7 may move accordingly.

8 Anything further, Mr. Riesen?

9 MR. RIESEN: No, ma'am.

10 THE COURT: Mr. Smiley?

11 MR. SMILEY: Ready to go, Your Honor.

12 THE COURT: All right. Please bring in the
13 jury. Please rise for the jury.

14 And, Detective, if you will be seated so that --
15 it's just lots of movement, so that's why I have you
16 remain seated.

17 [Whereupon, the jury enters the courtroom at
18 4:10 p.m.]

19 THE BAILIFF: Jurors are present, Your Honor.

20 THE COURT: Thank you. Thank you. Please be
21 seated.

22 Ladies and gentlemen of the jury, in order so
23 that everyone can see the video, we have moved the
24 video back. But I cannot see you, so if at any time
25 you need anything, I'm going to make sure that I can

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1 see the foreperson. So if you need anything, cannot
2 hear or see the video or any of the witnesses, if you
3 will just indicate to the foreperson and she will let
4 the Court know.

5 Mr. Riesen.

6 MR. RIESEN: Thank you, Your Honor.

7 [Whereupon, videotape, State's Exhibit Number 4,
8 is played for the jury from 4:12 p.m. to 4:15 p.m.]

9 Q. [Mr. Riesen] Detective Brown, you've seen this
10 video before; correct?

11 A. Yes.

12 Q. Who was in that taxicab at the very beginning of
13 the video?

14 A. Detective Huper and Cory.

15 Q. Okay. And who was the individual that was seen
16 walking over to a Chevy Impala?

17 A. Cory.

18 Q. Okay. And what -- where did Cory -- did Cory
19 get into the Chevy Impala?

20 A. Yes.

21 Q. And you had stated earlier that he was in there
22 about two minutes or so; is that correct?

23 A. Yes.

24 Q. Okay. After -- what we can't see, because the
25 video is edited, is where Cory went afterwards. So that's

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1 where your testimony is important. What did Cory do after
2 he got out of the Chevy, that white Chevy Impala?

3 A. After Cory got out of the Chevy Impala, he went
4 back to the taxicab with Detective Huper. They then
5 exited 1201 Remount and they went to Hanahan Middle School
6 on Murray Drive.

7 Q. Okay. Did you follow them?

8 A. Yes.

9 Q. Were you under constant surveillance following
10 them?

11 A. Yes.

12 Q. By the time that Cory walked from the cab to
13 that Chevy Impala, did he make contact with any other
14 people?

15 A. No.

16 Q. Did he ever make contact with any other people
17 from the time you originally searched him, when you put on
18 the prerecorded [sic] wire, until when he went to that
19 vehicle and got in that Chevy Impala?

20 A. No.

21 Q. So the only people he was in contact with were
22 law enforcement officers --

23 A. Yes.

24 Q. -- is that correct?

25 Okay. When you went to the school afterwards

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1 and you followed him, did you search him?

2 A. Yes.

3 Q. What did you locate on him?

4 A. A plastic bag containing an off-white rocklike
5 substance.

6 MR. RIESEN: Okay. May I approach, Your Honor?

7 THE COURT: You may.

8 Q. [Mr. Riesen] I'm handing you what's been
9 previously marked as State's Exhibit Number 5. Do you
10 recognize this?

11 A. Yes.

12 Q. What is it?

13 A. It's Best kit number 185822.

14 Q. What is a Best kit number?

15 A. A Best kit number -- a Best kit number is a
16 serial number assigned to a Best kit, which is used to
17 transfer drugs from a law enforcement agency -- law
18 enforcement agency to SLED for weight and analysis.

19 Q. Okay. Are those the drugs that you seized on
20 May 4th, 2007, from Cory?

21 A. Yes.

22 Q. How do you know that those are the drugs that
23 you seized on May 4th, 2007?

24 A. I initialed the bag, and it's the same plastic
25 bag they were originally in.

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1 Q. Okay. What did -- not to be redundant, but what
2 exactly did you do when you confiscated these drugs? How
3 did you process them?

4 A. I went back to the metro office. They were
5 weighed and field-tested with a cocaine swab. They
6 weighed approximately 14.8 grams, and they field-tested
7 presumptive for cocaine base.

8 Q. Cocaine base is another name for that crack
9 cocaine?

10 A. Yes.

11 Q. And did you label the Best kit?

12 A. Yes.

13 Q. Where did you place the drugs when you got to
14 the police -- where did -- let me take that back. Where
15 did you transfer the drugs after you confiscated them?

16 A. After I confiscated them and I placed them in
17 the Best kit, I put them into the evidence locker at the
18 Charleston County Sheriff's Office.

19 Q. I got you.

20 And how was that evidence locker secured?

21 A. It's a locker that has a padlock on it. Once
22 you -- and it's in the form of a mailbox. Once you place
23 the whatever item in, it can only be unlocked by an
24 evidence custodian.

25 Q. Was that -- was those drugs right there in your

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1 sole custody between the time you confiscated them and the
2 time you put them in that locker?

3 A. Yes.

4 Q. What did you end up charging the defendant with?

5 A. Trafficking cocaine base, distribution of
6 cocaine base within one half mile proximity of a school.

7 Q. And what school was that?

8 A. North Charleston Academy.

9 MR. RIESEN: May I approach?

10 THE COURT: You may.

11 Q. [Mr. Riesen] I'm showing you what's been
12 previously marked as State's Exhibit Number 6, a map.
13 Could you point out on this map where the Hess station is
14 that the controlled buy took place at?

15 A. The Hess station is located right on the corner
16 of North Rhett and Remount.

17 Q. Okay. And where were you guys located in your
18 surveillance?

19 A. Myself and Detective Constanza were in this
20 area.

21 Q. Okay. And where is the school, that you charged
22 him with the proximity charge, located?

23 A. Right there.

24 Q. Okay. And so from here to here, do you know the
25 distance?

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1 A. Around a quarter of a mile.

2 Q. Okay. And how do you know it was around a
3 quarter of a mile?

4 A. I've driven it several times, and I also
5 MapQuested it.

6 Q. Okay. And you're familiar with this area?

7 A. Yes.

8 MR. RIESEN: Your Honor, at this time we would
9 like to admit State's Exhibit Number 6.

10 MR. SMILEY: Without objection.

11 THE COURT: State's 6 into evidence without
12 objection.

13 MR. RIESEN: Thank you, Your Honor.

14 [Whereupon, State's Exhibit Number 6, map, is
15 admitted into evidence by the Court]

16 THE COURT: You may publish that to the jury, if
17 you wish.

18 MR. RIESEN: Okay.

19 Q. [Mr. Riesen] When did you end up arresting the
20 defendant?

21 A. May 9th, 2007.

22 Q. So about five days later --

23 A. Yes.

24 Q. -- from the controlled buy; correct?

25 A. Yes.

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1 Q. And where did you arrest him?

2 A. At [REDACTED].

3 Q. And do you know who lived there?

4 A. Yes.

5 Q. Who?

6 A. The defendant and Lashaunda Williams.

7 Q. And how do you know the defendant lived there?

8 A. That's the address utilized on his driver's
9 license.

10 Q. Okay. And do you know the -- who was the other
11 person that lived there?

12 A. Lashaunda Williams.

13 Q. And what's her relationship to the defendant?

14 A. I believe she's a live-in girlfriend.

15 Q. Okay. Are any vehicles register -- strike that.
16 Are any vehicles registered to that address?

17 A. Yes.

18 Q. What vehicles are registered?

19 A. A 1998 Buick LeSabre, as well as a 2003 Chevy
20 Impala.

21 Q. Okay. As to the 2003 Chevy Impala, is that the
22 same Chevy Impala you saw involved in the drug transaction
23 at the Hess station on May 4th of '07?

24 A. Yes.

25 Q. Do you know whose name that car is registered

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1 to?

2 A. Yes.

3 Q. Whose?

4 A. Lashaunda Williams.

5 Q. Now, a couple more questions.

6 We talked earlier about audio. You fixed an
7 audio on the defendant. You said you fixed audio, as well
8 as prerecorded funds; is that correct?

9 A. Yes.

10 Q. Did you ever locate the prerecorded funds?

11 A. No.

12 Q. But this was how many days later?

13 A. Five.

14 Q. Five days. Okay.

15 As to the audio, have you had a chance to listen
16 to the audio?

17 A. Yes.

18 Q. And is the audio clear?

19 A. No.

20 Q. Why is that?

21 A. Audio can be unclear for different reasons:
22 being inside a car, outside a car, weather conditions,
23 telephone poles, the acoustics of an area. It all
24 depends.

25 Q. Is that uncommon?

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1 A. No.

2 Q. So then what's the purpose of audio if it's not
3 clear?

4 A. The primary purpose of audio is for safety, the
5 undercover officer's safety, as well as the informant's
6 safety.

7 Q. And did you give -- on that audio give Cory any
8 instructions?

9 A. Yes.

10 Q. And what were those instructions?

11 A. The instructions I gave Cory were that he was
12 not to get in the car with Mr. Brown and drive around; he
13 was only to do whatever transaction they were going to do
14 in one stationary location for safety reasons.

15 Q. Okay. And did you learn where -- whether or not
16 they were going to go get the drugs, or it was going to
17 take place there?

18 A. I learned that the defendant had the drugs with
19 him.

20 Q. Okay. And so that's why it was taking place at
21 that person's going somewhere?

22 A. Yes.

23 Q. And you had instructed him for safety reasons
24 not to get in the car and go somewhere else. Is that what
25 you meant?

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1 A. Yes.

2 Q. Okay. One or two more questions.

3 What is a -- I think you referred earlier: what
4 is buy-walk? You said earlier this was a -- you set this
5 up as a buy-walk. What is a buy-walk?

6 A. A buy-walk is when either an undercover officer
7 or a confidential informant are utilized to purchase
8 illegal narcotics and the defendant at the time is allowed
9 to walk away, to drive away.

10 Q. And the reason for that? Why are they allowed
11 to drive away?

12 A. To protect the identity of the informant or
13 undercover officer, as well as to hopefully conduct
14 another controlled purchase, another buy-walk.

15 MR. RIESEN: The Court's indulgence, Your Honor.

16 THE COURT: Yes, sir.

17 [Whereupon, Mr. Riesen and Ms. Linder confer]

18 Q. [Mr. Riesen] As to the 2003 Chevy Impala that
19 you said you saw at the house, the defendant's house when
20 you arrested him, was there anything unique? How do you
21 know that that was the same car?

22 A. It had the same dark-tinted windows.

23 Q. And what color was it?

24 A. White.

25 MR. RIESEN: That's all I have at this time,

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1 Your Honor.

2 THE COURT: Mr. Smiley?

3 Counsel, are you going to use the video?

4 MR. SMILEY: At some point. Not at the
5 beginning, but at some point.

6 THE COURT: Okay.

7 MR. SMILEY: I think we might be here a while,
8 though.

9 CROSS-EXAMINATION

10 BY MR. SMILEY:

11 Q. So you arrested Cory Hart?

12 A. Yes.

13 Q. And you arrested him in March of 2007?

14 A. Yes.

15 Q. And you charged him with trafficking in cocaine?

16 A. Cocaine base, yes.

17 Q. So and he had, what, about twenty-some-odd grams
18 of crack on him that day?

19 A. Yes.

20 Q. About three-quarters of an ounce? An ounce is
21 twenty-eight grams; right?

22 A. Yes.

23 Q. All right. And you charged him also with
24 proximity of a school?

25 A. Yes.

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1 Q. And you charged him with having a gun?

2 A. Yes.

3 Q. Charged him with a marijuana charge?

4 A. Yes.

5 Q. Manufacturing marijuana?

6 A. Yes.

7 Q. He was growing plants?

8 A. Yes, sir.

9 Q. All right. And he -- in relation to having all
10 those drugs around, had a small child and he was charged
11 with neglect of a child also?

12 A. Unlawful conduct with a child.

13 Q. Right. Unlawful conduct.

14 All right. And after that initial arrest, you
15 made an offer to him to see if he wanted to work for you?

16 A. Yes.

17 Q. Since he was in -- he had those substantial
18 charges, whether he wanted to try to better his situation
19 by buying or doing something in cooperation with you;
20 correct?

21 A. Yes.

22 Q. All right. And when's the first time you asked
23 him that?

24 A. I asked him that the day we arrested him.

25 Q. Okay. Now, in connection with this case, do you

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1 have -- other than the reports that you did, do you have
2 any notes or anything?

3 A. No.

4 Q. Okay. Now, you said that when you -- you didn't
5 sign him up as a CI that initial day, though?

6 A. No.

7 Q. You said you met with him approximately six
8 times?

9 A. Yes.

10 Q. Do you -- did you record any of that? any of
11 those meetings?

12 A. No.

13 Q. Where did those meetings take place?

14 A. At the Hanahan Police Department.

15 Q. Okay. So the gentleman Mr. Hart, when he got
16 arrested he got out on bond?

17 A. Yes.

18 Q. Did you help him get a low bond if he would co-
19 operate?

20 A. Yes.

21 Q. Okay. So after he got out on bond, with your
22 help he would come see you at the Hanahan Police
23 Department and he met with you five or six times; correct?

24 A. Yes.

25 Q. And after those discussions, he finally agreed

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1 to cooperate in making a buy from Stanford Brown?

2 A. Yes.

3 Q. He suggested the name Stanford Brown to you, or
4 did you suggest it to him?

5 A. He suggested Stanford Brown.

6 Q. Okay. So at the point that that happened, you
7 set him up as a CI, gave him the number 1010?

8 A. Correct.

9 Q. And you had him fill out a sheet with his
10 information on it; right?

11 A. Yes.

12 Q. And you read him the code of conduct about you
13 can't break the law, basically, can't be around drugs, we
14 can search you anytime we want; right?

15 A. Yes.

16 Q. And you've got to tell us the truth?

17 A. Yes.

18 Q. How much does an ounce of crack cocaine
19 typically cost?

20 A. Anywhere from 1,000 to \$1200.

21 Q. So a half ounce would cost somewhere between
22 five and 600 bucks?

23 A. Yes.

24 Q. There's twenty-eight grams in an ounce?

25 A. Yes, sir.

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1 Q. So a half ounce is fourteen grams?

2 A. Yes, sir.

3 Q. All right.

4 MR. SMILEY: Just one second. Beg the Court's
5 indulgence.

6 THE COURT: Yes, sir.

7 [Whereupon, Mr. Smiley reviews documents]

8 Q. [Mr. Smiley] Do you remember the day of Cory's
9 arrest?

10 A. I believe it was March 1st, 2007.

11 Q. Okay. About what period of time did it take to
12 convince him to cooperate?

13 A. Somewhere around mid to late March.

14 Q. Okay. So you signed him up mid March?

15 A. Yes.

16 Q. He told you who he was going to buy from?

17 A. Yes.

18 Q. And then nothing happened -- or no action was
19 taken until the first part of May?

20 A. Yes.

21 Q. Did he pick that date or did y'all?

22 A. We did.

23 Q. All right. So you give him \$340 worth of buy
24 money; right?

25 A. Yes.

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1 Q. And that buy money, you took a picture of it,
2 right, before you gave it to him?

3 A. Yes.

4 Q. And that -- the reason you record that buy money
5 is that you hope to recover it and that way the person
6 that held it would be in the line somehow of the sale of
7 the drugs; correct?

8 A. Yes.

9 Q. Now, you -- and what's his rank with the --

10 A. Detective.

11 Q. Detective? All right. Detective Constanza --

12 A. Yes.

13 Q. -- y'all were in the Bi-Lo shopping center. Who
14 was shooting the video?

15 A. We were in the Food Lion shopping center.

16 Q. Excuse me. Food Line and Bi-Lo. All right.
17 Food Line.

18 A. Detective Nice shot the video.

19 Q. Nice. So he wasn't with y'all?

20 A. No.

21 Q. He was in another car. Where was he located?

22 A. I believe he was in the Food Lion shopping
23 center closest to Remount.

24 Q. Okay. So all three of you, you and Detective
25 Constanza were in one car?

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1 A. Yes.

2 Q. Detective Nice was in another car?

3 A. Yes.

4 Q. And y'all were in the same parking lot next to
5 the Hess station?

6 A. Yes.

7 Q. All right. And this video is not the type that
8 interfaces with audio? It's just a picture; correct?

9 A. Yes.

10 Q. All right. But you talked about you put an
11 audio-recording on Mr. Hart; right?

12 A. Yes.

13 Q. The device that recorded.

14 As a matter of fact, you made a recording of
15 everything that was said; right?

16 A. Yes.

17 Q. From the time it was placed on him until the
18 time that he returned to the middle school, I guess;
19 correct?

20 A. Yes.

21 Q. Now, that white car that came through the lot
22 that was on the video, did you get its license plate
23 number?

24 A. Not that day, no, sir.

25 Q. No.

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1 And the windows were up?

2 A. Yes.

3 Q. And so you didn't get a visual on the driver?

4 A. No.

5 Q. Neither did Detective Constanza or Detective
6 Nice?

7 A. No.

8 Q. Now, the phone calls that were on the audio
9 recording, you could only hear one side of those -- of
10 what was going on; correct?

11 A. Yes.

12 Q. And that would be what Cory Hart was saying;
13 correct?

14 A. Yes.

15 Q. So you couldn't hear whoever it was on the other
16 end?

17 A. No.

18 Q. So you believed -- I believe it was your
19 testimony -- the reason you wanted to use Cory Hart was to
20 get to his supplier; correct?

21 A. Yes.

22 Q. All right. Now, after this deal -- alleged deal
23 with the white car and Mr. Hart gets into the false cab,
24 the one driven by Huper, and it comes back, and you said
25 you searched him again?

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1 A. Yes.

2 Q. He didn't hand you the drugs?

3 A. He did hand me the drugs.

4 Q. Okay. Well, Mr. Riesen made it sound like you
5 put him up here and searched him and pulled the drugs out
6 of his pocket. No. He came up and handed them to you;
7 right?

8 A. Yes.

9 Q. So did you search him again or --

10 A. Yes.

11 Q. -- did he just hand you the drugs?

12 A. No. I searched him again.

13 Q. As thoroughly as before, where you went in his
14 crotch and all of that?

15 A. Yes.

16 Q. Where was the audio recorder attached? Was he
17 wearing it in his crotch, on his chest?

18 A. It was in his pocket.

19 Q. In his pocket?

20 A. Yes.

21 Q. Now, you had a visual of the white car when it
22 was sitting there, the outside of the white car?

23 A. Yes.

24 Q. And you were able to see that Mr. Hart got into
25 the car?

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1 A. Yes.

2 Q. That he was in the back rear seat?

3 A. Yes.

4 Q. And that it appeared from looking at the video,
5 and probably from your eyes, that there were two
6 individuals in the car?

7 A. Yes.

8 Q. Okay. And nobody else got in the car?

9 A. No.

10 Q. And we only saw what appeared to be a couple of
11 minutes of that video. That video is much longer, isn't
12 it?

13 A. Yes.

14 Q. That video runs from the moment he gets in the
15 cab, I guess? No. When did -- let me ask it this way so
16 I don't assume anything. Where did that video start?

17 A. I believe the video started when the taxicab
18 driven by Detective Huper arrived at the Hess station.

19 Q. Okay.

20 MR. SMILEY: Your Honor, I'm going to ask that
21 the whole tape be published to the jury. But not at
22 this time. I'm going to finish my cross and ask that
23 all but that last part, under the doctrine of
24 completeness, to show everything that happened that
25 day.

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1 THE COURT: Yes, sir.

2 Q. [Mr. Smiley] Now, the audiotape you turned into
3 evidence; right?

4 A. Yes.

5 Q. So it's not lost, it's there, it's available to
6 hear what was said that day; right?

7 A. Yes.

8 Q. Okay. Was there anything else remarkable about
9 the white car that pulled in? Was there any bumper
10 stickers on it that you recognized?

11 A. No, sir.

12 Q. Was there any special wheels on it that would
13 have made it unique?

14 A. No, sir.

15 Q. Nothing? It was just a plain old white car;
16 right?

17 A. Yes, sir.

18 Q. No wreck marks or anything like that? A plain
19 old car?

20 A. Yes, sir.

21 Q. It had tint, though --

22 A. Yes.

23 Q. -- I guess that was an add-on.

24 All right. Now, did Cory Hart ever do any other
25 cooperation for your department, or was this a one-time

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1 event?

2 A. One-time event.

3 Q. So in order to get the benefit of any help from
4 the police and the prosecution, he just had to make one
5 buy and one buy from Stanford Brown?

6 A. Yes.

7 Q. Now, you testified he was never out of sight --
8 and I'm talking about Cory Hart -- never out of sight
9 from the time he was searched until the time he returned,
10 right --

11 A. Yes.

12 Q. -- was what you testified to?

13 A. Yes.

14 Q. But he got out of your sight. You're just
15 saying he wasn't out of the sight of some law enforcement
16 officer; correct?

17 A. No.

18 Q. You saw him the entire time?

19 A. Yes.

20 Q. All right. So when he was in the cab, y'all
21 were following it?

22 A. Yes.

23 Q. Directly behind it?

24 A. Yes.

25 Q. Now, let's get to some of these reports.

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1 [Whereupon, Mr. Smiley reviews documents]

2 Q. [Mr. Smiley] In this case was the CI ever shown
3 a photo lineup?

4 A. No.

5 Q. All right. Did you ever hear who he was talking
6 to over the phone?

7 A. No.

8 Q. You didn't place the calls, he did; correct?

9 A. Yes.

10 Q. Now, when you made the arrest on the evening or
11 afternoon of May the 9th over at Windsor Court, you made a
12 list of things that were in the yard like a blue Buick
13 LeSabre, right, and you put the VIN number down?

14 A. Yes.

15 Q. And miscellaneous other stuff. Did you make any
16 note in your report of a white -- of a white Chevy Impala?

17 A. No.

18 Q. Okay. Until the CI told you who he had bought
19 from, you did not know it was Stanford Brown; correct?

20 A. No.

21 Q. So when he said, I bought from Stanford or
22 Boobie, you identified who he bought from; correct?

23 A. Yes.

24 Q. And that would have been after he got back to
25 the middle school and gave you the drugs and all of that?

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1 A. Yes.

2 Q. All right. And that's when he would have given
3 you a written statement that said that who he bought them
4 from; correct?

5 A. Yes.

6 Q. Now, it is your testimony -- make sure I'm clear
7 on this -- that before this began, you searched Cory Hart?

8 A. Yes.

9 Q. You, yourself?

10 A. Yes.

11 Q. All right. Because that's an important thing;
12 right?

13 A. Yes.

14 Q. Make sure that he didn't try to pull a fast one
15 on you; right?

16 A. Yes.

17 Q. Or to make sure he's not trying to carry a gun
18 for his own protection, quote, unquote. For numerous
19 reasons, you want to make sure he's searched?

20 A. Yes.

21 Q. And you did that search yourself?

22 A. Yes.

23 Q. Okay. Now, you said that you put it in this
24 Best kit. And explain -- probably the -- a Best kit; what
25 is a Best kit?

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1 A. A Best kit is the kit used by SLED for drug
2 analysis. What we do is after we seize drugs either by
3 controlled purchase, search warrant, et cetera, we take
4 the drugs back, field test them. After we field test them
5 and weigh them, we place them inside a Best kit.

6 Q. Okay. So you're following SLED procedures by
7 using their kit; correct?

8 A. Yes.

9 Q. All right. So you collect the drugs and the
10 drugs --

11 That's [indicates] the drugs; right?

12 A. Yes.

13 Q. And this bag here, is that what it came in, or
14 is that a different bag?

15 A. The red plastic bag?

16 Q. The one with the red stripe on it.

17 A. No, that's not what it came in.

18 Q. Where's the bag it came in?

19 A. The bag it came in is right there.

20 Q. Okay. So that's the --

21 MR. SMILEY: Permission to publish for a moment,
22 Your Honor.

23 THE COURT: Yes, sir.

24 Q. [Mr. Smiley] So this is the bag it came in?

25 A. Yes.

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1 Q. The crumpley cellophane bag inside the Best kit?

2 A. Yes.

3 Q. And this quarter moon, that's the crack itself;
4 correct?

5 A. Yes.

6 Q. And that's what you collected from Cory Hart?

7 A. Yes.

8 Q. All right. Then you placed it in this smaller
9 bag?

10 A. No. I placed it into the Best kit.

11 Q. In this big bag?

12 A. Yes.

13 Q. Okay. This big bag that's sealed?

14 A. Yes.

15 Q. That's heat --

16 A. Not the heat-sealed bag.

17 Q. Okay. Well, help us out here.

18 A. Okay. This initial bag underneath -- you see
19 the bag with the blue line?

20 Q. Right. Okay.

21 A. I placed it in this bag, into that bag, and then
22 sealed it and initialed it.

23 Q. All right. So you took this drug --

24 A. Yes.

25 Q. You never placed it in this bag?

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- 1 A. No.
- 2 Q. You took it and put it in this other bag?
- 3 A. Yes.
- 4 Q. And sealed that one?
- 5 A. Yes.
- 6 Q. All right. So once you did that, you put the
- 7 seizure date and what-have-you on it and dated it?
- 8 A. Yes.
- 9 Q. All right. And that's your signature and
- 10 handwriting on it; right?
- 11 A. Yes.
- 12 Q. Okay. Now, this drug transaction took place on
- 13 what day?
- 14 A. On the 4th of May.
- 15 Q. Okay. And you retrieved the drugs at Hanahan
- 16 Middle; is that right?
- 17 A. Yes.
- 18 Q. Okay. And then you took it back to metro?
- 19 A. Yes.
- 20 Q. And sealed it in the bag, filled it out, and
- 21 deposited it?
- 22 A. Yes.
- 23 Q. That same day?
- 24 A. Yes.
- 25 Q. Okay. And that would have been on May 4th?

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1 A. Yes.

2 Q. All right. Now, once it -- let me make sure I
3 understand something, now. Once you seal it in that bag
4 and put it in that evidence bin, it's there; right?

5 A. Yes.

6 Q. You can't decide, well, I want to get it back
7 out. Once you put it in there, it's in there?

8 A. Yes.

9 Q. All right. Now, there are some forms you fill
10 out in connection with that; right?

11 A. Yes.

12 MR. SMILEY: Find my forms.

13 [Whereupon, Mr. Smiley reviews documents]

14 Q. [Mr. Smiley] Just so the jury knows, you're
15 referring to some notes you've got in this case?

16 A. Yes.

17 Q. All right. Now, when you fill out the rule -- a
18 Form B, the Rule 6 Form B --

19 A. Yes.

20 Q. -- you fill out one per evidence?

21 A. Yes.

22 Q. All right. Well, do me a favor here. Tell me
23 which one goes with this case.

24 [Whereupon, the witness reviews documents]

25 A. They both do.

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1 Q. [Mr. Smiley] Well, you said you only fill out
2 one.

3 A. Yes.

4 Q. But there's two --

5 A. Yes.

6 Q. -- correct?

7 So you filled out two of these this time?

8 A. Yes.

9 Q. All right. And you filled these out on May the
10 4th; right?

11 A. One on May the 4th and one on May the 7th.

12 Q. Okay. So help me here, because the procedure is
13 you would fill out one; right?

14 A. Yes.

15 Q. But you filled out two on this one.

16 A. Yes.

17 Q. So on May the 4th you filled out this one? You
18 can look at them. Tell me which one you did when, so we
19 can sort of figure out what goes with what evidence.

20 [Whereupon, the witness reviews documents]

21 A. I believe we filled out --

22 [Whereupon the witness reviews documents]

23 A. I believe we filled out this one first.

24 Q. [Mr. Smiley] Okay. So you filled out this one
25 on the 4th?

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1 A. Yes.

2 Q. All right. Saying that you had collected, from
3 a confidential informant, a plastic bag with 14.8 grams of
4 an off-white rocklike substance; right?

5 A. Yes.

6 Q. And you initialed it; right?

7 A. Yes.

8 Q. Okay. And then that goes -- this goes with the
9 drugs in the evidence locker?

10 A. Yes.

11 Q. All right. And they get a control number;
12 right?

13 A. Yes.

14 Q. That matches up, right, with your drugs; right?

15 A. Yes.

16 Q. Okay. But then on the 7th, or another day, you
17 filled out another one?

18 A. Yes.

19 Q. And gave it a different control number?

20 A. Yes.

21 Q. So you unpackaged the drugs and then put it in
22 another drug [sic] after you had already put it in the
23 box?

24 A. Yes.

25 Q. I thought once it went in the box, it was in the

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1 evidence tech's custody.

2 A. It is.

3 Q. So how did you get it back?

4 A. The evidence technicians called me because they
5 said there was some sort of error with my Best kit, so I
6 had to repackage it into --

7 Q. Well, let's talk --

8 A. -- another Best kit.

9 Q. -- about the error.

10 What was the error?

11 A. Something clerical. I'm not sure.

12 Q. Well, we do a chain of custody for a reason, and
13 he said something was wrong; right?

14 A. Yes.

15 Q. And you don't remember what was wrong?

16 A. No.

17 Q. He just told you that you needed to come redo
18 that because the first time around you didn't do it right;
19 correct?

20 A. Yes.

21 Q. All right. So when I asked you before if you
22 put it in the bag and sealed it on May the 4th and put it
23 in the thing, and that you filled all this out, that's not
24 true? You filled it -- you filled it out on the 7th.

25 A. I filled it out on the 4th.

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1 Q. I think you're mistaken. What's that on that
2 bag? What date did you mark it?

3 A. May 7th.

4 Q. So, in fact, you did it on the 7th and not the
5 4th?

6 A. Yes.

7 Q. All right. And this clerical mistake on the 4th
8 you tried to fix on the 7th; correct?

9 A. Yes.

10 Q. So just so I don't get confused. You collect
11 the evidence from Cory Hart in that bag; right?

12 A. Yes.

13 Q. And you take it to metro that evening?

14 A. Yes.

15 Q. And you weigh it?

16 A. Yes.

17 Q. And you break off a piece, or whatever you do,
18 to see if it's presumptive, right --

19 A. Yes.

20 Q. -- through your tests, and it tested
21 presumptive?

22 A. Yes.

23 Q. And then you put it in a Best kit; right?

24 A. Yes.

25 Q. And put that Best kit in the evidence box. Is

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1 the evidence box there at metro?

2 A. No.

3 Q. You had to go over to Pinehaven?

4 A. Yes.

5 Q. Okay. So you drove over to Pinehaven and put it
6 in the evidence box?

7 A. Yes.

8 Q. All right. But this isn't that Best kit because
9 this was filled out on the 7th --

10 A. Yes.

11 Q. -- not on the 4th.

12 All right. So the drugs, once they were put in
13 that tamper-resistant drug pouch and given to the evidence
14 custodian, they actually went back in your custody; right?

15 A. Yes.

16 Q. And you opened that Best kit, put it in another
17 one, resealed it, and gave it a new control number, and
18 then filled out the paperwork; correct?

19 A. Yes.

20 Q. And at that point you had it sworn as when you
21 received it; right?

22 A. Yes.

23 Q. Because you had it sworn that you received it on
24 the 7th, correct?

25 A. Yes.

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1 Q. May the 7th; right? Not the 4th?

2 A. [No response]

3 Q. All right. This littler blue bag in here, where
4 is that from? Because I know you put it in that big bag
5 on the 7th. But this littler bag here, where did that
6 come from; do you know?

7 A. I don't know.

8 Q. You didn't put it in there?

9 A. No.

10 Q. All right. Now, this bag that the crack is in
11 now with the red stripe, you didn't put it in there?

12 A. No.

13 Q. All right. So you don't know when this best kit
14 was opened and put into this other kit? It looks like
15 another plastic bag. You don't know who added or
16 subtracted from it?

17 A. No.

18 Q. Okay. But it's fair to say that this case
19 didn't go normally because you made some mistake?

20 A. Yes.

21 Q. Okay. Now, who puts this tag on the outside?
22 The evidence custodian?

23 A. Yes.

24 Q. All right. So what date did he put everything
25 in this heat-shrunked bag?

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1 A. It says May the 4th.

2 Q. May the 4th. But we know that that's not
3 possible because you had to reopen and redo it on the 7th?

4 A. Yes.

5 Q. So we know that's not correct?

6 A. To my knowledge.

7 Q. All right. What happened to the Best kit from
8 the 4th; do you know? Did it just get thrown away?

9 A. I believe so.

10 Q. Yeah. Okay.

11 Now, the video, the audio on the case, did you
12 listen to it --

13 A. Yes.

14 Q. -- from start to finish, for anything of
15 evidence; correct?

16 A. Yes.

17 Q. Anything that would help support and corroborate
18 the CI; right?

19 A. Yes.

20 Q. All right. And this is the copies of the money
21 you made, it appears?

22 A. Yes.

23 Q. All right. And this is the money you gave to
24 Cory Hart?

25 MR. SMILEY: Publish to the jury very briefly,

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1 Your Honor.

2 THE COURT: You may.

3 Q. [Mr. Smiley] So each of the bills were laid on
4 a photocopier so that the serial numbers could be seen and
5 a photocopy was made; correct?

6 A. Yes.

7 Q. All right. That -- because the serial numbers,
8 of course, would be the identifying mark from each of the
9 bills; right?

10 A. Yes.

11 Q. Okay. In this case -- I never asked you, but
12 were you the case agent in charge of this one?

13 A. Yes.

14 Q. Okay. This is your baby; right?

15 A. Yes.

16 Q. All right. Was any prerecorded buy money was
17 never reported -- was never recovered in this case?

18 A. No, sir.

19 Q. All right. Let's see how to ask this question.
20 The evidence when it's submitted is given the control
21 number; right?

22 A. Yes.

23 Q. And along with that there is like a pending
24 evidence paper describing what it is that's created;
25 correct?

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1 A. Yes.

2 Q. Was there ever a second pending evidence
3 submission made of these drugs, or are you just relying on
4 the one from -- on May the 4th?

5 A. Just relying on May the 4th.

6 Q. Just the one on May the 4th or --

7 A. Yes, sir.

8 Q. Okay. If I could get that back for a second.
9 Sorry.

10 Now, the one on May the 4th, though, has got the
11 wrong control number on it; right?

12 A. Yes.

13 Q. Because you changed it from the D18993 to the
14 822; right?

15 A. Yes.

16 Q. Okay. So when there was that change from 8993
17 to 822, right -- and forgive me -- when you made that
18 change, was there any other documentation done to say,
19 hey, we made a mistake and we changed control numbers? Or
20 just you knew you changed it?

21 A. I just knew I changed it.

22 Q. Okay. So somebody who's not affiliated with the
23 case, somebody looking from the outside in, would be
24 looking for evidence under the wrong control number;
25 right?

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1 A. Yes.

2 Q. Now, you could have -- you chose not to --
3 you're the case agent. But you could have stopped that
4 white car that day; correct?

5 A. Yes.

6 Q. And arrested whoever was inside; correct?

7 A. Yes.

8 Q. And if you had kept it in the line of sight the
9 whole time, most probably the person who sold the drugs
10 would have had the buy money on them; right?

11 A. Yes.

12 Q. And the scales that Cory describes when he went
13 in the car probably would have been in there; right?

14 A. Yes.

15 Q. You certainly could have gotten the license
16 plate off the back of the white car; right?

17 A. Yes.

18 Q. That second person in the car, the CI says he
19 didn't know him?

20 A. Yes.

21 Q. Mr. Hart said he didn't know who that other guy
22 was?

23 A. Yes. He said he didn't know him.

24 Q. He did say he did, or didn't?

25 A. He said he did not known him.

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1 Q. Okay. Got you. I'm sorry.

2 And that -- he said, though, that he knew
3 Stanford the majority of his life; right?

4 A. No.

5 Q. No? Okay. So then I misunderstood your
6 testimony.

7 MR. SMILEY: Now I'm getting ready to get to the
8 video, Your Honor.

9 Q. [Mr. Smiley] On this video you've, of course,
10 reviewed the whole thing; right?

11 A. Yes.

12 Q. And was your view of the white car similar to
13 what's in this video?

14 A. No.

15 Q. All right. How did it differ?

16 A. I had a different angle.

17 Q. You were farther away, correct, because you said
18 that Nice was up close to the boundary; right?

19 A. He was -- he was closer to the -- in the Food
20 Line parking lot closest to the Remount side. I'm not
21 quite sure where he was. I had --

22 Q. Hang on --

23 A. -- a different angle.

24 Q. Hang on one second.

25 MR. SMILEY: Beg the Court's indulgence. I've

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1 got a --

2 THE COURT: Yes, sir.

3 MR. SMILEY: -- board back here I'm going to
4 grab real quick. Right out this door. Be right back.

5 THE COURT: Counsel, approach.

6 [Whereupon, an off-the-record bench conference
7 is held]

8 THE COURT: Ladies and gentlemen of the jury, I
9 understand that several of you have some child-care
10 issues, so we're going to go ahead and stop here for
11 the evening.

12 Please do not discuss this case amongst
13 yourselves. I know it's going to be very difficult
14 when you go home and your significant other is going to
15 want to know what you did today. At some point you
16 will be able to discuss this case, but not tonight. So
17 just if anyone asks you what you're doing just say, I
18 cannot discuss it. You may not discuss this case
19 amongst yourselves. Please do not begin your
20 deliberations. Do not do any independent research. Do
21 not read, watch, listen to any news accounts about this
22 case should there be any.

23 Please return to your jury room promptly at
24 9:30. Once you all are all seated in your jury room,
25 we will begin at that time.

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1 Please have a restful evening. We'll see you
2 back at 9:30.

3 Please rise for the jury.

4 [Whereupon, the jury exits the courtroom at
5 5:06 p.m.]

6 THE COURT: Thank you. Be seated.

7 MR. SMILEY: Two things, Your Honor. First of
8 all, the detention officer Hancock, I know where he is.
9 He's right across the street from my office most every
10 day. Instead of him having to sit in the -- sit here
11 with us, because it won't be until tomorrow sometime
12 that I think we'll get to it. If I need him, can I
13 just call him fifteen minutes before we're going to
14 need him back? And the State -- Mr. Riesen, just so
15 he's not stuck here.

16 MR. HANCOCK: Thirty or forty-five will be
17 better --

18 MR. SMILEY: I can --

19 THE COURT: Mr. Smiley, hold on one second.

20 MR. SMILEY: I was just trying to help.

21 THE COURT: One second, Mr. Smiley.

22 MR. SMILEY: Yes, ma'am.

23 What do you need Deputy Hancock for? We'll go
24 ahead and have our issue hearing now concerning that.

25 MR. SMILEY: That will be fine.

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1 THE COURT: All right. Anything further?

2 MR. SMILEY: Nothing besides to remind the
3 witness not to talk to anybody.

4 THE COURT: All right. I'm going to go ahead
5 and let Detective Brown step down. And may he be
6 excused for the evening, Mr. Riesen?

7 MR. RIESEN: He may, Your Honor.

8 THE COURT: Mr. Smiley, any objection?

9 MR. SMILEY: No objection.

10 THE COURT: Detective, I know that you know what
11 being sequestered means. Can you articulate to the
12 Court, so that there is no confusion, what it means to
13 you?

14 THE WITNESS: It means I'm not to discuss the
15 case at all with anybody.

16 THE COURT: Exactly. That means the State, or
17 Mr. Smiley or Ms. Hensley, or your testimony with any
18 of the witnesses who have testified. Do you understand
19 that, sir?

20 THE WITNESS: Yes.

21 THE COURT: And what time do you want Mr. Riesen
22 [sic] here? I mean, I'm sorry. What time do you want
23 Detective Brown back in the morning?

24 MR. RIESEN: Well, I guess if he's -- depends on
25 what time we're starting back.

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1 MR. SMILEY: 9:30.

2 THE COURT: We're going to start back at 9:30.
3 Mr. Riesen, do you need --

4 MR. RIESEN: 9:15. And if you could just -- he
5 needs to pick up the confidential informant. He's been
6 giving him a ride. So that's all we needed to make him
7 aware of. He's going to be the follow-up witness.

8 THE COURT: All right. Detective, if you will
9 be back in the courtroom at 9:15. And I understand
10 that you are also chauffeuring one of the witnesses.

11 THE WITNESS: Yes, ma'am.

12 THE COURT: All right. And, again, remember
13 that you have been sequestered, and that means no
14 discussion with the -- of your testimony with the
15 confidential informant.

16 THE WITNESS: Yes, ma'am.

17 THE COURT: Thank you. You may step down and
18 you may be excused from the courtroom. We'll see you
19 in the morning. Thank you.

20 THE WITNESS: Thank you.

21 MR. SMILEY: Lastly, Your Honor, on the same
22 matter, just in an abundance -- I also believe that
23 means not -- since he's in the middle of testifying,
24 not to review notes and reports, and all of that,
25 between now and then because if he has to refresh his

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1 memory he should do it on the stand. And that's all.
2 I don't want him to go study tonight, judge.

3 THE COURT: Mr. Riesen?

4 MR. RIESEN: I would assume he could still look
5 at his -- his investigator packet that he has up there.
6 I don't see -- if he can look at it during the trial,
7 why can't he look at it now --

8 MR. SMILEY: Well, he's not supposed -- pardon
9 me.

10 He's not supposed to be looking at it during
11 trial unless he needs to refresh his memory. It's just
12 that we don't object very often when he does. I'm just
13 saying that he shouldn't be reviewing materials unless
14 it's to refresh his memory, and only after he testifies
15 that he can't remember. And for him to go home and
16 review them would be, in essence, refreshing his memory
17 without first stating on the record he did not
18 remember.

19 THE COURT: Mr. Smiley, I will allow you to ask
20 the witness in the morning whether or not he reviewed
21 the materials, and we'll address it at that time.
22 Thank you.

23 MR. SMILEY: Yes, ma'am.

24 THE COURT: Thank you, Detective. You may be
25 excused.

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1 [Whereupon, the witness is excused and exits the
2 witness stand]

3 THE WITNESS: Yes, ma'am.

4 THE COURT: All right. Mr. Smiley, I understand
5 that -- or I have made notes that you had made two
6 objections --

7 MR. SMILEY: Yes, ma'am.

8 THE COURT: -- and that I overruled your
9 objections. I indicated to you that I would allow you
10 to fully articulate your position on the record, and so
11 I will allow you to do that at this time.

12 MR. SMILEY: Yes, ma'am.

13 The first objection I made was to the --

14 THE COURT: And that TV is just in the way, and
15 I need to see and hear you, Mr. Smiley.

16 [Off the record momentarily]

17 MR. SMILEY: The first objection, Your Honor,
18 was as to the telephone recordings, the admission of
19 the tape of the telephone recordings from the jail --

20 THE COURT: Which is State's Exhibit Number 1.

21 MR. SMILEY: Yes, ma'am.

22 -- as being hearsay, hearsay based on the fact
23 that it does not fit -- well, it is hearsay. The State
24 says it fits the business record exception and
25 therefore should be allowed.

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1 Correctly stated?

2 MR. RIESEN: [No response]

3 MR. SMILEY: Well, I would argue, Your Honor,
4 that this tape is captured for the sole purpose of the
5 anticipation of litigation. The testimony of the
6 detention officer was that its primary use is reports
7 by attorneys, and it's in the investigation of crimes;
8 therefore, in the ordinary course of business would
9 be -- the collected is towards the aim of detention.
10 That's not what they're being used for. It does not
11 meet the exception.

12 Those tapes were prepared anticipating
13 litigation in this case. It denies my client his sixth
14 amendment right to confrontation because the tapes
15 contains two people: allegedly Mr. Brown, which of
16 course anything he said would have been another
17 exception, which would be statement against interest.
18 And I certainly understand that. But the other person
19 alleged -- or they weren't identified. But the other
20 person on the phone, whatever she said would be
21 hearsay. The tape itself does not meet the exception.

22 It was further stated that whatever that other
23 person said would not be hearsay because it's not being
24 offered for the truth of the matter asserted. I
25 certainly believe that that person's comments certainly

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1 are taken in the context of the conversation in which
2 my client allegedly made the statements against
3 interest, is being offered for the truth of the matter
4 asserted, the conversation is being offered for the
5 truth of the matter asserted, or it wouldn't be put in
6 this courtroom.

7 I mean, I'll stipulate that they had a phone
8 call. It's the contents that they're offering for the
9 truth of the matter asserted; therefore, that's my
10 objection. It violates my client's -- it violates Rule
11 7's business --

12 MS. HENSLEY: Exception.

13 MR. SMILEY: -- business rule exception. Thank
14 you. It's getting late for me, too.

15 It also I believe is hearsay on the part of the
16 other party because it is being offered for the truth
17 of the matter asserted, it violates the sixth amendment
18 of the United States Constitution, the rules of
19 evidence of our state, and also the South Carolina
20 Constitution, deprives my client his right of
21 confrontation of testimonial evidence which, in fact,
22 this is. Under United States vs. Crawford it is
23 reaffirmed and: evidence is testimonial in nature. He
24 has an absolute right to confront the person making the
25 statements.

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1 THE COURT: Do you have any response?

2 MR. RIESEN: Yes, Your Honor.

3 First of all, every case I've seen, it's the
4 business record exception, number one. Number two,
5 it's a -- it is a statement against interest, as well
6 as an admission by the defendant. Number three, as to
7 the other person on the line, that is not being offered
8 for the truth of the matter asserted. That is being
9 offered to show the context of the answer to those
10 questions.

11 There's no question that he's the one that
12 initiated these calls. This anticipation of
13 litigation: the detective testified that it's also for
14 security reasons. So it's more than just that. Jail
15 tapes have come in in every case I've seen. And these
16 were made by the defendant. He was told that they were
17 being recorded. He was given a unique pin. All of
18 that survives authentication, as well as any type of
19 hearsay. His statements are statements against
20 interest and admissions by him.

21 The other statements: the jury doesn't have to
22 believe a word she says, but they need to hear it to
23 understand what his answers are, what he's saying. And
24 I think it's the same issue we had before, and there's
25 no question that it comes in under the Business Records

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1 Act.

2 MR. SMILEY: But by his very statement that the
3 jury doesn't have to believe any word she says means
4 they're being offered for the truth of the matter
5 asserted. And I don't know about any other cases, but
6 there's an easy way for him to get the tapes in. He
7 puts Ms. Williams on the stand and asks her if that's
8 her voice from the other side of the conversation.

9 THE COURT: Mr. Smiley, I overruled your
10 objection based upon the fact the Court, having heard
11 the testimony of Officer Hancock, did find he did state
12 that these recordings are made in the ordinary course
13 of business, that the tapes cannot be tampered with
14 once they are recorded. I also found that Deputy
15 Hancock did testify that they are most -- that the most
16 often use that he has seen are for court, but he did
17 not say that that was the reason why they were
18 recorded, that they were not recorded in anticipation
19 of litigation.

20 Based upon those facts, the Court overruled your
21 objection.

22 Anything further regarding that issue for the
23 record, Mr. Smiley? Anything else you need to
24 articulate?

25 MR. SMILEY: No, ma'am. The only thing I want

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1 to articulate is I am not attacking authenticity. I
2 don't have a problem with authenticity. My objection
3 falls solely on hearsay. And that's all I have, Your
4 Honor, the business rule and being hearsay, in general.
5 Thank you, Your Honor.

6 THE COURT: And then my notes indicated you also
7 had a -- I overruled an objection, when Detective Brown
8 was on the stand, regarding the use of the CI, in
9 general. And I will allow you to articulate --

10 MR. SMILEY: Thank you, Your Honor.

11 THE COURT: -- that.

12 MR. SMILEY: It almost slipped my mind.

13 Is when we're in -- of course, we're trying the
14 case of State vs. Stanford Brown, have a CI, he says
15 that they used CI -- they have to use CIs to get people
16 that are already committing crimes. Okay? They're
17 going to put a CI on the stand in this case, which is
18 their primary piece of evidence, to testify against
19 Stanford Brown. I mean, he just told the jury -- and
20 you can call it general or not -- has made a statement
21 that the only way to have gotten Mr. Brown is to use a
22 CI because he's already committing crimes. And that
23 was -- and I know that sounds convoluted, but there's a
24 direct correlation there that I think was improper.
25 Talking about prior bad acts without establishing the

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1 proper foundation to bring that up I believe is unduly
2 prejudicial to my client, and move to strike that
3 testimony and curative instruction given to disregard
4 that my client is considered innocent and to be tried
5 on the facts presented in this courtroom on that day,
6 that they are to disregard any kind of reference that
7 my client has committed other crimes.

