

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Bentley Price, Circuit Court Judge

OMAR SHARIFF GENTILE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2024-000704

APPENDIX

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON 2012-GS-10-02587
2012-GS-10-05473

STATE OF SOUTH CAROLINA)
)
-vs-) TRANSCRIPT OF RECORD
)
) June 20, 2014
OMAR SHARIFF GENTILE,)
)
) Charleston, South Carolina
Defendant.)

B E F O R E:

The Honorable Roger M. Young, Sr., Judge.

APPEARANCES:

Lindsey McClain Byrd, Assistant Solicitor
Attorney for the State

Jason Thomas King, Deputy Public Defender
Attorney for the Defendant

Reported By:

Amanda Kelly Haffenden, RPR, CRR
Circuit Court Reporter for the
Ninth Judicial Circuit

1 (June 20, 2014.)

2 MS. BYRD: This is a defense motion to compel
3 discovery, specifically an audio video recording of a
4 controlled CI buy conducted by Charleston Police
5 Department that was the basis for probable cause over a
6 search warrant, the execution of that search warrant
7 leading to the pending charges against Mr. Gentile, which
8 include trafficking in heroin third and a proximity
9 charge.

10 THE COURT: All right. It's your motion.

11 MR. KING: Your Honor, this is one of those
12 cases that's on the over two years list. This is really,
13 I think, has been the main thing holding it up is this
14 video. So there was a search warrant conducted, and
15 within days before that, the informant purchases drugs
16 from this residence.

17 My understanding is he purchased it not from
18 Mr. Gentile, but from someone -- from his brother. I
19 believe it may be on the video, but it's evidence of a
20 drug sale where my client, Omar Gentile, is in the video
21 as well, and within days they do a search warrant,
22 execute it, and we feel that we'd be entitled to the
23 video as part of the evidence, so we're just asking for a
24 copy of the video. Mr. Gentile wants to view it.

25 THE COURT: It was used as the basis for a

1 search warrant of what?

2 MR. KING: Of a residence.

3 THE COURT: His residence?

4 MR. KING: Yes, Your Honor.

5 THE COURT: Okay. What's the State's
6 position?

7 MS. BYRD: Your Honor, the State's position
8 is that the defendant's not entitled to this video. The
9 first point would be that it's not relevant to his
10 particular charges. The second point would be that even
11 if the Court did think that it was somehow relevant that
12 the State's interest in protecting the identity of the
13 CI would outweigh any relevance it may have in this case,
14 and the reason being for that are several, as a matter of
15 fact.

16 The controlled buy occurred several days
17 before the search warrant was executed, so Mr. Gentile's
18 not being charged with events that occurred involving the
19 CI several days prior. He hasn't been charged with a
20 distribution. He's being charged with what happened the
21 day the search warrant was executed. The CI was not
22 present for that. The CI is not a material witness for
23 those particular charges, and therefore it's not relevant
24 to that case.

25 THE COURT: It was used as the basis for the

1 issuance of the search warrant, correct?

2 MS. BYRD: Yes, Your, Honor that's correct.

3 THE COURT: So that was probable cause?

4 MS. BYRD: Yes, Your Honor. That was the
5 basis for probable cause to search that residence.

6 THE COURT: So it is relevant.

7 MS. BYRD: Well, again, the State would argue
8 that also, in addition, the fact that the CI purchased
9 cocaine from a person at that residence, Mr. Gentile's
10 not charged with possession of -- any level of possession
11 of cocaine. He's charged with possession of heroin.
12 It's completely separate --

13 THE COURT: But it was found as a result of
14 the search warrant.

15 MS. BYRD: It was, Your Honor. As far as the
16 probable cause for the search warrant, the State feels
17 that challenging that probable cause would be a pretrial
18 issue.

19 Again, the CI is not necessary as a witness
20 for any pretrial challenge of the validity of the search
21 warrant. The sworn officer's testimony is all that's
22 needed for the purposes of that particular pretrial
23 challenge. As a compromise, the State has let defense
24 counsel know that the CI -- there are indicators that
25 would potentially give away the CI's identity on the

1 video.

2 As a practice, I do not deny these videos. I
3 freely hand them over; however, again, the CI's identity
4 could be easily determined from certain indicators on the
5 video. I have offered to let Mr. King view that video in
6 its entirety and report back to his client.

7 I've offered to provide still shots from that
8 video to show his client the most, you know, important
9 pieces of information that would be -- that would give
10 grounds to the probable cause for the search warrant.

11 I have also offered to allow him to show his
12 client the video on mute and let him read along with the
13 transcript so that he could see for himself the video,
14 and all of these are attempts to not keep discovery from
15 him while also protecting the CI. At this point, I don't
16 know what else I can do to accomplish both of those
17 goals.

18 THE COURT: All right. What about her
19 compromise?

20 MR. KING: Your Honor, Mr. Gentile wants to
21 see the video. He doesn't want to see it on mute. He
22 wants to see the evidence against him. I think at some
23 point the interest in protecting the informant has to
24 give way to, you know, his right to prepare his case and
25 know the evidence against him. And they're accusing him

1 of being a drug trafficker, and this is a video of
2 something going on involving drugs in the house within
3 days before the search.

4 This is a -- you know, it's so close in time
5 that I think it's just part of the same -- it's part of
6 the same transaction, and Mr. Gentile should be able to,
7 like Rule 5 says, be able to copy any videos and any
8 evidence against him.

9 THE COURT: Here's what I'd like you to do:
10 I would like you to prepare a transcript of the video and
11 then bring it to me to watch and see what this looks
12 like. In fact, we can set down, you and I and Mr. King
13 can set down and watch it, and then I'll make a
14 determination as to whether or not it needs to be
15 released in that form or any other form to his client.

16 MS. BYRD: Yes, sir. That's fine. Thank you
17 so much.

18 THE COURT: All right.

19 - - -

20 (Whereupon, the proceedings were concluded.)

21 - - -

22

23

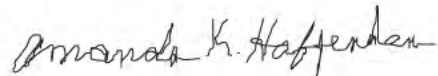
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25

I, the undersigned Amanda Kelly Haffenden, RPR, CRR, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 20th of June 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 20, 2016



Circuit Court Reporter

STATE OF SOUTH CAROLINA
VS.
OMAR GENTILE and
MAURICE GENTILE,
DEFENDANTS.

held before the Honorable Kristi L. Harrington
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on Friday, September 18, 2015, Commencing at 11:27 a.m.

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

[None]

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PROCEEDINGS

THE COURT: And what type of motion is this?

MR. KING: The C.I., Your Honor.

THE COURT: The C.I. Okay. Thank you.

MR. KING: That's correct, Your Honor.

This is first up October 5th. This is a case where a confidential informant was used for an alleged control buy within seventy-two hours of a search of a residence.

Mr. Gentile was arrested and charged when they did the search warrant on the residence. He was in the house, they found drugs in the house, and they've charged him with trafficking. So it's not a case where there is a distribution with an informant that is involved with Mr. Gentile. It's my understanding that the informant bought drugs from Maurice Gentile, my client's brother, out of that residence.

So I'm making an argument that I should be allowed to know the identity of that informant, be able to interview them, possibly subpoena them for trial on the merits of the case, in addition to a motion to suppress on the search warrant.

I had sent a couple of cases over, Your Honor. It appears there's a balancing test where you balance the public interest of protecting the flow of criminal activities against the individual's right to prepare his

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1 defense. So we're asserting our right to due process
2 and our right to confrontation to know the identity and
3 interview this witness.

4 The two cases I sent to Your Honor were State vs.
5 Ryan [phonetic], a South Carolina case, and I believe
6 it's Rovlaro vs. United States, a United States Supreme
7 Court case.

8 THE COURT: Thank you, Mr. King, for preparing a
9 written motion, and articulating in the motion, and
10 citing case law. Thank you.

11 MR. KING: It's not that this informant was a
12 participant in the actual trafficking case, Judge. But
13 the language of these cases talk about if the informant
14 is a material witness. And I believe, you know, from
15 this informant's going from this residence, going inside
16 of the residence, within seventy-two hours of the search
17 warrant, you know, this is somebody who may have
18 information. It appears that this informant may know
19 the people inside the residence.

20 There's a quote from Rovlaro, Your Honor, that says
21 that where the disclosure of the informant's identity or
22 the contents of this communication is relevant and
23 helpful for the defense to use, or is essential to a
24 fair determination of a cause, the privilege must give
25 way.

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1 So we're arguing in this case that it would be
2 relevant and helpful to the defense at least to
3 interview this person and, you know, to determine if
4 that might be something we could present into evidence
5 to give merit to the case. That's it, in addition to my
6 motion to suppress on the search warrant.

7 THE COURT: What is the State's position?

8 MR. SOWARDS: Your Honor, first, the State's
9 position would be that Mr. King raised this exact issue
10 on this exact case last year, argued that exact argument
11 in front of Judge Young --

12 THE COURT: Is that correct, Mr. King?

13 MR. KING: It was a slightly different motion,
14 though somewhat correct. I filed a motion to compel the
15 DVD of that buy.

16 THE COURT: And what did Judge Young rule?

17 MR. KING: He denied that motion for me having the
18 DVD. I think the final agreement was with Ms. Byrd, the
19 previous attorney -- solicitor, on the case, they could
20 -- Mr. Gentile and his brother could watch the video on
21 mute with a transcription of the video.

22 But now we are at the brink of trial --

23 THE COURT: Do you see -- did you see the C.I. on
24 the video?

25 MR. SOWARDS: Your Honor, there is a point at which

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1 I think you can see the C.I. on the video.

2 THE COURT: Is there -- it's already been
3 disclosed?

4 MR. SOWARDS: It has not been disclosed, as far as
5 I know. I think a transcript was provided. Also, the
6 school --

7 THE COURT: The transcript. He could not view the
8 video. Is that --

9 MR. SOWARDS: That's correct.

10 Law enforcement, Your Honor, has a genuine concern
11 about the informant's safety in this case and what
12 watching the video might reveal regarding that.

13 And if I may approach, Your Honor --

14 THE COURT: You may.

15 MR. SOWARDS: -- and hand you the --

16 THE COURT: Do you plan to call the C.I. as a
17 witness?

18 MR. SOWARDS: We do not.

19 [Whereupon, Mr. Sowards proffers documents to the
20 Court]

21 MR. SOWARDS: Your Honor, just -- Mr. King cited a
22 few cases. Both of those cases involved distributions
23 and that distribution was being tried.

24 In this case, Your Honor, the defendant was never
25 charged with -- neither of them was charged with

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1 distribution. Warrants were not served. This is --

2 THE COURT: Well, what is he charged with?

3 MR. SOWARDS: -- strictly a search warrant case.

4 It's trafficking -- this has been as trafficking
5 heroin and a proximity charge. based on --

6 THE COURT: Based on weight, correct, and --

7 MR. SOWARDS: Correct, Your Honor.

8 THE COURT: -- then the proximity?

9 MR. SOWARDS: Based solely on what was found when
10 the search warrant was executed on February 9th.

11 THE COURT: Mr. King, happy to hear from you.

12 MR. KING: Your Honor, I filed this motion because
13 now that we're at the brink of trial -- I understand
14 that Judge Young didn't want to hand over the video, you
15 know, a year ago. But we're at the brink of trial now,
16 and I think the privilege of the informant has to give
17 way at this point for us to present a full and fair
18 defense. His due process rights. This informant is far
19 -- and it's -- that this informant came to this house so
20 close in time to the search warrant.

21 There's another person selling drugs out of the
22 house, I believe is Maurice Gentile, and this person
23 allegedly bought drugs from Maurice Gentile. It appears
24 in the video to maybe know -- to maybe know the people
25 inside the house. This person may have information that

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1 could help prove my client's innocence and that, you
2 know, he is not guilty of the trafficking for the drugs
3 found in the house.

4 It's really -- the whole case is based on this
5 informant. And it's so tied up into the main case,
6 their privilege must give way in this situation.

7 THE COURT: Was the only -- was the informant --
8 the purchase by the informant, was that the only -- was
9 that the sole basis of the search warrant?

10 MR. SOWARDS: It was, Your Honor. It formed the
11 probable cause for the search warrant.

12 And just to address Mr. King's point --

13 THE COURT: Well, let me rephrase my question.
14 Tell me about what transpired with the informant.

15 MR. SOWARDS: Your Honor, the -- I think it was
16 like pretty much all the controlled purchases that the
17 City of Charleston conducts. They wired the informant
18 for audio sound. The informant went to the home,
19 purchases cocaine from an occupant of the home, and then
20 left. And the officer then, based on that buy, went to
21 the magistrate, provided that information to the
22 magistrate, got a search warrant, and they executed it
23 on February 9th.

24 I think, Your Honor, were this a distribution case,
25 we would absolutely agree with Mr. King and we would not

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1 be having this hearing before you because he would have
2 the video and he would have everything he needs. But I
3 don't think the identity of the C.I. is important to
4 determine whether there was probable cause for the
5 search warrant.

6 THE COURT: Anything further, Mr. King?

7 MR. KING: Just that it is bigger than the search
8 warrant, Your Honor. It has to do with -- it could be
9 relevant to his defense. And I may not even know that
10 just, you know, being able to --

11 THE COURT: But explain it just hypothetically,
12 Mr. King. How could that be relevant to his defense?
13 Are you challenging the search warrant, then?

14 MR. KING: That is part of it, Your Honor.

15 I'm going to be challenging the search warrant.
16 During the trial itself I would -- you know, the
17 potential defense, most likely defense, against Mr.
18 Gentile was that he wasn't knowingly in possession of
19 the drugs found in that house, that he didn't live
20 there, that wasn't his house.

21 This informant might be able to say that she bought
22 drugs from Mr. Gentile's brother. So might be able to
23 say that Omar Gentile wasn't involved in drugs, that
24 this informant has never seen Mr. Gentile selling drugs
25 or around drugs. I mean, the person appears to know

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1 what's going on inside the house, and know people. So
2 there's some involvement with -- that's really what the
3 trial is about, is about this residence and --

4 THE COURT: But possession is different from
5 distribution.

6 MR. KING: It is, Your Honor. And I understand
7 that. It's not exactly on point with the normal cases
8 where there's a distribution and the informant
9 participates directly in that transaction. But it's so
10 close in time to the search warrant, this person could
11 have information that could help our defense. We don't
12 know exactly, because I don't know who it is and I can't
13 interview them.

14 THE COURT: But you have seen the video?

15 MR. KING: I have.

16 THE COURT: Okay. Anything further, Ms. Linder,
17 Mr. Sowards?

18 MR. SOWARDS: Your Honor, just to say that for the
19 search warrant suppression, I think only the officers
20 will be called. We're not arguing and we don't intend
21 to argue in the case that the defendant actually sold
22 drugs. And then the search warrant is for the location
23 and not necessarily for the occupants. It's just a
24 search warrant for 1 Grove Street.

25 THE COURT: Say that one more time.

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1 MR. SOWARDS: It was just a search warrant for 1
2 Grove Street and not directed towards any specific
3 occupant of the home.

4 THE COURT: All right. Final word, Mr. King.

5 MR. KING: Just that, you know, Mr. Gentile is
6 caught up in this and, you know, he's still charged even
7 if the search warrant wasn't -- he wasn't the target.
8 And I think that may be the whole point. He wasn't the
9 target of the investigation, but he got caught up in
10 this. And I think we have a right to interview any
11 witness who may have some knowledge about it.

12 THE COURT: All right. Take the matter under
13 advisement. I want to read that case again, in light of
14 the discussion and argument here today.

15 You will have my ruling -- I'm going to try to get
16 it done before close of business today. All right? So
17 if there is any additional case law or anything that I
18 need to know, I'll be happy to hear from you. All
19 right? Thank you.

20 MR. SOWARDS: Thank you, Your Honor.

21 THE COURT: And so this is first up October 5th; is
22 that correct?

23 MR. SOWARDS: That's correct.

24 THE COURT: All right. Mr. Gentile, please stand.

25 [Whereupon, Mr. Gentile complies]

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1 THE COURT: And I know I have done this several
2 times. How are you doing today?

3 MR. GENTILE: Fine.

4 THE COURT: And, sir, you know what I'm going to
5 say to you.

6 First of all, I'm going to place you under oath.
7 Please raise your right hand.

8 [Whereupon, Mr. Gentile is duly sworn by the Court
9 as follows: do you swear or affirm that the testimony
10 and the statements you are about to give the Court will
11 be the truth, the whole truth, and nothing but the
12 truth, so help you God]

13 MR. GENTILE: Yes, Your Honor.

14 THE COURT: Thank you. You may put your hand down.

15 Mr. Gentile, we are set now -- I had given you a
16 continuance, I believe, you and your brother; is that
17 right?

18 MR. GENTILE: Yes, ma'am.

19 THE COURT: And I'm not looking at my notes, so
20 please correct me if I'm incorrect, but from the last
21 docketing day. And so you are now first up on October
22 5th.

23 Is that correct, Mr. Sowards?

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

25 THE COURT: And you are prepared and ready to go,

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1 based upon my ruling, of course?

2 MR. SOWARDS: We are prepared.

3 THE COURT: And just assuming that I would grant
4 Mr. King's motion, would you still be ready to go on
5 October 5th?

6 MR. SOWARDS: I think so, Your Honor.

7 THE COURT: And you anticipate two, three days?

8 MR. SOWARDS: I think two days. Probably the end
9 of the day on Tuesday.

10 THE COURT: Mr. King, you are ready to go?

11 MR. KING: I will be, Your Honor. Just this
12 witness I would -- assuming what happens with this
13 hearing. But I'll be happy to get ready if -- whether
14 it goes either way. If it's not disclosed, if it is
15 disclosed, I think I can interview the witness and be
16 ready.

17 THE COURT: Mr. Gentile, you are up for trial. You
18 are first up on October 5th. Do you understand what
19 will happen if you do not show up?

20 MR. GENTILE: Yes, ma'am.

21 THE COURT: Tell me what will happen.

22 MR. GENTILE: I'll have a warrant for my arrest.

23 THE COURT: And what else? More importantly, I
24 think than that, would be what?

25 MR. GENTILE: Present.

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1 THE COURT: Well, what will happen is we will try
2 your case in your absence, because I have advised you of
3 what would happen if you don't show up, so your attorney
4 has his file and he would be sitting at that -- probably
5 at that very same table with no one to defend. But the
6 State would be able to go forward in your absence. Do
7 you understand?

8 MR. GENTILE: Yes, ma'am.

9 THE COURT: Sometimes defendants think that if they
10 don't show up, the case goes away. And I just want you
11 to understand that is not the case. We will try this
12 case with or without you. Do you understand?

13 MR. GENTILE: Yes, ma'am.

14 THE COURT: In and of itself, then, a bench warrant
15 independently would issue. But once you are picked up,
16 then the sentence would be revealed. So that's what
17 would happen if you don't show up. I have no concern or
18 think that you would not show up, because you've been
19 here several times.

20 Mr. King, he's always been here?

21 MR. KING: He has.

22 THE COURT: All right. Mr. Gentile, any questions?

23 MR. GENTILE: No, ma'am.

24 THE COURT: And I believe we have already asked and
25 there are no outstanding offers?

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1 All offers have been rejected on the record;
2 correct, Mr. King?

3 MR. KING: I believe so, Your Honor.

4 THE COURT: Is that correct?

5 MR. SOWARDS: That's correct.

6 THE COURT: All right. Thank you.

7 Good luck to you. I believe I will be trying your
8 case on October 5th. All right. Thank you.

9 MR. SOWARDS: Thank you, Your Honor.

10 [HEARING CONCLUDES AT 11:40 A.M.]

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State vs. Gentile

C E R T I F I C A T E

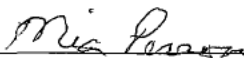
STATE OF SOUTH CAROLINA

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 motions hearing held before the Honorable Kristi L. Harrington, on Friday, September 18, 2015.

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 March, 2016.



Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

STATE OF SOUTH CAROLINA

VS.

OMAR S. GENTILE

DEFENDANT.

VOLUME 1 OF 2

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, January 4, 2016, Commencing at 11:44 a.m.

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

[None]

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Proceedings
January 4, 2016

PROCEEDINGS

THE COURT: Is the State ready?

MR. SOWARDS: The State is ready, Your Honor.

THE COURT: Mr. King?

MR. KING: Yes, Your Honor, we're ready.

THE COURT: Do you need to talk to your client, concerning any matters, before we bring in the jury?

MR. KING: Could I have maybe five minutes?

THE COURT: I think they're on a break.

My intention is to pick your jury and then we'll break for lunch, then we'll have to move courtrooms, and then we'll do our pretrial motions after lunch.

So if there is anything that I need to address before picking the jury, please tell me right now. Okay?

So please take some time to talk to your client because I understand -- you know, I just accepted the codefendant's plea, so I don't know if that changes the complexion.

MR. KING: Well, there's no plea offer for Mr. Omar Gentile.

THE COURT: I understand.

MR. KING: It's mandatory twenty-five years at this point.

THE COURT: So at that point. Okay.

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1 MR. KING: If they made an offer, that may be
2 something that we could talk about.

3 But it's mandatory twenty-five whether we have a
4 trial or not, so I have to go to trial at this point.

5 THE COURT: Do you need to talk to him before we
6 bring in the jury?

7 MR. KING: My client?

8 THE COURT: Yes.

9 MR. KING: Yes, just briefly, Your Honor.

10 THE COURT: All right. Take your time.

11 [Whereupon, a recess is taken from 11:31 a.m. to
12 11:44 a.m.]

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JURY VOIR DIRE

[Whereupon, the jury panel enters the courtroom at
11:44 a.m.]

THE BAILIFF: The panel is all here, Your Honor.

THE COURT: All right. Good morning, ladies and
gentlemen. We are now moving to select a jury for a
particular case.

Ladies and gentlemen, you may have come up to me
and shared some personal information or made a request
or said something to me. Ladies and gentlemen, we have
quite a large panel and so if you told me something and
I said you need to tell the presiding judge, please, at
the appropriate time --

I do it the same way. I have a series of questions
to ask. If you wish to stand at that time, you do so at
that time, but I will give you an opportunity to come
forward and speak with me in private concerning any
concerns you may have concerning this case. Ladies and
gentlemen --

Is the State ready?

MR. SOWARDS: The State is ready, Your Honor.

THE COURT: Is the defendant ready?

MR. KING: Yes, Your Honor.

THE COURT: Ladies and gentlemen, the case that we
are selecting a jury for is the case of the State of

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1 South Carolina versus Omar Shariff Gentile, case number
2 2012-GS-10-2587. The State alleges that Mr. Gentile did
3 in Charleston County, South Carolina, on or about
4 February 9th, 2012, knowingly and unlawfully did
5 distribute, sell, purchase, manufacture, or possess with
6 intent to distribute, heroin, a controlled substance,
7 within a one-half mile radius of the grounds of the
8 Charleston School of Math and Science located at 1002
9 King Street, Charleston, South Carolina, all in
10 violation of Section 44-53-445 of the South Carolina
11 Code of Laws, 1976 as amended. Mr. Gentile has pled not
12 guilty to that indictment.

13 The State further alleges, in indictment 2015-GS-
14 10-5473, that Mr. Gentile did on, or about February 9th,
15 2012, in Charleston County, South Carolina, knowingly
16 sell, manufacture, cultivate, deliver, purchase, or
17 bring into this state, or did provide financial
18 assistance, or otherwise aid, abet, attempt, or conspire
19 to sell, manufacture, cultivate, deliver, purchase, or
20 bring into this state, or was knowingly in actual or
21 constructive possession, or knowingly attempted to
22 become in actual or constructive possession, of 4 grams
23 or more of any morphine, opium, salt, isomer, or salt of
24 an isomer thereof, namely heroin, as described in
25 Section 44-53-190 -- or 44-53-210, or 4 grams or more of

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1 any mixture containing any of these, all in violation of
2 Section 44-53-370(e)3 of the South Carolina Code of
3 Laws, 1976 as amended. Mr. Gentile has pled not guilty
4 -- Gentile has pled not guilty to that indictment, as
5 well.

6 Is there any member of the jury panel that knows
7 anything about this case, other than what I have just
8 read to you? If so, please stand.

9 [Whereupon, there is no response]

10 THE COURT: Thank you. There are none.

11 Mr. King, if you would please stand, introduce
12 yourself, your client, and any persons who will be
13 assisting you throughout this trial.

14 MR. KING: I'm Jason King, with the public
15 defendant's office. I represent Omar Gentile.

16 Sitting with me is Tamara Van Pala, who is another
17 attorney in our office.

18 I may have Investigator Wilson on occasion --

19 THE COURT: Thank you.

20 Is there any member of the jury panel related by
21 blood, marriage, close personal friend, ever have any
22 business, personal, or professional dealings with
23 Mr. Gentile? If so, please stand.

24 [Whereupon, there is no response]

25 THE COURT: Thank you. There are none.

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1 Any member of the jury panel related by blood,
2 marriage, close personal friend, ever had any matters
3 handled by Mr. King or Ms. Van Pala? If so, please
4 stand.

5 [Whereupon, there is no response]

6 THE COURT: Thank you. There are none.

7 Any member of the jury panel ever been employed by,
8 or a family member employed by, or do any business with
9 the public defender's office in the ninth circuit, which
10 is Charleston and Berkeley? If so, please stand.

11 [Whereupon, there is no response]

12 THE COURT: Thank you. There are none.

13 Mr. Sowards, if you would please stand, introduce
14 yourself, any persons who will be assisting you
15 throughout this trial.

16 MR. SOWARDS: Thank you.

17 Good morning. My name is Whit Sowards, and I'm an
18 assistant solicitor with the ninth circuit solicitor's
19 office.

20 With me is Ms. Stephanie Linder, also assistant
21 solicitor.

22 This is Special Agent Jonathan Shealy, with SLED,
23 and to his left is Special Investigator Dave Lawson, who
24 works with the ninth circuit solicitor's office as well.

25 Myself, Ms. Linder, and Mr. Lawson work for

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1 Scarlett Wilson. Thank you.

2 THE COURT: Thank you.

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

8 [Whereupon, there is no response]

9 THE COURT: Thank you. There are none.

10 Is there any member of the jury panel that has ever
11 had any matter handled by any solicitor or any person in
12 the solicitor's office in the ninth circuit -- which,
13 again, is Charleston and Berkeley County -- or you do
14 any business with, or have been employed by, or a family
15 member employed with, the ninth circuit solicitor's
16 office? If so, please stand.

17 [Whereupon, there is no response]

18 THE COURT: Thank you. There are none.

19 Ladies and gentlemen, I am going to call a list of
20 potential witnesses who may be called to testify in this
21 case. If you know these individuals in any capacity,
22 related by blood, marriage, close personal friend, ever
23 have any business, personal, professional dealings with
24 any of these individuals, please stand as I call their
25 name.

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1 Agent Jonathan Shealy, South Carolina Law
2 Enforcement Division, otherwise known as SLED. He was
3 formerly with the Charleston Police Department. Officer
4 Jake Grill, Charleston Police Department; Officer Keith
5 Sumner, Charleston Police Department; Detective John
6 Marn, Charleston Police Department; Officer William
7 Olson, Charleston Police Department; Sargent Jeff
8 Robertson, Charleston Police Department; Officer Sean
9 Lucas, Charleston Police Department; Detective Patrick
10 Gill, Charleston Police Department; Corporal Tonette
11 Mitchell, Charleston Police Department; Detective Leon
12 Forrest, Charleston Police Department; Mary K. Phillips,
13 Charleston Police Department; Renee Hilton, Charleston
14 Police Department; Melanie Frederick, with the
15 Charleston Police Department; Corporal Rodney Van Horn,
16 Charleston Police Department; Susan Payne, with the
17 Charleston Police Department; Brian Hinton, Charleston
18 Police Department; Linda Wilson, Charleston Police
19 Department; and Kevin Sherbine, with the Charleston
20 County Sheriff's Office.

21 Is there any member of the jury panel that knows
22 any of these individuals in any capacity? If so, please
23 stand.

24 [Whereupon, there is no response]

25 THE COURT: Thank you. There are none.

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1 Is there any member of the jury panel who has ever
2 been employed by the South Carolina Law Enforcement
3 Division, otherwise known as SLED, Charleston Police
4 Department, or the Charleston County Sheriff's Office?
5 If so, please stand.

6 [Whereupon, there is no response]

7 THE COURT: Thank you. There are none.

8 Is there any member of the jury panel that is a
9 former law enforcement officer or you've worked in any
10 capacity within a law enforcement agency, either
11 currently or formerly, or a close friend or family
12 member? If so, please stand.

13 Yes. Your jury number and name?

14 MS. HONAN: My jury number is 145. Melinda Honan.
15 My husband is Thomas Honan. He was a major in
16 Charleston County Sheriff's Office.

17 THE COURT: And he is no longer employed there?

18 MS. HONAN: He's retired.

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

22 MS. HONAN: No, ma'am.

23 THE COURT: And your jury number, before you sit
24 down.

25 MS. HONAN: 145.

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

2 Anyone else?

3 [Whereupon, there is no response]

4 THE COURT: Thank you. There are none.

5 Is there any member of the jury panel who has ever
6 attended the Charleston School of Math and Science, or
7 your child attended, or you've worked there, or you live
8 around that area of 102 King Street -- excuse me -- 1002
9 King Street? If so, please stand.

10 Yes, sir. Your jury number and name?

11 MR. DAVIS: 68. James Davis.

12 THE COURT: And so tell me what I need to know.

13 MR. DAVIS: My son goes to school there.

14 THE COURT: And he is currently there?

15 MR. DAVIS: Yes, ma'am.

16 THE COURT: And is there anything -- the State
17 alleges that one of the incidents occurred around that
18 school. Is there anything about your son going to
19 school there that would affect your ability to be fair
20 and impartial in this case?

21 MR. DAVIS: I would probably say it probably would.

22 THE COURT: I'm going to protect you from the trial
23 of this case. You do not have to answer any further
24 questions, but I'm going to have you stay with us so
25 that I can keep the panel together.

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1 MR. DAVIS: Okay.

2 THE COURT: And tell me your jury number one more
3 time.

4 MR. DAVIS: 68.

5 THE COURT: 68 is excused from the trial of this
6 case. Thank you.

7 Yes, sir?

8 MR. WASHINGTON: I'm Frances Washington, juror
9 number 326.

10 I work for the Charleston County School District,
11 and I do work at Math and Science.

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

15 MR. WASHINGTON: No.

16 THE COURT: And will you base -- only upon the
17 facts you hear from the witness stand and any other
18 evidence that is presented and make your decision based
19 only upon those, not on any knowledge you have about
20 that area?

21 MR. WASHINGTON: Yes.

22 THE COURT: Was that a yes, Mr. Washington?

23 MR. WASHINGTON: Yes.

24 THE COURT: All right. And tell me your jury
25 number.

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1 MS. WILLIAMS: 335.

2 THE COURT: 335.

3 I'm sorry. Your jury number, Mr. Washington?

4 MR. WASHINGTON: 326.

5 THE COURT: 326. All right. Thank you.

6 MS. WILLIAMS: My jury number is 335. Clisby
7 Williams.

8 I doubt this is what you had in mind, but I was on
9 the original charter committee that got the school
10 started. And I'm hoping to send a child there, but, I
11 mean, I don't currently.

12 THE COURT: And, again, it is more important for us
13 to have more information than not enough. As I
14 indicated to you downstairs, the attorneys involved and
15 the parties involved in this case are taking notes.
16 Some of you will be much better jurors suited on
17 different types of cases.

18 So my question to you is will you be able to listen
19 to the facts from the witness stand, apply the law as I
20 give it to you, and render a verdict based only upon
21 those things, free from any outside influences that you
22 have or a specialized knowledge you have about the
23 school?

24 MS. WILLIAMS: Yes.

25 THE COURT: And your jury number?

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1 MS. WILLIAMS: 335.

2 THE COURT: 335. Thank you. Is there anyone else?

3 [Whereupon, there is no response]

4 THE COURT: Thank you. There are none.

5 Is there any member of the jury panel or a member
6 of your immediate family affiliated with a victim's
7 rights organization, or an organization that promotes
8 law enforcement, such as Citizens Against Violent Crime
9 or People Against Rape? If so, please stand.

10 [Whereupon, there is no response]

11 THE COURT: Thank you. There are none.

12 Ladies and gentlemen, I now have a series of
13 questions to ask that I have determined you need to come
14 forward if you need to answer these questions and speak
15 with me in private. So please listen very carefully. I
16 have a series of questions.

17 Have you or a close friend or relative ever been
18 the victim of a crime, or have you or a close friend or
19 relative ever been accused of a crime?

20 Have you, a member of your family, or close
21 personal friend, ever been incarcerated, or a family
22 member or close personal friend is currently
23 incarcerated, or you have been arrested by the City of
24 Charleston for any reason, or you have been arrested for
25 a drug offense?

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

3 If you need to answer any of those questions, or if
4 you just need to speak with me concerning any matter,
5 please move -- the bailiffs will assist you.

6 Mr. Caines, which way do you want them to come?
7 Right there?

8 And so please come forward at the appropriate --
9 now is the appropriate time.

10 THE BAILIFF: Juror 318.

11 [Whereupon, juror number 318 comes forward]

12 [Whereupon, the Court, juror number 318, and
13 counsel confer]

14 THE COURT: 318 will remain. Thank you.

15 THE BAILIFF: Juror number 91.

16 [Whereupon, juror number 91 comes forward]

17 [Whereupon, the Court, juror number 91, and counsel
18 confer]

19 THE COURT: Juror 91 will remain.

20 THE BAILIFF: 217.

21 [Whereupon, juror number 217 comes forward]

22 [Whereupon, the Court, juror number 217, and
23 counsel confer]

24 THE COURT: 217 will remain. Thank you.

25 THE BAILIFF: Juror 320.

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1 [Whereupon, juror number 320 comes forward]

2 [Whereupon, the Court, juror number 320, and
3 counsel confer]

4 THE COURT: 320 will remain. Thank you.

5 THE BAILIFF: Juror 261.

6 [Whereupon, juror number 261 comes forward]

7 [Whereupon, the Court, juror number 261, and
8 counsel confer]

9 THE COURT: 261 will remain. Thank you.

10 THE BAILIFF: Juror 244.

11 [Whereupon, juror number 244 comes forward]

12 [Whereupon, the Court, juror number 244, and
13 counsel confer]

14 THE COURT: 244 will remain.

15 THE BAILIFF: Juror 71.

16 [Whereupon, juror number 71 comes forward]

17 [Whereupon, the Court, juror number 71, and counsel
18 confer]

19 THE COURT: 71 is protected from the trial of this
20 case.

21 Just have a seat. We'll have you stay with us.

22 THE BAILIFF: Juror 335.

23 [Whereupon, juror number 335 comes forward]

24 [Whereupon, the Court, juror number 335, and
25 counsel confer]

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1 THE COURT: 335 will remain. Thank you.

2 THE BAILIFF: Juror 28.

3 THE COURT: Ladies and gentlemen, if you know Robin
4 Cannady or John Davis, please come forward.

5 They are both with the Charleston Police
6 Department; is that correct?

7 MR. SOWARDS: They are both lay witnesses.

8 THE COURT: I'm sorry. Robin Cannady or John
9 Davis. If you know either of those individuals, please
10 get in the line and come forward and see me.

11 [Whereupon, juror number 28 comes forward]

12 [Whereupon, the Court, juror number 28, and counsel
13 confer]

14 THE COURT: I'm going to protect you from the trial
15 of this case. You don't have to answer anymore
16 questions about this case. Okay? All right. Thank
17 you.

18 THE BAILIFF: 323.

19 [Whereupon, juror number 323 comes forward]

20 [Whereupon, the Court, juror number 323, and
21 counsel confer]

22 THE COURT: 323 will remain. Thank you.

23 THE BAILIFF: Juror 12.

24 [Whereupon, juror number 12 comes forward]

25 [Whereupon, the Court, juror number 12, and counsel

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1 confer]

2 THE COURT: I'll have you stay with us. Tell me
3 your juror number.

4 JUROR NUMBER 12: 12.

5 THE COURT: 12. Thank you. He will remain.

6 THE BAILIFF: Juror 177.

7 [Whereupon, juror number 177 comes forward]

8 [Whereupon, the Court, juror number 177, and
9 counsel confer]

10 THE COURT: 177 will remain. Thank you.

11 THE BAILIFF: Juror 315.

12 [Whereupon, juror number 315 comes forward]

13 [Whereupon, the Court, juror number 315, and
14 counsel confer]

15 THE COURT: 315 will remain. Thank you.

16 THE BAILIFF: Juror 101.

17 [Whereupon, juror number 101 comes forward]

18 [Whereupon, the Court, juror number 101, and
19 counsel confer]

20 THE COURT: 101 will remain.

21 THE BAILIFF: Juror 271.

22 [Whereupon, juror number 271 comes forward]

23 [Whereupon, the Court, juror number 271, and
24 counsel confer]

25 THE COURT: 271 will remain.

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1 Is there anyone else?

2 [Whereupon, there is no response]

3 THE COURT: Is there anyone else?

4 [Whereupon, there is no response]

5 THE COURT: Thank you. There are none.

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STRIKING OF THE JURY

THE COURT: Is the State ready?

MR. SOWARDS: The State is ready, Your Honor.

THE COURT: Is the defendant ready?

MR. KING: Defendant is ready.

THE COURT: All right. Thank you.

THE CLERK OF COURT: Ladies and gentlemen, if I call your name, if you will please come up to this podium, just like everyone else does directed by the bailiffs -- come up to the podium, stand, and face the parties. I will then ask the parties questions and then I'll either ask you to have a seat back in the audience, or I'll ask you to have a seat in the jury box.

Strikes are five and five.

Juror number 101, Earthalee Gant.

[Whereupon, juror number 101 comes forward]

[Off the record momentarily]

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

MR. SOWARDS: Please excuse this juror.

THE CLERK OF COURT: Ms. Gant, please have a seat back in the audience. You've been excused from the trial of this case.

THE COURT: But don't leave.

[Whereupon, juror number 101 returns to the audience]

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1 THE CLERK OF COURT: Juror number 61, Theresa
2 Robards. 261.