8 THE COURT: Mr. Smiley, I heard your objection
9 at the sidebar --

10 MR. SMILEY: Yes, ma'am.

11 THE COURT: -- and wanted to allow you the time
12 to --

13 MR. SMILEY: Thank you.

14 THE COURT: -- articulate on the record.

15 And, again, what I indicated -- and I hope that
16 it was fully stated, but I will state it for the record
17 so that you have a complete record, Mr. Smiley --

18 MR. SMILEY: Yes, ma'am.

19 THE COURT: -- was that the response -- the
20 answer to that question was in response to an inquiry
21 of Detective Brown by Mr. Riesen as to the use and
22 purpose and what a CI in general is, not in anything in
23 specific terms, to Mr. Hart or to Mr. Brown. And I
24 note your objection for the record.

25 And is there anything else in response to that

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1 ruling that you wish to articulate for the record?

2 MR. SMILEY: No, ma'am.

3 THE COURT: All right. Is there anything
4 further that we need to put on the record this evening?

5 MR. SMILEY: I don't believe so.

6 MR. RIESEN: I have just one thing, Your Honor.

7 THE COURT: Yes, sir.

8 MR. RIESEN: And now that the CD has come in,
9 we've stipulated that the audiotape, which is the
10 recording which has been redacted, will become Exhibit
11 Number 3.

12 THE COURT: The audiotape that is in conjunction
13 with the video?

14 MR. RIESEN: No. I'm sorry. We made a cassette
15 tape, which is the same as the jail tapes that we just
16 admitted. The jail tapes are very long. We've
17 redacted it because there were certain things that were
18 talked about regarding other crimes that, of course, we
19 didn't play on the CD. So Jim had said if it comes in,
20 the CD comes in, then you will allow the tape to come
21 in so that they can listen to that if they -- if they
22 want to listen to them when the trial has ended, they
23 can play it from -- first, I'm going to play it here,
24 because it's redacted. And if they want to listen to
25 it later with a tape player in the back, they can,

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1 rather than have them come in and us trying to find the
2 exact spot on the CD every time for that.

3 THE COURT: And, Mr. Smiley, understanding that
4 you have objected to 1 in the entirety with --
5 overlooking that objection, with the exception of that
6 objection that you have, do you have any objection to
7 State's 3?

8 MR. SMILEY: No, ma'am.

9 [Whereupon, State's Exhibit Number 3, cassette
10 tape, is admitted into evidence by the Court]

11 MR. SMILEY: And what I -- I don't think the
12 right word is stipulation. What I agreed is that the
13 tape would be a relevant summary of volumes of CDs
14 because there's -- not hundreds, but thirty or forty
15 hours worth of conversations over the last two years,
16 probably, that have been condensed down to what is
17 relevant for the State's purposes. So I believe under
18 the rules, a summary can be made from voluminous -- I
19 can't say the word.

20 MS. HENSLEY: Voluminous.

21 MR. SMILEY: Voluminous. Thank you. A large
22 amount of material. And so while I don't think it's a
23 stipulation, I believe that I won't object to it on the
24 basis that it fits a rule within the rules of evidence.

25 THE COURT: All right.

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1 MR. RIESEN: That's totally fine, Your Honor.

2 THE COURT: Anything else?

3 MR. RIESEN: No, ma'am.

4 THE COURT: Mr. Smiley, just so I understand
5 just for scheduling: you have more questions of
6 Detective Brown, and then you're going to play the one-
7 hour video in its entirety?

8 MR. SMILEY: Yes, ma'am.

9 THE COURT: Can we either sometime this evening,
10 or in the morning before we begin, so that I can view
11 the video so that we can logistically all see it at the
12 same time? Perhaps right about here in front of the
13 clerk might be a better place to put it.

14 MR. SMILEY: Unfortunately, this doesn't move
15 and so if we get this way, it becomes difficult for the
16 jurors to see behind it.

17 THE COURT: Well, let's attempt to work it out,
18 if we can. Anything --

19 MR. RIESEN: Just for --

20 THE COURT: I'm sorry?

21 MR. RIESEN: I was just going to say for time
22 restraints, I want to just say it's an hour and forty-
23 five minutes. Am I wrong?

24 MR. SMILEY: I don't think it's quite that long.

25 MR. RIESEN: Okay. Well, I'm just trying to set

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1 up so you -- for time restraints, Your Honor. Let me
2 see how long it is. Have you got it written down how
3 long it was?

4 [Whereupon, Mr. Riesen and Ms. Linder confer]

5 MR. RIESEN: Well, I don't have it. I'm not
6 sure how --

7 THE COURT: Well, we're going to start back at
8 9:30, as soon as all the jurors are back, and at this
9 point I do not -- no matter how long it is, we're
10 watching it in its entirety. So we'll be here in its
11 entirety, and we'll do that tomorrow.

12 MR. SMILEY: I still believe we'll finish most
13 of it by tomorrow afternoon and close and charge --

14 THE COURT: We are in recess in this matter
15 until 9:30.

16 [JURY TRIAL ADJOURNS AT 5:23 P.M.]

17
18
19
20
21
22
23
24
25

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the jury trial held before the Honorable Kristi L. Harrington, on Monday, January 6, 2009.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 10th day of January, 2010.

Mia Perron
Mia Perron, CCR, CVR-CM
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CCR, CVR-CM

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT
 COUNTY OF CHARLESTON) INDICTMENT NO.: 2007-GS-10-9933

STATE OF SOUTH CAROLINA)
)
 VS.)
)
 STANFORD BROWN,)
)
 DEFENDANT.)
 _____)

JURY TRIAL

VOLUME 2 OF 3

held before the Honorable Kristi L. Harrington
 Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
 in the Charleston County Courthouse
 Charleston, South Carolina
 on Tuesday, July 7, 2009, Commencing at 9:38 a.m.

SUSAN "MIA" PERRON, CCR, CVR-CM
 Circuit Court Reporter - 9th Judicial Circuit
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EXHIBITS

[none]

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PROCEEDINGS

1
2 THE COURT: Anything before we bring in the
3 jury?

4 MR. SMILEY: No, ma'am.

5 MR. RIESEN: Nothing from the State, Your Honor.

6 THE COURT: All right. Let's bring in the jury.
7 [Whereupon, the jury enters the courtroom at
8 9:40 a.m.]

9 THE BAILIFF: All present, Your Honor.

10 THE COURT: Thank you. Please be seated.
11 Detective Brown, please come forward. Please be
12 seated. I will remind you that you are still under
13 oath.

14 THE WITNESS: Yes, ma'am.

15 [Whereupon, Detective Brown re-takes the witness
16 stand]

17 THE COURT: Mr. Smiley, your witness.

18 [Off the record momentarily]

19 MR. SMILEY: All right. Detective Brown, let's
20 get back to where we were at the end of yesterday when
21 I was getting ready to run outside and get a board to
22 draw things on. And I think we can probably get it
23 without that.

24 We were talking about the position of your car
25 and the position of Detective Nice's car.

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1 THE WITNESS: Yes.

2 MR. SMILEY: Remember where we were?

3 THE WITNESS: Yes, sir.

4 MR. SMILEY: All right.

5 - - - - -

6 MARK BROWN,

7 Having Been Previously Sworn,

8 was Examined and Testified as Follows:

9 CONTINUED CROSS-EXAMINATION

10 BY MR. SMILEY:

11 Q. And is it fair to say that Detective Nice was
12 closer to the Hess station than you were?

13 A. Yes, sir.

14 Q. Okay. The video that we saw was taken by
15 Detective Nice?

16 A. Yes, sir.

17 Q. There wasn't any other video --

18 A. No.

19 Q. -- just that one video; right?

20 A. At the Hess station. Yes, sir.

21 Q. At the Hess station. And that's what we're
22 talking about. Your angle would have been different than
23 Detective Nice's; correct?

24 A. Yes, sir.

25 Q. If this was -- were you to the left of Detective

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1 Nice or to the right?

2 A. To the right.

3 Q. Okay. So you were farther away from the road?

4 A. Yes, sir.

5 Q. Okay. Were you farther back?

6 A. I don't believe so.

7 Q. Okay. So about the same but just farther up a
8 little, which would have made your distance to the white
9 car farther?

10 A. Yes, sir.

11 Q. All right. The taxi?

12 A. Yes, sir.

13 Q. And that was in the Hess station parking lot?

14 A. Yes, sir.

15 Q. And it had Detective Huper in it --

16 A. Yes.

17 Q. -- right? And he was the cab driver?

18 A. Yes, sir.

19 Q. In relation to North Rhett, okay, was the taxi
20 on the Food Lion side or on the North Rhett side?

21 A. More towards the North Rhett side.

22 Q. Okay. So he was sort of on the opposite side
23 than you?

24 A. Yes. Yes, sir.

25 Q. Okay. And I hope I'm painting this well enough.

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1 And then we've got Remount Road; right?

2 A. Yes, sir.

3 Q. Got Detective Nice sitting in the Food Lion
4 parking lot closest to Remount?

5 A. Yes, sir.

6 Q. You're in the Food Lion farther away from
7 Remount?

8 A. Yes, sir.

9 Q. We've got Detective Huper on the other side
10 close to North Rhett?

11 A. Yes, sir.

12 Q. In relation to Remount, was he on the left side
13 of the store or the right side, if you understand what I'm
14 talking about. I'm trying to paint it as best I can.

15 A. [No response]

16 Q. Was he close to Remount, or far away?

17 A. He was farther away from it.

18 Q. Okay. So he was sort of over in -- y'all sort
19 of had an L-shape?

20 A. Sort of, yes.

21 MR. SMILEY: Okay. I hope y'all understood
22 that. I'm doing my best.

23 Q. [Mr. Smiley] All right.

24 THE COURT: Mr. Smiley, please keep your
25 attention --

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1 MR. SMILEY: Yes, ma'am.

2 THE COURT: -- to asking --

3 MR. SMILEY: Yes, ma'am.

4 THE COURT: -- questions. Thank you.

5 MR. SMILEY: Yes, ma'am.

6 Q. [Mr. Smiley] Okay. Now, this video that we saw
7 yesterday, we didn't hear any audio on it. But there
8 actually is some audio; correct?

9 A. I do believe so.

10 Q. All right. So it's attached. You can -- if I
11 were to turn up the volume on this TV, there would be some
12 audio; correct?

13 A. Yes, sir.

14 Q. Okay. And that would have been the wire that he
15 was wearing?

16 A. Yes, sir.

17 Q. Okay. So if we were to play the audio portion
18 that y'all saved as evidence, it would match up with that?

19 A. Yes, sir.

20 Q. All right. None of the officers, that being --
21 let me make sure of all the officers there. Detective
22 Nice, yourself --

23 A. Yes, sir.

24 Q. Detective Tom Constanza?

25 A. Yes, sir.

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- 1 Q. Detective Huper?
- 2 A. Yes, sir.
- 3 Q. Those were the only officers that were present;
- 4 correct?
- 5 A. No, sir.
- 6 Q. Who else is present?
- 7 A. Sargent Anderson, Detective Smith, Detective
- 8 Midget, and I believe Detective Johnson.
- 9 Q. So we had four other officers?
- 10 A. Yes, sir.
- 11 Q. All right. Well, let's position them. Where
- 12 was Sargent Anderson?
- 13 A. Sargent Anderson was in our gold van.
- 14 Q. Gold van.
- 15 Was he in the Food Lion parking lot, the Hess
- 16 parking lot --
- 17 A. The Food Lion parking lot.
- 18 Q. Food Lion parking lot.
- 19 In relation to the camera, was he to the right
- 20 or the left?
- 21 A. Neither. He would have been behind it.
- 22 Q. Behind it?
- 23 A. Yes, sir.
- 24 Q. So he was farther away?
- 25 A. Yes, sir.

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1 Q. Okay. Anybody else in the gold van?

2 A. Detectives Midget, Smith, and Johnson, I
3 believe.

4 Q. So all -- everybody was in the gold van?

5 A. Yes, sir.

6 Q. Okay. And so four plus two: there's six
7 officers in the Food Lion overlooking the Hess station;
8 right?

9 A. Yes, sir.

10 Q. And then there is an officer in the parking lot
11 but farther away of the Hess station. So there are seven
12 detectives, sargents, policemen, on the scene; correct?

13 A. Yes, sir. Roughly.

14 Q. All right. In this case, in relation to the
15 sale at the Hess station you're the only one that did
16 reports; correct?

17 A. Yes, sir.

18 Q. All right. So all those other officers didn't
19 do anything independent. If they had any information,
20 they would have relayed it to you; correct?

21 A. Yes, sir.

22 Q. And then you did the report? No sense everybody
23 writing the same thing; correct?

24 A. Yes, sir.

25 Q. All right. From being the lead detective, case

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1 agent, collecting the information, did Sargent Anderson --
2 was he able to identify the driver?

3 A. No, sir.

4 Q. Was he able to identify the passenger?

5 A. No, sir.

6 Q. The gentleman using the video, Detective Nice,
7 was he able to identify the driver?

8 A. No, sir.

9 Q. Was he able to identify the passenger?

10 A. No, sir.

11 Q. Detective Huper, who was on the other side and
12 had a different angle, was he able to identify the driver?

13 A. No, sir.

14 Q. Was he able to identify the passenger?

15 A. No, sir.

16 Q. Yourself, who had another angle, were you able
17 to identify the driver?

18 A. Later on, yes.

19 Q. No. That wasn't my question.

20 A. Oh. Okay.

21 Q. At the Hess station at the time that the
22 incident was taken, were you able to identify the driver?

23 A. No, sir.

24 Q. Were you able to identify the passenger?

25 A. No, sir.

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1 Q. All right. That leaves us the three other
2 detectives that were in the gold van. Were they able to
3 make an identification of the driver?

4 A. No, sir.

5 Q. Of the passenger?

6 A. No, sir.

7 Q. All right. Of those seven detectives that were
8 watching the Hess station, no one got the tag number of
9 the white car?

10 A. No, sir.

11 Q. What was the name of the school?

12 A. North Charleston Academy.

13 Q. Have you ever been to that school?

14 A. I've driven past it. I've never been to it.

15 Q. Okay. You haven't been inside of it?

16 A. No, sir.

17 Q. I noticed you pointed --

18 MR. SMILEY: Where is our map?

19 Q. [Mr. Smiley] I noticed you pointed to it on the
20 map. It's right in here? North Rhett and Sumner?

21 A. Yes, sir. I believe so.

22 Q. Okay. So to get to it you would go down North
23 Rhett, if you were heading towards Remount --

24 A. Yes, sir.

25 Q. -- and take a left on Sumner?

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- 1 A. Yes, sir.
- 2 Q. Okay. And it would be on your right-hand side?
- 3 A. I believe so, yes, sir.
- 4 Q. But you've never been inside?
- 5 A. No, sir.
- 6 Q. Never met the principal?
- 7 A. No, sir.
- 8 Q. You know it to be a school just because you've
- 9 been told that?
- 10 A. And MapQuest. Yes, sir.
- 11 Q. Excuse me?
- 12 A. And MapQuest.
- 13 Q. And MapQuest tells you it's a school?
- 14 A. Yes, sir.
- 15 Q. You don't know how many students it has or
- 16 anything like that?
- 17 A. No, sir.
- 18 Q. And if I'm correct, you rely on the fact that
- 19 it's a school within a half mile, that that's the school
- 20 you're relying upon?
- 21 A. Yes, sir.
- 22 Q. Okay. And it's a regular school; right?
- 23 A. Yes, sir.
- 24 Q. It's not like it's a Sunday school or anything.
- 25 It's a school; correct?

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1 A. Yes, sir.

2 Q. Okay. When you reviewed the audio tape -- you
3 did have an opportunity to review it; right?

4 A. Yes, sir.

5 Q. Stanford Brown's name was never mentioned on
6 that tape, was it?

7 A. No, sir.

8 Q. The nickname Boobie was never mentioned on that
9 tape, was it?

10 A. I'm not sure.

11 Q. If it was, you would have remembered it; right?

12 A. Yes, sir.

13 Q. Okay. On that tape the confidential informant
14 makes a phone call; correct?

15 A. Yes, sir.

16 Q. On the audio; correct?

17 A. Yes, sir.

18 Q. He never told anybody which number he was
19 calling, did he?

20 A. No, sir.

21 Q. You never listened in to the other side of the
22 conversation, did you?

23 A. No, sir.

24 Q. He received a couple of phone calls while he was
25 in the back seat, didn't he?

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1 A. I think so, yes, sir.

2 Q. Yeah. You weren't able to identify the caller
3 on those phone calls, were you?

4 A. No, sir.

5 Q. And you weren't able to listen to that
6 conversation, either?

7 A. No, sir.

8 Q. You could hear what the CI said, but you
9 couldn't hear what was being said by anybody else --

10 A. No, sir.

11 Q. -- correct?

12 A. Yes, sir.

13 Q. All right. Now, when you got to Windsor Court,
14 I believe it is -- Windsor Street?

15 A. Windsor Hill Boulevard.

16 Q. Thank you. Thank you.

17 When you got there, you wrote down a VIN number,
18 didn't you?

19 A. [No response]

20 Q. In your reports you wrote down the vehicle
21 identification number of an automobile, didn't you?

22 A. Yes, sir, I did.

23 Q. Yeah. And that would have gone to a blue
24 LeSabre that was in the yard?

25 A. Yes, sir.

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1 Q. Is it your testimony that there was a white
2 Impala there in the yard, too?

3 A. [No response]

4 Q. I believe yesterday on direct you said there was
5 a white car there, too; right?

6 A. I believe --

7 Q. Maybe I'm wrong.

8 A. Yes, sir.

9 Q. Okay. Now, you didn't write down the VIN number
10 of it, though, did you?

11 A. No, sir.

12 Q. You didn't take down the tag number for it, did
13 you?

14 A. No, sir.

15 Q. Now, this video, all right, it started sometime
16 before the buy; correct?

17 A. Yes, sir.

18 Q. And it ends after the cars leaves; correct?

19 A. Yes, sir.

20 Q. And that would be, in totality, the video that
21 you have of this alleged incident; correct?

22 A. Yes, sir.

23 MR. SMILEY: Your Honor, at this time if I could
24 use the entire video as a part of cross-examination.

25 It's going to be quite lengthy, and I would like the

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1 entire video to be shown. And I'm going to --

2 THE COURT: All right. You may play it.

3 MR. SMILEY: -- move this out of the way.

4 Q. [Mr. Smiley] Now, you didn't tape this video,
5 though; right?

6 A. No, sir.

7 Q. But you've reviewed it as the case agent; right?

8 A. Yes, sir.

9 MR. SMILEY: Okay. Move my stuff out of the
10 way. I think this is the best view, we decided, Your
11 Honor, from right here.

12 THE COURT: Can everybody see it?

13 MR. SMILEY: Can everybody see it?

14 THE COURT: Mr. Smiley, please do not --

15 MR. SMILEY: I apologize, Your Honor.

16 THE COURT: -- address the jury.

17 MR. SMILEY: I apologize.

18 THE COURT: Can everyone see it? Thank you.

19 MR. SMILEY: Sanford, if I -- Stanford, can you
20 see it?

21 MR. BROWN: [Indicates affirmatively].

22 MR. SMILEY: I apologize, Your Honor. Just
23 trying to be helpful.

24 MR. SMILEY: And I believe -- before we start, I
25 want to make sure it's at the beginning.

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1 [Off the record momentarily]

2 MR. SMILEY: And so I'm out of the way, Your
3 Honor, with your permission, can I stand back here?
4 Because I'm going to ask some questions of the officer.

5 THE COURT: Yes, sir.

6 [Whereupon, video of drug buy, State's Exhibit
7 Number 4, is played for the jury from 9:55 a.m. to
8 10:51 a.m.]

9 Q. [Mr. Smiley] All right. Officer, is this the
10 beginning of the video that was turned in in this case?

11 A. Yes, sir.

12 Q. Okay. Now, this isn't of the Hess station, is
13 it?

14 A. No, sir.

15 Q. Okay. Where is this being taken?

16 A. I believe that's on Judy Street, sir.

17 Q. Judy Street. Okay.

18 These two individuals that are sitting there, is
19 either of them Stanford Brown?

20 A. No, sir.

21 Q. Okay. And Judy Street was part of this case?
22 That's where it started?

23 A. [No response]

24 Q. I mean, you weren't just taking video for the
25 heck of it. You were taking video for a purpose; correct?

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1 A. Yes, sir.

2 Q. All right. That was my question.

3 MR. SMILEY: And, Your Honor, with your
4 permission, there's some audio that's not real -- but
5 can we turn it up so the audio can be heard? And the
6 clerk could so we can hear everything?

7 [Whereupon, the clerk of court complies]

8 THE COURT: Thank you, Ms. Stacey.

9 MR. SMILEY: Thank you. Thank you very much.

10 Your Honor, there's not a counter on this tape
11 that I can see. We're beginning the tape at one after
12 10:00 by the Court's clock.

13 THE COURT: Thank you.

14 Q. [Mr. Smiley] Detective, were these individuals
15 ever identified?

16 A. No, sir.

17 MR. SMILEY: I know it's annoying, Your Honor,
18 but I would ask that we be able to hear everything.

19 THE COURT: Counsel approach. Counsel? Mr.
20 Riesen.

21 [Whereupon, an off-the-record bench conference
22 is held]

23 MR. SMILEY: If you could -- Madam Clerk, I'm
24 going to have to -- if you could do it for me.

25 [Whereupon, the clerk of court complies]

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1 Q. [Mr. Smiley] Do you know what time this was
2 during the day, approximately?

3 A. Around six o'clock, maybe.

4 Q. Six o'clock in the evening?

5 A. Yes.

6 Q. Now, Detective, did you have a particular
7 purpose in being on Judy Street?

8 A. Yes, sir.

9 Q. Was that particular purpose in relation to
10 Stanford Brown?

11 A. Yes, sir.

12 Q. And this surveillance that you're taking now --
13 and I guess that will be the best way to classify this
14 part of the tape -- was it in hopes of identifying and
15 seeing Stanford Brown?

16 A. Yes, sir.

17 Q. Okay. And, Detective, if at any point you see
18 Stanford, please note it for the jury. Okay?

19 A. Yes, sir.

20 Q. And Detective Nice is taking this video;
21 correct?

22 A. Yes, sir.

23 Q. All right. This gentleman was never identified?

24 A. No, sir.

25 Q. All right. Is the reason you were over on Judy

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1 Street because you had hoped that you could set up the buy
2 over here originally?

3 A. Yes, sir.

4 Q. Okay. Well, that makes more sense. We aren't
5 just sitting on a strange street taking video for the heck
6 of it; correct?

7 A. No, sir.

8 Q. All right. Were you able to identify to whom
9 this residence belonged?

10 A. I believe that it belonged to a Matthew Jenkins.

11 Q. To Matthew Jenkins? It didn't belong to Mr.
12 Brown?

13 A. No, sir.

14 Q. All right. Sometimes doing surveillance is
15 pretty boring, isn't it?

16 A. Yes, sir.

17 Q. Had your CI given you the information about Judy
18 Street?

19 A. Yes, sir.

20 Q. Okay. So your CI is the one that said Judy
21 Street and got y'all there for surveillance?

22 A. Yes, sir.

23 Q. All right. And this is the first time you had
24 used this CI; correct?

25 A. Yes, sir.

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1 Q. And the only time; right?

2 A. Yes, sir.

3 Q. Now, let me ask you another question while we're
4 watching this part. The original master plan would be for
5 the CI to arrive by cab at Judy Street to make a purchase
6 from an individual already at Judy Street?

7 A. Yes, sir.

8 Q. Okay. So the anticipation is that Stanford
9 Brown, or the gentleman that was going to be purchased
10 from, would be at Judy Street?

11 A. Yes, sir.

12 Q. Okay. Now, Detective Nice wasn't the only
13 officer set up here, was he?

14 A. I don't believe so, no, sir.

15 Q. There was other officers in the area already in
16 place --

17 A. Yes, sir.

18 Q. -- for your master plan to go down? All right.
19 Correct?

20 A. Yes, sir.

21 Q. Now, in a couple of minutes the plan is going to
22 change; right?

23 A. Yes, sir.

24 MR. SMILEY: And, Your Honor, for the record,
25 we've now watched approximately fifteen to sixteen

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1 minutes of the tape.

2 THE COURT: Thank you.

3 Q. [Mr. Smiley] Detective, let me ask you a couple
4 of other questions while we're going through this part of
5 the tape that doesn't really change.

6 You're with the Hanahan police?

7 A. Yes, sir.

8 Q. And you're assigned to metro?

9 A. Yes, sir.

10 Q. Okay. That means the officers from all
11 different parts of the County, inside and out within the
12 circuit, are on one team? Is that fair to say?

13 A. No, sir.

14 Q. Well, describe -- I know you've talked about it
15 a little bit beforehand. But if you'll describe to the
16 jury, while we're watching this part that doesn't change,
17 what the metro unit is comprised of.

18 A. The metro --

19 Q. And I'll stop you if the video changes. Don't
20 worry about that.

21 A. Okay. The metro unit is composed of myself, a
22 Hanahan police officer, as well as seven other Charleston
23 County detectives from the sheriff's office in Charleston
24 County.

25 Q. Okay. So it's you and seven other Charleston

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1 County guys?

2 A. Yes.

3 Q. All right. You're the only Berkeley County
4 individual assigned to the metro unit?

5 A. Yes, sir.

6 Q. All right. Okay. I misunderstood that. And it
7 changes from time to time?

8 A. [No response]

9 Q. Like you aren't -- how long have you been
10 assigned to metro?

11 A. Two years and nine months.

12 Q. Two years, nine months. Okay.

13 How long had you been assigned to metro when
14 this incident took place? Actually, hold that question.
15 We're moving now so --

16 MR. SMILEY: Your Honor, the tape can -- if it
17 can be reflected on the record: at about eighteen
18 minutes after the tape started, the view has changed
19 and the camera is moving.

20 Q. [Mr. Smiley] That audio that you're hearing,
21 that's from the wire the CI is wearing?

22 A. I believe so.

23 Q. Okay. Now, on the video it appears that
24 Detective Nice is leaving the Judy Street location.

25 A. Yes, sir.

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1 Q. All right. Now, that's the audio y'all would
2 have been listening to --

3 A. Yes.

4 Q. -- correct? All right.

5 What road is he traveling down now, if you know?

6 A. Remount Road.

7 Q. Remount Road. All right. Heading towards North
8 Rhett?

9 A. Yes, sir.

10 Q. Do you remember what kind of automobile
11 Detective Nice was driving?

12 A. I believe it was an Econoline van.

13 Q. It was a van. All right.

14 So the plan has changed, is there's not going to
15 be a sale at Judy Street. The CI has directed you to go
16 to the Hess station?

17 A. Yes.

18 Q. All right. And this is the Food Lion that we've
19 talked about; right?

20 A. Yes.

21 Q. Okay. That's the Hess station we just saw on
22 the corner; right?

23 A. Yes.

24 Q. All right. That is the Hess station there;
25 right?

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1 A. Yes.

2 Q. Now Detective Nice has now taken up position in
3 the Food Lion, the edge of the Food Lion parking lot,
4 overlooking the Hess station?

5 A. Yes.

6 Q. His view would have been towards North Rhett;
7 correct?

8 A. Yes.

9 Q. Okay.

10 MR. SMILEY: Your Honor, for the record, his car
11 has become stationary at about twenty-three minutes
12 into the video. And I'm sorry I have to do it that
13 way. It just doesn't have a good counter.

14 Q. [Mr. Smiley] Now, you've also moved from where
15 you were to the Food Lion parking lot; right?

16 A. Yes, sir.

17 Q. Now, you weren't on Judy Street, though? You
18 were following the CI around; is that correct?

19 A. Yes, sir.

20 Q. All right. And we're somewhere around between
21 6:00 and 6:30 in the evening when this was taken?

22 A. Roughly.

23 Q. All right. Now, that audio we are hearing is
24 the same audio you heard; right?

25 A. Yes, sir.

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1 Q. Okay. That's not the cab, is it?

2 A. It is.

3 Q. That's the cab with Detective Huper and the CI
4 in it?

5 A. Yes.

6 Q. Okay. Now, that audio we're hearing is coming
7 from inside the cab; right?

8 A. I think so. I'm not sure.

9 Q. Well, the CI is in the cab --

10 A. Yes.

11 Q. -- and that's his audio; right?

12 A. Yes, sir.

13 Q. Okay. That's Detective Huper driving?

14 A. Yes.

15 Q. All right. Fair to say your audio is not
16 working really good that day?

17 A. Yes, sir.

18 Q. Okay. Because you can see them talking, but you
19 can't hear it on the audio; right?

20 A. Yes, sir.

21 Q. Okay. And I guess when I say them, that would
22 be Detective Huper and the CI; right?

23 A. Yes.

24 Q. Okay. Now, the detective didn't move, he just
25 refocused the camera just then; right?

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1 A. Yes, sir.

2 Q. All right. Took it from wide-angle back;
3 correct?

4 A. Yes, sir.

5 Q. Or vice versa, I guess. And that's the CI;
6 right?

7 A. Yes.

8 Q. You can't really understand what's being said by
9 the CI, can you?

10 A. No, sir.

11 Q. And that was his cell phone that was called;
12 correct?

13 A. Yes, sir.

14 Q. All right.

15 MR. SMILEY: Your Honor, for the record, we've
16 watched approximately thirty minutes of the video as
17 the car -- the target cab is sitting still in the
18 parking lot.

19 Q. [Mr. Smiley] Now, those police officers that
20 just drove by, they weren't connected with your case?

21 A. No, sir.

22 Q. All right. But at this point, all of the
23 detectives are in place; correct?

24 A. Yes, sir.

25 Q. All right. The cab is moving; correct?

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1 A. Yes, sir.

2 Q. And that's a different ring tone; correct?

3 A. Yes.

4 Q. And that's the detective's phone at this point?

5 A. Yes.

6 Q. All right. So the detective is talking to the
7 cab-driver detective; correct?

8 A. Yes.

9 Q. Is it fair to say he's repositioned the cab at
10 this point?

11 A. Yes.

12 Q. All right.

13 MR. SMILEY: For the purpose of the record, the
14 cab is repositioned approximately thirty-three minutes
15 into the tape.

16 Q. [Mr. Smiley] Now, are the cab windows tinted?

17 A. No, sir.

18 Q. Okay. But you still don't get a very clear
19 view, do you?

20 A. No, sir.

21 Q. All right. Now, that's your rat, I mean, excuse
22 me, CI sitting in the back seat; right?

23 A. Yes, sir.

24 Q. All right. So we're in sit-and-wait mode at
25 this point?

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1 A. Yes, sir.

2 Q. All right. Now, that's the CI's phone; correct?

3 A. Yes, sir.

4 Q. You don't know who he is talking to, do you?

5 A. No, sir.

6 Q. All right. You don't know who he's talking to
7 there, do you?

8 A. No, sir.

9 Q. But Detective Huper was sitting in the cab?

10 A. Yes, sir.

11 MR. SMILEY: Your Honor, for the record, we've
12 watched approximately forty minutes of the tape.

13 Q. [Mr. Smiley] Is that the CI's phone once again,
14 or is --

15 A. Yes, sir.

16 Q. -- or is that Detective Huper's?

17 A. The CI's phone.

18 Q. The CI's.

19 Once again, you don't know who he's talking to,
20 do you?

21 A. No, sir.

22 Q. Is that a police radio that's going on in the
23 background?

24 A. I believe it's the cab.

25 Q. The cab speaker?

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1 A. Yes, sir.
2 Q. The dispatch with the cab?
3 A. Yes, sir.
4 Q. All right. Because that was an actual cab;
5 right?
6 A. Yes, sir.
7 Q. It had like all the real stuff for a cab in it?
8 A. Yes, sir.
9 Q. All right. Do you know what that noise was?
10 A. No, sir.
11 Q. Okay. The CI's phone again?
12 A. Yes, sir.
13 Q. The CI walking?
14 A. Yes, sir.
15 Q. And that's the white car; right?
16 A. Yes, sir.
17 THE COURT: Mr. Smiley, I can't hear you over
18 the volume.
19 MR. SMILEY: Okay.
20 Q. [Mr. Smiley] That's the white car?
21 A. Yes, sir.
22 Q. The CI is inside the white car?
23 A. Yes, sir.
24 MR. SMILEY: We're approximately forty-six
25 minutes into the tape, Your Honor.

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1 Q. [Mr. Smiley] The CI's phone?

2 A. Yes.

3 Q. Now, that was allegedly the deal that took place
4 in the car; right?

5 A. Yes, sir.

6 Q. And nobody else got in that car other than the
7 CI?

8 A. I don't believe so, no, sir.

9 Q. And the white car was allowed to drive off;
10 correct?

11 A. Yes, sir.

12 Q. All right. It wasn't tailed or surveilled, it
13 was just allowed to leave; correct?

14 A. Yes, sir.

15 Q. All right. Detective Nice is now leaving the
16 area; correct?

17 A. Yes, sir.

18 Q. And that's about fifty minutes into the tape;
19 correct?

20 A. Yes, sir.

21 Q. All right. This is the only video you took that
22 was taken of the incident that day?

23 A. Yes, sir.

24 Q. And that's the only audio of the incident, that
25 we've heard here; correct?

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1 A. Yes, sir.

2 Q. This video, you viewed it after the incident?

3 A. Yes, sir.

4 Q. And it's -- from watching it today in court, is
5 it substantially or exactly the same as you remember it?

6 A. Yes, sir.

7 Q. Once this video was taken, you took it into
8 evidence; correct?

9 A. Yes, sir.

10 Q. And you put it -- you dropped it in a drop box?

11 A. Yes, sir.

12 Q. And at the same time you dropped off the drugs?

13 A. Yes, sir.

14 Q. All right. Now, you didn't have to get this
15 back out and change control numbers or anything?

16 A. No, sir.

17 Q. All right. Do you know where Detective Nice is
18 now?

19 A. I'm not sure. Somewhere on Remount heading
20 towards 26.

21 Q. All right. Do you know where Detective Nice is
22 going at this point?

23 A. Back to metro.

24 Q. Back to metro.

25 So the remainder of this tape, does it have any

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1 surveillance on it, anything to do with this case?

2 A. No, sir.

3 Q. Just basically the camera is running while he's
4 driving?

5 A. Yes, sir.

6 Q. All right. This is a stationary camera --

7 A. Yes, sir.

8 Q. -- that he can zoom in and out and run?

9 A. Yes, sir.

10 MR. SMILEY: Your Honor, since there's nothing
11 further on the tape in surveillance, no -- according to
12 the officer, nothing to do with the case besides the
13 camera running while he's driving, I don't know that we
14 need to see the rest of it. So I don't know that it's
15 relevant at this point.

16 THE COURT: All right. So you would like to
17 stop the tape at this point?

18 MR. SMILEY: Yes, ma'am.

19 THE COURT: All right.

20 MR. SMILEY: All right.

21 THE COURT: Thank you.

22 [Whereupon, videotape of drug buy, State's
23 Exhibit Number 4, concludes at 10:51 a.m.]

24 Q. [Mr. Smiley] What is the address of the school?

25 A. [No response]

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1 Q. The school.

2 A. 5505 North Rhett.

3 Q. 5505 North Rhett. All right. Now --

4 MR. SMILEY: Beg the Court's indulgence.

5 THE COURT: Yes, sir.

6 [Whereupon, Mr. Smiley reviews documents]

7 Q. [Mr. Smiley] All right. I know I've kept you
8 up here a long time, but I'm almost done.

9 Now, yesterday you testified that three days
10 after you put the drugs into evidence you got a call that
11 came from the evidence custodian --

12 Do you remember his name?

13 A. I'm not sure.

14 Q. -- from an evidence custodian with the
15 Charleston County Sheriff's Office who told you that there
16 was a problem with the Best kit you had dropped in and
17 that you needed to come correct it; right?

18 A. Yes, sir.

19 Q. All right. And so you went to Pinehaven and got
20 the drugs out of evidence; correct?

21 A. Yes, sir.

22 Q. The other, the tape and all that, you left in
23 evidence; correct?

24 A. Yes, sir.

25 Q. All right. So you took the Best kit that you

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1 had filled out on the 4th and dropped it in, opened it,
2 pulled the drugs out, discarded the old Best kit, put it
3 in a new one and wrote a new control number on it and new
4 information on it; correct?

5 A. Yes, sir.

6 Q. When you did that, where did you do that?

7 A. I did that at the evidence compound.

8 Q. Okay. And then you placed it back into evidence
9 after changing the control number and repackaging it?

10 A. Yes, sir.

11 Q. But it's your testimony that you don't remember
12 what the problem was, just that there was a problem;
13 correct?

14 A. Yes, sir.

15 Q. Okay. Now, let's talk about Cory Hart. You
16 arrested him; right?

17 A. Yes, sir.

18 Q. You arrested him for drugs; correct?

19 A. Yes, sir.

20 Q. And a gun?

21 A. Yes, sir.

22 Q. And not taking care of his child very well?

23 A. Yes, sir.

24 Q. He had twenty -- approximately twenty-one grams
25 of crack on him; right?

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1 A. Yes, sir.

2 Q. You then offered to let him be a cooperating
3 individual, a CI; right?

4 A. Yes, sir.

5 Q. And helped him with his bond to get out of jail?

6 A. Yes, sir.

7 Q. All right. So that you -- he doesn't do you any
8 good sitting in jail. You need him on the street; right?

9 A. Yes, sir.

10 Q. Three weeks later you signed him up as a CI?

11 A. Yes, sir.

12 Q. Give or take.

13 Okay. Now, you are dealing with a criminal, a
14 guy that's broke the law; right?

15 A. Yes, sir.

16 Q. So you are very careful with who you choose to
17 be a cooperating individual; right?

18 A. Yes, sir.

19 Q. So once you chose him, you read him a code of
20 conduct; right?

21 A. Yes, sir.

22 Q. That basically says you've got to be a good
23 citizen; right?

24 A. Yes, sir.

25 Q. Something that you and I take for granted but

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1 when you're dealing with someone like a cooperating
2 individual, you've got to read it out to them; correct?

3 A. Yes, sir.

4 Q. Okay. Now, this isn't somebody who you had
5 relied upon in the past or proved reliable in the past,
6 this is your first deal with him; right?

7 A. Yes, sir.

8 Q. Okay. Is he -- your testimony is he told you
9 that he could do Stanford Brown. You didn't tell him
10 that, that you wanted Stanford Brown. He said he could
11 get it from Stanford Brown; correct?

12 A. Yes, sir.

13 Q. All right. So after he was signed up, a month
14 and a half goes by and then y'all tell him, we're ready,
15 basically; right?

16 A. Yes, sir.

17 Q. All right. So the CI then goes through whatever
18 it takes to set up a deal; correct?

19 A. Yes, sir.

20 Q. And, unfortunately, we don't have any recordings
21 of that set-up, do we?

22 A. No, sir.

23 Q. All right. And he called -- he used his cell
24 phone, I would assume, to set most of that up?

25 A. Yes, sir.

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1 Q. All right. And he would have called the number
2 using that cell phone?

3 A. Yes, sir.

4 Q. And it would have been captured in his cell
5 phone?

6 A. Yes, sir.

7 Q. All right. Now, on the day of the indicant, you
8 searched him; right?

9 A. Yes, sir.

10 Q. Because you wanted to make sure he didn't have
11 any drugs on him; right?

12 A. Yes, sir.

13 Q. Or any guns on him; right?

14 A. Yes, sir.

15 Q. Because you didn't just trust him, you had to
16 make sure; right?

17 A. Yes, sir.

18 Q. Because you're dealing with a guy that you had
19 arrested and hadn't relied on before; correct?

20 A. Yes, sir.

21 Q. All right. So and then you put an audio
22 recording on so that you could hear what was going on;
23 right?

24 A. Yes, sir.

25 Q. And it turns out that it wasn't very good. But

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1 you put one on him; right?

2 A. Yes, sir.

3 Q. And you do that because you're just not going to
4 trust what he says. You want to be able to hear what's
5 going on; right?

6 A. Yes, sir.

7 Q. Additionally, for safety purposes, to make sure
8 if something goes wrong you want to be able to monitor
9 what's going on; right?

10 A. Yes, sir.

11 Q. And, lastly, you want that recording of what's
12 going on to be able to let this jury hear if it ever comes
13 to court; correct?

14 A. Yes, sir.

15 Q. All right. Now, you used a video in this buy
16 with a CI to be able to show what went on; right?

17 A. Yes, sir.

18 Q. And because you're not going to trust just what
19 he says goes on, you want a recording of it; correct?

20 A. Yes, sir.

21 Q. And that's why -- one of the reasons there's
22 seven officers around. They want to watch what's going
23 on; right?

24 A. Yes, sir.

25 Q. And of course there are safety concerns. I'm

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1 not going to say that's the only reason. But you want
2 that, too; right?

3 A. Yes, sir.

4 Q. And in this case, before it ever took place it
5 was determined that whoever sold those drugs to your CI
6 wouldn't be arrested; right?

7 A. Yes, sir.

8 Q. Not that day.

9 A. Yes, sir.

10 Q. Okay. So you've got a CI, you've searched him
11 thoroughly, you read him his code of conduct, you've got
12 seven officers there to set up the deal; right?

13 A. Yes, sir.

14 Q. Now, this Cory Hart: the first time he had ever
15 done this stuff, and so you didn't know how he would
16 perform; correct?

17 A. No, sir.

18 Q. Now, it's fair to say you didn't trust him,
19 either; correct?

20 A. Yes, sir.

21 Q. I mean, he's a criminal. You can't trust him
22 can you?

23 A. No, sir.

24 Q. All right. And since you can't trust him,
25 that's one of the reasons when he comes back you pat him

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1 down, and you also get the drugs, but to make sure he
2 didn't have anything else on him when he comes back;
3 right?

4 A. Yes, sir.

5 Q. And then you, after it's over with, have him
6 write down what he said happened; right?

7 A. Yes, sir.

8 Q. That's because you don't want him later to
9 change his story; right?

10 A. Yes, sir.

11 Q. So you don't trust him; right?

12 A. Yes, sir.

13 MR. SMILEY: Nothing further.

14 THE COURT: Mr. Riesen?

15 MR. RIESEN: Thank you, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. RIESEN:

18 Q. Detective Brown, let's go through a couple of
19 things that Mr. Smiley asked you about. First, as to the
20 defendant's charges: one of those was unlawful neglect
21 towards a child; correct?

22 A. Yes, sir.

23 Q. What is that?

24 MR. SMILEY: Objection, Your Honor. It wasn't
25 the defendant's charges, it was the CI's charges.

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1 MR. RIESEN: I apologize. I misspoke. One of
2 the --

3 THE COURT: Okay. Thank you.

4 MR. RIESEN: All right. Strike that.

5 Q. [Mr. Riesen] One of the confidential
6 informant's, Cory Hart's, charges was unlawful conduct
7 towards a child; is that correct?

8 A. Yes, sir.

9 Q. What is that charge based upon?

10 A. It was based on the fact that there was a strong
11 odor of marijuana in the residence where the child was
12 located.

13 Q. Okay. Now, Mr. Smiley also talked about he was
14 charged with several other charges: trafficking, unlawful
15 possession of a firearm, manufacturing marijuana, and I
16 think this unlawful conduct. I believe you testified
17 earlier that it's not uncommon to use someone, a
18 confidential informant, after they've been busted, to get
19 to someone else; is that correct?

20 A. Yes, sir.

21 Q. And is this a common practice?

22 A. Yes, sir.

23 Q. And, again, why don't we just use police
24 officers rather than these -- than people you've already
25 busted?

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1 A. You have to use confidential informants because
2 they have contact with other dealers, and other dealers
3 tend to only trust people they've already dealt with in
4 the past.

5 Q. Now, let's talk about the video surveillance.
6 It's not glamorous; correct?

7 A. No, sir.

8 Q. I believe you testified -- I think that was
9 Mr. Smiley's words. And it's not the best quality;
10 correct?

11 A. No, sir.

12 Q. And the audio stinks?

13 A. Yes, sir.

14 Q. And this is not CSI. You guys don't have the
15 equipment that we see on TV; is that correct?

16 A. No, sir.

17 Q. So you can only work with what you have; is that
18 correct?

19 A. Yes, sir.

20 Q. And that surveillance, that's -- is that typical
21 how it works? these stakeouts where you sit for long
22 periods of time until things go down -- until the deal
23 goes down?

24 A. Yes, sir.

25 Q. Now, there's been a lot of talk about locations

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1 and not seeing who was in the vehicle; right?

2 A. Yes, sir.

3 Q. And there was also a discussion about no
4 stickers on the car, nothing to identify the car; correct?

5 A. Yes, sir.

6 Q. Now, it was a white Chevy Impala; is that
7 correct?

8 A. Yes, sir.

9 Q. And it was a 2003 make?

10 A. Yes, sir.

11 Q. And it had tinted windows; is that correct?

12 A. Yes, sir.

13 Q. And when you went to [REDACTED] to
14 arrest the defendant at his home, was that vehicle located
15 there?

16 A. Yes, sir.

17 Q. Okay. Now, Mr. Smiley brought up the fact that
18 that wasn't listed on the incident report; is that
19 correct?

20 A. Yes, sir.

21 Q. Now, there's a lot of things listed on this
22 incident report; correct?

23 A. Yes, sir.

24 Q. And let's talk about why you list certain things
25 on the incident report and why you don't.

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1 MR. RIESEN: And this may be a legal issue, Mr.
2 Smiley.

3 MR. SMILEY: It is.

4 MR. RIESEN: May we approach?

5 THE COURT: Please approach.

6 [Whereupon, an off-the-record bench conference
7 is held]

8 THE COURT: Ladies and gentlemen, there is a
9 matter that I must take up outside of your presence.
10 Do not discuss this case amongst yourselves. Do not
11 begin your deliberations.

12 Please rise for the jury.

13 [Whereupon, the jury exits the courtroom at
14 11:04 a.m.]

15 THE COURT: All right. We are outside of the
16 presence of the jury.

17 Mr. Riesen, you indicated that you had a matter
18 of law.

19 MR. RIESEN: That is correct, Your Honor.

20 Mr. Smiley brought up the incident report which
21 relates to his arrest at [REDACTED].

22 I did not bring that up. Mr. Smiley did. In doing
23 that, Mr. Smiley specifically said, now, you testified
24 earlier that when you arrested the defendant, that

25 there was a white 2003 Chevy Impala there; correct. He

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1 said, yes, that is correct. Mr. Smiley then said:
2 well, on this incident report I see that you have a
3 blue Buick LeSabre, VIN number so-and-so, and listed
4 it. He left out -- basically, he's drawing the
5 conclusion that there is a blue car there that's listed
6 on the incident report but for some reason there is not
7 a white Chevy Impala, which is the crux of this case.
8 This is where the buy went down. Therefore, he's
9 leading the jury to infer that he's either lying or it
10 wasn't there.

11 I seek to elicit the testimony from Mr. Brown
12 that the reason it's not on there is because he didn't
13 confiscate the car. There were no drugs in it. There
14 was nothing in it. The things listed on this incident
15 report are only those that are confiscated; most
16 importantly, the blue Buick LeSabre. The reason that's
17 listed, drugs were found in that vehicle. And that is
18 why it's listed on here. Had drugs been found in the
19 Chevy Impala, it would have been on there, as well.

20 He's clearly leading the jury to believe that
21 it's not on here, that car is not on here, because it
22 wasn't there. He's opened the door, Your Honor.

23 MR. SMILEY: If I may respond, Your Honor?

24 THE COURT: You may.

25 MR. SMILEY: First of all, I never asked him

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1 whether -- what was confiscated or wasn't confiscated.
2 Mr. Riesen, in direct, had brought up the Windsor Hill
3 address and the fact that my client was arrested there;
4 brought up that there was a blue Buick LeSabre there
5 and a white Impala there. In cross, I merely asked
6 him, did you write down the VIN number of the blue
7 LeSabre, and he said yes. I asked him did he write
8 down the VIN number or the tag off of the white Impala.
9 He said no, and I moved on.

10 I didn't open any doors. I certainly should be
11 able to cross on the fact in direct he brought up where
12 he was arrested and that there were two cars there, a
13 blue one and a white one. The drugs that were found in
14 the blue LeSabre are subject to indictments in another
15 county. That is not on trial here.

16 I certainly didn't open any doors. I followed
17 up on the fact that they made an arrest. In the arrest
18 there were two cars, once of which they wrote the VIN
19 number down on. I just asked him if he wrote the VIN
20 number down, the tag number down, on the Impala. I
21 have yet to suggest that the Impala was not there.
22 That's putting words in my mouth.

23 THE COURT: Mr. Riesen, I did not hear your
24 question --

25 MR. SMILEY: I --

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1 THE COURT: Hold on one second, Mr. Smiley.

2 -- because what I -- you interrupted your
3 question, mid question, saying you think we had a
4 matter of law. What door do you plan to open?

5 MR. RIESEN: Well, my question was going to
6 be: Mr. Smiley questioned you about a blue Buick
7 LeSabre with a VIN number that's listed in the incident
8 report. He also questioned you about whether or not
9 the Chevy Impala was also listed on there or had a VIN
10 number. My question was going to be why isn't the
11 Chevy -- it's a blue -- it's a blue Impala is listed
12 and -- with a VIN number at [REDACTED] Windsor, why isn't the
13 Chevy Impala. The reason for that is because that we
14 didn't seize that vehicle, there was nothing in it,
15 there was no drugs, there was nothing; the only items I
16 list in an incident report, when I make any arrest, are
17 items that we seized.

18 The 2003 Chevy Impala was not seized, so that's
19 why it wasn't listed in the incident report.

20 THE COURT: Mr. Smiley?

21 MR. SMILEY: Your Honor, I asked the following
22 questions: when you got to Windsor Hill, you wrote
23 down the vehicle identification number of an
24 automobile, didn't you. The answer: yes. Would that
25 had gone to the blue LeSabre that was in the yard.

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1 Yes. There was a white Impala in the yard. Yes. You
2 didn't write down the tag number for it; did you. No.
3 You didn't write down the VIN number for it. No.

4 That's it. I didn't open any doors.

5 THE COURT: Mr. Smiley, why shouldn't Mr. Riesen
6 be allowed to inquire as to why he didn't write down
7 the tag number?

8 MR. SMILEY: Of the white car?

9 THE COURT: Yes.

10 MR. SMILEY: He didn't write down the tag number
11 of the blue car, either.

12 MR. RIESEN: He wrote down the VIN number.

13 THE COURT: Why can't Mr. Riesen -- I'm --

14 MR. SMILEY: He --

15 THE COURT: -- failing to understand why Mr.
16 Riesen cannot follow up on the cross-examination, on
17 his redirect, and ask why he did not treat the white
18 car the same as the blue car.

19 MR. SMILEY: When the answer is because the
20 blue car had drugs in it and the white car did not, we
21 now -- the undo prejudice of a separate case, an
22 uncharged crime that he's charged in another county --
23 we aren't trying them together, is -- would outweigh
24 any probative value he might have gotten from that.

25 I followed up their questions. They said there

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1 was a blue car and a white car in the yard. I just
2 asked him, did you write down the VIN number of one.
3 Yeah. Did you write it down for the other. No. I
4 didn't suggest the car wasn't there. I suggested that
5 we just -- that he wrote down a VIN number for one.

6 THE COURT: And, Mr. Smiley, you -- I'm just
7 trying to characterize your argument so that -- your
8 objection is the fact that the blue car --

9 MR. SMILEY: Right.

10 THE COURT: -- is the subject of Dorchester
11 County charges, which was the subject of the motion
12 that I granted --

13 MR. SMILEY: Correct.

14 THE COURT: -- correct?

15 MR. SMILEY: Yes, ma'am.

16 THE COURT: The issue is not that he cannot
17 inquire about the white car being treated; it is what
18 happened subsequent to the blue car? Is that your
19 objection?

20 MR. SMILEY: If the answer -- yes, ma'am. If
21 the answer is, we seized the blue car because there was
22 drugs in it, that's subject to another one, another
23 investigation, is I believe that's improper. You ruled
24 that there shouldn't be any mention of the drugs from
25 another county --

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1 THE COURT: Correct.

2 MR. SMILEY: -- that's the subject there.

3 If he says the answer is he confiscated the blue
4 car but not the white car, without the drug part, I
5 don't care. I mean, I don't care. But when we get
6 into drugs that are subject to other litigation, that I
7 made a prior bad-acts motion that was granted -- I
8 haven't opened the door. I didn't ask him anything to
9 do with why they were seizing anything. I merely asked
10 did he -- he had written down the VIN number on the
11 blue car, did he write it down on the white car.

12 Now, you've got to remember he alleges the white
13 car was used to sell drugs. I mean, it's on the --
14 they say that's the same part that's on the video -- is
15 they could have confiscated that, I assume. But we're
16 getting into a simple forfeiture stuff then. It had
17 drugs inside of it. I just ask him why he didn't --
18 that did he do it. I didn't ask why. I just asked did
19 he write it down.

20 THE COURT: Mr. Riesen, briefly.

21 MR. RIESEN: Your Honor, our whole case hinges
22 on this car. Because we don't have --

23 THE COURT: The white car.

24 MR. RIESEN: The white car. I'm sorry. The
25 2003 Chevy Impala.

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1 On the video we don't -- you can't see who's
2 in it. This is a circumstantial case. It's testimony
3 from a CI who says it's in there. But most importantly
4 it's from an officer who, on video and under
5 surveillance, saw a 2003 Chevy Impala at the buy
6 location and then five days later, where they arrested
7 the defendant, that same car there. That's the
8 circumstantial evidence. Is that just a coincidence
9 that it's a 2003 Chevy Impala in both locations?

10 If the jury is to believe -- is led to believe
11 that, oh, you only listed a VIN number of a Buick on
12 the -- where you arrested the defendant, that's leading
13 them to believe that there was no white car there.
14 He's testified that the Chevy Impala was there. So we
15 need to let them know why he didn't put it on his
16 incident report. And, quite frankly, he didn't put it
17 on his incident report because he didn't seize that --
18 he didn't seize that vehicle. He only puts things on
19 there that are seized. Now, there's a limit --

20 THE COURT: Mr. Riesen, you may ask the
21 detective why the cars were treated differently.

22 MR. RIESEN: Okay.

23 THE COURT: But you may not ask him what was
24 found in the car.

25 MR. RIESEN: Okay. That's fine. And when you

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1 say that, just so he understands: so he can basically
2 say one car -- evidence was seized in one car and
3 evidence was not seized in another? Is that what
4 you're saying? I'm not going to say drugs. I'm going
5 to say evidence.

6 THE COURT: Mr. Riesen, I am certainly not in a
7 position to tell Detective Brown what he did or did not
8 do on that day.

9 MR. RIESEN: Okay.

10 THE COURT: What I am ruling on is in accordance
11 with the motion to exclude testimony of prior bad acts,
12 which I granted yesterday concerning the subsequent
13 Dorchester County charges, which is why I understand
14 the blue car was confiscated and the VIN number and all
15 applicable information pertaining to that car was on
16 the report and the white car was not.

17 MR. RIESEN: Okay.

18 THE COURT: You may not inquire or elicit
19 testimony regarding why the car was confiscated,
20 because that I have already ruled on, that drugs were
21 found in the car and those are the subsequent charges
22 that are pending in Dorchester County.

23 MR. RIESEN: So I can ask the question, then,
24 why wasn't the white Impala not listed on your incident
25 report and let him answer it? Is that what you're

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1 telling me?

2 THE COURT: I'm assuming that the answer is
3 going to be along the lines of because it was not
4 confiscated.

5 MR. RIESEN: Okay. I'll ask that question,
6 then.

7 THE COURT: Anything further, Mr. Smiley?

8 MR. SMILEY: No, ma'am.

9 THE COURT: We are going to take about a five-
10 minute break. All right? Be back -- we'll do seven.
11 11:25, and then we'll bring the jury in.

12 Detective Brown, you know the rules.

13 THE WITNESS: Yes, ma'am.

14 THE COURT: Thank you.

15 [Whereupon, a recess is taken from 11:15 a.m. to
16 11:24 a.m.]

17 THE COURT: Thank you. Be seated.

18 Anything before we bring in the jury?

19 MR. SMILEY: Not from the defense, Your Honor.

20 THE COURT: Mr. Riesen?

21 MR. RIESEN: Nothing, Your Honor.

22 THE COURT: Let's bring in the jury.

23 [Whereupon, the jury enters the courtroom at
24 11:25 a.m.]

25 THE BAILIFF: All present, Your Honor.

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1 THE COURT: Thank you. Please be seated. Mr.
2 Riesen.

3 MR. RIESEN: Thank you, Your Honor.

4 CONTINUED REDIRECT EXAMINATION

5 BY MR. RIESEN:

6 Q. Now, Detective Brown, as I was asking you
7 earlier: Mr. Smiley brought up the point that when you
8 made the arrest at [REDACTED] that you had
9 listed a Buick LeSabre with a VIN number on your incident
10 report but you did not list a Chevy Impala; is that
11 correct?

12 A. Yes.

13 Q. Why didn't you list the Chevy Impala?

14 A. I didn't list the Chevy Impala because I didn't
15 -- we didn't seize any items from it or the vehicle
16 itself.

17 MR. SMILEY: Your Honor, objection. May we
18 approach?

19 THE COURT: You may.

20 [Whereupon, an off-the-record bench conference
21 is held]

22 THE COURT: Overruled.

23 Q. [Mr. Riesen] A couple more points. Mr. Smiley
24 talked about trust with a CI; correct?

25 A. Yes.

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1 Q. Now, cases aren't about trust, though, they're
2 about facts --

3 A. Yes.

4 Q. -- is that correct?

5 And they're about procedure?

6 A. Yes.

7 Q. Let's talk about the facts. Okay? Number one,
8 did you have constant surveillance of Cory Hart from the
9 time you placed an audio wire on him and searched him
10 until the time he left that taxi -- left that Chevy Impala
11 and walked to the cab?

12 A. Yes.

13 Q. He never lost your sight -- you never lost sight
14 of him?

15 A. No.

16 Q. And when you searched him, did he have any drugs
17 on him initially?

18 MR. SMILEY: I'm going to object to the leading,
19 Your Honor.

20 THE COURT: Sustained as to leading.

21 Q. [Mr. Riesen] Did you search him initially?

22 A. Yes.

23 Q. Did he have any drugs on him?

24 A. No.

25 MR. SMILEY: Objection. Leading, Your Honor.

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1 THE COURT: Sustained. Mr. Riesen, please
2 rephrase.

3 Q. [Mr. Riesen] Is there any way that the
4 defendant -- excuse me. Is there any way that Cory Hart
5 could have received --

6 MR. SMILEY: Objection, Your Honor. Leading.

7 MR. RIESEN: This is a yes or no question.

8 MR. SMILEY: Which is leading.

9 THE COURT: Counsel.

10 Let Mr. Riesen finish his question. Mr. Riesen?

11 Q. [Mr. Riesen] Is there any way that Cory Hart
12 could have gotten drugs on him, other than in that
13 taxicab?

14 A. No.

15 MR. SMILEY: Objection.

16 MR. RIESEN: I take it back.

17 MR. SMILEY: Move to strike.

18 MR. RIESEN: Not taxicab.

19 THE COURT: Hold on one second.

20 MR. RIESEN: Sorry.

21 MR. SMILEY: Motion. Leading, Your Honor.

22 THE COURT: I'm going --

23 MR. SMILEY: He suggested the answer.

24 THE COURT: I'm going to overrule that as to
25 leading.

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1 MR. RIESEN: I'll rephrase it.

2 Q. [Mr. Riesen] Is there any way --

3 THE COURT: He's already answered, Mr. Riesen.
4 He answered. He answered --

5 MR. RIESEN: I said taxi. It wasn't taxi. I
6 misspoke.

7 Q. [Mr. Riesen] Is there any way that the
8 confidential informant could have received drugs other
9 than in the Chevy Impala?

10 A. No.

11 Q. Okay.

12 MR. RIESEN: We have a matter of law, Your
13 Honor.

14 THE COURT: Please approach.

15 [Whereupon, an off-the-record bench conference
16 is held]

17 MR. RIESEN: Court's indulgence one second, Your
18 Honor.

19 THE COURT: Yes, sir.

20 [Whereupon, Mr. Riesen and Ms. Linder confer]

21 MR. RIESEN: No further questions, Your Honor.

22 THE COURT: Counsel approach.

23 [Whereupon, an off-the-record bench conference
24 is held]

25 THE COURT: Mr. Smiley, any --

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1 MR. SMILEY: Recross? Yes, ma'am.

2 THE COURT: -- any recross?

3 MR. SMILEY: Yes, ma'am.

4 RECROSS-EXAMINATION

5 BY MR. SMILEY:

6 Q. Now, just so we can be real clear. The blue
7 LeSabre you wrote the VIN number down on; correct?

8 A. Yes.

9 Q. And you confiscated that car; correct?

10 A. Dorchester did.

11 Q. All right. The white Impala, you say it was
12 there in the yard; right?

13 A. Yes.

14 Q. Okay. And that's the car you've alleged was in
15 the video; right?

16 A. Yes.

17 Q. Did you write the tag number down?

18 A. No.

19 Q. Did you take the VIN number off of it?

20 A. No.

21 Q. Okay. Now, undercover officers make purchases
22 all the time; correct?

23 A. Some cases.

24 Q. Yeah. I mean, it's not uncommon for an officer
25 to make a case; right?

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1 A. No.

2 Q. Now, the allegation in this case is one purchase
3 by your -- Mr. Cory Hart on Mr. Stanford Brown. That's
4 what you're here about is the one sale; right?

5 A. Yes.

6 Q. And it's the only time you used this CI; right?

7 A. Yes.

8 Q. Oh. I've got another question. When I was --
9 through direct and cross, is Mr. Riesen keeps saying 2003
10 white Impala. When it came through in that video, you
11 just saw a white car; right?

12 A. Yes.

13 Q. All right. You didn't know it was a 2003 Impala
14 then, did you?

15 A. [No response]

16 Q. Did you? When it pulled in, you saw a white
17 car. You didn't say, oh, there's a 2003 white Impala, did
18 you?

19 A. Could you say it again for me?

20 Q. Let me -- we're at the Hess station; right?

21 A. Okay.

22 Q. You're in a position to view; correct?

23 A. Yes.

24 Q. A white car comes into the parking lot; correct?

25 A. Yes.

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1 Q. The one you didn't get the tag number on;
2 correct?

3 A. Yes.

4 Q. At that point you didn't look at it and say,
5 there's a 2003 white Impala, did you?

6 A. I did.

7 Q. What's the difference between a 2003 and a 2002
8 Impala?

9 A. Not much.

10 Q. Do you know the differences?

11 A. No.

12 Q. What's the difference between a 2003 and a 2004
13 Impala? Do you know?

14 A. Not much.

15 Q. So when you saw it, you saw a white car; right?

16 A. A white Chevy, yes.

17 Q. A Chevy. Okay.

18 Oh. I do have one more thing and then I'll be
19 done, Your Honor.

20 You're the part of the Charleston metro
21 narcotics unit; right?

22 A. Yes.

23 Q. And he asked you about the equipment that you
24 have; right?

25 A. Yes.

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1 Q. And y'all are the specialized unit. Y'all have
2 the technology that other people -- other units don't
3 have; right? You're specialized; correct?

4 A. Yes.

5 Q. And you use the audio to confirm what you see;
6 right?

7 A. Yes.

8 Q. And you use the video to confirm what this
9 person is doing; correct?

10 A. Yes.

11 MR. SMILEY: Nothing further.

12 THE COURT: Detective, you may step down.
13 Please remain in the courtroom.

14 THE WITNESS: Yes, ma'am.

15 [Whereupon, the witness is excused and exits the
16 witness stand]

17 THE COURT: Call your next witness.

18 MR. RIESEN: May we approach briefly, Your
19 Honor?

20 THE COURT: You may.

21 [Whereupon, an off-the-record bench conference
22 is held]

23 MR. RIESEN: The State calls Cory Hart.

24 [Whereupon, Mr. Hart enters the courtroom]

25 THE COURT: Mr. Hart, please come forward to the

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1 witness stand.

2 THE CLERK OF COURT: Please place your left hand
3 on the Bible and raise your right hand. The other one.

4 [Whereupon, Mr. Hart is duly sworn by the clerk
5 of court as follows: do you swear or affirm that the
6 testimony that you shall give this Court and jury in
7 the trial of this case shall be the truth, the whole
8 truth, and nothing but the truth, so help you God]

9 THE WITNESS: Yes, ma'am.

10 THE CLERK OF COURT: Please have a seat.

11 [Whereupon, Mr. Hart takes the witness stand]

12 THE CLERK OF COURT: For the record, please
13 state your name and spell your last name.

14 THE WITNESS: Cory Hart. My last name,
15 H-A-R-T.

16 THE COURT: Mr. Riesen.

17 MR. RIESEN: Thank you, Your Honor.

18 - - - - -

19 CORY HART,

20 Having Been First Duly Sworn,
21 was Examined and Testified as Follows:

22 DIRECT EXAMINATION

23 BY MR. RIESEN:

24 Q. Mr. Hart, are you married?

25 A. No, sir.

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- 1 Q. Have any children?
- 2 A. Yes, sir.
- 3 Q. How many?
- 4 A. One.
- 5 Q. Boy or girl?
- 6 A. A boy.
- 7 Q. And are you employed?
- 8 A. Yes, sir.
- 9 Q. Where do you work?
- 10 A. At Schlotzsky's Deli and Papa John.
- 11 Q. And how long have you been with Schlotzsky's
- 12 Deli?
- 13 A. Going on two years.
- 14 Q. And what about Papa John's?
- 15 A. About a year.
- 16 Q. Okay. And what do you do for them?
- 17 A. I'm a cook and manager.
- 18 Q. Okay. And let's talk about -- briefly about
- 19 your background. You have a criminal record; is that
- 20 correct?
- 21 A. Yes, sir.
- 22 Q. And you were arrested in 2007, by Detective Mark
- 23 Brown, on some drug charges; is that correct?
- 24 A. Yes, sir.
- 25 Q. And those charges were I believe trafficking

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1 cocaine, unlawful possession of a firearm --

2 MR. SMILEY: Objection, Your Honor. Leading.

3 THE COURT: Mr. Riesen, please rephrase.

4 Q. [Mr. Riesen] What were you arrested for?

5 A. I was arrested for --

6 MR. RIESEN: If you could speak up in that
7 microphone so the jury can hear you, okay, Mr. Hart?

8 THE WITNESS: Yes, sir.

9 A. Manufacturing marijuana, and child neglect.

10 Q. [Mr. Riesen] Okay. And that's what you were
11 actually convicted of, isn't it?

12 A. [Indicates affirmatively]

13 THE COURT: Mr. Hart, I'm going to need you to
14 speak up. My court reporter needs to write down
15 everything that you say, and she can't write down head
16 shakes. All right?

17 THE WITNESS: Yes, ma'am.

18 THE COURT: Thank you, Mr. Hart.

19 Q. [Mr. Riesen] Now, Mr. Hart, based on those
20 charges, were you approached to act as a confidential
21 informant?

22 A. Yes, sir.

23 Q. And, initially, did you want to cooperate?

24 A. No, sir.

25 Q. Why not?

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1 A. Because I was scared.

2 Q. Okay. Did you ultimately decide to cooperate?

3 A. Yeah. Yes, sir.

4 Q. And what did -- on May 4th, 2007, did you make a
5 controlled buy for --

6 MR. SMILEY: Objection, Your Honor. Leading.

7 THE COURT: I'm going to allow it just to lay
8 the foundation of the testimony.

9 Q. [Mr. Riesen] On May 4th, 2007, were you
10 involved in a controlled purchase of crack cocaine?

11 A. Yes, sir.

12 Q. And who did you buy crack cocaine from?

13 A. From Boobie.

14 Q. Okay. Do you see -- do you know Boobie's real
15 name?

16 A. Yes, sir.

17 Q. What is it?

18 A. Stanford Brown.

19 Q. Do you see him here today?

20 A. Yes, sir.

21 Q. Could you point him out for the jury.

22 A. Right there [indicates].

23 MR. RIESEN: Let the record reflect he's
24 pointing the defendant out as Stanford -- also as
25 Boobie.

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1 THE COURT: It will reflect.

2 Q. [Mr. Riesen] Did you know the defendant before
3 this buy in '07?

4 A. Yes, sir.

5 Q. How long approximately before this buy did you
6 know him?

7 A. About four years, sir.

8 Q. And how did you know him?

9 A. From the street.

10 Q. Did you know him well?

11 A. Yes, sir.

12 Q. Now, let's go back to May 4th of '07, okay?
13 Where did this purchase take place?

14 A. It took place on the corner of Remount and North
15 Rhett at the Hess gas station.

16 Q. Okay. Did you --

17 THE COURT: Hold on one second, Mr. Riesen.

18 MR. SMILEY: May we approach, Your Honor?

19 THE COURT: You may.

20 [Whereupon, an off-the-record bench conference
21 is held]

22 MR. SMILEY: Withdraw the objection.

23 THE COURT: Mr. Riesen.

24 MR. RIESEN: Thank you, Your Honor.

25 Q. [Mr. Riesen] Now, you said this purchase took

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1 place at the Hess station at Remount Road and North Rhett;
2 is that correct?

3 A. Yes, sir.

4 Q. Did you meet with anyone -- any detectives prior
5 to this?

6 A. Yes, sir.

7 Q. And who did you meet with?

8 A. With Detective Brown.

9 Q. Was there any other officers that you met with
10 then?

11 A. Yes. But I can't pronounce his name.

12 Q. You can't pronounce his name.

13 If I were to say Detective Constanza, does that
14 ring a bell?

15 A. Yes, sir.

16 Q. Okay. What did they do when they met with you
17 initially?

18 A. When they met with me they patted me down, make
19 sure I ain't had no drugs or anything on me. Then the
20 home boy give me a wire, give me some cash. That's what
21 happened.

22 Q. Okay. You said pat you down. Did they search
23 you thoroughly?

24 A. Yes, sir.

25 Q. Where all did they search you?

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1 A. They check my waistline, checked my shoes, my
2 hair, everything.

3 Q. Okay. What did they do after they searched you?
4 Where did y'all go next?

5 A. We went to -- well, actually, he checked me on
6 Dorchester Road, at the Hess on Dorchester Road --

7 MR. RIESEN: Can you speak up, please? It's
8 hard to hear you. Okay?

9 A. I got pat down on the Hess on Dorchester Road.
10 And then we went around Remount Road to the Bi-Lo so I can
11 get in the cab.

12 Q. [Mr. Riesen] Okay. Now, when you said -- let's
13 take a step back. When you said you got patted, is that
14 the search you're referring to?

15 A. Yes, sir.

16 Q. Okay. And did they search you thoroughly?

17 A. Yes, sir.

18 Q. And they equipped you with an audio, you said?

19 A. Yes, sir.

20 Q. And then you said you were driven from that Hess
21 station, which was where you initially were searched to --
22 where did you say they took you next?

23 A. The one on Remount Road and North Rhett.

24 Q. Okay. And you said you got into a cab there?

25 A. No.

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1 Q. Okay. I'm sorry. What did you do when you got
2 to the Bi-Lo on Remount Road?

3 A. When I got to Remount Road I gone to the Bi-Lo
4 and then a cab -- where they took me to the cab.

5 Q. And that's when you got in the cab?

6 A. Yes, sir.

7 Q. Okay. Do you recall around what time this was?

8 A. Probably about six o'clock.

9 Q. Now, you stated earlier you were involved in a
10 controlled buy with the defendant. How did you get in
11 touch with him? How did you get in contact with him for
12 this buy?

13 A. I called him from my cell phone.

14 Q. Okay. And where were you when you called. Were
15 you in the taxi?

16 A. Yes, sir.

17 Q. And what did you say to him?

18 A. I told him I had \$340 and I wanted to buy some
19 drugs.

20 Q. And was he willing to sell it to you?

21 A. Yes, sir.

22 Q. And do you -- did y'all decide when and where
23 that was -- did you then decide where that was to take
24 place?

25 A. Yes, sir.

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1 Q. And where was that going to take place again?

2 A. At the Hess on Remount and North Rhett.

3 Q. Okay. Now, when you got to the Hess station
4 initially, was the defendant there?

5 A. No, sir.

6 Q. But I'm assuming he later -- did he show up?

7 A. Yes, sir.

8 Q. Okay. And approximately how long were you in
9 the cab before he showed up?

10 A. About thirty minutes.

11 Q. Okay. Now, how did he -- I assume -- when he
12 arrived, how did he get there?

13 A. A white Impala.

14 Q. Okay. A white Impala, you said?

15 A. Yes, sir.

16 Q. Had you seen that Impala before?

17 A. Yes, sir.

18 Q. I'm sorry?

19 A. Yes, sir.

20 Q. How many times had you seen that Impala before?

21 A. Plenty times.

22 Q. Okay. And when you -- who was driving? When
23 you had seen that Impala before -- had you ever been in
24 that Impala before?

25 A. Yes, sir.

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1 Q. Who was driving the Impala when you were in it
2 before?

3 A. Boobie.

4 Q. Okay. And, again, you said Boobie. Is that the
5 defendant?

6 A. Yes, sir.

7 Q. Okay. How many times do you think you've been
8 in that Impala before?

9 A. Like ten times.

10 Q. I'm sorry?

11 A. Like ten times.

12 Q. Okay. Let's go back to the Hess station when
13 that Impala arrived. Okay. What did you do when the
14 Impala arrived?

15 A. I got out the cab and I walked over to the
16 Impala and got in the back seat.

17 Q. Okay. When you got in the back seat, which door
18 did you get in?

19 A. On the right-hand side.

20 Q. Okay. And when you got into the back seat of
21 that Chevy Impala, who was driving?

22 A. Boobie.

23 Q. Again, Boobie is who?

24 A. The defendant, sir.

25 Q. Was anyone else in that vehicle?

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1 A. Yes, sir.

2 Q. Okay. Who -- do you know who the other person
3 was?

4 A. No, sir.

5 Q. Was it a male or a female?

6 A. It was a male.

7 Q. Black or white?

8 A. A black male.

9 Q. Ever seen him before?

10 A. No, sir.

11 Q. When you got in the back seat tell us exactly --
12 I want you to tell the jury exactly what happened when you
13 got in the back seat of that car.

14 A. When I got in the back seat --

15 Q. Look at the jury. Tell them what happened.

16 A. When I got in the back seat I had \$340 that I
17 had got from the detectives, so I gave Boobie the \$340
18 that I had and then he gave me some crack. He tried to
19 put it in my hand. And then I'm like, I need a bag. So
20 he put it on the scale and everything, and weighed it out,
21 put it in a bag and gave it to me, and I got out of the
22 car --

23 Q. And did he take --

24 A. -- I walked back to the taxi.

25 Q. I'm sorry. I didn't mean to interrupt.

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1 Finish what -- could you just repeat what you
2 said after you -- you put it in a bag. And then what
3 happened?

4 A. He pulled the crack out. I gave him the cash
5 first, you know, and then he pulled the crack out and he
6 weighed it on a scale. And then after he weighed it on
7 the scale, he tried to give it to me and then I was like,
8 I need a bag to put it in. And then he put it in a bag.
9 And then I left out of his car.

10 Q. Okay. Where did he -- did you see where --
11 where the crack came -- where he pulled it from?

12 A. No, sir.

13 Q. Was it in anything?

14 A. Maybe like a -- like a Crown Royal bag.

15 Q. Okay. And you mentioned a digital scale.

16 A. Yes, sir.

17 Q. Where did this digital scale come from?

18 A. It was in the car. I don't know where at in the
19 car.

20 Q. Okay. And you said he weighed it. Where did he
21 weigh it? Where in the car did he do this?

22 A. On the low -- on the low piece, the low console
23 part, in the middle.

24 Q. Okay. Did you -- do you know how much it
25 weighed out to?

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1 A. Yes, sir. At like fourteen grams.

2 Q. Okay. About fourteen grams.

3 A. [Indicates affirmatively]

4 Q. After he gave you the crack cocaine in the
5 plastic bag, you said you got out of the taxicab; correct?

6 A. Yes, sir.

7 MR. RIESEN: Excuse me. Strike that.

8 Q. [Mr. Riesen] You said you got out of the Chevy
9 Impala; is that correct?

10 A. Yes, sir.

11 Q. Just one quick question. What were the windows
12 like in this Impala?

13 A. Tinted.

14 Q. Okay. When you walked from that -- where did
15 you go when you left the Impala?

16 A. I walked back to the cab.

17 Q. Okay. Did you stop and talk to anybody?

18 A. No, sir.

19 Q. Did you interact with anybody?

20 A. No, sir.

21 Q. In fact, did you talk or interact with anyone
22 other --

23 MR. SMILEY: Objection, Your Honor. Leading.

24 THE COURT: Mr. Riesen, please rephrase.

25 Q. [Mr. Riesen] After you left the Impala, where

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1 did you go?

2 A. After I left the Impala, I got inside the
3 taxicab.

4 Q. And did you get in -- okay. What door did you
5 get in?

6 A. In the taxicab?

7 Q. Yes.

8 A. In the back seat.

9 Q. Was this the same taxicab you referred to
10 earlier that you got in?

11 A. Yes, sir.

12 Q. What happened after you got in the taxicab? Did
13 you go anywhere?

14 A. Yes, sir.

15 Q. Where did you go?

16 A. I went to go meet up with Mr. Brown.

17 Q. When you say Mr. Brown, is that Detective Brown?

18 A. Detective Brown.

19 Q. Okay. And do you remember where you went?

20 A. I think I went to a school or something, to
21 Hanahan Middle School, or Hanahan something.

22 Q. Well, when you went to this location, what
23 happened?

24 A. I was searched once again, pat down thoroughly
25 in my hair, waistline, shoes, everything. They took my

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1 shoes off. He took his drugs off of me. Like the drugs
2 that I got from Boobie, he took them off me. He took the
3 wire off of me. And then I had to write a statement.

4 MR. RIESEN: May I approach, Your Honor?

5 THE COURT: You may.

6 MR. RIESEN: I need to play the video, redacted
7 portion. This may take -- can we approach briefly?

8 THE COURT: You may.

9 [Whereupon, an off-the-record bench conference
10 is held]

11 MR. RIESEN: May I approach, Your Honor?

12 THE COURT: You may.

13 Q. [Mr. Riesen] Now, Mr. Hart, I'm showing you
14 what's been marked as State's Exhibit Number 4. It's a
15 VHS tape. Do you recognize this tape?

16 A. Yes, sir.

17 Q. Now, have you watched this tape with me before?

18 A. Yes, sir.

19 Q. And what you've seen on this videotape, does it
20 fairly and accurately represent --

21 A. Yes, sir.

22 Q. -- what happened during the controlled buy --

23 A. Yes, sir.

24 Q. -- on May of '07?

25 A. Yes, sir.

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1 MR. RIESEN: Okay. I'm going to play this
2 video. I would like to publish this to the jury again
3 and take him -- have him take us through it, the edited
4 portion. We're not going to watch the whole thing,
5 Your Honor.

6 THE COURT: All right. Thank you.

7 MR. RIESEN: Can you see the TV okay?

8 THE WITNESS: Yes, sir.

9 MR. RIESEN: All right.

10 [Whereupon, videotape, State's Exhibit Number 4,
11 is played for the jury from 11:56 a.m. to 11:59 a.m.]

12 Q. [Mr. Riesen] Now, is this the cab you're
13 referring to that you were in?

14 A. Yes, sir.

15 Q. Where were you located?

16 A. In the back seat of the taxicab.

17 Q. Is that your phone?

18 A. Yes, sir.

19 Q. Who was that call from?

20 A. From Boobie letting me know --

21 Q. From who?

22 A. From Boobie letting me know --

23 Q. Who's car is that?

24 A. That's Boobie car.

25 MR. RIESEN: Speak up.

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- 1 A. That's Boobie car.
- 2 Q. [Mr. Riesen] And let the record reflect you
- 3 stated that Boobie was the one that called you just then?
- 4 A. Yes, sir.
- 5 Q. Is that you walking?
- 6 A. Yes, sir.
- 7 Q. Is that noise the audio on you?
- 8 A. Yes, sir.
- 9 Q. Was it in your pocket?
- 10 A. It was in my pocket, yes, sir.
- 11 Q. And is that you getting in the back seat?
- 12 A. Yes, sir.
- 13 Q. Who is that? Did you just say the name Boobie?
- 14 A. I'm not too sure.
- 15 Q. And what's going on right here?
- 16 A. He weighing it on the scale.
- 17 Q. Weighing it on the scale?
- 18 A. [Indicates affirmatively]
- 19 Q. What did you say then?
- 20 A. Give me a piece of bag.
- 21 Q. And did he give you that bag?
- 22 A. Yes, sir.
- 23 Q. Is that you exiting the vehicle?
- 24 A. Yes, sir.
- 25 [Whereupon, videotape, State's Exhibit Number 4,

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1 concludes]

2 Q. [Mr. Riesen] Okay. Now, you stated earlier
3 someone else was in the vehicle that you didn't know?

4 A. Yes, sir.

5 Q. Did this person ever handle the drugs?

6 A. No, sir.

7 Q. Who gave you those drugs?

8 A. Boobie.

9 Q. Have you ever been to [REDACTED] [REDACTED]

10 [REDACTED] before?

11 A. Yes, sir.

12 Q. Okay. Do you know who lives there?

13 A. Yes, sir.

14 Q. Who?

15 A. Boobie.

16 Q. And how do you know he lives there?

17 A. Because I been there before.

18 Q. Okay. Were you there -- who were you there
19 with?

20 A. With Boobie.

21 MR. RIESEN: I'm going to play the jail tapes,
22 Your Honor.

23 Q. [Mr. Riesen] I'm handing you what's been marked
24 as State's Exhibit Number 3 --

25 MR. SMILEY: Objection. May we approach?

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1 THE COURT: You may.

2 [Whereupon, an off-the-record bench conference
3 is held]

4 THE COURT: Ladies and gentlemen of the jury,
5 there is a matter of law that I must take up outside of
6 your presence. This is also a good time for us to go
7 ahead and take our lunch break.

8 Please do not begin your deliberations. Do not
9 discuss this case amongst yourselves.

10 Please be back in your jury room at 2:00 p.m.
11 Thank you.

12 [Whereupon, the jury exits the courtroom at
13 12:02 p.m.]

14 THE COURT: Thank you. Be seated.

15 Mr. Riesen, you indicated that you had a matter
16 of law.

17 Mr. Hart, you may step down.

18 [Whereupon, Mr. Hart exits the witness stand]

19 THE COURT: You indicated you had a matter of
20 law concerning you at this time wish to publish the
21 jail tapes which are now exhibit -- are State's Number
22 1 into evidence over Mr. Smiley's objection; is that
23 correct?

24 MR. RIESEN: I think the exhibit number, Your
25 Honor, is actually Exhibit Number 3. It's the tape-

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1 recording that came in subsequent to the CD, which was
2 the jail-tape CD was Number 1, the inventory log was 2,
3 and then the tape was 3. We took that up yesterday, I
4 think.

5 THE COURT: Madam Court Reporter, has 3 been
6 introduced into evidence?

7 THE COURT REPORTER: Yes, ma'am.

8 THE COURT: All right. Mr. Riesen, I'll be
9 happy to hear from you.

10 MR. RIESEN: Thank you, Your Honor.

11 We seek to now publish the tape for the -- for
12 the jury. The only question that the State elicits to
13 seek from Mr. Hart is does he recognize the voice on
14 the jail tape. He's testified before that he knows
15 Boobie well. He's testified he's known him for over
16 four years. He's testified he's been in his vehicle
17 over ten times. He's testified that he knows him from
18 the street.

19 It is our position that we want to be able to
20 show that more likely than not that the person on these
21 jail tapes is the defendant.

22 Mr. Smiley was arguing, when we were trying to
23 get the tape in, that other people can use pin numbers
24 and trying to I guess cast -- it sounded like cast
25 doubt on whether or not this was actually the defendant

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1 on these jail tapes.

2 Authentication basically states that it's a
3 person that can testify and who has knowledge of what
4 the matter purports to be. He basically has listened
5 to the jail tapes with me and he can testify that based
6 upon listening to it, that is Boobie. It's also self-
7 authenticating, in a sense, because the guy says Boobie
8 on every single call.

9 So it is highly relevant for him to be able to
10 testify that that is the person that I know speaking on
11 those jail tapes, just like it would be on a 911 call
12 or anything else.

13 THE COURT: Mr. Smiley?

14 MR. SMILEY: Your Honor, I haven't argued that
15 it was not my client, number one. I don't think that's
16 been --

17 But number two, there's fifty hours of -- give
18 or take, of jail tape. They're welcome to take another
19 piece, that's not an admission by my client, to say is
20 that your client. I mean, come on, Your Honor.
21 They're trying -- he has no connection whatsoever to
22 that tape, none. It wasn't a call to him. It was a
23 call to someone else. They can use that person for
24 authentication. Is they used the jail person to say
25 that's the pin number and that's how it works. This

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1 man that's testifying has no knowledge of that
2 conversation whatsoever. It's pure hearsay.

3 THE COURT: But, Mr. Smiley, does he have to
4 have knowledge of the conversation, or does he just
5 have to be able to testify that he knows that voice to
6 be Boobie's?

7 MR. SMILEY: They've played it for part -- for
8 that. I mean, are they going to look for part -- I
9 think they want to say the person on this call --

10 I'll stipulate the person on the call is Boobie.
11 They don't need to do it through that. I mean, he says
12 Boobie at the beginning of the conversation. They're
13 trying to backdoor getting the playing of the tape
14 through this gentlemen because they haven't -- they
15 didn't do it through someone else, because I've
16 objected to it as hearsay. Anything that he responds
17 to on that tape is going to be him interpreting
18 hearsay.

19 I mean, I'll stipulate that it's my client's
20 voice on the tape. I haven't put it in issue.

21 THE COURT: Mr. Riesen, if Mr. Smiley stipulates
22 that that is, in fact, Boobie's voice, the defendant's
23 voice, on the tape is there any reason to play this
24 tape -- to play the tape through this witness?

25 MR. RIESEN: Well, let me make -- let me make

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1 sure I understand what he will stipulate to. He is
2 going to say that is his client, Boobie, also known as
3 Stanford Brown, on every one of those jail tapes that
4 we're playing. If he's going to testify that's him,
5 then I don't need -- then I don't have a problem with
6 just playing it and not asking my client -- excuse
7 me -- not asking the CI is that boobie. If they'll
8 stipulate that that's him on those calls, I don't need
9 to ask him.

10 MR. SMILEY: I haven't listened to fifty hours
11 worth, but --

12 MR. RIESEN: This isn't fifty -- sorry.

13 THE COURT: Mr. Smiley, I understand now that
14 Number 3 is a redacted portion.

15 MR. SMILEY: Yes, ma'am.

16 THE COURT: Have you listened to --

17 MR. SMILEY: Yes, the redacted portion --

18 THE COURT: -- to 3?

19 MR. SMILEY: -- I've listened to. I agree that
20 the person on the redacted portion is Stanford Brown.
21 I have not argued -- so there's no need for a person
22 that has nothing to do with those tapes to be
23 commenting.

24 THE COURT: If the only reason, Mr. Riesen, that
25 you are playing the jail tapes is to authenticate the

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1 voice of the defendant, then is there any other reason
2 to play the tapes through this witness?

3 MR. RIESEN: No, there's not. As long as
4 there'll be -- one second.

5 [Whereupon, Mr. Riesen and Ms. Linder confer]

6 MR. RIESEN: Let me make sure that we understand
7 the issue.

8 I'm assuming Mr. Smiley doesn't object to me
9 playing the tapes. I want to publish them for the
10 jury, not them just take them back to the jury -- I
11 want out publish them --

12 THE COURT: Okay. Let me make this clear.
13 Unless there's a reason, Mr. Riesen, to use the tapes
14 with this witness, I am not going to allow him to
15 comment on the tapes. You have not established to me,
16 other than the fact that you're trying to authenticate
17 the defendant's voice, that he has any connection
18 whatsoever that he's heard those tapes before; correct?

19 MR. RIESEN: No, that's -- I do want to -- Your
20 Honor, I do want to authenticate the tapes through him.
21 Under the authentication rules, it's a person that's
22 not with knowledge. I want him to authenticate that
23 voice on those tapes. He has knowledge, he's known
24 him for four years, he's dealt with him in the past,
25 he's --

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1 THE COURT: Mr. Riesen, are you only doing that
2 because you -- I'm going to allow you to -- the tape is
3 in evidence over Mr. Smiley's objection. You may
4 publish it, if you wish. But if you're going to just
5 play it just for this witness, Mr. Smiley has
6 stipulated that that's the defendant's voice.

7 MR. RIESEN: Okay. I guess what I'm trying to
8 understand, what I'm confused on, Your Honor, then will
9 I be playing it for the next witness? Or when can I
10 play it?

11 THE COURT: You can play it at any time, Mr.
12 Riesen.

13 MR. RIESEN: Okay. So other than with him?
14 You're saying I can't play it with him? When I release
15 him, can I publish it?

16 THE COURT: Mr. Riesen, perhaps I missed
17 something. Does Mr. Hart have any connection to the
18 jail tapes, State's 3, other than the fact that he
19 knows one of the voices on the tape?

20 MR. RIESEN: Absolutely he does. This talked
21 about the buy that he made to them. He's the one that
22 -- only he and Stanford Brown know what happened that
23 day when the bust -- when the bust went down. So, yes,
24 he can testify to what is on those tapes, absolutely.
25 Like, yes, that's what -- Mr. Brown says that he was at

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1 the Hess station. That is correct. I was there with
2 him. I was the one who sold him drugs. I am Cory that
3 he is referring to. He's saying Cory is a F'ing so and
4 so. I'm going to put the word out on the street, blah,
5 blah, blah. Is that the Cory you're referring to.
6 Yeah, that's me. I was the one. I'm the only one
7 there during the buy with him. It has to be me.

8 MR. SMILEY: He wasn't privy to that
9 conversation. It's hearsay.

10 THE COURT: Who is the other -- who is the other
11 person on the conversation?

12 MR. SMILEY: Lashaunda Williams is the other
13 person on the conversation.

14 THE COURT: Mr. Riesen, how is this witness
15 going to be able to comment on a conversation that he
16 was not a party to?

17 MR. RIESEN: He can comment -- my understanding,
18 he can comment in two ways. Number one, as to the
19 person on there as the defendant; and, number two, he
20 can comment to -- the things that are being talked
21 about on that tape he can corroborate. He can say,
22 yes, that's what happened. This guy is admitting that
23 he was at the Hess station. I was at the Hess station.
24 I was the -- I am Cory. I am the one that set him up.
25 I am the confidential informant that he is -- that they

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1 are referring to.

2 THE COURT: So you intend through Mr. Hart to
3 play State's 3 and have questions about that
4 conversation to him?

5 MR. RIESEN: Yes.

6 THE COURT: Mr. Smiley?

7 MR. SMILEY: I've made it very clear. Wasn't
8 privy to the conversation whatsoever. Any comments
9 would be speculation on his part. He wasn't part of
10 the conversation. It's going to be hearsay. As I've
11 stipulated that the person on there was Mr. Brown. All
12 he's done is listen to the tape and make his
13 interpretation of what's said. He wasn't part of the
14 conversation. Anything he says is going to be his
15 interpretation, his opinion, his speculation, as to
16 what is being said back and forth. He was not there
17 with knowledge of the conversation.

18 THE COURT: How long is the tape?

19 MR. RIESEN: It's probably a total of ten
20 minutes.

21 THE COURT: All right. We are going to break
22 for lunch now. I'm going to -- can I listen to the
23 tape, --

24 MR. RIESEN: Yes, ma'am.

25 THE COURT: -- on my laptop?

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1 MR. RIESEN: No. It's a -- I can -- no, you
2 can't. It's a cassette tape.

3 THE COURT: It's a cassette tape.

4 MR. RIESEN: I can get a cassette tape [sic]
5 from my office for you, if you would like, Your Honor,
6 and --

7 THE COURT: Mr. Smiley, you've heard the
8 cassette tape?

9 MR. SMILEY: Yes, ma'am, I've heard the cassette
10 tape.

11 THE COURT: All right. We will take our lunch
12 break. The jury will be back. Let's go ahead. We
13 will play the tape. Let's be back at a quarter to
14 2:00. You indicated -- how long is the tape?

15 MR. RIESEN: It's probably a total of ten
16 minutes or so. Ten to fifteen minutes at the most.

17 THE COURT: Well, ten to fifteen is a little --

18 MR. RIESEN: I know, Your Honor. I didn't time
19 it. Because we redacted it, I didn't time it.

20 THE COURT: Okay. Be back at twenty til 2:00.
21 I'm going to listen to the tape, and then I will make
22 my final ruling.

23 Have a nice lunch.

24 MR. RIESEN: Thank you.

25 MR. SMILEY: Your Honor --

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1 THE COURT: Did you have a question?

2 MR. SMILEY: Is -- during lunch I don't need the
3 evidence, but can I have that TV in that room so I --

4 THE COURT: And where is Mr. Hart? Where did
5 Mr. Hart go?

6 MR. SMILEY: He walked out.

7 UNIDENTIFIED: No, ma'am. He's in that room
8 right there, Judge.

9 THE COURT: All right. Would you bring Mr. Hart
10 forward? Thank you.

11 [Whereupon, Mr. Hart re-enters the courtroom]

12 THE COURT: Mr. Hart, if you'll just come
13 forward. We're going to take -- if you'll come forward
14 just a little bit.

15 [Whereupon, Mr. Hart complies]

16 THE COURT: Thank you. We're going to take our
17 lunch break, so I need you back in this courtroom at
18 twenty till 2:00, at 1:40, all right? And we are using
19 that clock, so make sure whatever you're using for a
20 timepiece that you're coordinated so we're back so we
21 can get started.

22 You may not discuss your testimony, what you
23 testified to on the witness stand, with either Mr.
24 Riesen or anyone from the State, or Mr. Smiley or Ms.
25 Hensley. Do you understand that, sir?

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1 THE WITNESS: Yes, ma'am.

2 THE COURT: All right. And you may not talk to
3 any of the individuals that have already testified --
4 do you understand -- about your testimony.

5 THE WITNESS: Yes, ma'am.

6 THE COURT: All right. See you back at 1:40.
7 Thank you.

8 [Whereupon, a recess is taken from 12:16 p.m. to
9 1:42 p.m.]

10 THE COURT: Are you ready, Mr. Riesen?

11 MR. RIESEN: Your Honor, yes. Mr. Smiley and I
12 have reached a stipulation to kind of expedite without
13 having to play the tapes now. May I approach, or may
14 we approach, and show you what we drafted potentially
15 for your --

16 THE COURT: You may.

17 [Whereupon, an off-the-record bench conference
18 is held]

19 THE COURT: Okay. So Mr. Hart can come back on
20 the stand at any time. We don't need a hearing?

21 MR. SMILEY: No.

22 MR. RIESEN: No, ma'am.

23 THE COURT: Okay. And do you need a few
24 moments?

25 MR. RIESEN: I think I'm okay now.

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1 THE COURT: All right. We are missing --

2 MR. RIESEN: Could I just have about three
3 minutes?

4 THE COURT: We're missing four jurors so as soon
5 as the jurors get in, we'll get started.

6 MR. RIESEN: I'll just need five minutes. I'll
7 be back.

8 THE COURT: I appreciate the two of you working
9 that out. Thank you.

10 And why don't the two of you -- or, Mr. Riesen,
11 just make sure -- go through while we have this time
12 and make sure that everything you think is in evidence
13 has truly been admitted.

14 MR. RIESEN: Okay.

15 THE COURT: All right. Thank you.

16 [Whereupon, a recess is taken from 1:43 p.m. to
17 2:08 p.m.]

18 THE COURT: Where is Mr. Hart?

19 THE BAILIFF: He's coming.

20 THE COURT: Thank you.

21 [Whereupon, Mr. Hart enters the courtroom]

22 THE COURT: Mr. Hart, if you will come and have
23 a seat back on the witness stand. I'll remind you that
24 you are still under oath.

25 [Whereupon, Mr. Hart re-takes the witness stand]

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1 THE COURT: Please bring in the jury.
2 You may be seated, Mr. Hart. Thank you.
3 [Whereupon, the jury enters the courtroom at
4 2:11 p.m.]

5 THE BAILIFF: All present, Your Honor.

6 THE COURT: Thank you. Be seated.

7 Mr. Riesen.

8 MR. RIESEN: Thank you, Your Honor.

9 CONTINUED DIRECT EXAMINATION

10 BY MR. RIESEN:

11 Q. All right. Mr. Hart, when we were last
12 speaking, we had reviewed the videotape and we were going
13 to go over it. At this time, I want to review what you've
14 testified to so far. Okay?