3 [Whereupon, juror number 61 comes forward]

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

5 MR. SOWARDS: Please seat this juror.

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

7 MR. KING: Please seat the juror.

8 THE CLERK OF COURT: Ms. Robards, please --

9 THE COURT: This way.

10 THE CLERK OF COURT: -- have a seat in the jury
11 box. You've been selected as a juror in this case.

12 [Whereupon, juror number 61 is seated in the jury
13 box as a juror]

14 THE CLERK OF COURT: Juror number 51. David
15 Childs, 51.

16 [Whereupon, juror number 51 comes forward]

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

18 MR. SOWARDS: Please seat this juror.

19 THE CLERK OF COURT: What say you for the
20 defendant?

21 MR. KING: Please seat this juror.

22 THE CLERK OF COURT: Mr. Childs, please have a seat
23 in the jury box. You've been selected as a juror in
24 this case.

25 [Whereupon, juror number 51 is seated in the jury

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1 box as a juror]

2 THE CLERK OF COURT: Juror number 12. W. Victor
3 Barley, 12.

4 [Whereupon, juror number 12 comes forward]

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

6 MR. SOWARDS: Please seat this juror.

7 THE CLERK OF COURT: What say you for the
8 defendant?

9 MR. KING: Please seat this juror.

10 THE CLERK OF COURT: Mr. Barley, please have a seat
11 in the jury box. You've been selected as a juror in
12 this case.

13 [Whereupon, juror number 12 is seated in the jury
14 box as a juror]

15 THE CLERK OF COURT: Juror number 335. Clisby
16 Williams, 335.

17 [Whereupon, juror number 335 comes forward]

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

19 MR. SOWARDS: Please excuse this juror.

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

23 [Whereupon, juror number 335 returns to the
24 audience]

25 THE CLERK OF COURT: Juror number 318. Dawn

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1 Vocolina, 318.

2 [Whereupon, juror number 318 comes forward]

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

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

5 [Whereupon, Mr. Sowards and Ms. Linder confer]

6 MR. SOWARDS: Please seat this juror.

7 THE CLERK OF COURT: What say you for the
8 defendant?

9 MR. KING: Please seat this juror.

10 THE CLERK OF COURT: Ms. Vocolina, please have a
11 seat in the jury box. You've been selected as a juror
12 in this case.

13 [Whereupon, juror number 318 is seated in the jury
14 box as a juror]

15 THE CLERK OF COURT: Juror number 236. Matthew
16 O'Toole, 236.

17 [Whereupon, juror number 236 comes forward]

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

19 MR. SOWARDS: Please seat this juror.

20 THE CLERK OF COURT: What say you for the
21 defendant?

22 MR. KING: Please seat this juror.

23 THE CLERK OF COURT: Mr. O'Toole, please have a
24 seat in the jury box. You've been selected as a juror
25 in this case.

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1 [Whereupon, juror number 236 is seated in the jury
2 box as a juror]

3 THE CLERK OF COURT: Juror number 218. Alfie Ming,
4 218.

5 [Whereupon, juror number 218 comes forward]

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

7 MR. SOWARDS: Please seat this juror.

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

9 MR. KING: Please seat the juror.

10 THE CLERK OF COURT: Mr. Ming, please have a seat
11 in the jury box. You've been selected as a juror in
12 this case.

13 [Whereupon, juror number 218 is seated in the jury
14 box as a juror]

15 THE CLERK OF COURT: Juror number 277. John
16 Semsar, 277.

17 [Whereupon, juror number 277 comes forward]

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

19 MR. SOWARDS: Please seat this juror.

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

21 MR. KING: Please seat this juror.

22 THE CLERK OF COURT: Mr. Semsar, please have a seat
23 in the jury box. You've been selected as a juror in
24 this case.

25 [Whereupon, juror number 277 is seated in the jury

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1 box as a juror]

2 THE CLERK OF COURT: Juror number 320. Kimberly
3 Walker, 320.

4 [Whereupon, juror number 320 comes forward]

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

6 MR. SOWARDS: Please seat this juror.

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

8 MR. KING: Please excuse this juror.

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

12 [Whereupon, juror number 320 returns to the
13 audience]

14 THE CLERK OF COURT: Juror number 330. Anthony
15 Whaley, 330.

16 [Whereupon, juror number 330 comes forward]

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

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

19 [Whereupon, Mr. Sowards and Ms. Linder confer]

20 MR. SOWARDS: Please excuse this juror.

21 THE CLERK OF COURT: Mr. Whaley, please have a seat
22 back in the audience. You've been excused from the
23 trial of this case.

24 Three strikes for the State.

25 [Whereupon, juror number 330 returns to the

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1 audience]

2 THE CLERK OF COURT: Juror number 323. Jill
3 Wardwell, 323.

4 [Whereupon, juror number 323 comes forward]

5 THE CLERK OF COURT: What say you for the State?

6 MR. SOWARDS: Please seat this juror.

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

8 MR. KING: Please seat this juror.

9 THE CLERK OF COURT: Mr. Wardwell, please have a
10 seat in the jury box. You've been selected as a juror
11 in this case.

12 [Whereupon, juror number 323 is seated in the jury
13 box as a juror]

14 THE CLERK OF COURT: Juror number 80. Kimberly
15 Dufault, 80.

16 [Whereupon, juror number 80 comes forward]

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

18 MR. SOWARDS: Please seat this juror.

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

20 MR. KING: Please seat this juror.

21 THE CLERK OF COURT: Ms. Default, please have a
22 seat in the jury box. You've been selected as a juror
23 in this case.

24 [Whereupon, juror number 80 is seated in the jury
25 box as a juror]

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1 THE CLERK OF COURT: Juror number 13. Jillian
2 Barton, 13.

3 [Whereupon, juror number 13 comes forward]

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

5 MR. SOWARDS: Please seat this juror.

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

7 MR. KING: Please excuse this juror.

8 THE CLERK OF COURT: Ms. Barton, please have a seat
9 back in the audience. You've been excused from the
10 trial of this case.

11 [Whereupon, juror number 13 returns to the
12 audience]

13 THE CLERK OF COURT: Juror number 253. Jessica
14 Qualls, 253.

15 [Whereupon, juror number 253 comes forward]

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

17 MR. SOWARDS: Please seat this juror.

18 THE CLERK OF COURT: What say you for the
19 defendant?

20 MR. KING: Please seat this juror.

21 THE CLERK OF COURT: Mr. Qualls, please have a seat
22 in the jury box. You've been selected as a juror in
23 this case.

24 [Whereupon, juror number 253 is seated in the jury
25 box as a juror]

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1 THE CLERK OF COURT: Juror number 28. Alesha
2 Brown, 28.

3 [No response]

4 MR. SOWARDS: Your Honor, I think juror number 28
5 was protected and she --

6 THE COURT: Yes.

7 THE CLERK OF COURT: Ms. Brown, please have a seat.

8 THE COURT: Ms. Brown, please have a seat. Thank
9 you.

10 Thank you, Mr. Sowards.

11 [Whereupon, juror number 28 returns to the
12 audience]

13 THE CLERK OF COURT: Juror number 171. Carl
14 Kennon, 171.

15 [Whereupon, juror number 171 comes forward]

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

17 MR. SOWARDS: Please seat this juror.

18 THE CLERK OF COURT: What say you for the
19 defendant?

20 MR. KING: Please excuse this juror.

21 THE CLERK OF COURT: Mr. Kennon, please have a seat
22 back in the audience. You've been excused from the
23 trial of this case.

24 Three strikes for the defendant.

25 [Whereupon, juror number 171 returns to the

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1 audience]

2 THE CLERK OF COURT: Juror number 89. Martha
3 Fitts, 89.

4 [Whereupon, juror number 89 comes forward]

5 THE CLERK OF COURT: What say you for the State?

6 MR. SOWARDS: Please seat this juror.

7 THE CLERK OF COURT: What say you for the
8 defendant?

9 MR. KING: Please seat this juror.

10 THE CLERK OF COURT: Ms. Fitts, please have a seat
11 in the jury box. You've been selected as a juror in
12 this case.

13 [Whereupon, juror number 89 is seated in the jury
14 box as a juror]

15 THE CLERK OF COURT: Juror number 14. Jonathan
16 Bates, 14.

17 [Whereupon, juror number 14 comes forward]

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

19 MR. SOWARDS: Please seat this juror.

20 THE CLERK OF COURT: What say you for the
21 defendant?

22 MR. KING: Please seat this juror.

23 THE CLERK OF COURT: Ms. Bates -- Mr. Bates, please
24 have a seat in the jury box. You've been selected as a
25 juror in this case.

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1 [Whereupon, juror number 14 is seated in the jury
2 box as a juror]

3 THE CLERK OF COURT: Now picking for alternates.
4 The strikes are one and two.

5 The first alternate. Juror number 202. Anna
6 Makusij, 202.

7 [Whereupon, juror number 202 comes forward]

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

9 MR. SOWARDS: Please seat this juror.

10 THE CLERK OF COURT: What say you for the
11 defendant?

12 MR. KING: Please seat this juror.

13 THE CLERK OF COURT: Madam Juror, please have a
14 seat in the jury box. You've been selected as a juror
15 in this case.

16 [Whereupon, juror number 202 is seated in the jury
17 box as an alternate juror]

18 THE CLERK OF COURT: Now picking for the second
19 alternate. Strikes are one and two.

20 Juror number 217. Lori Milligan-Chorvat, 217.

21 [Whereupon, juror number 217 comes forward]

22 THE CLERK OF COURT: What say you for the State?

23 MR. SOWARDS: Please seat this juror.

24 THE CLERK OF COURT: What say you for the
25 defendant?

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1 MR. KING: Please excuse this juror.

2 THE CLERK OF COURT: Ms. Milligan-Chorvat, please
3 have a seat back in the audience. You've been excused
4 from the trial of this case.

5 [Whereupon, juror number 217 returns to the
6 audience]

7 THE CLERK OF COURT: Juror number 244. Randall
8 Phillips, 244.

9 [Whereupon, juror number 244 comes forward]

10 THE CLERK OF COURT: What say you for the State?

11 MR. SOWARDS: Please seat this juror.

12 THE COURT: What say you for the defendant?

13 MR. KING: Please excuse this juror.

14 THE CLERK OF COURT: Mr. Phillips, please have a
15 seat back in the audience. You've been excused from the
16 trial of this case.

17 That's two strikes for the defendant.

18 [Whereupon, juror number 244 returns to the
19 audience]

20 THE CLERK OF COURT: Juror number 315. Lorena
21 Vegabaez, 315.

22 [Whereupon, juror number 315 comes forward]

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

24 MR. SOWARDS: Please seat this juror.

25 THE COURT: Any challenge from the defendant?

State vs. Gentile
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1 MR. KING: No.

2 THE CLERK OF COURT: Ms. Vegabaez, please have a
3 seat in the jury box. You've been selected as a juror
4 in this case.

5 [Whereupon, juror number 315 is seated in the jury
6 box as an alternate juror]

7 THE CLERK OF COURT: Your Honor, the jury has been
8 selected and seated.

9 THE COURT: Thank you.

10 Any motions or matters from the State?

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

12 MR. KING: May I confer for one moment, Your Honor?

13 THE COURT: Yes. Yes.

14 [Whereupon, Mr. King, the defendant, and Ms. Van
15 Pala confer]

16 MR. KING: I have nothing, Your Honor.

17 THE COURT: Ladies and gentlemen, you were not
18 selected as the jury to try this case but as you know,
19 your service is for the week unless I have protected you
20 otherwise. Please call the hotline number, that you
21 were given, after 6:00 p.m. today to receive further
22 instructions.

23 I may not see the rest of you again for the week,
24 but thank you for your contribution to our justice
25 system and for your service to Charleston County. Y'all

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January 4, 2016

1 are excused. Thank you.

2 [Whereupon, the jury panel is excused and exits the
3 courtroom at 12:29 p.m.]

4 THE COURT: Ladies and gentlemen, you have been
5 selected as the jury to try this case. It is an
6 appropriate time we'll take a lunch break and then there
7 are some matters I must handle outside of your presence,
8 so we will not begin the trial of this case until 9:30
9 in the morning. 9:30. So once you leave here, the
10 bailiffs will show you where to report and how to do
11 that.

12 Ladies and gentlemen, these are what I call my
13 general instructions. These apply to you throughout the
14 progress of this trial until I tell you otherwise.
15 Until you have been discharged from service in this
16 case, you may not perform any investigation, research,
17 or experiment of any kind, either on your own or as a
18 group. Do not consult any dictionaries or other
19 encyclopedias for general information on the subjects of
20 this trial. You may not look up anything anywhere
21 concerning this case or the people involved, and that
22 includes the attorneys, the defendant, the judge, as
23 well as the witnesses. You may not go to the scene
24 where the events are alleged to have taken place. You
25 may not use any internet maps or Google Earth or

State vs. Gentile
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1 anything of that nature. You must not have any
2 discussions regarding this case with each other or with
3 anyone. And, ladies and gentlemen, that's face-to-face
4 discussions, but it also means you can't text about this
5 case, blog about this case, make any postings on face
6 book or any other social internet site. All right?
7 Ladies and gentlemen, I do not know what they all are.
8 I cannot keep up with them so, simply put, you may not
9 talk about this case with anyone in any fashion.

10 Please understand that I am giving these directions
11 as part of my responsibility to ensure that justice is
12 done. Your actions could jeopardize the results of this
13 trial if you violate my instructions.

14 Ladies and gentlemen, if you become aware of
15 another juror's violations, you also must report that to
16 me immediately.

17 Ladies and gentlemen, please have a wonderful
18 evening. I will see you back at 9:30 in the morning.
19 Please be escorted to your jury room. Please follow our
20 lovely bailiff. Thank you.

21 [Off the record momentarily]

22 [Whereupon, the jury exits the courtroom at
23 12:31 p.m.]

24 THE COURT: Anything before we break for lunch?

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

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1 MR. KING: Only the matter of whether Mr. Gentile
2 will remain on bond.

3 THE COURT: Do you have the bond form filled out?

4 MR. KING: I do, Your Honor.

5 THE COURT: I'll tell you what. I'll address that
6 after lunch. He is going to stay with us until lunch,
7 and then I will review the paperwork.

8 Mr. Gentile, you're going to stay with us
9 throughout the lunch hour, and then I'll hear arguments
10 on behalf -- but it's into our lunch hour now. All
11 right?

12 2:15. 2:15. And I don't know what courtroom we're
13 going to be in.

14 THE CLERK OF COURT: 3-A.

15 THE COURT: 3-A. I'll see you in 3-A. Thank you.

16 [Whereupon, a recess is taken from 12:37 p.m. to
17 2:26 p.m.]

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State vs. Gentile
Pretrial Motions
January 4, 2016

PRETRIAL MOTIONS

THE COURT: What is pending? Mr. Sowards, what motions are pending?

MR. SOWARDS: Your Honor, I think Mr. King was requesting a Jackson v. Denno hearing. He's challenging the search warrant.

There was -- I didn't get it to the law clerk this morning, but there might be something regarding transcripts. I think we've resolved that between us.

And I'm pretty sure that's it. And the bond issue.

THE COURT: Do you have any motions or matters?

MR. SOWARDS: I do not.

THE COURT: Mr. King?

MR. KING: Your Honor, the State intends to introduce statements that my client made to law enforcement. We're just requesting an evidentiary hearing. It's my understanding if we request a hearing, the State has the burden of proof by a preponderance of the evidence that the statement's voluntary and that Miranda is applied.

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State vs. Gentile
Jackson v. Denno Hearing
January 4, 2016

JACKSON V. DENNO HEARING

THE COURT: Mr. Sowards?

MR. SOWARDS: Thank you, Your Honor. The State
calls Detective Jake Grill.

[Whereupon, Mr. Grill comes forward]

[Whereupon, Mr. Grill is duly sworn by the clerk of
court as follows: do you swear or affirm that your
testimony will be the truth, the whole truth, and
nothing but the truth, so help you God]

THE WITNESS: Yes, sir, I do.

[Whereupon, Mr. Grill takes the witness stand]

THE CLERK OF COURT: If you will please state your
full name, and spell your last name for the record.

THE WITNESS: Yes, sir. Detective Charles Jacob
Grill. G-R-I-L-L.

THE COURT: Mr. Sowards?

MR. SOWARDS: Thank you.

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Jackson v. Denno Hearing
Charles Jacob Grill
Direct Examination by Mr. Sowards

CHARLES JACOB GRILL,

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

DIRECT EXAMINATION

BY MR. SOWARDS:

Q. Detective Grill, where are you currently employed?

A. I work for the City of Charleston Police
Department.

Q. And in what capacity are you employed with the City
of Charleston Police Department?

A. I am currently assigned to the special
investigations unit of the Charleston Police Department.

Q. And were you working with the City of Charleston
Police Department on February 9th, 2012?

A. Yes, sir, I was.

Q. And in what capacity were you working on that date?

A. I was a detective with the investigations unit,
special investigations unit, and we executed a search warrant
on that particular day.

Q. Detective Grill, did you witness any statements on
that date from the defendant, Omar Gentile?

A. Yes, sir, I did.

Q. And where did you witness those statements?

A. We were inside a residence, I believe in the back
bedroom downstairs. We were in there, myself and Detective

Jackson v. Denno Hearing
Charles Jacob Grill
Direct Examination by Mr. Sowards

1 Shealy.

2 Q. And was the defendant, Omar Gentile, read his
3 Miranda rights?

4 A. Yes, he was.

5 Q. And who read him those rights?

6 A. Detective Shealy.

7 Q. And how was he read those rights?

8 A. He was read those rights from his -- from a
9 CPD-issued Miranda card.

10 MR. SOWARDS: Your Honor, may I approach the
11 witness?

12 THE COURT: You may.

13 Q. [Mr. Sowards] Detective Grill, I'm going to hand
14 you this card, and if you could please tell me what that is.

15 A. This is a CPD-issued Miranda warning card that we
16 use to provide defendants of their rights or their Miranda
17 warnings.

18 Q. And is that the card that was used when the
19 defendant, Omar Gentile, was read his Miranda rights?

20 A. Yes, sir, it is.

21 Q. And how do you know that?

22 A. Well, the defendant signed his card and, also, I
23 signed it and Detective Shealy signed it.

24 Q. And did the defendant, Omar Gentile, indicate to
25 you that he understood those rights or did he indicate that he

Jackson v. Denno Hearing
Charles Jacob Grill
Direct Examination by Mr. Sowards

1 understood those rights?

2 A. Yes, sir, he did.

3 Q. And how did he indicate?

4 A. Well, he said that he understood, and that -- he
5 signed the card.

6 Q. And did Omar Gentile's -- or the defendant's waiver
7 of his rights appear to you to be knowingly and voluntary?

8 A. Yes, sir.

9 Q. Do you know, or did you know, the age of the
10 defendant at the time?

11 A. I'm sure we did, but I don't recall his age.

12 Q. Did you know his education?

13 A. No, sir.

14 Q. Did you observe any mental defects?

15 A. No, sir.

16 Q. Did he appear to be intoxicated?

17 A. No, sir.

18 Q. Did he have bloodshot eyes or slurred speech?

19 A. No, sir, he did not.

20 Q. Did he appear to have any physical defects?

21 A. No, sir.

22 Q. And was the defendant detained at the time?

23 A. Yes, he was.

24 Q. And how was he detained?

25 A. He was placed in handcuffs.

Jackson v. Denno Hearing
Charles Jacob Grill
Direct Examination by Mr. Sowards

1 Q. And why was he placed in handcuffs?

2 A. Because like I earlier stated, that we were
3 executing a search warrant at that residence. He was located
4 inside that residence.

5 We detained him. We placed handcuffs on his hands,
6 behind his back and then when we brought him into the room to
7 advise him of his rights, we removed those handcuffs and put
8 them up front.

9 Q. Was the defendant threatened at any time?

10 A. No, sir, he was not.

11 Q. Was the defendant promised any leniency if he
12 talked?

13 A. No, sir, he was not.

14 Q. And did the defendant give a statement?

15 A. Yes, sir, he did speak with us.

16 Q. And were his statements memorialized in any way?

17 A. Yes, sir. Detective Shealy wrote a report.

18 Q. And what statements did the defendant make on that
19 date?

20 A. He stated -- may I refer to my report -- or to
21 Detective Shealy's report?

22 MR. SOWARDS: Your Honor, may --

23 THE COURT: You may.

24 [Whereupon, the witness reviews documents]

25 A. He basically stated that it was his residence.

Jackson v. Denno Hearing
Charles Jacob Grill
Direct Examination by Mr. Sowards

1 THE WITNESS: Make sure.

2 [Whereupon, the witness reviews documents]

3 A. He stated that he came to the residence every day,
4 that he does have a room at that residence, and that his room
5 was upstairs.

6 And during the questioning, he stated that -- we
7 asked him to describe where his room was and he stated that it
8 was upstairs and kind of looked up, upward, in an upward
9 direction as his room. So we were in the back bedroom, and
10 there was a room directly above us and that's the direction
11 that he looked to.

12 Q. And did he make any other statements?

13 A. I'm sorry. Yeah.

14 He stated that he -- he requested that we get some
15 pants for him, because he was in I believe something like
16 basketball shorts and a tank top at the time when he was
17 initially detained.

18 He asked for a pair of pants, and we retrieved them
19 from the room that he indicated was his, and we also got him a
20 thermal tee-shirt and some shoes from that room.

21 And then he also stated that some keys belonged to
22 him that were found inside the lock of the door of that
23 bedroom directly above where we were.

24 And he also -- I'm sorry. He also stated that he
25 had money in that room, as well. I believe it was a thousand

Jackson v. Denno Hearing
Charles Jacob Grill
Direct Examination by Mr. Sowards

1 -- roughly -- he said it was roughly \$1,000 in that room.

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

3 THE COURT: Take your time.

4 MR. SOWARDS: No further questions.

5 Please answer any questions that Mr. King may
6 have.

7 THE WITNESS: Okay.

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Jackson v. Denno Hearing
Charles Jacob Grill
Cross-Examination by Mr. King

CROSS-EXAMINATION

BY MR. KING:

Q. Do you know: were you the first person to go into the residence? Were you part of the group?

A. The entry team? Yes, sir, I was.

Q. The door was broken in?

A. We made entry into it, yes, sir.

Q. Can you explain how that happens?

A. Well, we knock our presence and alert everyone that we are there to conduct a search warrant. After waiting, we'll knock the door in with the entry device that we use.

Q. How long do you wait?

A. That particular day or -- I mean, it varies.

Q. Do you remember that day?

A. It varies. So --

Q. So it's some sort of big heavy device --

A. Yes, sir.

Q. -- like a battering ram or something and you --

A. Yes, sir.

Q. -- bash the door?

A. Yes, sir.

Q. And when that happened, did you see anyone when you --

A. Yes, sir.

Q. -- busted the door open?

Jackson v. Denno Hearing
Charles Jacob Grill
Cross-Examination by Mr. King

1 A. Yes, sir.

2 We located the defendant in the downstairs living
3 room, I believe at the -- I think he was sitting on the couch
4 like right at the coffee table.

5 Q. He's sitting on the couch in like basketball shorts
6 or pants?

7 A. I believe so, yes, sir.

8 Q. And the door was busted open?

9 A. Yes, sir.

10 Q. How many officers entered at that time?

11 A. I believe it was -- I would say anywhere from six
12 to ten.

13 I'm not a hundred percent sure because we have
14 other officers that have duties as, you know, perimeter
15 security while we're out there.

16 So I don't know exactly how many was actually
17 designated for the entry team.

18 Q. Were there any dogs?

19 A. Like?

20 Q. Drug-sniffing dogs that were brought in, that you
21 know of?

22 A. I don't particularly remember any or recall any.
23 But we do have --

24 Q. I'm not saying there was.

25 A. -- them available.

Jackson v. Denno Hearing
Charles Jacob Grill
Cross-Examination by Mr. King

1 Q. I'm just asking.

2 A. Yeah, we do have some available.

3 I don't know if we did bring any in, though, if
4 that makes sense.

5 Q. But it could have been as many as ten police
6 officers?

7 A. Sir?

8 Q. It could have been as many as ten police officers
9 who entered into the house?

10 A. To make entry.

11 Q. Okay.

12 A. Yes, sir.

13 Q. And at that point, Mr. Gentile is detained and
14 cuffed you said --

15 A. Yes, sir.

16 Q. -- behind his back?

17 A. Yes, sir.

18 Q. And then how long before he was even interrogated?
19 Before you asked him questions?

20 A. Well, I don't know. I don't know roughly the
21 amount of time it was.

22 Q. Was it immediately, or was it after other things
23 had been done inside the house?

24 A. Well, I mean, as soon as we enter a residence, we
25 have to secure that residence.

Jackson v. Denno Hearing
Charles Jacob Grill
Cross-Examination by Mr. King

1 We have to make sure there's no other people in
2 there, that we don't know, for our safety. So as soon as we
3 do that, then we -- we secure everybody. We read them the
4 search warrants, we read them their Mirandas, and then we'll
5 move into questioning at that time.

6 Q. Now, where exactly in the house was he questioned?

7 A. I believe there was -- downstairs there's a back
8 bedroom, a converted bedroom. There was another individual
9 located inside that bedroom.

10 Q. The handicapped individual? Mr. Davis?

11 A. Yes, sir. Yes, sir.

12 Q. So when he's taken in there, who -- what all -- is
13 it just you and Officer Shealy --

14 A. Yes, sir. We did --

15 Q. -- at that time?

16 A. We did an initial, you know, search of that room to
17 make sure there's no weapons or anything that he can grab, or
18 anybody can grab, and then we brought him in there and
19 questioned him in there.

20 Q. Just the two of you?

21 A. Yes, sir.

22 Q. And meanwhile the other officers are conducting the
23 search of the rest of the residence?

24 A. Yes, sir.

25 Doing whatever they've been assigned to do. Yes,

Jackson v. Denno Hearing
Charles Jacob Grill
Cross-Examination by Mr. King

1 sir.

2 Q. Were you and Shealy, were y'all both armed,
3 uniformed?

4 A. Yes, sir.

5 Q. And the other officers who came in were also armed?

6 A. Yes, sir.

7 Q. Do you remember if he was put on the couch in his
8 handcuffs, for a little bit, with Mr. Davis?

9 A. You mean like initially? Yes, sir.

10 Q. Yes.

11 A. He was.

12 Q. Mr. Davis was cuffed, as well?

13 A. Yes, sir.

14 Q. And they were put on the couch together, at --

15 A. Yes, sir.

16 Q. -- least at the beginning?

17 Was there ever any discussion of arresting
18 Mr. Davis [phonetic]?

19 A. As what -- who?

20 Q. As to Mr. Gentile. Was there ever --

21 A. Did I talk to Mr. Gentile --

22 Q. Yeah. Yeah.

23 Did y'all threaten to like take Mr. Davis to
24 jail --

25 A. We didn't --

Jackson v. Denno Hearing
Charles Jacob Grill
Cross-Examination by Mr. King

1 Q. -- or anything like that?

2 A. -- threaten anybody.

3 Q. Did you say anything about arresting Mr. Davis?

4 A. No, sir.

5 I wouldn't ask for Mr. Gentile's opinion for that,
6 if that's what you're asking me.

7 Q. Well, I know you wouldn't ask his opinion. But was
8 it said out loud?

9 A. [No response]

10 Q. Because he was never arrested; right? He was --

11 A. I don't --

12 Q. -- Mr. Davis.

13 A. Yeah, he was never arrested. We never put any
14 charges --

15 MR. KING: I have no further questions, Your Honor.

16 THE COURT: Mr. Sowards?

17 MR. SOWARDS: No further questions.

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

19 THE WITNESS: Thank you, Your Honor.

20 [Whereupon, Mr. Grill is excused and exits the
21 witness stand]

22 THE COURT: Call your next witness.

23 MR. SOWARDS: The State calls Detective Agent
24 Jonathan Shealy.

25 [Whereupon, Mr. Shealy comes forward]

Jackson v. Denno Hearing
Charles Jacob Grill
Cross-Examination by Mr. King

1 [Whereupon, Mr. Shealy is duly sworn by the clerk
2 of court as follows: do you swear or affirm that your
3 testimony will be the truth, the whole truth, and
4 nothing but the truth, so help you God]

5 THE WITNESS: Yes, sir, I do.

6 THE CLERK OF COURT: Be seated.

7 [Whereupon, Mr. Shealy takes the witness stand]

8 THE CLERK OF COURT: If you'll please state your
9 full name, and spell your last name for the record.

10 THE WITNESS: Agent Jonathan Shealy. S-H-E-A-L-Y.

11 MR. SOWARDS: Thank you, Agent Shealy.
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Jackson v. Denno Hearing
Jonathan Shealy
Direct Examination by Mr. Sowards

JONATHAN SHEALY,

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

DIRECT EXAMINATION

BY MR. SOWARDS:

Q. Where are you currently employed?

A. Currently, I'm employed with the South Carolina Law
Enforcement Division.

Q. And where were you working back on February 9th,
2012?

A. I was working with the City of Charleston Police
Department.

Q. And in what capacity were you working with the
Charleston --

A. I was a member of the special investigations unit.

Q. And were you assigned as the case agent on the
search warrant involving the defendant, Omar Gentile, at 1
Grove Street?

A. Yes, sir, I was.

Q. And did you receive any statements from the
defendant on that date?

A. Yes, sir, I did.

Q. And where did you receive those statements?

A. When we spoke to the defendant, we were in the
downstairs of the residence in a back -- I describe it as a

Jackson v. Denno Hearing
Jonathan Shealy
Direct Examination by Mr. Sowards

1 makeshift bedroom area in the back of the house.

2 Q. And was anyone with you when you received those
3 statements from the defendant?

4 A. Yes, sir, there was.

5 Q. And who was that?

6 A. Detective Grill.

7 Q. Prior to receiving any statements from the
8 defendant, did you recite his Miranda rights to him?

9 A. Yes, sir, I did.

10 Q. And how did you recite those Miranda rights?

11 A. I verbally read, verbatim, from the Miranda cards
12 that we are issued through the police department.

13 Q. And could you read those rights exactly as you read
14 them to the defendant on February 9th, 2012?

15 A. Yes, sir.

16 You have the to remain silent. Anything you say
17 can and will be used against you in a court of law. You have
18 the right to talk with a lawyer and have him present during
19 any questioning. If you cannot afford to hire a lawyer, one
20 will be appointed to represent you before any questioning, if
21 you wish one. If you decide to answer questions without a
22 lawyer present, you have the right to stop answering questions
23 at any time you so choose.

24 Q. And did anyone sign that card?

25 A. Yes. He did.

Jackson v. Denno Hearing
Jonathan Shealy
Direct Examination by Mr. Sowards

1 Q. Who signed it?

2 A. The defendant, Mr. Gentile. Omar.

3 Q. And did anyone else sign it?

4 A. Yes, sir.

5 Myself and Detective Grill both signed it and dated
6 it and timed it.

7 Q. And what's the date on it?

8 A. The date is February the 9th, 2012.

9 Q. After reciting those rights to the defendant, did
10 he indicate to you that he understood them?

11 A. Yes, sir, he did.

12 Q. And did he indicate to you that he wished to waive
13 those rights?

14 A. Yes, sir.

15 Q. And did his waiver appear to be knowing and
16 voluntary?

17 A. Yes, sir, it did.

18 Q. Did you observe any mental defects on the
19 defendant?

20 A. No, sir, I didn't.

21 Q. What about was the defendant -- did the defendant
22 appear to be intoxicated at the time?

23 A. No, sir.

24 Q. Did you observe bloodshot eyes?

25 A. No, sir.

Jackson v. Denno Hearing
Jonathan Shealy
Direct Examination by Mr. Sowards

1 Q. What about slurred speech?

2 A. No, sir.

3 Q. Did you observe any physical defects from the
4 defendant?

5 A. No, sir.

6 Q. And was the defendant detained at the time?

7 A. Yes, sir, he was.

8 Q. And why was the defendant detained?

9 A. It's common practice that whenever we execute a
10 search warrant, that everyone inside that residence is
11 detained for a number of reasons. One is officer safety.
12 Another reason is to preserve any evidence that may be
13 destroyed by parties inside the residence during the execution
14 of the search warrant.

15 Q. And was the defendant threatened at any time during
16 his statement?

17 A. No, sir.

18 Q. Did you promise him any leniency if he talked?

19 A. No, sir.

20 Q. And did the defendant eventually give a statement?

21 A. Yes, sir, he did.

22 Q. And did you memorialize that statement in any way?

23 A. I did in my report.

24 Q. And what statements did the defendant make?

25 A. The defendant told us several different things.

Jackson v. Denno Hearing
Jonathan Shealy
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1 He basically told us that he did come to the
2 residence every day, that he came there to take care of his
3 cousin, a Mr. Davis, John Davis.

4 He replied -- he stated that he did stay there from
5 time to time, and he stated where his bedroom was. He
6 described it to us being upstairs. When we asked specifically
7 where it was, from the position where we were downstairs, if
8 you look straight up, that would be right where his bedroom
9 was. He motioned upward.

10 He also told us that he had some money in his room
11 and that was, he said, roughly around \$1,000.

12 Later on, he had asked for some pants, I believe a
13 thermal shirt, and some shoes. We retrieved those items from
14 his room.

15 There's a key that was in a lock going into his
16 room. That key was noticed. We asked him if he wanted his
17 key. He stated that he did want his key from his room.

18 I did ask him whether or not he realized that there
19 was a school directly across from his residence. He stated
20 that there was a school directly across from his residence,
21 and that there was also a church right around the corner.

22 I think that's --

23 [Whereupon, the witness reviews documents]

24 A. That's about it.

25 Q. [Mr. Sowards] Agent Shealy, did the defendant ever

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1 make any statements about any narcotics that were found in the
2 house?

3 A. He did not.

4 Q. Did the defendant claim ownership of anything?

5 A. He did not.

6 Q. Was he asked?

7 A. He was.

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

9 [Whereupon, Mr. Sowards and Ms. Linder confer]

10 MR. SOWARDS: No further questions at this time.

11 Please answer any questions that Mr. King may
12 have.

13 THE COURT: Mr. King?

14 MR. KING: Just briefly.

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Jackson v. Denno Hearing
Jonathan Shealy
Cross-Examination by Mr. King

CROSS-EXAMINATION

BY MR. KING:

Q. You were -- you wrote the report in this case?

A. Yes, sir, I did.

Q. And that's the report where you documented what --
the statements Mr. Gentile made?

A. Yes, sir.

Q. And is that refreshing your memory for testifying
today?

A. Yes, sir.

Q. What you put in the report, is that accurate --

A. Yes, sir.

Q. -- as far as what he said?

A. Yes, sir.

Q. Did you put down everything that he said in your
remark -- I mean, in your police report?

A. Yes, sir.

Q. Did you leave anything out, that he said, that was
important?

A. No, sir.

MR. KING: That's all the questions I have.

MR. SOWARDS: Nothing further from the State.

THE COURT: You may step down. Thank you.

[Whereupon, Mr. Shealy is excused and exits the
witness stand]

Jackson v. Denno Hearing
Jonathan Shealy
Cross-Examination by Mr. King

1 THE COURT: Call your next witness.

2 MR. SOWARDS: We have no more witnesses, Your
3 Honor.

4 THE COURT: Do you have any witnesses, Mr. King?

5 MR. KING: Beg the Court's indulgence.

6 THE COURT: Take your time.

7 [Whereupon, Mr. King and Mr. Gentile confer]

8 MR. KING: Your Honor, I have no witnesses.

9 THE COURT: Happy to hear argument.

10 MR. KING: Your Honor, I would just argue that -- I
11 don't know if I have much of an argument against the
12 Miranda.

13 But as far as voluntariness goes, the police did
14 bust the door down with a battering ram. There were six
15 to ten police officers, armed police officers, who
16 entered into the residence.

17 He was handcuffed and detained. The handicapped
18 individual that lives there in the residence, as well,
19 was handcuffed and detained. They sat on the couch
20 together. He was taken into the room along with two
21 officers who were armed.

22 I think that that's the course of the situation and
23 that we argue that the statement, again, was not
24 voluntary.

25 THE COURT: Sir, if you would please take your

Jackson v. Denno Hearing
Jonathan Shealy
Cross-Examination by Mr. King

1 phone outside. I don't know how you got into this
2 courtroom, but I know there's at least four signs you
3 had to pass.

4 If everyone would take this moment to look at your
5 phones, make sure they're turned off.

6 The next one that goes off I will be taking into
7 custody, deputies.

8 Mr. Sowards?

9 MR. SOWARDS: Thank you, Your Honor.

10 Both officers testified that while the defendant
11 was detained, it was for his safety, for the
12 preservation of evidence. It seemed like it was well
13 after entry was made into the home.

14 Your Honor, Detective Shealy read him the rights
15 verbatim from the card. The defendant signed it,
16 indicating that he understood those rights and wished to
17 waive them.

18 And then, Your Honor, he was asked several
19 questions. He answered some, he refused to answer
20 others, which we think -- the State would submit speaks
21 to the voluntariness of this -- of the statements that
22 were given.

23 THE COURT: Say that last sentence one more time,
24 Mr. Sowards.

25 MR. SOWARDS: Your Honor, the defendant was asked

Jackson v. Denno Hearing
Jonathan Shealy
Cross-Examination by Mr. King

1 several questions. He answered some, he refused to
2 answer others, and the State would submit that that
3 speaks to the voluntariness of the statements that were
4 given. He understood that he did not have to speak to
5 police, but he did so.

6 THE COURT: Anything further, Mr. King?

7 MR. KING: No, Your Honor.

8 THE COURT: And so what relief are you seeking?
9 What do you want me to do, Mr. King?

10 MR. KING: Suppress the statements, Your Honor.

11 THE COURT: All of the statements?

12 MR. KING: Yes, Your Honor.

13 THE COURT: Based upon the testimony that has been
14 presented here today, under the totality of the
15 circumstance I find -- I deny your motion to suppress
16 the statement. I find that they were not coerced.

17 Note your objection to my ruling.
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State vs. Gentile
Motion by Mr. King
January 4, 2016

MOTIONS

THE COURT: Next motion, Mr. King?

MR. KING: Your Honor, the next motion is regarding the search warrant. This case is all based upon a search warrant based upon a controlled buy by a confidential informant.

First, I would just like, for the record, to incorporate by reference two other hearings that have been held on this issue. On June 20th, 2014, there was a hearing in front of Judge Young where I had requested a copy of the video-recording of the informant making the buy. And Mr. Gentile wanted to see that, as well. That was denied.

On September 18th, 2015, there was a hearing to reveal the identity of the informant. Your Honor conducted that hearing, and that motion was denied September 18th, 2015.

We are renewing that motion, Your Honor, to reveal the identity of the information and to call him to the stand for this hearing, based on the confrontation clause and due process clause.