15 Now, on May 4th of '07 you got involved in a
16 drug buy?

17 A. Yes, sir.

18 Q. And that was from the defendant, Boobie, and
19 also known as Stanford Brown?

20 A. Yes, sir.

21 Q. And were you searched prior to this buy?

22 A. Yes, sir.

23 Q. And were you equipped with prerecorded money, as
24 well as audio?

25 A. Yes, sir.

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1 Q. And did you then get into a --

2 MR. SMILEY: Your Honor, I'm going to object on
3 two bases: leading, and cumulative. It's already been
4 asked and answered. But firstly --

5 THE COURT: It is leading.

6 Mr. Riesen, I understand you're trying to
7 summarize, but it's only been about an hour and a half.
8 I'm sure the jury remembers, so if you will please
9 continue.

10 MR. RIESEN: Okay.

11 Q. [Mr. Riesen] Could you just tell the jury what
12 happened on that videotape that we just watched.

13 A. All right. On the videotape show me I been in
14 the -- I been inside the taxicab with Boobie. So I
15 sitting inside the cab waiting. He called me on the phone
16 to let me know he was roll up when he came into the Hess
17 station. So I got out the cab, goes inside of his car,
18 get in the back seat. And then I give him the money I
19 had, and then I got some drugs, some crack, and then I
20 asked him for a piece of bag. He gave me a piece of bag
21 to put the drugs in. And then I got out of his car and
22 got inside the cab.

23 Q. Okay. And were you searched after that?

24 A. Yes, sir.

25 Q. And who searched you?

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1 A. Detective Brown and the other detective.

2 Q. Okay. And what did he retrieve from you, if
3 anything?

4 A. The wire and the money. I mean, the money, the
5 wire and the drugs I got.

6 Q. Okay. Now, you mentioned earlier that you had
7 a -- that you asked for a bag and he gave you a bag; is
8 that correct?

9 A. Yes, sir.

10 MR. RIESEN: May I approach, Your Honor?

11 THE COURT: You may.

12 Q. [Mr. Riesen] I'm showing you what's been marked
13 as State's Exhibit Number 5. Okay? And I want to show
14 you this little plastic baggie here that has a green
15 number on it. The last five digits are 08601. Do you
16 recognize that baggie?

17 A. Yes, sir.

18 Q. What baggie is that?

19 A. That the sandwich bag that the drugs were inside
20 of.

21 Q. And who gave you that sandwich bag?

22 A. Boobie.

23 Q. And where did he give you that?

24 A. Inside his car at the Hess station.

25 MR. RIESEN: The Court's indulgence, please,

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1 Your Honor.

2 THE COURT: Yes, sir.

3 [Whereupon, Mr. Riesen and Ms. Linder confer]

4 Q. [Mr. Riesen] Just for clarity purposes: when
5 you had the drugs, you said earlier you gave them to
6 Detective Brown; is that correct?

7 A. Yes, sir.

8 Q. And where was that at?

9 A. That was at -- when me and him went to the
10 school, behind the school, and he had pat me down and
11 everything, and he retrieve the wire and everything.

12 Q. Did you ever touch the drugs again after that?

13 A. No, sir.

14 Q. Okay. And, again, you said earlier that there
15 was another person in the vehicle; is that correct?

16 A. Yes, sir.

17 Q. Where was this person sitting?

18 A. In the passenger seat.

19 Q. Okay. And was he in the car when you got in it,
20 or did he get in it later?

21 A. He was in the car when I got in it.

22 Q. And did he handle the drugs at all?

23 A. No, sir.

24 MR. RIESEN: Okay. No further questions, Your
25 Honor.

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1 THE COURT: Mr. Smiley.

2 CROSS-EXAMINATION

3 BY MR. SMILEY:

4 Q. Let's just start there.

5 That white car at the Hess station, you said
6 that there was a driver and a passenger; right?

7 A. Yes, sir.

8 Q. That was the only people in the car?

9 A. Yes, sir.

10 Q. Until you got in it?

11 A. Yes, sir.

12 Q. Nobody else got into that car from the time that
13 it arrived at the Hess station until the time it left,
14 right, besides you?

15 A. That's right.

16 Q. And if I told you somebody else got in that car,
17 one of us would have to be a liar; right?

18 A. Yes, sir.

19 Q. Okay. Now, you're a felon; right?

20 A. Convicted felon, yes, sir.

21 Q. And you're a drug dealer; right?

22 A. I'm not a drug dealer.

23 Q. All right. You got arrested in March; right?

24 A. Yes, sir.

25 Q. March, 2007, for trafficking and crack cocaine;

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1 right?

2 A. Yes, sir.

3 Q. You had almost three-quarters of an ounce of
4 cocaine, didn't you? Twenty-one grams?

5 A. Yes, sir.

6 Q. All right. And you got charged with that crime,
7 and you got charged with growing marijuana; right?

8 A. Yes, sir.

9 Q. You got charged with having that crack cocaine
10 within proximity of a school; right?

11 A. Yes, sir.

12 Q. You got charged with having a gun around
13 those -- with those drugs; right?

14 A. Yes, sir.

15 Q. And you got charged of -- for lack of a better
16 word -- unlawful conduct with a child, child neglect;
17 right?

18 A. Child neglect. Yes, sir.

19 Q. Yeah. Because the child was around the drugs;
20 right?

21 A. No, sir. The child was around the smoke.

22 Q. The smoke from the drugs?

23 A. Yes, sir.

24 Q. Oh. Okay.

25 All right. So when you got arrested that day,

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1 is you were looking at five to thirty years on that
2 trafficking charge; right?

3 A. Yes, sir.

4 Q. All right. And you were looking up to ten years
5 on that proximity charge; right?

6 A. Yes, sir.

7 Q. And you were looking up to another ten years on
8 that manufacturing marijuana charge, weren't you?

9 A. Yes, sir.

10 Q. And you were looking up to another five years
11 for having that pistol; right?

12 A. Yes, sir.

13 Q. And you were looking up to another ten years for
14 the neglect of a child; right?

15 A. Yes, sir.

16 Q. All right. So you were looking at going to
17 prison for thirty, plus ten, plus ten, plus ten, plus
18 five; right? Sixty-five years you were looking at; right?

19 A. Yes, sir.

20 Q. And you had to go to prison for at least five
21 for the trafficking charge; right?

22 A. No, sir.

23 Q. So you didn't know it carried a mandatory
24 minimum of five years?

25 A. I mean, I didn't know that at -- yes, sir.

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1 Q. Okay. So you knew you were in big trouble;
2 right?

3 A. Yes, sir.

4 Q. I mean, you were familiar because you had been
5 convicted of possessing drugs before, hadn't you?

6 A. Yes, sir.

7 Q. And you had been convicted of failing to stop
8 for a blue light before; right?

9 A. Yes, sir.

10 Q. So you're a criminal; right?

11 A. I had a history.

12 Q. You had a history. Yes, sir.

13 So you offered to cooperate with the police;
14 right?

15 A. Yes, sir.

16 Q. Because you had to get out of trouble; right?

17 A. Yes, sir.

18 Q. And you also had to get out of jail; right?

19 A. Yes, sir.

20 Q. And so he fixed your bond, right, so you could
21 get out?

22 A. Yes, sir.

23 Q. And he being Detective Brown. So to work for
24 him, he got you out of jail and told you that if you would
25 cooperate, he's going to help you out with your charges;

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1 right?

2 A. Yes, sir.

3 Q. Now, between when you got arrested and the first
4 of May, how many times did you meet with Detective Brown?

5 A. Repeat that again.

6 Q. Between when you got arrested and got out of
7 jail in March, all right, and the first of May when this
8 alleged sale took place, how many times did you meet with
9 Detective Brown?

10 A. Like five times.

11 Q. Okay. Where did you meet with him?

12 A. At Hanahan Police Department.

13 Q. All right. And when you got there to sign up as
14 a CI, confidential informant, he read you a code of
15 conduct; right?

16 A. Yes, sir.

17 Q. Is that you couldn't break the law; right?

18 A. Yes, sir.

19 Q. You couldn't do all kinds of things. And he
20 read them to you and had you sign it; right?

21 A. Yes, sir.

22 Q. And then he -- then you talked about setting a
23 target for the investigation; right?

24 A. Yes, sir.

25 Q. And it was agreed that you would go after

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1 Stanford Brown; right?

2 A. Yes, sir.

3 Q. All right. In the car that day, the car -- you
4 walk up on the car and get in the back seat; right?

5 A. Yes, sir.

6 Q. The driver, what was he wearing?

7 A. I can't remember that day what he was wearing.

8 Q. You don't have a clue? Don't remember?

9 A. Not that day. That was a long time ago.

10 Q. Yeah. It was a couple of years ago; right?

11 A. Yes, sir.

12 Q. What did the passenger have on? Do you know?

13 A. I can't remember.

14 Q. Was that the first time you had ever seen the
15 passenger?

16 A. Yes, sir.

17 Q. Do you remember if the music was on in the car
18 or not?

19 A. I can't remember, sir.

20 Q. Okay. And you were the only guy in the back
21 seat?

22 A. Yes, sir.

23 Q. Who do you know that lives on Judy Street?

24 A. I used to live on Judy Street. My mom used to
25 live on Judy Street.

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1 Q. Okay. How much -- since you're a drug dealer,
2 maybe you can answer this. How much does an ounce of
3 crack cocaine cost on the street?

4 A. I ain't too sure, because I ain't into that no
5 more.

6 Q. When you were into it you purchased an ounce of
7 cocaine before, haven't you?

8 A. Yes, sir.

9 Q. How much did it cost you?

10 A. Maybe 800.

11 Q. \$800?

12 A. Maybe.

13 Q. How many grams are there -- do you know how many
14 grams there are in an ounce?

15 A. Yes, sir.

16 Q. Twenty-eight; right?

17 A. Yes, sir.

18 Q. The \$340 you were given that day, who came up
19 with that amount, you or the police?

20 A. Me.

21 Q. You told them that's how much you needed?

22 A. [Indicates affirmatively]

23 Q. All right. Now, when you were in the cab, you
24 placed a call; right?

25 A. Yes, sir.

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1 Q. Did you provide the phone number you called to
2 the police?

3 A. [No response]

4 Q. Did you give them the phone number you called?
5 Did they look at your phone? Did you give them a number
6 and say, hey, this is the number I called?

7 A. [No response]

8 Q. You didn't, did you?

9 A. I can't remember.

10 Q. And you got calls while you were in the cab;
11 right?

12 A. Did I?

13 Q. Yeah.

14 A. I'm not too sure. I can't remember.

15 Q. Okay. Don't remember.

16 Now, you said when you met with the police that
17 day they searched you; right?

18 A. Yes, sir.

19 Q. And you testified that you were patted down when
20 you were at the Hess station on Dorchester; right?

21 A. Yes, sir.

22 Q. Were you outside? Were y'all standing outside
23 when they did that?

24 A. Was I standing outside when they pat me down?

25 Q. Yeah.

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1 A. Yes, sir.

2 Q. So right there at the gas pumps and all of that,
3 they --

4 A. It was like on the side of the store.

5 Q. Okay. On the side of the store, out in the open
6 at Dorchester Road Hess station --

7 A. Yes, sir.

8 Q. -- in broad daylight --

9 A. Yes, sir.

10 Q. -- they practically strip-searched you?

11 A. Not strip-search me like --

12 Q. They just like [indicates] --

13 A. They took off my shoes, searched my hair.

14 Q. All right. They gave you the pat-down. They
15 didn't like --

16 A. I didn't get like naked --

17 Q. All right. I was just making sure.

18 What personal items did you have with you? Did
19 -- you had your cell phone; right?

20 A. That was it.

21 Q. Have a wallet?

22 A. No. No, sir.

23 Q. All right. You didn't have anything but your
24 cell phone?

25 A. Just my cell phone.

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1 Q. All right. Now, you didn't get -- in the cab at
2 the Hess station on Dorchester, you didn't get into that
3 later; right? Or am I confused?

4 A. I got in the cab when I got on Remount Road.

5 Q. So you were with Detective Brown and Constanza
6 in their car; right?

7 A. Yes. After I left the Hess station on
8 Dorchester Road, I went on Remount Road. When I went to
9 Remount Road, they dropped me off at Bi-Lo and the cab was
10 sitting up there waiting. They told me to get inside the
11 cab, and I got in the cab. That's when I called on the
12 phone.

13 Q. All right. I got you. All right. I'm just
14 making sure.

15 So they searched you in broad daylight and gave
16 you the money then; right?

17 A. Earlier that day, yeah.

18 Q. Oh. You already had the money before you got
19 searched?

20 A. No.

21 Q. When did they give you the money that day?

22 A. When I been at the Hess gas station, that's when
23 they put the wire on me and they give me the money.

24 Q. Oh. They put the wire on you out in broad
25 daylight?

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1 A. On Dorchester Road --

2 Q. Okay. So they put the wire on you and searched
3 you and gave you the money there at the Hess station?

4 A. Yes, sir.

5 Q. You got it?

6 A. Yes, sir.

7 Q. And then you got in the car with Detective Brown
8 and Constanza and they drove you around to Remount and
9 North Rhett at the Food Lion; right?

10 A. No. They dropped me off at Bi-Lo.

11 Q. Keep getting them backwards. At the Food Lion
12 next to the Hess? Or is it Bi-Lo next to the Hess?

13 A. The Food Lion next to the Hess on --

14 Q. So you went to --

15 A. -- on Remount Road.

16 Q. -- somewhere else?

17 A. No. Listen; listen; listen.

18 Q. Okay. I'm listening. Go ahead.

19 A. I went on Dorchester road, right --

20 Q. Okay.

21 A. -- they picked me up off the Dorchester Road at
22 the Hess gas station. That's where I was pat down and
23 everything.

24 Q. Okay.

25 A. That's when -- after the home boy pat me down

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1 and everything, home boy give me the wire and home boy
2 give me the money. After home boy give me the money, we
3 got in the car, we went to on Remount Road, and when we
4 got on Remount Road I was dropped off at Bi-Lo. They told
5 me to wait on the cab -- well, the cab was out there
6 already --

7 Q. Okay. I got you.

8 A. So I got inside the cab --

9 Q. Uh-huh.

10 A. -- I called his phone, and the cab take me right
11 there to Hess --

12 Q. All right.

13 A. -- and I sat right there and waited.

14 Q. I got you. I understand what you're saying.

15 Now, switching gears just for a second. As a
16 result of your cooperation, you've already gotten the
17 deal; right?

18 A. Yes, sir.

19 Q. And for the result of your cooperation, first of
20 all you got that good bond? That's the first thing;
21 right?

22 A. Yes, sir.

23 Q. Then you went to Dorchester County where you
24 were looking at five to sixty-five years, and pled guilty
25 to something; right?

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1 A. To the courthouse up there?

2 Q. Yeah. That's where you got your deal?

3 A. Not there. I believe in Moncks Corner.

4 Q. Moncks Corner. Moncks Corner.

5 Okay. So you went up there and in exchange for
6 this one-time cooperation thing you pled guilty to the
7 manufacturing of marijuana, right --

8 A. Yes, sir.

9 Q. -- growing the plants --

10 A. Yes, sir.

11 Q. -- and having your child around the smoke;
12 right?

13 A. Yes, sir.

14 Q. And you got two years suspended on two years
15 probation; right?

16 A. Yes, sir.

17 Q. So all that time was swept away and you got
18 probation for getting Stanford Brown; right?

19 A. Yes, sir.

20 Q. He was the target; right?

21 A. Yes, sir.

22 Q. And you had twenty-one grams of crack and a gun;
23 right?

24 A. Yes, sir.

25 Q. All right. So after you got out of this white

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1 car, you walked and got back in the cab and y'all went
2 over to Hanahan Middle School?

3 A. Yes, sir.

4 Q. And you met Detective Brown and Nice and you
5 handed Detective Brown the drugs; right?

6 A. Actually, he went in my pocket and got it.

7 Q. Oh. You didn't hand it to him? He searched you
8 for them?

9 A. He searched me. He searched me and pat me down
10 and then --

11 Q. The same kind of pat-down he did before; right?

12 A. Yeah.

13 Q. Okay. So he patted you down and took the drugs
14 out of your pocket. All right. And took the wire back
15 off of you?

16 A. Yes, sir.

17 Q. The wire taped to you or anything?

18 A. No, sir.

19 Q. Just in your pocket; right?

20 A. Just in my pocket.

21 Q. Okay. Did he ever tell you why he was searching
22 you before or after?

23 A. To make sure I ain't had no drugs on me or
24 anything.

25 Q. Because he didn't trust you; right?

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1 A. I mean, I don't know that part -- I don't know.
2 Just I know it just not -- to make sure I ain't had no
3 drugs on me.

4 Q. Okay. Now, I think you testified that you had
5 known Stanford for about four years before this?

6 A. Yes, sir.

7 Q. All right. And you knew that Stanford drove a
8 white car, white Impala; right?

9 A. I knew that he drove one, yes, sir.

10 Q. Okay. And you knew that beforehand; right?

11 A. Before what?

12 Q. Before any of this deal went down, you knew
13 that; right?

14 A. Yes, sir.

15 Q. And you knew that Stanford was who they wanted;
16 right?

17 A. Yes, sir.

18 Q. Okay. And they told you that they were going to
19 let that car drive away so that you wouldn't get caught up
20 right there; right?

21 A. Yes, sir.

22 Q. Okay. Changing gears a little bit again.

23 Were you familiar with the Remount Road and
24 North Rhett area? Do you know that area?

25 A. Yes, sir.

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1 Q. Do you know the corner of North Rhett and
2 Sumner? A block down.

3 A. [No response]

4 Q. Do you know that church that's right down there?

5 A. Yes, sir.

6 Q. The Church of God?

7 A. Yes, sir. Yes, sir.

8 Q. It's about a block over?

9 A. Yes, sir.

10 Q. Okay. Were you ever shown any photo lineups in
11 this case? Were you ever shown photographs and asked to
12 identify anybody?

13 A. No, sir..

14 MR. SMILEY: I'm going to show a piece of the
15 video, with the Court's permission.

16 THE COURT: Yes, sir.

17 Q. [Mr. Smiley] If you will watch this video, I'm
18 going to ask you a quick question after we see a piece of
19 it; all right?

20 A. Yes, sir.

21 Q. And I'll point out what I'm going to ask the
22 question so we can keep our view.

23 [Whereupon, videotape is played for the jury]

24 Q. [Mr. Smiley] See this fellow in the red that
25 walked by?

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1 MR. SMILEY: We'll do it again.
2 Q. [Mr. Smiley] This guy. Do you know this guy?
3 A. Yes, sir.
4 Q. This guy in the red, did you know him?
5 A. [Indicates affirmatively]
6 Q. Do you know who that is?
7 A. Yes, sir.
8 Q. Who is that?
9 A. Somebody I knew.
10 Q. What's his name? What's the guy in the red's
11 name?
12 A. Joe-Joe.
13 Q. Excuse me?
14 A. Joe-Joe.
15 Q. Joe-Joe. What's his -- anything else goes with
16 that?
17 A. That's all I know.
18 Q. All right. So you know Joe-Joe, the guy in the
19 red that was walking up; right?
20 A. Yes, sir.
21 MR. SMILEY: Nothing further.
22 THE COURT: Mr. Riesen?
23 MR. RIESEN: Just a couple.
24 - - -
25 - - -

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REDIRECT EXAMINATION

BY MR. RIESEN:

Q. Now, earlier when we watched that video, there was a phone call when you were in the back seat; is that correct?

A. Yes, sir.

Q. And it was a phone call that was placed to your phone; is that correct?

A. Yes, sir.

Q. And you testified earlier that that was from Boobie; is that correct?

A. Yes, sir.

Q. Okay. So when Mr. Smiley asked earlier whether or not you received a call from him, you said you didn't remember. Does that refresh your recollection?

A. When I been in the back seat, my phone rang.

Q. And who was that from?

A. From Boobie.

Q. Okay. And this person that was walking with the red shirt that you knew, did he get into the car?

A. I never saw him got in the car.

Q. Okay. Well, when you were in the back seat --

A. Yeah. I was back there by myself.

Q. Okay. And you said that there was a person in the passenger seat that you didn't recognize; is that

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1 correct?

2 A. That's right.

3 Q. Was it that person that was --

4 A. Huh-uh.

5 Q. -- walking by?

6 A. No, sir.

7 Q. And you had said you've been in this location
8 before?

9 A. Yes, sir.

10 Q. And had you been there --

11 A. Plenty of times.

12 Q. Okay. So you know people that hang around
13 there?

14 A. Yes, sir.

15 MR. RIESEN: Court's indulgence.

16 THE COURT: Yes, sir.

17 [Whereupon, Mr. Riesen and Ms. Linder confer]

18 Q. [Mr. Riesen] Now, Mr. Smiley was asking you
19 about all your charges and you looking at sixty-five years
20 or something like that. Your sentence was two years
21 suspended upon two years of probation; is that correct?

22 A. Yes, sir.

23 Q. Okay. And why don't you tell the jury: what
24 are you required to do as part of your probation?

25 A. Just being on probation I have to stay out of

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1 trouble, make sure I maintain a job, go to a couple of
2 drug classes. Just make sure I just stay out of trouble,
3 basically.

4 Q. Okay. And in the last two years, have you
5 stayed out of trouble?

6 A. Yes, sir.

7 Q. Have you been arrested?

8 A. No, sir.

9 Q. Have you completed all of your probation?

10 A. Yes, sir.

11 Q. Are you still on probation?

12 A. No, sir.

13 Q. Did you have to do drug tests?

14 A. Yes, sir.

15 Q. Did you complete those drug tests?

16 A. Yes, sir.

17 Q. Did you --

18 MR. SMILEY: I'm going to object, Your Honor.

19 Series of leading questions, and relevance.

20 THE COURT: I sustain as to leading, Mr. Riesen.

21 Q. [Mr. Riesen] As to probation, what were the
22 requirements?

23 A. To make sure that --

24 MR. SMILEY: Objection, Your Honor. Relevance.

25 THE COURT: Overruled.

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1 Q. [Mr. Riesen] Well, I'm going to rephrase that.
2 What were your -- could you please tell the jury what you
3 had to do as part of your probation.

4 A. Just make sure that I ain't getting in no
5 trouble, make sure I report to them like I supposed to
6 report to them, plus I got to pay them money every time I
7 go, too, so I make sure I have them paid all the way up.
8 The drugs tests, make sure I pass them. I never failed
9 one.

10 Q. So have you been clean for the last two years?

11 A. Not while -- when I been on probation, yes, sir.

12 Q. Okay. So you have not gotten arrested since
13 then?

14 A. No, I ain't got arrested or anything.

15 Q. Are you off of probation now?

16 A. Yes, sir.

17 Q. You've completed your probation?

18 A. Yes, sir.

19 Q. And your charges -- you're testifying today your
20 charges are already dismissed; right?

21 A. Yes, sir.

22 Q. So you don't have anymore charges? There's
23 nothing else that the police could do to you? You didn't
24 even have to testify today, but you decided to do so;
25 correct?

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1 A. Yes, sir.

2 MR. RIESEN: Thank you.

3 THE COURT: Mr. Smiley?

4 RECROSS-EXAMINATION

5 BY MR. SMILEY:

6 Q. So you're kidding me, right, is you're telling
7 me that that two years of probation was so tough it was a
8 lot tougher than doing sixty-five years in prison? Is
9 that your testimony?

10 MR. RIESEN: Objection, Your Honor.

11 THE COURT: Basis?

12 MR. RIESEN: That wasn't his testimony.

13 MR. SMILEY: I'm asking if it was or not.

14 THE COURT: Mr. Smiley. Overruled.

15 A. Repeat that again.

16 Q. [Mr. Smiley] So it's your testimony that two
17 years of probation that you had to do was a lot tougher
18 than doing sixty-five years in prison?

19 A. I mean, I just don't like getting in trouble,
20 period, you know. I don't want to get in trouble, you
21 know. That's all.

22 Q. And you're here today in this courtroom out of
23 the goodness of your heart?

24 A. Yes.

25 Q. Not because you're fulfilling your end of the

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1 deal?

2 A. [Indicates negatively]

3 Q. No, because honor doesn't have anything to do
4 with being a criminal and being a drug dealer, does it?

5 A. [No response]

6 Q. Answer.

7 A. What was that?

8 MR. SMILEY: Withdraw the question.

9 THE COURT: Mr. Hart, you may step down. May
10 Mr. Hart be excused?

11 MR. RIESEN: He may.

12 THE COURT: Any objection, Mr. Smiley?

13 MR. SMILEY: No, ma'am.

14 THE COURT: Mr. Hart, you are free to remain in
15 the courtroom but you are also free to leave. Thank
16 you.

17 [Whereupon, Mr. Hart is excused and exits the
18 witness stand]

19 THE COURT: Call your next witness.

20 MR. RIESEN: Your Honor, at this time we would
21 like to publish the jail tapes, and have you read the
22 stipulation.

23 THE COURT: All right. And this is State's --

24 MR. RIESEN: Exhibit Number --

25 THE COURT: -- 3?

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1 MR. RIESEN: -- 3, I believe, Your Honor. May I
2 approach?

3 THE COURT: You may.

4 [Whereupon, Mr. Riesen proffers documents to the
5 Court]

6 THE COURT: Ladies and gentlemen, a stipulation
7 is an agreement between the parties that the evidence
8 that you are about to hear is what the parties purport
9 it to be.

10 In this case you are about to hear a recorded
11 conversation by the defendant, Stanford Brown, made
12 while incarcerated at the Charleston County Detention
13 Center. The stipulation between the parties is that
14 the person making the calls is the defendant and it is
15 his voice on the tapes. Mister --

16 MR. SMILEY: Also, at this time if you could
17 note my objection as previously stated.

18 THE COURT: Objection as to --

19 MR. SMILEY: The admission.

20 THE COURT: -- State's 3.

21 [Whereupon, jail tape, State's Exhibit Number 3,
22 is played momentarily]

23 THE COURT: Counsel approach.

24 [Whereupon, jail tape is stopped]

25 [Whereupon, an off-the-record bench conference

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1 is held]

2 [Off the record momentarily]

3 [Whereupon, jail tape, State's Exhibit Number 3,
4 is played for the jury from 2:48 p.m. to 2:55 p.m.]

5 [Whereupon, an off-the-record bench conference
6 is held]

7 [Whereupon, Detective Huber enters the
8 courtroom]

9 THE COURT: Thank you, Detective. You may have
10 a seat in the gallery. Thank you.

11 MR. RIESEN: Your Honor, the other witnesses are
12 not here yet, my chain of custody people. We need to
13 call them. If we could take a short recess? We didn't
14 anticipate this.

15 THE COURT: Ladies and gentlemen, we are going
16 to go ahead and take our mid-afternoon break.

17 Again, please do not begin your deliberations.
18 Do not discuss this case amongst yourselves.

19 Please rise for the jury.

20 [Whereupon, the jury exits the courtroom at
21 2:59 p.m.]

22 THE COURT: Be seated.

23 Where are they, Mr. Riesen?

24 MR. RIESEN: Your Honor, we just didn't --
25 we were trying to figure out the time, and instead

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1 of telling everyone to show up at three o'clock based
2 on -- I'm not casting any blame on Mr. Smiley. He said
3 he was going to take a long time on the confidential
4 informant, so as a result I think we told them to be
5 here at four o'clock.

6 Is that correct?

7 MS. LINDER: There are two coming at 3:30, and I
8 can call and make sure that they're -- perhaps they've
9 not already left metro -- that they are in the car
10 immediately. I'm going to step outside, if that's
11 okay, Your Honor, and call to make sure.

12 MR. SMILEY: And I will say I expected to go to
13 3:30, Your Honor. I told them. They asked me. I said
14 3:30. I expected it to take an hour and a half. Based
15 on my other cross, it went just better than I expected
16 so --

17 MR. RIESEN: And I didn't realize I had left
18 Detective Huber off there, either, so that's my fault.
19 I apologize to the Court.

20 MS. LINDER: Your Honor, may I step --

21 THE COURT: You may step outside --

22 MS. LINDER: -- outside and --

23 THE COURT: -- Ms. Linder. Thank you.

24 MS. LINDER: -- they may be here in five
25 minutes. I'm just going to check the status.

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1 THE COURT: Thank you.

2 MS. LINDER: Thank you, Judge.

3 THE COURT: Mr. Riesen, you know not to plan
4 your case around the defense.

5 MR. RIESEN: I know, Your Honor. I'm just
6 trying to -- rather than tell everyone to show up at
7 3:00, I'm trying my best to gauge this stuff. This has
8 taken a long time. I haven't been doing it twenty
9 years, and I apologize.

10 [Off the record momentarily]

11 MR. RIESEN: Your Honor, we left a message for
12 them to come. I have a quick question just for
13 planning purposes. Our only witnesses left now are
14 chain witnesses: two from Charleston County Sheriff's
15 Office locally, and then two SLED officers that have to
16 come from Columbia. We told them we would call them at
17 three o'clock because, again, of us thinking that it
18 was going to take a lot longer. I can tell them to get
19 in the car right now and come from Columbia.

20 I just don't know how long Jim anticipates
21 taking with the two witnesses locally from Charleston
22 County Sheriff's Office, or if it were okay to assume
23 that it will be closer to 5:00 with these two witnesses
24 and it'll be okay to rest and bring them here first
25 thing in the morning, the last two SLED officers.

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1 THE COURT: Mr. Riesen, you can't rest without
2 the two SLED officers; correct?

3 MR. RIESEN: I cannot. I can tell them to come
4 here, and be here as fast as they can.

5 THE COURT: Mr. Riesen, we are going until 5:00
6 so I suggest that however you anticipate your case
7 needs to go until five o'clock, that you get the
8 witnesses that you need here.

9 MR. RIESEN: So are you telling me, Your Honor,
10 that there's no way we would be allowed to rest maybe
11 thirty minutes early based on the fact that I have to
12 tell people to come from Columbia and we may not need
13 them?

14 THE COURT: Mr. Riesen, this is your case.

15 MR. RIESEN: Yes, ma'am.

16 THE COURT: Okay? I have a jury out that is
17 waiting on you. Do you not have any additional
18 witnesses to call at this time?

19 MR. RIESEN: Yes, ma'am. As I said, I have two
20 witnesses locally to call, and I needed your direction
21 on whether or not you want me to call two SLED
22 witnesses to be here --

23 THE COURT: I'm going to take a five-minute
24 recess, Mr. Riesen.

25 [Whereupon, a recess is taken from 3:03 p.m. to

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1 3:19 p.m.]

2 THE COURT: If y'all will remain standing. The
3 jury is just right around the corner.

4 [Whereupon, the jury enters the courtroom at
5 3:19 p.m.]

6 THE BAILIFF: All present, Your Honor.

7 THE COURT: Thank you. Thank you. Please be
8 seated.

9 Ladies and gentlemen of the jury, we are going
10 to go ahead and recess for the day.

11 Please do not begin your deliberations, do not
12 discuss this case amongst yourselves or with any
13 friends or family members, as I indicated to you
14 yesterday.

15 Please do not do any independent investigations.
16 Do not read, watch, listen to any news accounts, if
17 there should be any regarding this case.

18 Please be back in your jury room at 9:00 a.m.
19 We will begin promptly once everyone is back in their
20 jury room.

21 Please have a good afternoon, and I will see you
22 in the morning. Thank you.

23 [Whereupon, the jury exits the courtroom at
24 3:21 p.m.]

25 THE COURT: Thank you. Be seated.

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1 Anything before we break for the afternoon?

2 MR. RIESEN: No, ma'am.

3 THE COURT: Mr. Smiley?

4 MR. SMILEY: No, ma'am.

5 THE COURT: All right. We'll be back at 9:00

6 a.m. Thank you.

7 MR. RIESEN: Thank you, Your Honor.

8 MR. SMILEY: Thank you.

9 [JURY TRIAL ADJOURNS AT 3:21 P.M.]

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the jury trial held before the Honorable Kristi L. Harrington, on Tuesday, July 7, 2009.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 10th day of January, 2010.



Mia Perron, CCR, CVR-CM
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CCR, CVR-CM

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT
 COUNTY OF CHARLESTON) INDICTMENT NO.: 2007-GS-10-9933

STATE OF SOUTH CAROLINA)
)
 VS.)
)
 STANFORD BROWN,)
)
 DEFENDANT.)
 _____)

JURY TRIAL

VOLUME 3 OF 3

held before the Honorable Kristi L. Harrington
 Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
 in the Charleston County Courthouse
 Charleston, South Carolina
 on Wednesday, July 8, 2009, Commencing at 9:11 a.m.

SUSAN "MIA" PERRON, CCR, CVR-CM
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MARKED/ADMITTED

State'sState's Exhibit Number 5
[Drugs]

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State's Exhibit Number 7
[SLED report]

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[Note from the jury]

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THE COURT: Thank you.. Please be seated.
Anything before we bring in the jury, Mr.
Riesen?

MR. RIESEN: No, ma'am.

THE COURT: Mr. Smiley?

MR. SMILEY: No, ma'am.

THE COURT: Bring in the jury.

[Whereupon, the jury enters the courtroom at
9:11 a.m.]

THE BAILIFF: All seated, Your Honor.

THE COURT: Thank you. Please be seated.

Mr. Riesen, call your next witness.

MS. LINDER: The State calls Cathy Kjellman.

[Whereupon, Ms. Kjellman enters the courtroom]

THE CLERK OF COURT: Please place your left hand
on the Bible and raise your right hand.

[Whereupon, Ms. Kjellman is duly sworn by the
clerk of court as follows: do you swear or affirm that
the testimony that you shall give this Court and jury
in the trial of this case shall be the truth, the whole
truth, and nothing but the truth, so help you God]

THE WITNESS: I do.

THE CLERK OF COURT: Please have a seat.

[Whereupon, Ms. Kjellman takes the witness

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1 stand]

2 THE CLERK OF COURT: For the record, please
3 state your name and spell your last name.

4 THE WITNESS: My name is Cathy Kjellman, spelled
5 K-J-E-L-L-M-A-N.

6 THE COURT: Ms. Linder.

7 MS. LINDER: Thank you, Your Honor.

8 - - - - -

9 CATHY KJELLMAN,

10 Having Been First Duly Sworn,

11 was Examined and Testified as Follows:

12 DIRECT EXAMINATION

13 BY MS. LINDER:

14 Q. Who is your employer?

15 A. Charleston County Sheriff's Office.

16 Q. And how long have you been employed by the
17 Charleston County Sheriff's Office?

18 A. About ten years.

19 Q. And please describe your duties there.

20 A. Currently, I'm an investigator in the crime
21 scene lab and we investigate and process evidence for our
22 county and surrounding counties.

23 Q. Okay. And can you please tell the jury about
24 any special training or skills or educational background
25 you have in that or in law enforcement in general?

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1 A. Specifically, in my job I test marijuana, and a
2 lot of it is on-the-job training.

3 Q. And were you employed by Charleston County
4 Sheriff's Office back in May of 2007?

5 A. Yes, I was.

6 Q. In what capacity?

7 A. As an investigator with the crime scene lab.

8 Q. And were you involved with this case, the State
9 vs. Stanford Brown, back in May of 2007?

10 A. Yes.

11 MS. LINDER: Your Honor, may I approach?

12 THE COURT: You may.

13 Q. [Ms. Linder] At this time I'm showing you
14 what's been marked as State's Exhibit 5 for identification
15 purposes. Do you recognize it?

16 A. Yes, I do.

17 Q. And how do you recognize it?

18 A. It's a Best kit that came in on May 7th, 2006.

19 Q. And I guess kind of threefold: when, where, and
20 how did you actually receive it?

21 A. Well, this I would have probably picked up from
22 our lockers or evidence lockers which are located at
23 headquarters. Would pick it up from the lockers and take
24 it over to my office, in a secure environment, and enter
25 it in the computer.

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1 Q. And are there any markings on the bag that
2 denotes that you indeed received it or that you did not
3 receive it?

4 A. My initials are on the top of it, yeah.

5 Q. And who did you receive that from?

6 A. Mark Brown.

7 Q. You talked about a locker. Can you explain
8 to the jury what exactly this locker is? Is it secure,
9 is it -- how is it accessed, who can access it?

10 A. It's a set of lockers, wooden lockers, that
11 are -- the majority of them are probably about that big
12 [indicates]. They're all locked with a padlock. The only
13 people that have keys to it are us that work specifically
14 in the crime lab, and there are six of us that have keys
15 to that -- to those lockers.

16 Q. Okay. You said that you took it from the locker
17 to your office. Where is your office? What -- is your
18 office a secure location, is it -- can anyone walk in at
19 any time?

20 A. It's a secure location and only people that work
21 there have access to it. And the building is located just
22 across the parking lot from where I picked it up.

23 Q. All right. Can you tell the jury a little bit
24 about the packaging? I believe you referred to it as a
25 Best kit?

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1 A. Yes.

2 Q. Can you tell them about that?

3 A. It's described as a Best kit. It's a best
4 evidence test kit. And this is the way it would normally
5 come back from SLED. And when it goes up to SLED, it goes
6 up in an envelope and they take it, unseal it, test it,
7 and do their process -- further process with it.

8 Q. Okay. You said that they unseal it. Is it
9 sealed beforehand?

10 A. Yes. This plastic bag that's inside here, it's
11 got a tamper-proof seal across the top of it.

12 Q. And who seals that tamper-proof seal --

13 A. Mark Brown.

14 Q. -- in the beginning?

15 A. Mark Brown seals it.

16 Q. Was there anything different or somewhat unusual
17 about this Best kit about this case?

18 A. Not with this particular package.

19 Q. Okay. Can you describe that any more?

20 A. This is the way that it would normally come to
21 us.

22 Q. Okay. So you took it from the secured locker to
23 your office. What did you do with it --

24 A. It was --

25 Q. -- does it get logged in? How does it get

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1 logged in? Did you do that?

2 A. Yes. It was logged in to our computer system
3 and given a storage location and an evidence tag that
4 comes back with it. Then it goes into -- a storage
5 location is what we call a vault, which is inside of
6 another locked, sealed room.

7 Q. Did it remain in the Charleston County Sheriff's
8 Office's sole custody from the time it was in the locker
9 until the time it left the premises?

10 A. Yes. And it never left until it left to go up
11 to SLED for testing.

12 Q. And who took it up next?

13 A. I believe it was Investigator Owen that took it
14 up to SLED.

15 Q. So during all of this, the locker to the
16 compound to where -- until it was checked out by
17 Investigator Owen, who had custody of the drugs?

18 A. We did.

19 Q. Is that in a substantially same condition as
20 it -- as you saw before?

21 A. Yes.

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

23 THE COURT: Yes, ma'am.

24 [Whereupon, Ms. Linder and Mr. Riesen confer]

25 MS. LINDER: Nothing further at this time.

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1 Investigator Kjellman, please answer any questions
2 Mr. Smiley may have.

3 THE COURT: Mr. Smiley.

4 MR. SMILEY: May it please the Court, Your
5 Honor.

6 THE COURT: Yes, sir.

7 CROSS-EXAMINATION

8 BY MR. SMILEY:

9 Q. State's Exhibit Number 5, could I hold it for a
10 moment?

11 A. Yes, sir.

12 Q. Now, each of these Best kits that you're talking
13 about has a control number on it, doesn't it?

14 A. Yes.

15 Q. Okay. The control number on this Best kit is --
16 ends with the last three digits 822; correct?

17 A. Yes, sir.

18 Q. All right. And that's the evidence that you
19 held there at Pinehaven; correct?

20 A. Yes.

21 Q. Okay. Now, can you tell me anything about
22 serial number 18993 that was collected by Detective Brown
23 on May 4th in the case of the State vs. Stanford Brown?

24 A. I believe what had happened is there was some
25 kind of error with the Best kit when we first came in

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1 contact with it.

2 Q. Well, you told -- on direct you said you came in
3 contact with it on May the 7th. You didn't mention any
4 error, did you?

5 A. No.

6 Q. Okay. So now you're telling this jury there was
7 a problem; correct?

8 A. When it first came to us, yeah.

9 Q. Okay. Well, when it came -- so when control
10 number ending 993 came to you and you got it, there was a
11 problem?

12 A. Yeah.

13 Q. All right. So did you document that problem
14 anywhere?

15 A. No, I did not. I believe Mark Brown was
16 contacted to come correct that error.

17 Q. Okay. Do you know what the error was?

18 A. Offhand, I do not remember.

19 Q. There was a problem with the evidence, though,
20 right --

21 A. There was --

22 Q. -- you couldn't log it in?

23 A. There was a problem with the Best kit, yeah, the
24 way it was --

25 Q. Well, you didn't write it down. So I keep

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1 asking you what is the problem. You don't know; correct?

2 A. I mean, it was 2007. I'm not sure what the
3 error was at the time --

4 Q. Well, if you had documented it, we would know
5 what the problem was; correct?

6 A. Yes, sir.

7 Q. All right. So the evidence was originally
8 submitted to you in a Best kit with the control number
9 ending in 993. It was retrieved by you on May the 7th;
10 correct?

11 A. Yes, sir.

12 Q. That Best kit no longer exists?

13 A. 993 does not, no.

14 Q. Okay. And you're testifying you cannot tell
15 this jury what the problem with the evidence was?

16 A. I do not remember, no.

17 Q. Now, one of the reasons that you use the serial
18 number code, so that the evidence can be identified;
19 right?

20 A. Yes.

21 Q. And it -- a Best kit is a tamper-resistant
22 pouch; correct?

23 A. Yes.

24 Q. Once it's put in there and sealed -- and if you
25 try to open it, you're going to destroy the package;

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1 right?

2 A. Yes, sir.

3 Q. Okay. That way you'll know if the evidence has
4 been tampered with; right?

5 A. Yes, sir.

6 Q. So this evidence was originally put in control
7 number 993; right?

8 A. Yes, sir.

9 Q. And it was tampered with. It was opened;
10 correct?

11 A. Not until Mark Brown came in to open it and
12 change it.

13 Q. Well, once he put it in there and put it in your
14 custody, he came back and got it; right?

15 A. He came back and changed out the Best kits. It
16 never left my office.

17 Q. Okay. But he tampered with 993? He opened it?

18 A. Yes.

19 Q. He couldn't put it back in there and seal --

20 A. Yes.

21 Q. -- it, could he?

22 So then, without noting the change in the chain
23 of custody, you just changed serial numbers and put it in
24 another Best kit; right? He did.

25 A. Yes.

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1 Q. When he came and got the evidence -- call him
2 up, got a problem here, he came down, and you handed him
3 the Best kit?

4 A. Yes.

5 Q. And that was Best kit 993?

6 A. Yes.

7 Q. All right. Where did he retrieve Best kit 822?

8 A. It was probably at my office. We --

9 Q. Not probably. Do you remember where he
10 retrieved it?

11 A. It was at my office.

12 Q. It was at your office. So you gave him another
13 Best kit?

14 A. Yes.

15 Q. All right. And then he transferred the contents
16 to -- do you have knowledge of where he transferred the
17 contents?

18 A. He transferred it into the new Best kit, the
19 822.

20 Q. Okay. When he made that transfer, were you
21 physically watching him?

22 A. Yes.

23 Q. All right. But when you're trying to keep a
24 chain of custody -- well, let me ask it this way. The
25 purpose of a chain of custody is to ensure the integrity

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1 of evidence; correct?

2 A. Yes.

3 Q. All right. Whenever someone handles the drugs,
4 they're put in the chain; correct?

5 A. Yes.

6 Q. So in this case we have paperwork that shows
7 that Detective Brown put it in the lockbox on May 4th, the
8 original day?

9 A. Yes.

10 Q. That you collected it on May the 7th?

11 A. Yes.

12 Q. And that David Owen took it to SLED later in
13 June?

14 A. Yes.

15 Q. All right. When, in fact, it was put into the
16 lockbox on May 4th, retrieved by you on the 7th --

17 Correct?

18 A. Yes.

19 Q. -- then put back in the hands of Detective
20 Brown; correct?

21 A. Yes.

22 Q. Then put back in your hands; right?

23 A. [Indicates affirmatively]

24 Q. And that doesn't show up in the chain, does it?

25 A. It never left my office.

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1 Q. But he handled it; correct?

2 A. [Indicates affirmatively]

3 Q. And you can't tell this jury what the problem
4 was? No?

5 A. Not off the top of head I couldn't tell you.

6 Q. All right. But you wouldn't have called him
7 unless there was a problem --

8 A. Yes.

9 Q. -- correct?

10 Now, your only involvement in this case was
11 being the custodian; right?

12 A. Yes.

13 Q. You didn't take fingerprints or submit it to
14 fingerprints or anything like that?

15 A. No, sir.

16 Q. That would be the baggie, the baggie that was
17 inside here. Nothing was done with that?

18 A. Not that I know of, no.

19 MR. SMILEY: All right. Beg the Court's
20 indulgence.

21 THE COURT: Yes, sir.

22 [Whereupon, Mr. Smiley and Ms. Hensley confer]

23 MR. SMILEY: Nothing further.

24 THE COURT: Ms. Linder.

25 MS. LINDER: Briefly, Your Honor.

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1 MR. SMILEY: Oh. Excuse me, Your Honor. I'm
2 walking away with some crack. I'm sorry.

3 REDIRECT EXAMINATION

4 BY MS. LINDER:

5 Q. Investigator Kjellman, if there is a clerical
6 error with paperwork, is it your duty to make attempts to
7 have the clerical errors fixed?

8 A. Yes.

9 Q. Is misspelling of a name a clerical error?

10 A. Generally, no.

11 Q. Are two different case numbers written down a
12 clerical error?

13 A. Yes.

14 Q. Would a clerical error -- let me go back.

15 When you log in evidence, do you log in evidence
16 seven days a week, twenty-four hours a day? You access
17 that locker and you log it in?

18 A. One of us does, yeah. The job rotates to us.

19 Q. Does a purposefully -- if a Best kit is
20 purposefully opened to correct a clerical error, what does
21 that tell you?

22 A. There was an error with some place in the --
23 probably the bag, that required the bag being opened.

24 Q. Does that flag, with your education and
25 experience, a contamination?

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1 A. Not necessarily a contamination, no.

2 Q. Throughout all this, who -- from when it was in
3 the locker to when Investigator Owen took the drugs, who
4 had custody and where was custody of the drugs in this
5 case?

6 A. At my office.

7 Q. And was transferring the drugs from the first
8 Best kit to the --

9 MR. SMILEY: Objection, Your Honor. Leading
10 question.

11 THE COURT: Let Ms. Linder finish.

12 Q. [Ms. Linder] Who was present when the drugs in
13 this case were transferred from the first to the second
14 Best Kit?

15 A. Me and Mark Brown.

16 Q. Are the drugs here in State's Exhibit 5, for
17 identification purposes, are your initials on them?

18 A. Yes, they are.

19 Q. Are they in substantially the same condition
20 when you received them?

21 A. Yes.

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

23 THE COURT: Yes, ma'am.

24 [Whereupon, Ms. Linder and Mr. Riesen confer]

25 Q. [Ms. Linder] Will you describe to the jury or

1 explain to the jury or give suggestions to the jury of
2 what clerical problems could come about in these cases?

3 MR. SMILEY: Objection, Your Honor. May we
4 approach?

5 THE COURT: You may.

6 [Whereupon, an off-the-record bench conference
7 is held]

8 THE COURT: Sustained. Please rephrase your
9 question, Ms. Linder.

10 Q. [Ms. Linder] Investigator Kjellman, can you
11 explain to the jury any reasons why a Best kit or evidence
12 in the Best kit, while in constant custody of the
13 Charleston County Sheriff's Office, would have to be
14 transferred to a different kit?

15 A. Most likely it's -- there's paperwork that has
16 to go inside this bag here that's got to be filled out
17 correctly. And there's certain paperwork that goes inside
18 the bag, there's certain paper that stays outside the bag.
19 A lot of times it'll get mixed up. They didn't sign some
20 paperwork in there, it wasn't filled out completely. You
21 gave the suggestion of the case numbers being different.
22 Any number of those reasons would make it so it would --
23 Mark would have to come in and change it and fill it out
24 correctly and change the Best kits.

25 Q. Is that uncommon?

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1 A. No.