THE COURT: To call the informant to the stand?

MR. KING: Yes, Your Honor. That's correct.

The confrontation and due process clauses under the U.S. and South Carolina constitutions.

State vs. Gentile
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1 The second thing, Your Honor -- there's two parts
2 to my argument. One is that the affidavit in the search
3 warrant does not establish probable cause. I cited to a
4 case, State vs. Dupree, which holds that if a controlled
5 buy is properly conducted, then it would establish
6 probable cause for a search warrant. I just request
7 that the State make an evidentiary showing that the
8 controlled buy was properly conducted.

9 And the final issue, Judge, on that, I found a case
10 out of Indiana where an Indiana court suppressed
11 evidence based on a search warrant where even though the
12 search warrant said they have up to ten days to serve
13 the warrant, they suppressed it -- because I think seven
14 days had gone by -- and they argued that the probable
15 cause had dissipated during the time that the warrant
16 was issued and the time the warrant was served.

17 THE COURT: Do you have any South Carolina law on
18 that?

19 MR. KING: I referenced one case, Your Honor, that
20 says that probable cause does dissipate with time and
21 that the warrant has to be served in a reasonable time.
22 I believe that --

23 THE COURT: All right. What case is that?

24 MR. KING: That was Winborne, Your Honor. State
25 vs. Winborne.

State vs. Gentile
Motion by Mr. King
January 4, 2016

1 THE COURT: W-I-N-B-O-R-N-E.

2 MR. KING: That is State vs. Winborne, 273 South
3 Carolina 62.

4 I believe that's before the search warrant statute
5 was adopted in South Carolina. It does have a ten-day
6 -- up to ten days in that statute, as well.

7 But I'm making this argument on constitutional
8 grounds. The Indiana case references some federal law.
9 I believe it's the eighth circuit.

10 THE COURT: Anything further?

11 MR. KING: No. That's basically it, Your Honor.
12 But I just request --

13 THE COURT: Just outlining the issues in --

14 MR. KING: Right.

15 And that the State establish that there was
16 probable cause in the search -- in the affidavit itself
17 in the search warrant, and that the probable cause
18 extended until the time that the search warrant was
19 executed.

20 THE COURT: And are you renewing your motion to
21 reveal the C.I.?

22 MR. KING: I am, Your Honor.

23 THE COURT: All right.

24 MR. KING: And, overall, making a motion to
25 suppress the -- or suppress the evidence based on the

State vs. Gentile
Motion by Mr. King
January 4, 2016

1 other two search warrant issues that I mentioned.

2 THE COURT: Mr. Sowards?

3 MR. SOWARDS: Would Your Honor like for me to
4 address the first part, and then call our witness for
5 the search warrant?

6 THE COURT: Let's go ahead and call your witness.

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State vs. Gentile
Motion to Suppress
January 4, 2016

MOTION TO SUPPRESS

MR. SOWARDS: The State calls Agent Jonathan
Shealy.

[Whereupon, Mr. Shealy comes forward]

THE CLERK OF COURT: Place your left hand on the
Bible, and raise your right for me.

[Whereupon, Mr. Shealy is duly sworn by the clerk
of court as follows: do you swear or affirm the
testimony you shall give the Court shall be the truth,
the whole truth, and nothing but the truth, so help you
God]

THE WITNESS: Yes, ma'am, I do.

THE CLERK OF COURT: Thank you. Please be seated.

[Whereupon, Mr. Shealy takes the witness stand]

THE CLERK OF COURT: Sir, for the record, if you'll
please state your name, spelling your last name.

THE WITNESS: Agent Jonathan Shealy. S-H-E-A-L-Y.

MR. SOWARDS: Thank you, Agent Shealy.

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Motion to Suppress
Jonathan Shealy
Direct Examination by Mr. Sowards

JONATHAN SHEALY,

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

DIRECT EXAMINATION

BY MR. SOWARDS:

Q. What is your occupation?

A. I'm currently employed with the South Carolina Law
Enforcement Division.

Q. And have you previously worked for the City of
Charleston Police Department?

A. Yes, sir.

Q. And when were you employed with the City of
Charleston Police Department?

A. I started with the City of Charleston Police
Department back in 2006, and I worked there for approximately
eight and a half years.

Q. And so it's fair to say you were employed with the
City of Charleston Police Department in February of 2012?

A. Yes, sir.

Q. And what were you -- what was your position with
the department during that time?

A. I was a member of the special investigations unit.

Q. And how long -- and could you describe what the
special investigations unit is?

A. The special investigations unit is a unit that is

Motion to Suppress
Jonathan Shealy
Direct Examination by Mr. Sowards

1 primarily composed of narcotics investigations and vice
2 alcohol investigations, and I worked the narcotics side
3 throughout my time with that unit.

4 Q. Agent Shealy, how long were you in the special
5 investigations unit?

6 A. Approximately around five years.

7 Q. Agent Shealy, how did you become involved in the
8 investigation of this case, State versus Omar Gentile?

9 A. This particular case, I was the case agent.

10 Q. And what was your role as a case agent?

11 A. A case agent typically starts an investigation
12 whether or not we get information on illegal narcotic activity
13 in an area.

14 My particular role in this investigation is I
15 basically had the C.I. do a controlled buy. I assigned
16 personnel to certain areas, whether it was with the controlled
17 buy or with the search warrant. I decide ultimately who is
18 being charged within the investigation.

19 MR. SOWARDS: May I approach the witness, Your
20 Honor?

21 THE COURT: You may.

22 Q. [Mr. Sowards] Agent Shealy, I'm going to hand you
23 this. It's a search warrant. Do you recognize that?

24 A. Yes, sir.

25 Q. And how do you recognize that?

Motion to Suppress
Jonathan Shealy
Direct Examination by Mr. Sowards

1 A. It is a search warrant that I typed up for the
2 residence of **1** Grove Street.

3 Q. Did you sign the affidavit --

4 A. Yes --

5 Q. -- for the search warrant?

6 A. Yes, sir, I did.

7 Q. And what did you do after you signed the affidavit?

8 A. After the affidavit is signed, we execute the
9 search warrant.

10 Q. Now, when you go to the judge to have a search
11 warrant signed, do you just hand the judge the warrant and
12 stand there silently?

13 A. Absolutely not.

14 You typically give a judge a background of what
15 this investigation is about.

16 Obviously, the judge is going to read it. But you
17 give them a more detailed background of what's occurring, what
18 you're looking for, who the parties are involved, because
19 sometimes you don't put all your information into the search
20 warrant due to the fact that a search warrant is actually left
21 at a residence and there's some information that will
22 compromise an ongoing investigation. So you give the judge a
23 brief summary of what's going on.

24 Q. And is that what you did in this case?

25 A. Yes, sir, I did.

Motion to Suppress
Jonathan Shealy
Direct Examination by Mr. Sowards

1 Q. And what was the location to be searched?

2 A. 1 Grove Street.

3 Q. And what was the probable cause for this search
4 warrant?

5 A. The probable cause for this search warrant,
6 particularly, was -- we had different things. We conducted a
7 controlled purchase of illegal narcotics from the residence,
8 and we also had intel that a legal narcotic activity was
9 coming from the residence.

10 And when I talk about controlled purchase, we had a
11 confidential informant that had information in reference to
12 narcotic activity going on at this residence. We used that
13 confidential informant to go and purchase illegal narcotics
14 from the residence.

15 And I want to explain a little bit about the
16 controlled purchase. Before and after a controlled purchase
17 is made, we have an operations plan. We have many team
18 members involved in this. We have surveillance, a
19 confidential informant that's searched prior to going out to
20 purchase illegal narcotics -- for any kind of weapons, any
21 kind of illegal whatever -- any kind of illegal thing on the
22 C.I. The C.I. is also given prerecorded U.S. currency that we
23 supply the C.I. from our narcotics fund. The C.I. is
24 instructed on what to do. From there --

25 From this particular buy, we did all that. We wire

Motion to Suppress
Jonathan Shealy
Direct Examination by Mr. Sowards

1 the C.I. up with audio and video surveillance equipment. We
2 also listen to that audio as it's going on to make sure the
3 C.I. is safe and that the C.I. is doing exactly what we told
4 the C.I. to do.

5 In this particular case, all that was done. The
6 C.I. was searched. The C.I. was given prerecorded U.S.
7 currency. The C.I. was wired up. The C.I. left a
8 predetermined location, went directly to the residence of 1
9 Grove Street, knocked on the door, was invited in to 1 Grove
10 Street where the C.I. did purchase an amount of an illegal
11 narcotic from a black male subject from with inside the
12 residence. The C.I. did then leave that residence and come
13 directly back to us, as instructed.

14 From that point, the C.I. turned the narcotics
15 directly over to myself, at which point the C.I. is then
16 searched once again to make sure there's no more illegal
17 narcotics on the subject.

18 I enter that -- I field-tested that narcotics to be
19 presumptive as illegal narcotics, and it's placed into
20 evidence. I then go back and review the audio and video.

21 And from that point, I did determine that the C.I.
22 did go directly to that residence, did enter that evidence --
23 that residence, and did purchase illegal narcotics.

24 And then the confidential informant also writes a
25 statement stating exactly what they did throughout that buy.

Motion to Suppress
Jonathan Shealy
Direct Examination by Mr. Sowards

1 Q. Now, when was the affidavit -- or when was this
2 signed by the magistrate? The search warrant.

3 A. You want the date?

4 Q. The date.

5 A. The date that the judge signed the search warrant
6 was February the 3rd, 2012.

7 Q. And when was the search warrant executed?

8 A. The search warrant was executed on February the
9 9th, 2012.

10 Q. What was the reason for any delay between when the
11 search warrant was signed and when it was executed?

12 A. There's multiple of reasons that we wait a period
13 of time.

14 One being is the protection of the confidential
15 informant. Most of the time we are still currently utilizing
16 these confidential informants on ongoing investigations, other
17 investigations. We are given that window of opportunity. We
18 are given ten days to serve a search warrant, so a lot of
19 times we will wait a certain amount of time to protect that
20 C.I.'s identity.

21 Another reason is there was multiple investigations
22 going on within that area at the time, and we tend to wait and
23 serve the search warrant to where it won't mess up any other
24 ongoing investigations in that area.

25 Q. And, Agent Shealy, did -- was that delay, was that

Motion to Suppress
Jonathan Shealy
Direct Examination by Mr. Sowards

1 in good faith?

2 A. Yes.

3 Q. And when you executed the search warrant on
4 February the 9th, did you have a good-faith belief that it was
5 at that time supported by probable cause?

6 A. Absolutely.

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

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

9 MR. SOWARDS: No further questions from the State.
10 Please answer any questions that Mr. King may
11 have.

12 THE COURT: Mr. King.

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Motion to Suppress
Jonathan Shealy
Cross-Examination by Mr. King

CROSS-EXAMINATION

BY MR. KING:

Q. Detective Shealy, you testified about some information you had about 1 Grove Street?

A. Yes, sir.

Q. Can you -- I know you had an informant. And this informant is the one that made this controlled purchase situation?

A. Yes, sir.

Q. Did you have any other information? Or I guess maybe the question: what information did you have, prior to the controlled purchase, about this residence?

A. We had -- and I -- we had numerous -- we had a different -- a couple of different sources giving us information about narcotics activity at 1 Grove Street. Our informant advised me that there was narcotic activity going on at 1 Grove Street.

From that point, we determined whether or not -- we try to corroborate that with other information that we've heard about 1 Grove Street and the individuals who live or stay at 1 Grove Street. We determine whether or not we have enough to go ahead and make a buy or try to get into the residence. At that point we did, and that's where we did the controlled purchase.

Q. Now, is this something where you were trying to

Motion to Suppress
Jonathan Shealy
Cross-Examination by Mr. King

1 find out about this residence? Or did you seek out this
2 residence? Or did information come to you about this
3 residence?

4 A. Information came to me about the residence.

5 Like I said before, we've had information through
6 numerous sources that narcotic activity was going on in this
7 area. That's why we had numerous operations going on in this
8 area.

9 Q. Can you describe more about that? Other than -- I
10 know you had this informant. You're talking about other
11 information. What type? I'm not asking for identities of
12 anything confidential, necessarily. But what information,
13 what other information, did you have other than what this
14 informant was telling you?

15 A. We were just told that there were individuals
16 selling illegal narcotics out of the residence of 1 Grove
17 Street.

18 Q. This is coming from other informants, or police
19 officers?

20 A. Police officers, law enforcement.

21 Q. And you said you did supplement this search warrant
22 with oral testimony, you said, to the --

23 A. Yes, sir.

24 Q. -- the magistrate?

25 A. Yes, sir.

Motion to Suppress
Jonathan Shealy
Cross-Examination by Mr. King

1 Q. Did you tell the magistrate about these other
2 sources of information, or did you just rely on this
3 controlled purchase?

4 A. I had told the magistrate in reference to,
5 obviously, the controlled purchase.

6 But I always try to give them an overall summary of
7 what's -- or how we led up to this. I said, you know,
8 basically through information that we've collected from a
9 confidential informant and through other sources, we knew
10 about illegal narcotic activity coming from this residence.
11 From that point, we utilized a confidential informant to go in
12 and make a controlled purchase.

13 Q. Did you tell the magistrate what this other sources
14 of information were, or did you just say we had other sources?

15 A. Just illegal narcotic activity.

16 Q. Was the information you were getting specific to
17 anyone in the residence?

18 A. We did get specific information about what was
19 occurring at the residence.

20 Q. And what was that? What was the specific
21 information?

22 A. We were basically told that -- from a confidential
23 informant that there were two individuals in the residence who
24 were selling illegal narcotics; one went by the name of Scope,
25 one went by the name of Juice; and that heroin was being sold

Motion to Suppress
Jonathan Shealy
Cross-Examination by Mr. King

1 out of the residence, as well as cocaine.

2 Q. So you got this informant and you -- you said you
3 testified you conducted this controlled purchase. I want to
4 talk about that.

5 You didn't put any information about the
6 reliability of the informant in the search warrant, did you?

7 A. No, sir.

8 Q. Because sometimes I've seen them where they say,
9 you know, an informant who has previously supplied us with,
10 you know, information that's been confirmed.

11 So you were relying just on that purchase itself,
12 not on the previous reliability of the informant?

13 A. No, sir.

14 We have used that informant multiple times. And
15 like I said, that informant was an ongoing informant for us
16 for other cases. The informant was reliable.

17 But I -- you know, if you're asking did I put it in
18 the search warrant, no, sir, I did not.

19 Q. So as far as the magistrate knew, this was -- there
20 was no information the magistrate had about the reliability of
21 the informant, other than what you put in --

22 A. No, sir.

23 Q. -- the search warrant?

24 A. No, sir.

25 Q. In this case -- and I want to talk about how you --

Motion to Suppress
Jonathan Shealy
Cross-Examination by Mr. King

1 I guess how you conduct this controlled buy.

2 You testified that you get the informant and you
3 search them?

4 A. Yes, sir.

5 Q. And you wire them up with a camera?

6 A. Yes, sir.

7 Q. And you drop this informant off. You don't drop
8 him off right in front of the house?

9 A. No, sir.

10 Q. You dropped him off some distance from the house, I
11 guess, I guess to preserve your cover?

12 A. Yes, sir.

13 Q. Do you remember -- do you have a rough idea of how
14 far away you dropped off the informant?

15 A. Several blocks.

16 I would say less than half a mile. It was -- and
17 don't quote me. I just -- definitely several blocks away.

18 Q. Not exact.

19 But they had to walk a few minutes to get to this
20 residence?

21 A. Certainly. Yes, sir.

22 Q. Is there constant surveillance on the informant
23 while they're walking there? Or just listening?

24 A. Well, we try to keep an eye on the informant.

25 Sometimes we -- you know, obviously there's times

Motion to Suppress
Jonathan Shealy
Cross-Examination by Mr. King

1 where you get caught up in traffic. We do try to keep an eye
2 on an informant. That's why we have different people placed
3 in different areas.

4 I wouldn't be able to tell you for sure if we had
5 eyes on the informant the entire time. But we are constantly
6 listening to that. And with that being said, we review the
7 entirety of the audio. The video is cut on as soon as --
8 before we drop the informant off.

9 So I guess the answer to your question is we try to
10 keep eyes on the informant the entire time. Sometimes it's
11 not possible, but the camera pretty much --

12 Q. I guess that's what I was trying to establish is
13 you didn't keep constant surveillance on this informant the
14 entire -- visual surveillance the entire time they walked from
15 the drop-off point to 1 Grove Street?

16 A. I really couldn't tell you that.

17 From my point, we -- myself and another detective
18 were responsible for the extraction of the C.I. So this
19 particular buy, we could have kept constant surveillance on.
20 Some buys you can, some buys you can't.

21 I honestly couldn't tell you whether or not we did
22 or not on this particular one.

23 I know we did have eyes on the residence. And I'm
24 just going from memory here. From when the C.I. did enter the
25 residence, we did have eyes on the residence.

Motion to Suppress
Jonathan Shealy
Cross-Examination by Mr. King

1 Q. But, again, that was some distance away from where
2 the drop-off point was?

3 A. Yes, sir.

4 Q. So this -- the camera is put on I guess on the
5 front of their body somewhere?

6 A. It's placed in different positions.

7 We kind of switch it up. So it's all over, really.
8 But, typically, definitely in front somewhere of the body.

9 Q. So when you're watching the video, you can see
10 ahead of the informant, right, what's in front of them?

11 A. That's right.

12 Q. But you generally can't see their hands outside of
13 the view of the camera; right?

14 A. I would say no.

15 Q. And you can't see what's behind them --

16 A. No.

17 Q. -- if the camera is pointing straight ahead?

18 A. No, sir.

19 Q. And you can only see a certain amount straight
20 ahead and to the left and right?

21 A. Right.

22 Q. And do you remember in the video in this case that
23 there are other people? I mean, this informant is walking out
24 in public; right?

25 A. Right.

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1 Q. During the daytime?

2 A. Right.

3 Q. So there are at least one other person on that
4 video, who's seen in the field of view at some point, that
5 this informant passes?

6 A. I would -- fair to say there probably was.

7 I mean, I -- like I said, I watched that video
8 years ago. But I'm sure it was. I mean, it was during the
9 daytime and it was -- in that area, that's a well-populated
10 area.

11 Q. And, now, and what you -- and you reviewed the
12 video and you believed it to be a narcotics purchase?

13 A. Absolutely.

14 Q. And it was Mr. Gentile's brother, Maurice Gentile,
15 who is on the video selling to the informant?

16 A. Well, like I said, there was a black male subject.
17 We believe it to be Maurice Gentile.

18 But with that being said, we do know that Mr. Omar
19 Gentile was definitely at the residence during the time of the
20 purchase.

21 Q. But he's not involved in the purchase, or do you
22 need to review the video again to refresh your memory? But
23 from what I saw, he's not involved in the purchase. He's
24 sitting inside on a couch I believe with Mr. Davis, the
25 handicapped man.

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1 A. Right.

2 Q. So there's a person who comes to the door when the
3 informant comes to the door; right?

4 A. Right.

5 Q. And you can see that person's face on the video?

6 A. Right.

7 Q. And you did some research to find out who that
8 person was?

9 A. Right.

10 Q. And you determined that person was Maurice Gentile?

11 A. Right.

12 Q. In these videos, it really captures -- it captures
13 wherever the camera happens to be pointed; right? You can't
14 control necessarily where the camera is pointing?

15 A. No.

16 We don't have -- no, we can't manually control it.
17 It's kind of -- the human body kind of controls it. Wherever
18 the body goes, the camera goes.

19 Q. And in your experience doing these sort of
20 purchases, it captures -- let's see. Sometimes it can capture
21 the entire purchase, sometimes it might just capture a flash
22 of money? Right? It doesn't always capture everything on the
23 video --

24 A. No.

25 Q. -- is that right?

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1 A. No. I -- no.

2 Q. And in this case it doesn't capture everything on
3 the video?

4 A. I haven't seen the -- this particular purchase was
5 actually -- like I said, we're not making motion pictures.
6 This is on the body. I believe from this purchase, this
7 actually by itself was pretty good. This was one of our
8 better pretty clear, knock on the door, go inside, money's
9 exchanged, narcotics are exchanged, leaves. But like I said,
10 I haven't reviewed this video in --

11 Q. Well, I didn't see any -- I remember seeing money
12 but not any cocaine actually on the video. And that wouldn't
13 be unusual, right, for the actual hand-to-hand not to be
14 caught --

15 A. Like I said, we're not --

16 Q. -- video camera?

17 A. -- we don't have --

18 THE COURT: Please don't talk over each other.

19 Thank you.

20 Let him finish his question, and then you may
21 answer. Thank you.

22 Q. [Mr. King] In your experience dealing with this,
23 the camera doesn't always capture the exact one hand placing
24 drugs into another hand?

25 A. No.

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1 Q. Would you say probably more than likely it doesn't
2 actually capture that? You usually try and capture the
3 person's face?

4 A. No. We try to capture -- we try to capture
5 everything.

6 But like I said, we're not -- it's not a motion
7 picture. We try to do the best we can with the placement of
8 the cameras. It's our goal to capture everything, but that
9 doesn't necessarily always happen.

10 Q. Would you agree in this case that it doesn't
11 actually show cocaine on the video?

12 A. Like I said, I have not seen this video in a number
13 of years.

14 I recall seeing a hand-to-hand transaction. But if
15 you're asking me did I see a crystal-clear-in-color white-
16 powder substance, I would say no.

17 Q. After this, after this happened, I believe you
18 testified you waited -- this was on February 3rd that we're
19 talking about with the video. And you waited until the 9th to
20 serve the search warrant and execute it?

21 A. You're asking when the buy was made?

22 Q. The buy was on February 3rd; right?

23 A. No.

24 Q. It wasn't?

25 A. No. The search warrant was signed on February the

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1 3rd.

2 Q. Well, how -- it says within the previous seventy-
3 two hours. So do you know how long before the search warrant
4 was taken to the magistrate that --

5 A. It was within seventy-two hours.

6 Q. Okay. But you don't remember exactly when? if it
7 was twenty-four or --

8 A. I can look back at my --

9 Q. But it could have been as much as seventy-two
10 hours?

11 A. It was within seventy-two hours.

12 Q. And you testified you waited until the 9th to
13 execute the search warrant, one reason to protect the identity
14 of the informant? I guess because if the police come in right
15 after some controlled purchase is done, it's going to be
16 obvious who the informant is so you want some time to pass?

17 A. Yes, sir.

18 Q. Did you do anything, any surveillance or anything
19 like that, between the time the search warrant was signed and
20 executed?

21 A. Yes.

22 We will do -- we'll do pre-surveillance on the
23 house, because we typically try to see if there's any
24 children, any dogs, elderly people, so we typically try to get
25 out there as much as we can. But a lot of times we really --

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1 we don't -- we're working other cases. But we always
2 typically try to do at least a certain amount of surveillance
3 on it to see those factors. Because before we hit a house, we
4 want to make sure there's not little children in there, dogs.
5 We kind of want to know who's in and out, how many people's
6 there.

7 Q. So in this case you had I think it was Forrest,
8 Detective Forrest, who was doing pre -- the surveillance
9 before the day the search warrant was executed?

10 A. Detective Forrest. Yes, sir.

11 Q. Do you know how long you had been doing
12 surveillance before it was executed? Approximately an hour,
13 two hours?

14 A. I do not know.

15 I was involved in a second search warrant, that was
16 being executed that day, with the SWAT Team.

17 But I would say Forrest was -- Detective Forrest
18 was probably out there at least an hour before. We typically
19 try to get someone out there generally an hour before.

20 Q. But other than that, was there anything else done
21 in those intervening days after the search warrant was issued?

22 A. I would say -- yeah.

23 Like I said before, we typically try to go out
24 there and do as much surveillance as we can. I couldn't give
25 you the dates or the amount of time we did it, but we -- yes.

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1 We would go out there and at least try to see if
2 there's dogs, children, see what kind of activity is going on
3 during that time. But I wouldn't be able to give you specific
4 dates or times or how long we did it, or anything like that.

5 Q. Can you give us specifics on what was observed in
6 that surveillance? Anything --

7 A. I can say that we definitely didn't see children,
8 dogs, any of that kind of thing. Because that's pretty much
9 what we're looking for at that point.

10 We've already got -- we've already established
11 probable cause that narcotics were being sold there. We
12 definitely want to look out for that, as well, but we're --
13 after a search warrant is signed, our main goal then is to see
14 the dangers before we execute the search warrant.

15 So I would be able to tell you we didn't observe
16 dogs, little children, anything like that, or that would have
17 been noted.

18 Q. And is that what -- and when Forrest is doing his
19 pre-search surveillance, is that what he's looking for as
20 well?

21 A. He's looking for a number of things, really. Any
22 dangers.

23 Basically, it's for security purposes, what -- any
24 dangers: did you see anybody take any guns in and out of
25 cars, dogs, children, things like that.

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1 Q. And from my understanding, Forrest did observe
2 someone leaving 1 Grove Street and entering 2 Grove Street;
3 right?

4 A. Again, I was -- I was personally on another search
5 warrant. I never spoke with Forrest. But what I was told was
6 that he did see someone come out. But I wasn't given any
7 specifics to it. My focus was, at that time, executing
8 another search warrant at a different residence. So I was not
9 even part of the tactile surveillance, entry, or anything, on
10 1 Grove Street.

11 Q. Okay. But you did enter -- you were present during
12 Mr. Gentile's statement, though? You did -- you were there at
13 some point?

14 A. Right. Yes, sir. Yes, sir.

15 Q. So I guess, then -- I'll wrap it up.

16 From your knowledge, Detective Forrest didn't see
17 anything other than somebody leaving and going into another
18 residence? No information relating to drug activity?

19 A. No, sir. No, sir.

20 Like I said, I was on a different search warrant.
21 But when I did get there, I was later briefed or told that
22 Forrest did see someone exit the residence.

23 But I was not part of any of that. I was focusing
24 -- I mean, that -- it was my case. I was focusing on 1 Grove
25 Street.

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1 MR. KING: That's all the questions I have.

2 THE COURT: Mr. Sowards?

3 MR. SOWARDS: No further questions, Your Honor.

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

5 [Whereupon, Mr. Shealy is excused and exits the
6 witness stand]

7 THE COURT: Call your next witness.

8 MR. SOWARDS: The State has no other witnesses,
9 Your Honor.

10 THE COURT: Mr. King, do you have any witnesses?

11 MR. KING: I have no witnesses, Your Honor. Just
12 argument.

13 THE COURT: All right. Let me hear your argument.

14 MR. KING: Your Honor, the first issue I guess is
15 whether or not the probable cause existed for the
16 search.

17 I had cited the a court the case State vs. Dupree.
18 In this case, it appears -- it references control
19 purchases and gives some examples. And it appears in
20 this case is that the law enforcement is searching the
21 informant, dropping the informant off near the house and
22 observing them enter the house and then exit the house,
23 and then returning with the drugs.

24 It's a little different in this case because as the
25 officer testified, he can't say that there was constant

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1 surveillance on this informant the whole time that
2 they're walking from the drop-off point to 1 Grove
3 Street. And what you can see is what the camera is
4 filming, which happens to capture the person standing.
5 But, you know, there's no way to eliminate that this
6 person got these drugs from someone else. You know,
7 someone's off to the left or right, or even behind them.
8 It doesn't capture everything.

9 So I'm distinguishing State vs. Dupree because in
10 this case there wasn't constant surveillance on the
11 informant the entire time, and I would argue that the
12 controlled buy wasn't properly conducted as the --
13 again, The State vs. Dupree and that there was not
14 probable cause for the search.

15 Secondly, Judge, I was arguing that there was that
16 delay in serving the search warrant, executing it, from
17 February the 3rd to February 9th. And I had the Evander
18 [phonetic] case. That's really all I have, Judge. But
19 in that case they talk about how one controlled
20 purchase, you know, was not enough to show some ongoing
21 operation to where probable cause would last that long.
22 You know, so they're -- the holding in that case is, you
23 know, you have to execute the warrant promptly while the
24 probable cause still exists.

25 There was one purchase, alleged purchase, from this

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1 house that they're basing this on. There was
2 surveillance done at the intervening -- you know, at
3 least some point, but that was just it seems like to
4 eliminate dogs, and children. And safety issues. But
5 there's no evidence that there was continuing drug
6 activity from February 3rd all the way up until February
7 9th. There is no testimony that there was a high volume
8 of traffic of people going into the residence and
9 leaving. You know, no other -- you know, they could
10 have conducted more than one controlled purchase at the
11 house.

12 But in this case, Judge, our view is that the
13 probable cause dissipated from February the 3rd to
14 February 9th, and they waited an unreasonably long time
15 to execute the search warrant. I think if they had
16 waited one day, two days, that still would have
17 protected the identity of the informant.

18 But, you know, they waited -- I believe they waited
19 too long and the probable cause had dissipated. I'm
20 making this motion based on the fourth amendment, the
21 corresponding provisions of the South Carolina
22 Constitution.

23 THE COURT: Then why do we have ten days in the
24 Constitution, Mr. King?

25 MR. KING: It's not in the Constitution, Your

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1 Honor. It's in the --

2 THE COURT: Or in the --

3 MR. KING: -- statute.

4 THE COURT: In the statute.

5 MR. KING: It's in South Carolina 17-13-140. I
6 believe that's based on the Federal Rule. The Federal
7 Rule, I guess they have to have some sort of time limit
8 where the ten days is definitely too far.

9 But Indiana -- the Indiana case references some
10 federal cases that hold that doesn't mean the -- that
11 the probable cause absolutely lasts at least ten days.
12 Well, Magamus [phonetic] is is probable cause still
13 there when the search warrant is executed.

14 The ten days is a guideline, I think, and it sets
15 an outer boundary but it doesn't mean that they always
16 have -- and the federal cases say that this doesn't mean
17 they always have ten days to execute it; in certain
18 circumstances, the police need to go in and execute it
19 more promptly because probable cause dissipates over
20 time.

21 That's all, Your Honor.

22 THE COURT: All right.

23 MR. SOWARDS: Thank you, Your Honor. I'll address
24 the controlled purchase first.

25 Detective Shealy, Agent Shealy, testified that,

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1 yes, while the informant was not under surveillance the
2 entire time, that there are controls in place to
3 establish the reliability of the informant, such as the
4 wiring of the informant with audio and video. They did
5 that in the case, this case. They searched the
6 informant before and after. They did that in this case.
7 That they had a live audio wire that they used to
8 monitor the informant as that person left the vicinity
9 of Agent Shealy, went to the house and came back.

10 Based on reviewing the video, it did appear that
11 the informant entered the residence of 1 Grove Street.
12 And we would submit to you that at that point it's not
13 really all that important according to who actually sold
14 the drugs, but what's important is that the informant
15 entered 1 Grove Street and purchases narcotics. But
16 there's nothing to suggest -- it's Agent Shealy's
17 testimony that there was nothing to suggest that
18 something untoward happened during the buy. So we would
19 submit to you, Your Honor, that the reliability of the
20 informant was established in that way.

21 But there was also the informant gave them intel
22 prior to the controlled purchasing, indicating that one
23 individual was selling heroin from the residence and one
24 individual was selling cocaine. And that intel was
25 corroborated by the buy, where cocaine was purchased.

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1 Secondly, Your Honor, as far as the delay is
2 concerned, South Carolina Statute 17-13-140, as Your
3 Honor pointed out, provides law enforcement ten days to
4 search -- or to execute a search warrant. And I think
5 that that statute recognizes that. But as Mr. King
6 said, in some cases it's appropriate to do it two or
7 three days, and in some cases it's appropriate to do it
8 ten days, after the search warrant is signed.

9 Agent Shealy testified that there were a number of
10 investigations occurring in the area, any one of which
11 would be jeopardized by executing the search warrant at
12 **1** Grove Street. Unlike I believe the case -- the
13 Indiana case that Mr. King cites to, merely had intel
14 beforehand that people were actively selling out of that
15 residence. It wasn't an instance where they just sent
16 the informant out to go try to buy drugs off someone.
17 They were given intel that narcotics activity was
18 occurring at the home and the informant went there to
19 purchase it.

20 And, also, Agent Shealy testified that they were
21 using the informant in other investigations and they
22 wished to protect the informant's identity, and all that
23 was done in good faith, and at the time that the search
24 warrant was executed Agent Shealy and others had a good-
25 faith belief that it was supported by probable cause.

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1 THE COURT: Mr. King, anything further?

2 MR. KING: Just that the other part of my motion
3 was that if we had the informant here, if we had the
4 right to confront and cross-examine the informant, we
5 might be able to answer some of these questions. We can
6 -- the ability to call the informant to the stand.

7 THE COURT: What is your position as to the
8 informant?

9 MR. SOWARDS: Your Honor, our position is the same
10 today as it was on I believe it was September 18th --

11 THE COURT: I've heard a few cases since that time,
12 so if you will refresh your argument on that one.

13 MR. SOWARDS: Your Honor, the State's position is
14 that in cases such as this one where the informant was
15 not an active participant in the charges that are being
16 tried in this case the -- sorry -- that the informant's
17 identity can remain confidential. It allows the free
18 flow of information to law enforcement from informants.

19 Your Honor, the informant, like I said, was not an
20 active participant in the search warrant. Neither this
21 defendant nor the codefendant was the one that was
22 charged for anything related to the controlled purchase.
23 That distribution warrant was never served either
24 defendant.

25 So that would be our position, Your Honor.

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1 THE COURT: Mr. King, anything further?

2 MR. KING: Nothing.

3 Just that they're talking about an ongoing
4 operation, so I think the informant would be a material
5 witness to this alleged ongoing operation.

6 Even though they didn't charge anyone for that
7 controlled purchase -- and there is case law that talks
8 about being a participate in a transaction. And there's
9 also language about being a material witness.

10 There's another person selling drugs out of the
11 front door, Maurice Gentile, so there could even be a
12 question about did the -- who the drugs actually
13 belonged to. So I think that we should have a right to
14 investigate that and possibly cross-examine that.

15 And I agree that the informant was not present
16 when the search warrant was executed, was not present in
17 the house or a part of that. But with it being an
18 ongoing -- the State claiming an ongoing drug operation,
19 that informant is still a material witness or a witness
20 to this ongoing drug operation. That's all.

21 THE COURT: Well, is there a charge of an ongoing
22 drug operation?

23 MR. KING: I guess there's not a charge. There's a
24 charge of trafficking. But, no, I guess there's not a
25 charge of --

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1 THE COURT: But it's trafficking because of the
2 weight; correct?

3 MR. KING: That's right.

4 THE COURT: And it's possession with intent to
5 distribute because of the weight; correct?

6 MR. KING: Yes, Your Honor.

7 THE COURT: So tell me again, under the case law,
8 why the State would need to reveal the informant.

9 MR. KING: Because it's bigger than just this one
10 moment in time. If they're alleging an ongoing
11 operation and there's another -- it's not just that,
12 that there's an ongoing operation, but that this
13 informant is a witness, based on their testimony,
14 claiming that drugs were being sold out of that house.
15 What developed the information and really fueled this
16 case is that informant.

17 [Off the record momentarily]

18 MR. KING: And further grounds, Your Honor, there
19 is another person in the house who is selling drugs, and
20 that was witnessed by this informant. That informant
21 had information about what's going on inside that house
22 that could be helpful to our defense. Our defense is
23 that it's not Mr. Gentile's heroin.

24 THE COURT: One more time.

25 MR. KING: Our defense is that it's not Maurice --

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1 it's not Omar Gentile's heroin that they're trying to
2 claim was his. There's another person in the house who
3 sold drugs to an informant, and that informant I believe
4 is a material witness that could provide helpful
5 information in this case.

6 THE COURT: Anything further?

7 MR. SOWARDS: No, Your Honor.

8 THE COURT: So your first argument, so that I -- I
9 just want to make sure that I'm clearly understanding,
10 because you've raised several issues and I just want to
11 address them in no particular order.

12 So at this point, you want -- we are revisiting
13 your request to reveal the C.I.?

14 MR. KING: Yes, Your Honor.

15 And to have him testify at this hearing to
16 establish probable cause. Because they're basically
17 testifying on hearsay at this point. The informant is
18 also a witness to this alleged controlled purchase. So
19 to reveal -- not just for -- for this hearing itself,
20 and for trial, as a material witness.

21 THE COURT: How I understand the facts to be
22 revealed and testified to today, the C.I. merely gave
23 the probable cause for the detectives to go and get the
24 search warrant; is that correct?

25 MR. KING: That's correct, Your Honor.

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1 The informant -- they relied on this informant's
2 controlled purchase as probable cause to search the
3 house.

4 THE COURT: And based upon that, they went to a
5 magistrate, had a search warrant issued, executed the
6 search warrant within ten days; is that correct?

7 MR. KING: Yes, Your Honor.

8 THE COURT: And then your client has been charged
9 with not distributing to the confidential informant but
10 to merely possessing trafficking weight quantities
11 within the proximity of a school; is that correct?

12 MR. KING: Yes, Your Honor.

13 THE COURT: That's what the State alleges?

14 MR. KING: Yes, Your Honor.

15 THE COURT: Based upon my reading of the case law
16 and the testimony as I understand it here today, I again
17 deny your motion to reveal the C.I. based upon the case
18 law as I interpret it.

19 Because the C.I. was the basis for the probable
20 cause, I do find that there was probable cause for the
21 search warrant to issue, based upon the testimony,
22 again, presented here today and what was contained in
23 the affidavit.

24 And then I do find, based upon the officer's
25 testimony as to why they waited, the six-day delay was

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1 not -- did not -- was not in violation of your client's
2 constitutional right.

3 Have I addressed all your remaining issues, Mr.
4 King? I just want to make sure.

5 MR. KING: Yes, Your Honor.

6 THE COURT: With that, is there anything else?

7 MR. KING: No, Your Honor.

8 MR. SOWARDS: I think the only other pretrial issue
9 would be whether the defendant can remain on bond.

10 THE COURT: What about sequestration?

11 MR. SOWARDS: We're not asking for witnesses to be
12 sequestered.

13 THE COURT: Mr. King?

14 MR. KING: I'm not asking for sequestration, Your
15 Honor. I don't think in this case it's necessary.

16 THE COURT: Let me hear your position as to whether
17 or not Mr. Gentile should be allowed to remain on bond.

18 MR. SOWARDS: Your Honor, the State would object.

19 Mr. Gentile is facing quite a bit of time if he is
20 convicted. Twenty-five years. He has a prior history
21 going back to 2002 of failing to appear. And those are
22 -- would be our two reasons.