2 MS. LINDER: Nothing further, Your Honor.

3 MR. SMILEY: I've got --

4 THE COURT: Mr. Smiley?

5 MR. SMILEY: -- a few, if I could, Your Honor.

6 RECROSS-EXAMINATION

7 BY MR. SMILEY:

8 Q. But you don't know what the problem is in this
9 case; correct?

10 A. I don't recall the exact problem with this one,
11 no.

12 Q. You don't know the problem; correct?

13 A. [No response]

14 Q. All right. You said that it could be because of
15 the paperwork filled out wrong?

16 A. Yes.

17 Q. Where is the paperwork?

18 A. That gets taken out when it's at SLED.

19 Q. Okay. So you don't know if that was the problem
20 or not?

21 A. I don't recall, no.

22 Q. All right. And you say it's common to destroy
23 Best kits and put them in other ones?

24 A. In common for errors like that like I described.

25 Q. Okay. Now, you testified that you -- on

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1 redirect that these drugs were substantially in the same
2 condition as when they were put in the Best kit?

3 A. Yeah.

4 Q. How do you know that? Because you look at drugs
5 all day long; right?

6 A. Yeah.

7 Q. So how do you know that?

8 A. I mean, the Best kit looks in the same
9 condition.

10 Q. But this isn't the original Best kit, is it?

11 A. No.

12 MR. SMILEY: I don't have anything further.

13 THE COURT: Any objection to this witness being
14 released from the courthouse?

15 MS. LINDER: None, Your Honor.

16 THE COURT: Mr. Smiley?

17 MR. SMILEY: No, ma'am.

18 THE COURT: Ma'am, you may step down and be
19 excused from the courthouse. Thank you.

20 THE WITNESS: Thank you.

21 [Whereupon, the witness is excused and exits the
22 witness stand]

23 THE COURT: Call your next witness.

24 MS. LINDER: The State calls Investigator David
25 Owen.

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1 [Whereupon, Mr. Owen enters the courtroom]

2 THE CLERK OF COURT: Place your left hand on the
3 Bible and raise your right hand.

4 [Whereupon, Mr. Owen is duly sworn by the clerk
5 of court as follows: do you swear or affirm that the
6 testimony that you shall give this Court and jury in
7 the trial of this case shall be the truth, the whole
8 truth, and nothing but the truth, so help you God]

9 THE WITNESS: I do.

10 THE CLERK OF COURT: Please, sir, have a seat.

11 [Whereupon, Mr. Owen takes the witness stand]

12 THE CLERK OF COURT: For the record, please
13 state your name and spell your last name.

14 THE WITNESS: David Owen, O-W-E-N.

15 MS. LINDER: Good morning, Investigator Owen.

16 THE WITNESS: Good morning.

17 - - - - -

18 DAVID OWEN,

19 Having Been First Duly Sworn,
20 was Examined and Testified as Follows:

21 DIRECT EXAMINATION

22 BY MS. LINDER:

23 Q. Will you please tell the jury who's your
24 employer.

25 A. Charleston County Sheriff's Office.

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1 Q. And how long have you worked for Charleston
2 County Sheriff's Office?

3 A. Seven years.

4 Q. And please describe your duties with CCSO.

5 A. Currently, my duties, I'm a property crimes
6 detective in the investigations division. I have been
7 since November of last year.

8 Q. Okay. And what was your position I guess back
9 in May and June of 2007 with the sheriff's office?

10 A. I was a crime scene investigator, which dual
11 role was to evidence custodian.

12 Q. Can you please tell the jury about any special
13 training or skills or education you have in law
14 enforcement.

15 A. Have crime scene reconstruction, crime scene
16 investigations, latent fingerprints, cold-case
17 investigators.

18 Q. And were you involved in this case, the State
19 vs. Stanford Brown, back in 2007?

20 A. Yes, I was.

21 MS. LINDER: May I approach?

22 THE COURT: You may.

23 Q. [Ms. Linder] At this time I'm showing you
24 what's been pre-marked as State's Exhibit 5 for
25 identification purposes. Do you recognize it?

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1 A. Yes, I do.

2 Q. How do you recognize it?

3 A. It's a Best kit with a SLED lab number on it.
4 And the SLED lab number is L0708601, which matches the
5 receipt I received when I transported it.

6 Q. Okay. When did you receive it?

7 A. I received it on June 14th of 2007.

8 Q. Where and how did you receive it on June 14th?

9 A. I received it -- it was in a secured lock vault
10 at our evidence compound in North Charleston. I take it
11 out of evidence, fill out the proper paperwork, and
12 transport it to SLED in Columbia.

13 Q. And who had custody of it at evidence?

14 A. It's in a secured vault. It just sits in a
15 secured vault until we go back and get it. It would have
16 been placed in evidence by Investigator Kjellman.

17 Q. Okay. What did you do once you received it?

18 A. Once I receive it, I look at it to make sure
19 that it hasn't been tampered with, all the paperwork in --
20 paperwork pertaining to the Best kit itself is correct.
21 I'll fill out additional paperwork, for chain of custody
22 purposes, stating that I took it out of evidence and the
23 reason why I took it out of evidence. Then I place it all
24 together and transport it to Columbia.

25 Q. Okay. Can you tell the jury a little bit about

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1 that Best kit that you referred to, the kind of qualities
2 of it?

3 A. The Best kit is issues by SLED in Columbia.
4 It's -- this inner plastic piece with the blue writing on
5 it is where the suspected drugs go into it. There is a
6 form, in triplicate, that's filled out that gives
7 information about the arresting deputy or the arresting
8 investigator, who the defendant might be, where they got
9 it from. It's all put into a manilla envelope and secured
10 until testing.

11 Q. And the paperwork you described filling out,
12 what information do you put on that paperwork?

13 A. The information on the paperwork is the case
14 agent, the deputy that's investigating, the defendant's
15 name, their date of birth, their address, social security
16 numbers, any identifying remarks, dates that it was
17 received, where it was received, as well as what the
18 substance might be.

19 Q. Okay. How -- in this case how was the substance
20 described in your paperwork?

21 A. In my paperwork it was described as an off-white
22 rocklike substance.

23 Q. Are you familiar with a Form C?

24 A. Yes, I am.

25 Q. Is there any other identifying information on

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1 the Form C about the drugs in this case?

2 A. Can you elaborate on that question?

3 Q. It appears as though on this form there are
4 lines that are filled out.

5 A. On the form, it's generated by a computer from
6 data that we have put on that form. It spits out that --
7 in this particular case that I, David Owen, am employed by
8 the sheriff's office as a crime scene investigator, that I
9 took this evidence, which is listed as off-white rocklike
10 substance. And in parenthesis behind that it says
11 TW39.9GR, which TW is total weight; and then 39.9 grams of
12 substance is what I'm taking out of evidence and
13 transporting to SLED.

14 Q. And where do you get the 39.9 grams?

15 A. On any illegal drugs or suspected drugs that
16 come into the sheriff's office evidence compound, we get a
17 total weight. The total weight is the complete package.
18 We do not open the package to get a true weight of the
19 drugs. We're not certified to test it, and so we don't
20 open the package. We just take a total weight, place it
21 on a scale, and that total weight was the 39.9 grams.

22 Q. Once you did all this paperwork and checked out
23 the drugs, so to speak, what did you do next with the
24 drugs?

25 A. I have a plastic lockbox that I secure in my

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1 vehicle. I leave North Charleston and transport it to
2 SLED, where I transfer it to the evidence custodian at
3 SLED.

4 Q. Who had custody and control of the drugs from
5 when they were checked out at Charleston County Sheriff's
6 Office evidence compound to when they were checked in at
7 SLED in Columbia?

8 A. I had complete control of them.

9 Q. And is this in substantially the same condition
10 as when you saw it before?

11 A. Yes.

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

13 THE COURT: Yes, ma'am.

14 [Whereupon, Ms. Linder and Mr. Riesen confer]

15 MS. LINDER: Nothing further at this time.

16 Investigator Owen, please answer any questions Mr.
17 Smiley may have.

18 CROSS-EXAMINATION

19 BY MR. SMILEY:

20 Q. Y'all don't tear open the Best kits to weigh
21 them; right? You don't tear the Best kit open?

22 A. No, we do not.

23 Q. Because then it would be tampered with; right?

24 A. Correct.

25 Q. Okay. And what you were describing with the

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1 Best kits is there's a standard and procedure that's been
2 proscribed by State Law Enforcement Division; correct?

3 A. Correct.

4 Q. And they -- is that correct?

5 A. Correct.

6 Q. And they provide the standard Best kit bags;
7 correct?

8 A. Correct.

9 Q. And then they provide you with the Form B and
10 Form C's and transferring the evidence; correct?

11 A. Correct.

12 Q. All right. And that's to maintain the integrity
13 of the evidence; right?

14 A. That is correct.

15 Q. Now, those Best kits, they're a special kind of
16 bag; right?

17 A. Correct.

18 Q. If an attempt has been made to open them, you'll
19 be able to see?

20 A. That is correct.

21 Q. Unless that bag that was opened was destroyed
22 and put in another Best kit?

23 A. Correct.

24 Q. So at that point, the evidence would have been
25 tampered with but you won't be able to tell; right?

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1 A. Correct.

2 Q. Now, I'm going to show you Rule 5 -- I mean,
3 Form 5, Rule 6 in this case. And it control -- has a
4 control number on it; correct?

5 A. That is correct.

6 Q. And it's fair to say that the evidence that you
7 transferred from the evidence compound at Pinehaven --

8 A. Yes.

9 Q. -- to SLED had a control number of 8185822?

10 A. Correct.

11 Q. All right. Now, in order to -- switch with you
12 for a second.

13 In order to know what to take, what kind of
14 analysis has been done, there's a SLED request form done;
15 right?

16 A. Correct.

17 Q. Okay. And in this case it appears that
18 Detective Brown made a request; right?

19 A. Correct.

20 Q. And he made a request that the drugs that he
21 seized on May 4th be taken to SLED; correct?

22 A. Correct.

23 Q. And what is the control number on those drugs?

24 A. 1893 -- 18993.

25 Q. Okay. Not the same drugs, is it?

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1 A. No. It's not the same number, no.

2 Q. Okay. Now, if a Best kit is tampered with for
3 some reason by an officer, would you expect that there
4 would be some kind of written explanation to that?

5 A. What are you -- what are you defining as
6 tampering with?

7 Q. Well, if an officer seals up a SLED envelope --

8 A. Yes.

9 Q. -- in his case --

10 A. Uh-huh.

11 Q. -- and then later tears it open, takes it out,
12 wouldn't you expect that there would be some kind of
13 explanation for that?

14 A. Yes.

15 Q. Okay. I think I gave you -- I got everything
16 back I gave you?

17 A. Yes, sir.

18 Q. All right. Oh. Just a couple more questions.
19 You've been trained in fingerprint analysis, but
20 you don't know if any were done on these drugs or the bag
21 that it was contained in, do you?

22 A. No, we do not -- no, there's not.

23 MR. SMILEY: Beg the Court's indulgence.

24 THE COURT: Yes, sir.

25 [Whereupon, Mr. Smiley and Ms. Hensley confer]

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1 MR. SMILEY: Nothing further.

2 THE COURT: Ms. Linder.

3 MS. LINDER: Thank you, Your Honor. Just
4 briefly.

5 REDIRECT EXAMINATION

6 BY MS. LINDER:

7 Q. Investigator Owen, Mr. Smiley asked you about
8 control numbers on Form B.

9 A. Correct.

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

12 THE COURT: Yes, ma'am.

13 Q. [Ms. Linder] Investigator Owen, I show you this
14 Form B. Is this the Form B that was shown to you by
15 defense counsel? Based on the control number.

16 MR. SMILEY: Your Honor, I object. I never
17 showed him a Form B. I would be glad to --

18 A. Subsequent.

19 MR. SMILEY: -- give her what I showed him.

20 THE COURT: Counsel approach.

21 MR. SMILEY: SLED request form --

22 THE COURT: Counsel approach.

23 MR. SMILEY: Oh. I apologize, Your Honor.

24 [Whereupon, an off-the-record bench conference
25 is held]

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1 MR. SMILEY: Withdrawn, Your Honor --

2 THE COURT: Thank you.

3 Q. [Ms. Linder] According to the paperwork that
4 you turn in to SLED, what is the control number on the
5 drugs in this case?

6 A. The control number on the drugs in this case is
7 185822.

8 Q. When you received the bag, what condition was it
9 in, the Best kit?

10 A. When I received it back from SLED?

11 Q. When you received it back from evidence.

12 A. Oh. From evidence? It was -- the seal was
13 completed and had -- and appeared not to have been
14 tampered with.

15 Q. With your experience as an evidence and also the
16 duties as evidence custodian, can you think of any reason
17 why a Best kit would need to be opened when it first gets
18 to the evidence compound?

19 A. Clerical errors.

20 Q. And what are clerical errors? If you could
21 explain.

22 A. Within the Best kit, as stated earlier, the
23 prosecuting deputy's name is on there, the defendant's
24 name, what the substance is, other identifiers to the
25 defendant, other identifiers to our agency, and our agency

1 address.

2 Clerical errors in the past, within 2007, mainly
3 attributed to the -- a new way that we entered evidence.
4 The current supervisor, Sargent Manigo, created an
5 evidence database -- which was approved for use with our
6 department -- to where everything is generated by computer
7 from the data entry. For instance, if I would go in, I
8 would have to log in under my name and my badge number and
9 enter evidence into the afore case. If I was entering --
10 if I was entering someone else's evidence, it would pop up
11 under my name so I would have to go in there and
12 specifically tell the computer that this evidence belongs
13 to somebody else.

14 It took several months to get used to department
15 wide for deputies to realize that they needed to change to
16 the proper case agent if they were not the case agent.
17 That was the main part -- or the major part of the
18 clerical errors that we received in 2007.

19 Q. If a clerical error such as you just mentioned
20 occurs, how is that remedied within Charleston County
21 Sheriff's Office?

22 A. Can you repeat the question, please.

23 Q. If a clerical error occurs, as you just
24 mentioned, how is that remedied? What does the sheriff's
25 office do about it?

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1 A. The only way that that can be remedied is the
2 crime scene supervisor or the five deputies assigned to
3 that agent to the crime scene unit are the only ones
4 allowed to change or have access to change that
5 information. If we sense a clerical error is there, or we
6 know a clerical error is there, we contact the case agent
7 or the deputy responsible for the evidence and say, hey,
8 we think there's an error or either there is an error; you
9 need to come to the compound so we can discuss it and
10 figure it out.

11 Once that deputy has arrived, we sit down and we
12 go over it and they'll either tell us yes or no there are
13 errors. If there are errors -- in this particular case --
14 or in a case with a Best kit, if the Best kit is sealed --
15 this green strip is a blue seal. It seals the bag
16 completely. I'm not sure of the millage of the plastic,
17 but it's pretty thick plastic. If you tamper with it,
18 you're going to rip the bag.

19 When we take it to SLED for processing, if the
20 bag has been tampered with in any means SLED will not
21 accept it. Within this bag, when it's turned in as
22 evidence there is a form inside of it that describes --
23 the form that's in triplicate is also in there. It has
24 all the information about the case. If there is a
25 clerical error present, that form has to be changed, as

1 well. The bag has to be opened at that point. From that
2 point, we have to transfer it to a new Best kit and it
3 becomes a whole new -- another issue with the control
4 numbers being transferred over, as well.

5 Q. If there's a clerical error as you mentioned in
6 a new Best kit -- in calling a case agent, the case agent
7 agrees that there is a clerical error and you need to
8 change to a new Best kit, you said something about
9 transferring Best kit number. Is there any paperwork
10 aftermath, so to speak, if you have to change that Best
11 kit?

12 A. All of the paperwork in the Best kit itself is
13 controlled by SLED. It's issued by SLED. All of that --
14 the voided, if you will -- voided Best kit has to go to
15 SLED for them to mark it off as being a voided kit. And
16 then I don't know if they keep any paperwork to that
17 effect or if it's destroyed from that point on. But any
18 new paperwork, any new Best kit number is changed in our
19 system, in our evidence system, and the old number is
20 basically lost.

21 Q. When an officer fills out information for the
22 Best kit, is one of the pieces of paper a SLED drug
23 analysis request?

24 A. Correct.

25 Q. If there is a change in a Best kit number,

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1 would that affect the SLED drug analysis request? Would
2 there -- would a different one have to be generated?
3 Would you scratch it out? How would it be changed?

4 A. It's been done different ways. A new one is
5 generated with the correct information on it. Or if it's
6 just a small -- if it's a number, sometimes it's scratched
7 out and written over. But most of the time a new form is
8 generated.

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

10 THE COURT: Yes, ma'am.

11 [Whereupon, Ms. Linder and Mr. Riesen confer]

12 Q. [Ms. Linder] When you checked out these drugs
13 on June 14th, 2007, what did you do with them?

14 A. I verified all the information to be correct and
15 then transported it to SLED.

16 Q. Who had custody of the Best kit from when it was
17 logged out at the Charleston County Sheriff's Office
18 evidence compound to when it was logged in to sled?

19 A. I'm the only one who had custody of it.

20 Q. And is -- State's Exhibit Number 5, which I
21 believe is still in front of you, Investigator Owen, is
22 that in substantially the same condition as when you saw
23 it before?

24 A. Yes, it is.

25 MS. LINDER: Thank you, Your Honor. I have no

1 further questions.

2 THE COURT: Mr. Smiley?

3 RECROSS-EXAMINATION

4 BY MR. SMILEY:

5 Q. All of that is fine and good about if there was
6 a clerical error, and we change this, and we had a new
7 computer system, but you don't know what the problem was
8 in this case, do you?

9 A. Back in 2007, no, I do not.

10 Q. No. Is you -- but you did say that if it was
11 tampered with in some way, there would be a written
12 explanation; correct?

13 A. I did not say that.

14 Q. Okay. Then forgive me.

15 Let me ask you this. You got this new computer
16 system. If you're changing around control numbers,
17 there's no report made in there?

18 A. To my knowledge, no.

19 Q. Okay. You said that SLED accounts for those
20 control numbers?

21 A. To my knowledge. I'm not exactly sure how SLED
22 has control of them.

23 Q. Well, can you tell me where the Best kit that
24 these drugs were placed in to begin with, the 18993, is?

25 A. No, I cannot. Actually -- may I see that,

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1 please?

2 Q. Sure. I'll be glad to.

3 A. It would be 18993 --

4 Q. Yeah.

5 A. -- actually it's not enough numbers for a
6 control number. There's five numbers on this form, and
7 there's actually six numbers within the control number.

8 Q. Well, all right. But when you were requested to
9 take drugs to SLED, is the control number you were
10 requested -- the Best kit you were requested to take was
11 993; correct?

12 A. No. The Best kit I was requested to take was
13 185--

14 Q. Well, where's --

15 A. -- 822.

16 Q. -- the request for that? You don't know?

17 A. I'm not sure.

18 Q. I don't, either.

19 A. The paperwork -- a copy of this form, or one
20 similar to it, should have been in this Best kit. And
21 that paperwork is taken out at SLED when the analysis is
22 done, so the paperwork does not come back with it. And
23 this would have been the only copy we have.

24 Q. Okay. Is it fair to say in this case your
25 actual involvement was picking up a package with the Best

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1 kit number ending with 822? I believe that's correct --
2 822, and taking it to Columbia?

3 A. Correct.

4 Q. That's your actual knowledge of this case?

5 A. Correct.

6 MR. SMILEY: Nothing further.

7 THE COURT: Any objection to this witness being
8 released --

9 MS. LINDER: None, Your Honor.

10 THE COURT: -- from the courthouse? Mr. Smiley?

11 MR. SMILEY: Nothing further.

12 THE COURT: Investigator, you may step down and
13 be released from the courthouse. Thank you.

14 THE WITNESS: Thank you.

15 [Whereupon, the witness is excused and exits the
16 witness stand]

17 THE COURT: Call your next witness.

18 MS. LINDER: The State calls Carmen Tucker.

19 [Whereupon, Ms. Tucker enters the courtroom]

20 THE CLERK OF COURT: Please place your left hand
21 on the Bible and raise your right hand.

22 [Whereupon, Ms. Tucker is duly sworn by the
23 clerk of court as follows: do you swear or affirm that
24 the testimony that you shall give this Court and jury
25 in the trial of this case shall be the truth, the whole

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1 truth, and nothing but the truth, so help you God]

2 THE WITNESS: I do.

3 THE CLERK OF COURT: Thank you, ma'am. Please
4 be seated.

5 [Whereupon, Ms. Tucker takes the witness stand]

6 THE CLERK OF COURT: For the record, please
7 state your name and spell your last name.

8 THE WITNESS: Carmen Janine Tucker, T-U-C-K-E-R.

9 MS. LINDER: Good morning, Ms. Tucker.

10 - - - - -

11 CARMEN J. TUCKER,

12 Having Been First Duly Sworn,

13 was Examined and Testified as Follows:

14 DIRECT EXAMINATION

15 BY MS. LINDER:

16 Q. Who are you employed by?

17 A. State Law Enforcement Division, otherwise known
18 as SLED.

19 Q. And how long have you been employed by SLED?

20 A. I have now been employed by SLED three years and
21 two months.

22 Q. Can you briefly describe your duties at SLED?

23 A. Sure. It is my duty to analyze evidentiary
24 evidence that is brought in on any particular case for the
25 presence of controlled substances.

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1 Q. And can you describe your educational
2 background.

3 A. Sure. I have a chemistry degree. Bachelor's
4 and master's in chemistry. I have two and a half years
5 working in synthesis of medicinal compounds, like
6 pharmaceuticals. I came to work for SLED and they
7 provided my chemical analysis training, as well as my
8 marijuana analysis training, and they also sent me to the
9 academy to learn the law and legal for the State. I also
10 have training courses with the GBI -- I'm sorry, not the
11 GBI -- I'm sorry -- Drug Enforcement Administration, and
12 with SAFS, which is the Southern Association for Forensic
13 Scientists.

14 Q. And have you chemically analyzed substances to
15 determine whether or not they are narcotics?

16 A. Yes, I have.

17 Q. How many times?

18 A. Coming up on probably about 3,000.

19 Q. And is this a regular part of your job?

20 A. Yes, ma'am.

21 Q. And have you been qualified as an expert on drug
22 analysis in state courts before?

23 A. Yes, I have.

24 Q. How many times?

25 A. I have been qualified eight times in the state.

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1 MS. LINDER: Your Honor, at this time the State
2 moves for Carmen Tucker to be admitted as an expert in
3 the field of drug analysis.

4 MR. SMILEY: Without objection.

5 THE COURT: Ladies and gentlemen, ordinarily a
6 person cannot give opinion testimony. Normally when a
7 person testifies, they must testify only as to what
8 they saw or heard or sensed by smell or something of
9 that nature. However, there is an exception when
10 someone is qualified because of their education or
11 experience. They are then permitted to give their
12 opinion in certain areas if the Court qualifies them
13 that way.

14 Ms. Tucker will be qualified in the area of drug
15 analysis to give opinion testimony in that area. That
16 does not mean that you must accept the opinion. It is
17 evidence for you to use any way that you see fit.

18 Ms. Linder.

19 MS. LINDER: Thank you, Your Honor. May I
20 approach the witness?

21 THE COURT: You may.

22 Q. [Ms. Linder] I'm showing you at this time
23 what's been marked as State's Exhibit 5 for identification
24 purposes. Do you recognize it, Ms. Tucker?

25 A. Yes, I do.

1 Q. How do you recognize this bag?

2 A. I recognize this bag through my initials that
3 are on there, my handwriting, all of -- all the places
4 where it's marked and initialed with a green marker. And
5 also this is the bag that I re-sealed it in after
6 analysis.

7 Q. Okay. And can you explain the qualities of the
8 bag that you sealed it in and the bag it's in?

9 A. Sure. The bag that's on the inside that you see
10 here is called a Best bag. It basically has one opening
11 at the top, and it has an evidence-proof seal. Basically,
12 it's like if anybody tried to tamper with it, you could
13 tell if they had tried to pull it because of the adhesive
14 that it uses.

15 This is the bag that the evidence came in to me,
16 to my possession in. I then -- on the opposite end of
17 that seal, I opened the bag at the bottom and removed the
18 evidence which was in -- I don't know if you can see it --
19 this little evidence bag in here. It was sealed in that
20 little evidence bag. And then inside that little evidence
21 bag was a plastic bag, which is where the actual substance
22 that I tested was.

23 And once I'm done testing, I repackage it -- and
24 this Ziploc bag is mine. That's the one I added -- and
25 then reseal it in this heat-sealed pouch with -- on the

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1 inside of this pouch I put my initials and the date. I
2 don't know if you can see that from there -- with a marker
3 and then I seal on the outside over that twice to make
4 sure it's sealed. And then I'll do a round check to make
5 sure there are no tears.

6 Q. How did you come into possession of that sample?

7 A. Basically, what happens is the officers will
8 bring them into our evidence control department downstairs
9 on the first floor. And depending on what county it is,
10 it will get assigned to us. I will be able to pull up a
11 list of cases that are assigned to me. I'll then go
12 downstairs with the list and have one of the technicians
13 pull the cases for me and they will then put them into my
14 name in the system and I will take them upstairs. We have
15 a locker vault inside of our lab, as well.

16 Q. And from within SLED, is it provided for you or
17 is it generated -- is there some sort of chain of custody
18 form that's generated through SLED?

19 A. Right. Our chain of custody at SLED, once the
20 officers bring it into the evidence control department, is
21 all done electronically. Once they bring the evidence in,
22 the girls process it, they process the paperwork, give
23 them a receipt, and they assign the case a lab number
24 which is this L number here. And that label is attached
25 to the case on the case jacket.

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1 From there, like the -- everything is
2 electronic. Anybody who touches that case -- or the girl
3 who takes it in, it'll be in her custody and then she'll
4 scan it into the vault and it'll be in the vault's custody
5 where it's locked away. And then every time someone goes
6 in there to take that evidence out, they have to scan
7 their badge which is unique to that person. And it puts
8 it in each individual's custody as they move that evidence
9 around, basically. So like when I went down to pick it up
10 from the evidence technician, she would have to go in the
11 vault, transfer it from the vault's custody to her
12 custody, and then transfer it into my custody.

13 Q. And have you reviewed that electronically-
14 generated form?

15 A. Yes, I have.

16 Q. And were you able, by looking at that form, to
17 learn how it was received or what channels it went
18 through?

19 A. I did. I reviewed the form and I can -- and I
20 can tell step by step from the time the officer brought it
21 in to the time it left SLED, by the form, where the
22 evidence went through the chain.

23 Q. When the evidence or when the sample or the
24 drugs were brought to SLED, were they placed -- what kind
25 of location were they placed? Could I have walked in and

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1 gotten something out? What kind of place were they put
2 when it was logged in --

3 A. When the officers --

4 MR. SMILEY: Objection, Your Honor. Unless she
5 received it, it's going to require speculation.

6 THE COURT: She may answer, if she knows.

7 A. When the officers bring the evidence in, the
8 procedure is they bring it in and check it in with one of
9 the evidence technicians in evidence control, as I said
10 before. And once all the paperwork is done and everything
11 is checked in, they take the evidence and lock it in their
12 lockable vault on their floor. And that's where it
13 remains.

14 Now, their lieutenant and the girls who work in
15 there are the ones who have access to that vault. And you
16 have to have, like I said -- all of our keycards that we
17 have to swipe, and our keys, they're electronically
18 specific to the person who it's been coded for.

19 Q. [Ms. Linder] Okay. Procedurally, once it's
20 checked in through a specific bag to the -- I think you
21 called it intake --

22 A. Evidence control?

23 Q. -- evidence control, procedurally what happens
24 next before it gets to you, generally speaking?

25 A. Well, procedurally, like once the -- once one of

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1 the technicians, whoever takes care of that case,
2 processes in the paperwork and takes in the case, they
3 will take that sample, that evidence, and they will lock
4 it into their lockable vault. It goes in the vault's
5 custody at that time. Then if say I come down and get it,
6 they have to go in the vault, get it into their custody
7 and then put it into my custody. It's all done right
8 there at the same time.

9 Q. When did you specifically receive these drugs?

10 A. I received these drugs on August the 7th, 2007.

11 Q. When you received these drugs, what was the
12 condition of the bag, the packaging, the Best kit? What
13 was the condition of it?

14 A. Okay. The internal bag here that I was telling
15 you about before, that we call the Best bag, that's one of
16 the things that we do when we receive drugs for our cases
17 is we check those bags. And we like do a round search.
18 We go all the way around the bag and make sure there
19 aren't any tears, cuts or rips. We also check the seal.

20 Like I said, this is a tamper-evidence bag. So
21 if someone were to pull on that seal, because of the way
22 the adhesive is it would show where it had been stretched
23 or pulled or torn, and you would be able to tell. And so
24 I always make sure that's done. And then when I open it
25 at the bottom, I cut a little slit in the bottom of the

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1 bag away from the seal. Then sometimes if they're in this
2 like little evidence bag inside, they're sealed in those
3 and sometimes they just -- you know, they're in the
4 plastic bag in there.

5 But basically that -- we check this outer bag
6 and make sure everything is in order. And we also mark
7 it. That's what the okay is on here. It says okay, and
8 it's the date and my initials. That's saying that I've
9 checked this, it's fine.

10 Q. Have these drugs been in your office's
11 continuous care, custody and control from June 14th until
12 you tested them on August the 7th?

13 A. To my knowledge, yes.

14 Q. Are these drugs in substantially the same
15 condition now as when you first received them?

16 A. Yes, they are.

17 Q. And for what purpose did these drugs come into
18 your possession?

19 A. The drugs were basically assigned to me so that
20 I could analyze the compound for the possibility of
21 controlled substances, whether they were -- it was present
22 or not.

23 MS. LINDER: Your Honor, at this time we offer
24 State's Exhibit 5 for admission into evidence.

25 MR. SMILEY: Objection.

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1 THE COURT: Counsel approach.

2 [Whereupon, an off-the-record bench conference
3 is held]

4 THE COURT: I am reserving State's Number 5
5 into evidence pursuant to your cross-examination,
6 Mr. Smiley.

7 You may proceed, Ms. Linder.

8 MS. LINDER: Thank you, Your Honor.

9 Q. [Ms. Linder] Did you test these drugs?

10 A. Yes, I did.

11 Q. And can you describe the test or examination
12 that you did on these drugs.

13 A. Sure. Once we open the bag and remove the
14 drugs, we weigh them first, just the drugs, not with the
15 bag. And then we take a sample and we do what we call a
16 chemical test. Basically what we're doing is we're adding
17 chemical reagents to it and we're looking for a color
18 change. That's just a directional test. It tells us
19 where to go in further analysis.

20 I then took a sample and ran it on our infrared
21 spectroscopy. It's an instrumentation that we use to
22 identify drug compounds.

23 Q. And what was the results of your testing?

24 A. The results of my testing was that this sample
25 was cocaine base crack, 13.34 grams.

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1 MS. LINDER: Your Honor, may I approach?

2 THE COURT: You may.

3 Q. [Ms. Linder] At this time I'm showing you
4 what's been pre-marked as State's Exhibit 7 for
5 identification purposes. Do you recognize it?

6 A. Yes, I do.

7 Q. What is it?

8 A. That is a copy of our -- the report that we
9 submit when a case is finalized.

10 Q. Is this report prepared in the ordinary course
11 of business?

12 A. Yes, it is.

13 Q. And what was that result of the testing?

14 A. There was cocaine base crack found, 13.34 grams,
15 205.86 grains, schedule two substance.

16 MS. LINDER: And, Your Honor, also at this time
17 we offer State's Exhibit 7 be admitted into evidence.

18 THE COURT: Mr. Smiley?

19 MR. SMILEY: The report?

20 THE COURT: Yes.

21 [Whereupon, Mr. Smiley and Ms. Hensley confer]

22 MR. SMILEY: May we approach, Your Honor?

23 THE COURT: You may.

24 [Whereupon, an off-the-record bench conference
25 is held]

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1 THE COURT: State's 7 I will withhold my ruling
2 until your cross-examination, Mr. Smiley.

3 Q. [Ms. Linder] In reviewing your internal chain
4 from SLED, can you please tell us, according to that
5 chain, who handled the drugs at SLED from start to finish?

6 A. According to the chain, the electronic chain
7 that we keep --

8 MR. SMILEY: Objection. Hearsay, Your Honor.

9 THE COURT: Overruled.

10 A. According to the electronic chain we keep, the
11 evidence was brought in to SLED to our evidence control
12 department by a David H. Owen, investigator.

13 It was then taken from him by Tammy Banister,
14 who is one of forensic technicians. And that happened on
15 June the 14th. Tammy logged the evidence in. She gave it
16 a lab number like I showed you before, the yellow label,
17 processed the paperwork. Tammy then put the evidence on
18 June 14th, same day, into what we -- their drug lab vault,
19 basically. We call it an evidence room, but it's a vault.

20 It was then taken out on July 3rd by Selena
21 Kinard, who is another technician who works down there,
22 and moved into a temporary evidence lock-up vault. They
23 were doing renovations in the main vault, so they had to
24 move all the evidence over.

25 MR. SMILEY: Objection. May we approach, Your

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1 Honor?

2 THE COURT: You may.

3 [Whereupon, an off-the-record bench conference
4 is held]

5 THE COURT: Overruled.

6 Q. [Ms. Linder] Please continue, Ms. Tucker.

7 A. Okay. So Selena Kinard, the forensic
8 technician, on July the 3rd moved that evidence to their
9 temporary vault while they were doing renovations on the
10 main vault. And then on August the 7th Selena Kinard, the
11 same technician, took that evidence into her name and then
12 transferred it to me on the same day. That's the day I
13 came and picked it up, August the 7th of 2007.

14 And then when I was done processing that
15 evidence, I returned it to Selena Kinard October 5th,
16 2007. And she then placed it back in the temporary
17 evidence vault on the same day, October 5th, 2007. And
18 then Selena Kinard, the forensic technician, same
19 technician, pulled it back out on the 17th of October to
20 turn it over to Cathy Kjellman with the Charleston County
21 Sheriff's Office. They were coming to pick up their
22 evidence that had been processed already, which is typical
23 procedure, and that happened on October 17th.

24 Q. And just to make certain: State's Exhibit 7
25 which I previously handed to you, which is for

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1 identification purposes only, what were the results of the
2 tests that you performed?

3 A. The results were cocaine base crack found, 13.34
4 grams, 205.86 grains, and it's a schedule two substance.

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

6 THE COURT: Yes, ma'am.

7 [Whereupon, Ms. Linder and Mr. Riesen confer]

8 Q. [Ms. Linder] I know we just went through that
9 automated log. From June 14th until you -- June 14th of
10 2007, until you tested it, was it in the custody of your
11 SLED office in a secure location?

12 A. To my knowledge, yes.

13 MS. LINDER: No further questions at this time,
14 Your Honor. If you could please answer any questions
15 Mr. Smiley may have.

16 THE WITNESS: Sure.

17 MS. LINDER: And, Judge, if I may approach to
18 remove the items back toward --

19 THE COURT: You may. Mr. Smiley, your witness.

20 CROSS-EXAMINATION

21 BY MR. SMILEY:

22 Q. What would happen -- well, not what -- if -- ask
23 it this way. Ms. Tucker, if the SLED kit that you -- the
24 SLED bag that you received had been tampered with, would
25 you test the drugs?

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1 A. Absolutely not.

2 Q. All right. If the drugs had started out in one
3 Best kit and had been tampered with and placed in another
4 Best kit, you wouldn't know it, would you?

5 A. I only know what I receive when I go and pick up
6 the evidence, so that's the Best kit that I knew about.

7 Q. Right. But if another Best kit had been
8 tampered with, right --

9 A. Right.

10 Q. -- and destroyed, and you were given this Best
11 kit, you wouldn't test it if you knew about it, would you?

12 A. If I knew about it, I would go to my lieutenant.

13 Q. All right. There's a reason to use that Best
14 kit: to ensure the integrity of the evidence; correct?

15 A. That's correct.

16 Q. And that's why you -- the very first thing you
17 do is you take the kit and you look at it on all four
18 corners and on the sides to make sure there's nothing been
19 done to it; right?

20 A. That's correct.

21 Q. And the Best kit that you were given had a
22 control number ending in 822?

23 A. That's correct.

24 Q. Okay. If -- these control numbers --

25 A. Uh-huh.

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1 Q. -- do you know where they come from?

2 A. They are specific to the Best kits. When the
3 Best kits are produced, they are printed like right on the
4 plastic Best kit.

5 Q. SLED does that; right?

6 A. As far as I know, yes, we --

7 Q. Yeah.

8 A. -- provide those Best kits.

9 Q. Right. Is there a SLED analysis request
10 contained in the Best kit?

11 A. It -- yes. It comes inside the Best kit and
12 when we process the evidence and we cut the bag open on
13 the bottom, we take that paperwork out and that paperwork
14 is then scanned into our -- we no longer keep paper
15 records. We scan all of the records in, so we have them
16 all electronically now.

17 Q. Okay. Well, I'm going to show you the SLED drug
18 analysis request on this that -- from the drug of May 4th,
19 '07. What's the control number on that?

20 A. It's B18993.

21 Q. Okay. If you had been given a control number on
22 that request that didn't match the Best kit that you had,
23 would you test it?

24 A. I would go to my lieutenant and we would have to
25 clear it up.

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1 Q. All right. In this case did you go to your
2 lieutenant?

3 A. I didn't have to. The numbers matched. The
4 number on the form that I received with the Best kit
5 matched the number on the Best kit.

6 Q. All right. So in other words, you were unaware
7 if it had been placed in another Best kit and opened
8 before you got it?

9 A. That's correct.

10 Q. Now, when the drugs were brought to SLED, you
11 didn't receive them?

12 A. No. No, I did not.

13 Q. When they were brought on June 14th, some other
14 person received them; correct?

15 A. That's correct. Our evidence technician.

16 Q. All right. The first time you saw the drugs was
17 on August --

18 A. August 7th.

19 Q. August 7th.

20 So while you assume that they were within your
21 custody and they were collected by one of your evidence
22 techs, you don't know that? You just assume that;
23 correct?

24 A. I said no. It's according --

25 Q. According to that.

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1 A. -- the electronic evidence log, yeah.

2 Q. Right. But you don't know it?

3 A. I wasn't physically there.

4 Q. No. No.

5 And when it -- from your evidence log it
6 appeared that one person collected it and it was moved by
7 another person. You weren't physically present for that,
8 either?

9 A. That's correct.

10 Q. And when -- did you go down to the vault and get
11 it, or did somebody pull it out and bring it up to you?

12 A. No. I go pick up my own evidence.

13 Q. Okay. And you return it there; right?

14 A. That's exactly right.

15 Q. Then to get the evidence to court that you
16 tested, someone has to come pick it up; right? You don't
17 bring it down here?

18 A. That's correct.

19 Q. And in this case I think you testified that
20 Investigator Kjellman came and got it?

21 A. That's correct.

22 Q. At least you think so. You weren't present
23 but --

24 A. That's correct.

25 Q. Now, from where it went from Investigator

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1 Kjellman to get to the courtroom, you wouldn't know?

2 A. That's correct.

3 MS. LINDER: Objection, Your Honor. May we
4 approach?

5 THE COURT: You may.

6 [Whereupon, an off-the-record bench conference
7 is held]

8 THE COURT: Sustained as to the -- are you
9 withdrawing the --

10 MR. SMILEY: Withdrawn.

11 THE COURT: -- Mr. Smiley?

12 MR. SMILEY: Yes, ma'am.

13 THE COURT: Thank you.

14 Q. [Mr. Smiley] Now, when you received your
15 package, the --

16 A. It's on the -- right there.

17 Q. Okay. Thanks.

18 When you receive this package, it has paperwork
19 inside the blue bag?

20 A. That's correct.

21 Q. And that's a drug request form?

22 A. That's correct.

23 Q. Is it controlled -- does it have the Form B's or
24 C's in it?

25 A. The newer cases, like from about halfway through

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1 2006 don't. The older cases do. What they do now with
2 the B and C forms, when they bring them in and check that
3 evidence in with the evidence technician initially is they
4 scan those in for us. So we no longer have to do that.
5 They're already in our system.

6 Q. If a case had the same drugs, allegedly, two
7 Form B's with different control numbers, would you find
8 that out of procedure?

9 A. If it was the same case number?

10 Q. Same case number, different control numbers, for
11 one Best kit.

12 A. Oh, yes. That wouldn't -- they're not supposed
13 to put multiple Best kit numbers in with one.

14 Q. Right. One control --

15 A. One control number for one case.

16 Q. All right. From what you can tell, there are at
17 least -- there was someone from SLED that allegedly
18 received the drugs; correct?

19 A. That's correct.

20 Q. And someone from SLED that allegedly moved the
21 drugs?

22 A. Correct.

23 Q. And then you handled the drugs?

24 A. That's correct.

25 Q. So there was at least two other people from SLED

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1 in the chain; correct?

2 A. To my knowledge, yes.

3 MR. SMILEY: All right. Nothing further.

4 THE COURT: Ms. Linder?

5 MS. LINDER: Briefly, Your Honor.

6 REDIRECT EXAMINATION

7 BY MS. LINDER:

8 Q. Ms. Tucker, in doing your drug analysis at SLED,
9 is integrity important in the evidence?

10 A. Absolutely.

11 Q. If you received a Best kit that appeared to have
12 been tampered with, would you test it?

13 A. Absolutely not. We are specifically ordered to
14 go straight to the lieutenant with that evidence and
15 present it to them. The officers, anyone involved in
16 bringing the evidence in, the evidence technicians are
17 notified and it's out of my hands at that point I don't
18 touch it.

19 Q. Before you test it, do you check it to see if
20 it's been tampered with?

21 A. Yes, I do.

22 Q. If it was tampered with one, two, or fifteen
23 people ahead of you, would you be able to tell that it was
24 tampered with when you were first opening it before
25 analysis?

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1 A. If the bag -- if that Best bag had been tampered
2 with, yes, I would be able to tell.

3 Q. Was the Best kit bag in this case that you
4 received tampered with when you received it?

5 A. No, it was not.

6 Q. Was its integrity intact?

7 A. Yes, it was.

8 Q. Did you follow your normal testing and analysis
9 procedure to test the Best kit bag in this case?

10 A. Yes, I did.

11 MS. LINDER: Nothing further, Your Honor.

12 THE COURT: Mr. Smiley?

13 RECROSS-EXAMINATION

14 BY MR. SMILEY:

15 Q. But you only had one Best kit bag; right?

16 A. Yes, sir.

17 Q. So if it had been tampered with in another bag
18 before it was switched to this bag, you wouldn't know
19 about it?

20 A. My only knowledge is of the bag that I received
21 it in.

22 Q. But if you knew about it, you would have gone
23 straight to your lieutenant?

24 A. Absolutely.

25 MR. SMILEY: Okay. Nothing further.

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1 THE COURT: May this witness be excused from the
2 courthouse?

3 MS. LINDER: Your Honor, I believe this witness
4 may be excused.

5 I believe at this time we may have a matter of
6 law to bring up in front of the Court.

7 THE COURT: If you would please remain in the
8 courtroom for just a moment. And you may step down,
9 though.

10 THE WITNESS: Thank you.

11 [Whereupon, the witness exits the witness stand]

12 THE COURT: Ladies and gentlemen of the jury,
13 there is a matter of law that I must take up outside of
14 your presence. It's also a good time for us to take
15 our mid-morning break. Please do not begin your
16 deliberations. Do not discuss this case amongst
17 yourselves.

18 Please rise for the jury.

19 [Whereupon, the jury exits the courtroom at
20 10:25 a.m.]

21 THE COURT: All right. Mr. Smiley, I'll be
22 happy to hear from you regarding State's 5 and 7.

23 MR. SMILEY: Yes, ma'am. It is first to State's
24 5, is at the beginning of this case I filed a Rule 6
25 motion demanding that that chain be produced in court.

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1 And under Rule 6, of course, the defendant or his
2 attorney may demand the appearance of important persons
3 within the chain of custody in the same manner as
4 provided in Section A.

5 I certainly did that in this case. Did it the
6 moment I got -- filed my discovery motion. Is in this
7 case, after the demand for chain, is there are two
8 people in the chain, at minimum, who have not testified
9 in this case; that being the one that received it at
10 SLED, the one that moved it at SLED.

11 I objected the chemist in this case testifying
12 to the reception and moving of the evidence as beyond
13 her knowledge; therefore, at this point I do not
14 believe the chain is complete in this case and would
15 ask that -- especially since we know that the control
16 number has been changed in this case.

17 I think it's very important to have a very
18 complete chain. And there's already some questioning
19 about how it started up and how it finished. And so I
20 think a motion at this point that the -- I don't think
21 I can ask that it -- I'm just -- my motion at this
22 point is -- or my objection at this point is the chain
23 is not complete.

24 THE COURT: Mr. Smiley, how do you -- what do
25 you feel is incomplete about the chain?

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1 MR. SMILEY: There are two people in the chain
2 that have not -- at least two people in the chain that
3 have not testified.

4 THE COURT: And who would those be?

5 MR. SMILEY: That would be the receiving clerk
6 at SLED who allegedly got the drugs from Investigator
7 Owen, and also the drugs were allegedly moved within
8 SLED by a Selene Kinard. The first person -- I don't
9 have her last name, which is that it was Tammy that
10 supposedly received the evidence. And I believe in
11 order -- after demanded in Rule 6 to establish their
12 chain, they still have two people missing.

13 THE COURT: Ms. Linder?

14 MS. LINDER: Thank you, Your Honor. May it
15 please the Court.

16 The first thing: as far as Mr. Smiley's
17 argument about the chain being incomplete because we
18 are lacking two people, in his mind, I would look
19 toward State v. Sweet, a 2007 case, and then also DSS
20 vs. Cochran, which is a 2005. And I can hand these up
21 to the Court, if you would like.

22 THE COURT: We have them. Thank you.

23 MS. LINDER: What I would argue in those, in the
24 DSS case first: in this case the argument is that DSS
25 did not establish a chain of custody because the person

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1 who drew the blood and sealed the containers did not
2 testify -- that's one person -- and the person who's
3 sample delivered [phonetic] did not testify, the person
4 who transported it were not testifying. And it says:
5 [reading] the absence of testimony from these persons
6 and the unknown identity of the courier fails to render
7 it incomplete.

8 I would say in this case we are not to that
9 level even. We have -- we know the identity of the
10 people. Those people were identified by name in court.
11 We also know the forms, so to speak, were filled out by
12 their personal badge that is individualized to each
13 person who logged it in, put it in the vault, it's date
14 and time stamped on that chain.

15 And first of all, in that DSS case, it says
16 that, quote: [reading] however, we have never held the
17 chain of custody rule requires every person associated
18 with the procedure be available to testify or identify
19 personally, depending upon the facts of the case.

20 Moreover, it says: [reading] generally we
21 will uphold the chain of custody if the safeguards
22 instituted ensure the integrity of the evidence, even
23 if every person associated with the procedure is not
24 personally identified.

25 We have identified the people in this case. And

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1 the people who Mr. Smiley wants to hear from are SLED
2 people. And it is the State's position that that is a
3 secured facility. You heard that from Ms. Tucker,
4 you've heard that from Investigator Owen who checked it
5 into SLED. It is a secured facility with badge and pin
6 numbers identified to the individuals and that the
7 integrity has not been breached, so to speak. And that
8 was testified to by Carmen Tucker: she went around all
9 four sides; she checks everything thoroughly.

10 And then we want to go to the Sweet case. It
11 again says that every witness -- every person in the
12 chain of custody does not have to testify if the
13 substance is fungible, such as drugs and blood. Drugs
14 in this case.

15 And in that case they held that the court was
16 willing to fill in the gap, so to speak, as long as the
17 general manner of how drugs were treated was shown --
18 which was told by Carmen Tucker -- in the process to,
19 and told by Investigator Owen on the process in, and
20 also that each person was identified and named. And I
21 hold that we have done that in this case, Your Honor.

22 Furthermore, I believe that these two people are
23 not mandatory for us to have in court. It does not go
24 toward the admissibility of the chain of evidence on
25 this case. It is the State's position that this goes

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1 toward the weight of it in this case. And Mr. Smiley
2 has already discussed this in his cross and recross.
3 I'm sure he will bring it up -- he's brought it up with
4 many witnesses so far, and I'm sure he will bring it up
5 in closing, also. And that is his right.

6 We believe that the admissibility should not be
7 in question, since we showed how everything was
8 reasonably demonstrated to be handled and we've
9 identified each person in the chain, we believe it goes
10 strictly toward the weight of the evidence and that is
11 a decision for the jury to make.

12 MR. SMILEY: If I could respond, Your Honor?

13 THE COURT: Hold on one second.

14 Ms. Linder, do you feel that under Rule 6 you
15 did not have to have every person in the chain present
16 to testify?

17 MS. LINDER: Your Honor, under Rule 6 -- we have
18 furnished counsel with everyone. And it was as
19 practicable, is how I read the case law. And we do not
20 feel, through looking at case law, and -- that every
21 single person had to testify here today.

22 THE COURT: All right. Mr. Smiley.

23 MR. SMILEY: First, let me distinguish the DSS
24 case, which is pretty simple. Under the DSS case, the
25 Rule 6 states -- from criminal procedure governs this

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1 case. And this is a criminal case in which Mr. Brown's
2 liberty is at stake. A very different matter.

3 Second of all, in the Sweet case it talks about
4 if the Best kit hadn't been tampered with. But we have
5 testimony that we've got two Best kits here. I mean,
6 it's very clear. And at that point you would think you
7 would want everybody in the chain to testify;
8 therefore, I don't believe they've made their chain at
9 this point in time, Your Honor, and I don't believe
10 this case is stable, is Rule 6 I demanded the
11 appearance of everyone in the chain and they've not
12 provided it.

13 THE COURT: Do you have a copy of your Rule 6
14 request?

15 MR. SMILEY: I'll get it. I'm sure I have it.
16 If not, I can go down and get the one that I filed with
17 the Court.

18 [Whereupon, Mr. Smiley reviews documents]

19 MR. SMILEY: Your Honor, is I'm providing you
20 with my request for disclosure of evidence in
21 compliance with Rule 5, Brady, filed April 15th of
22 2008. And number 11 --

23 [Whereupon, Mr. Smiley reviews documents]

24 MR. SMILEY: I think I actually named it several
25 times. And that's --

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1 THE COURT: Anything further, Mr. Smiley?

2 MR. SMILEY: No, ma'am.

3 THE COURT: Do you have any further response,
4 Ms. Linder?

5 MS. LINDER: Just very briefly, Your Honor.

6 I just wanted to say for the Court's record that
7 we were not aware of the other people in the chain
8 until Monday of this week. Their internal log is not
9 produced for us. We have been able to get one
10 additional person out of these two here in this short
11 notice. They are not on our original witness list
12 because that was made before I knew of this.

13 I will say that in Mr. Smiley's Rule 5 and Rule
14 6, he says that he would object to it without having
15 everyone there, and I believe that he has done that.
16 And I respectfully ask that you overrule his objection
17 because we have produced the CI who puts it from the
18 defendant to the officer, Mark Brown, to him turning it
19 in, and then Investigator Kjellman.

20 You know, from the lack of -- the paperwork that
21 Mr. Smiley had with Mr. Brown -- with Detective Brown
22 turning it in was never signed by Kjellman. There is a
23 piece of paperwork with the correct numbers, with
24 Kjellman signing it, and we believe that that chain
25 continues to go from Kjellman to Owen, checked into a

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1 secure spot. He has a receipt that it was received.
2 And then we have Carmen Tucker who can identify the two
3 people in SLED, and we have Carmen Tucker who tells
4 general procedure of how it's handled, and there's
5 security and personalized badges with it.

6 Nothing further, Your Honor.

7 THE COURT: Any response to that, Mr. Smiley?

8 MR. SMILEY: No, Your Honor.

9 THE COURT: Based upon the testimony the Court
10 has heard, the purpose of the chain of custody in
11 testifying is that -- so that the -- there is
12 established, from the time the drugs were taken or
13 whatever the evidence was taken, and there is not left
14 to conjecture any speculation as to who handled and
15 what was done with the drugs.

16 Based upon the testimony as presented, it was
17 clear that the officer took it to Kjellman, then Owen
18 took it to SLED, it was delivered to SLED. And based
19 upon the testimony of Ms. Tucker, who was qualified as
20 an expert without objection, she testified that she
21 would not have testified the drugs if -- or tested the
22 drugs if the bag had been tampered with; that pursuant
23 to the automatic evidence chain, that is an internal
24 procedure, that the -- she knew when the drugs had been
25 delivered to SLED; that they did not appear to her to

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1 be tampered with.

2 The case law is clear that there must -- without
3 an absence of tampering, as long as everyone in the
4 chain is known, that the drugs would be admissible.
5 The fact that the individual that the drugs were
6 delivered to at SLED did not testify, the Court does
7 not feel it's in violation of Rule 6.

8 The State's 5, which are the drugs, and State's
9 7, will be admitted over your objection, Mr. Smiley.

10 MR. SMILEY: Thank you, Your Honor.

11 [Whereupon, State's Exhibit Number 5, drugs, is
12 admitted into evidence by the Court]

13 [Whereupon State's Exhibit Number 7, SLED
14 report, is admitted into evidence by the Court]

15 THE COURT: Do you have any further witnesses?

16 MR. RIESEN: No, Your Honor. The State rests at
17 this time.

18 THE COURT: All right. We'll go ahead and hear
19 your motions at this time concerning -- if there are
20 any.

21 MR. SMILEY: Your Honor, in this case I would
22 make -- first I renew my objections.

23 THE COURT: One thing, too, Mr. Smiley. I did
24 not allow you before you -- to articulate. You had,
25 while Ms. Tucker was testifying, I believe accordingly

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1 around the same time about the business records --

2 MR. SMILEY: Yes, ma'am.

3 THE COURT: -- you made an objection that I
4 overruled. If you wish to fully articulate that on the
5 record to preserve your argument.

6 MR. SMILEY: If I could.

7 Is she testified from a computer printout that
8 was provided to the solicitor and myself, as the trial
9 began, that showed the internal movement of the drugs
10 that I argued for her to say who took the drugs in and
11 who moved the drugs would be improper because she had
12 no knowledge. And that was my objection as to her
13 using -- relying upon an internal record to tell the
14 chain of custody. And I believe that violates Rule 6,
15 it violates my client's right to confrontation in this
16 case, and it's beyond her knowledge and therefore would
17 require her to speculate or assume who received the
18 drugs, where they were moved, and under what manner and
19 fashion. And that would be my objection as to that,
20 Your Honor.

21 THE COURT: And, Mr. Smiley, I overruled your
22 objection --

23 MR. SMILEY: Yes, ma'am.

24 THE COURT: -- and based upon several things.
25 She testified that she had relied upon that and as an

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1 expert I allowed and overruled your objection based
2 upon those.

3 Anything further, Mr. Smiley?

4 MR. SMILEY: Let's start from the beginning, go
5 through my objections one more time.

6 THE COURT: All right. Are you moving into your
7 motion for a directed verdict at this time?

8 MR. SMILEY: Yes, ma'am.

9 THE COURT: Do you want to go ahead and we'll
10 take our break --

11 MR. SMILEY: That would be nice if we could.

12 THE COURT: -- and allow you to articulate your
13 argument?

14 Okay. We'll go ahead and take a ten-minute mid-
15 morning break. Please be back.

16 Mr. Smiley, let me -- before we take our break,
17 I'm going to go ahead and advise your client of his
18 right --

19 MR. SMILEY: Yes. Stand up --

20 [Whereupon, Mr. Brown complies]

21 THE COURT: -- so that you can also answer --
22 Please swear the defendant.

23 THE CLERK OF COURT: Please raise your right
24 hand.

25 [Whereupon, Mr. Brown is duly sworn by the clerk

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1 of court as follows: do you swear or affirm to tell
2 the truth, the whole truth, and nothing but the truth,
3 so help you God]

4 MR. BROWN: Yes, ma'am, I do.

5 THE CLERK OF COURT: Thank you. You may put
6 your hand down.

7 THE COURT: Mr. Brown, I am now going to explain
8 to you certain of your rights. If you do not
9 understand anything that I say, please let me know, and
10 if you need me to explain anything to you in further
11 detail, please let me know. Do you understand, Mr.
12 Brown?

13 MR. BROWN: Yes, ma'am.

14 THE COURT: We've reached the stage of the trial
15 where you are going to be able to present your defense.
16 You have the right to claim the protections given to
17 you by the fifth amendment to the Constitution of the
18 United States. This amendment states in part that no
19 person shall be compelled in any criminal case to be a
20 witness against himself. This means that you cannot be
21 required to testify in this case. You have the right
22 to testify on your own behalf; however, no one can make
23 you testify. This is a personal right and no one can
24 waive this right except for you.

25 If you decide to testify, you will be subject to

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1 the same rules that govern other witnesses and you may
2 be examined and cross-examined on any relevant issue in
3 this case. In addition, if you have any convictions
4 involving dishonesty or false statement, or for crimes
5 punishable by imprisonment for more than one year, and
6 the Court determines that the probative value of
7 admitting this evidence outweighs its prejudicial
8 effect to you, the solicitor will be able to introduce
9 your record to attack your credibility.

10 If you decide to testify, this decision on your
11 part must be freely, voluntarily, and intelligently
12 made, with the knowledge of the protections given to
13 you by the fifth amendment of the -- and the
14 consequences of your decision to testify.

15 If you decide not to testify, Mr. Brown, I will
16 instruct the jurors that they cannot give the fact that
17 you did not testify any consideration whatsoever and
18 that there is to be absolutely no prejudice to you
19 because you did not testify. It is left entirely up to
20 you whether or not to testify. You may talk with your
21 attorney, your family, your friends or anyone else, but
22 ultimately the final decision is left up to you.

23 Do you understand what I have explained to you?

24 MR. BROWN: Yes, ma'am.

25 THE COURT: Do you have any questions about what

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1 I have explained to you?

2 MR. BROWN: No.

3 THE COURT: Have you discussed with your lawyer
4 whether or not you should testify?

5 MR. BROWN: Yes, Your Honor.

6 THE COURT: I am going to -- we're going to take
7 our ten-minute break and then when we come back, I'm
8 going to ask you. That will give you a few minutes to
9 again speak with Mr. Smiley and Ms. Hensley concerning
10 your right to testify. Thank you, Mr. Brown. You may
11 be seated.

12 [Whereupon, Mr. Brown complies]

13 THE COURT: Mr. Smiley, do you need Ms. Tucker
14 or Detective Brown any further?

15 MR. SMILEY: No.

16 THE COURT: May they be released from --

17 MR. SMILEY: Absolutely.

18 THE COURT: Ms. Tucker and Detective Brown, you
19 are free to remain in the courtroom, but you are also
20 released from any subpoenas that you may currently be
21 under.

22 We'll be back in ten minutes. Thank you.

23 [Whereupon, a recess is taken from 10:45 a.m. to
24 10:56 a.m.]

25

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MOTION FOR A DIRECTED VERDICT

THE COURT: All right. Mr. Smiley, I'll be happy to hear from you.

MR. SMILEY: Yes, ma'am.

Your Honor, I would make a directed verdict motion first, on trafficking in cocaine, that they have failed to show the element of the offense that the fact Mr. Brown was the perpetrator and the seller of the drugs. They were shown a video and audio. We've got a -- the only person that says that he purchased it from -- the only evidence is from Mr. Cory Hart in this case. And at a very threshold, it can't be just suspicion. It needs to be higher. So that's my directed motion on the trafficking.

As to the proximity to a school: not only do I maintain the same motion as to identity, but I also say that they have not established that the -- what was it called -- North Charleston Academy actually exists at that address. There was, in fact, testimony from a CI that they are relying upon that it's a church.

I also would ask you to take judicial notice of the fact that Charleston County tax records show that it belongs to House of God. And I have that record, if you wish to see it.

[Whereupon, Mr. Smiley and Ms. Hensley confer]

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1 THE COURT: I don't need to see that, Mr.
2 Smiley.

3 MR. SMILEY: All right. Is in that it hasn't
4 been established; and, therefore, I would make a
5 directed motion to have that motion directed in favor
6 of my client.

7 Renew my objections. I guess I'll go backwards.
8 I'll object to -- I have objected that the chain of
9 custody is not complying with Rule 6 and that in a case
10 where there has been evidence of tampering -- in the
11 beginning it started off with one control number and
12 that SLED kit was reopened, that bag destroyed, without
13 any documentation of why. Is that showing the complete
14 chain that's very necessary, and denies my client his
15 rights and specifically under the United States
16 Constitution on his confrontation right and also the
17 South Carolina Constitution.

18 My other objections that I would renew -- just
19 one moment.

20 THE COURT: Yes, sir.

21 [Whereupon, Mr. Smiley and Ms. Hensley confer]

22 MR. SMILEY: I believe those are my major
23 objections, Your Honor, is -- any other objections that
24 I made, of course, I wish to preserve for the record.
25 But those are the main arguments that I've made.

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1 THE COURT: Thank you, Mr. Smiley.

2 MR. RIESEN: Thank you, Your Honor.

3 THE COURT: Mr. Riesen?

4 MR. RIESEN: May it please the Court.

5 As you know, the standard is when evidence is
6 viewed most favorable -- it must be viewed in light of
7 the most favorable -- to the State, basically. We have
8 proven, number one, through a confidential informant
9 and a detective, that the drug buy took place at the
10 Hess station. There has been videotape of that. We've
11 had testimony from -- correct testimony from the CI, as
12 well as the officer, that a buy took place inside a
13 Chevy Impala that was also -- that was also located at
14 the house where the defendant lives. Those drugs were
15 tested. They were tested as crack cocaine. You can
16 look at both the direct and circumstantial evidence.
17 There is plenty.

18 Most importantly, and most damaging, you can
19 listen to the defendant's own words on the jail tapes
20 where he admits to being at the Hess station and
21 knowing Cory is there. Cory is the CI. He's going to
22 put his name out on the street; that he's greedy; he
23 should have never done this; blah, blah, blah.

24 There's plenty of evidence to show the drug --
25 that there was a drug deal that went down.

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1 Now, as to the prox charge, we have testimony
2 from the detective that he knows that area, he had
3 driven by there, he had driven by that school. He said
4 he did a MapQuest on it, he put that address on it and
5 it popped up, and it was less than a half a mile. He
6 showed on the proximity chart where that school is in
7 relation to where the Hess station is. And he has
8 testified that that is the school, and he's been there.
9 So I think that's satisfied.

10 As to the chain of custody, again, I think we
11 already had this issue with you earlier, but we have
12 gone from the initial person who took the drugs, who
13 was Detective Brown; to who he turned them over to in
14 evidence lockup, which was Captain Kjellman, and she
15 testified; and then David Owen, who took the drugs to
16 SLED; and then Carmen Tucker at SLED who tested them.
17 She also completed the chain by telling about the
18 people that had the drugs before her.

19 So, basically, based on that we ask the State
20 [sic] to deny the motion for directed verdict.

21 MR. SMILEY: Two things very --

22 THE COURT: Hold on, Mr. Smiley.

23 MR. SMILEY: Yes, ma'am.

24 THE COURT: Mr. Riesen?

25 MR. RIESEN: Yes?

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1 THE COURT: What testimony was presented that
2 it's actually a school?

3 MR. RIESEN: Mark Brown, the detective, was the
4 one who testified. I asked him specifically -- may I
5 approach?

6 THE COURT: You may.

7 MR. RIESEN: I grabbed this chart right here and
8 I asked him, I said, can you point out where the drug
9 buy took place and can you point out where the school
10 took place. And I put my finger on each. He said he
11 was familiar with both. I asked him if he was familiar
12 with this area and if he had driven it. He said yes.
13 And I also asked him, how do you know that it's less
14 than half a mile. He said, I've driven it and I've
15 MapQuested it.

16 THE COURT: Mr. Riesen, my question to you was
17 whether -- what testimony was presented that North
18 Charleston Academy actually meets the definition in the
19 statute that it's a school.

20 MR. RIESEN: Well, if I'm understanding your
21 question, the testimony is that the detective said -- I
22 believe he testified to -- because I asked him about
23 the proximity charge, which specifically lists it as a
24 school, if he knew that area, if he had been to that
25 school before --

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1 THE COURT: What specifically lists it as a
2 school, Mr. Riesen?

3 MR. RIESEN: The indictment listed it, as well
4 as my questions to him: have you been to that school.
5 And he said, yes, he had been to that school, North
6 Charleston --

7 THE COURT: What evidence do you have, Mr.
8 Riesen, other than the indictment, which is a notice
9 document -- and I am assuming that you do not want me
10 to hold you strictly to everything contained in every
11 indictment presented in this Court. What evidence do
12 you have that North Charleston Academy meets the
13 definition required by the statute?

14 MR. RIESEN: Well, I guess the only thing I have
15 is the officer's testimony. That's all I have.
16 Whether you consider that evidence, Your Honor --

17 THE COURT: Let's break this down, Mr. Riesen.
18 What was the testimony of Detective Brown concerning
19 the -- is it an elementary school, is it public, is it
20 private, is it a middle, is it a secondary?

21 MR. RIESEN: Okay. I'll pull my exact question,
22 Your Honor.

23 [Whereupon, Mr. Riesen reviews documents]

24 MR. RIESEN: I asked: what did you charge the
25 defendant with. Answer: trafficking crack cocaine and

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1 distribution of crack cocaine within a half a mile of a
2 school. What school. North Charleston Academy.

3 At this time I'm going to show you what has been
4 marked as State's Exhibit 6 for ID purposes. Do you
5 recognize it. Will you please show the jury where the
6 transaction took place. Will you please show the jury
7 where North Charleston Academy is located. It's 55
8 North Rhett, within a half a mile -- it's 55 North
9 Rhett, which is -- Charleston Academy is within a half
10 a mile of the transaction location at 1201 Remount
11 Road. Yes. How do you know. Drove it. I think he
12 said he drove it and he MapQuested it.

13 Am I answering your question you asked me?

14 THE COURT: No, sir. Not at all.

15 MR. RIESEN: Okay. May I confer?

16 THE COURT: You may.

17 [Whereupon, Mr. Riesen and Ms. Linder confer]

18 MR. RIESEN: In conferring with Ms. Linder, she
19 told me that during the course of our testimony all he
20 said was that it was a school. He didn't testify what
21 type of school, whether it was a college, whether it
22 was a -- you know, a Bible school, a church. He just
23 said it was a school. That's the only -- as to the
24 statute, all I have as to what he testified. He said
25 it was a school. And I would assume that school fits

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1 the definition with the statute of proximity, his
2 testimony to that.

3 THE COURT: Mr. Riesen, do you know what North
4 Charleston Academy is?

5 MR. RIESEN: I just know it's -- all I know is
6 from what the officer told me, it is a school. That's
7 all I know. I haven't independently gone there. I
8 don't -- I can just go by what he told me and what -- I
9 can tell you that I personally MapQuested it myself and
10 there was something that said North Charleston Academy
11 listed at 55 --

12 THE COURT: Mr. Riesen, I concede that there is
13 abundant testimony that -- presented. The issue that
14 the Court has is whether or not North Charleston
15 Academy actually meets the definition of a school.

16 Mr. Smiley?

17 MR. SMILEY: And on that issue, Your Honor, I
18 asked him some very specific questions about whether it
19 was a school or not. And if I could, I said: have you
20 ever been to this school. Driven past it. I noticed
21 you pointed it out on the map right here. And we
22 established where it was. And then I said, have you
23 ever been inside. No. You know it to be a school, but
24 you've never been there. No. MapQuest tells me it's a
25 school. So you don't know how many students it has.

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1 No. Have you ever met the principal. No. It's a
2 regular school, or is it like a Sunday school or
3 anything. And he did not answer. He did not provide
4 an answer at that point.

5 And, Your Honor, I don't believe they have
6 established that it's a school. We also have testimony
7 that it is a church.

8 THE COURT: We have testimony that it's a
9 church?

10 MR. SMILEY: Yes. The CI said that it was a
11 church, if he's to be believed.

12 I would submit they haven't established that
13 it's a school at all, or what type of school it is, in
14 any form or fashion.

15 And we're relying upon MapQuest to be an
16 official public record. That's how they determined
17 that it was a school. They didn't do any investigation
18 to that effect.

19 I did forget one thing in my direct that I
20 needed -- in my directed motion verdict, in my renewing
21 my objections. I knew I forgot something. And I don't
22 need to do further argument. I've just got to preserve
23 it for the record.

24 I argued abundantly about the jail tapes not
25 being an exception to the business records, and I just

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1 note my continued objection at this point, Your Honor.

2 [Whereupon, the Court reviews documents]

3 THE COURT: With respect to your argument
4 concerning chain of custody, the Court feels that her
5 previous ruling was clearly articulated, so I note your
6 objection to the admission of State's 5 and 7 for the
7 record.

8 With respect to your motion for a directed
9 verdict, under Rule 19 the Court is concerned with the
10 existence or non existence of the evidence as -- and
11 not to its weight. In the light most favorable to the
12 State, based upon the evidence as presented, there was
13 abundant testimony that there were drugs. It meets the
14 weight of trafficking. There was testimony presented
15 by the CI, Mr. Hart, to identify the defendant, Mr.
16 Brown, and testimony that the offense occurred within
17 Charleston County.

18 With respect to the proximity charge, even in
19 the light most favorable to the State, there has not
20 been testimony. In reviewing State v. Green, it is an
21 essential element that the State must prove that the
22 school is, in fact, a school. North Charleston Academy
23 has not been proven by the State, so there is
24 absolutely -- in the Court's opinion, there was no
25 testimony presented that the school -- North Charleston

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1 Academy is a school pursuant to the definition intended
2 and written in the statute and for the purpose intended
3 by the legislature.

4 Grant your motion for directed verdict as to the
5 proximity charge.

6 Anything further, Mr. Smiley?

7 MR. SMILEY: No, ma'am.

8 THE COURT: Mr. Brown, I remind you that you are
9 still under oath. Have you had time to speak with your
10 attorney regarding your decision on whether to testify
11 or not testify?

12 MR. BROWN: Yes, I have.

13 THE COURT: And at this time do you wish to
14 testify?

15 MR. BROWN: No, ma'am.

16 THE COURT: Thank you.

17 MR. SMILEY: Of course, we would rest after the
18 State rests. I don't know if they have or not.

19 I'm trying to get set up so it moves very
20 smoothly, Your Honor, is to get my equipment set up so
21 that we go straight through it. And I'm not quite
22 there yet, just to let you know for scheduling
23 purposes.

24 THE COURT: Okay. Mr. Smiley, I'm going to
25 bring the jury back in, let you rest, and then -- let

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1 you both rest, and then we are ready to go. So how
2 long do you need to get your equipment set up?

3 MR. SMILEY: Five minutes.

4 THE COURT: We'll take a five-minute break.
5 We'll break until 11:25.

6 MR. SMILEY: Yes, ma'am. I'll be ready.

7 THE COURT: We're going to break. When we come
8 back in, Mr. Riesen, you will rest. Mr. Smiley, you
9 will rest.

10 And who is doing the close on behalf of the
11 State?

12 MR. RIESEN: I will be, Your Honor.

13 MR. SMILEY: And I'll have last argument.

14 THE COURT: Thank you.

15 [Whereupon, a recess is taken from 11:15 a.m. to
16 11:24 a.m.]

17 THE COURT: Mr. Riesen, the Court has included
18 mere presence. Are you requesting a mere presence
19 charge?

20 MR. RIESEN: I'm sorry. I couldn't --

21 THE COURT: Are you requesting a mere presence?

22 MR. RIESEN: No.

23 THE COURT: Mr. Smiley?

24 MR. SMILEY: Yes, ma'am.

25 THE COURT: Any other charges, Mr. Riesen, that

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1 you are requesting?

2 MR. RIESEN: None, Your Honor.

3 THE COURT: Mr. Smiley?

4 MR. SMILEY: Other than the chain of custody and
5 credibility of the chain of custody, Your Honor, no,
6 ma'am.

7 THE COURT: Okay. Those are both in there.

8 Mr. Smiley, are we close to being ready?

9 MR. SMILEY: Yes, ma'am. We've very close.
10 Very close.

11 [Off the record momentarily]

12 MR. RIESEN: Your Honor?

13 THE COURT: Yes, sir?

14 MR. RIESEN: We are going to object to the one,
15 the charge, that he's requesting on the chain of
16 custody.

17 THE COURT: Based upon?

18 MR. RIESEN: Well, I think your standard charge
19 about weight covers any admissibility. It covers all
20 of that. They don't need a whole new charge on that.
21 We talked about weight and admissibility, I assumed, of
22 the evidence in your standard instruction. It should
23 be amply clear for the jury --

24 THE COURT: I'll note your objection for the
25 record, Mr. Riesen. I'm including the chain of

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1 custody.

2 Mr. Riesen, do you happen to have the address of
3 North Charleston Academy?

4 MR. RIESEN: I'm sorry? I can't --

5 THE COURT: Do you have the address for the
6 North Charleston Academy?

7 MR. RIESEN: I believe it was 5505 North Rhett.

8 MR. SMILEY: That's correct.

9 THE COURT: All right. Please bring in the
10 jury. Please rise for the jury.

11 [Whereupon, the jury enters the courtroom at
12 11:29 a.m.]

13 THE BAILIFF: All present, Your Honor.

14 THE COURT: Thank you. Please be seated.

15 Mr. Riesen?

16 MR. RIESEN: Your Honor, at this time the State
17 rests.

18 THE COURT: Thank you. Mr. Smiley?

19 MR. SMILEY: The defense won't be presenting any
20 evidence.

21 THE COURT: All right.

22 MR. SMILEY: We rest.

23 THE COURT: And you rest at this time?

24 MR. SMILEY: Yes, ma'am.

25 THE COURT: Thank you.

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1 Ladies and gentlemen, you have now heard all of
2 the testimony in this case. As I indicated to you
3 before, we have reached the stage of the trial after
4 all the evidence has been admitted and all of the
5 testimony from the witness stand. You will now hear
6 closing arguments of counsel.

7 As I indicated to you, just like opening
8 statements were not evidence, closing arguments are not
9 to be considered as evidence, either.

10 Mr. Riesen.

11 MR. RIESEN: Thank you, Your Honor. May it
12 please the Court.

13 - - - - -
14 CLOSING ARGUMENT

15 MR. RIESEN: Now, at the beginning of this case
16 I told you to use your common sense. We've had about
17 three days now, and that's all I ask you to do.

18 The defense has tried to throw up as much on the
19 wall as they can and see what sticks. Their job, his
20 job, is distract, create little problems to distract
21 you from the big pictures. If you use your common
22 sense, I'm confident that what we said in the
23 beginning, you'll find the defendant guilty of
24 trafficking cocaine.

25 So let's talk about the evidence. Let's talk

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1 about what you've heard during the course of this
2 trial. I'm going to try to make it as brief as
3 possible to give you an overview. Okay?

4 Detective Mark Brown: y'all heard from
5 Detective Mark Brown. He testified to the following:
6 that he searched the confidential informant, Cory Hart,
7 at a predetermined location before he ever took him to
8 where the drug buy went down, which was at the Hess
9 station. Okay? He testified that he was in constant
10 surveillance of him, that there was no way he could
11 have got out, traded drugs with someone, hid them on
12 him, that those drugs that were later confiscated came
13 from the Chevy Impala. He testified that he went and
14 set up surveillance about fifty yards away from the
15 Hess station where this Impala -- where the Impala
16 pulled up. Okay?

17 You then saw video evidence. Granted, as I
18 stated earlier, this isn't CSI. We don't have the best
19 equipment. But that's how -- that's the only equipment
20 Hanahan P.D. had. Okay? You saw a lot of -- I'm
21 trying to abbreviate it and not spare you all the stuff
22 that we didn't need to see. But what you did see was
23 the CI, Cory Hart, sitting in a cab. What else did you
24 see? You then saw him get out of the cab, walk over to
25 a Chevy Impala that had driven up, and he got into the

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1 back seat. Okay? There were tinted windows. We
2 couldn't see inside. That is granted.

3 This case is not about -- it's about direct as
4 well as circumstantial evidence. This is about
5 connecting the dots. And when I say using your common
6 sense, when you put this all together and you really
7 think about it, there should be no question in your
8 mind that Cory Hart purchased drugs from the defendant
9 in this case.

10 When he got in the cab, he was in there about
11 two minutes. What did you see next? You saw him get
12 out and head back towards the cab. Now, we don't know
13 what went in there [phonetic]. The only thing we can
14 go by is what the CI says. Now, granted, I completely
15 agree that most people will not want to believe one
16 drug person testifying about another. But I also told
17 you at the beginning of this case, that we take the
18 witnesses as they come to us. I don't have the luxury
19 of picking and choosing my witnesses.

20 When it comes to drug cases, who do drug dealers
21 sell to? People they know, people they deal with.
22 That is what happens here. As Detective Brown
23 explained, that is not uncommon. It happens all the
24 time. It is the only way to get to the people they
25 trust. That's what happens -- happened here.

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1 Now, let's assume that you don't even believe
2 the CI. Okay? Well, then you've got to ask yourself,
3 do I believe Detective Brown; did he lie, did he make
4 all of this up. You saw him on the stand. You judged
5 his credibility. Has he got some vendetta or some
6 conspiracy against Stanford Brown where he's going to
7 lie or he's going to tamper with evidence? That is
8 what the defense would have you believe, that he
9 tampered with evidence. Baloney. Absolute baloney.
10 There was a clerical mistake. It was explained. He's
11 trying to make you think he did something nefarious,
12 something bad with these drugs, to get this person.
13 That is just baloney.

14 Look at what you saw in the video. And let's
15 also talk about what we're going to -- you listen to
16 the jail tapes? Okay. I know it's almost hard to
17 hear. Okay? I've had the luxury of listening to them
18 many times, and I've transcribed them. Now, I can't
19 give you the transcripts for you to take back, but I'm
20 going to put up on PowerPoint exactly what he says.
21 And if you don't believe what he says, you're going to
22 have the luxury of taking that tape player back there
23 and listen to them. You listen to what the defendant
24 says. The defendant puts himself at the Hess station.
25 He knew it was Cory Hart. He knew it was Cory. Why?

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1 Because he was the only one he sold drugs to. He had
2 been there before. Okay?

3 Let's talk about the jail tapes.

4 MR. SMILEY: Objection, Your Honor. Could we
5 have that taken down immediately? May we approach?

6 THE COURT: Please turn it off.

7 [Whereupon, an off-the-record bench conference
8 is held]

9 THE COURT: Ladies and gentlemen of the jury,
10 there is a matter of law that I must take up outside of
11 your presence. Please do not begin your deliberations.
12 You have not received your charge on the law.

13 Please rise for the jury.

14 [Whereupon, the jury exits the courtroom at
15 11:37 a.m.]

16 THE COURT: Thank you. Be seated.

17 Mr. Smiley, what was your objection to the --

18 MR. SMILEY: My objection is that the prosecutor
19 displayed in front of the jury, right after he told him
20 he had been able to listen to this tape many, many
21 times and had transcribed the tape -- while he couldn't
22 give them the transcript, he put it up on the board to
23 read it to them.

24 Your Honor, that's not in evidence. The tape is
25 in evidence. There has been no certified transcript

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1 made of what that tape purports to say. That would be
2 his interpretation. It has not been certified.

3 THE COURT: Well, isn't that the purpose of
4 closing arguments, Mr. Smiley?

5 MR. SMILEY: He's suggesting it's an additional
6 piece of evidence when he says, I've listened to it
7 many times and here is a transcript. Your Honor, that
8 is -- it has not been certified, whatsoever.

9 THE COURT: Mr. Riesen?

10 MR. RIESEN: Yes, ma'am. This is not a
11 transcript. I've already said that they're not taking
12 this back into the jury. This is my recollection of
13 what I was -- this is no different from me saying,
14 you've heard on the tape, and me reading exactly what I
15 wrote down or what I heard. This is what he said on
16 the jail tapes. I can repeat what he said on the jail
17 tapes.

18 They're not taking it back into evidence.
19 You're more than welcome to give a limiting or curative
20 instruction if you want. I specifically said, you can
21 go back there to listen to this and interpret it
22 however you want, but this is what I heard on the jail
23 tapes and this is what the defendant said. That's no
24 different than me putting it on there and it's no
25 different from me basically saying, and you've listened

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1 to the jail tapes and you heard the following, the
2 defendant said this, and the defendant said that. I
3 have every right to do that in my closing.

4 THE COURT: You have every right to say that,
5 Mr. Riesen, but by putting it up on the screen after
6 you just said, I sat there and listened to it and this
7 is a transcript, how is that not -- how are you not
8 testifying?

9 MR. RIESEN: Because it's no different than me
10 putting up on there what I'm going to say. I'm going
11 to be saying the same thing that is on there. It's not
12 a transcript that's going back to the jury. They're
13 not getting any transcript. I'm just --

14 THE COURT: Well, if it's the same thing, Mr.
15 Riesen, that you were going to say, I'm not going to
16 allow it on the video.

17 MR. RIESEN: I'm sorry?

18 THE COURT: I'm not allowing it if -- if that is
19 the same thing that you're going to say, you may say it
20 to the jury.

21 MR. RIESEN: Okay. So I don't -- okay. I'll
22 just read it to them.

23 Just so I understand the reason for the
24 objection -- I don't --

25 THE COURT: I'm not allowing it, Mr. Riesen.

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1 Well, one, it's in the Court's discretion. Two, you
2 have indicated by your statement to the jury that you
3 sat down and transcribed the tapes, more or less, and
4 that that is the transcription and that is what the
5 jury should have heard from the tapes. That is not a
6 certified transcript of the tapes, is it, Mr. Riesen?

7 MR. RIESEN: It's not a transcription, by any
8 means. It's not going back the jury. It's not
9 evidence. It's nothing. It's my -- it's me writing
10 down what they said. Just like taking notes: it's no
11 different from them taking notes of what's going on in
12 the trial, what the defendant says, and me talking
13 about it and putting it up and saying this is what the
14 defendant said.

15 THE COURT: Mr. Riesen, I heard you. I have
16 ruled.

17 Anything further?

18 MR. RIESEN: [No response]

19 MR. SMILEY: [No response]

20 THE COURT: Please bring in the jury.

21 [Whereupon, the jury enters the courtroom at
22 11:41 a.m.]

23 THE BAILIFF: All present, Your Honor.

24 THE COURT: Thank you. Mr. Riesen, you may
25 continue.

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CONTINUED CLOSING ARGUMENT

MR. RIESEN: All right. As I was saying earlier, there were some jail tapes that y'all listened to, okay? And I'm going to tell you what the defense said in those jail tapes, and I want you to take this tape back when I'm done and listen to it yourself, okay, because it places the defendant there with Cory Hart.

There were four calls, if you recall. Okay? And on the first call it's a call from the defendant to his -- to Lashaunda Williams, his girlfriend -- excuse me, his wife.

MR. SMILEY: Objection, Your Honor. Arguing something not in evidence.

THE COURT: Overruled.

MR. RIESEN: And that woman on the voice -- that person on the voice was Lashaunda Williams. So I'm going to read to you a transcript, because I know it was -- I'm going to read to you what was said on those tapes and I want you --

MR. SMILEY: Objection, Your Honor. May we approach?

THE COURT: Counsel approach.

[Whereupon, an off-the-record bench conference is held]

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1 THE COURT: Sustain your objection.

2 MR. RIESEN: As I was saying, I'm going to read
3 to you my interpretation of what was said.

4 Mr. Brown -- the very first call. Brown: Cory
5 a little bitch boy. Woman: I told you that. I told
6 you that, Boobie. Who got in the car. Brown: Cory.
7 Woman: yeah. Brown: Uh-huh. Woman: where he work.
8 Brown: I ain't know. Woman: you believe -- and then
9 there's something inaudible. Brown: I didn't meet
10 Cory at home. I never saw Cory at his home. Woman:
11 you saw him last week. Brown: I saw him at the Hess.
12 Woman: and you did it up with him. Brown: I know it
13 be Cory. Woman: the thing say the thing's Hess.

14 Now, let me just tell you what they're talking
15 about there when they said the thing. They're talking
16 about a warrant. He was given a warrant when he was
17 arrested, and on that warrant it talks about when --
18 what your charges are. And that's given to you in
19 jail. And on that warrant it just lists confidential
20 informant. It doesn't put --

21 MR. SMILEY: Objection, Your Honor. Arguing
22 facts not in evidence.

23 THE COURT: Overruled.

24 MR. RIESEN: And on that it just lists
25 confidential informant. Okay? And the reason for that

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1 is because they were trying to protect the identity.
2 And you've heard testimony about protecting the
3 identity.

4 So woman says: the thing says Hess. Brown:
5 yeah. No. The thing say the corner of Remount road
6 and North Rhett.

7 What's at the corner of Remount Road and North
8 Rhett.

9 Woman: and you were driving my car, too,
10 weren't you. Brown: no. I be driving mine. Woman:
11 no, because you picked your car back up Friday. Brown:
12 no. I been in my car. Me and Mack been in my car
13 together when I did that.

14 That's who the passenger was, someone by the
15 name of Mack.

16 Woman: no. You and Mack -- you and Mack been
17 in my car that day, that day when you meet with Sophie.
18 Brown: I telling you, me and Mack been in my car
19 because that's when we did -- no, not that day. When I
20 been with Mack to see you and Sophie. No, not that
21 day. Woman: that May 7th, I have your car that whole
22 week. You didn't get your car until that Friday night.
23 I had your car that whole week. Brown: no. I telling
24 you it been my car. It were. Woman: the report say
25 your car. Brown: Uh-huh. Woman: I hope it ain't

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1 Mack ass shit [phonetic].

2 What's he saying? He's saying, I hope it's not
3 Mack that's the one who set me up.

4 Brown: what -- Woman: I hope it ain't Mack ass
5 shit. Woman: hello. Brown: you know Mack, he in
6 lockup now. Woman: that's my whole point. Brown:
7 but I telling you, out of all the people -- now, come
8 on, now. You know I know why they had to do it up.
9 You know what I'm saying. You know Mack ain't buying
10 nothing from me. God damn. If you see on the paper
11 they had a confidential informant because you know I
12 say I met him at Remount Road and North Rhett.

13 He's placing himself there time and time again.

14 Woman: and they said eleven o'clock that night
15 they saw you turn a key to our house. Brown: uh-huh.
16 Woman: so did they ask you if I live there. Brown:
17 yeah. Woman: you tell them no. Brown: yeah. I told
18 them I stayed there. I didn't even know why the fuck
19 they ran up over there. I said, man, y'all better
20 tell that shit to my lawyer. Woman: who tell them I
21 been -- who tell them whose house this is. Brown: I
22 never said nothing. They didn't even ask me who it
23 is -- they didn't even ask me who you is. You know, I
24 just tell them, shit, I come here. And then there's
25 inaudible. I will stay here at your address and I'll

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1 stay at this girl's address. And they said that we
2 watched you turn the key. Who said that. Brown: the
3 black dude. Woman: oh. He the one. Sophie said he
4 the one with the smart mouth -- referring to Detective
5 Brown.

6 Now, the second call. That's the first call.
7 That was on May 11th, two days after he was arrested.
8 Again, how would he know a Cory. He wouldn't know
9 unless he was there.

10 Brown: yeah, man. Woman: hey, Boobie --
11 referring to the defendant -- that day how you see him.
12 By him getting in the car with you. Brown: yeah.
13 Woman: in the back seat. Brown: yeah. Woman: he
14 had an -- a transmitter and audio thing. Right.
15 Brown: yeah. Woman: I wonder how they can't see
16 that. Brown: I don't know how the F, man. I
17 should -- I should have cut that N-word's ass up, man.
18 I keep telling myself that. Remember I tell you that.
19 Being F'ing greedy. Being greedy. Me and the N word.
20 Shooting shit so thick. He like, man, I didn't get
21 paid today. All I got is \$300. You know what I'm
22 saying. Woman: he get paid, or he didn't get paid.
23 Brown: yeah. He like all I got is \$300. I need my
24 dog to look out for me. Make that shit sound so F'ing
25 sweet. Man, that little N slack boy, um.

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1 Continued from call number 2. Woman: well, he
2 ain't got the car back or nothing. Brown: uh-huh.
3 Woman: he ever been in jail before. Brown: uh-huh.
4 Probation.

5 Cory. Again, he knows Cory. He knows he's
6 gotten probation.

7 He's F'ing dumb. I don't give an F how many
8 people he rattle, he going to get done. Woman: he
9 shouldn't be for long, he going -- he going to be on
10 the street like that. Brown: yeah. That's what I'm
11 talking about. But you going see what time it is. As
12 soon as this shit get out on the street, I don't give
13 an F who do it to them.

14 What's he talking about? I'll leave that to
15 your discretion.

16 You know what I'm saying? But everybody done.
17 That boy sitting out there -- inaudible -- street like
18 that. He's put himself in a bind. I'm going to put
19 it -- I'm going put him on the street. That MS talking
20 still trying to bump ends [phonetic] off.

21 Why do you think -- when Cory said he was afraid
22 to testify, now you know why.

23 Woman: yeah, he is. When they going to move
24 you.

25 Okay. This is the third call. Got two more.

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1 Brown: That's -- that just keep -- shit keep running
2 in my MF'ing head, man. Woman: what. Brown: damn.
3 How that shit been going down. Not them boy coming in
4 the house and getting me, how this N called me that BS.
5 [Inaudible] [Inaudible] Woman: them calling that day.
6 Brown: that day when you called me he be like, man,
7 he just got his paycheck, he got three bills, but he
8 have -- need me to look out for him, you know.

9 He was talking about Cory.

10 Woman: but you was never going to see him.

11 Brown: yeah, I went to see him. Woman: wait, wait,
12 wait. You ain't saying that.

13 She's covering for him now, she -- because of
14 the recorder.

15 Brown: no. I went to see him at the Hess. I
16 didn't see him [inaudible] Brown: oh, I ain't -- I
17 ain't talk to him but that day when I see him at the
18 Hess. Woman: um.

19 Last call. Woman: Bobbie, he told me you
20 tell -- Bobbie, he told me to tell you are you sure
21 Cory did this. Brown: yeah. I'm one hundred percent
22 positive, and I am never goddamn wrong about this shit
23 here. Brown: man, tell him I am -- I am 2000 mother
24 F'ing percent sure G.D. Cory did this. Woman: that's
25 what I -- Cory did this. Brown: I am -- I am so -- I

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1 am so sure when I say Cory did this. I know he did
2 this. I mark -- I -- and then you can't hear. Woman:
3 hold up; hold up; hold up. You know you in lockup.

4 Those are the tapes I want you to listen to.
5 And if you don't believe anything else in this case,
6 believe what comes out of the defendant's own mouth.
7 These smoking mirrors about tampering -- what does
8 tampering have to do with evidence when he's admitted
9 he's there, he's doing it, Cory did it. There was no
10 tampering here. Smoking mirrors.

11 Now, as I stated earlier, the defendant has been
12 charged with trafficking cocaine, crack cocaine. And
13 you've seen the amount of drugs. It's not Miami Vice.
14 It's not a ton of drugs. Okay?

15 I want to go over briefly what the State is
16 required to prove for trafficking crack cocaine. Okay?
17 The State must prove beyond a reasonable doubt that,
18 number one, the defendant knowingly sold, aided,
19 abetted, or conspired to sell crack cocaine or -- now,
20 let's talk about the first. He definitely sold it.
21 But even if you for some -- let's say the defense
22 throws up some theory that it was this passenger. Who
23 knows? He would have aided and abetted. He was in the
24 car with him. So, regardless, he conspired to sell.

25 Number two: the defendant had actual or

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1 constructive possession of the cocaine. Okay? Actual
2 possession is simple. It's on -- okay? I hand it to
3 you. I have actual possession. That's what we have.
4 However, let's, just for argument's sake, say
5 constructive possession. That's within your dominion
6 or control. In other words, it's somewhere around. If
7 I have a can and I sit it here, I'm still within
8 constructive possession of it. Okay? This was in his
9 car. This was a white Impala. He was the one driving
10 it. Cory had been in that car before numerous times.
11 Again, let's say you don't believe the CI, you don't
12 believe Cory. Detective Brown arrested him five days
13 later and that car was at his house. Is that just a
14 coincidence that it just happens to be a white Chevy
15 Impala with tinted windows? Maybe. But if so, this
16 guy has got the worse luck in the world. Okay?

17 And, finally, the crack cocaine weighed between
18 ten and twenty-eight grams. You've heard testimony
19 from Carmen Tucker at SLED. She was qualified as an
20 expert. She tested these drugs and they weighed about
21 thirteen grams, definitely over the ten to twenty-eight
22 grams. Okay?

23 As I said earlier, and as I said at the
24 beginning of the case, all I've asked is that you use
25 your common sense. I think that if you do and you --

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1 the defense is going to try to muddle this chain of
2 custody and everything else. Just go back to what was
3 on the jail tapes. What did the defendant say? What
4 did Detective Brown say? Is he a liar?

5 Do I think he tampered with this? They keep
6 saying tampered. It was a clerical -- you've heard
7 what clerical mistakes are. Even if you believe there
8 was something wrong with that, well, then, why does the
9 defendant admit that he was at the Hess station, and he
10 was going to put a hit out on Cory, and Cory's -- one
11 hundred thousand percent Cory did this to him. And
12 this was two days before he would have even known it
13 was Cory. How did he know it was Cory? Common sense.
14 Because Cory was the one in the car with him. Cory was
15 someone he knew well.

16 So this isn't about trust and credibility of a
17 CI. This is about linking the dots, putting the dots
18 together, linking it all up. If you do that, I am
19 convinced that you will find the defendant guilty of
20 trafficking crack cocaine.

21 On behalf of myself, Stephanie, and the State,
22 thank you for your attention. I know it's been long.
23 I know it's not fun to sit here. I know you've got
24 busy lives. But you're the reason we have such a good
25 system. And I really do thank you for your attention

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1 over the last couple of days. Thank you.

2 THE COURT: Mr. Smiley?

3 MR. SMILEY: May it please the Court.

4 - - - - -

5 CLOSING ARGUMENT

6 MR. SMILEY: In his opening, he told you a few
7 things: that Cory Hart was going to lead them to a
8 bigger fish; that you're going to get to see audio --
9 hear audio, marked money, see a video, you're going to
10 hear from the cab driver, and he went on and on and on.
11 What have they proved? What have they proved? That's
12 what we need to get down to, is that.

13 You've got the audio from the video. Listen to
14 it. Where is the marked money? Where is the marked
15 money? No one ever identified Stanford Brown inside
16 any white Chevy. And that's as close as it gets. He
17 keeps saying Impala, but when I asked the officer over
18 and over and over, he can't -- white Chevy. It's about
19 as common a car as there is.

20 Where is the license tag number? I mean, it was
21 right there in front of them. Seven cops looking at it
22 and couldn't write the license tag number? Maybe
23 something didn't fit. I'm not accusing anybody of
24 being a liar, besides the CI, because I made the CI
25 answer a question right off the bat when I said, if

MIA PERRON, CCR, CVR-CM

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1 somebody else got in that car, then one of us is a
2 liar. And he says, yes.

3 And I'm going to ask you to bear with me for
4 just a second because I'm going to get out this video
5 that the prosecution doesn't want you to see, and let's
6 look and see who gets in that car.

7 Beg the Court's indulgence.

8 THE COURT: Yes, sir.

9 MR. BROWN: [Off the record momentarily]

10 [Whereupon, videotape, State's Exhibit Number 4,
11 is played for the jury]

12 MR. SMILEY: The CI is sitting in the cab.

13 And if it's back a little far, I'm sorry. I
14 want to make sure we see this.

15 There's a white Chevy pulling in. All right.
16 The first thing: see this guy right here in the red
17 shirt? I asked the CI, did you know him. He said,
18 yeah, it's Joe-Joe. Now, Joe-Joe just happens to be
19 arriving on the scene as this white car comes in and
20 the CI is there. There goes the CI, the rat. And it's
21 going to be tough to see so -- now you see Joe-Joe
22 walking over towards the white car. Now, watch right
23 in the corner of this screen in just a moment. I want
24 you to see who gets in the back seat of this car.
25 Right there. See right there? I want you to look

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1 really, really close. We may have to play this a few
2 times. And I'm going to back it up.

3 See that red shirt? Watch where it goes. In
4 the car. Can you believe that somebody is a liar?
5 Somebody is a liar. A friend of Cory Hart in a red
6 shirt named Joe-Joe just happens upon the Hess station
7 at the same time this Cory has got to get himself in
8 trouble. If you remember, is he was sitting in a car
9 and was getting some phone calls. But we don't know
10 who those phone calls are to, because I've asked
11 everybody: who are those phone calls to.