23 THE COURT: He's been out on bond how long,
24 Mr. King?

25 MR. KING: Since 2012, Your Honor. Three years or

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1 more.

2 He's shown up whenever he's supposed to show up. I
3 believe he's been to three or four status conferences,
4 in front of Your Honor, that we've had this year. This
5 has been on previous trial dockets. He's always shown
6 up. He's shown up today. He's here today. I think
7 he's shown -- I don't think he's going anywhere. If he
8 was, it would have been long before this.

9 But he's shown up for every court date. His bail
10 bondsman, Rhonda Smith, has no problem remaining on the
11 bond. We would ask that he remain out.

12 THE COURT: Have you ever requested his appearance,
13 that he's not shown up, since 2012?

14 MR. SOWARDS: Not that I'm aware of.

15 THE COURT: Mr. Gentile, please stand.

16 Go ahead and place him under oath.

17 THE CLERK OF COURT: Sir, if you'll raise your
18 right hand.

19 [Whereupon, Mr. Gentile is duly sworn by the clerk
20 of court as follows: do you swear or affirm the
21 testimony you shall give the Court shall be the truth,
22 the whole truth, and nothing but the truth, so help you
23 God]

24 MR. GENTILE: Yes, ma'am.

25 THE COURT: Mr. Gentile, do you understand where we

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1 are, procedurally, in your trial?

2 MR. GENTILE: Yes, ma'am.

3 THE COURT: Where are we?

4 MR. GENTILE: Going to the case.

5 THE COURT: And you understand that you have the
6 right to be present for your trial but you also --

7 MR. GENTILE: Yes, ma'am.

8 THE COURT: -- we could also proceed if you choose
9 not to show up?

10 MR. GENTILE: Yes, ma'am.

11 THE COURT: And so the trial could proceed in your
12 absence, should I grant your attorney's request to allow
13 you to remain on bond?

14 MR. GENTILE: Yes, ma'am.

15 THE COURT: And do you know what time we are
16 staring court in the morning?

17 MR. GENTILE: I believe 9:30.

18 THE COURT: And is there any reason that I should
19 not allow you to remain out on bond?

20 MR. GENTILE: Not any reason. I mean, I would like
21 to be with my family --

22 THE COURT: Are you --

23 MR. GENTILE: -- with my mama.

24 THE COURT: Are you going to show back up to court
25 tomorrow?

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1 MR. GENTILE: Huh?

2 THE COURT: Will you be in court tomorrow?

3 MR. GENTILE: Oh. Yes, ma'am.

4 THE COURT: So you understand what will happen if
5 you do not show up?

6 MR. GENTILE: Yes.

7 THE COURT: What is going to happen?

8 MR. GENTILE: Be tried in my absence.

9 THE COURT: And what else?

10 MR. GENTILE: Found guilty.

11 THE COURT: I don't know that, because that's up to
12 the jury to determine. All right? I've seen defendants
13 be found not guilty in their absence. But I do not
14 recommend that as a strategy because I am telling you
15 you must appear tomorrow. Do you understand?

16 MR. GENTILE: Yes, ma'am.

17 THE COURT: And if you do not appear, not only will
18 we proceed in your absence but a bench warrant will
19 issue and I will find that you are in contempt of court.
20 Do you understand?

21 MR. GENTILE: Yes, ma'am.

22 THE COURT: All right. I'm going to sign the
23 order.

24 Mr. King, any concerns that you have, as an officer
25 of the Court?

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Cross-Examination by Mr. King

1 MR. KING: No, Your Honor.

2 THE COURT: Note your --

3 MR. KING: I've always been able to reach him.

4 THE COURT: He's always been here, I recall, on
5 time?

6 MR. KING: Yes, Your Honor.

7 THE COURT: Mr. Gentile, please be here at nine
8 o'clock in the morning.

9 MR. GENTILE: Oh, yes.

10 THE COURT: Ms. Leonard, are we going to be back in
11 the big courtroom?

12 THE CLERK OF COURT: You should be back in 4-C
13 tomorrow.

14 THE COURT: All right. Please have a seat.
15 Anything further?

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

17 MR. KING: No, Your Honor.

18 THE COURT: See y'all at -- we'll begin at 9:30.

19 MR. SOWARDS: Thank you, Your Honor.

20 THE COURT: Thank you.

21 MR. KING: Thank you.

22 [JURY TRIAL ADJOURNS AT 3:39 P.M.]

23

24

25

State vs. Gentile

C E R T I F I C A T E

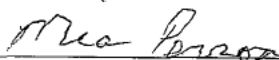
STATE OF SOUTH CAROLINA

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 4, 2016.

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 March, 2016.



Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

STATE OF SOUTH CAROLINA
VS.
OMAR GENTILE
DEFENDANT.

VOLUME 2 OF 2

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, January 5, 2016, Commencing at 9:46 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
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PROCEEDINGS

THE COURT: Anything before we bring in the jury?
From the State?

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

THE COURT: From the defendant?

MR. KING: No, Your Honor.

THE COURT: All right. Let's go ahead and bring in
the jury.

[Off the record momentarily]

THE COURT: Please rise for the jury.

[Whereupon, the jury enters the courtroom at
9:50 a.m.]

THE BAILIFF: All jurors present, Your Honor.

THE COURT: If my jurors would remain standing.
Everyone else be seated.

Please administer the oath.

THE CLERK OF COURT: Ladies and gentlemen of the
jury --

Please have the defendant stand.

[Whereupon, Mr. Gentile complies]

THE CLERK OF COURT: Please raise your right hand.
After I have given you this oath, if you accept it,
please respond by saying I do.

[Whereupon, the jury is duly sworn by the clerk of
court as follows: do you swear or affirm that you shall

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1 well and truly try, and a true deliverance make between
2 the State of South Carolina and the defendant at bar,
3 whom you shall have at charge, and a true verdict render
4 according to the evidence and the law, so help you God]

5 If you have accepted this oath, please have a seat.

6 [Whereupon, jurors comply]

7 THE CLERK OF COURT: Please let the record reflect
8 that all jurors took their seats.

9 THE COURT: Thank you.

10 Good morning, ladies and gentlemen. My first
11 question to you after we take a break will always be did
12 you comply with the instructions over the evening hour.
13 If you did not comply with the instructions, please
14 stand.

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

17 Ladies and gentlemen, you may have noticed when you
18 came in this time the attorneys and the members of the
19 audience and the parties involved in this case were
20 standing. This is out of respect for your new position
21 as judges of the facts. Ladies and gentlemen, so please
22 -- after this time, when you come, in please come in and
23 take your seats because the people involved in this
24 case, as well as the members of the audience, will
25 remain standing until all fourteen of you are seated.

State vs. Gentile
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January 5, 2016

1 Mr. Bates, you have been selected as the foreperson
2 in this case, so that is your assigned seat.

3 And to my two alternates, those are your assigned
4 seats.

5 The rest of you may sit on those first two rows
6 wherever you are comfortable. You do not have assigned
7 seating.

8 Mr. Bates, as foreperson, you are the jury
9 spokesperson so at any time if any of you need any
10 additional breaks or have any questions or need anything
11 else, please let your foreperson know. He will alert
12 the bailiffs, who will always be seated right where they
13 are right now, and they will alert me and we'll handle
14 the matter as soon as we can.

15 Ladies and gentlemen, the bailiffs have been
16 passing out your notepads. You are allowed to take
17 notes throughout the progress of this trial. Please
18 remember one juror's notes are no more correct or
19 accurate than another juror's notes. If at the end when
20 you retire to consider your verdict you need to hear any
21 testimony played back, we will simply bring you back
22 into the courtroom and replay that testimony for you.
23 So do not feel you have to write down word-for-word what
24 is happening.

25 I caution jurors -- sometimes, because I do it

State vs. Gentile
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1 myself -- when I'm taking notes, I have a tendency to
2 look down so you may actually miss something that's
3 happening before you while you are taking notes.

4 So with all those caveats, you are allowed to take
5 notes. We will collect your notepads during our lunch
6 break, hand those back out to you after the lunch break,
7 and then lock them up for the evening hour.

8 Ladies and gentlemen, we are now going to begin the
9 case.

10 The defendant is charged by an indictment filed in
11 this court with the charge of trafficking in heroin and
12 distribution of controlled substance within the
13 proximity of a school. I will explain the elements of
14 those two indictments to you at a later time.

15 The indictment is simply the charge by which this
16 case is brought into court. It is not in any sense
17 evidence of the allegations it contains. The defendant
18 has pled not guilty to each indictment. The State has
19 the burden of proving each of the elements of the
20 indictment -- of each indictment beyond a reasonable
21 doubt. It is your duty, ladies and gentlemen, to
22 determine whether the State has met its burden.

23 Your purpose as jurors is to find and determine the
24 facts. You are the sole judges of the facts in this
25 case. If at any time I make any comment regarding the

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January 5, 2016

1 facts of this case, you must disregard it. You are to
2 determine the facts from the testimony you hear and any
3 other evidence that is introduced in court.

4 Ladies and gentlemen, you will have an opportunity
5 when you retire to consider your verdict -- everything
6 that has been introduced into evidence will go back with
7 you to your jury room. So if at any time you do not
8 have an opportunity to observe everything to your
9 satisfaction, it will go back with you. It is important
10 that you perform your duty of determining the facts
11 diligently and conscientiously because ordinarily there
12 is no way to correct an erroneous determination of the
13 facts by a jury.

14 On the other hand, and with equal emphasis, the
15 same law that makes you the judges of the facts makes me
16 the judge of the law. The law as given by this Court is
17 the only law you may consider. You must accept it and
18 follow it, even though you may disagree with it. I
19 cannot tell you what I think the facts are, and you
20 cannot disagree with me about what the law is or what
21 the law should be. Your job is to take the law as I
22 give it to you, apply it to the facts as you find it
23 from the testimony of sworn witnesses and any other
24 evidence that is introduced. After doing that, you will
25 render your verdict, a true and just verdict, under the

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1 solemn oath that you just took.

2 You must decide this case based solely on the
3 evidence presented here in the courtroom. This means
4 that during the trial, as I indicated to you yesterday,
5 you must not conduct any independent research. You must
6 not discuss this case with anyone until I tell you you
7 may begin your deliberations. Ladies and gentlemen, if
8 you become aware of another juror's violations, you must
9 report that to me immediately.

10 It is important that you keep an open mind and not
11 decide any issue in this case until all of the evidence
12 has been presented, the parties have made their closing
13 arguments, and I have instructed you on the law
14 applicable to this case. It is your solemn
15 responsibility to determine the guilt or innocence of
16 the defendant, and your verdict must be based only on
17 the evidence in court here today.

18 In just a moment the solicitor will make what is
19 called an opening statement in which the solicitor will
20 explain to you the issues in this case, or at least what
21 the solicitor believes the issues are in this case. The
22 attorney for the defendant may also make an opening
23 statement, although the defendant is not required to do
24 so at this time. Please remember what the attorneys
25 tell you in their opening statements, as well as what

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1 they will tell you in their closing arguments, is not
2 evidence in this case. It is only their contention as
3 to what the issues are.

4 The evidence in this case will be presented to you
5 by the testimony of sworn witnesses from the witness
6 stand, as well as by any exhibits that are introduced
7 into evidence.

8 From time to time you may hear one of the attorneys
9 state an objection, or I may find it necessary to ask
10 the attorneys to approach the bench, or I might even
11 excuse you from the courtroom for a short while. If I
12 have the attorneys approach, please do not try to
13 overhear us or read our lips. Do not think that we're
14 trying to hide anything from you. As I indicated to you
15 earlier, the law does not allow me to have an opinion
16 about the facts in this case but sometimes it is
17 necessary for me to make a comment regarding the facts
18 in this case in order to issue a ruling on the law, so I
19 might find it necessary to excuse you for a short while
20 so that in no way anything that I say or do throughout
21 the progress of this trial will influence you as to your
22 finding of 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 is my responsibility to

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1 rule as a matter of law as to whether certain testimony
2 is admissible at all. But once the testimony is
3 admitted, whether or not you believe it is solely for
4 you to determine.

5 In deciding whether to believe a witness, you have
6 the right to consider the interest of a witness, the
7 bias of a witness, the prejudice of a witness, the
8 opportunity for the witness to have seen and heard the
9 things about which they may testify, and it is also your
10 right to consider the way the witness acts on the
11 witness stand.

12 You have a right to consider anything in the record
13 that will help you evaluate the testimony of the
14 witnesses. That means it's your duty to pay close
15 attention. Please do not let your thoughts wander, or
16 close your eyes and take a short nap, while you're
17 listening to the testimony. Ladies and gentlemen, it is
18 important that you pay close attention.

19 Please give strict attention to all of the
20 testimony so that at the end of the testimony, after you
21 have heard closing arguments on behalf of counsel and I
22 have instructed you on the law applicable to this case,
23 you will be in a position to determine what the true
24 facts are, apply the law to those facts, and render a
25 verdict.

State vs. Gentile
Proceedings
January 5, 2016

1 Ladies and gentlemen, please give your strict
2 attention.

3 Mr. Sowards?

4 MR. SOWARDS: Thank you. May it please the Court.

5 THE COURT: Yes.
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State vs. Gentile
Opening Statement by Mr. Sowards
January 5, 2016

OPENING STATEMENT

MR. SOWARDS: Good morning. My name is Whit Sowards, as I told you yesterday when we were selecting you-all to serve on this jury. I am assistant solicitor here in the ninth circuit solicitor's office and with me is assistant solicitor Stephanie Linder.

On February 9th, 2012, detectives with the City of Charleston Police Department's special investigations unit executed a search warrant at 1 Grove Street, not too far from where we all are here today. When officers entered the residence, they located the defendant, Omar Gentile, in the living room. They located another individual in a kind of makeshift bedroom in the back of the downstairs.

As officers investigated 1 Grove Street, they were able to tie one of the bedrooms upstairs to the defendant. And in that bedroom, detectives located some personal effects appearing to belong to the defendant. They found -- in one of the drawers they found a digital scale. They found wax bindles, rubber bands, very consistent with the distribution of heroin. And they found in that same drawer 13.84 grams of heroin. They also found about \$1500 in currency in the defendant's bedroom.

So I know that people have strong opinions about

State vs. Gentile
Opening Statement by Mr. Sowards
January 5, 2016

1 whether drugs should be legalized in this country but on
2 February 9th, 2012, and today, the possession of heroin
3 was and is illegal in the state of South Carolina.

4 Now, throughout the course of this trial, you-all
5 will hear testimony from four of the detectives who
6 participated in the investigation of 1 Grove Street.
7 You will hear from individuals with the City of
8 Charleston Police Department who collect, store, and
9 transport evidence. And you will hear from a chemist,
10 who is employed by the City of Charleston Police
11 Department, who performed a forensic analysis on
12 narcotics that were found in the defendant's bedroom.

13 Now, it's the State's burden to prove beyond a
14 reasonable doubt that the defendant is trafficking
15 heroin and possession with intent to distribute heroin
16 within the proximity of a school. And I submit to you
17 that after hearing all of that testimony and reviewing
18 all of the evidence that is submitted in this case, that
19 all twelve of you will be firmly convinced that the
20 heroin found in the defendant's bedroom was his and you
21 will render a verdict of guilty on both indictments.
22 Thank you.

23 THE COURT: Mr. King?

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State vs. Gentile
Opening Statement by Mr. King
January 5, 2016

OPENING STATEMENT

MR. KING: On that day in February, Mr. Gentile had come to this residence, like he does most days, to take care of his cousin. John Davis is the guy that he referred to back in his bedroom. He's a handicapped individual. He had a leg amputated.

Mr. Gentile comes there -- doesn't live there, but comes there every day to help take care of this man. He has a job at Saint Morris [phonetic] Building Services. He's not involved in drugs. But he is at the wrong place at the wrong time, because he's sitting on the couch. He had come in -- spare pants laying over in that room on the bed, or pants that had been taken off. He's sitting on the couch now, in some more comfortable clothes, and the police bust in with a search warrant and they find heroin hidden in a drawer in that bedroom.

Now, it looks bad. Life's complicated, and there's situations where -- and we all know it from our experiences, whether our personal life, and sometimes in the plot of movies or TV shows or whatever, situations where you can get caught up where it might look bad at first look but it doesn't necessarily mean you're guilty.

About six days before the search warrant was executed, Omar's brother, Maurice Gentile, sold cocaine

State vs. Gentile
Opening Statement by Mr. King
January 5, 2016

1 to a confidential informant at 1 Grove Street, at that
2 residence. Now, he can't help what his brother does.
3 And this is the world he lives in. But what we would
4 expect in that situation -- because things do happen in
5 life and sometimes things aren't what they appear, is
6 that the police do everything reasonable to make sure
7 that they have the right guy -- that they investigate
8 events, because they have to present this evidence to
9 you and you're going to have to make this determination
10 about a man's life of whether he's guilty or not.

11 So we're asking you to listen to all the evidence,
12 to follow the law as the judge instructs you that he is
13 presumed innocent. And they have to prove that this was
14 his heroin, and I don't think they can do that.

15 We're asking you to find him, at the end of all
16 this evidence, not guilty. Thank you.

17 THE COURT: Call your first witness.

18 MR. SOWARDS: Thank you. The State calls Detective
19 Jake Grill.

20 [Whereupon, Mr. Grill comes forward]

21 THE CLERK OF COURT: I need to swear you in.

22 MR. GRILL: Yes, sir.

23 [Whereupon, Mr. Grill is duly sworn by the clerk of
24 court as follows: do you swear or affirm that your
25 testimony will be the truth, the whole truth, and

State vs. Gentile
Opening Statement by Mr. King
January 5, 2016

1 nothing but the truth, so help you God]

2 THE WITNESS: Yes, sir, I do.

3 THE CLERK OF COURT: Be seated.

4 [Whereupon, Mr. Grill takes the witness stand]

5 THE CLERK OF COURT: Please state your full name,
6 and spell your last name for the record.

7 THE WITNESS: Yes, sir. Detective Charles Jacob
8 Grill. G-R-I-L-L.

9 MR. SOWARDS: Good morning, Detective Grill.

10 THE WITNESS: Good morning.

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Charles Jacobs Grill
Direct Examination by Mr. Sowards
January 5, 2016

CHARLES J. GRILL,

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

DIRECT EXAMINATION

BY MR. SOWARDS:

Q. What is your current occupation?

A. I am currently employed by the City of Charleston Police Department.

Q. And how long have you been with the City of Charleston Police Department?

A. Over ten years.

Q. And what are your current duties with the City of Charleston Police Department?

A. Currently, I'm assigned to the DEA Charleston Drug Task Force.

It's a task force made up of local agencies assigned to the Federal Drug Enforcement Administration. I'm assigned to them.

However, the City -- I still work for the City, I just -- I'm just attached to that task force group. And my role in the City is under the special investigations unit within the City department detective's unit.

Q. And could you describe to the jury, please, your duties as a member of the DEA task force?

A. Yes, sir.

Charles Jacobs Grill
Direct Examination by Mr. Sowards
January 5, 2016

1 My duties and responsibilities are to investigate
2 drug traffickers within the jurisdiction of United States and
3 international cases.

4 When I was a City detective, my responsibilities
5 was to investigate drug trafficking with the City of
6 Charleston's jurisdiction.

7 However, attached to the federal drug task force,
8 I'm basically just the same thing as a federal agent and I
9 have the same authority as a Federal Drug Enforcement
10 administrator.

11 Q. And, Detective Grill, were you working with the
12 City of Charleston Police Department on February the 9th of
13 2012?

14 A. Yes, sir, I was.

15 Q. And in what capacity were you working with the
16 department then?

17 A. I was a detective, and we executed a search warrant
18 at the residence.

19 Q. Now, you've kind of described your duties with the
20 DEA task force, and you mentioned that you've also worked in
21 the special investigations unit. What were your duties as a
22 member of that?

23 A. Yes, sir.

24 Like I said earlier, my main priority in that unit
25 was to investigate drug traffickers or drug crimes that have

Charles Jacobs Grill
Direct Examination by Mr. Sowards
January 5, 2016

1 occurred within the City of Charleston, within the
2 jurisdiction of the City.

3 Q. And, Detective Grill, could you please explain to
4 the jury your training and background as it relates --

5 A. Yes, sir.

6 Q. -- to a police officer?

7 A. Every police officer attends the criminal justice
8 academy, which is in Columbia. You know, it's a -- when I
9 went through the academy, it was a nine-week program. I
10 believe they've increased it now.

11 And once you graduate there -- I was assigned the
12 patrol division of a team-one area of Charleston Police
13 Department, and I was on -- I worked on the streets for over
14 two years as a marked uniform police officer.

15 From there, I was assigned to the special
16 investigations unit. And within -- with being assigned there,
17 I also have obtained hundreds of hours of additional
18 specialized training in drug crimes and money-laundering
19 crimes, clandestine labs, stuff like that.

20 And after being in the special investigations unit
21 for approximately about two years, that's when I was then
22 assigned to the drug task force. And since then, I've
23 obtained several more hours of specialized training into like
24 the federal side of a drug investigation.

25 Q. I think you may have answered this earlier, but I

Charles Jacobs Grill
Direct Examination by Mr. Sowards
January 5, 2016

1 just want to make clear. Did you have the occasion to work on
2 February 9th of 2012?

3 A. Yes, sir, I was. Yes.

4 Q. And did you have the occasion to become involved in
5 the investigation of this case, State versus Omar Gentile --

6 A. Yes.

7 Q. -- on February 9th --

8 A. Yes, sir.

9 Q. -- 2012?

10 And what was your role in the execution of the
11 search warrant at 1 Grove Street?

12 A. I was on the entry team, the team that entered into
13 the residence.

14 MR. SOWARDS: May I approach the witness, Your
15 Honor?

16 THE COURT: You may.

17 Q. [Mr. Sowards] Detective Grill, I'm going to hand
18 you what's been marked as State's -- just for identification
19 as State's Exhibit 17.

20 A. Yes.

21 Q. Do you recognize that?

22 A. Yes, sir, I do.

23 Q. And is that a fair and accurate description of what
24 that's supposed to depict?

25 A. Yes, sir.

Charles Jacobs Grill
Direct Examination by Mr. Sowards
January 5, 2016

1 Q. And what is that?

2 A. It's a map of the City of Charleston. Or an area
3 in the City of Charleston.

4 MR. SOWARDS: Your Honor, at this time the State
5 moves -- would ask to move State's Exhibit 17 into
6 evidence.

7 THE COURT: Any objection?

8 MR. KING: May I just see it briefly?

9 THE COURT: You may approach.

10 [Whereupon, Mr. King reviews documents]

11 MR. KING: No objection, Your Honor.

12 MR. SOWARDS: Your Honor, at this time, the State
13 would ask to publish Exhibit 17.

14 THE COURT: State's 17 into evidence without
15 objection.

16 [Whereupon, State's Exhibit Number 17 is admitted
17 into evidence by the Court]

18 THE COURT: You may publish.

19 MR. SOWARDS: Thank you. May I approach, Your
20 Honor?

21 THE COURT: You may.

22 Q. [Mr. Sowards] While we're waiting on that, I'll
23 just ask you to describe what you see in that picture.

24 A. Yes, sir.

25 This is a -- it's an aerial photograph of the upper

Charles Jacobs Grill
Direct Examination by Mr. Sowards
January 5, 2016

1 peninsular of Charleston, I guess you could say.

2 Q. And I'm sorry. If you could again please describe
3 what we're looking at in this picture.

4 A. Yes, sir.

5 It's just an aerial photograph of the upper
6 peninsular of Charleston.

7 Q. And do you see -- or can you locate 1 Grove Street
8 on that map?

9 A. Yes, sir.

10 This is King Street that runs through here, and
11 this is Grove Street, the dead-end of Grove. 1 would be
12 somewhere around this area right here.

13 Q. And is that located in Charleston County, Detective
14 Grill?

15 A. Yes, sir, it is.

16 Q. And is that where the search warrant was executed?

17 A. Yes, sir, it was.

18 MR. SOWARDS: May I approach, Your Honor?

19 THE COURT: You may. You have continuing
20 permission.

21 MR. SOWARDS: Thank you.

22 Q. [Mr. Sowards] Detective Grill, I'm going to
23 hand you what has been marked for identification as State's
24 Exhibit 1.

25 A. Yes, sir.

Charles Jacobs Grill
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1 Q. And do you recognize that picture?

2 A. Yes, sir.

3 Q. And how do you recognize that picture?

4 A. It's -- I just know it. It's a picture of 1 Grove
5 Street.

6 Q. Is that a fair and accurate depiction of 1 Grove
7 Street?

8 A. Yes, sir, it is.

9 MR. SOWARDS: Your Honor, at this time the State
10 would seek to move State's Exhibit 1 into evidence.

11 THE COURT: Any objection?

12 MR. KING: No, Your Honor.

13 THE COURT: State's 1 into evidence without
14 objection.

15 [Whereupon, State's Exhibit Number 1 is admitted
16 into evidence by the Court]

17 THE COURT: You may publish.

18 MR. SOWARDS: Thank you.

19 Q. [Mr. Sowards] And I think you testified that you
20 recognized that as 1 Grove Street. Could you point out
21 specifically which residence is 1 Grove Street?

22 A. Yes, sir. It's this one right here.

23 Q. And is that where you were part of the team that
24 executed the search warrant?

25 A. Yes, sir, it was.

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1 Q. As you just stated, you were part of the team that
2 executed the search warrant at 1 Grove Street. What exactly
3 was your role in the execution of that search warrant?

4 A. When we execute search warrants, we assign duties
5 and responsibilities to officers while we're doing that. But
6 for this purpose, my main focus was -- or my first priority,
7 and first priority of any search warrant that we do, is when
8 we make entry we have to secure that residence.

9 We approach the residence. We knock and announce
10 our presence. And then if we need to, we force entry into
11 that residence. We enter that residence. We secure that
12 residence. We detain anyone that's inside of that residence
13 and secure that residence, and then that's when we conduct --
14 after we secure that residence and make it secure, we --
15 that's when we'll then execute the search warrant and actually
16 start searching for whatever we're looking for.

17 Q. And was anyone located inside the residence when
18 entry was made?

19 A. Yes, sir.

20 When we made entry into that residence, we located
21 the defendant. I believe he was on the couch in the
22 downstairs living room. And then there was another individual
23 located in the downstairs back bedroom. I believe that was
24 Mr. Davis.

25 Q. And do you see the defendant in the courtroom

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1 today?

2 A. Yes, sir, I do.

3 Q. Could you please point him out and describe what
4 he's wearing?

5 A. Yes, sir.

6 He's wearing the brown jacket, khaki pants, brown
7 shoes.

8 Q. And are you familiar with the defendant's name?

9 A. Yes, sir, I am. It's Omar Gentile. Also goes by
10 the name of Scope.

11 MR. SOWARDS: Please let the record reflect that
12 the witness identified the defendant, Omar Gentile, as
13 the individual who was present in the house.

14 THE COURT: It will.

15 Q. [Mr. Sowards] And, now, Detective Grill, as part
16 of the investigation of 1 Grove Street, the execution of the
17 search warrant on February 9th, did you have the opportunity
18 to speak with the defendant, Omar Gentile?

19 A. Yes, sir, we did. I did.

20 Q. And when did that occur?

21 A. It occurred after -- well, when we initially made
22 entry, like I said, we detained him right there at the -- in
23 the living room. We detained Mr. Davis in the back bedroom.

24 And then we brought them together and actually I
25 read the search warrant to both of them while they were

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1 detained right there.

2 And then after -- you know, we didn't locate anyone
3 after there. So after I read the search warrant, we then took
4 Mr. Gentile to the back bedroom, after we searched it to make
5 sure there was no weapons or anything like that. We sat him
6 down on the bed. And Detective Shealy, Agent Shealy, he read
7 them their -- his Miranda warnings, and then we proceeded to
8 have a conversation with him.

9 Q. Now, you just testified that Agent Shealy read the
10 defendant his Miranda warnings. How did he advise him of
11 those rights?

12 A. He read them off of a issued -- CPD issued Miranda
13 warning card.

14 Q. Detective Grill, I'm going to hand you what's been
15 marked for identification as State's Exhibit 26.

16 A. Uh-huh.

17 Q. Do you recognize that, sir?

18 A. Yes, sir, I do.

19 Q. And what is that?

20 A. It's the Miranda warning card, the CPD-issued
21 Miranda warning card, that we -- that Detective Shealy read to
22 Mr. Gentile.

23 Q. And how do you know that's the card that Detective
24 Shealy used to read --

25 A. Well, Mr. Gentile -- I'm sorry.

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1 Q. -- Mr. Gentile his rights?

2 A. Mr. Gentile signed the card, Detective Shealy
3 signed the card, and I also signed the card. And it's dated
4 and timed.

5 Q. Thank you.

6 A. Yes, sir.

7 Q. Now, during the time in which you spoke to the
8 defendant, did the defendant appear to be under the influence
9 of drugs or alcohol?

10 A. No, sir, he did not.

11 Q. Did he appear to understand the nature of the
12 inquiry?

13 A. Yes, sir, he did.

14 Q. Did he appear to be confused by what was happening?

15 A. No, sir, he did not -- was not.

16 Q. Did he appear -- or did he ever tell you that he
17 did not understand what was happening?

18 A. No, sir, he did not.

19 Q. Was the defendant ever threatened?

20 A. No, sir.

21 Q. Was the defendant ever promised anything in
22 exchange for speaking with officers?

23 A. No, sir, he was not.

24 Q. I think you had testified earlier that the
25 defendant was detained at the time. What does that mean?

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1 A. Well, when we initially make entry, we put
2 handcuffs on everybody that may be inside of a residence.

3 We put handcuffs on Mr. Gentile, placed the
4 handcuffs behind his back at the initial time. However, when
5 we moved him into the back bedroom, after we advised him of
6 his rights with the Miranda card, we moved those handcuffs to
7 his front so he could actually sign the card.

8 Q. Now, were the defendant's answers to yours and
9 Detective or Agent Shealy's questions recorded in any manner?

10 A. Yes, sir, they were.

11 Q. And how were they recorded?

12 A. In Agent Shealy's report.

13 Q. And after Agent Shealy advised -- I think you may
14 have testified to this, but I just want to make it clear.
15 After Agent Shealy advised the defendant of his constitutional
16 rights, did he acknowledge that he understood those rights?

17 A. Yes, sir, he did.

18 Q. And how did he make that acknowledgment?

19 A. He just said he understood.

20 Q. And after being advised of his rights, did the
21 defendant make any statements?

22 A. Yes, sir, we had a -- we had a little conversation.

23 MR. KING: Your Honor, I just renew my objection
24 pretrial.

25 THE COURT: It will be noted. Thank you.

Charles Jacobs Grill
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1 Q. [Mr. Sowards] And what were those statements?

2 A. Refer to my report -- or Agent Shealy's report.

3 [Whereupon, the witness reviews documents]

4 A. He stated that -- he stated that he basically --
5 he comes to that residence every day to help take care of
6 Mr. Davis; that he did stay there from time to time; and that
7 his -- when he did stay there, his room was located upstairs.

8 And when we asked him to point out his -- to point
9 out his bedroom, he described -- well, we asked him where --
10 to describe where his bedroom was upstairs. He stated --
11 indicated that it was actually above where we were located in
12 the downstairs bedroom. So there was a bedroom located
13 directly upstairs. And while we asked him that he looked up
14 and said, it's up there. So he pointed out which one to us by
15 indicating where his bedroom was.

16 And then he asked while during the -- while during
17 the conversation we were having, he asked Detective Shealy to
18 get him some pants out of his bedroom, a thermal shirt, and a
19 pair of shoes out of his bedroom.

20 And then he also -- in the upstairs bedroom, the
21 one that he pointed out, it was a set of keys that were inside
22 of a lock. The door had a lock on it and there was a set of
23 keys on there, and which he stated that those keys in fact did
24 belong to him.

25 And he stated that he had over \$1,000 cash in his

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1 room and that --

2 Also, when we asked him where his residence was,
3 while we were filling out the booking sheet, he stated that
4 **1** Grove Street was his residence.

5 MR. SOWARDS: May I approach?

6 THE COURT: You may.

7 Q. [Mr. Sowards] Detective Grill, I want to hand you
8 what's been marked for identification as State's Exhibit
9 Number 2.

10 A. Yes, sir.

11 [Whereupon, the witness reviews documents]

12 Q. [Mr. Sowards] And do you recognize that?

13 A. Yes, sir.

14 Q. And how do you recognize that?

15 A. It's the floor plan of **1** Grove Street.

16 Q. And is that a fair and accurate depiction of the
17 floor plan of **1** Grove Street?

18 A. Yes, sir.

19 MR. SOWARDS: Your Honor, at this time the State
20 would seek to admit State's Exhibit Number 2.

21 THE COURT: Any objection?

22 MR. KING: No, Your Honor.

23 THE COURT: State's 2 into evidence without
24 objection.

25 [Whereupon, State's Exhibit Number 2 is admitted

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1 into evidence by the Court]

2 THE COURT: You may publish.

3 Q. [Mr. Sowards] Detective Grill, what are we looking
4 at here?

5 A. That's the floor plan of 1 Grove Street.

6 Q. Could you just generally kind of describe the
7 layout of the house?

8 A. Yes, sir.

9 I mean, right here, as you can see, that's the
10 living room. This is the back bedroom that we were referring
11 to. These are staircases. This is the front door of the
12 residence, so when you walk in there's a set of stairs.
13 That's where the stairs lead up to bedroom number two. And
14 this is bedroom number three, and then bedroom number four.

15 Q. And which bedroom did the defendant indicate
16 belonged to him?

17 A. It was this one right here, bedroom three.

18 Q. And that's where -- the keys you indicated the
19 defendant claimed as his own, that's where they were found?

20 A. Yes, sir.

21 Q. And what about the pants and the shirt and shoes?

22 A. The pants were obtained from that bedroom, bedroom
23 number 3.

24 Q. Thank you.

25 Detective Grill, are you familiar with the general

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1 area around 1 Grove Street?

2 A. Yes, sir.

3 Q. Are there any schools located near that residence?

4 A. Yes, sir.

5 There is a school directly across the street from
6 it. I mean, it's directly across the street from that
7 residence. It's -- I think it's 1002 King Street, is the
8 address of the school.

9 Q. And what school is that?

10 A. It's River -- excuse me. It's Charleston School of
11 Math and Science now, I believe is the name of it.

12 Q. And did the defendant make any statements regarding
13 the school?

14 A. He did.

15 He did state -- he did state that he was aware that
16 the school was directly outside of his house, across the
17 street.

18 Q. Now, you previously testified that you've had a lot
19 of training as a narcotics detective. Have you had training
20 on street-level drug dealing?

21 A. Yes, sir.

22 Q. And could you just generally describe that training
23 again for the jury?

24 A. Yes, sir. Like I said, we -- every police officer
25 attends the criminal justice academy.

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1 After graduating that, I obtained training in
2 undercover techniques for undercover operations, surveillance
3 -- specialized surveillance training put on by the FBI.

4 And of course with the Drug Enforcement
5 Administration, I've obtained training with the basic
6 investigative school put on by the DEA, the Drug Enforcement
7 Administration.

8 And then also, once I was assigned to the -- as a
9 task force officer, I was given training as a task force
10 officer, orientation training, and basically what it entails,
11 what do they expect, from investigators.

12 Q. And are you, based on your training and experience,
13 familiar with the distribution of heroin?

14 A. Yes, sir, I am.

15 Q. And based on your training and experience, how is
16 street-level heroin typically distributed?

17 A. Typically what we see is street level -- on the
18 street level, you see it distributed in one or two ways. One
19 way being in a clear plastic baggie, either -- usually a half
20 gram to a gram quantity. Or typically what we see is it's
21 sold in what we call bindles, which are -- bindles are bags,
22 is what they refer to them, is -- basically, it's a folded
23 piece of like a wax bag or a waxine bag, almost -- and they
24 typically put anywhere from two -- or .03 grams to .04-or-five
25 grams. So it's a very minute -- pretty much a dosage unit

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January 5, 2016

1 into a wax bag, and then they fold it and they -- so it makes
2 one little small rectangle. And then typically we call that a
3 bindle or a bag and it's either sold individually -- and each
4 individual bindle is sold for typically from twenty to twenty-
5 five dollars.

6 And then most commonly what we see is they'll take
7 ten bags and that will make a bundle. So a bundle is ten
8 bindles. And that typically goes for 200, 250 on the street.

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

10 THE COURT: Take your time.

11 [Whereupon, Mr. Sowards and Ms. Linder confer]

12 MR. SOWARDS: I have no further questions at this
13 time.

14 Please answer any questions that Mr. King may
15 have.

16 THE WITNESS: Yes, sir.

17 THE COURT: Mr. King?

18 MR. KING: Detective Grill, I just want to ask you
19 a few questions.

20 THE WITNESS: Yes, sir.

21 - - -

22 - - -

23 - - -

Charles Jacob Grill
Cross-Examination by Mr. King
January 5, 2016

CROSS-EXAMINATION

BY MR. KING:

Q. You were part of the entry team --

A. Yes, sir.

Q. -- in the execution of the search warrant?

A. Yes, sir.

Q. It was about noon, roughly?

A. No, sir. Hang on.

[Whereupon, the witness reviews documents]

A. Yeah. Yes, sir, it was, actually.

Q. [Mr. King] You entered first --

A. I --

Q. -- one of -- one of the first to enter?

A. I don't know, sir. It was probably -- I could have been first or third. I don't --

Q. You were one of the first few groups, though, to enter into the residence?

A. Yes, sir. I was in the -- I was in the initial entry team. Yes, sir.

Q. Broke the door open?

A. Well, I mean, we made entry into it, yes, sir.

Q. Forcefully?

A. Yes, sir.

Q. You saw someone sitting on the couch?

A. We saw the defendant sitting on the couch.

Charles Jacob Grill
Cross-Examination by Mr. King
January 5, 2016

1 Q. Mr. Gentile?

2 A. Yes, sir.

3 Q. You detained him?

4 A. Yes, sir.

5 Q. You searched him?

6 A. Well, he -- I mean, he was just wearing a tank top
7 and some shorts.

8 Q. Well, you testified that's part of the routine.
9 You detain the individuals in the house?

10 A. Yes, sir.

11 Q. You search them? You want to make sure --

12 A. Oh, absolutely.

13 Q. -- they don't have any drugs or --

14 A. Absolutely.

15 Q. -- anything on them? So you go and search Mr.
16 Gentile?

17 A. Uh-huh.

18 Q. No heroin on him?

19 A. No, sir.

20 Q. No drugs or anything on him?

21 A. No, sir.

22 Q. You said he wasn't high on drugs?

23 A. Didn't appear.

24 Q. There was a guy, John Davis, there?

25 A. Yes, sir.

Charles Jacob Grill
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1 Q. And he seemed -- he had an amputated leg --

2 A. Yes, sir.

3 I believe it was from the knee down, or something
4 like that.

5 Q. Knee down? There was like a walker in the room?

6 A. Sir?

7 Q. There was like a walker in his bedroom? Do you
8 remember?

9 A. Could have been, yes, sir.

10 Q. But he appeared to be in poor health?

11 A. He had a leg amputated.

12 Q. And it was a bandaged leg? It was still bandaged.
13 Do you remember seeing that?

14 A. I don't remember seeing a bandage, but I think
15 there was something white. I don't know if it was a bandage.
16 Could have been just a sleeve.