12 Now, we've not only got that car there, we've
13 got a detective over here, we've got five detectives
14 sitting in the other Bi-Lo parking lot, and we've got a
15 CI. Did anybody tell you about the guy getting in the
16 back seat? I want you to look at it again because I
17 think this is about as important a piece of evidence as
18 you're going to see in this case. Let's back up. All
19 right. Where did I put my --

20 UNIDENTIFIED: It's right here.

21 MR. SMILEY: Oh. Thank you.

22 Watch him. He's coming. Well, I missed it.
23 We're going to back up one more time.

24 Watch that corner. Right there. There is a man
25 that was identified as Joe-Joe right there getting in

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1 that car.

2 [Whereupon, videotape, State's Exhibit Number 4,
3 concludes]

4 MR. SMILEY: They can't identify anybody in that
5 car, but we know that Joe-Joe was there and we know
6 that Cory was there. Nobody tells you about that?

7 You've got to remember, Cory was looking at
8 sixty-five years in prison, a mandatory five years. He
9 had drugs around his kids, he had a gun. The detective
10 said, hey, we need a target; let's get Stanford Brown.
11 Why, I don't know, but that's what came out of that
12 conversation.

13 Did they record any phone calls between the CI,
14 Cory Hart, and Stanford Brown? No. Because I asked,
15 did you capture the numbers in your cell phone, because
16 doing good investigative work, don't you think they
17 could have gone to the phone company and found out a
18 record of those calls, who were they to and who were
19 they from? They didn't do that. I wonder why.

20 Joe-Joe got in the back of that car. Wonder
21 why? Somebody had to provide that crack. I don't know
22 who's in the front seat. I'm going to suggest to you
23 that they haven't proved to you anybody in that car was
24 Stanford Brown. It was a white car. They didn't take
25 the tag number. They could have stopped the car there

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1 and arrested whoever was in the car right after the
2 sale, then there wouldn't have been any question. They
3 didn't do that. They could have followed the car away.
4 They didn't do that. But by his own admission, the
5 only person that can identify Cory Hart -- I mean,
6 identify Stanford Brown is Cory Hart. And I asked him
7 very clearly, if somebody else got in that car, one of
8 us is a liar, and he said, yes, sir. Well, somebody
9 else got in that car. And they're trying to pull the
10 wool over your eyes. There's no smoking mirrors here.
11 Videos don't lie. Cory Hart can lie, other people can
12 be mistaken. Videos don't lie.

13 How do you reconcile that in this case? How do
14 you reconcile that at the precise moment that this
15 operation is being set up, that this fellow Joe-Joe
16 just happens along, walks straight over and jumps in
17 this car, unless it was preplanned; preplanned. And
18 who would have the incentive and the reason to preplan
19 it? Cory Hart. He had to get his probation. He had
20 to provide them with Stanford Brown.

21 Now, videos don't lie. Now, the audio, the
22 audio attached to this, we let it -- first, the
23 prosecutor turned it down. I turned it up so you could
24 listen to it. You can't hear anything. You don't give
25 them a break. That's their job to make a case. It's

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1 their job to prove it beyond a reasonable doubt. I
2 told you, this is all about assumptions. There are so
3 many assumptions in this case it's not funny.

4 But there's one thing without a doubt: this man
5 in red, right there, is getting in that car. Did
6 Detective Brown testify about it? No. Did any of the
7 other officers come in here and testify about it? No.
8 But there is no doubt he's in that car. It's the only
9 way Cory Hart could make this -- you know, Cory Hart
10 could have actually made a buck off of this. Think
11 about it. I've got sixty-five years facing me, I got
12 out on a free bond, so I didn't have to pay to get out,
13 or a low bond. Make sure I characterize that right.
14 All I've got to do is one deal, is I got to do that to
15 get probation. So how am I going to do that? I get on
16 the phone, I get one of my buddies to show up, I get a
17 fellow in a white car -- you never know it's Stanford,
18 because he said he knows Stanford drives a white car
19 and he's got to get Stanford -- get another buddy to
20 drive up, give them all to me, I take the crack, take
21 it back to them, and then meet up with Joe-Joe later
22 and get 300 bucks. It makes just as much sense as what
23 they're suggesting. I mean, how do you explain that?

24 Now, I want to talk about these jail tapes for a
25 minute. First of all, let's get real. There is no

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1 transcript of those jail tapes. You heard them.
2 They're garbled, and they're garbled. You listen
3 to them all you want. My client was served with an
4 arrest -- told them where it was. He says, yeah, I've
5 met Cory up there many times. That's why Cory knew to
6 set it up there, to have it all fall apart there.
7 Because he's angry. I would be angry, too, if I had
8 just been screwed by a friend. Not over selling drugs,
9 but to get out of trouble, he's going to offer up who
10 they want. I would be angry. Of course he's angry.

11 But you listen to that tape, and listen to it
12 close. Never, ever, does he say, I sold Cory the
13 drugs. Not ever. You can listen to it all day long.
14 He doesn't even have the amount of money right. And
15 that's another thing I wanted to talk to you about. I
16 asked the detective how much an ounce of crack cocaine
17 cost, twenty-eight grams. He said, \$1,000 or so. 800
18 is what Cory said. Man, they're getting it on the
19 cheap. You know, maybe that's all that Joe-Joe had
20 that day. But it didn't matter, just as long as they
21 did the deal. It doesn't match. It does not match.

22 And after -- of all those hours of sitting in
23 the jail making phone calls, that's the best they can
24 come up with is that there's some talk about the Hess
25 station. Is he angry at Cory? Of course he's angry at

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1 Cory.

2 But what have they proven? They're proven --
3 they've proven a white car showed up at the Hess
4 station. They proved that. You can see that. There
5 was a white car at the Hess station. Cory Hart got in
6 the car. They've proven that. I just proved that
7 another gentleman got in the car.

8 They've got Cory got out and then allegedly made
9 an exchange in that car and gave it to the detective.
10 That's what they are saying here. They haven't
11 identified anybody besides Cory Hart who the detective
12 told you, I wouldn't trust him. I asked him, would you
13 trust him? Do you trust him? That's why he does all
14 these things: I don't trust him. But he wants you to
15 trust him. He wants you to forget about all the
16 problems in their case and say, ah, something -- just
17 assume that's it's correct. We didn't write down the
18 tag number; no, we didn't see who was inside; no, we
19 didn't arrest him; no, we didn't find any buy money;
20 no, we didn't record the phone conversations; no, we
21 didn't get the cell records.

22 No, they didn't do anything besides rely on Cory
23 Hart, a known criminal looking at sixty-five years and
24 doing whatever he could to make it right in his mind,
25 and to get off. He ain't setting up Stanford. He

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1 can't set up Stanford, so he gets Joe-Joe to bring the
2 drugs to the thing so he can make it look good.

3 If Joe-Joe didn't have anything to do with it,
4 why wouldn't he be -- why wouldn't he be in the courts?
5 Why wouldn't he have testified, yeah, there was more
6 than two people in the car; a third guy came and got in
7 the car. He didn't testify to it because it blows what
8 he's trying to pull off. You saw the change in his
9 demeanor when he was testifying. He was very solemn to
10 begin with. But when I asked him, did you know that
11 guy, he looked down, he hesitated, and he said, yeah.
12 Do you know his name? He didn't want to tell us. He
13 started shivering, because he knew I'd talk to him, and
14 saw what it appears everybody else missed. Joe-Joe got
15 in the car. Joe-Joe can't be explained.

16 Now, some other things I want to touch on. They
17 made a big point of talking about when Cory, the guy we
18 don't trust, the guy that's the admitted liar, showed
19 up for this deal, that they searched him thoroughly,
20 went in his butt crack, looked in his crotch and all
21 that. When I asked Cory about it, he said they did
22 that standing outside at a gas station. More like a
23 [indicates] pat-down. Maybe Cory already had the drugs
24 on him. I don't know. But they don't match up.

25 There's no smoking mirrors in this case.

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1 There's a video that very clearly shows what went on
2 that day. A white car pulled up, you can't see inside,
3 officers didn't think it was important to write down
4 any kind of tag number or they didn't write it down
5 because it wasn't what they were looking for. I don't
6 know. Is they don't report the other gentleman,
7 whoever he is, Joe-Joe, getting in the car at all.

8 Now, you can turn the audio up on this tape.
9 I'm going to give you one last thing here. When you
10 hear the phone calls coming back and forth, you didn't
11 hear that different ring tone or the -- a police
12 officer in the front, the ring tone in the back, and
13 right near the time the CI popped out there's a ding,
14 ding. Maybe it's a text message. I'm sure y'all can
15 decide. But listen to the audio. I would submit to
16 you Cory Hart and Joe-Joe were in cahoots in this case.
17 I don't have to prove anything.

18 Stanford Brown started out in this case an
19 innocent man. He stood over here not guilty, and y'all
20 stood with him. It's the State's job to remove that
21 reasonable doubt, to remove the doubt in this case; not
22 to move it halfway where you've got to guess, but to
23 move it all the way down to a reasonable -- to remove
24 reasonable doubt. They could have done that if there
25 was a case to be made. They could have gotten the tag,

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1 they could have gotten the phone records, they could
2 have put officers out to arrest whoever made that sale
3 as soon as they left. They could have done a lot of
4 things. They didn't do it, and they're asking you to
5 make it up. They're asking you to take this farce, the
6 making of Cory Hart, and take away a man's liberty.

7 He was presumed innocent when we started. The
8 State has done nothing to remove that. The only piece
9 of evidence they've presented to you that says Stanford
10 Brown sold crack cocaine that day is Cory Hart, who is
11 -- who has a very, very strong reason, strong, strong
12 reason, to lie. He was looking at sixty-five years.
13 Sixty-five years. He got probation. He had already
14 been convicted of drugs. He had already been convicted
15 of -- he got probation. It's just not right. It's
16 just not right. How do you explain to a jury? You
17 can't.

18 There's only one verdict in this case. And I'm
19 sure there's other things that I should have pointed
20 out to you. So you all -- the one thing I wanted to
21 make sure you saw is Joe-Joe getting in the car. That
22 can't be explained. There's only one verdict: not
23 guilty.

24

- - -

25

- - -

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CHARGE OF THE COURT

1
2 THE COURT: Ladies and gentlemen of the jury, I
3 remind you that during this trial you and I have had
4 certain duties to perform. As the trial judge it is my
5 responsibility to preside over the trial of this case,
6 and I have the duty to rule on the admissibility of the
7 evidence offered during this trial. You are to
8 consider only the competent evidence before you. If
9 there was any testimony that was ordered stricken from
10 the record, you must disregard that testimony. You are
11 to consider only the testimony which has been presented
12 from this witness stand, any exhibits which have been
13 made a part of the record in this case, as well as the
14 stipulations of counsel.

15 I have the additional duty to charge you on the
16 law applicable to this case. As the presiding judge, I
17 am the sole judge of the law of this case and it is
18 your duty as jurors to accept it and to apply the law
19 as I state it to you now. If you already have any idea
20 as to what the law is or what the law ought to be, and
21 it does not agree with what I now tell you, you must
22 abandon your idea because you are sworn to accept the
23 law and apply the law as I state it to you now.

24 In every case tried in this Court before a jury,
25 the jury becomes the sole and exclusive judge of the

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1 facts in this case. A trial judge cannot state,
2 comment on, or make any statement to a trial jury about
3 the facts in a case. Since you, the jury, are the sole
4 judge of the facts in this case, you are not to infer
5 from anything that I have said during the progress of
6 this trial in ruling upon the admissibility of the
7 evidence, or otherwise, or anything that I say now
8 during the course of this instruction to you, that I
9 have any opinion as to the facts in this case. The law
10 does not allow me to have an opinion about the facts in
11 this case. This is a matter solely for you to
12 determine. As jurors, it is your duty to determine the
13 effect, value and weight and the truth of the evidence
14 that was presented during this trial.

15 The indictment charges the defendant with
16 trafficking cocaine base crack. I remind you that the
17 fact that the defendant was arrested, charged and
18 indicted in this case is not evidence in this case and
19 cannot be considered by you as evidence of guilt in
20 this case, nor does it create any presumption or
21 inference of guilt. This document is simply the formal
22 written instrument which contains the charge made
23 against the defendant. It is the formal document by
24 which this case is brought into court.

25 The defendant has pled not guilty to this

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1 indictment, and that plea puts the burden on the State
2 to prove the defendant guilty. A person charged with
3 committing a criminal offense in South Carolina is
4 never required to prove himself innocent. I charge you
5 that it is an important rule of the law that the
6 defendant in a criminal trial, no matter what the
7 seriousness of the charge may be, will always be
8 presumed innocent of the crime for which the indictment
9 was issued unless guilt has been proven by evidence
10 satisfying you of that guilt beyond a reasonable doubt.

11 The presumption of innocence does not end when
12 you begin your deliberations, but it accompanies the
13 defendant throughout the trial until you reach a
14 verdict of guilt based on evidence satisfying you of
15 that guilt beyond a reasonable doubt. The presumption
16 of innocence is like a robe of righteousness placed
17 around the shoulders of the defendant, which remains
18 with the defendant until it has been stripped from the
19 defendant by evidence satisfying you of the defendant's
20 guilt beyond a reasonable doubt. The presumption of
21 innocence is not mere legal theory. It is not just a
22 legal phrase. It is a substantial right to which ever
23 defendant is entitled unless you, the jury, are
24 satisfied from the evidence of the defendant's guilt
25 beyond a reasonable doubt.

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1 The State has the burden of proving the
2 defendant guilty beyond a reasonable doubt. Some of
3 you may have served as jurors in civil cases where you
4 were told that it is only necessary to prove that a
5 fact is more likely true than not true, such as by the
6 greater weight or the preponderance of the evidence.

7 In criminal cases the State's proof must be more
8 powerful than that. It must be beyond a reasonable
9 doubt. Proof beyond a reasonable doubt is -- proof
10 beyond a reasonable doubt is proof that leaves you
11 firmly convinced of the defendant's guilt. There are
12 very few things in this world that we know with
13 absolute certainty, and in criminal cases the law does
14 not require proof that overcomes every possible doubt.
15 If based upon your consideration of the evidence you
16 are firmly convinced that the defendant is guilty of
17 the crime charged, you must find the defendant guilty.
18 If, on the other hand, you think that there is a real
19 possibility that the defendant is not guilty, you must
20 give the defendant the benefit of the doubt and find
21 him not guilty.

22 There are two types of evidence which are
23 generally presented during a trial: direct evidence
24 and circumstantial evidence. Direct evidence is the
25 testimony of a person who claims to have actual

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1 knowledge of a fact, such as an eyewitness. It is
2 evidence which immediately establishes the main fact to
3 be proved. Circumstantial evidence is proof of a chain
4 of facts and circumstances indicating the existence of
5 a fact. It is evidence which immediately establishes
6 collateral facts from which the main fact may be
7 inferred. Circumstantial evidence is based on
8 inference and not upon personal knowledge or
9 observation. The law makes absolutely no distinction
10 between the weight or value to be given either direct
11 or circumstantial evidence, nor is a greater degree of
12 certainty required of circumstantial evidence than that
13 of direct evidence. You should weigh all of the
14 evidence in this case. After weighing all of the
15 evidence, if you are not convinced of the guilt of the
16 defendant beyond a reasonable doubt, you must find the
17 defendant not guilty.

18 Necessarily, you must determine the credibility
19 of the witnesses who have testified in this case.
20 Credibility simply means believability. It becomes
21 your duty as jurors to analyze and evaluate the
22 evidence and determine which evidence convinces you of
23 its truth. In determining the believability of
24 witnesses who have testified in this case, you may
25 believe one witness over several witnesses, or several

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1 witnesses over one. You may believe a part of the
2 testimony of one witness and reject the remaining part
3 of that same witness. You may believe the testimony of
4 a witness in its entirety or reject the testimony of a
5 witness in its entirety. You may consider whether any
6 witness has exhibited to you any interest, bias,
7 prejudice, or other motive in this case. You may also
8 consider the appearance and the demeanor of the witness
9 while on the witness stand.

10 The rules of evidence typically do not permit a
11 witness to testify as to opinions or to conclusions.
12 An exception to this rule exists for witnesses we call
13 an expert witness, a witness who by education or
14 experience has become expert in some art, science, or
15 profession, or calling may state an opinion as to
16 relevant and material matter in which the witness
17 claims to be an expert, and may also state the reasons
18 for that opinion. You should consider any expert
19 opinion received in evidence in this case and like any
20 other evidence, give it the weight you think it
21 deserves. If you decide that the opinion of an expert
22 witness is not based upon sufficient education or
23 experience, or if you conclude that the reasons given
24 in support of the opinion are not sound, or that the
25 opinion is outweighed by other evidence, you may

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1 disregard that opinion entirely. An expert witness'
2 testimony is to be given no greater weight than that of
3 other witnesses simply because the witness is an
4 expert. Further, you are not required to accept an
5 expert's opinion, even though it is not contradicted.

6 I instruct you and emphasize that the fact that
7 the defendant did not testify is not a factor to be
8 considered by you in any way in your deliberation and
9 in your consideration on the question of the guilt or
10 innocence of the defendant. It must not be considered
11 by you in any manner whatsoever. A defendant has a
12 constitutional right to remain silent and the assertion
13 of this right must not be considered by you in your
14 deliberations. I repeat: under your oath, you are to
15 draw no conclusion whatsoever from the fact that the
16 defendant in this case did not testify. The fact that
17 this defendant did not testify should not even be
18 discussed in the jury room. The burden of proof, as I
19 have stated to you, is on the State. The defendant is
20 not required to prove his innocence. The burden of
21 proof remains on the State to prove guilt beyond a
22 reasonable doubt.

23 An issue in this case is the identification of
24 the defendant as the person who committed the crime
25 charged. The State has the burden of proving identity

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1 beyond a reasonable doubt. You must be satisfied
2 beyond a reasonable doubt of the accuracy of the
3 identification of the defendant before you may convict
4 the defendant. Identification testimony is an
5 expression, a belief, or impression by a witness. You
6 must determine the accuracy of the identification of
7 the defendant. You must consider the believability of
8 each identification witness in the same way as any
9 other witness. You may consider whether the witness
10 had an adequate opportunity to observe the offender at
11 the time of the offense. This will be affected by
12 things like how long or short a time was available, how
13 far or close the witness was, the lighting conditions,
14 and whether the witness had the chance to see or know
15 the person in the past. Once again, I instruct you the
16 burden of the proof -- of proof on the State extends to
17 every element of the crime charged and this
18 specifically includes the burden of proving beyond a
19 reasonable doubt the identity of the defendant as the
20 person who committed the crime. If after examining the
21 testimony you have a reasonable doubt as to the
22 accuracy of the identification, you must find the
23 defendant not guilty.

24 In order to establish criminal liability,
25 criminal intent is required. For example, the mental

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1 state required to be proven by the State for a
2 particular crime might be purpose, intent, knowledge,
3 recklessness, or criminal negligence. Criminal intent
4 must be proven by the State beyond a reasonable doubt.
5 Criminal intent is always a matter that must be
6 determined by the jury from the circumstances
7 surrounding the situation. There is no way to prove
8 intent to a mathematical certainty. There is no way
9 medical science can dissect a person's brain and
10 determine what the person had in mind, so the law says
11 that criminal intent may be inferred from the
12 circumstances shown to have existed. This is how you
13 make a determination of whether or not the element
14 requiring intent was present. It is not necessary to
15 establish intent by direct and positive evidence, but
16 intent may be established by inference in the same way
17 as any other fact, by taking into consideration the act
18 of the parties and all the facts and circumstances of
19 the case.

20 Criminal intent is a mental state, a conscious
21 wrongdoing. It is up to you to determine what the
22 defendant intended to do, based upon the circumstances
23 shown to have existed. Criminal intent can arise from
24 action or a failure to act. It may arise from
25 negligence, recklessness, or an indifference to duty,

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1 or to consequences that is considered by the law to be
2 the equivalent of criminal intent.

3 Mere presence at the scene is not sufficient to
4 prove someone guilty of a crime. A defendant's
5 presence where a crime is being committed, or mere
6 association with a person who commits a crime, does not
7 make a defendant an accomplice or an aider and abetter
8 of the person committing the crime. The burden is on
9 the State to prove every element of the crime charged.
10 If you find, after reviewing all of the evidence, that
11 the State has proved that the defendant was only
12 present at the scene of the crime and that they have
13 not proved beyond a reasonable doubt any other
14 participation in the crime, then you must find the
15 defendant not guilty. The law is that the proof of at
16 the scene of the crime is not sufficient to find
17 someone guilty.

18 A party offering into evidence fungible items
19 such as drugs or blood samples must establish a
20 complete chain of custody, as far as practical. Where
21 an analyzed substance has passed through several hands,
22 the identity of individuals who acquired the evidence
23 and what was done with the evidence between the taking
24 and the analysis must not be left to conjecture.

25 The defendant is charged with trafficking in

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1 cocaine base. The State must prove beyond a reasonable
2 doubt that the defendant knowingly sold, manufactured,
3 cultivated, delivered, purchased, brought into the
4 state, provided financial assistance or otherwise
5 aided, abetted, attempted or conspired to sell,
6 manufacture, cultivate, deliver, purchase or bring into
7 the state, was knowingly in actual or constructive
8 possession, knowingly attempted to become in actual or
9 constructive possession, of crack cocaine. The State
10 must also prove beyond a reasonable doubt that the
11 amount of the cocaine base was ten grams or more but
12 less than twenty-eight grams.

13 Ladies and gentlemen, there are two possible
14 verdicts that you may find in this case. There is no
15 significance whatsoever in the order in which I state
16 these possible verdicts; it's simply one must go on the
17 form first. In the Court of General Sessions, docket
18 number 2007-GS-10-9933, the State of South Carolina vs.
19 Sanford Lavelle Brown, number one: we, the jury, find
20 the defendant not guilty; or two, we, the jury, find
21 the defendant guilty of trafficking cocaine base.

22 Madam foreperson, you must certify that the
23 decision is the unanimous decision of the jury, sign,
24 and date the verdict form.

25 Ladies and gentlemen, your decision must be a

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1 unanimous one. When the jury agrees on the verdict,
2 Madam Foreperson, you will knock on the door indicating
3 to the bailiff that you have reached a verdict, and at
4 that time we will receive you back into the courtroom.

5 I ask you now to go back into your jury room but
6 do not begin your deliberations until you are told to
7 do so by the clerk. We must gather the verdict form,
8 as well as all the evidence that will be going back to
9 you, and there are some matters that I must discuss
10 with the attorneys for both parties before you begin
11 your deliberations.

12 Mr. Alternate, you have completed your service
13 at this time but I ask that you remain with us. You
14 will be put into a separate jury room, and I will come
15 and release you at the appropriate time.

16 Ladies and gentlemen, please rise for the jury.

17 [Whereupon, the jury exits the courtroom at

18 12:31 p.m.]

19 THE COURT: Thank you. Be seated.

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1 THE COURT: Any objections to the charge as
2 read, from the State, with the other objections that --
3 aside from the previous objections, Mr. Riesen?

4 MR. RIESEN: No, ma'am.

5 THE COURT: Mr. Smiley?

6 MR. SMILEY: No, ma'am.

7 THE COURT: And I show 1, 2, 3, 4, 5, 6 and 7
8 have been admitted. Is that correct?

9 MR. RIESEN: That sounds correct, yes.

10 MR. SMILEY: If we could, the tape went out the
11 door -- we'll have to bring it back in -- when we
12 rolled the TV out.

13 THE COURT: Any objection to the TV just going
14 back with the tape in it?

15 MR. SMILEY: No, ma'am.

16 MR. RIESEN: And I would just like to put this
17 up there. It's a tape player, in case they need it, as
18 well.

19 THE COURT: All right. Any objection to that
20 tape player going back, Mr. Smiley?

21 MR. SMILEY: That tape only had that one piece
22 on it; right?

23 MR. RIESEN: The tape has the only thing I gave
24 to you, is those four calls.

25 MR. SMILEY: No, I don't have any objection.

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1 THE COURT: All right. And please review the
2 verdict form.

3 Mr. Smiley, you had no defense exhibits; is that
4 correct?

5 MR. SMILEY: No exhibits.

6 [Whereupon, Mr. Smiley and Mr. Riesen review
7 documents]

8 MR. RIESEN: No objection.

9 THE COURT: No objections to the verdict form?

10 MR. SMILEY: No, ma'am.

11 THE COURT: All right. And we're --

12 MR. SMILEY: It's still in evidence, so we'll
13 send it back.

14 THE COURT: It is in evidence?

15 MR. SMILEY: Yes, ma'am.

16 THE COURT: All right. Madam Bailiff, here's
17 the verdict form. The television goes back. Here's
18 the verdict form and the indictment. And all of those
19 go.

20 Anything further before the jury is instructed
21 to begin their deliberations?

22 MR. RIESEN: No, ma'am.

23 MR. SMILEY: No, ma'am.

24 [Whereupon, the evidence, verdict form, and
25 indictment go to the jury at 12:33 p.m.]

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1 THE COURT: All right. Thank you. We'll be at
2 ease until we get a verdict.

3 Wait a minute. Anything before we recess in
4 this case?

5 MR. RIESEN: No, ma'am.

6 MR. SMILEY: No, ma'am.

7 THE COURT: Mr. Smiley?

8 MR. SMILEY: No, ma'am.

9 [Whereupon, a recess is taken from 12:33 p.m. to
10 1:50 p.m.]

11 THE COURT: Thank you. Be seated.

12 Please bring in the jury.

13 [Whereupon, the jury enters the courtroom at
14 1:51 p.m.]

15 [Whereupon, Court's Exhibit Number 2, note from
16 the jury, is marked by the court reporter]

17 THE BAILIFF: Jurors are all seated, Your Honor.

18 THE COURT: Thank you. And where is the
19 alternate?

20 THE BAILIFF: Did you need the alternate?

21 THE COURT: I do need the alternate. And just
22 make sure that he remains seated where he was
23 currently.

24 [Whereupon, the alternate juror enters the
25 courtroom at 1:53 p.m.]

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1 THE COURT: Thank you. Be seated.

2 Ladies and gentlemen of the jury, I received a
3 note, that has been now marked as Court's Exhibit
4 Number 2, indicating if the defendant is being charged
5 with the proximity near a school.

6 Is that correct, Madam Foreperson? Was that
7 your question?

8 THE FOREPERSON: That's my question.

9 THE COURT: All right. Ladies and gentlemen of
10 the jury, outside of your presence I determined and
11 resolved the indictment, which was 2007-GS-10-9932,
12 which was the distribution of cocaine base crack within
13 a proximity of a school.

14 The verdict form and the indictment that you
15 have is the remaining charge for which you are
16 determining and for which you are to be determining the
17 verdict with respect to Mr. Brown. The indictment for
18 the proximity of a school charge has already been
19 resolved and does not need to be considered during your
20 deliberations.

21 Madam Foreperson, does that answer the jury's
22 question?

23 THE FOREPERSON: Yes.

24 THE COURT: All right. If you will please
25 return.

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1 Mr. Alternate, if you will please remain and go
2 back to your separate jury room.

3 But if you will continue your deliberations at
4 this time.

5 Please rise for the jury.

6 [Whereupon, the jury exits the courtroom at
7 1:54 p.m.]

8 THE COURT: Thank you. Be seated.

9 Any objection to the Court's charge --

10 MR. RIESEN: Not from the State.

11 THE COURT: -- or to the Court's instruction?

12 MR. RIESEN: None from the State, Your Honor.

13 THE COURT: Mr. Smiley?

14 MR. SMILEY: None from the defense, Your Honor.

15 THE COURT: All right. We'll be at ease in this
16 case.

17 [Whereupon, a recess is taken from 1:55 p.m. to
18 3:56 p.m.]

19 THE COURT: Are we ready for the jury?

20 MR. SMILEY: The defense is ready, Your Honor.

21 MR. RIESEN: The State is ready, Your Honor.

22 [Whereupon, the jury enters the courtroom at
23 4:00 p.m.]

24 THE BAILIFF: All present, Your Honor.

25 THE COURT: Thank you. Please be seated.

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1 VERDICT

2 THE COURT: Madam Foreperson, I understand that
3 you have reached a verdict.

4 THE FOREPERSON: We have.

5 THE COURT: If you will please hand the verdict
6 form to the bailiff.

7 [Whereupon, the foreperson proffers documents to
8 the bailiff. The bailiff proffers documents to the
9 Court]

10 [Whereupon, the Court reviews documents]

11 [Whereupon, the Court proffers documents to the
12 clerk of court]

13 THE CLERK OF COURT: State of South Carolina,
14 County of Charleston, the State of South Carolina,
15 plaintiff, versus Stanford Lavelle Brown, defendant, in
16 the Court of General Sessions, 2007-GS-10-9933, we, the
17 jury, find the defendant guilty of trafficking cocaine
18 base; signed, foreperson, Arnetha Drayton.

19 Ladies and gentlemen of the jury, if this is
20 your verdict, please raise your right hand.

21 [Whereupon, jurors comply]

22 THE CLERK OF COURT: Thank you.

23 THE COURT: Anything further --

24 MR. SMILEY: I would ask --

25 THE COURT: -- required of the jury?

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1 MR. SMILEY: I would ask that the jury be
2 polled, Your Honor.

3 THE COURT: Madam Clerk, please poll the jury.

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5 POLLING OF THE JURY

6 THE CLERK OF COURT: Ladies and gentlemen of the
7 jury, I am going to ask you two questions. If you
8 would please respond to those questions.

9 Juror number 86, Arnetha Drayton. Is this your
10 verdict?

11 MS. DRAYTON: It is.

12 THE CLERK OF COURT: Is this still your verdict?

13 MS. DRAYTON: It is.

14 THE CLERK OF COURT: Thank you, ma'am.

15 Juror number 5, Susan Aiello. Is this --

16 MS. AIELLO: Aiello.

17 THE CLERK OF COURT: Is this your verdict?

18 MS. AIELLO: Yes, it is.

19 THE CLERK OF COURT: Is this still your verdict?

20 MS. AIELLO: Yes, it is.

21 THE CLERK OF COURT: Thank you, ma'am.

22 Juror number 11, Dvante Alston. Is this your
23 verdict?

24 MS. ALSTON: Yes.

25 THE CLERK OF COURT: Is this still your verdict?

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1 MS. ALSTON: Yes.

2 THE CLERK OF COURT: Thank you, ma'am.

3 Juror number 40, Carole Bridges. Is this your
4 verdict?

5 MS. BRIDGES: Yes.

6 THE CLERK OF COURT: Is this still your verdict?

7 MS. BRIDGES: Yes.

8 THE CLERK OF COURT: Thank you, ma'am.

9 Juror number 148, Shirley Hines. Is this your
10 verdict?

11 MS. HINES: Yes.

12 THE CLERK OF COURT: Is this still your verdict?

13 MS. HINES: Yes.

14 THE CLERK OF COURT: Thank you, ma'am.

15 Juror number 158, Jennifer Huston. Is this your
16 verdict?

17 MS. HUSTON: Yes, ma'am.

18 THE CLERK OF COURT: Is this still your verdict?

19 MS. HUSTON: Yes, ma'am.

20 THE CLERK OF COURT: Thank you, ma'am.

21 Juror number 299, Caroline Smith. Is this your
22 verdict?

23 MS. SMITH: Yes, ma'am.

24 THE CLERK OF COURT: Is this still your verdict?

25 MS. SMITH: Yes.

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1 THE CLERK OF COURT: Thank you, ma'am.
2 Juror number 308, Geraldine Sudina. Is this
3 your verdict?
4 MS. SUDINA: Yes.
5 THE CLERK OF COURT: Is this still your verdict?
6 MS. SUDINA: [Indicates affirmatively]
7 THE CLERK OF COURT: Thank you, ma'am.
8 Juror number 359, Shanika Brown. Is this your
9 verdict?
10 MS. BROWN: Yes, ma'am.
11 THE CLERK OF COURT: Is this still your verdict?
12 MS. BROWN: Yes, ma'am.
13 THE CLERK OF COURT: Thank you, ma'am.
14 Juror number 362, Michael Copelin. Is this your
15 verdict?
16 MR. COPELIN: Yes.
17 THE CLERK OF COURT: Is this still your verdict?
18 MR. COPELIN: Yes.
19 THE CLERK OF COURT: Thank you, sir.
20 Juror number 371, Laura Knight. Is this your
21 verdict?
22 MS. KNIGHT: Yes, ma'am.
23 THE CLERK OF COURT: Is this still your verdict?
24 MS. KNIGHT: Yes, ma'am.
25 THE CLERK OF COURT: Thank you, ma'am.

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1 Juror number 385, Amanda Wood. Is this your
2 verdict?

3 MS. WOOD: Yes, ma'am.

4 THE CLERK OF COURT: Is this still your verdict?

5 MS. WOOD: Yes, ma'am.

6 Your Honor, the jury has been polled and the
7 verdict stands.

8 THE COURT: Thank you.

9 Anything further, Mr. Smiley?

10 MR. SMILEY: Nothing further. Nothing further
11 from the defense.

12 THE COURT: Anything further required of the
13 jury? From the State?

14 MR. RIESEN: No, ma'am.

15 THE COURT: Ladies and gentlemen of the jury,
16 this completes your service in this case. It also
17 completes your service for the week. Again, thank you
18 for your contribution to Charleston County. We
19 appreciate your service, and you are released.

20 Please rise for the jury.

21 [Whereupon, the jury exits the courtroom at
22 4:04 p.m.]

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MOTIONS

THE COURT: Thank you. Be seated.

Anything outside of the presence of the jury,
Mr. Smiley?

MR. SMILEY: Regarding the jury, no, ma'am. I
have my motions to set aside the verdict. I can do
this now, if you like, or I can do them later.

THE COURT: I'll be happy to hear from --

MR. SMILEY: I would renew my objection to the
introduction of the jail tapes as -- per the grounds
that I previously stated, that they are hearsay and
there is no exception that was met, and that it
violated my client's constitutional right of
confrontation as guaranteed by the United States
Constitution and the Constitution of South Carolina.

I next renew my objection as to the chain of
custody. I filed the required -- well, I filed a Rule
6 request that they all appear in the chain. There
were two people that did not appear. Since there was
some kind of irregularity in the beginning of the
chain, I certainly ask that they be produced. And so I
just note my objection for that for the record.

I would renew my directed verdict, or now
verdict -- set aside the judgement of the jury and ask
for a new trial on the evidence that was presented does

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1 not rise to the level to prevent the jury to reach a
2 conclusion beyond a reasonable doubt as to the guilt,
3 the perpetrator being my client.

4 And so I'm just preserving the record as I have
5 before, Your Honor.

6 THE COURT: Thank you.

7 Mr. Riesen, do you have any response?

8 MR. RIESEN: Just briefly, Your Honor.

9 The jury has heard all the testimony over three
10 days, and they considered it for about three hours. I
11 don't believe I need to go into all the facts. We've
12 already done that. I agree with your ruling.

13 As to the chain of custody and the jail tapes,
14 they've taken careful consideration as to the chain of
15 custody. We provided everyone that we had knowledge of
16 that was in the chain, and the case law supported the
17 decision you made. And ask for the jail tapes --
18 again, as a business record, it came in with the
19 defendant's permission. And we would ask that the
20 verdict stand.

21 THE COURT: Any response or anything further,
22 Mr. Smiley?

23 MR. SMILEY: No, ma'am.

24 THE COURT: I am denying your motions, Mr.
25 Smiley, for a new trial. The Court articulated the

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1 reasons for introducing -- or allowing the introduction
2 of the jail tapes at the time. And I believe I then
3 allowed you to articulate yet again your complete
4 objection to them coming in. Based -- the reasoning
5 and rationale for allowing the tapes to come in is the
6 same as when I allowed them to come in over your
7 objection. And I believe that was State's 1 and 3.

8 As to the chain of custody, the Court again
9 articulated the reasoning in allowing the chain of
10 custody, and I even used your chain of custody
11 instruction. But I do note for the record your
12 objection again to the chain of custody. Based upon
13 the testimony that the Court heard, the Court feels
14 that the chain was complete as presented by the State.

15 Based upon all those factors, the fact that the
16 jury has heard the evidence and considered it for
17 approximately four hours, I am denying your motion for
18 a new trial.

19 Are you prepared to go forward with sentencing
20 at this time?

21 MR. SMILEY: We're going to have a disagreement
22 about whether this is a second offense or a third
23 offense, Your Honor, so it may take some time.

24 THE COURT: It's not going to be a big
25 disagreement. Either Mr. Riesen has proof to show that

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1 he has one or two previous convictions, or he doesn't.

2 MR. SMILEY: -- it's one or two occasions that's
3 -- it's going to be whether it's --

4 THE COURT: So it is what it is, Mr. Smiley --

5 MR. SMILEY: Yes, ma'am.

6 THE COURT: -- so I'm assuming that Mr. Riesen
7 is prepared to go forward at this time with --

8 MR. RIESEN: Not at this time. I just need to
9 go get the sentencing sheets, as well, because I didn't
10 know we were -- had reached a verdict yet. I can go
11 get them out of my office. I didn't know what the
12 verdict was going to be, Your Honor, so I didn't want
13 to print out any sentencing sheets until we knew what
14 the verdict would be.

15 THE COURT: All right. As to what the sentence
16 is going to be: is it a second, first, third?

17 MR. RIESEN: It's a third, based upon the two
18 sentencing sheets I have. There's two proximity
19 charges with different dates of offenses. They were
20 signed on the same day, but they were two different
21 dates. The date of offense is two separate dates, and
22 it's two separate proxies from two separate years.

23 MR. SMILEY: One or two occasions is my
24 position. And I -- see what he's relying upon, and
25 I'll -- I believe it's a second, Your Honor. That's

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1 why it's not quite as simple. There's certainly one or
2 two occasions.

3 THE COURT: All right. When you are ready to go
4 forward on sentencing, Mr. Riesen, let me know.

5 MR. RIESEN: Okay.

6 [Whereupon, a recess is taken from 4:10 p.m. to
7 5:43 p.m.]

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State vs. Stanford Brown
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SENTENCING

1
2 THE COURT: Mr. Smiley, are you prepared for
3 sentencing?

4 MR. SMILEY: Yes, ma'am. I don't -- I believe
5 Mr. Riesen argues it's a third. I still maintain it's
6 a second.

7 THE COURT: And you maintain it's a second.
8 I have in my hands a sentencing sheet where your
9 client --

10 MR. SMILEY: I think I --

11 THE COURT: -- pled on 2002-GS-10-3826 in front
12 of Judge Rawl to possession with intent to distribute
13 cocaine proximity of a school and the offense date was
14 April 18th of 2002. The sentence date was June 4th of
15 2003.

16 MR. SMILEY: Yes, ma'am.

17 THE COURT: Is that correct?

18 MR. SMILEY: That is one offense. Yes, ma'am.
19 One arrest.

20 THE COURT: And he has another offense date of
21 4/15/03 on indictment 2003-GS-10-4116, which was a
22 waiver, and he pled to possession with intent to
23 distribute cocaine proximity and pled on the same date.

24 It is your position, Mr. Smiley, if I'm
25 understanding your argument correctly, that because he

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1 pled on the same date, that that would be one -- count
2 as one offense; is that correct?

3 MR. SMILEY: Yes, ma'am.

4 THE COURT: Mr. Riesen, it is your position,
5 what I'm understanding, is because there were two
6 separate offense dates that this then makes each one
7 separate, thus making this incident offense a third
8 offense; is that correct?

9 MR. RIESEN: That is correct, Your Honor.

10 THE COURT: And who has the case law to prove
11 that they are right?

12 MR. SMILEY: I don't have anything.

13 MR. RIESEN: I can begin, Your Honor.

14 State v. Koon as well as State v. Gordon both
15 talk about the sentencing date briefly. And I'll just
16 read it. In State v. Koon it said: [reading] the
17 Court reversed the grant of a PCR --

18 THE COURT: What is the cite for that case, Mr.
19 Riesen?

20 MR. RIESEN: I'm sorry. Opinion --

21 [Whereupon, Mr. Riesen reviews documents]

22 MR. RIESEN: May I just bring it up to you,
23 because the way it's -- I can just say what it says.
24 It's opinion number -- State v. Gordon is 356 S.C. 143.

25 THE COURT: Okay.

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1 MR. RIESEN: Then, again, State v. Koon, it says
2 opinion number --

3 THE COURT: And how do you spell Koon?

4 MR. RIESEN: K-O-O-N.

5 THE COURT: Thank you.

6 MR. RIESEN: Yes, ma'am.

7 And it says opinion number 2000-UP-291, Court of
8 Appeals, April 18th, 2000.

9 THE COURT: So that's an unpublished opinion --

10 MR. RIESEN: That is.

11 THE COURT: -- you are citing, Mr. Riesen?

12 MR. RIESEN: That is, Your Honor. But it is
13 interpreting Gordon.

14 THE COURT: All right.

15 MR. RIESEN: Basically, it says: [reading] the
16 Court reversed the grant of PCR, holding that the
17 defendant was properly sentenced to life without
18 parole. Although State v. Gordon stands for the
19 proposition that two offenses committed closely in
20 point in time should be considered as one for purpose
21 of sentencing under the three strikes rule, Gordon did
22 not establish a bright-line rule as to what
23 constitutes, quote, two offenses committed so closely
24 in point of time, unquote. Defendant's burglary of a
25 different building in a different location, which

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1 occurred two weeks later, clearly constituted a
2 separate burglary.

3 We have a whole year apart in our two offenses;
4 therefore, it's not within the closely connected time
5 period. So based on that, we would argue that it's
6 clearly a separate offense and he should be -- it
7 should be enhanced accordingly.

8 THE COURT: Mr. Smiley?

9 MR. SMILEY: I don't have any case law. I can
10 just say this isn't a burglary case or a three-strikes
11 case. He has one adjudication on June the 4th, 2003,
12 in which he pled to multiple offenses, but one
13 adjudication. I would ask you to consider it a second
14 offense. I believe Koon is an unpublished opinion and
15 I don't know that it has any precedential value in this
16 Court at this point. Gordon certainly stands for the
17 proposition that two offenses closely related should be
18 counted as one for the purposes of three strikes. But,
19 again, I don't know that that applies here.

20 THE COURT: Mr. Smiley, had Mr. Brown pled
21 guilty to one offense on June 3rd and then the next
22 offense on June 4th, would we be having this
23 conversation?

24 MR. SMILEY: It would be two different
25 adjudication dates.

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1 THE COURT: So your position is an adjudication
2 date is what the Court should go by?

3 MR. SMILEY: Would be the main factor that I
4 would look at. The first factor I looked at would be
5 adjudication date. There is only one adjudication date
6 here. The second factor, I probably would go back to
7 relying on some of the arguments of Gordon that the
8 closer in time, the easier it is to count them as one
9 for purposes of strikes. Of course, we're talking
10 about drug offenses here, and what constitutes a second
11 or a third offense. I don't know if they're analogous
12 or not.

13 I talked to my client before -- and I think it's
14 important for the record, Your Honor. I talked to my
15 client that I was unsure whether he would be facing a
16 second or a third, but we needed to plan as if there
17 was a third when we made our decision to go to trial.
18 And I think he would tell you that we did make that.
19 So he wasn't unprepared to be facing a higher penalty.
20 We still argue it was a second offense. I hope you
21 understand what I'm saying.

22 THE COURT: I do understand, Mr. Smiley.
23 Anything further?

24 MR. SMILEY: No, ma'am.

25 THE COURT: Anything further from the State?

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1 MR. RIESEN: No, ma'am.

2 THE COURT: Based upon my review of the case law
3 -- I did not consider Koon, which was an unpublished
4 opinion -- the Court will be considering and treating
5 this incident offense as a third offense based upon the
6 fact that Mr. Brown committed an offense April 18th of
7 2002, and then committed the next offense April 15th,
8 2003, although he did plead guilty --

9 And I do agree, Mr. Smiley, it was one
10 adjudication. But it was two separate drug offenses.
11 That based upon my review -- and I have not heard that
12 they were connected in any way, other than they were
13 the same offense approximately one year apart. And I'm
14 assuming through judicial economy and through a plea
15 bargain he pled and they were treated and -- but they
16 are considered and will be considered as convictions
17 separate and distinct from each other, thus making it a
18 third offense.

19 Anything further before I sentence Mr. Brown?

20 MR. SMILEY: No, ma'am, Your Honor. I think
21 there is a pretty stiff mandatory minimum in this case
22 and I would ask you to, of course, sentence him to
23 that. And give him credit. He's been in jail
24 continuously since arrest of May the 9th, 2007.

25 THE COURT: So how many days, Mr. Smiley? I

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1 remember you --

2 MR. SMILEY: Oh. I lost count.

3 THE COURT: -- filed your speedy motion --

4 MR. SMILEY: It was back then -- I have lost
5 count. It was 700 and some change. If we could just
6 mark that it was from May 9th, 2007, is when his
7 incarceration on this charge began. Thank you, Your
8 Honor.

9 And I don't believe we have -- his family is
10 here in support, of course, but I've explained to them
11 the large amount of time and the mandatory time in this
12 case, and the fact that it's eighty-five percent and
13 that your hands are tied greatly in what sentence you
14 could give. So I would just ask for the minimum. And
15 I do not believe that my client, nor his family, need
16 to address you.

17 THE COURT: Mr. Smiley, I will be happy to hear
18 from one family member.

19 MR. SMILEY: I don't -- I've talked to them and
20 they -- I'm the mouthpiece, and they all agreed on
21 that. And you heard the facts in this case. I would
22 just ask you for mandatory minimum in this case.

23 THE COURT: Mr. Brown, anything you wish to tell
24 the Court? Please rise.

25 MR. BROWN: Yes, ma'am.

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1 [Whereupon, Mr. Brown complies]

2 MR. SMILEY: Anything you want to tell her?

3 MR. BROWN: No, sir.

4 THE COURT: Nothing you wish to tell the Court,
5 Mr. Brown?

6 MR. BROWN: No, ma'am.

7 THE COURT: Anything further from the State?

8 MR. RIESEN: Your Honor, just would you like his
9 record, or is that not necessary?

10 THE COURT: I have two certified convictions in
11 front of me, Mr. Riesen. Is there anything else I need
12 to know? I sat and listened for --

13 MR. RIESEN: Well, there are other things, that
14 aren't drug related, that I didn't give to you as
15 certified convictions because they didn't deal with
16 enhancement, there's no need to read them.

17 THE COURT: Be happy to hear whatever you wish
18 to tell the Court, Mr. Riesen.

19 MR. RIESEN: That's okay, Your Honor.

20 THE COURT: All right. Thank you.

21 It's the order of the Court on indictment 2007-
22 GS-10-9933 that you be committed to the State
23 Department of Corrections for a term of thirty years.
24 Give you credit since May of 2007. Good luck to you,
25 sir.

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1 MR. BROWN: Yes, ma'am.

2 MR. SMILEY: Thank you, Your Honor.

3 THE COURT: Mr. Brown, I must do this, as well.
4 Please come back.

5 As your attorney indicated to you, my hands were
6 fairly tied because this was a third offense --

7 MR. BROWN: Yes, ma'am.

8 THE COURT: -- and I did not advise you I also
9 must fine you in the amount of \$50,000. I cannot
10 suspend that, nor could I suspend any of the time that
11 you are facing. But I also must indicate to you that
12 you are facing -- and I must impose a 50,000-dollar
13 fine upon you.

14 MR. BROWN: Yes, ma'am.

15 THE COURT: Good luck to you, Mr. Brown. Thank
16 you.

17 MR. SMILEY: Thank you very much, Your Honor.

18 THE COURT: Thank you, Mr. Smiley, Ms. Hensley.

19 [JURY TRIAL CONCLUDES AT 5:53 P.M.]
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State vs. Stanford Brown
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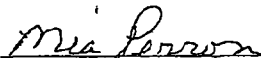
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the jury trial held before the Honorable Kristi L. Harrington, on Wednesday, July 8, 2009.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 10th day of January, 2010.