17 Q. You handcuffed Mr. Davis and Mr. Gentile and put
18 them on the couch?

19 A. Yes, sir.

20 Q. And then you said you took Mr. Gentile and you and
21 Detective Shealy, Agent Shealy, asked him questions?

22 A. Yes, sir.

23 Q. And he told you he comes there every day --

24 A. Uh-huh.

25 Q. -- to help take care of Cousin John Davis?

Charles Jacob Grill
Cross-Examination by Mr. King
January 5, 2016

1 A. Yes, sir.

2 Q. He stayed there sometimes, from time to time, is
3 what you said; right?

4 A. [Indicates affirmatively]

5 THE COURT: Is that a yes?

6 A. Yes, sir.

7 THE WITNESS: I'm sorry. I'm sorry.

8 A. Yes, sir.

9 Q. [Mr. King] And he indicated which room he stays
10 in?

11 A. Yes, sir.

12 Q. And he told you he had roughly \$1,000 in the room,
13 over \$1,000?

14 A. I believe he said he had over \$1,000. Yes, sir.

15 Q. I thought -- do you remember yesterday you had
16 testified that he had roughly 1,000? Is that fair enough?

17 A. Well, roughly over -- I mean, yes, sir.

18 Q. He asked for pants, thermal shirt, and shoes?

19 A. Yes, sir.

20 Q. That he -- you said he was wearing like maybe
21 lounging clothes?

22 A. Yes, sir.

23 He had on a white tank top and I believe some like
24 basketball type shorts or whatever.

25 Q. He didn't claim any drugs?

Charles Jacob Grill
Cross-Examination by Mr. King
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1 A. No, sir, he did not.

2 Q. You were also involved in the search of 2 Grove
3 Street next door; right?

4 A. Yes, sir.

5 Q. You got called into that case because a black male
6 was observed leaving 1 Grove Street?

7 A. Yes, sir.

8 Before we executed the search warrant at 1, we had
9 pre-surveillance out there and the surveillance saw an
10 individual leave and then leave from 1 Grove Street and walk
11 directly next door to 2 Grove.

12 Q. And you assisted in the search of 2 Grove Street?

13 A. Yes, sir.

14 Q. And in that -- at 2 Grove Street, y'all found
15 about a gram of heroin?

16 A. I believe it was somewhere around there, yes, sir.

17 Q. And over 10 grams of cocaine base?

18 A. Cocaine, cocaine base, I don't --

19 Q. Cocaine base is crack cocaine?

20 A. Yes, sir.

21 Q. It's different -- I guess different than powder
22 cocaine?

23 A. Yes, sir.

24 Q. And \$3,137?

25 A. I mean, if you say so, yes, sir.

Charles Jacob Grill
Cross-Examination by Mr. King
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1 Q. And it was claimed by Xavier Williams?

2 A. Yes, sir.

3 Q. And he was charged with trafficking cocaine?

4 A. I believe so, yes, sir.

5 MR. KING: That's all the questions I have.

6 THE COURT: Mr. Sowards, redirect?

7 MR. SOWARDS: No redirect at this time.

8 THE COURT: Detective, you may step down. Feel
9 free to stay with us, but I believe you are free to
10 leave.

11 THE WITNESS: Yes, ma'am.

12 [Whereupon, Mr. Grill is excused and exits the
13 witness stand]

14 THE COURT: Ladies and gentlemen, it's an
15 appropriate time for us to take a midmorning break.
16 Please remember all my admonitions. Leave your notepads
17 in your chair.

18 Please rise for the jury.

19 [Whereupon, the jury exits the courtroom at
20 10:32 a.m.]

21 THE COURT: Thank you. Please be seated. About
22 ten minutes.

23 [Whereupon, a recess is taken from 10:33 a.m. to
24 10:43 a.m.]

25 THE COURT: Anything before we bring in the jury?

Charles Jacob Grill
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1 From the State?

2 MR. SOWARDS: Nothing from the State.

3 THE COURT: From the defendant?

4 MR. KING: No, Your Honor.

5 THE COURT: Please rise for the jury.

6 [Whereupon, the jury enters the courtroom at
7 10:44 a.m.]

8 THE BAILIFF: All jurors present.

9 THE COURT: Thank you. Please be seated.

10 Call your next witness.

11 MR. SOWARDS: The State calls Detective John Marn.

12 [Whereupon, Mr. Marn comes forward]

13 [Whereupon, Mr. Marn is duly sworn by the clerk of
14 court as follows: do you swear or affirm that your
15 testimony will be the truth, the whole truth, and
16 nothing but the truth, so help you God]

17 THE WITNESS: I do.

18 THE CLERK OF COURT: Be seated.

19 [Whereupon, Mr. Marn takes the witness stand]

20 THE CLERK OF COURT: Please state your full name,
21 and then spell your last name for the record.

22 THE WITNESS: Yes, sir. Detective John Marn.

23 M-A-R-N.

24 MS. LINDER: Good morning, Detective Marn.

25 THE WITNESS: Good morning.

John Marn
Direct Examination by Ms. Linder
January 5, 2016

JOHN MARN,

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

DIRECT EXAMINATION

BY MS. LINDER:

Q. What's your occupation?

A. I am a police detective currently assigned to the
special investigations unit.

Q. And how long have you been in law enforcement?

A. Been in law enforcement since 2006.

Q. And how long have you been with the special
investigations unit?

A. Five years.

Q. What are your duties as a special investigations
unit detective?

A. Primary duties are to investigate narcotics and
vice-related criminal offenses.

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

A. Yes, ma'am.

I have a bachelor's degree in criminal justice,
master's in business and education.

I attended the six-month Pennsylvania police
academy, as well as the South Carolina criminal justice
academy.

John Marn
Direct Examination by Ms. Linder
January 5, 2016

1 And since being a police officer, I have
2 had additional training: advanced narcotics and vice
3 investigations, evidence handling, interview and
4 interrogation, courses along those lines.

5 Q. And did you have the occasion to be working back on
6 February the 9th, 2012?

7 A. Yes, ma'am.

8 Q. And are you involved at all in the case -- this
9 case at hand, which is the State versus Omar Gentile?

10 A. Yes, ma'am.

11 Q. And with that case, were you involved with the
12 search warrant that was executed?

13 A. I was.

14 Q. Do you remember what address that was?

15 A. **1** Grove.

16 Q. And is that in the city of Charleston?

17 A. It is.

18 Q. Is it Charleston County?

19 A. Yes, ma'am.

20 Q. What was your role during that search warrant
21 execution?

22 A. Initially my role was on the entry team and then
23 once the location was secured, I transitioned into a search
24 component.

25 Q. What do you mean when the location was secure?

John Marn
Direct Examination by Ms. Linder
January 5, 2016

1 A. When we execute a search warrant at a location,
2 after we make entry we do what's called a sweep of the
3 location, detain anyone that's present at the location. Then
4 we do what's called a secondary sweep, just to make sure there
5 was no one that was overlooked or missed. And once we're sure
6 that the location is safe, we call it secured and then we move
7 on to the execution of the search warrant itself.

8 Q. And can you describe to the jury just how a search
9 is done? You said you transitioned to the search part.

10 A. Yes, ma'am.

11 The rooms in the residence are labeled, and then
12 a detective is assigned or goes to a specific room to conduct
13 a search and is methodically searching that particular room.

14 For instance, when I search a bedroom, the first
15 thing I do is I clear underneath the bed, and the bed itself,
16 then I methodically work from left to right in the room using
17 the bed as a place to place stuff as I search.

18 Q. And when you're executing a search warrant in this
19 case, a narcotics search warrant, what types of items are you
20 looking for?

21 A. Narcotics, paraphernalia, scales, paperwork, rubber
22 bands, glassine bags. Anything indicative of the narcotics
23 trade.

24 Q. Okay. I would like to take you back specifically
25 to this case, back to February 9th of 2012. After entering

John Marn
Direct Examination by Ms. Linder
January 5, 2016

1 that house at 1 Grove Street, were any items of interest
2 located inside?

3 A. Yes, ma'am.

4 Q. And did you, in fact, locate evidence?

5 A. I did, ma'am.

6 Q. And what area of 1 Grove were you specifically
7 tasked with searching?

8 A. Bedroom number three.

9 Q. Bedroom number three? And was that upstairs,
10 downstairs?

11 A. Upstairs.

12 Q. Did you locate items in bedroom number three?

13 A. Yes, ma'am.

14 Q. What items were located?

15 A. We located approximately 16 grams of heroin;
16 glassine baggies and rubber bands, which is used in the
17 narcotics trade, specifically heroin, for packaging heroin.

18 What they will do is they will place the heroin in
19 a glassine bag, which is called a bindle. And then ten
20 bindles together, wrapped, is called a bundle.

21 We found digital scales with residue on the scales,
22 paperwork in the name of Mr. Omar Gentile, a driver's license,
23 a pay stub was found in Mr. Gentile's name in the drawer where
24 the heroin was located, as well as other paperwork and a
25 social security card.

John Marn
Direct Examination by Ms. Linder
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1 MR. KING: Your Honor, I just renew my pretrial
2 objection.

3 THE COURT: It's noted for the record. Thank you.

4 Q. [Ms. Linder] And was there anything unusual? Did
5 you locate anything on or about the door to the room?

6 A. Yes, ma'am.

7 The door had a lock on the door and I located --
8 there was keys inside the lock to the door.

9 Q. Were pictures taken of the search warrant, during
10 the search warrant, of the room that you searched?

11 A. Yes, ma'am.

12 Q. And at this time I would like to show you what's
13 already been entered as State's Exhibit 2.

14 MS. LINDER: If I may approach the witness, Your
15 Honor?

16 THE COURT: You may.

17 Q. [Ms. Linder] Do you recognize that?

18 A. Yes, ma'am, I do.

19 Q. And that's already been entered for the jury and
20 they've already seen it.

21 Can you just say what exactly that picture -- that
22 diagram depicts?

23 A. Yes, ma'am.

24 It depicts the location of 1 Grove Street where we
25 executed the search warrant.

John Marn
Direct Examination by Ms. Linder
January 5, 2016

1 MS. LINDER: And I'm going to put this up, and it's
2 going to show up on the screen ahead of you and behind
3 you. It's a touch screen, so feel free to draw away
4 like you were on your cell phone.

5 Q. [Ms. Linder] Okay. So you said -- did you search
6 upstairs or downstairs?

7 A. Upstairs.

8 Q. Can you circle which bedroom you were responsible
9 for searching?

10 A. Yes, ma'am.

11 Q. So that's bedroom three?

12 A. It is.

13 Q. And it's the bedroom where you said you located all
14 those items?

15 A. Correct.

16 Q. At this time, I'm going to show you a bunch of
17 pictures and I would like for you to look at them and tell me
18 if you recognize these photos.

19 [Whereupon, the witness reviews documents]

20 A. Yes, ma'am, I do.

21 Q. [Ms. Linder] And how do you recognize them?

22 A. These are photos of the items that I located in
23 bedroom number three during the search warrant.

24 Q. And do they fairly and accurately depict the room
25 that you searched and the items that you located?

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1 A. Yes, ma'am.

2 MS. LINDER: Your Honor, at this time I would seek
3 to introduce these photographs for the jury and publish
4 them. They are State's Exhibits 3, 4, 5, 6, 7, 8, 9,
5 10, 11, 12, 13 and 16.

6 THE COURT: Mr. King?

7 MR. KING: I just renew my pretrial objection, Your
8 Honor.

9 THE COURT: All right. Please approach.

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

12 THE COURT: Your objection, pretrial objection, is
13 noted for the record.

14 Ms. Linder?

15 MS. LINDER: Thank you, Your Honor.

16 Q. [Ms. Linder] Detective Marn, I wanted to go back
17 and look through State's Exhibits 3, 4, 5, 6, 7, 8, 9, 10, 11,
18 12, 13 and 16. Those are all the photos that you previously
19 reviewed?

20 [Whereupon, the witness reviews documents]

21 A. Yes, ma'am.

22 Q. [Ms. Linder] And those all accurately depict the
23 room that you searched that day?

24 A. They do.

25 THE COURT: Noting your previous objection,

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1 Mr. King, State's 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13
2 and 16 into evidence noting your objection.

3 [Whereupon, State's Exhibit Numbers 3, 4, 5, 6, 7,
4 8, 9, 10, 11, 12, 13 are admitted into evidence by the
5 Court]

6 [Whereupon, State's Exhibit Number 16 is admitted
7 into evidence by the Court]

8 THE COURT: You may publish.

9 MS. LINDER: Thank you, Your Honor.

10 Q. [Ms. Linder] First, I would like to bring your
11 attention to State's Exhibit 3. Can you please explain to the
12 jury -- and if it's helpful, feel free to draw on that screen.
13 Can you explain to the jury what this picture depicts?

14 A. Yes, ma'am.

15 This picture first depicts the quantity of heroin
16 that was found in this room.

17 Q. Where is the heroin?

18 A. It is in the plastic bag on top of the dresser
19 there. I'm trying to circle -- yes.

20 Q. And what else do you see in this photograph?

21 A. A digital scale next to it, with white residue,
22 which is commonly used for weighing out narcotics.

23 Q. What else is important to you as a trained
24 narcotics officer?

25 A. If you look in the desk drawer you can see the

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1 rubber bands and the glassine baggies, which is commonly how
2 heroin is packaged for distribution and sale.

3 Q. And what else did you find in this drawer?

4 A. There was money, United States currency, found.

5 Q. And did this box appear to be underneath this hat,
6 or is it laid really quickly right on top?

7 A. It appears to be underneath, somewhat, but more so
8 on top.

9 Q. At this time, I would like to have you open and
10 look at State's Exhibit 30.

11 A. [Witness complies]

12 Q. Do you recognize that?

13 A. I do, ma'am.

14 Q. And how do you recognize that?

15 A. This is the heroin that was located in bedroom
16 number three at 1 Grove Street.

17 Q. Thank you.

18 A. You're quite welcome.

19 Q. Is that heroin the same heroin that's in the
20 picture that's on the screen?

21 A. Yes, ma'am.

22 Q. Now I would like to show you State's Exhibit 21.
23 Do you recognize that?

24 A. I do, ma'am.

25 Q. How do you recognize it?

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1 A. That is the box housing the rubber bands and
2 glassine baggies that was located in the drawer in bedroom
3 number three.

4 Q. And are these shown in the picture that's in front
5 of the jury?

6 A. They are.

7 MS. LINDER: Your Honor, at this time I would seek
8 to admit State's Exhibit 21 into evidence.

9 MR. KING: Subject to my pretrial objection.

10 THE COURT: State's 21, noting the defendant's
11 objection, into evidence.

12 [Whereupon, State's Exhibit Number 21 is admitted
13 into evidence by the Court]

14 Q. [Ms. Linder] So this is the box that was in the
15 drawer. And what are these items?

16 A. Those are the glassine baggies I was explaining
17 earlier that are used commonly in the packaging of heroin for
18 sale.

19 Q. And what else was in this box?

20 A. Rubber bands.

21 Q. And how are those rubber bands used, again?

22 A. Once you place the heroin into a specific bag, it
23 is called a bindle. Ten bindles are put together, wrapped
24 with those gum bands, to form what is called a bundle.

25 Q. At this time I would show you what's been marked as

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1 State's Exhibit 23. And what does that show?

2 A. That --

3 Q. What is that? Do you recognize it?

4 A. Yes, ma'am.

5 That is the digital scale, with the white residue,
6 in the photo.

7 Q. Is that in substantially the same condition as it
8 was the day you initially located it, February 9 of 2012?

9 A. Yes, ma'am.

10 MS. LINDER: Your Honor, at this time the State
11 would seek to admit State's Exhibit Number 23 into
12 evidence.

13 MR. KING: Subject to pretrial objection.

14 THE COURT: State's 23 into evidence, noting your
15 objection.

16 Q. [Ms. Linder] Detective Marn, what I would like
17 to do now is I would like to publish to the jury State's
18 Exhibit 4. And what does this picture show?

19 A. It's the picture of the box holding the glassine
20 baggies and the rubber bands that were located in the drawer
21 in bedroom three.

22 Q. Do you know what this is right here?

23 A. The Bank of America card, ma'am?

24 Q. Yes.

25 A. Yes.

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1 Q. Whose name is that Bank of America card in?

2 A. Omar Gentile.

3 Q. And is that the defendant in this case?

4 A. It is.

5 Q. And is this the location where that bank card was
6 found?

7 A. Yes, ma'am.

8 Q. At this time I would like to publish for the jury
9 State's Exhibit 5. Can you please tell them what this picture
10 shows?

11 A. Yes, ma'am.

12 It shows a Crown Royal bag holding United States
13 currency.

14 Q. State's Exhibit 6?

15 A. State's -- a shot, just farther out, of the shoe
16 box which was holding the Crown Royal bag and the other money.

17 Q. State's Exhibit 7?

18 A. This is a pair of jeans that was located in bedroom
19 number three with the -- that United States currency in the
20 pocket.

21 Q. State's Exhibit 4. I'm sorry. State's Exhibit 8?

22 A. That is the South Carolina identification card of
23 Mr. Omar Gentile, the defendant in this case.

24 Q. State's Exhibit 9?

25 A. Mail addressed to Mr. Gentile, the defendant in

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1 this case.

2 Q. And what address was it sent to?

3 A. 1 Grove Street, ma'am.

4 Q. Is that the location of the search warrant?

5 A. It is.

6 Q. State's Exhibit 10?

7 A. Again, it's mail from the Department of Revenue,
8 sent to Mr. Omar Gentile at the location of the search
9 warrant, 1 Grove Street.

10 Q. State's Exhibit 11?

11 A. Social Security card in the name of Mr. Omar
12 Gentile.

13 Q. At this time I would like to show you what's been
14 marked as State's Exhibit 25. If you can look at that,
15 please. After you've looked at it, please let me know: do
16 you recognize that item?

17 A. I do, ma'am.

18 Q. How do you recognize it?

19 A. This is one of the items that I seized during the
20 search warrant at 1 Grove Street.

21 Q. And that item was from bedroom number 3?

22 A. It was.

23 Q. And is that in substantially the same condition as
24 it was when you seized it back on February the 9th of '12?

25 A. Yes, ma'am.

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1 MS. LINDER: At this time, Your Honor, I would like
2 to -- I seek to admit State's Exhibit 25 into evidence.

3 MR. KING: Subject to our pretrial objection.

4 THE COURT: State's 25 into evidence, noting your
5 objection.

6 [Whereupon, State's Exhibit Number 25 is admitted
7 into evidence by the Court]

8 Q. [Ms. Linder] Detective Marn, can you please tell
9 me the significance? Why did you decide to collect this as
10 part of evidence?

11 A. Yes, ma'am. It's a pay stub in the name of the
12 defendant, Omar Gentile, that was located in the same drawer
13 as the heroin, the glassine baggies, the rubber bands, were
14 found.

15 Q. All in the same drawer as the drugs?

16 A. Yes, ma'am.

17 Q. At this time I show you what's been marked as
18 State's Exhibit 24. Do you recognize that?

19 A. Yes, ma'am, I do.

20 Q. Is it in substantially the same condition as it was
21 when you first saw it?

22 A. Yes, ma'am.

23 MS. LINDER: The State at this time would seek to
24 admit State's Exhibit 24.

25 THE COURT: Mr. King?

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1 MR. KING: Sorry. Same objection, Your Honor.

2 THE COURT: State's 24 into evidence, noting your
3 objection.

4 [Whereupon, State's Exhibit Number 24 is admitted
5 into evidence by the Court]

6 Q. [Ms. Linder] Detective Marn, can you please tell
7 the jury what this is?

8 A. Yes, ma'am.

9 It's the South Carolina identification card for
10 Mr. Omar Gentile.

11 Q. And where was this found?

12 A. This was located in the pants pocket which were
13 located in bedroom number three that was previously shown.

14 Q. At this time I would like to show you what's been
15 marked as State's Exhibit -- and already admitted -- as
16 State's Exhibit 12. Can you please tell the jury what this
17 is?

18 A. Yes, ma'am.

19 It's a picture of United States currency located in
20 bedroom number three.

21 Q. State's Exhibit 13?

22 A. The same photo. Just a photograph showing you that
23 it was located in the dresser drawer in bedroom number three.

24 Q. And is this the same dresser drawer that we
25 previously looked at the other side? There are -- are there

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1 multiple drawers --

2 A. Yes, ma'am.

3 Q. -- that we looked at?

4 A. Yes, ma'am.

5 Q. State's Exhibit 16?

6 A. It is another digital scale that was located in the
7 room, bedroom number three, during the execution of the search
8 warrant.

9 Q. And at this time, I'm going to show you what's been
10 marked as State's Exhibit 22. Will you look at that? Let me
11 know if you recognize it.

12 A. Yes, ma'am, I do.

13 Q. How do you recognize it?

14 A. This is the digital scale that I located in bedroom
15 number three during the search warrant.

16 Q. Does it appear in substantially the same condition
17 as it was when you first located it?

18 A. Yes, ma'am.

19 MS. LINDER: Your Honor, at this time we would seek
20 to admit State's Exhibit 22 into evidence.

21 MR. KING: Subject to our pretrial objection, Your
22 Honor.

23 THE COURT: Noting your objection, State's 22 into
24 evidence.

25 [Whereupon, State's Exhibit Number 22 is admitted

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1 into evidence by the Court]

2 Q. [Ms. Linder] And if you could just tell the jury,
3 what is this?

4 A. It is a digital scale that is used commonly in the
5 narcotics trade for weighing up quantities of narcotics or
6 drugs.

7 And to me, what made that one significant is it is
8 used to weigh a higher quantity or a heavier weight than the
9 smaller digital scale which was previously shown.

10 Q. And at this time, I would like to show you what's
11 been marked as State's Exhibit 20. Feel free to take those
12 out. If you could please look at those and then let me know
13 if you recognize --

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

15 Q. And how do you recognize them?

16 A. These are items that were located in bedroom number
17 three during the search.

18 Q. And are they substantially in the same condition as
19 they were when you first located them?

20 A. They are.

21 Q. And do you recall where specifically they were
22 located during the search warrant?

23 A. [No response]

24 Q. Were they located on the floor, on the dresser, in
25 the dresser somewhere?

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1 A. In the dresser, ma'am, I believe.

2 MS. LINDER: Your Honor, at this time the State
3 would seek to admit State's Exhibit 20 into evidence.

4 MR. KING: Subject to pretrial.

5 THE COURT: State's 20 into evidence, noting your
6 objection.

7 [Whereupon, State's Exhibit Number 20 is admitted
8 into evidence by the Court]

9 MS. LINDER: Bet the Court's indulgence.

10 THE COURT: Take your time.

11 [Whereupon, Ms. Linder and Mr. Sowards confer]

12 MS. LINDER: That's all the questions I have for
13 you at this time, Detective Marn. If you could please
14 answer anything the defense may have.

15 THE WITNESS: Yes, ma'am.

16 THE COURT: Mr. King?

17 MR. KING: Thank you. Detective Marn?

18 THE WITNESS: Sir.

19

20

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John Marn
Cross-Examination by Mr. King
January 5, 2016

CROSS-EXAMINATION

BY MR. KING:

Q. So you searched bedroom number three?

A. Yes, sir.

Q. The door to that bedroom was open?

A. Yes, sir.

Q. The keys were in the door?

A. Yes, sir.

Q. You found a pair of black pants on the bed?

A. Yes, sir.

Q. With that ID in it?

A. Correct.

Q. That ID has an address of 146 Williman Street,
Apartment ■ --

A. Yes, sir.

Q. -- Charleston, 29403?

A. Yes, sir.

Which it's not uncommon for people not to change
their IDs or their address on their driver's licenses.Q. But it also could be that he lives at 146 Williman
Street, Apartment ■ --A. Well, all the evidence we found would say contrary
to that, sir.Q. You found \$774 in the black jeans, in one pocket,
and 103 in another?

John Marn
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January 5, 2016

1 A. I'm sorry, sir. Can you repeat?

2 Q. You found cash in two pockets in that -- in the
3 black pair of pants?

4 A. Yes, sir.

5 Q. \$774 in one pocket?

6 A. Yes, sir.

7 Q. 103 in another?

8 [Whereupon, the witness reviews documents]

9 A. Yes, sir.

10 Q. [Mr. King] That totals 887 in the pants?

11 A. Yes, sir.

12 Q. Roughly \$1,000? Close to it?

13 A. Close to it, within a couple of hundred.

14 Q. You found some other cards in the pants, like a AAA
15 card?

16 A. Yes, sir, there was other cards.

17 Q. There was a belt in the pants?

18 A. Yes, sir, I believe there was.

19 Q. Consistent with someone taking off a pair of pants
20 and laying them on the bed?

21 A. Yes, sir.

22 Q. Did you find any drugs in the pants?

23 A. No, sir.

24 Q. Any paraphernalia in the pants?

25 A. No, sir.

John Marn
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1 Q. You found that bag of heroin inside the top dresser
2 drawer?

3 A. Correct.

4 Q. The drawer was closed?

5 A. I don't recall if it was closed or partially open.

6 Q. The photo --

7 MR. KING: May I approach, Your Honor?

8 THE COURT: You may.

9 Q. [Mr. King] This photo, Exhibit Number 3 --

10 A. Yes, sir.

11 Q. -- that doesn't accurately reflect how you found
12 the heroin, does it? Is that how you found it when you walked
13 in the room?

14 A. No, sir.

15 It would have been in the top of the dresser
16 drawer.

17 Q. You don't remember if you had to open the drawer or
18 not?

19 A. I don't.

20 Q. And you didn't take any photographs of the scene
21 when you first walked in of how that dresser looked, did you?

22 A. No, sir.

23 My responsibility is simply to search. There's
24 another detective that is housed with the photography and
25 recovery of the items.

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1 Q. And you said you've taken training in evidence
2 handling?

3 A. I have, yes.

4 Q. So you saw the heroin in that drawer when you were
5 searching?

6 A. Correct.

7 Q. You grabbed the heroin and you put it on top of the
8 dresser?

9 A. No, sir.

10 Q. How did it get on top of the dresser?

11 A. Once we find the -- once we locate -- as a
12 searcher, once I located the substance, I call for the officer
13 that is recovering. He comes, photographs it, and takes
14 custody of that evidence.

15 Q. So you didn't create that scene in that photograph
16 there?

17 A. Correct.

18 Q. One of the scales was found in the dresser drawer?

19 A. Yes.

20 Q. The other scale was found on the floor in the
21 closet?

22 A. In the closet. Yes, sir.

23 Q. You said there was like \$250 in cash in the drawer?

24 A. Yes, sir.

25 Q. A total of \$1,521 in the room? Does that sound

John Marn
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January 5, 2016

1 accurate?

2 A. I would have to add up everything on the return,
3 but that sounds correct.

4 Q. And you said you found Omar Gentile's social
5 security card in that drawer?

6 A. Correct.

7 Q. You don't know when that social security card was
8 put in that drawer, do you?

9 A. No, sir.

10 Q. You found Omar's earning statement in that top
11 dresser drawer?

12 A. Correct.

13 Q. That was from April 1st, 2011; right?

14 A. I believe so, sir. If you could show me, I could
15 verify.

16 MR. KING: May I approach?

17 THE COURT: You may.

18 Q. [Mr. King] Showing you State's Exhibit Number 25.

19 A. Thank you.

20 [Whereupon, the witness reviews documents]

21 A. Yes, sir. That is correct.

22 Q. [Mr. King] That pay stubs is from months before
23 you were conducting this search; right?

24 A. Yes, sir.

25 Q. You found Omar's bank statement in that top dresser

John Marn
Cross-Examination by Mr. King
January 5, 2016

1 drawer?

2 A. I believe so, sir.

3 Q. And that statement is from the pay period of
4 November 10th through December 12th, 2011?

5 A. I would have to see it to verify.

6 Q. Handing you State's 20.

7 A. Thank you.

8 [Whereupon, the witness reviews documents]

9 A. That is correct, sir.

10 Q. [Mr. King] And you don't know when that bank
11 statement was put in that top drawer?

12 A. I do not.

13 Q. In fact, you don't know when anything was put
14 inside that top drawer?

15 A. No, sir.

16 Q. The same thing with the bank card. You found a
17 bank card in that top drawer?

18 A. Yes, sir.

19 I wouldn't know when it was placed in there,
20 either.

21 MR. KING: Those are all the questions I have.

22 THE COURT: Ms. Linder?

23 MS. LINDER: Just briefly, Your Honor.

24 - - -

25 - - -

Alexander Keith Sumner
Redirect Examination by Ms. Linder
January 5, 2016

REDIRECT EXAMINATION

BY MS. LINDER:

Q. Mr. King has brought up a bunch of things about different dates. Dates, addresses, so on and so forth.

MS. LINDER: I'm trying to see -- thank you very much.

Q. [Ms. Linder] In State's Exhibit 20 that's already been admitted into evidence, there's a Bank of America statement; right?

A. Yes, ma'am.

Q. And if you can look at the bottom of the statement, it talks about the ending balance on what date?

A. 12/12/11.

Q. So if the ending balance December 12 -- if there's an ending balance of December 12th, was it mailed before December 12th or after December 12th?

A. It would be mailed after, ma'am.

Q. So the postal service is pretty good these days. Even if it gets there two days later, it puts it at December 14th, and that's if it was mailed that day. How far away is December 14th to February 9th?

A. Roughly two months.

Q. So two months.

Okay. Do you believe a social security card is important?

Alexander Keith Sumner
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January 5, 2016

1 A. Yes, ma'am, I do.

2 Q. Do you think a bank statement is important?

3 A. Yes, ma'am.

4 Q. Or a pay stub?

5 A. Yes, ma'am.

6 Q. These important items kept in a stranger's home?

7 A. Not likely.

8 Q. There's a key on the door to get into this room?

9 A. There was.

10 Q. There's a lock. Actually, a key and a lock?

11 A. Yes, ma'am.

12 Q. What did you do with those keys?

13 A. I notified the case agent, Detective Shealy, that
14 there was keys located in the door.

15 Q. This pay stub that Mr. King asked you to look at,
16 which is State's Exhibit Number 25, he asked you about the
17 date on it, which is?

18 A. Pay ending March 27th.

19 Q. Of?

20 A. 2011.

21 Q. A while ago?

22 A. Yes, ma'am.

23 Q. A while ago when we're talking about February 9th.
24 But what's the address of the defendant on that one?

25 A. 3954 River Biering [phonetic] Lane, Apartment

Alexander Keith Sumner
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1 Number ■, in North Charleston.

2 Q. Is that Grove Street?

3 A. No, ma'am.

4 Q. So in April of '11, there is a non-Grove Street
5 address but in December of '11, the bank statement, it's a
6 Grove Street address?

7 A. Yes, ma'am.

8 Q. And, again, talk about addresses and dates and all
9 that kind of stuff. I would like for you to look at State's
10 Exhibit 24. What is that, again?

11 A. It's the South Carolina identification card for
12 Mr. Omar Gentile.

13 Q. And what address is on there?

14 A. 146 Williman Street, Apartment ■, Charleston, South
15 Carolina.

16 Q. And what date is that issued?

17 A. This was issued on June 22nd, 2010.

18 Q. So in 2010, Mr. Gentile is associated with
19 Williman. In 2011, Mr. Gentile is associated with a Whipper
20 or a Whipple, something in North Charleston. But less
21 than two months before the execution of the search warrant,
22 Mr. Gentile has important paperwork associated with the Grove
23 Street address?

24 A. That's correct.

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

Alexander Keith Sumner
Redirect Examination by Ms. Linder
January 5, 2016

1 [Whereupon, Ms. Linder and Mr. Sowards confer]

2 MS. LINDER: Nothing further. Thank you.

3 THE WITNESS: Yes, ma'am.

4 MR. KING: Nothing.

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

6 THE WITNESS: Thank you, ma'am.

7 [Whereupon, Mr. Marn is excused and exits the
8 witness stand]

9 THE COURT: Call your next witness.

10 MS. LINDER: The State calls Keith Sumner.

11 Your Honor, can Detective Marn be excused?

12 THE COURT: Any objection?

13 MR. KING: No, Your Honor.

14 [Whereupon, Mr. Sumner comes forward]

15 [Whereupon, Mr. Sumner is duly sworn by the clerk
16 of court as follows: do you swear or affirm that your
17 testimony will be the truth, the whole truth, and
18 nothing but the truth, so help you God]

19 THE WITNESS: I do.

20 THE CLERK OF COURT: Be seated.

21 [Whereupon, Mr. Sumner takes the witness stand]

22 THE CLERK OF COURT: Please state your full name,
23 and spell your last name for the record.

24 THE WITNESS: Alexander Keith Sumner. S-U-M-
25 N-E-R.

Alexander Keith Sumner
Direct Examination by Ms. Linder
January 5, 2016

ALEXANDER KEITH SUMNER,

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

DIRECT EXAMINATION

BY MS. LINDER:

Q. What's your occupation?

A. I work with the City of Charleston Police
Department.

Q. And how long have you been in law enforcement?

A. Twenty years.

Q. Were you working back -- where were you working,
what division were you working, back in February of 2012?

A. I was working with the special units, special
investigations unit, which is a narcotics and vice unit.

Q. And can you just tell the jury briefly a little bit
about your training and education and experience?

A. I graduated from USC with a bachelor's in criminal
justice. I attended the criminal justice academy. And I've
also went to a two-week investigation DEA course afterwards,
and several other yearly trainings.

Q. Were you working back in February the 9th of 2012?

A. Yes, I was.

Q. And were you working anything involved with this
case, the State versus Omar Gentile, on that date?

A. Yes, I was.

Alexander Keith Sumner
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1 Q. Were you involved in the search warrant execution?

2 A. Yes, I was.

3 Q. What was your role in that?

4 A. I was part of the entry team and then once we made
5 entry, we secured the scene.

6 After we secured the scene, my primary was a
7 recovering agent and also assist in searching the residence.

8 Q. What does a recovering agent mean?

9 A. A recovering agent: when somebody finds evidence,
10 the recovery agent will go over there, take a photo of it, and
11 take it into his custody and later on will tag and bag the
12 evidence.

13 Q. What's the purpose of having one person being the
14 recovering agent?

15 A. It makes it a lot easier with the chain of custody.
16 He's responsible.

17 Q. As the recovery agent, did you handle narcotics
18 that were seized in this case?

19 A. I did.

20 Q. And did you collect any narcotics in bedroom number
21 three?

22 A. Yeah. I collected --

23 Q. And the items that you collected from bedroom
24 number three, the items you collected, what did you do with
25 those narcotics?

Alexander Keith Sumner
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January 5, 2016

1 A. I took it to the -- after we collected all the
2 evidence, we write everything down, where it was located from
3 -- write everything down that the agent that found it, we
4 write it down where he located it, what bedroom, and then we
5 seal it and put it in a plastic bag, sealed, and initial.

6 Q. And you write all that down so you remember four
7 years later if you're in a situation like this?

8 A. Yes, ma'am.

9 Q. And after you took the drugs located in bedroom
10 number three and you for lack of a better term bagged and
11 tagged them, where did you take them?

12 A. Took them to the City of Charleston evidence at the
13 station.

14 Q. And who did you give them to?

15 A. Brian Hinton. Or Hinton.

16 Q. Okay. And did the drugs found in bedroom three
17 remain in your sole care, custody, and control from 1 Grove
18 Street all the way until CP evidence where you gave them to
19 Brian Hinton?

20 A. Yes, they did.

21 Q. At this time I show you what's been marked as
22 State's Exhibit 30 for ID purposes. Do you recognize this?

23 A. Yes, ma'am.

24 Q. How do you recognize it?

25 A. Well, first of all, I put a tag on here with my --

Alexander Keith Sumner
Direct Examination by Ms. Linder
January 5, 2016

1 with the case number, the bag number, and what it is, the
2 offense is narcotics, and "submitted by" is my name right
3 here. And then when we seal it down here at the bottom and
4 top, I initial. My initials are right there.

5 Q. And does it appear in substantially the same
6 condition as when you first submitted it?

7 A. Yes, it does.

8 MS. LINDER: I have no further questions for you.
9 If you could answer anything Mr. King may have.

10 THE WITNESS: Okay.

11 THE COURT: Mr. King?

12 MR. KING: Thank you, Your Honor.

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Alexander Keith Sumner
Cross-Examination by Mr. King
January 5, 2016

CROSS-EXAMINATION

BY MR. KING:

Q. You testified you were the collecting agent --

A. Correct --

Q. -- your role?

You recovered the heroin that was found in the
bedroom three?

A. Yes, sir.

Q. When you went into the bedroom, do you remember
where the heroin was when you went in there? What did you see
when you went in the bedroom?

A. I would have to look at my notes to find out
exactly where, I mean, where he found it. I just took the
picture of it, and I would have to look at it to remember.

Q. You grabbed the heroin out of the drawer and put it
on top of the dresser?

A. I don't recall. I don't think -- no, I don't think
I did.

Q. Well, Detective Marn testified that the heroin was
inside the dresser drawer and that he didn't move it. And
there's a photograph of it on top of the dresser drawer. And
I'm assuming you took the photo; right?

A. Correct.

Q. How did it get on top of the dresser drawer?

A. Can I take a look at my notes?

Alexander Keith Sumner
Cross-Examination by Mr. King
January 5, 2016

1 Q. Sure.

2 [Whereupon, the witness reviews documents]

3 A. Yes. It was located in the top dresser drawer.
4 And when he -- you know, he pulled the drawer out, he probably
5 saw it there so I took it out and put it on the dresser.

6 Q. [Mr. King] And so you didn't take a photo --

7 A. Yeah, because there's -- there's so much other
8 stuff in there. So but just by taking a picture of it, of
9 just the dresser, and then the drawer itself, you couldn't see
10 it.

11 Q. But you didn't take the picture of the open dresser
12 drawer before anything was taken out of it?

13 A. No.

14 Q. You submitted that bag of heroin to the evidence
15 room?

16 A. Correct.

17 Q. You submitted it as approximately 16 grams of
18 heroin?

19 A. Yes, sir.

20 Q. Did you request that that plastic bag of heroin --

21 A. No.

22 Q. You submitted other drugs found at 1 Grove Street;
23 right?

24 A. Yes.

25 Q. Was it you who found 50 grams of cocaine,

Alexander Keith Sumner
Cross-Examination by Mr. King
January 5, 2016

1 approximately 50 grams, in bedroom four?

2 A. Yes. I was the one that searched bedroom four.

3 Q. In two different plastic bags?

4 A. I would have to look at it to recall.

5 Q. Can you refresh your memory if you look at your
6 notes?

7 A. Yeah, I can.

8 [Whereupon, the witness reviews documents]

9 A. Yeah.

10 Actually, it was one clear plastic bag with 41
11 grams, and then there's another bag that had 10 grams.

12 Q. [Mr. King] Two plastic bags?

13 A. Two plastic bags.

14 Q. And you found about 79 grams of marijuana, again,
15 in two plastic bags?

16 A. Yes.

17 Q. And that's -- there are 28 grams in an ounce? Are
18 you familiar with conversions?

19 A. Yes.

20 Q. That would be close to three ounces of marijuana?
21 Close? Approximately?

22 A. Correct.

23 Q. In two plastic bags, again.

24 So cocaine, marijuana, and the heroin were all
25 in -- it's put in like a sandwich baggie, sort of? A plastic

Alexander Keith Sumner
Cross-Examination by Mr. King
January 5, 2016

1 sandwich baggie?

2 A. Yeah.

3 They can be put in sandwich bags, they can be put
4 in waxy paper. They can be put in a variety of packagings.

5 Q. These were all in plastic bags, though; right? The
6 marijuana, the cocaine and the heroin?

7 A. Bedroom number four?

8 Q. Well, the heroin in bedroom number three was in a
9 plastic --

10 A. Yeah.

11 Q. -- bag?

12 A. Yeah.

13 Q. And the cocaine and the marijuana in bedroom four
14 were in plastic bags?

15 A. Correct.

16 Q. When you submitted the marijuana and the cocaine
17 into evidence, do you remember if you requested that they
18 fingerprint the bags, as well as drug test?

19 A. I don't request anything, because it's not my case.
20 That would have to be on the case agent to request
21 the fingerprints.

22 MR. KING: May I approach, Your Honor?

23 THE COURT: You may.

24 [Whereupon, Defendant's Exhibit Number 1 is marked
25 by the court reporter]

Alexander Keith Sumner
Cross-Examination by Mr. King
January 5, 2016

1 Q. [Mr. King] I'm going to hand you Defendant's
2 Exhibit 1 for identification.

3 A. Okay.

4 Q. That is a -- you don't have anything to do with
5 that property form? Because it seems to have a notation with
6 your name beside it that says Sumner after the police
7 fingerprint, as well as drug analysis.

8 A. Yes, my name and all.

9 But I've never seen this here. This is not my --
10 this is not the form that we use, that I use, or that the
11 department officers use.

12 This here is I think Brian Hinton. They're the
13 evidence -- this is their form. I've never seen this type of
14 form.

15 MR. KING: That's all the questions I have, Your
16 Honor.

17 THE COURT: Redirect?

18 MS. LINDER: Briefly, Your Honor.

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Alexander Keith Sumner
Redirect Examination by Ms. Linder
January 5, 2016

REDIRECT EXAMINATION

BY MS. LINDER:

Q. I just want to try to be clear.

We're here for Omar Gentile, who is charged with
heroin?

A. Correct.

Q. Not coke or weed?

A. No.

Q. So item 30 is the item that you said is in
substantially the same condition that was located by Marn but
collected by you in bedroom three?

A. Correct.

Q. And you collect more -- you physically collect
everything at the scene; correct?

A. Everything.

Q. So when you were also in bedroom three, right next
to -- when you lifted that heroin out of that dresser drawer,
you also actually were the person who collected and had item
21?

A. Correct.

Q. These waxine bindles and rubber bands.

You also are the person in bedroom number three --
with the heroin -- who collected State's Exhibit 25, this
earning statement with the defendant's name?

A. Correct.

Alexander Keith Sumner
Redirect Examination by Ms. Linder
January 5, 2016

1 Q. And you also are the person who collected State's
2 24 and 20 and 23 and 22, all of these items that were in
3 bedroom number three, which is the bedroom where the heroin
4 was located?

5 A. Correct.

6 Q. And the sheet of paper, Defense Exhibit 1 for ID
7 purposes that he showed you, is this a piece of paper that you
8 created?

9 A. No, ma'am.

10 Q. Does that piece of paper have heroin on it? Is
11 that request having to do with heroin seized in this case?

12 A. No.

13 Q. What type of drug does that request have to do
14 with?

15 A. Cocaine found in -- just two bags of cocaine.

16 Q. But this is a heroin case?

17 A. Correct.

18 MS. LINDER: I have nothing further, Your Honor.

19 THE COURT: Mr. King, any recross?

20 MR. KING: No further questions, Your Honor.

21 THE COURT: You may step down. You are free to go.
22 Feel free to stay with us.

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

25 THE COURT: Call your next witness.

Alexander Keith Sumner
Redirect Examination by Ms. Linder
January 5, 2016

1 MS. LINDER: The State calls Brian Hinton.

2 THE CLERK OF COURT: This way, Mr. Hinton. Up
3 here, please.

4 [Whereupon, Mr. Hinton comes forward]

5 [Whereupon, Mr. Hinton is duly sworn by the clerk
6 of court as follows: do you swear or affirm that your
7 testimony will be the truth, the whole truth, and
8 nothing but the truth, so help you God]

9 THE WITNESS: I do, sir.

10 THE CLERK OF COURT: Be seated.

11 [Whereupon, Mr. Hinton takes the witness stand]

12 THE CLERK OF COURT: Please state your full name,
13 and spell your last name for the record.

14 THE WITNESS: Brian Hinton. H-I-N-T-O-N.

15 MS. LINDER: Good morning. How are you?

16 THE WITNESS: Good. How are you?

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Brian Hinton
Direct Examination by Ms. Linder
January 5, 2016

BRIAN HINTON,

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

DIRECT EXAMINATION

BY MS. LINDER:

Q. Where are you presently employed?

A. Charleston Police Department evidence room.

Q. And how long have you been in CPD's evidence?

A. Thirteen years.

Q. Were you working with City evidence back in
February of 2012?

A. I was.

Q. When you work at City evidence, what do some of
your duties include?

A. Within the evidence that's submitted by officers in
cases, I accept it and make sure their vouchers are correct,
it's properly sealed, and initialed. Accept the voucher in,
assign it a storage location, put it in that storage location,
and then maintain it until the disposition of the case.

Q. And does all of this occur in a secured area?

A. It does.

Q. So a random person couldn't just all of a sudden
just access it?

A. No.

Q. On February 9th of 2012, did you receive evidence

Brian Hinton
Direct Examination by Ms. Linder
January 5, 2016

1 from Keith Sumner with regard to this case?

2 A. I did.

3 Q. And did you receive a multitude of items from him?

4 A. I did.

5 Q. Did you receive those items in person?

6 A. I did.

7 Q. Is that unusual?

8 A. No.

9 Q. What types of items, just generally speaking, did
10 you receive from him?

11 A. I know we had money, some coins, paraphernalia,
12 scales, drugs, heroin, marijuana.

13 Q. All right. At this time, I'm going to show you
14 what's been marked as State's Exhibit 30. Do you recognize
15 this?

16 A. I do.

17 Q. How do you recognize it?

18 A. It's got our evidence label, which has the case
19 number, the bag and item number which is created during the
20 voucher, the offense, and the officer's name, and the seals.

21 Q. And does it appear in substantially the same
22 condition as it was when it was first turned into evidence?

23 A. Yes.

24 Q. And so your role with regards to Exhibit 30 is that
25 you did the intake?

Brian Hinton
Direct Examination by Ms. Linder
January 5, 2016

1 A. Correct.

2 Q. You never -- and that's where your role, your job,
3 with that ended?

4 A. Correct.

5 MS. LINDER: I have nothing further. Please answer
6 anything Mr. King may have.

7 THE COURT: Mr. King?

8 MR. KING: Thank you, Your Honor. May I approach
9 the witness, Your Honor?

10 THE COURT: You may.

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Brian Hinton
Cross-Examination by Mr. King
January 5, 2016

CROSS-EXAMINATION

BY MR. KING:

Q. Officer, I'm going to hand you what's been marked as Defendant's Exhibit Number 1.

A. Okay.

Q. Do you recognize those forms?

A. Yes, sir.

Q. What is that?

A. It's a chain of custody report, which has the bag and item number and basically from the time that it was received until it's accepted. Any time it left, it's documented on this form.

Q. And that's three property forms relating to three types of drugs found at 1 Grove Street; is that right? Marijuana, cocaine, and heroin?

A. Yes, sir.

Q. At the top area of each one, there's a note section.

A. Right.

Q. For example, the marijuana? Where it says property description, marijuana?

A. Okay.

Q. Now, you see there's a note section there with a notation?

A. Yes, sir.

Brian Hinton
Cross-Examination by Mr. King
January 5, 2016

1 Q. Who makes that note in the notation?

2 A. You're talking about the quarter of the way down
3 here?

4 Q. It says: approximately 79 grams of a green-in-
5 color --

6 A. Right.

7 Q. -- plant-like substance.

8 A. The officer puts those notes in when they created
9 the voucher.

10 Q. Sumner. There's a notation that says Sumner.

11 A. Correct.

12 So he would have done that when he created the
13 voucher. Date and timestamps it when he -- when he puts --
14 after he inputs those notes in that field.

15 Q. And you're sure about that?

16 A. Yes, sir.

17 Q. Is that why it has Sumner's name in parenthesis
18 right after that, though?

19 A. Yes, sir.

20 Q. And it says on there please fingerprint the bags,
21 as well as drug test?

22 A. Correct.

23 Q. Now, the cocaine, can you find that one?

24 A. Yes, sir.

25 Q. Now, that has a similar note, too; right?

Brian Hinton
Cross-Examination by Mr. King
January 5, 2016

1 A. Yes, sir.

2 Q. With Sumner after it in parenthesis?

3 A. Correct.

4 Q. And that has two bags contained a white-in-color
5 powdery substance, cocaine --

6 A. Yes, sir.

7 Q. -- fingerprint the bags, as well as drug test;
8 right?

9 A. Yes. Yes.

10 Q. Now look at the heroin. That has a notation there,
11 as well, right, by Sumner?

12 A. Yes, sir.

13 Q. Is there any indication on there to fingerprint
14 that bag?

15 A. No, sir.

16 MR. KING: I have no other questions, Your Honor.

17 THE COURT: Redirect?

18 Q. [Mr. Sowards] No redirect, Your Honor.

19 THE COURT: You may step down. You are free to
20 leave, but feel free to stay with us.

21 THE WITNESS: Thank you, sir.

22 [Whereupon, Mr. Hinton is excused and exits the
23 witness stand]

24 THE COURT: Call your next witness.

25 MS. LINDER: The State calls Linda Wilson.

Brian Hinton
Cross-Examination by Mr. King
January 5, 2016

1 THE CLERK OF COURT: This way, please.

2 [Whereupon, Ms. Wilson comes forward]

3 THE CLERK OF COURT: Left hand on the Bible, and
4 raise your right hand.

5 [Whereupon, Ms. Wilson is duly sworn by the clerk
6 of court as follows: do you swear or affirm that your
7 testimony will be the truth, the whole truth, and
8 nothing but the truth, so help you God]

9 THE WITNESS: Yes, sir.

10 THE CLERK OF COURT: Be seated.

11 [Whereupon, Ms. Wilson takes the witness stand]

12 THE CLERK OF COURT: If you'll please state your
13 full name, and spell your last name for the record.

14 THE WITNESS: Linda Wilson. W-I-L-S-O-N.

15 MS. LINDER: Good morning.

16 THE WITNESS: Good morning.

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Linda Wilson
Direct Examination by Ms. Linder
January 5, 2016

LINDA WILSON,

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

DIRECT EXAMINATION

BY MS. LINDER:

Q. Where are you presently employed?

A. City of Charleston Police Department, evidence
division.

Q. And how long have you been with the City?

A. About seven years.

Q. What do your duties include being with evidence?

A. I usually take in evidence, accept it in, store it,
maintain chain of custody, get the evidence that officers
turns in to me.

Q. And is all of this done in a secure location?

A. Yes, ma'am.

Q. After an employee of City Charleston Police
Department Evidence takes an item in and secures it into
evidence, does it ever get sent out again?

A. Yes, ma'am. Some items go. Uh-huh.

Q. Do narcotics ever get sent out?

A. Yes, ma'am. They --

Q. Why?

A. They go to the lab for testing.

Q. And in your chain of custody that you maintain, do

Linda Wilson
Direct Examination by Ms. Linder
January 5, 2016

1 you keep track of who releases -- who signs them out?

2 A. Yes, sir.

3 Q. And who picks up the narcotics before they go to
4 the lab?

5 A. Susan Payne came to pick up -- comes and picks up
6 the narcotics..

7 Q. And on February the 10th of 2012, did you transfer
8 any narcotics from evidence to Susan Payne to go to the lab?

9 A. Yes, ma'am.

10 Q. Did you transfer a substance -- pardon me. At this
11 time, I hand you what's marked as State's Exhibit 30. Do you
12 recognize it?

13 A. Yes, ma'am.

14 Q. How do you recognize it?

15 A. Well, according to my chain of custody, it's bag
16 33, item 1.

17 Q. And what did you do with that evidence?

18 A. I -- when I came in that morning, I got it from
19 that lab box, where it was stored, and signed it over to Susan
20 Payne.

21 Q. And does that appear in substantially the same
22 condition as it did when you first saw it?

23 A. Yes, ma'am.

24 MS. LINDER: I have no further questions for this
25 witness, Judge. If you can please have Mr. King -- as

Linda Wilson
Direct Examination by Ms. Linder
January 5, 2016

1 well, if you can please answer any of Mr. King's
2 questions.

3 THE COURT: Mr. King?

4 MR. KING: I have no questions for this witness.

5 THE COURT: You may step down. Feel free to stay
6 with us, but you are free to leave.

7 [Whereupon, Ms. Wilson is excused and exits the
8 witness stand]

9 THE COURT: Who is your next witness?

10 MS. LINDER: The next witness is Susan Payne.

11 [Whereupon, Ms. Payne comes forward]

12 THE CLERK OF COURT: Put your left --

13 [Whereupon, Ms. Payne is duly sworn by the clerk of
14 court as follows: do you swear or affirm that your
15 testimony will be the truth, the whole truth, and
16 nothing but the truth, so help you God]

17 THE WITNESS: I do.

18 THE CLERK OF COURT: Be seated.

19 [Whereupon, Ms. Payne takes the witness stand]

20 THE CLERK OF COURT: Please state your full name,
21 and spell your last name for the record.

22 THE WITNESS: My name is Susan Marie Payne.

23 P-A-Y-N-E.

24 MS. LINDER: Good morning.

25 THE WITNESS: Good morning.

Susan Payne
Direct Examination by Ms. Linder
January 5, 2016

SUSAN PAYNE,

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

DIRECT EXAMINATION

BY MS. LINDER:

Q. Where are you presently employed?

A. The City of Charleston Police Department.

Q. And how long have you been with the City?

A. Approximately ten years.

Q. And what's your position there?

A. I am the evidence custodian and loans [phonetic]
administrator for the forensic services division.

Q. And what duties do you have that are involved with
narcotics?

A. I'm responsible for picking up the evidence at the
police station in the morning and bringing it to the forensic
laboratory.

Q. And on February the 10th of 2012, did you receive
an item, item 33-1, from the CPD evidence?

A. Yes, ma'am.

Q. And who did you receive that item from?

A. I received it from Linda Wilson.

Q. And what did you do with that item when you took it
to the lab?

A. I entered it into our system, assigned it a

Susan Payne
Direct Examination by Ms. Linder
January 5, 2016

1 laboratory number, and placed it in our safe.

2 Q. And can just anybody access that safe?

3 A. No, ma'am.

4 Q. Is it secure?

5 A. Yes, ma'am.

6 Q. At this time, I want to show you what's been marked
7 as State's Exhibit 30 for ID purposes. Do you recognize this?

8 A. Yes, ma'am.

9 Q. How do you recognize it?

10 A. It has our analyst's initial and the sticker from
11 our laboratory on it.

12 Q. And does it appear in substantially the same
13 condition as it did when you first picked it up?

14 A. Substantially. Yes, ma'am.

15 MS. LINDER: I have no further questions for this
16 witness.

17 Ms. Payne, if you could please answer any questions
18 the defense may have.

19 MR. KING: I have no questions, Your Honor.

20 THE COURT: Ms. Payne, you may step down. Feel
21 free to stay with us, but you are also free to leave.

22 THE WITNESS: Thank you.

23 [Whereupon, Ms. Payne is excused and exits the
24 witness stand]

25 THE COURT: Mr. Foreman, it is an appropriate time

Susan Payne
Direct Examination by Ms. Linder
January 5, 2016

1 for us to take another break. Do y'all need a break, or
2 do you want to continue on? All right. We'll go ahead
3 and take a short break.

4 Please remember all my admonitions. Leave your
5 notepads right where they are.

6 Please rise for the jury.

7 [Whereupon, the jury exits the courtroom at
8 11:44 a.m.]

9 THE COURT: Thank you. Be seated.

10 Who is your next witness?

11 MR. SOWARDS: It will be Renee Hilton, the chemist.

12 THE COURT: And then who else?

13 MR. SOWARDS: Agent Shealy. I think he'll probably
14 be our last.

15 THE COURT: And so we're going to take ten minutes,
16 so should we -- how long do you anticipate?

17 MR. SOWARDS: I think we could get the chemist's
18 testimony in in probably ten or fifteen minutes.

19 And he'll be about thirty or forty-five.
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State vs. Gentile
Defendant's Rights
January 5, 2016

DEFENDANT'S RIGHTS

THE COURT: I'm going to go ahead and advise your client of his right to testify so you'll have a few minutes to talk to him.

THE CLERK OF COURT: Mr. Gentile, please stand.

[Whereupon, Mr. Gentile complies]

[Whereupon, Mr. Gentile is duly sworn by the clerk of court as follows: do you swear or affirm that you will tell the truth, the whole truth, and nothing but the truth, so help you God]

MR. GENTILE: Yes, sir.

THE COURT: Mr. Gentile, I'm going to explain to you certain of your rights. The State has not rested, and your attorney has not made the motion for a directed verdict, but I like to advise you of your rights as early as we can so that you have an opportunity to meet with your attorneys.

If you do not understand anything that I say, please let me know. If you need for me to explain anything in further detail, please let me know. Do you understand?

MR. GENTILE: Yes, ma'am.

THE COURT: The Constitution gives you certain protections. Under the fifth amendment to the Constitution of the United States, no person shall be

State vs. Gentile
Defendant's Rights
January 5, 2016

1 compelled in any criminal case to be a witness against
2 himself. This means that you cannot be required to
3 testify.

4 You do have the right to testify on your own
5 behalf. No one can make you testify. This is a
6 personal right, and no one can waive this right except
7 for you. If you decide to testify, you will be subject
8 to the same rules that govern other witnesses and you
9 may be examined and cross-examined on any relevant issue
10 in this case.

11 In addition, if you have any convictions involving
12 dishonest or false statements or for crimes punishable
13 by imprisonment for more than one year and I determine
14 that the probative value of admitting this evidence
15 outweighs its prejudicial effect to you, the solicitor
16 will be allowed to introduce your record to attack your
17 credibility.

18 If you decide to testify, this decision on your
19 part must be freely, voluntarily, and intelligently made
20 with knowledge of the protections given to you by the
21 fifth amendment and the consequences of your decision to
22 testify.

23 If you decide not to testify, I will instruct the
24 jurors that they cannot give the fact that you did not
25 testify any consideration whatsoever and there is to be

State vs. Gentile
Defendant's Rights
January 5, 2016

1 absolutely no prejudice to you because you did not
2 testify.

3 It is left entirely up to you. You may speak with
4 your attorney, your friends, your family, or anyone
5 else, but the final decision is left entirely up to you.

6 Do you understand what I have explained to you?

7 MR. GENTILE: Yes, ma'am.

8 THE COURT: Do you have any questions?

9 MR. GENTILE: No, ma'am.

10 THE COURT: Do you need for me to explain anything
11 in further detail?

12 MR. GENTILE: No, ma'am.

13 THE COURT: All right. Thank you.

14 We are going to go ahead and take a ten-minute
15 break, and you can speak to your client.

16 Mr. Gentile, please remember that the same
17 admonition that I gave you -- you're still out on the
18 same bond conditions but we will continue, whether or
19 not you decide to -- whether or not you show back up.
20 All right? Thank you.

21 We're at ease. Ten minutes.

22 [Whereupon, a recess is taken from 11:45 a.m. to
23 12:02 p.m.]

24 THE COURT: Anything before we bring in the jury?
25 From the State?

State vs. Gentile
Defendant's Rights
January 5, 2016

1 MR. SOWARDS: Nothing from the State.

2 THE COURT: From the defendant?

3 MR. KING: Your Honor, we had -- I had discussed
4 with Mr. Sowards about redacting a few things from the
5 bank statement and the social security number on the
6 social security card.

7 THE COURT: Okay.

8 MR. KING: So at some point before the evidence
9 goes back, if we consent, is that okay if we just redact
10 a few things?

11 THE COURT: Other personal identifiers, I think
12 that's appropriate. Thank you.

13 All right. Let's bring in the jury.

14 [Off the record momentarily]

15 THE COURT: Please rise for the jury.

16 [Whereupon, the jury enters the courtroom at
17 12:05 p.m.]

18 THE BAILIFF: All jurors are present.

19 THE COURT: Thank you. Be seated. Call your next
20 witness.

21 MR. SOWARDS: The State calls Renee Hilton.

22 THE CLERK OF COURT: This way, please.

23 [Whereupon, Ms. Hilton comes forward]

24 THE CLERK OF COURT: Put your left hand on the
25 Bible, and raise your right hand.

State vs. Gentile
Defendant's Rights
January 5, 2016

1 [Whereupon, Ms. Hilton is duly sworn by the clerk
2 of court as follows: do you swear or affirm that your
3 testimony will be the truth, the whole truth, and
4 nothing but the truth, so help you God]

5 THE WITNESS: Yes.

6 THE CLERK OF COURT: Be seated.

7 [Whereupon, Ms. Hilton takes the witness stand]

8 THE CLERK OF COURT: Please state your full name,
9 and spell your last name for the record.

10 THE WITNESS: Renee Hilton. H-I-L-T-O-N.

11 MR. SOWARDS: Good afternoon, Ms. Hilton.
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Renee Hilton
Direct Examination by Mr. Sowards
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1 RENEH HILTON,

2 Having Been First Duly Sworn,

3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MR. SOWARDS:

6 Q. What is your current occupation?

7 A. I'm the laboratory manager with the Charleston
8 Police Department.

9 Q. And how long have you been with the Charleston
10 Police Department?

11 A. In January 10th will be five years.

12 Q. And were you employed with the Charleston Police
13 Department in February of 2012?

14 A. Yes.

15 Q. And what are your current duties as the laboratory
16 manager?

17 A. I make sure that the laboratory runs, I make sure
18 that our instruments are running properly, I manage the
19 personnel within the laboratory, and I just manage the daily
20 function of the laboratory as well as performing drug
21 analysis, fire debris analysis and serology analysis.

22 Q. And could you please describe for the jury your
23 training, education, and experience?

24 A. I have a bachelors's of science in chemistry from
25 the University of South Carolina. I completed Charleston

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1 Police Department's in-house training, as well as going to
2 various on-site and online trainings with regards to drug
3 analysis. I've helped prepare training, and I've trained
4 other members within our division.

5 Q. And have you had the occasion to chemically analyze
6 substances to determine whether the substance is or contains a
7 narcotic or a narcotic type drug?

8 A. Yes.

9 Q. And how many times have you done that?

10 A. I've done probably about 5,000 cases.

11 Q. And have you had an occasion -- or had the occasion
12 to chemically analyze substances to determine whether the
13 substance is or contains heroin?

14 A. Yes.

15 Q. And how many times have you done that?

16 A. We don't really calculate how many times we've done
17 a particular substance, but within a given week I probably do
18 about two or three heroin cases.

19 Q. And do you make these analyses as part of your
20 regular duties?

21 A. Yes.

22 Q. What kind of equipment do you have in the lab for
23 testing drugs?

24 A. We have three -- or excuse me. We have two
25 instruments, and a wet-color test.

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1 Now, a wet-color test is something that we put on
2 the substance and based on the color change we can give a
3 presumptive identification of a substance to help us go -- to
4 figure out what test to do next.

5 The next instrument we have is the Fourier
6 Transform Infrared Spectrometer, FTIR for short. And that
7 particular instrument puts vibrations on the compound and,
8 based on the vibrations, it will result in a spectrum and then
9 based on that spectrum, we can compare it to know substances.

10 The last instrument is a gas chromatograph mass
11 spectrograph, GCMS for short. This particular instrument is
12 two instruments in one. The GC side of it separates the
13 substance -- or separates the sample into all of the compounds
14 within that sample. And then the second sample -- or excuse
15 me -- second instrument, based on the separation, can
16 determine the mass spec or the peak imprint of that particular
17 peak within the data.

18 Those are the three types we can use.

19 Q. And have you previously been admitted as an expert
20 on drug analysis?

21 A. Yes.

22 Q. And how many times?

23 A. I've testified seven times.

24 MR. SOWARDS: Your Honor, at this time the State
25 would move that Renee Hilton be declared as an expert in

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1 the field of drug analysis.

2 THE COURT: Any objection?

3 MR. KING: No objection.

4 THE COURT: Ladies and gentlemen, normally a person
5 cannot give opinion testimony. Typically when a person
6 testifies, they must testify as to either what they've
7 heard or saw or sensed by smell or something of that
8 nature.

9 There is an exception in our law if someone is
10 qualified because of their education or experience.
11 They are then permitted to give their opinion in certain
12 areas.

13 I am going to qualify this witness in the area of
14 drug analysis, as an expert, to give opinion testimony
15 in that area. That does not mean that you must accept
16 her opinion. It is simply evidence for you to use in
17 any way that you see fit.

18 Mr. Sowards?

19 MR. SOWARDS: Thank you, Your Honor.

20 Q. [Mr. Sowards] As a result of completing your drug
21 analysis, do you generate a report of any kind?

22 A. Yes.

23 Q. And what does the report contain?

24 A. It contains the results, the item description, the
25 methods that I used to confirm the results, the case number,

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1 the laboratory-generated lab number. And if it's supplied to
2 us, the suspect's name.

3 MR. SOWARDS: May I approach the witness, Your
4 Honor?

5 THE COURT: You may.

6 MR. SOWARDS: Thank you.

7 Q. [Mr. Sowards] Ms. Hilton, I'm going to hand you
8 what has been marked for identification as State's Exhibit 18.
9 Do you recognize that?

10 A. Yes.

11 Q. What is that?

12 A. My laboratory report.

13 Q. When you said my, I think that answers this next
14 question. Who prepared it?

15 A. I did.

16 Q. And when did you prepare that report?

17 A. I prepared it on February 17th, 2012.

18 Q. Is the report signed by you?

19 A. Yes.

20 Q. And who is the subject of the drug report or which
21 case is the subject of the drug report?

22 A. The case number is 1202203.

23 Q. Does that identify who the subjects are that are
24 subject to that drug report?

25 A. This report has the suspects' names on it, yes.

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1 Q. And what are the suspects' names?

2 A. Maurice Eugene Gentile and Omar Shariff Gentile.

3 Q. And is that report a fair and accurate
4 representation of a lab report that you generated as a result
5 of your expert analysis of this case?

6 A. Yes.

7 MR. SOWARDS: Your Honor, at this time the State
8 would seek to move Exhibit 18 into evidence.

9 MR. KING: Only my -- renew my pretrial objections,
10 Your Honor.

11 THE COURT: State's 18 into evidence, noting your
12 previous objection.

13 [Whereupon, State's Exhibit Number 18 is admitted
14 into evidence by the Court]

15 MR. SOWARDS: Your Honor, at this time the State
16 requests to publish --

17 THE COURT: You may.

18 MR. SOWARDS: -- Exhibit 18. Thank you.

19 Q. [Mr. Sowards] Could you just describe what we're
20 looking at here?

21 A. This is my lab report.

22 Q. And I would like to ask you specifically item 33-1,
23 what does that indicate?

24 A. It is the weight, the uncertainty, the result, and
25 the methods used to determine item 33-1.

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1 MR. SOWARDS: May I approach the witness, Your
2 Honor?

3 THE COURT: You may.

4 Q. [Mr. Sowards] Ms. Hilton, I'm going to hand you
5 what's been marked as State's Exhibit 30. Do you recognize
6 that?

7 A. Yes.

8 Q. And how do you recognize that?

9 A. It has my initials on it.

10 Q. And can you identify what that is?

11 A. It is a plastic bag with tan powder.

12 Q. And how can you identify that?

13 A. I'm looking at it.

14 Q. Is there anything else on there that indicates to
15 you what that is?

16 A. On the bag, no, other than just a plastic bag with
17 tan powder.

18 MR. SOWARDS: Your Honor, may I approach the
19 witness?

20 THE COURT: You may. You have continuing
21 permission.

22 MR. SOWARDS: Thank you.

23 Q. [Mr. Sowards] What is inside that bag?

24 A. A tan, crunchy, chunky powder.

25 Q. And is there anything written on that bag?

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1 A. The lab number, the Q number, and my initials.

2 Q. And are those the drugs that you retrieved from the
3 vault -- from a secured location within the lab?

4 A. Yes.

5 Q. And is there a way for you to determine, based on
6 either that bag or the bigger plastic bag that it's contained
7 in, who handled it and -- before you did?

8 A. Not from the bag, no.

9 Q. But is there a way for you, in general, to identify
10 and handle items that are brought to the lab?

11 A. Yes.

12 Q. And how do you do that?

13 A. By the chain of custody.

14 Q. And who brought that to the lab? Do you know?

15 A. Susan Payne.

16 Q. And when you retrieved the item from the vault from
17 the lab, did it appear to be tampered with?

18 A. No.

19 Q. And does this exhibit appear in substantially the
20 same condition as it did back when you tested it?

21 A. Yes.

22 MR. SOWARDS: Your Honor, at this time the State
23 would move to admit State's Exhibit 30 into evidence.

24 MR. KING: Subject to my pretrial objection.

25 THE COURT: State's 30 into evidence, noting your

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1 objection.

2 [Whereupon, State's Exhibit Number 30 is admitted
3 into evidence by the Court]

4 Q. [Mr. Sowards] Now, as you see on here, this is a
5 report generated by you. Could you please explain to the jury
6 the results of your analysis in this case?

7 A. Yes.

8 I weighed the substance at 13.84 grams, with an
9 assigned uncertainty of 0.01. The methods in which I used to
10 confirm the result, heroin, were color test and GCMS.

11 Q. And from those tests, were you able to form an
12 expert opinion as to what the exhibit is or what it contains?

13 A. Yes.

14 Q. And what is that?

15 A. Heroin.

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

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

18 MR. SOWARDS: No further questions from the State.
19 Please answer any questions Mr. King may have.

20 THE COURT: Mr. King, any questions?

21 MR. KING: No, Your Honor.

22 THE COURT: You may step down. You are free to
23 leave, but feel free to stay with us. Thank you.

24 THE WITNESS: Thank you.

25 [Whereupon, Ms. Hilton is excused and exits the

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1 witness stand]

2 THE COURT: Call your next witness.

3 MR. SOWARDS: The State calls Agent Jonathan
4 Shealy.

5 [Whereupon, Mr. Shealy comes forward]

6 THE CLERK OF COURT: Put your left hand on the
7 Bible, and raise your right hand.

8 [Whereupon, Mr. Shealy is duly sworn by the clerk
9 of court as follows: do you swear or affirm that your
10 testimony will be the truth, the whole truth, and
11 nothing but the truth, so help you God]

12 THE WITNESS: Yes, sir, I do.

13 THE CLERK OF COURT: Be seated.

14 [Whereupon, Mr. Shealy takes the witness stand]

15 THE CLERK OF COURT: Please state your full name,
16 and spell your last name for the record.

17 THE WITNESS: Jonathan David Shealy. S-H-E-
18 A-L-Y.

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Jonathan Shealy
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JONATHAN SHEALY,

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

DIRECT EXAMINATION

BY MR. SOWARDS:

Q. Agent Shealy, what is your occupation?

A. I'm currently working for the South Carolina Law
Enforcement Division.

Q. And how long have you been with the South Carolina
Law Enforcement Division?

A. Approximately one and a half years.

Q. And where did you work prior to -- or being with
the South Carolina Law Enforcement Division?

A. I was employed by the City of Charleston Police
Department.

Q. And how long were you with the City of Charleston
Police Department?

A. I was hired in January of 2006, and approximately
eight and a half years I was employed with the City of
Charleston Police Department.

Q. And in what capacity did you work with the City of
Charleston Police Department?

A. During the execution of the search warrant?

Q. Just in general. What duties did you have?

A. When I started off, I was in team one patrol. I

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1 was a patrolman, uniformed. Answered calls for service.

2 After about two and a half years, I was assigned to
3 the special investigations unit, which is comprised of
4 narcotics investigations and vice operations, vice
5 investigations. Within that unit, I primarily focused on
6 narcotics investigations. During that time, I was also a
7 member of the Charleston SWAT team.

8 Q. And what were your duties in February of 2012? Or
9 sorry. What was your -- what was your role with the City of
10 Charleston Police Department in February of 2012?

11 A. February of 2012, I was -- I was a member of the
12 special investigations unit. And February of 2012 is when --
13 is the time we executed the search warrant at 1 Grove Street.
14 I was the case agent on that investigation.

15 Q. And what do you mean by case agent? Could you
16 please describe for the jury what that means, what that
17 entails?

18 A. The case agent is typically the agent or the
19 officer who's in charge of a particular investigation.

20 And like I said before, being a member of the
21 special investigations unit, I primarily focused on narcotics
22 investigations.

23 Case agent basically takes over a case. Whether or
24 not we get information about criminal activity in a certain
25 area is assigned to an agent.

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1 For this particular case, this was my case. I got
2 information about narcotic activity at this location. With
3 that being said, I was in charge of making decisions such as
4 how we were going to conduct the investigation, such as
5 possibly using a controlled buy, surveillance, assigning
6 people to different entities within that investigation whether
7 it be assisting me with a controlled buy or kind of lining up
8 people for search warrants and getting everything squared
9 away.

10 Also, I'm pretty much in charge of determining who
11 is charged and what those charges are.

12 Q. And just specifically about 1 Grove Street, where
13 is that located?

14 A. 1 Grove Street is located within the City of
15 Charleston jurisdiction. Downtown Charleston on the
16 peninsular.

17 Q. Is that in Charleston County?

18 A. Yes, it is. It's in Charleston County.

19 Q. And how did your investigation lead you to 1 Grove
20 Street?

21 A. My investigation led me to 1 Grove Street? We got
22 intel, through various sources, that there was narcotic
23 activity going on at 1 Grove Street. From that intel, what
24 we did, we utilized a confidential informant to go and
25 purchase a quantity of illegal narcotics out of that

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1 residence.

2 Q. And what did you do based on that confidential
3 buy --

4 A. We --

5 Q. -- controlled buy?

6 A. Based on the controlled buy that we got, we got a
7 search warrant signed by a judge to execute a search of that
8 residence for illegal narcotics.

9 Q. And on what date was that search executed?

10 A. That search was executed on February the 9th, 2012.

11 Q. Now, were you present when entry was made into the
12 residence?

13 A. No, sir, I was not present when entry was made into
14 the residence. I was involved in another search warrant that
15 was being conducted simultaneously with that search warrant.

16 Due to the fact that I was a member of the SWAT
17 team, SWAT team was actually making entry into another house
18 at the same exact time this house was being made entry -- or a
19 search warrant was being executed, so I was not present when
20 the search warrant was executed.

21 Q. Are you generally aware, though, of what happened
22 prior to your arriving there?

23 A. Yes, sir, I am.

24 Q. Were any individuals located in the residence when
25 the search warrant was executed?

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1 A. Yes, sir.

2 There was two individuals located inside the
3 residence during the execution of the search warrant. One of
4 those individuals was the defendant, Mr. Omar Gentile.
5 Another individual was Mr. James Davis, an elderly gentleman.

6 Q. And do you see Omar Gentile in the courtroom today?

7 A. Yes, sir, I do.

8 Q. Could you please point him out and describe what
9 he's wearing?

10 A. He's wearing a brown jacket, brown pants, brown
11 shoes.

12 MR. SOWARDS: Please let the record reflect that
13 the witness identified Omar Gentile as the individual
14 who was present at 1 Grove Street on February 9th of
15 2012.

16 THE COURT: It will.

17 Q. [Mr. Sowards] And during the -- or, actually,
18 after the search warrant was executed, did you have an
19 opportunity to speak with the defendant, Omar Gentile?

20 A. Yes, sir.

21 After the search warrant was executed and I -- my
22 task was completed on the other search warrant, I immediately
23 left the second location that we were searching. I came over,
24 due to the fact that I was the case agent, and I was able to
25 then pair up with my group over at 1 Grove Street and I did

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1 have the -- I did speak with the defendant.

2 Q. And prior to speaking with the defendant, did you
3 advise him of his rights?

4 A. Yes, sir, I did.

5 Q. And how did you advise him of those rights?

6 A. I advised the defendant of his rights by reading
7 from a preprinted CPD-issued Miranda card, and I read those
8 rights -- read them out loud to him.