Mia Perron, CCR, CVR-CM
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CCR, CVR-CM

-158-

FORM 5

STATE OF SOUTH CAROLINA)

County of CHARLESTON)2012-CP-10-3627
IN THE COURT OF COMMON PLEASStandford Brown #293743)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEFBY
JULIE J. ARMSTRONG
CLERK OF COURT
2012 JUN -4 PM 4:33

FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Corr. Inst., P.O. Box 205, 136 Wilborn Ave, SC. 29472
2. Name and location of Court which imposed sentence Charleston County, General Sessions
3. Name(s) of co-defendant(s) (if any) no
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2007-GS-10-9933 (trafficking cocaine)

- (b) _____
 (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) July 8, 2009 (30 years)
 (b) _____
 (c) _____
6. Check whether a finding of guilty was made:
 (a) after a plea of guilty _____
 (b) after a plea of not guilty trial by jury
 (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
 (a) the name of each Court to which you appealed:
 i. South Carolina Court of Appeals
 ii. _____
 iii. _____
 (b) the result in each such Court to which you appealed:
 i. denied
 ii. _____
 iii. _____
 (c) the date of each such result:
 i. Filed 8, 2012
 ii. _____
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. 2012-UP-063
 ii. _____
 iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
 (a) n/a

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) ineffective assistance of counsel
- (b) denial of 6th, 4th, 5th, and 14th amendments
- (c) denial of due process
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) counsel failed to perform any investigation,
- (b) applicant reserves the right to amend this application
- (c) applicant does not waive any issues
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. n/a
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. n/a
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

i. n/a

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. n/a

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. n/a

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

first filing of pcr

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. n/a

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. n/a

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) first filing of pcr
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? n/a
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. James Smiley, IV, esq.
3842-B Leeds Ave. Charleston, SC. 29405
- ii. same as above
- iii. Wanda H. Carter, Esq. Appeal
South Carolina, Office of Indigent Defens
- (b) the proceedings at which each such attorney represented you:
- i. trial
- ii. sentencing
- iii. appeal

19. State clearly the relief you seek in filing this application:

vacate sentence and conviction and remand for new trial

20. Are you now under sentence from any other court that you have not challenged?

no

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Dorchester)

VERIFICATION

I, Standford Brown, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Standford Brown

SWORN to and subscribed before me this 29th
day of May, 2012.

Sylvia Jones (L.S.)
Notary Public

My Commission Expires: 1/24/2018

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

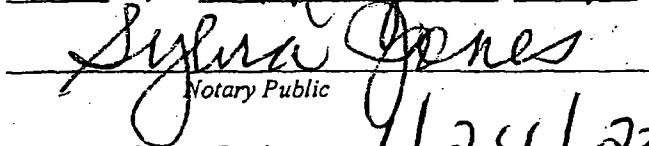
I, Standford Brown, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this

9th day of May, 2012


Notary Public

My Commission Expires: 9/24/2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2012-CP-10-3627
	)	
Standford Brown, #293743, ¹	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed June 4, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the August 2007 term of the Charleston County Grand Jury for trafficking cocaine base (2007-GS-10-9933). Applicant was represented by James Smiley IV, Esquire.

On July 8, 2009, the Applicant proceeded to trial and was convicted. The Applicant was sentenced by the Honorable Kristi Lea Harrington to confinement for a period of thirty (30) years with a fine of \$50,000. The Applicant filed a timely notice of appeal. The Court of Appeals affirmed the Applicant's conviction on February 8, 2012. (State v. Brown, 12-UP-063).

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject conviction(s) and the Applicant's records from the South

¹ The SC Department of Corrections and the Charleston County Clerk of Court's records has the Applicant listed as "Stanford Brown".

Carolina Department of Corrections. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.

a. Failure to investigate

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a

reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not herein before either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: AKW
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

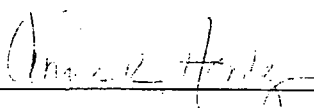
Oct. 24, 2012.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2012-CP-10-3627
	)	
STANFORD BROWN, #293743	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. Mark Andrew Peper
 The Peper Law Firm
 1637 Savannah Highway, Ste 202
 Charleston, SC 29407

DATED this 24th day of October, 2012



 Anne R. Henley, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON 2012-CP-10-3627

STANFORD BROWN)
Applicant,) TRANSCRIPT OF RECORD
-vs-) December 5, 2012
STATE OF SOUTH CAROLINA,) Charleston, South Carolina
Respondent.)

B E F O R E:

The Honorable Roger M. Young, Sr., Judge.

A P P E A R A N C E S:

Mark Peper, Esquire
Attorney for the Petitioner

Ashleigh Wilson, Esquire
Attorney for the Respondent

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

1	I N D E X				
2	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
3	Stanford Brown	5	31	--	--
4	Sheryl Brown	37	--	--	--
5	James W. Smiley, IV	43	54	--	--
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1	E X H I B I T S			
2	NO.	DESCRIPTION	ID.	EV.
3	Applicant's 1	Indictment	13	13
4	Applicant's B	Document	15	--
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1 (December 6, 2012.)

2 THE COURT: This is Stanford Brown versus
3 South Carolina? Are you ready to proceed today on your
4 application for post-conviction relief?

5 MR. PEPER: Yes, sir.

6 THE APPLICANT: I would like to present the
7 Court -- I wrote -- this is the second time I wrote him
8 inquiring about my complete case file so I could prove my
9 case today or whatnot, but he haven't overturned my
10 complete case file, but I still can show the
11 ineffectiveness due to the information and things like
12 that I want to present to the Court through my exhibits.

13 THE COURT: All right. Are you ready to go?

14 THE APPLICANT: Yes, sir.

15 THE COURT: All right. Mr. Peper, you want
16 to tell me briefly what he's -- the basis for his
17 affidavit.

18 MR. PEPER: Yes, Your Honor. May it please
19 the Court: Briefly, Judge, he's alleged ineffective
20 assistant of counsel. His original application, I was
21 appointed and agreed to assist him in arguing.

22 Briefly, Judge, there are just some
23 evidentiary issues that Mr. Brown feels that Mr. Smiley
24 was not able to address prior to trial, along with some
25 investigative issues that he would like to present to the

1 Court.

2 That is essentially the brunt of our
3 discussion, and at this point I'll be prepared to call
4 Mr. Brown.

5 THE COURT: All right. Go ahead.

6 MR. PEPER: Your Honor, the Applicant calls
7 Stanford Brown.

8 STANFORD BROWN,

9 having been first duly sworn,
10 was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. PEPER:

13 Q. Good afternoon, Mr. Brown. How old are you?

14 A. I'm 31 years old.

15 Q. What end of education you got?

16 A. I dropped out of school outside of ninth grade, so
17 I got an eighth grade education.

18 Q. Able to read and write?

19 A. Yes, sir.

20 Q. Able to understand?

21 A. Yes, sir.

22 Q. If you don't understand a question or anything,
23 let me know, all right?

24 It's my understanding that you were charged and
25 convicted with trafficking crack, third offense; is that

1 correct?

2 A. Yes, sir.

3 Q. And what kind of sentence did you get?

4 A. I got 30 years, 30-year sentence.

5 Q. And who represented you at that trial?

6 A. Jim Smiley.

7 Q. And when was he retained?

8 A. I retained Mr. Smiley, like, April 10th, 2008.

9 Q. And when did your case go to trial?

10 A. 2009, like July.

11 Q. Okay. So he worked for you for a little over a
12 year?

13 A. Fifteen months.

14 Q. Okay. How often would you -- were you in jail the
15 entire time?

16 A. Yes. I was incarcerated the whole time. I had a
17 hold for Dorchester County, and I also had \$125,000 bond
18 for Charleston County.

19 Q. On this charge?

20 A. On this charge.

21 Q. How often during those 15 months that Mr. Smiley
22 represented you were you able to meet with him?

23 A. I would say about four times that he came himself.
24 And I would say, like, the other three times where --
25 when I was in the County Jail, other inmates who had Mr.

1 Smiley as their lawyer as well, everyone would be talking
2 to him. Smiley would be coming to the County Jail, so I
3 would go upstairs and tell Mr. Smiley when I see him with
4 them, and I'd be like, When are you coming to see me
5 soon?

6 He be like -- he tell me a whole lot of soon.
7 Every time I go and talk to him inside the roof or
8 whatnot, I be like, what are you doing? He wasn't doing
9 nothing on my case, so I went as far as writing -- I
10 wrote the Bar telling the Bar that, you know, me and
11 Mr. Smiley had irreconcilable differences.

12 They referred me to a few dispute with
13 Mr. Smiley, which I didn't prevail in the few dispute, so
14 what I did I wrote Deadra Jefferson. I filed my own pro
15 se motion which I have the motion and I have letters from
16 the Supreme Court of me and Mr. Smiley, our confrontation
17 and whatnot. I told -- well, when we went in front of
18 Ms. Deadra Jefferson, she told me, she said, What gives
19 you the right to file a pro se motion?

20 So I told her, I was, like, I'm a U.S.
21 citizen, so under my first constitutional amendment
22 right, I got a right to petition agreements and motion.
23 She tell me, Well, I feel -- she said she feel Mr. Smiley
24 is a good lawyer and whatnot, and she did not do no fact
25 finding or nothing to why I even came before her.

1 Q. All right. Let me stop you there. Why were
2 you -- why did you want to remove Mr. Smiley as your
3 attorney?

4 A. Mr. Smiley wasn't doing nothing.

5 Q. I need you to be more specific.

6 A. Well, when Mr. Smiley first became my attorney, I
7 had Laurie Knobloch before Mr. Smiley, and the reason
8 why Ms. Knobloch was removed from off my case, she told
9 me was before me case is because she told me out of her
10 own mouth when I was keep inquiring about the video --
11 she told me, she was like, I done watch the video.
12 You're not on the video. The video depicts someone else
13 stealing the drugs, and the audio is a one sided audio
14 which they have the confidential informant, and she was,
15 like, the marked money, they never retrieved no marked
16 money.

17 I told her, he took money from off my person as
18 well as out of my residence, so she was, like, plead to
19 the zero to 15. And so I'm like, I'm not pleading to no
20 zero to 15.

21 And so she's, like, Well, if you don't take this
22 plea, then you go to trial. You're going to lose, so
23 what I told her, I told her, I'll take the plea, so we
24 went in front of Hughston.

25 I told Hughston what she told me in the back.

1 Hughston said, Ms. Knobeloch, is this true?

2 So she said -- she said, Well, Your Honor, it's a
3 little more difficult than you think.

4 So he asked her, he said, What's difficult about
5 it?

6 She said, Well, I don't have the proper
7 paperwork before me, and I can't really go in details
8 right now.

9 So he told her, I tell you what I would do:
10 I would remove you off this case, just since it's that
11 difficult, so once I removed -- once I got removed
12 from -- once she was removed from me as counsel,
13 Mr. Smiley, I obtained Mr. Smiley through my brother and
14 my mother. And when Mr. Smiley came to see me, I told
15 him from the jump, I told him, I said, Well, my previous
16 lawyer, Ms. Knobeloch, she done told me that she watched
17 the video. I haven't saw the video yet, but I still
18 wanted to see this video.

19 So I told him, I was like, Well, the
20 affidavit of the warrant stated that on May 4, 2007, I
21 sold 14.8 grams of cocaine base to a confidential
22 informant, stating that it was under the control and
23 conditions utilizing a prerecorded major currency and
24 audio transmitter, stating that the above is believed to
25 be true based on the personal observation and

1 investigation of the Detective Enbron, Detective Euper,
2 and Detective Nice.

3 So I told Mr. Smiley right then and there, I
4 was, like, We need to have a Frank vs. Delaware hearing
5 because everything inside the affidavit is false. He
6 made false statements knowingly and intentionally,
7 because he told me, Just calm down and let me check into
8 it.

9 So I went on to tell Mr. Smiley also about my
10 chain of custody, because inside my Rule 5, like I told
11 Ms. Knobeloch, the affidavit stating that I sold 14.8
12 grams that's the only drugs that it stated I sold, 14.8
13 grams of cocaine base.

14 So I told him same thing I told Ms. Knobeloch
15 you got two best kit, but you only got one drugs. I
16 said, Something ain't right. Same thing he told me Ms.
17 Knobeloch told me: Well, I don't want to look into it.
18 Personally I wrote SLED under the Freedom of Information
19 Act.

20 Q. Let me stop you there, Mr. Brown. The issue
21 you're referring to, is that the indictment charging
22 you --

23 A. Well, well --

24 Q. -- with trafficking?

25 A. This is really, like, going to the chain of

1 custody.

2 Q. I know. I apologize.

3 A. Yeah, it's still dealing with the trafficking.

4 Q. Let me ask you this question, okay? Did you have
5 an issue with the indictment and how it was presented to
6 the grand jury?

7 A. Okay. Well, it's like this right here: The
8 indictment -- every time they keep telling me, Take the
9 plea to trafficking first to zero to 15, I was, like, I
10 said, How am I going to take a plea to trafficking first
11 and the lesser included defense?

12 I don't got indictments stating that I was charged
13 with trafficking third. I told Mr. Smiley that the
14 indictment don't even give fair notice. All it give is
15 just a general description of the penalty intended to be
16 charged and whatnot.

17 So he told me, he said, No, you have all the drug
18 charges on your record and whatnot.

19 So I was telling him, I said, Okay -- well, he was
20 my attorney in 2003 when I caught my YOA. I said, Well,
21 you know I only have one adjudication for that right
22 there.

23 He is supposed to -- he was like, Well, I'm still
24 going to look into that and whatnot. Everything he tell
25 me he going to look into. Me and Mr. Smiley, it was like

1 oil and water. He said he going to do this and then he
2 didn't want to do it, because I even like I was saying
3 about the chain of custody, I told him to look into the
4 chain of custody or whatnot and here come to find out,
5 once I go to trial or whatnot, what Mr. Smiley which I
6 just -- my gut feeling just told me that miley is going
7 to set me up when I go before these people, and when we
8 went to court, come to find out the best kit was tampered
9 with before --

10 Q. Mr. Brown, we're going to get there, okay? The
11 indictment that you're referring to --

12 A. Okay. Well --

13 Q. May I approach? Let me ask you to look at that.

14 A. The indictment.

15 MR. PEPER: And, Your Honor, this has been
16 marked for identification purposes as Applicant's 1.

17 BY MR. PEPER:

18 Q. Is that the indictment?

19 A. That's the indictment.

20 Q. Were you provided with that?

21 A. Yes. I was provided with that.

22 Q. Is that a true and accurate copy of the
23 indictment?

24 A. That's a true and accurate copy of the indictment.

25 MR. PEPER: We would move for Applicant's No.

1 1 to be admitted into evidence, Your Honor.

2 MS. WILSON: No objection, Your Honor.

3 (Indictment marked for identification and
4 admitted into evidence as Applicant's Exhibit No. 1.)

5 THE WITNESS: I also -- what I did, I wrote
6 the Court of administration and --

7 BY MR. PEPER:

8 Q. Mr. Brown, let me stop you there. Let me ask you
9 some questions about the indictment.

10 A. Okay.

11 Q. It's my understanding that that indictment charges
12 you with trafficking crack; is that right?

13 A. Right.

14 Q. And the grand jury indicted you on the top of that
15 page on August the 6th of 2007, correct?

16 A. Right.

17 Q. Okay. Now, my understanding is that you don't
18 believe the grand jury actually met on August the 6th of
19 2007; is that correct?

20 A. Right, right.

21 Q. And what led you to that conclusion?

22 A. Okay. I told -- well, first, it was Ms.
23 Knobeloch. I was inquiring about a preliminary hearing,
24 but for some reason, they just say that I was already
25 directly indicted, so when they said I was directly

1 indicted, I was, like, you know, how could that be? I
2 didn't even have a lawyer at the time, but since I found
3 out that you don't have to have a lawyer to be indicted,
4 but I myself wrote the Court of administration asking for
5 the calendar for the month of August 2007. I also asked
6 him for the calender for the month of July 2007.

7 Q. So if I showed you that document, would you be
8 able to recognize it?

9 A. Right.

10 MS. WILSON: Your Honor, the State is going
11 to object to this copy. We don't have anybody here from
12 Court Administration to say if the grand jury roster
13 would have been put on this. This just says terms of
14 Circuit and Family Court for August of 2007, so we don't
15 have anybody to say it would be on here, so we're going
16 to object to the admission of this on evidence.

17 THE APPLICANT: I have --

18 MR. PEPER: Hold on.

19 THE COURT: What is this? They're not going
20 to put on here the grand jury is meeting because this is
21 the assignment for the Circuit Court judges, where
22 they're holding Court. All right? So I won't let it in
23 because it's not relevant.

24 MS. WILSON: Thank you, Your Honor.

25 THE APPLICANT: I have another --

1 BY MR. PEPER:

2 Q. Hang on.

3 MR. PEPER: Judge, may I show it to him for
4 identification purposes?

5 THE COURT: Sure.

6 (Document marked for identification as
7 Applicant's Exhibit No. B.)

8 BY MR. PEPER:

9 Q. I'm going to show you what's been marked
10 Applicant's B for identification purposes. Do you
11 recognize that document?

12 A. Yes, I recognize the document.

13 Q. Who requested that document, or what is it?

14 A. I requested the document from a Ms. Rosalyn
15 Frierson, which I have a letter from Ms. Rosalyn
16 Frierson, of me inquiring about this --

17 Q. You received it from her?

18 A. Her name, all this is on this paper.

19 Q. As a result of receiving that document, what is
20 now your position?

21 A. That I'm -- I would like to see the transcript
22 when the grand jury was not deliberating or voting and
23 also an empanelment order of the grand jury. That's all
24 I'm asking for. If they met then, I just ask for that
25 just to be presented.

1 Q. And did you ask Mr. Smiley to look into that
2 matter?

3 A. Well, no. I didn't ask him to look into that.
4 I'm not going to say I asked him to look in there, but I
5 inquired about it to Mr. Smiley whatnot, but he told me
6 that it's true billed. He showed me the true billed
7 stamp, but from my independent investigation when I got
8 to the prison, I had saw Evans vs. State, and the same
9 thing happened to him.

10 He had a true billed stamp. When he got the
11 calendar, the calendar reflect that the grand jury never
12 convened, so come to find out the grand jury empanelment
13 -- the grand jury wasn't even qualified to be considered
14 as grand juries and whatnot.

15 Q. Is that the position you're now taking?

16 A. Yes, sir.

17 Q. All right. Now, you mentioned earlier that this
18 crime was captured on video, correct?

19 A. Yes, sir.

20 Q. Were you able to ever review that video with Mr.
21 Smiley?

22 A. Yes. We reviewed it.

23 Q. Okay. All right. Now, there are also some issues
24 with regards to jail calls, evidence that there were some
25 jail calls.

1 A. Okay.

2 Q. Was that -- did you discuss that with Mr. Smiley?

3 A. Yes. I discussed that with Mr. Smiley, and I want
4 to make a record of this request form because they took,
5 like -- I would say, like, 2009, they went and got these
6 phone conversations and whatnot. It's not like I had any
7 indication that they was going to get these phone
8 conversations or whatnot, but I told Mr. Smiley, when he
9 came to me -- because when he came to me telling me about
10 the phone calls, I was like, well, you tell me about
11 these phone calls and whatnot. I didn't make these phone
12 calls.

13 He said, Well, it was used by your PIN number.

14 I went, I did not use my PIN number. So I told
15 him that I wrote the classification pertaining to someone
16 using my PIN number because I had a little incident with
17 a female friend I was dealing with saying that I gave
18 someone her number that used my PIN number to call her.

19 So I told Mr. Smiley, I even gave him the -- like
20 around the time, which was -- okay, they got these phone
21 conversations, like, in May. And then in June, I wrote
22 to the classification about someone using my phone
23 conversation, so -- I mean, not phone conversation, but
24 using my PIN number.

25 So I told Mr. Smiley, I said, well, you can get

1 these request forms and you can present them to the
2 Court.

3 Mr. Smiley, he told me that -- he was, Like, well,
4 I'll check into that, but I'm going to see about a better
5 defense than that, or whatnot.

6 So what Mr. Smiley did when we going to court,
7 Mr. Smiley he admitted these jail tapes. What -- I say
8 he should have let the confidential informant listen to
9 these jail conversations or whatnot and let the State
10 admit them through him, and Mr. Smiley could have shown
11 on the record, due to this video, that he said no one
12 else got inside this vehicle or whatnot, and when he
13 asked him did they know this fellow, he even call out the
14 dude name Jojo.

15 And Mr. Smiley he didn't cross-examine him to this
16 fellow getting inside the vehicle. He said, No more
17 further questions.

18 Then when I asked Mr. Smiley, her name was
19 Laree -- some lady that was with her doing the typing,
20 she said -- she was, like, Jim knows what he's doing.

21 And I told Mr. Smiley, I was, like, why then you
22 then cross-examine --

23 He said, I got this, okay?

24 So Mr. Smiley -- well, the solicitor
25 cross-examined him and asked him, does this young man --

1 the fellow you knew in the red shirt, did he get inside
2 the vehicle?

3 He's still sitting there and he said; No, I
4 didn't see him get inside the vehicle. When Mr. Smiley
5 go back on cross, I feel like he should have showed to
6 the jury because this could have had affected the
7 judgment of the jury to whatever his testimony was going
8 to be. He just sit right there and purge {sic} under
9 oath.

10 He stated that no one else got into the
11 vehicle, but Mr. Smiley later waited until the closing
12 argument to present this to the Court, that someone got
13 into this vehicle, but I feel like that was prejudiced to
14 my defense.

15 Q. Mr. Brown, back to the phone calls. Did you have
16 a chance to listen to and review those with your attorney
17 prior to the trial?

18 A. He let me read it. It wasn't no tape recording.
19 He let me read it or whatnot.

20 Q. Read the transcript of the phone calls?

21 A. Yeah.

22 Q. And your position is that you would have preferred
23 Mr. Smiley not allow those to come into evidence or --

24 A. Well, not not allow it, he admitted it. Even on
25 my transcript, Trip Riesen even said, when Mr. Smiley was

1 saying that, yeah, you amended it. Can I use my
2 transcript as an affidavit to events that what happened?

3 THE COURT: As an affidavit?

4 THE WITNESS: Well, I mean, I have the
5 transcript --

6 THE COURT: If you have the transcript and
7 you want to point to it or refer to it, you're welcome to
8 do that.

9 THE WITNESS: Thank you. This is a
10 transcript -- well, this is volume two of three,
11 transcript page 85, line seven to twenty.

12 Mr. Smiley: I played a part for that. I
13 mean, they are going to look for part. I think they want
14 to say the person on this call -- then Smiley say, I'll
15 stipulate the person on the call is Booby.

16 Then he states: They don't need to do it, do
17 they? I mean, he says Booby at the beginning of the
18 conversation. They're trying to back door get into the
19 playing of the tape through this gentleman because they
20 haven't -- they didn't do it through someone else because
21 I have objected to it as hearsay. Everything that he's
22 response to on that tape was going to be played -- was
23 going to be him interpreting hearsay. I mean, I'll
24 stipulate that it's my client's voice on that tape.

25 Now, that right there, that was prejudice.

1 There was nothing that could have cured that prejudice
2 right there when he did that. Now, when he stated that
3 right there, this was -- okay.

4 When he stated that right there, he still was
5 trying to, like, stop the tape from being admitted into
6 his evidence, but Mr. Riesen -- right here. This is
7 transcript page 117, line three to fourteen.

8 He says -- no, no, no, no, no. Go back, go
9 back, go back, go back. This is transcript, page 45.
10 Okay. This is transcript page 45, line 17 to 19, 17 to
11 19 -- no -- yeah, 17 to 19, 17 to 19. Okay. Well, 13
12 and 19, also to the chain of custody and the jail tapes.
13 They're taking care -- pardon me, that's Mr. Riesen
14 talking.

15 He said as to the chain of custody and the
16 jail tapes, they're taking careful consideration as to
17 the chain of custody --

18 MS. WILSON: Your Honor, could you get the
19 Applicant to tell us what volume we're in?

20 THE WITNESS: Volume three of three,
21 transcript page 145 from line 13 to -- I'll just go 13 to
22 20, 13 to 20. As to the chain of custody and the jail
23 tapes, they're taking careful consideration as to the
24 chain of custody.

25 We provided everyone that we had knowledge of

1 that was in the chain and the case law supporting the
2 decision you made and ask for the jail tapes again as a
3 business record. It came in with the defendant's
4 permission.

5 I ain't give no permission, Mr. Smiley
6 admitted that tape into evidence, and then right there he
7 does say the defendant's permission. I didn't admit
8 those tapes in as evidence, but had Mr. Smiley used
9 that -- the request form, the request form from the
10 County Jail and cross-examined Mr. Hancock to his own
11 personal knowledge, because he was the custodian of the
12 phone records, he could have mitigated the offense
13 where -- mitigated the State's theory of events of the
14 jail conversation, I'll say it like that, and also used
15 the video.

16 Q. And prior to trial, did you ask Mr. Smiley to look
17 into that for you?

18 A. Well, yeah, because when he came to me with the
19 jail tapes or whatnot, I said, No, that's not me. I
20 ain't talking on there.

21 The State never used a voice analysis to say that
22 that was me. They never brought LaShawn Williams saying
23 that she is saying this was me talking on the phone.
24 That wasn't me.

25 Q. Now, you've also alleged that you had requested

1 Mr. Smiley to further investigate an evidentiary issue
2 with regards to the best evidence kit.

3 A. Right.

4 Q. Can you explain that.

5 A. What the best evidence kit, I feel like had Smiley
6 done a thorough independent investigation and properly
7 prepared a valuable defense pertaining to this chain of
8 custody -- what was stated was when I told Mr. Smiley of
9 the two best kits or whatnot, like I said before, he told
10 me -- he was, like, Well, okay. I'll look into that, or
11 whatnot.

12 But everything after that was just about a plea or
13 whatnot, but when we got to trial, come to find out the
14 evidence was tampered with before the chemists at SLED
15 received it for analysis purposes. And Mr. Smiley, this
16 wasn't his argument to the drugs being at the school.
17 His argument was there was a problem with the kit and no
18 one documented it and the two people that was missing
19 from SLED could have given some -- could have shed some
20 light to why the best kit was switched.

21 That was just really like far left because you
22 have Detective Brown and you have this gentleman which is
23 the evidence custodian, Detective Brown, I just want him
24 out. Back to my transcript --

25 Q. Let me ask you this: Did you make any pretrial --

1 before trial, did he make any motions to suppress?

2 A. No, no motion, no motion to suppress. That is
3 another thing -- I was going to get to that, but I wanted
4 to point out, you know, the purged testimony that was
5 given by these officers, not only did they give purged
6 testimony, they also gave false and misleading
7 information on document, records, reports, and forms
8 required by the state?

9 And first when Smiley asked them, Smiley said,
10 well, is -- he asked, he said -- how do you say it?
11 Mr. Smiley asked, Was this documented? He said, What was
12 the error?

13 He said something clerical but I'm not sure, and
14 I'm going to go back to my transcript.

15 Q. All right. But this was all during the course of
16 the trial, right?

17 A. Right, right.

18 Q. But your testimony is that prior to trial, you
19 approached him with that issue. He told you he would
20 investigate it, but to your --

21 A. No. I mean, had he investigated, he would have
22 known that the -- he would have known the procedures
23 required by SLED stating that which -- can I present this
24 as an exhibit?

25 Q. Just tell me what it is.

1 A. It's the procedures that SLED states that when a
2 best kit has been deliberately altered or opened, a
3 written explanation has to be prepared. Also, all the
4 contents that was in that best kit has to be sent back to
5 SLED with the best kit for their disposition.

6 This was not done. There was no testimony of
7 this, but had Mr. Smiley provided me with effective
8 assistance of counsel and presented this to the Court,
9 it's a real possibility the outcome of these proceedings
10 would have been different. This was very prejudicial to
11 my defense, and Mr. Smiley can't sit here and say he
12 investigated this because of the facts it remains right
13 here. He did not investigated this.

14 Q. Now, with regards to your trial, did y'all have
15 discussions prior to trial about what witnesses would be
16 called on your behalf?

17 A. Well, I told Mr. Smiley to make sure Detective
18 Nice was there because he is the one behind the video. I
19 mean, his name is throughout my whole paperwork, even
20 from Charleston County going to Dorchester County to get
21 a -- to assist them in arresting me. Detective Nice was
22 the one, not Detective Brown, Detective Nice was the one
23 that went to them and told them -- I got exhibits. If I
24 can admit these exhibits, I mean, but the Detective Nice
25 was the one that went to a Detective Gibson and

1 told Detective Gibson that I was the one that sold these
2 drugs to the confidential informant, and which Detective
3 Nice, he was the one that was behind -- he shot the
4 video. It's all through my transcript: Who shot the
5 video? Detective Nice shot the video.

6 Q. So you asked Mr. Smiley to call him as a witness
7 at your trial?

8 A. Yes, yes, I did.

9 Q. Was he called as a witness?

10 A. No, he never testified.

11 Q. All right. Were any witnesses called on your
12 behalf?

13 A. No. There was no witnesses on called on my
14 behalf.

15 Q. Now, you had brought to my attention that you
16 believe Mr. Smiley was ineffective with regards to his
17 closing argument.

18 A. Well, his closing argument, he helped the case
19 against me. I'm going to read from my transcript.

20 Q. Just tell me what your -- why are you alleging
21 that he was ineffective with regards to his closing
22 argument?

23 A. He abandoned me as my defense counsel. He
24 abandoned me. It's clear in the transcript. Hold on
25 just one second, one second. Volume three of three,

1 transcript page 117, line three to fourteen:

2 Mr. Smiley states: My client was served with an
3 arrest, told them where it was.

4 He says: Yeah, I've met Cory out there many
5 times. That's why Cory know to set it up there, to have
6 it all fall apart there because he's angry. I would be
7 angry too if I had just been screwed by a friend not over
8 selling drugs, but to get out of trouble. He's going to
9 offer up who they want. I would be angry. Of course
10 he's angry but you listen. You listen to that tape.

11 I never tell him to go tell him something like
12 that. I never told Mr. Smiley I was even on that phone
13 conversation.

14 Q. Let me make sure what I understand you're
15 alleging, is that prior to trial and then throughout the
16 trial, your position that you asked Jim, or Mr. Smiley,
17 to portray was that you were never at the scene, correct?

18 A. Right, exactly.

19 Q. But now you're saying that he puts you at the
20 scene?

21 A. Yeah. He put me at the scene, yeah.

22 Q. All right. And one final issue that you wanted me
23 to raise here was with regards to the relationship
24 between and you Mr. Smiley leading up to the trial.

25 Were you -- did you ask for him to be relieved as

1 your attorney?

2 A. I asked Mr. Smiley before -- before I -- I was,
3 like, What are you doing? This is the one time, last
4 one, when someone else who had Mr. Smiley -- I went
5 upstairs, and I was, like, you know, he told me hold up
6 again.

7 When I come in, talked to Mr. Smiley, asked
8 Mr. Smiley, I was, like -- I was, like, What's going on,
9 man? I've been here already over a year and now almost
10 going on two-and-a-half years because Ms. Knobeloch, I
11 was, like, ain't nothing ever happen.

12 He said, You don't want to take the pleas?

13 I said, I'm not taking no plea. I said, Man, the
14 evidence does not link me to this crime.

15 I'm like, I'm not taking no plea, you know. So I
16 was just, like, could you just leave the case alone?

17 Mr. Smiley said, Well, I'm going to come back up
18 here and I'm going to talk to you and we're going to see
19 that video. That's how he got me off the talk of trying
20 to relieve him as counsel, so when I got back to my cell,
21 I worked on the bond first complaining about me and
22 Mr. Smiley, the issues we had and whatnot.

23 They sent me through to the fee dispute or
24 whatnot, that was after my fiancée -- she wrote them as
25 well too with the signatures of my brother and mother,

1 and with the fee dispute, I didn't prevail in the fee
2 dispute, so I wrote the Supreme Court, Chief Justice Jean
3 Toal, which Mr. Smiley -- she made Mr. Smiley and Trip
4 Riesen give a response as to why I was inside the County
5 Jail so long.

6 So Trip Riesen telling her that -- okay, she's
7 aware of the problems me and Mr. Smiley was having, the
8 motions I was filing and whatnot to have Mr. Smiley --
9 for him not doing his job because I didn't file a motion
10 to have him relieved as counsel just yet. So Mr. Smiley,
11 see, he was never with us.

12 He said, Well, my client never made me aware of
13 none of this, that he wanted me to file a motion. Why
14 would I go to the Bar and all this and I'm not going to
15 tell you, you know, that what you're doing ain't right.

16 And he told them that he -- through his
17 investigations, he watched the tape three to four times,
18 and while reviewing this tape, I was inside this video,
19 and when he stated that, I was, like, Dang, you know, he
20 said I'm outside the video, but he never told me I was
21 inside this video.

22 So now when we and Mr. Smiley do watch the
23 video, yeah, I got out -- I mean, I was -- and yet, you
24 know, I was cursing. He was cursing too. Both of us was
25 cursing one another. The tag team officer, he came

1 inside the room.

2 He was, like, Everything okay.

3 I was like, Man, I tell him, just please get
4 off my case, man. Please get off the case.

5 After that same meeting right there that's
6 when I go and file the order from Deadra Jefferson or
7 whatnot, but she denied me of having Mr. Smiley relieved
8 as counsel, and before we went to trial -- because this
9 was before -- I think this was before a fast and speedy
10 trial motion was put in. And he only did that due to the
11 fact that the Supreme Court then was on him about me
12 being inside the County Jail for so long.

13 So what I did, I wrote Mr. Smiley telling him
14 that I want him relieved as counsel. I'll represent
15 myself. So somebody else, I be telling them, I was,
16 like, Man, I'm going to go in there and represent myself.

17 They like, No, man. Don't do that, man.
18 Just go in there, you know what I'm saying, and, I mean,
19 if he do what he supposed to do, then you prevail.

20 I'm like, Man, he ain't doing his job.

21 I told Miss Linda, I was, like, Okay. Well,
22 just tell Mr. Smiley we just going in to trial or
23 whatnot. Nobody would listen to me, nobody would get him
24 off my case. I have --

25 Q. Your position is even leading up to the start of

1 the trial, in no uncertain terms, you did not want
2 Mr. Smiley representing you?

3 A. No, I did not, but I want to present this as an
4 exhibit to the Court that my family wrote Mr. Smiley a
5 letter. I wrote Mr. Smiley a letter. This is a letter
6 from the Supreme Court. All of them give their response
7 to the Chief Justice Jean Toal of my problems and
8 whatnot, and I have it right here, that this would
9 appease the Court that Mr. Smiley -- he was ineffective
10 assistance of counsel. He was ineffective assistance of
11 counsel.

12 Q. So there was various correspondence with regards
13 to trying to get Mr. Smiley removed from your case?

14 A. Right.

15 Q. All right.

16 MR. PEPER: Mr. Brown, that's all the
17 questions I have. The Attorney General's going to have
18 some questions for you. Okay?

19 CROSS-EXAMINATION

20 BY MS. WILSON:

21 Q. Good afternoon, Mr. Brown.

22 A. Good afternoon.

23 Q. Do you recall going over your discovery packet
24 with Mr. Smiley?

25 A. Do I recall going over the discovery packet with

1 Smiley?

2 Q. Yes.

3 A. Never. We never went over no discovery packet.

4 Q. Okay. But you did testify earlier today that you
5 reviewed the video, you discussed the jail calls, and you
6 ran a transcript of the phone calls. That was your
7 testimony today, though?

8 A. Yeah. That was my testimony and whatnot but it
9 was not like, you know, all this took place at one time.
10 I had to write the Bar in order just to see the video.
11 Had I not gone through writing the Bar, I still probably
12 would have gone to trial, and the only time I would have
13 seen the video was at the trial.

14 Q. But you saw it prior to the trial, though?

15 A. I saw it prior to the trial.

16 Q. Do you recall discussing any possible defenses
17 with Mr. Smiley?

18 A. Well, no -- well, I would say -- I told Mr. Smiley
19 to look into the chain of custody, as well as the
20 unlawful arrest warrant or whatnot, due to the fact that
21 the unlawful arrest warrant contains false statements and
22 whatnot. And Mr. Smiley, he kept saying that he was
23 going to look into it. He didn't look into it.

24 Q. Okay. You're saying right now that you told
25 Mr. Smiley to look into what?

1 A. To the chain of custody.

2 Q. Chain of custody. Okay. So you testified earlier
3 that he didn't ask Mr. Smiley to look into your issue of
4 the grand jury convening, that's correct?

5 A. You could say that. You could say that. You
6 could say that, yeah, I didn't tell him that, you're
7 right.

8 Q. You gave some testimony about letting Mr. -- you
9 said that Mr. Smiley should have cross-examined the
10 confidential informant, Mr. Hart, on someone named Jojo
11 getting into the car?

12 A. Well, my thing was him not fully impeaching him to
13 this individual getting into the back seat of this
14 vehicle. That was prejudiced to my defense because had
15 the jury heard his testimony to this individual getting
16 into the back, he stated -- it's clear on the record
17 that -- do you want me to read it from my transcript?

18 Q. I don't need you to read the transcript. Thank
19 you.

20 A. I was just saying it was clear on the record that
21 Mr. Smiley asked him about, Pause the video. Show him.
22 This fellow in the red shirt, do you see him?

23 He was, like, Yeah.

24 Do you know this fellow, the confidential
25 informant?

1 He stated, Yeah.

2 He said, What's his name? He said, Jojo, and
3 then Mr. Smiley said, did Jojo ever get inside this
4 vehicle?

5 And he was, like, he say, No. I never saw
6 him get inside the vehicle.

7 He said, Are you sure?

8 He said, Yeah, I'm sure.

9 So he said, If I show you that he got into
10 this vehicle, that makes me and you a liar so he was,
11 like, yes.

12 So Mr. Smiley said, No more questions.
13 That's when I told that lady back there, Ms. Hensley, I
14 was, like, What is he doing?

15 She said Jim knows what he's doing.

16 Q. Okay. Thank you on that one, okay? But you do
17 recall Mr. Smiley during his closing saying to the jury,
18 Do you see right here, do you see this guy in the red,
19 Jojo? Do y'all see him getting in the car right here?

20 You recall that.

21 A. I recall.

22 Q. He brought it out to the jury?

23 A. He brought it out to the jury, but his testimony
24 pertaining to this fellow -- his testimony was more of an
25 impact to the jury than Mr. Smiley just telling them,

1 Okay, well, he has a strategic strategy of what he try to
2 do at the closing. That was prejudice. That was really
3 prejudice.

4 Q. Okay. Thank you.

5 So do you also recall -- you talked today about
6 Mr. Smiley should have investigated a better defense
7 about there being two best kits? Do you recall him
8 bringing up there two best kids at trial? Do you recall
9 him bringing that up at trial?

10 A. Ma'am, it was inside the Rule 5. I mean, had
11 Mr. Smiley investigated it and presented to the Court, a
12 valuable piece of -- such as the SLED procedures, he
13 asked him, he said, When you're using this best kit, are
14 you following SLED procedures?

15 He stated yes. Okay? So had he brought
16 these procedures and presented it to the Court, telling
17 the Court that this evidence could not be admitted into
18 as evidence because it cannot be relied upon, it was
19 tampered with before the chemists received it for
20 analysis purposes.

21 Q. Do you recall Mr. Smiley objecting to the chain of
22 custody during your trial? Yes or no.

23 A. Yes. He objected. He objected to it, but it was
24 not properly preserved.

25 Q. And would you say today Mr. Smiley and Ms. Hensley

1 must have done some type of investigation in light of the
2 fact that the Court granted one of your directed verdict
3 motions? Do you recall that?

4 A. To the school, the school was not inside the range
5 of the -- of this so-called drug transaction -- I was
6 locked up five years after this crime happened.

7 Q. This is what I'm asking you. I think you're maybe
8 misunderstanding my question.

9 So what I'm saying to you, is Mr. Smiley must have
10 investigated your case to some extent because he was
11 successful at trial getting the Court to grant a directed
12 verdict on your behalf and getting one of your charges
13 dropped, so he had to have known something about the case
14 before the trial.

15 A. No, ma'am. I totally disagree.

16 Q. Okay.

17 MS. WILSON: Thank you. That's all I have
18 for you.

19 THE COURT: Anything else?

20 MR. PEPER: No, Your Honor.

21 THE COURT: You can step down.

22 MR. PEPER: Your Honor, the Applicant calls
23 Sheryl Howard to the stand.

24 SHERYL BROWN,

25 having been first duly sworn,

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. PEPER:

4 Q. Ms. Brown, I hate for the first question to be
5 about your age, but I know we don't ask women that, but
6 can you tell the Court how old you are?

7 A. I'm 54.

8 Q. What education do you have?

9 A. I graduated from high school, some college.

10 Q. Okay. And how are you related to the Applicant?

11 A. He's my son.

12 Q. All right. And were you responsible for hiring
13 Mr. Smiley?

14 A. Yes, me and my oldest son.

15 Q. All right. Were you involved in the
16 representation of -- were you involved in the
17 communications with Mr. Smiley to investigate this
18 matter?

19 A. Yes, I was.

20 Q. Were you able to communicate with him?

21 A. No, no. Actually, it was, like, when my son would
22 call me from the jail and says that he can't get in touch
23 with Mr. Smiley, Smiley wouldn't come see him, can I
24 call?

25 And I would call and I would speak to Ms. Linda,

1 and he -- I was -- Mr. Smiley was either out of the
2 office or busy at the time, and it got to the point where
3 I -- when I went into the office, his office, to make a
4 payment, it was, like, about \$1,500 left to pay up, and I
5 paid part of it the first time, but my son, he like,
6 Sheryl, Smiley isn't doing anything for me. Why are you
7 paying? Why are you paying? I just want him to proceed,
8 you know. He got the money, to proceed with the case so
9 there wouldn't be know, well, I don't have the money.
10 You're not trying to make any attempts, which my son
11 always been paying.

12 So when it got to that point, and I made the last
13 payment in full, then I could have set up appointment to
14 see Mr. Smiley? And then I was able to see him, both me
15 and my oldest son.

16 Q. Were you able to meet with him as long as you felt
17 necessary?

18 A. Well, my thing was, when I went to Mr. Smiley and
19 was told through his paralegal, I believe, Miss Linda,
20 you know, what I want to address at the time, and it was
21 mainly the video, the video and the true bill to see what
22 was going on with Stanford's case.

23 But when both my son and I got there, Mr. Smiley
24 told me that the video was not there, it was at his
25 office downtown, and court could convene at any time --

1 now, I'm not familiar with the law, how it works or
2 whatever the case may be, but I just assumed that because
3 this video was downtown and probably would have snapped
4 the next day or whatever, they are there and they needed
5 to have this video, but I wasn't, you know, up to par on
6 that.

7 And he said, Besides, the video will take a long
8 time for you to look at, you know.

9 So I said, Well, I really want to see the video
10 because my son said he saw, you know, someone getting
11 into the car and I want to see the video.

12 But he said, Well, I don't have the video here.
13 But at that time, he showed us other things, like a
14 picture of us standing up by an apartment, you know, and
15 telling us other things, that the currency -- that they
16 didn't get any currency from him, marked money or
17 whatever from him.

18 He told us those things, but my main concern was
19 the video, and I can just say one thing about the video.
20 During the trial, if I may, Mr. Smiley had shown the
21 video on a 27 inch television, and before he showed us
22 the video, which the DA had now into evidence, he showed
23 that video and the judge herself, Judge Christy, she
24 said, We're going to look at the video on the whole.

25 And she said, If it takes all day, no matter how

1 how long it takes, we're going to look at that video, but
2 the strange part, she said she would look at it as well.
3 It's all in the transcript, if you would read it, and it
4 was brought in.

5 Now, that 27 inch television had to be seen
6 between the jury, and we were sitting over here, and it
7 was like catty corner where we could have seen it and the
8 jury could see it too.

9 Now, the whole time, looking at that video, not
10 one person -- and I'm here to tell you. Not one person
11 got into that car. No one got into that car.

12 So as time went on, it was -- matter of fact, the
13 next day, Mr. Smiley and Mr. Riesen, they were like there
14 where the door swings at, where the table is at because
15 the TV was there, and Mr. Smiley showed Trip Riesen the
16 tape that he had.

17 It wasn't the tape that was in court, it was a
18 tape that he had, and that was the tape he was supposed
19 to show me because my son was trying to tell me, he said,
20 Sheryl, one got into the car, and as God as my witness,
21 God as my witness, I saw it. I saw this man get into the
22 car.

23 This guy in the red shirt got into the car, and
24 after it was all over with -- not the Court, we went on
25 break. We went on lunch, you know, and I stopped

1 Mr. Smiley, and I told him, Smiley, I said, I saw this
2 guy get into the car.

3 Mr. Smiley told me, No, what it is, the TV was at
4 an angle, and you only can probably see it at an angle
5 with somebody getting into the car.

6 No. I told him no, it wasn't so. I saw this guy
7 get in the car, and these were two tapes. I'm trying to
8 tell you, as God as my witness, two tapes, and I wished
9 that day I had said something when the judge had asked me
10 if I wanted to say anything on behalf of my son because
11 I'm trying to tell you, I saw the tape with the man
12 getting into the car, and it would have made a
13 difference.

14 Smiley took that -- Smiley brought a larger TV in.
15 He brought a larger TV in, and he said he was going to
16 put the video on tape where everybody can see it. And lo
17 and behold, he couldn't even get it to work. But, let me
18 tell you, when he got that tape to play, he used that
19 same small television. So strange. He took that
20 television and brought the television all the way in
21 front of the jury, not where we could see because if
22 anything, that was the day I want to see that guy get
23 into that car, because I know I saw with my own eyes, my
24 son was trying to tell me, Sheryl you got to see the tape
25 of the guy getting into the car.

1 Mr. Smiley took that tape, and it all was a farce
2 to me because of course the jury is going to look at
3 Smiley like, Okay, you got somebody getting -- boom.
4 He's in the car. Boom. He's in the car.

5 That jury is going to look at that TV and look at
6 Mr. Smiley like, Where is he coming from? None of them
7 was asked did you actually see from -- the DA didn't even
8 object to it him seeing somebody get in the car.

9 No objections, no nothing, but they played it so
10 well. They was, like, amazed, like, Wow, how did he see
11 this? They didn't say it, but just their facial
12 expression.

13 Now, when I was telling my son after all was said
14 and done, I told him, I said, I don't care. I don't see
15 how they have two tapes. Mr. Smiley should have entered
16 the tape that he had, he had, into evidence that morning,
17 or he could even have brought it up -- even this trial
18 should not even have taken place. It should not have
19 even taken place had he shown that tape, but there were
20 tapes. God as my witness, two tapes. Two tapes.

21 MR. PEPER: Those are all my questions.

22 THE COURT: You can step down.

23 MS. WILSON: Nothing from the State, Your
24 Honor.

25 MR. PEPER: That's all we have, Judge.

1 THE COURT: Anything from the State?

2 MS. WILSON: Your Honor, the State would call
3 Mr. James Smiley.

4 JAMES WATSON SMILEY, IV,
5 having been first duly sworn,
6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MS. WILSON:

9 Q. Good afternoon, Mr. Smiley. How long have you
10 been practicing law?

11 A. Since 1993.

12 Q. Has a good bit of it been in criminal law?

13 A. 100 percent, with the exception of about three or
14 four months.

15 Q. And you were appointed to -- you were retained to
16 represent Mr. Stanford, correct?

17 A. Retained, yes, ma'am.

18 Q. Do you recall when that took place?

19 A. I got retained approximately a year after his
20 initial arrest.

21 Q. Do you recall how many times you met with him
22 prior to trial?

23 A. I saw him at the jail four or five times, I would
24 believe is correct.

25 Q. And did you have any phone conversations or

1 anything with him?

2 A. Not that we talked about his cases. I would have
3 talked about his case in person.

4 Q. Okay. And did you file a Brady or any Rule 5
5 motions for Mr. Stanford?

6 A. Of course I did.

7 Q. And did you review discovery material that you
8 received with Mr. Stanford?

9 A. Certainly.

10 Q. Can you tell us what you received in discovery.

11 A. The discovery was police reports. Initially there
12 was a video; there was jailhouse audio; there were some
13 audio at the scene connected with the video, then later
14 we received a very little bit amount of the CI package.
15 That is the main parts of the discovery.

16 Q. And you reviewed all these for Mr. Brown?

17 A. Certainly.

18 Q. And prior to trial, did you discuss the elements
19 of the two charges against him?

20 A. In detail.

21 Q. Did you tell him what the State was required to
22 prove?

23 A. Yes.

24 Q. And did you discuss his version of the facts?

25 A. Certainly.