9 Q. I'll hand you what's been marked as State's Exhibit
10 26. Do you recognize that?

11 A. Yes, sir, I do.

12 Q. And how do you recognize that?

13 A. This is the preprinted Miranda card that I was just
14 speaking of.

15 It's got it's -- the rights are right on one side.
16 On the back side, it basically states do you understand your
17 rights. There's a place for the defendant to sign, which
18 Mr. Omar Gentile did sign. Also, there's a place for the
19 warning officer to sign, which was myself, and a place for a
20 witness to sign, which was Detective Grill. Also, it's time
21 and dated, which we wrote the date and time on there that the
22 rights were read.

23 Q. And when you say you read them, did you read them
24 verbatim from that card?

25 A. I did.

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1 Q. And what does that card state?

2 A. The card states -- and this is what I read to the
3 defendant -- you have the right to remain silent. Anything
4 you say can, will be used against you in a court of law. You
5 have the right to talk with a lawyer and have him present
6 during any questioning. If you cannot afford to hire a
7 lawyer, one will be appointed to represent you before any
8 questioning, if you wish one. If you decide to answer
9 questions without a lawyer present, you have the right to stop
10 answering questions at any time you so choose. On the back it
11 says, do you understand your rights, which we ask.

12 MR. SOWARDS: Your Honor, at this time the State
13 would seek to admit State's Exhibit 26.

14 MR. KING: Without objection.

15 THE COURT: State's 26 into evidence without
16 objection.

17 [Whereupon, State's Exhibit Number 26 is admitted
18 into evidence by the Court]

19 Q. [Mr. Sowards] Now, as you read the defendant his
20 rights, did he appear to understand the nature of your
21 inquiry?

22 A. Yes, sir, he did.

23 Q. Did he appear to be under the influence of drugs or
24 alcohol?

25 A. No, sir, he did not.

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1 Q. Did he appear to be confused?

2 A. No, sir, he did not.

3 Q. Did he ever tell you that he didn't understand what
4 was happening?

5 A. No, sir, he did not.

6 Q. Was the defendant ever threatened?

7 A. No, sir, he was not.

8 Q. Was the defendant ever promised anything in
9 exchange for speaking with you or Detective Grill?

10 A. No, sir.

11 Q. Now, was the defendant detained? Was he in
12 handcuffs as you read him these rights?

13 A. Yes, sir, the defendant was detained. He was in a
14 pair of handcuffs. And that's common practice.

15 As you heard earlier, Detective Grill explained
16 that when a search warrant is executed, everyone in that
17 residence is detained for several reasons. One reason is for
18 officer safety, as well as suspect safety. Another reason is
19 for preservation of any evidence that may be in close vicinity
20 of a suspect. That's why they're -- everyone is detained.
21 That's common practice.

22 Q. Now, after advising the defendant of his rights,
23 did he acknowledge to you that he understood those rights?

24 A. Yes, sir, he did.

25 Q. And how did he make that acknowledgment?

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1 A. He verbally stated that he acknowledged -- he
2 understood everything, as well as signing the back of the
3 card. At which time the defendant was handcuffed up front,
4 more comfortable, so he could sign the card.

5 Q. Now, after advising of the defendant -- or advising
6 the defendant of his rights, did the defendant make any
7 statements to you --

8 MR. KING: Your Honor, I just renew my pretrial
9 objection.

10 THE COURT: Thank you. Noted for the record.

11 A. Yes, sir, he did.

12 Q. [Mr. Sowards] And did you memorialize those
13 statements in any way?

14 A. Yes, sir, I did.

15 Q. And how did you memorialize those statements?

16 A. In my written or typed report.

17 Q. And what was the statements that the defendant gave
18 to you on February 9th of 2012?

19 A. He gave us several statements, to include that he
20 does come to the residence every day to take care of his
21 cousin, Mr. Davis. He stated that he did stay there from time
22 to time and that his bedroom was upstairs, which was
23 identified as bedroom number three. When we asked him to
24 describe basically where that bedroom was, he pointed up or
25 kind of motioned up and from where we were in the room, if you

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1 stack the picture that was shown earlier, we were in basically
2 the back left corner of that residence. And bedroom number
3 three would be directly upstairs, second floor, in the back
4 left corner. So when we asked him, he kind of motioned up
5 with his head.

6 Some of the other things that he stated to us is he
7 asked us to get a pair of pants, a thermal shirt, and some
8 shoes from his bedroom, which we did.

9 I was advised that there was a set of keys in that
10 door which was in a lock. When I went up there to retrieve
11 pants, I noticed that there indeed was a set of keys in there.
12 So I did come back down, ask Mr. Gentile if he did want his
13 keys. He replied that he did and that they were his.

14 He also told us that he had over \$1,000 of cash in
15 that room.

16 And while we were filling out the booking sheet, I
17 did ask Mr. Omar Gentile what address he wanted me to put down
18 for the booking sheet, what was his address. He said, just go
19 ahead and put down 1 Grove Street.

20 He also -- I did ask him did he realize that there
21 was a school directly across the street from his residence.
22 He replied to me, yes, that there was a school directly across
23 the street from his residence and that there was also a church
24 right around the corner.

25 Those are the things that he -- that we -- that he

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1 told us.

2 Q. So in his statement to you, he claimed that bedroom
3 three, which was what we saw earlier on a layout, belonged to
4 him?

5 A. Yes, sir.

6 Q. What did you find? Or what was found in bedroom
7 number three?

8 A. There was a variety of items found in bedroom
9 three, to include 16 grams of heroin that were field-tested
10 and also from the lab tested as heroin.

11 There was paraphernalia, what we call paraphernalia
12 in the room, such as scales, the glassine or waxine baggies
13 commonly used to package heroin. Also located was rubber
14 bands, which is commonly used to package heroin and distribute
15 heroin.

16 There was a large amount of cash located throughout
17 the room.

18 There was various identification for Mr. Omar
19 Gentile, such as pay stubs, South Carolina ID card, social
20 security card belonging to Mr. Omar Gentile, Bank of America
21 cards.

22 There was also a box of ammo in that room, which is
23 commonly found in rooms or homes that drug dealers have where
24 --

25 THE COURT: Hold on. I'm having a hard time with.

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1 the coughing.

2 MR. KING: May we approach?

3 THE COURT: Yes, you may.

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

6 MR. SOWARDS: Mr. Sowards, if you need to re-ask
7 the question so that it's clear. It's been a while.
8 Thank you.

9 MR. SOWARDS: Yes, ma'am. I'll move on to
10 something else, Your Honor.

11 THE COURT: All right. Thank you.

12 Q. [Mr. Sowards] Detective -- Agent Shealy, there
13 were a series of photographs taken while detectives recovered
14 at the -- are you familiar with those photographs?

15 A. Yes, sir, I am.

16 Q. Show you what's been admitted as State's Exhibit 3.
17 What are we looking at here, sir?

18 A. This picture here indicates the dresser drawer that
19 some items were located in. Obviously, we see here -- no,
20 that's not -- a set of scales with some white powder residue
21 on it. To the left of that you see a plastic baggie
22 containing the heroin. Down in the drawer itself, you have a
23 box that is containing the waxine or -- baggies that we were
24 talking about earlier. On top of that you see the black-in-
25 color rubber bands.

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1 Just to the right of that box you see a piece of
2 tape. This is very common in bagging heroin because once you
3 fold that bag down, you have to secure it. So it's always
4 secured with a piece of tape, clear tape.

5 Just to the right of the tape, you see U.S.
6 currency.

7 I believe that's it in that picture.

8 Q. Do you know how much currency was recovered from
9 the left dresser drawer?

10 A. I believe from the -- I believe from the left
11 dresser drawer there was \$250 in U.S. currency.

12 Q. And what about in this picture?

13 A. This picture right here is the -- just another
14 picture of that dresser drawer.

15 Again, you have the box. You can clearly see the
16 waxine paper bags in that box, including the rubber bands.

17 To the right of it, you see the clear-in-color tape
18 that is used to secure the waxine baggies once the heroin is
19 placed into it.

20 You also see here the Bank of America card which
21 belonged to -- which had Omar Gentile's name on it.

22 Q. Agent Shealy, I'm going to hand you two items. One
23 has been marked as -- for ID as State's 14 and one has been
24 marked for ID as State's 15. And do you recognize those?

25 A. Yes, sir, I do.

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1 Q. And how do you recognize those items?

2 A. These items were the items that were located in
3 bedroom number three that was located within that left dresser
4 drawer.

5 Q. And is that a fair and accurate depiction of the
6 room at the time?

7 A. Yes, sir.

8 Matter of fact, one of the pictures is pretty much
9 exactly how the drawer was found when it was located by
10 Detective Marn.

11 MR. SOWARDS: Your Honor, at this time the State
12 would seek to move Exhibits 14 and 15 into evidence.

13 MR. KING: Subject to my pretrial motion.

14 THE COURT: 14 and 15 into evidence without that
15 objection -- I'm sorry -- noting your objection.

16 [Whereupon, State's Exhibit Numbers 14 and 15 are
17 admitted into evidence by the Court]

18 THE COURT: You may publish.

19 MR. SOWARDS: Thank you.

20 Q. [Mr. Sowards] And what are we looking at here?

21 A. Again, this is a picture that we've just -- we just
22 saw. But in this picture right here, you also -- you have --
23 to your far left, you have the box with the waxine paper bags.
24 You can see the rubber bands just to the right of that. And
25 you have the clear-in-color tape.

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1 If you look below the tape, you see the plastic
2 baggie sticking out from under the U.S. currency. This
3 plastic baggie is the baggie that contained the heroin that
4 was located in that drawer.

5 And on top of that obviously is the U.S. currency,
6 the \$250.

7 Q. And what -- you testified that Detective Marn was
8 the -- doing location in bedroom three. Could you describe,
9 from your perspective as a case agent, what that means?

10 A. You talking about --

11 Q. What it means to be the locator.

12 A. Okay. And it -- common practice is once you are
13 assigned to a search team, you -- it's just how it sounds.
14 You are searching for anything of evidentiary value, whether
15 that be money, drugs, guns, U.S. currency.

16 Once you locate an item, you leave that item where
17 it's found. From that point, you call up what we call the
18 camera man. You yell it out: camera man, I've got something,
19 I found something. The camera man will come in. He will take
20 photos of those items in place.

21 The camera man is the one who will collect those
22 items and take downstairs so that we keep a chain of custody
23 at a minimum, because you don't want a lot of people touching
24 evidence or moving evidence.

25 So that's why you have -- you have a searcher who

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1 searches it; a camera man who comes in and photographs and
2 collects it. So that's kind of how we -- we did all of our
3 search warrants.

4 Q. So when would this picture have been taken?

5 A. This picture is -- and, again, I'm not -- I wasn't
6 there, but in my opinion this picture would have been taken as
7 soon as Detective Marn would have found this evidence. He
8 would have yelled out camera man, screamed it out. The camera
9 man would have come in, ask Detective Marn, what you got.
10 Detective Marn --

11 And like I said, I -- this is what I always did. I
12 would describe what I have, where it's at, you know, what I
13 believe it is, let's go ahead and take a photograph of it.
14 And then the camera man would move things around so he could
15 get better photographs of what was actually in the drawer.

16 Because a lot of times you can't -- from this
17 picture right here, you really can't tell what we've got
18 because in drawers things are piled up. So that's what I --

19 Q. And what does this picture show?

20 A. This picture right here is obviously the bag of
21 heroin that was located inside that drawer. It also shows to
22 the right of it the digital scales, which is commonly found in
23 distribution houses where narcotics are being sold. So you
24 have the heroin. You have the scales right next to it.

25 Q. There were -- well, I'll just ask you: as a case

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1 agent, do you often ask for -- if drugs are found, do you have
2 those drugs or baggies fingerprinted?

3 A. No, sir.

4 You typically do not have baggies fingerprinted.
5 But there are instances where you could have them
6 fingerprinted, but typically you don't. In my experience
7 throughout hundreds of investigations, it's nearly impossible
8 to get a fingerprint from a plastic baggie. So typically you
9 do not. But there are some instances where you may.

10 Q. And what is the purpose of fingerprinting
11 something?

12 A. You basically fingerprint something to see if you
13 can pull a latent print to make identification of who may have
14 been in contact with that item, whether it be a -- whether it
15 be anything. You pull a print to see if someone's been in
16 contact with it.

17 Q. And why, again, did you believe that bedroom number
18 three belonged to the defendant, Omar Gentile?

19 A. Bedroom number three belonged to the defendant,
20 Omar Gentile, because of his statement stating that that was
21 his -- indeed his bedroom.

22 He told us that that was his bedroom. There was
23 numerous identifiers located in that bedroom to place him in
24 that bedroom. Being from his identification card -- the most
25 important things that we take with us every day: your ID

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1 card, you never leave home without it; your bank card; your
2 social security card.

3 Also, a set of keys in a locked door that I asked
4 Mr. Omar Gentile if he wanted his keys out of the lock that
5 was in his door and he stated that he did want his keys. And
6 he took his keys.

7 Also from him asking me to get pants, shirt, and
8 shoes from his bedroom.

9 So, basically, the answer to your question is from
10 the items that we located from the bedroom, from the key we
11 located in the door, and from his verbal statements admitting
12 to that was -- to us, admitting that it was his bedroom.

13 Q. And was there any doubt in your mind who that
14 bedroom belonged to?

15 A. No, sir, no doubt whatsoever whose bedroom that
16 belonged to.

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

18 [Whereupon, Mr. Sowards and Ms. Linder confers]

19 MR. SOWARDS: The State has no further questions at
20 this time.

21 Please answer any questions that Mr. King may
22 have.

23 THE WITNESS: Yes, sir.

24 THE COURT: Mr. King?

25 - - -

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CROSS-EXAMINATION

BY MR. KING:

Q. Agent Shealy, you said you're the case agent in this particular case; right?

A. Yes, sir, I am.

Q. You're not part of the entry team? You weren't there at the very beginning?

A. No, sir, I was not.

Q. You said you were involved in another search, the execution of another search warrant?

A. Yes, sir.

I was just involved in the actual execution of a search warrant with the SWAT team.

Q. That wasn't at 2 Grove Street next door, was it? That was a separate -- completely separate place?

A. Yes, sir, it was a completely separate place, but we were about a block away from that location.

Q. So that's at least three search warrants that were executed that day, is I guess the -- 1 Grove Street, Grill at 2 Grove Street. And you were executing one at another place. Was it close by?

A. Well, two planned search warrants and then I guess another search warrant that came about.

So, yeah, to answer your question, three search warrants.

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1 Q. Is that common, doing more than one operation at
2 one time?

3 A. Yes, sir.

4 I mean, we've done it before. That's why -- I
5 mean, Charleston is the largest police department in the
6 state. We have plenty of manpower. It wasn't uncommon for us
7 to hit multiple houses in an area.

8 Just basically due to the fact that we have
9 multiple investigations going on at the same time in a certain
10 area, and if we do hit one house in that area and we have
11 investigations going on at a different house that's close by,
12 through our training and experience, once we hit a house,
13 everything shuts down for a while.

14 I mean, it's common sense. They know we're in the
15 area, they know we're hitting houses, and things are going to
16 quiet down for a while.

17 So if we do have -- I guess what I'm saying is it's
18 not uncommon, if we do have multiple investigations going on
19 in an area, to simultaneously hit houses. Our narcotics
20 division is large enough that our narcotics unit can hit a
21 house and our SWAT team can hit a house. And that's what
22 happened that day.

23 Q. As a case agent, you're familiar with all the
24 police reports in the case?

25 A. As the case agent, I'm familiar with my police --

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1 with my report from my -- whatever I do, I'm familiar with,
2 because I'm trying to focus on my case.

3 Q. Right.

4 But is it part of a case agent's role to sort of
5 being supervised -- oversee the whole case?

6 A. My case, yes, sir.

7 Q. Right. And I'm talking about the 1 Grove Street.

8 A. Yes, sir.

9 Q. Yeah. I'm talking about that.

10 So you were familiar with the police reports
11 relating to 1 Grove Street?

12 A. Yes, sir.

13 Q. And all the evidence that was recovered there?
14 You're familiar with basically the whole case?

15 A. Yes, sir.

16 Q. And you're aware that Omar Gentile had a job;
17 right? Saint Morris Building Services?

18 A. I was aware there were pay stubs located in the
19 residence.

20 I -- that doesn't necessarily mean you work. I
21 mean, I can't say one hundred percent that I knew he had a
22 job.

23 Q. You put it in your incident report that he worked
24 at Saint Morris Building Services; right?

25 [Whereupon, the witness reviews documents]

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1 A. You're talking about the incident --

2 Q. [Mr. King] Page 4 of the incident investigation
3 report, your recent incident report, where you list Omar
4 Gentile as a subject, and then Maurice Gentile.

5 [Whereupon, the witness reviews documents]

6 A. You're talking about in the actual place of
7 business --

8 Q. [Mr. King] Up ahead of that. You're looking at --
9 it's above that.

10 A. Yeah. I mean, when we -- yeah. Absolutely. When
11 we ask them what they -- what do you do for a living, they can
12 tell me they're an astronaut and I'll put that down.

13 So, yeah, a place of business, address, of whatever
14 his occupation was.

15 Q. And the same thing with the arrest report, the
16 booking sheet?

17 A. Yes. Yeah.

18 Booking sheet has the same thing. We ask them
19 common questions such as their name, date of birth, address,
20 social security number, closest kin. They can tell us whoever
21 they want. They can tell us their mother, their father.

22 So whatever we ask them, if they tell us they work
23 somewhere, we'll put that down. Absolutely.

24 Q. So you should be familiar, then, with information
25 Detective Olson obtained that showed the direct deposits all

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1 the way up until February the 3rd from Saint Morris Building
2 Company?

3 A. Detective Olson did do an additional search warrant
4 on his bank records.

5 Detective Olson kind of did that. Obviously, it's
6 my case. But it's kind of an off branch. Detective Olson has
7 had extensive training in bank records and stuff like that, so
8 he would typically -- if we did find bank statements, he would
9 do search warrants on their -- on individual's bank records.

10 Q. Were you familiar with the information that he
11 obtained? Did you review that?

12 A. I did. I've reviewed his report and what he
13 obtained.

14 Q. So you know that there were direct deposits from
15 Saint Morris Building Company all the way up -- every month,
16 all the way up until February 3rd, every two weeks?

17 A. Right.

18 Q. So he had a job?

19 A. Yeah.

20 Q. You spoke with Mr. Gentile, Omar Gentile, you said,
21 and you asked him questions?

22 A. Yes, sir.

23 Q. You said he wasn't high on anything. It wasn't
24 like he was high on heroin or drugs or anything?

25 A. No, sir.

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1 Q. He told you he comes there every day?

2 A. Yes, sir.

3 Q. He didn't say he lived there?

4 A. He told us that he did stay there. He did -- he
5 said that --

6 Q. From time to time.

7 A. -- I come here every day and I do stay here from
8 time to time.

9 Q. Helps take care of cousin John Davis, the elderly
10 gentleman you were talking about?

11 A. Yes, sir. Mr. Davis. Yes, sir.

12 Q. Said he stays in bedroom three from time to time
13 when he's there?

14 A. He said that that was his bedroom, bedroom number
15 three, and that's -- yeah, that's where he stayed at. That's
16 where we located all his personal belongings.

17 Q. And he told you about the money? That there was
18 roughly \$1,000 in the room?

19 A. He told us there was over \$1,000 in that room.

20 Q. You asked him if the heroin was his?

21 A. We did ask him about the narcotics located in that
22 room, whether the heroin was his. He did not acknowledge
23 anything about narcotics. Once we asked those questions, he
24 wouldn't acknowledge anything about drugs.

25 Q. He didn't claim the heroin?

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1 A. He did not. No, sir.

2 Q. Now, you were executing the search warrant at 1
3 Grove Street that day?

4 A. Yes, sir.

5 Q. You testified that -- or you were executing it
6 because a black male sold cocaine to a confidential informant
7 at 1 Grove Street; right?

8 A. Yes, sir, a black male sold cocaine to a
9 confidential informant.

10 Q. You identified that black male to be Maurice
11 Gentile, Omar Gentile's brother?

12 A. Yes, sir.

13 Q. And that was about six days or so prior to the
14 search warrant?

15 A. The date of the controlled purchase would have been
16 January the 31st, 2012, so roughly six days.

17 MR. KING: May I approach, Your Honor?

18 Q. [Mr. King] You're familiar with the lab report in
19 the case?

20 A. Yes, sir.

21 Q. Let me just show you State's Exhibit Number 18.

22 A. Yes, sir.

23 [Whereupon, the witness reviews documents]

24 Q. [Mr. King] That's got a lot of different drugs on
25 it?

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1 A. It's got --

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

3 THE COURT: Counsel approach. And bring the
4 report, please.

5 [Whereupon, an off-the-record bench conference is
6 held]

7 THE COURT: Overruled.

8 Q. [Mr. King] State's Exhibit Number 18. I was just
9 asking, there was several different types of drugs listed
10 there?

11 A. Three. Yes, sir.

12 Q. The heroin on there is the only thing found in that
13 bedroom number three, like on that -- as far as those drugs on
14 that lab report; right?

15 A. The only drugs on this lab report that were found
16 in Omar Gentile's bedroom was the heroin.

17 Q. And the rest of that I think was found in bedroom
18 four?

19 A. Yes, sir, which we identified to be Maurice
20 Gentile's bedroom.

21 Q. You testified -- as a case agent, you didn't have a
22 the plastic bag of heroin tested for fingerprints; right?

23 A. No, sir.

24 Q. But you've heard testimony that when the plastic
25 bags of cocaine and plastic bags of marijuana were submitted

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1 into evidence, there was a request for fingerprints on both of
2 those?

3 A. Yes, sir, I did. Yes, sir, I heard that.

4 Q. And you're aware of touch DNA?

5 A. I'm familiar with it. I'm not by no means an
6 expert.

7 Q. Are you aware that if a person touches something,
8 that they can leave their DNA on there --

9 A. Oh, absolutely.

10 Q. -- and you can test it for --

11 A. Absolutely.

12 Q. So you didn't have that bag of heroin tested for
13 any DNA?

14 A. For DNA?

15 Q. Right. Touch DNA.

16 A. No, sir. No, sir.

17 Q. When you worked at the Charleston Police Department
18 back then, did they have a fingerprint examiner in the police
19 department?

20 A. Yes, sir. As far as I know, we did.

21 Q. And so in basically the same building you were
22 working in, there was a fingerprint examiner in the same
23 building?

24 A. No, sir, not in the same -- well, I don't think
25 they were in the same building.

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1 I don't want to get too technical. I think they
2 had their own separate lab offsite but --

3 Q. Close by?

4 A. Yeah. Yes, sir. Within the city limits.

5 Q. Did they have a local lab that tested DNA? Do you
6 know?

7 A. I do not know.

8 I know from me working with the State Law
9 Enforcement Division, if they did -- I don't want to answer
10 that question incorrect. I know most touch DNA goes to SLED,
11 which is South Carolina Law Enforcement Division. I'm not
12 sure if Charleston had their own.

13 Q. In any event, it could have been submitted to SLED
14 to have them test it for DNA? The plastic bag of heroin.

15 A. I guess -- yeah, it could have been, yes, sir.

16 MR. KING: That's all the questions I have, Your
17 Honor.

18 THE COURT: Mr. Sowards, redirect?

19 MR. SOWARDS: Just a couple of questions, Your
20 Honor.

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REDIRECT EXAMINATION

BY MR. SOWARDS:

Q. Agent Shealy, Mr. King asked you about the statement and whether the defendant denied knowledge of the drugs or that he possessed drugs. Did he deny, or did he just not answer?

A. He just didn't answer.

When we asked about the heroin that was located in his bedroom, he just didn't answer. He didn't say anything.

MR. SOWARDS: Beg the Court's indulgence.

[Whereupon, Mr. Sowards and Ms. Linder confer]

MR. SOWARDS: No further questions, Your Honor.

THE COURT: Mr. King, recross?

MR. KING: No, Your Honor.

THE COURT: You may step down. You are going to stay with us. Thank you.

THE WITNESS: Thank you.

[Whereupon, Mr. Shealy is excused and exits the witness stand]

THE COURT: Call your next witness.

MR. SOWARDS: The State rests.

THE COURT: Ladies and gentlemen, that indicates to the Court that there is a matter of law that I must take up outside of your presence. It's also a really good time for us to go ahead and take our lunch break.

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1 Please utilize this clock on the wall. Please be
2 back, report back, at 2:15. 2:15. Thank you.

3 Please rise for the jury.

4 Take your notepads so we can lock them up. Thank
5 you.

6 [Whereupon, the jury exits the courtroom at
7 12:55 p.m.]

8 THE COURT: Please be seated.

9 THE COURT: Any motions or matters, Mr. King?

10 MR. KING: Yes, Your Honor.

11 At this time I would move for a directed verdict.
12 The --

13 THE COURT: Oh. Hold on one second. I'm sorry.
14 Let's go ahead and put the discussion of the
15 ammunition --

16 MR. KING: Yes.

17 THE COURT: -- so that the record -- before you
18 make your motion for a directed verdict. I apologize.

19 MR. KING: Right. I would put that on the record.
20 You know, earlier today we had talked in chambers
21 just briefly about a motion to exclude photographs of
22 the ammunition that they had through photos.

23 I was going to object to the ammunition in the
24 case. The State told me that they weren't going to put
25 those photographs in and then when Detective Shealy was

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1 testifying, he testified about finding ammunition in
2 that room. And my understanding, we had an agreement
3 that I was going to object to the ammunition. They
4 agreed not to put the photographs in.

5 My understanding would have been they weren't going
6 to bring up the ammunition at all, because they knew I
7 had an objection, really, to that, that it was not
8 relevant, and commutative, and any prejudicial -- any
9 probative value was substantially outweighed by its
10 prejudicial effect.

11 So I made an objection at that time. And I heard
12 Detective Shealy talk about the ammunition. So the
13 discussion that we had, there was an understanding that
14 they weren't going to go into the ammunition at all. If
15 they weren't -- if they're telling me, okay, we're not
16 going to put the photographs in, they knew I had an
17 objection to the ammunition, it doesn't quite seem right
18 to try to sneak it in another way through another
19 witness and telling me, we're not going to put the
20 photographs in.

21 THE COURT: My understanding was there was -- the
22 physical ammunition and a photograph -- and the
23 photographs of the ammunition; correct?

24 MR. KING: Yes, Your Honor.

25 THE COURT: And that you were objecting on several

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1 grounds. And so the photographs weren't put in. The
2 ammunition was not put in.

3 MR. SOWARDS: It was not. And --

4 THE COURT: And so we didn't place anything on the
5 record, Mr. King, so when y'all -- I had y'all approach
6 the bench so that we could just do this at the bench.

7 There was nothing placed on the record and so I
8 indicated to Mr. Sowards that we could do it outside the
9 presence of the jury but that he just needed to move on.

10 Anything further we need to place on the record,
11 Mr. King?

12 MR. KING: Not related to that, Your Honor.
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MOTION FOR A DIRECTED VERDICT

THE COURT: Let me hear from your motion for a directed verdict, or any other motions we need to hear.

I'm sure you're going to renew all your previous motions?

MR. KING: Yes, Your Honor, I do renew the previous motions.

I make a motion for a directed verdict. I believe they're -- I think they're relying on substantial -- or circumstantial evidence based on what's found in the room and where the drugs were located. I would argue that there is not substantial circumstantial evidence that Mr. Gentile was in possession of the drugs. And we've got some evidence that there was paperwork in the room. But they didn't find anything on him. And we would move for a directed verdict at this time.

THE COURT: All right. Mr. Sowards, is this your argument?

MR. SOWARDS: Thank you, Your Honor.

When considering the existence and not the weight of the evidence, and considering the evidence and all the inferences therefrom, the standard is that direct or substantial circumstantial evidence reasonably tends to prove the defendant's guilt, and the case should proceed to the jury.

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1 Detective Grill, Agent Shealy, and Detective Marn
2 all testified that this incident occurred in Charleston
3 County on February 9, 2012, at 1 Grove Street. Both
4 Detective Grill and Officer -- Agent Shealy identified
5 Omar Gentile as the individual located within the
6 residence, the individual who claimed the room where the
7 heroin was found.

8 And the evidence shows that based on the
9 defendant's statements and what was actually found in
10 bedroom three, coupled with the evidence or the
11 inferences from that, Omar Gentile had dominion and
12 control over bedroom three and its contents, including
13 the heroin.

14 The chemist testified that she tested and weighed
15 the drugs. They lab-tested positive for heroin. They
16 weighed 13.84 grams, which far exceeds the 4-gram
17 threshold for trafficking.

18 And finally, Your Honor, both -- well, actually,
19 Detective Grill testified that digital scales, bindles,
20 rubber bands, are all consistent with an intent to
21 distribute narcotics.

22 The defendant told both detectives that he was
23 aware of the school that was located across the street.

24 And so I think there is sufficient evidence, Your
25 Honor, to submit this case to the jury.

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1 THE COURT: Mr. King, anything further?

2 MR. KING: [Indicates negatively]

3 THE COURT: As to all previous motions and matters,
4 I stand by the Court's original ruling. I have heard
5 nothing that would cause me to change my ruling.

6 On the motion for directed verdict, under Rule 19
7 of the Rules of Criminal Procedure I am concerned only
8 with the existence or nonexistence of the evidence and
9 not to the weight. Based upon the two indictments that
10 are before me, I do find that the State has met its
11 burden, and deny your motion for a directed verdict at
12 this time, Mr. King.

13 Mr. Gentile, please stand. I remind you that you
14 are still under oath.

15 [[Whereupon, Mr. Gentile complies]

16 THE COURT: Have you had time to speak with your
17 attorney as to whether or not you will testify?

18 MR. GENTILE: Yes, ma'am.

19 THE COURT: Do you need any additional time to meet
20 with him and her, either together or separately, or with
21 anyone else, to make a determination?

22 MR. GENTILE: Yes, ma'am. I do not need any time.

23 THE COURT: And you have made a decision? What is
24 that decision?

25 MR. GENTILE: I wish not to testify.

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1 THE COURT: So I will instruct the jurors that they
2 are to give no consideration to the fact that you did
3 not testify in this case.

4 Please have a seat. Thank you.

5 [Whereupon, Mr. Gentile complies]

6 THE COURT: Are you requesting -- are there any
7 additional witnesses?

8 MR. KING: No, Your Honor.

9 I believe I would rest and then we would go on to
10 closing arguments.

11 THE COURT: And so let's just go ahead -- I'll
12 allow you to rest in front of the jury, but just as a
13 matter for the record, I will allow you to rest and then
14 renew all motions and matters.

15 MR. KING: Yes, Your Honor.

16 THE COURT: And, again, because there has been no
17 additional evidence presented, the Court stands by her
18 initial -- or original ruling.

19 I have -- you indicated there were no lesser
20 includeds, so I had the verdict forms prepared.

21 So we'll take -- we'll be back at 2:15. 2:15.

22 Mr. Gentile, we've reached the stage of the trial
23 -- you have been so appropriate, but I'm going to go
24 ahead at this point and place you in custody over the
25 lunch hour. Again, you have been more than appropriate,

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1 but this is just the time where I think that it is time
2 for you to be placed into custody. All right. Thank
3 you.

4 MR. KING: Your Honor, I would be requesting a mere
5 presence charge.

6 THE COURT: It's in there. Thank you.

7 MR. KING: Thank you.

8 THE COURT: We are at ease until 2:15.

9 [Whereupon, a recess is taken from 1:03 p.m. to
10 2:23 p.m.]

11 THE COURT: Anything before we bring in the jury?

12 MR. SOWARDS: I think the only thing we would ask
13 is that if -- because there was no expert testimony on
14 anything, the lab report, other than just the heroin,
15 that we redact the stuff on the lab report regarding --
16 pertaining to marijuana that was found in the house --

17 THE COURT: Mr. King?

18 MR. KING: Which exhibit are you referring to?

19 MR. SOWARDS: Exhibit 18.

20 THE COURT: Okay. What's your position?

21 MR. KING: Your Honor, there's been testimony about
22 it. It's relevant to my defense. I've been talking
23 about it, asked questions about it. It goes along with
24 my defense that there's someone else in the house who
25 had all those drugs. And the main reason I asked

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1 Detective Shealy about that particular document there
2 was to make sure that the jury understood only one of
3 those items was found in bedroom number three that they
4 claim was Mr. Gentile's.

5 There are some items on there that neither one of
6 us have talked about, like a straw, and cocaine residue.
7 I just didn't want the jury to think that something else
8 -- some other drugs were found inside of bedroom number
9 three.

10 THE COURT: You've already published that to the
11 jury. So note your exception -- objection, but I'm
12 going to allow it un-redacted.

13 With that, is there anything else?

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

15 MR. KING: No, Your Honor.

16 THE COURT: And I will allow you to rest in front
17 of the jury.

18 And then are you doing close?

19 MR. SOWARDS: Yes, Your Honor.

20 THE COURT: And Mr. King?

21 MR. KING: Yes.

22 THE COURT: All right.

23 [Whereupon, the jury enters the courtroom at
24 2:26 p.m.]

25 THE BAILIFF: All jurors are present, Your Honor.

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1 THE COURT: Thank you. Please be seated.

2 Did every member of the jury panel comply with the
3 Court's instructions over the lunch hour? If you
4 complied, please raise your right hand.

5 [Whereupon, jurors comply]

6 THE COURT: Thank you. All fourteen jurors
7 complied with my instructions over the lunch hour.

8 Mr. King?

9 MR. KING: Your Honor, the defense rests.

10 THE COURT: Ladies and gentlemen, you have now
11 heard all the testimony you will hear in this case and
12 you've received into evidence all the exhibits that have
13 been made part of the record in this case.

14 You will now hear closing arguments on behalf of
15 counsel. Just as I indicated to you what was contained
16 in opening statements is not evidence in this case,
17 neither is what is contained in their closing argument.

18 The State will go first, and then Mr. King will
19 have the final close, and then I will instruct you on
20 the law applicable to this case. You will then retire
21 to consider your verdict.

22 Please give your strict attention.

23 MR. SOWARDS: Thank you, Your Honor. May it please
24 the Court.

25 - - -

State vs. Gentile
Closing argument by Mr. Sowards
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CLOSING ARGUMENT

MR. SOWARDS: When I spoke to you this morning, the only thing you knew was that detectives with the City of Charleston Police Department's narcotics unit had charged the defendant, Omar Gentile, with trafficking cocaine and possession with intent to -- I'm sorry -- trafficking heroin, and possession with intent to distribute heroin within the proximity of a school. I will submit to you that now you know why.

On February the 9th, 2012, acting on intel from a few days before, the special investigations unit executed a search warrant at 1 Grove Street. And for purposes of this trial we're concerned with what they found in bedroom three, the bedroom that belonged to the defendant, and in that bedroom they found 13.84 grams of heroin.

Now, the judge will ultimately charge you on the law, but I want to touch on a few of the things that you'll hear. The State, as you've heard before, has the burden of proving this case, and that burden is to prove the defendant's guilt beyond a reasonable doubt.

Now, beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. As you see right there, there are very few things in this world that we know with absolute certainty. And in criminal

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1 cases, the law does not require proof that overcomes
2 every possible doubt, just proof that leaves you firmly
3 convinced.

4 And you'll also hear that there's two different
5 types, generally, of evidence that is submitted in
6 cases. There's direct evidence and circumstantial
7 evidence. Direct evidence is testimony of a person who
8 exerts or claims to have actual knowledge of a fact,
9 such as an eyewitness. And circumstantial evidence is
10 proof of a chain of facts and circumstances indicating
11 the existence of a fact. There's no distinction. As
12 far as the law is concerned, there's no greater weight
13 assigned to one or the other.

14 The defendant is charged with trafficking heroin.
15 And as you will hear when the judge charges you the law,
16 any person who is knowingly in actual or constructive
17 possession or knowingly attempts to become in actual or
18 constructive possession of 4 grams or more of any
19 morphine, opium, salt, isomer, or salt of an isomer,
20 including heroin, or 4 grams or more of any mixture
21 containing any of those substances, is guilty of
22 trafficking heroin. That requires the State to prove
23 several elements. The State has to prove that the
24 defendant knowingly, actually, or constructively
25 possessed, or attempted to come into actual or

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1 constructive possession, of 4 grams or more of heroin.

2 The defendant is also charged with possession with
3 intent to distribute heroin within proximity to a
4 school, and that requires proof that the defendant had
5 to know that he was in, on, or within a half mile radius
6 of an elementary, middle, or secondary school; that the
7 defendant had actual control or the right to exercise
8 control over the heroin; the defendant knowingly
9 distributed, sold, purchased, manufactured, or intended
10 to distribute the heroin; and upon analysis, that the
11 substance was in fact heroin.

12 Now, you'll notice in the definition it referred to
13 actual possession and constructive possession. Actual
14 possession occurs when the drugs are found to be in the
15 actual physical custody of the person charged with
16 possession. In contrast, constructive possession occurs
17 when the defendant has the dominion and control over
18 either the drugs or the premises upon which the drugs
19 are found. And constructive possession may be
20 established by circumstantial as well as direct
21 evidence. And the law allows that the defendant's
22 control over the premises gives rise to a permissive
23 inference that the defendant constructively possesses
24 any drugs that are found. So constructive possession is
25 knowledge, plus dominion and control, is possession.

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1 The State also has the burden of proving the weight
2 of the heroin. And as you saw in the definition of
3 trafficking heroin, that requires proof that the
4 substance weighed more than 4 grams. And proof of
5 knowledge regarding the weight is not required. So
6 whether -- that does not require that the State prove
7 that the defendant, he knew that it weighed 8 grams
8 versus 6, or vice versa.

9 Now, getting into the facts of this case, you heard
10 Detective Grill, Detective Marn, Detective Sumner, and
11 Agent Shealy testify about 1 Grove Street. When
12 officers entered the residence they entered on the first
13 floor, obviously, through the door. They found the
14 defendant, Omar Gentile, sitting on the couch. They
15 found John Davis in the back bedroom downstairs. When
16 they took the defendant, Omar Gentile, into the back
17 bedroom to speak with him, he told them the bedroom
18 right above mine -- right above this one is mine.
19 That's bedroom three.

20 Now, inside bedroom 3, you heard Detective Marn
21 tell you -- well, actually, I'll get back to the
22 defendant. He told officers -- in addition to which
23 bedroom was his, he said he was present at 1 Grove
24 Street almost every day, he stays over from time to
25 time, he claimed number three as his own. He requested

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1 pants, a shirt, and shoes from that bedroom. He claimed
2 the keys that were hanging in the door. He said there's
3 more than \$1,000 in cash in there, and I know that
4 school is right across the street.

5 Now, what they actually found in bedroom three,
6 13.84 grams of heroin in the dresser. In that same
7 drawer they found a box containing wax bindles, which
8 Detective Marn and Detective Shealy told you is what you
9 use to package heroin for street-level distribution.
10 You take one of these and you put about .03, .02, .03
11 grams of heroin in it, and then you put ten of them
12 together and you wrap them with a rubber band and that's
13 a bundle.

14 Also in that drawer they found \$250. And I think
15 that's significant -- they found his pay stubs, pay
16 stubs going all the way back to April of 2011. They
17 found a digital scale right above that drawer. They
18 found all that in his dresser drawer. And they found
19 his bank card, his ATM card. In the top right drawer,
20 they found a bank statement and some other items.

21 All that to say everything they found in his room
22 appeared to belong to him. They found pay stubs, they
23 found mail, his bank card, his ID. They found a scale,
24 his bindles, his rubber bands, and they found his drugs.

25 Now, we've heard a little bit about what they found

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1 in bedroom four. We had officers testify it belonged to
2 Maurice Gentile. This case is not about what they found
3 in Maurice Gentile's room. This case is about what they
4 found in bedroom three, the one the defendant told
5 officers was his. They said they found -- or they
6 associated the other bedroom upstairs to the defendant's
7 mother.

8 As you can see on the map -- well, it might be kind
9 of hard to see -- you can see that this is 26, here's 1
10 Grove Street, and there's the school, all in Charleston
11 County.

12 I would like to take a minute just to go over
13 Detective Grill's testimony regarding street-level
14 distribution of heroin. He said it's common to see ten
15 bindles packaged together to form one bundle. That one
16 bundle, in general, is .02 grams of heroin. One bindle.
17 I'm sorry. One bundle is .2 grams. Which means the
18 13.84 grams found in Omar Gentile's room adds up to
19 sixty-nine bundles. One bundle on the street is worth
20 200 to \$250. Which means at the street level, this is
21 worth \$13,800.

22 Now, during cross-examination detectives were asked
23 about a few things that I want to address. Mr. King
24 asked them about why was the cocaine -- or why was the
25 cocaine bags and the marijuana bag asked to be printed

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1 but not the heroin. There was testimony that we use a
2 fingerprint, we use touch ID -- touch DNA to prove
3 identification. Well, when somebody tells you, that's
4 my room, I think it's reasonable to assume that once in
5 the room -- which, by the way, was under lock and key,
6 keys the defendant said were his -- it's reasonable to
7 assume that what's in that bedroom belongs to him.

8 And there was also some question about multiple
9 addresses. On the pay stub, it lists River Biering Lane
10 in North Charleston. On the ID card, it lists 146
11 Williman Street in Charleston. On the bank statement,
12 it says **1** Grove Street. But consider that all that
13 stuff was located in his bedroom at **1** Grove Street.
14 They didn't find the pay stub somewhere else. They
15 found it in this drawer at **1** Grove Street in the
16 bedroom he says was his.

17 There was also some talk about **2** Grove Street,
18 right next door. During the brief surveillance of the
19 home, Detective Grill testified that he was told an
20 individual walked out of the house and into the
21 apartment or the residence next door, **2** Grove Street.
22 And when they finished at **1** Grove Street, they executed
23 a search warrant at **2** Grove Street and in there they
24 found over 30 grams of crack cocaine, \$5,000, and a gram
25 of heroin.

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1 Consider that when they opened the drawer where
2 they eventually found the heroin, they found \$250
3 sitting on top of that 13.84-gram bag of heroin. What
4 did they find next door? They found a gram of heroin.
5 Detective Grill told you that in his experience, a gram
6 of heroin can go 200 to \$250. I would submit to you
7 that rather than the person next door, Xavier Williams,
8 coming over and leaving this bag of drugs in Omar's
9 drawer, that he came over to buy a gram and he paid \$250
10 for it.

11 You've heard a lot of testimony today about what
12 they found. The defense would have you believe that
13 Omar Gentile had the worst luck. He comes over there to
14 help his cousin, goes upstairs, unlocks the door, takes
15 his pants off, throws some shorts on and gets real
16 comfortable, and lo and behold a neighbor comes over
17 just before the police execute a search warrant on his
18 house and leaves his drugs in Omar's room. That's what
19 you have to believe if you believe that story.

20 I submit to you that the simplest explanation in
21 this case, the one that makes the most sense, that
22 everything in that room belonged to Omar Gentile,
23 everything in that room, the room that he said was his,
24 that he stays overnight in it from time to time, that he
25 keeps his cash in it, he keeps his social security card

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1 there, keeps his bank statement, keeps the pay stubs, he
2 keeps his ID, and he keeps his drugs. Everything in
3 there belongs to Omar Gentile.

4 I submit to you that the State has met its burden
5 to prove beyond a reasonable doubt that the defendant,
6 Omar Gentile, did knowingly possess 13.84 grams of
7 heroin. And I submit to you that after you've
8 considered all the evidence and testimony in this case,
9 that you will agree and that you will return a verdict
10 of guilty on both charges. Thank you.

11 THE COURT: Mr. King?

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State vs. Gentile
Closing Argument by Mr. King
January 5, 2016

CLOSING ARGUMENT

1
2 MR. KING: The solicitor talked about constructive
3 possession. You're going to be instructed on the law.
4 But the point to remember is that knowledge is the most
5 important thing. He has to have knowledge that those
6 drugs are in that drawer before he's guilty. If he's
7 merely present at the scene and he's just there, he's
8 not guilty.

9 He comes in every day to take care of his cousin.
10 That's what we've learned from this evidence. He stays
11 in that room from time to time. From the scene, it
12 looks like he comes in that day, takes off pants, puts
13 them on the bed. He's got money, he's got his cards in
14 it, puts on more comfortable clothes and he's there, the
15 only one there, helping take care of this elderly
16 gentleman, Mr. Davis.

17 He's not using drugs. Both officers testified to
18 that. He's not high on anything. There's no drugs on
19 him or in his pants that they find on the bed. And the
20 drug -- the heroin, the baggies, the scale of white
21 powder, I think the solicitor may have said that it was
22 on the dresser. But there was testimony that it was in
23 the dresser. Heroin, baggies, and a scale with white
24 powder, not tan powder, like heroin is. White powder in
25 that dresser drawer where you wouldn't see it if you

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1 walked in, put your pants on the bed, changed clothes,
2 and walked out and sat on the couch. Detective Marn
3 said it was hidden in the drawer, the heroin, that he
4 had to get it out. Because I asked him about that. The
5 other scale was in a box in the closet. These are
6 things that aren't out in plain view where you would
7 immediately see them if you walked in.

8 So he's there sitting on the couch. And the items
9 in the drawer, the bank statements, the pay stub, those
10 aren't recent. Both of those are months old. So he's
11 there and he's sitting on the couch. And he's taken off
12 his pants, he's changed into comfortable clothes, and he
13 hasn't seen -- looked in a drawer, and the police bust
14 in the door and there he is on the couch. He had a job.

15 But it appears his brother is a drug dealer. He
16 can't help what his brother does or who his brother is
17 involved with, or what the guy next door may be doing.
18 Maybe that's why he tries to keep the door to his room
19 locked. I don't know. Does he know what his brother
20 was doing and he's supposed to report his brother? Who
21 knows. You know, people get killed in this business for
22 \$13,000 worth of drugs.

23 Now I want to talk about this investigation,
24 because that's what the most important thing is here is
25 the investigator and the evidence and what they've

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1 proven, not what they say, not what they assume. So we
2 know that the informant bought drugs from his brother,
3 Maurice Gentile I believe Shealy said on January 31st,
4 2012. So nine days before the search. And they bust in
5 nine days later in the middle of the day.

6 Now, there are nine days there. We have no idea
7 what was going on in that house in those nine days. At
8 least Grill had training in surveillance. They all had
9 training, all the police officers who testified. You
10 know, they didn't conduct any surveillance on that house
11 over those nine days to try and get some more
12 information about what's going on in the house? This is
13 some sort of drug operation? Who owns the house? We
14 know about bedroom one. That's where they said Mr.
15 Davis was. They claim that bedroom three is Mr.
16 Gentile's, bedroom four is his brother, Maurice
17 Gentile's. Who's in bedroom number two? We don't know
18 that.

19 And the important thing about this investigation is
20 how badly it went. The guy who sold the drugs at the
21 house isn't even there when they do the search warrant.
22 They didn't even do some surveillance on the house to
23 try to catch the guy they're actually looking for. They
24 bust in and he's not there. Maurice Gentile is not
25 there. It's Omar Gentile taking care of John Davis.

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1 And when they got there to do the search,
2 apparently they grabbed the bag of heroin out of the
3 drawer, put it on top of the dresser. Wanted to take a
4 picture of it. Sumner testified that he didn't take a
5 picture of the drawer with the heroin in it.

6 But Shealy testified about these photographs. If
7 you look at these photos -- and you should have them --
8 I mean, you'll see, they -- Shealy testified that there
9 was -- the drugs were up under this money. It was this
10 plastic bag. But this plastic bag appears to have some
11 sort of red like Ziploc style. That's not what that bag
12 of heroin has. And if you look at it, also, once
13 they've taken the heroin out and put it on the dresser,
14 the money doesn't look like it's been disturbed. And in
15 the angle there, you can't really see where this bag
16 might still be in there. You'll have these.

17 What I'm saying is that he's contradicting what
18 Sumner was saying. And is that bag with the red Ziploc,
19 is that supposed to be the same bag as the heroin? I
20 mean, what are we talking about here? It should be
21 clearer than this. Are they being forthright on the
22 stand when they're testifying? Being open and honest,
23 to make sure you have all the information you need to
24 make the right decision in this case about what really
25 happened?

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1 Shealy didn't want to tell you he had a job, even
2 though he knew that there was a pay stub for Saint
3 Morris Building Services and there was evidence that he
4 was getting a direct deposit from Saint Morris Building
5 Services every two weeks up until February 3rd of 2012,
6 right before the arrest. Why did I have to fight with
7 him to get him to say he had a job? Right? Are they
8 being fair to Mr. Gentile and to you

9 What about this. Where did the rest of heroin go?
10 They found 16 grams of heroin, they said, in that
11 drawer. Although we don't know what it looked like or
12 where it was, because they grabbed it and took it out
13 and started taking photographs of it. All right. It's
14 13.84 now. Where did over 2 grams of heroin go?
15 \$13,000 worth, or 13 grams. That's a couple of thousand
16 dollars worth of heroin gone.

17 They were executing several search warrants that
18 day. I mean, this sort of investigation, are you sure
19 it's the right thing? Are you sure what they've brought
20 into court is really what they found?

21 Detective Marn, I mean, he wouldn't say whether the
22 drawer was open or closed. He knows the drawer was
23 closed. I think that's something that he would remember
24 if the drawer was wide open and he certainly wouldn't
25 have testified about that, when I'm arguing with him

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1 that he didn't see what was in the drawer. He's the
2 only one that said that. I asked Detective Marn about
3 the address on the ID card, you know, if there's a
4 different address on the card. He said, oh, well, you
5 know, people often do that. And he just seemed
6 convinced that Omar Gentile lived there. And that's not
7 evidence, the fact that they assume that, that they
8 believe that. That's not how this works. They have to
9 prove this to you.

10 Now, Detective Sumner. When Hinton testified, he
11 said Sumner is the one who put on the property notes
12 about fingerprinting the plastic bags of marijuana and
13 cocaine. Had his name right after those notes. Sumner
14 said he didn't do that: I didn't do that. He's trying
15 to deny that, even though his name is right after the
16 notes and Hinton says that he's the one who put that on
17 there.

18 They're not being straightforward with you. And
19 that's the minimum we can ask, is that they're fair and
20 straightforward and give you the information you need.
21 This is not an assembly line where we just churn people
22 through and convict him because the police say he did
23 it. That's his heroin, trust us. Not in this
24 courtroom. Now, there's a war on drugs and there's
25 always innocent victims in a war. Drugs ruin lives.

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1 But so does falsely accusing someone of trafficking
2 heroin because of how things appear, without doing a
3 full investigation to determine what's really going on.

4 Imagine we were in a trial for murder -- because
5 the burden of proof is the same -- and the police found
6 a body in that room and a murder weapon and the police
7 walked in and grabbed that murder weapon and put it on
8 top of the dresser and took a photograph of it and
9 didn't bother to test it for prints or didn't bother to
10 test it for DNA. Does that sound acceptable? What's
11 the difference? The burden of proof is the same. And
12 it's just as important for Mr. Gentile that they implore
13 [phonetic] on this trial.

14 And we should expect the police, if they're going
15 to charge a man with a crime like this, to do everything
16 reasonably possible to make sure that you're sure. And
17 they can't expect you to make a decision if they're not
18 going to give you that information. Questions left
19 unanswered. What if that plastic bag of heroin had
20 Maurice Gentile's fingerprint on it, or his DNA? What
21 if that plastic bag has Xavier Williams -- that's the
22 guy who left 1 Grove Street and went next door -- what
23 if it had his fingerprint or his DNA on it? Isn't that
24 reasonable doubt? Isn't it reasonable to expect for
25 them -- when they requested the two bags, plastic bags,

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1 of marijuana -- it's the same plastic bag -- Detective
2 Shealy says, well, we don't get the fingerprints off a
3 plastic bags.

4 Well, they requested that they test two bags of
5 marijuana for fingerprints and they requested that they
6 test two bags of cocaine for fingerprints. But not the
7 heroin? Is it reasonable to expect them to do the best
8 they can? Whatever is reasonable. I understand they
9 can't do everything. But there's a fingerprint examiner
10 close by. They've got somebody right there. But they
11 don't bother.

12 There's a great big question mark in this case, a
13 great big hole in this case, and Omar deserves better
14 than that and you deserve better than that because the
15 jury is the one who makes this decision about what
16 happened and whether he's guilty. And if you can't be
17 sure, then he's not guilty.

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Charge of the Court
January 5, 2016

CHARGE OF THE COURT

1
2 THE COURT: Ladies and gentlemen, I am now going to
3 instruct you on the law applicable to this case.

4 I remind you that during this trial you and I have
5 had certain duties to perform. As the trial judge, it is my
6 responsibility to preside over the trial of this case, and I
7 also have the duty to rule on the admissibility of the
8 evidence offered during this trial.

9 You are to consider only the competent evidence
10 before you. If there was any testimony ordered stricken from
11 the record, you must disregard that testimony. You are to
12 consider only the testimony which has been presented from this
13 witness stand, the exhibits that have been made a part of the
14 record in this case, and any stipulations of counsel.

15 I have the additional duty to charge you the law
16 applicable to this case. As the presiding judge, I am the
17 sole judge of the law in this case. It is your duty as jurors
18 to accept the law and apply the law exactly as I state it to
19 you now. If you already have any idea as to what the law is
20 or what the law ought to be and it does not agree with what
21 I'm about to tell you, you must abandon your own idea because
22 you are sworn to accept the law and apply the law exactly as I
23 state it to you now.

24 In ever case tried in this court before a jury, the
25 jury becomes the sole and exclusive judges of the facts. A

State vs. Gentile
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1 trial judge may not make any comment regarding the facts in
2 this case. Since you, the jury, are the sole judge of the
3 facts in this case, you are not to infer from anything that I
4 have said or done throughout the progress of this trial that I
5 have any opinion about the facts in this case. The law does
6 not allow me to have an opinion about the facts in this case.
7 This is a matter for you to determine.

8 The indictments in this case charge the defendant
9 with trafficking in heroin and possession with intent to
10 distribute heroin within a proximity of a school. I remind
11 you the fact that the defendant was arrested, charged, and
12 indicted in this case is not evidence in this case and cannot
13 be considered by you as evidence of guilt in this case, nor
14 does it create any presumption or inference of guilt. The
15 document -- the indictment is simply the formal written
16 instrument that brings us to court here today.

17 The indictments in this case allege two different
18 offenses against the defendant. The charges are, indictment
19 2015-GS-10-5473, trafficking in heroin. Indictment 2012-GS-
20 10-2587, possession with intent to distribute heroin within
21 the proximity of a school. Each indictment charges a separate
22 and distinct offense. You must decide each indictment
23 separately on the evidence and the law applicable to it
24 uninfluenced by your decision as to the other indictment. The
25 defendant may be convicted or acquitted on either or both of

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1 the offenses charged. You will be asked to write a separate
2 verdict form of guilty or not guilty for each indictment.

3 Mr. Foreman, that is one of your additional duties,
4 but I'm going to explain the verdict forms at the end of my
5 charge.

6 The defendant has pled not guilty to each
7 indictment. That plea puts the burden on the State to prove
8 the defendant guilty. A person charged with committing a
9 criminal offense in South Carolina is never required to prove
10 himself innocent.

11 I charge you it is an important rule of law that
12 the defendant in a criminal trial, no matter what the
13 seriousness of the charge may be, will always be presumed to
14 be innocent of the crime for which the indictment was issued
15 unless guilt has been proven by evidence satisfying you of
16 that guilt beyond a reasonable doubt. This presumption of
17 innocence does not end when you begin your deliberations but
18 it accompanies the defendant throughout the trial until you
19 each a verdict of guilt based upon evidence satisfying you of
20 that guilt beyond a reasonable doubt.

21 The presumption of innocence is not mere legal
22 theory. It is not just a legal phrase. It is a substantial
23 right to which every defendant is entitled, unless you, the
24 jury, are satisfied from the evidence of the defendant's guilt
25 beyond a reasonable doubt.

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1 The rules of evidence ordinarily do not permit
2 witnesses to testify to opinions or to conclusions. An
3 exception to this rule exists for witnesses we call expert
4 witnesses, a witness who by education and experience has
5 become expert in some art, science, profession, or calling may
6 state an opinion as to relevant and material matters in which
7 the witness claims to be an expert, and may also state the
8 reasons for that opinion. You should consider any expert
9 opinion received in evidence in this case and, like any other
10 evidence, give it the weight you think it deserves. If you
11 decide that the opinion of an expert witness is not based on
12 sufficient education or experience, or if you conclude that
13 the reasons given in support of the opinion are not sound, or
14 that the opinion is outweighed by other evidence, you may
15 disregard the opinion entirely. An expert witness' testimony
16 is to be given no greater weight than that of other witnesses
17 simply because the witness has been qualified as an expert.
18 You are not required to accept an expert's opinion, even
19 though it is not contradicted.

20 The State has the burden of proving the defendant
21 guilty beyond a reasonable doubt. Some of you may have served
22 as jurors in civil cases where you were told that it was only
23 necessary to prove that a fact is more likely true than not
24 true by greater weight or preponderance of the evidence. In
25 criminal cases, the State's proof must be more powerful than

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1 that. It must be beyond a reasonable doubt. Proof beyond a
2 reasonable doubt is proof that leaves you firmly convinced of
3 the defendant's guilt. There are very few things in this
4 world that we do know with absolutely certainty, and in
5 criminal cases the law does not require proof that overcomes
6 every possible doubt. If based upon your consideration of the
7 evidence you are firmly convinced that the defendant is guilty
8 of the crime charged, you must find the defendant guilty. If,
9 on the other hand, you think there's a real possibility that
10 the defendant is not guilty, you must give the defendant the
11 benefit of the doubt and find him not guilty.

12 There are two types of evidence that are generally
13 presented throughout a trial: direct evidence and
14 circumstantial evidence. Direct evidence directly proves the
15 existence of a fact and does not require deduction.
16 Circumstantial evidence is proof of a chain of facts and
17 circumstances indicating the existence of a fact. Crimes may
18 be proven by circumstantial evidence. The law makes no
19 distinction between the weight or value to be given either
20 direct or circumstantial evidence. However, to the extent the
21 State relies on circumstantial evidence, all of the
22 circumstances must be consistent with each other and when
23 taken together point conclusively to the guilt of the
24 defendant beyond a reasonable doubt. If these circumstances
25 merely portrayed the defendant's behavior as suspicious, the

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1 proof has failed. The State has the burden of proving a
2 defendant guilty beyond a reasonable doubt. This burden rests
3 with the State regardless of whether the State relies on
4 direct evidence, circumstantial evidence, or a combination of
5 the two.

6 Necessarily, you must determine the credibility of
7 witnesses who have testified in this case. Credibility simply
8 means believability. It becomes your duty as jurors to
9 analyze the evidence and evaluate it and determine which
10 evidence convinces you of its truth. In determining the
11 believability of the witnesses who have testified in this
12 case, you may believe one witness over several witnesses or
13 several witnesses over one witness. You may believe a part of
14 the testimony of a witness and reject the remaining part of
15 the testimony of that same witness. You may believe the
16 testimony of a witness in its entirety, or reject the
17 testimony of a witness in its entirety. You may consider
18 whether the witness has exhibited to you any interest, bias,
19 prejudice, or other motive in this case. You may also
20 consider the appearance and manner of a witness while he or
21 she was testifying.

22 A statement alleged to have been made by the
23 defendant has been admitted into evidence in this case. While
24 I have determined that the statement is admissible, I instruct
25 you that you make the ultimate decision of whether or not the

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1 defendant made the statement. If the defendant did make the
2 statement, you must determine whether the statement was made
3 by the defendant voluntarily and of his own free will. This
4 means that the statement was not caused by pressure, force,
5 fear, threats, coercion, or intimidation, or by a hope or
6 promise of leniency, or a reward of any kind. In determining
7 whether the statement was voluntary, you should consider both
8 the characteristics of the defendant and the details of the
9 questioning. Some of the factors that you must consider are
10 the age of the defendant, the defendant's education or lack of
11 education, the defendant's mental ability or capacity, the
12 defendant's IQ or intelligence, the defendant's background and
13 environment, the place and length of detention, the nature of
14 the questioning, and the advice or lack thereof to the
15 defendant of his constitutional rights including but not
16 limited to the right to remain silent, that any statement
17 could be used against him in a court of law, the right to have
18 a lawyer present, that if he could not afford a lawyer a
19 lawyer would be appointed to represent him without any cost
20 and that he could stop making a statement at any time. You
21 must carefully consider all of the surrounding circumstances
22 before you give any weight to an alleged statement.

23 The State has a burden of proving beyond a
24 reasonable doubt that the alleged statement was voluntary. If
25 you determine it was, you may give the statement any further

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1 consideration that you deem proper. You must decide what
2 weight, if any, should be given to the alleged statement. If
3 you determine the alleged statement was not the free and
4 voluntary statement of the defendant, you should not consider
5 the statement at all.

6 In order to establish criminal liability, criminal
7 intent is required. For example, the mental state required to
8 be proven by the State for a particular crime might be
9 purpose, intent, knowledge, recklessness, or criminal
10 negligence. Criminal intent must be proven by the State
11 beyond a reasonable doubt. Criminal intent is always a matter
12 that must be determined by you from the circumstances
13 surrounding the situation. There is no way to prove intent to
14 a mathematical certainty. The law says that criminal intent
15 may be inferred from the circumstances shown to have existed.
16 This is how you make a determination of whether or not the
17 element requiring intent was present. It is not necessary to
18 establish intent by direct and positive evidence but intent
19 may be established by inference in the same way as any other
20 fact, by taking into consideration the acts of the parties and
21 all the facts and circumstances of this case.

22 Criminal intent is a mental state. It is a
23 conscious wrongdoing. It is up to you to determine what the
24 defendant intended to do based upon the circumstances shown to
25 have existed. Criminal intent can arise from action or a

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1 failure to act. It may arise from negligence, recklessness,
2 or an indifference to duty or consequences that is considered
3 by the law to be the equivalent of criminal intent.

4 Mere presence at the scene is not sufficient to
5 prove someone guilty of a crime. A defendant's presence where
6 a crime is being committed, or mere association with a person
7 who commits a crime, does not make a defendant an accomplice
8 or an aider and abetter of the person committing the crime.
9 The burden is on the State to prove every element of the crime
10 charged. If you find after reviewing all of the evidence that
11 the State has proved that the defendant was only present at
12 the scene of the crime and that they have not proved beyond a
13 reasonable doubt any other participation in the crime, then
14 you must find the defendant not guilty. The law is that proof
15 of at the scene of the crime is not sufficient to find someone
16 guilty.

17 The defendant is charged with trafficking in
18 heroin. The State must prove beyond a reasonable doubt that
19 the defendant knowingly sold, manufactured, cultivated,
20 delivered, purchased, or brought into the State, or provided
21 financial assistance, or otherwise aided, abetted, attempted
22 or conspired to sell, manufacture, cultivate, deliver,
23 purchase or bring into the state, or was knowingly in actual
24 or constructive possession or knowingly attempted to become in
25 actual or constructive possession of 4 or more grams of any

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1 morphine, opium, salt, isomer, salt of an isomer thereof,
2 including heroin or 4 grams or more of any mixture containing
3 those substances. The State must also prove beyond a
4 reasonable doubt that the amount of the heroin, or any
5 mixture, was 4 grams or more but less than 14 grams.

6 To prove possession, the State must prove beyond a
7 reasonable doubt that the defendant had both the power and the
8 intent to control the disposition or use of the heroin.
9 Possession may be either actual or constructive. Actual
10 possession means that the heroin was in the actual physical
11 custody of the defendant. Constructive possession means that
12 the defendant had dominion and control, or the right to
13 exercise dominion and control, over either the heroin itself
14 or the property in which the heroin was found. Mere presence
15 at the scene where the drugs were found is not enough to prove
16 possession. The defendant's knowledge and possession may be
17 inferred when a substance is found on the property under the
18 defendant's control. However, this inference is simply an
19 evidentiary fact to be taken into consideration by you, along
20 with the other evidence in this case, and to be given the
21 weight you decide it should have. Two or more persons may
22 have joint possession of a drug.

23 To deliver means to actually constructively or
24 attempt to transfer the drug. Distribute means to deliver,
25 other than by administering or dispensing a drug.

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1 The defendant is charged with possession with
2 intent to distribute heroin within a proximity of a school.
3 The State must prove beyond a reasonable doubt that the
4 defendant distributed, sold, purchased, manufactured or
5 possessed with intent to distribute heroin, a controlled
6 substance, within a one-half mile radius of the grounds of a
7 public or a private elementary, middle, or secondary school, a
8 public playground or park, public vocational or trade school
9 or technical education center, or a public or private college
10 or university. The defendant must have knowledge that he is
11 in, on, or within a one-half mile radius of the grounds of a
12 public or private elementary, middle, or secondary school,
13 public playground or park, a public vocational or trade school
14 or technical education center, or a public or private college
15 or university.

16 I instruct you and emphasize the fact that the
17 defendant did not testify in this case is not a factor to be
18 considered by you in any way in your deliberation and in your
19 consideration on the question of the guilt or innocence of the
20 defendant. It must not be considered by you in any manner
21 whatsoever. A defendant has a constitutional right to remain
22 silent and the assertion of this right must not be considered
23 by you in your deliberations. I repeat, under your oath you
24 are to draw no conclusion whatsoever from the fact that the
25 defendant in this case did not testify. The fact that he did

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1 not testify should not even be discussed in the jury room.
2 The burden of proof is on the State. The defendant is not
3 required to prove his innocence. The burden of proof remains
4 on the State to prove guilt beyond a reasonable doubt.

5 Ladies and gentlemen, I am now going to go over the
6 verdict forms with you. There are two verdict forms, as I
7 indicated to you. You must decide each one separately, based
8 upon the evidence and the law as I have just instructed you.

9 Mr. Foreperson, you are responsible for completing
10 the verdict forms.

11 In the Court of General Sessions for the Ninth
12 Judicial Circuit, 2015-GS-10-5473, we, the jury, find the
13 Defendant Omar Shariff Gentile not guilty, or, we, the jury,
14 find the Defendant Omar Shariff Gentile guilty, of trafficking
15 heroin 4 grams to 14 grams.

16 After you have reached a unanimous decision,
17 Mr. Foreman, all twelve of you must agree. You will sign and
18 date that verdict form.

19 In the Court of General Sessions for the Ninth
20 Judicial Circuit, 2012-GS-10-2587, we, the jury, find the
21 Defendant Omar Shariff Gentile not guilty, or, we, the jury,
22 find the Defendant Omar Shariff Gentile guilty, of possession
23 with intent to distribute heroin within the proximity of a
24 school.

25 Once again, once you have reached a unanimous

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1 decision, meaning all twelve of you have agreed on that
2 verdict, you will sign and date that verdict form.

3 Ladies and gentlemen, there was no significance in
4 the way I read the verdict forms to you. It's simply I had to
5 put something on the paper first and I had to read one of the
6 verdict forms first.

7 Is there any question or any one of my first twelve
8 that feels you would be unable to complete your deliberations
9 in this case? Is you feel that you would be unable to
10 complete your deliberations, please raise your hand.

11 [Whereupon, there is no response]

12 THE COURT: All twelve jurors have indicated that
13 they are able to complete the deliberations.

14 To my two alternates, please do -- we are going to
15 keep you separate until the verdict forms and the evidence
16 have gone back to the first twelve.

17 Please do not begin your deliberations until my
18 bailiffs tell you you may do so. We will be collecting the
19 evidence and the verdict form, and then they will indicate to
20 you you may begin your deliberations.

21 Please rise for the jury.

22 [Whereupon, the jury exits the courtroom at

23 3:14 p.m.]

24 THE COURT: Thank you. Be seated.

25 Any objection, correction, to the charge as read?

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1 From the State?

2 MR. SOWARDS: No objection from the State.

3 MR. KING: No, Your Honor.

4 THE COURT: All right. Thank you.

5 And the verdict forms are fine. I made that one
6 correction. Do you just want to look at it one more
7 time before I send it back?

8 [Whereupon, counsel review documents]

9 MR. SOWARDS: How do you propose that we redact --
10 because we have -- I think the bank statement, we could
11 just Sharpie it out.

12 THE COURT: I would have proposed you did that over
13 the lunch hour.

14 MR. SOWARDS: I'm sorry.

15 THE COURT: Just hand me the -- just take a Sharpie
16 and cross it out.

17 MR. SOWARDS: That was just on this one. The
18 account number and the balances.

19 THE COURT: And just -- for that account number.
20 The whole account number.

21 MR. KING: We had talked about -- he said he wasn't
22 going to go into the amount of money on there and then I
23 wouldn't have to like try to do some accounting.

24 THE COURT: Is that sufficient?

25 MR. SOWARDS: There might be a little bit on the

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1 back.

2 MR. KING: Yeah, what's on the back.

3 THE COURT: I'll flip it over. But that's -- on
4 the front, that's sufficient?

5 MR. KING: Yes.

6 THE COURT: It's all on the back.

7 MR. KING: Do you need the back?

8 THE COURT: Why don't you do this. Why don't you
9 just make a copy of the front --

10 MR. SOWARDS: All I care about is the address.

11 THE COURT: Right.

12 So just make a -- see if Mike can make you a copy
13 of that, and we'll mark that.

14 MR. KING: This one is okay.

15 THE COURT: Once it's been admitted.

16 [Off the record momentarily]

17 THE COURT: Just leave the -- if you are in
18 agreement, we can leave the social security card out.

19 MR. SOWARDS: Just block out the --

20 THE COURT: Well, or you can make a copy of it.
21 The picture --

22 MR. SOWARDS: Well, we have the picture of it
23 that's in. If we could just black out the picture -- or
24 the number and just leave the card out?

25 THE COURT: Okay. That will be -- that's a great

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1 idea. Thank you.

2 MS. LINDER: We'll leave the actual social security
3 card out?

4 THE COURT: Right.

5 Because I'm not -- I believe that's sort of a crime
6 to deface a social security card. Because you can't --
7 once you laminate it, it's no longer valid.

8 [Whereupon, Court's Exhibit Number 1 is marked by
9 the court reporter]

10 [Whereupon, Court's Exhibit Number 2 is marked by
11 the court reporter]

12 THE COURT: So here's what I understand happened.
13 Let's put it on the record.

14 State's Number 11 was the social security picture.
15 I redacted it with a Sharpie by marking out the number,
16 but the picture will go back with the redaction.

17 Is that correct?

18 MR. SOWARDS: Correct.

19 MR. KING: Yes, Your Honor.

20 THE COURT: Court's Number 1 is the actual social
21 security card that was contained in that packet of
22 documents. We will retain that, because I am not going
23 to make any redactions or marks on the original social
24 security card.

25 Court's 2 is the original from the bank statements,

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1 State's 20. So Court's 2 is the redaction with the
2 account number on the front and the balance on the
3 front. We made a copy and are sending only that, which
4 will now be 20.

5 Is that correct?

6 MR. SOWARDS: Yes.

7 MR. KING: Yes, Your Honor.

8 THE COURT: Madam Court Reporter, does that
9 coincide with what you have?

10 THE COURT REPORTER: Yes, ma'am.

11 THE COURT: Thank you.

12 [Off the record momentarily]

13 THE COURT: All right. We'll be at ease.

14 Mr. Gentile will -- you will remain in custody.
15 Thank you.

16 [Whereupon, the evidence goes to the jury at
17 3:22 p.m.]

18 THE COURT: Madam Court Reporter --

19 Mr. Gaines, when you bring the jury in, there's a
20 note back there. Hold on one second. There's a note
21 back there. Would you bring that with you? That will
22 be Court's 3.

23 THE BAILIFF: Yes, ma'am.

24 THE COURT: And this will be Court's 4.

25 [Whereupon, Court's Exhibit Number 4 is marked by

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1 the court reporter]

2 THE COURT: And just bring in the jury.

3 [Whereupon, the jury enters the courtroom at
4 5:00 a.m.]

5 [Whereupon, Court's Exhibit Number 3 is marked by
6 the court reporter]

7 THE COURT: Thank you. Please be seated.

8 We are marking for the Court's record, for the
9 record, the first note as Court's 3. The second note
10 will be Court's 4.: Mr. Foreman, ladies and gentlemen
11 of the jury, I was unclear as to what you were referring
12 to, trafficking and possession, so I'm going to read the
13 elements of both of the indictments to you.

14 Please listen very carefully. As you are aware,
15 this is how we have to communicate back and forth, with
16 the notes, so please listen very carefully to my charge.

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State vs. Gentile
Re-Charge of the Court
January 5, 2016

RE-CHARGE OF THE COURT

1
2 THE COURT: The defendant is charged with
3 trafficking in heroin. The State must prove beyond a
4 reasonable doubt that the defendant knowingly sold,
5 manufactured, cultivated, delivered, purchased, or brought
6 into the State, or provided financial assistance, or otherwise
7 aided, abetted, attempted or conspired to sell, manufacture,
8 cultivate, deliver, purchase, or bring into the state, or was
9 knowingly in actual or constructive possession or knowingly
10 attempted to become in actual or constructive possession of 4
11 grams or more of any morphine, opium, salt, isomer, salt of an
12 isomer thereof, including heroin, or 4 grams or more of any
13 mixture containing any of these substances. The State must
14 also prove beyond a reasonable doubt that the amount of the
15 heroin, or any mixture containing heroin, was 4 grams or more
16 but less than 14 grams. To prove possession, the State must
17 prove beyond a reasonable doubt that the defendant had both
18 the power and the intent to control the disposition or use of
19 the heroin. Possession may be either actual or constructive.
20 Actual possession means that the heroin was in the actual
21 physical custody of the defendant. Constructive possession
22 means that the defendant had dominion and control, or the
23 right to exercise dominion and control, over either the heroin
24 itself or the property on which the heroin was found. Mere
25 presence at the scene where the drugs were found is not enough

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1 to prove possession. The defendant's knowledge and possession
2 may be inferred when a substance is found on the property
3 under the defendant's control. However, this inference is
4 simply an evidentiary fact to be taken into consideration by
5 you, along with the other evidence in this case, and to be
6 given the weight that you decide it should have. Two or more
7 persons may have joint possession of a drug. To deliver means
8 to actually constructively or attempt to transfer the drug.
9 Distribute means to deliver, other than by administering or
10 dispensing a drug.

11 Ladies and gentlemen, that was the statutory
12 elements of indictment 2015-GS-10-5473, trafficking in heroin.

13 The defendant is charged with possession with
14 intent to distribute heroin within proximity of a school. The
15 State must prove beyond a reasonable doubt that the defendant
16 distributed, sold, purchased, manufactured, or possessed with
17 intent to distribute heroin, a controlled substance, within a
18 one-half mile radius of the grounds of a public or a private
19 elementary, middle, or secondary school, a public playground
20 or park, a public vocational or trade school or technical
21 education center, or a public or private college or
22 university. The person must have knowledge that he is in, on,
23 or within a one-half mile radius of the grounds of a public or
24 private elementary, middle, or secondary school, a public
25 playground or park, a public vocational or trade school or

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January 5, 2016

1 technical education center, or a public or private college or
2 university.

3 Ladies and gentlemen, that was the statutory
4 elements on indictment 2012-GS-10-2587.

5 THE COURT: You have, Mr. Foreman, the two verdict
6 forms that correspond with each of those charges.

7 Did that answer your question?

8 THE FOREPERSON: Yes.

9 THE COURT: All right. Please go back and continue
10 your deliberations.

11 Please rise for the jury.

12 [Whereupon, the jury exits the courtroom at
13 5:05 p.m.]

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State vs. Gentile
Re-Charge of the Court
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1 THE COURT: Thank you. Be seated.

2 Any objection, correction, addition, to how I
3 handled Court's 4? From the State?

4 MR. SOWARDS: Not from the State.

5 MR. KING: No, Your Honor.

6 THE COURT: All right. We will be at ease.

7 [Whereupon, a recess is taken from 5:06 p.m. to
8 6:02 p.m.]

9 [Whereupon, Court's Exhibit Number 5 is marked by
10 the court reporter]

11 THE COURT: We've got another note. Does having
12 more than 4 grams automatically constitute as
13 trafficking. And my response was would you like me to
14 read you the charge for this indictment, and the answer
15 was yes.

16 So that's why we're here. So I'm just going to
17 read trafficking one more time. Or as ever -- I guess
18 as many times as they need for me to read it.

19 Mr. King?

20 MR. KING: I'm okay with that response.

21 THE COURT: All right. Thank you.

22 [Off the record momentarily]

23 THE COURT: Rise for the jury.

24 [Whereupon, the jury enters the courtroom at
25 6:02 p.m.]

State vs. Gentile
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1 THE BAILIFF: All jurors present, Your Honor.

2 THE COURT: Thank you. Please be seated.

3 Ladies and gentlemen, I have received a note, that
4 is now Court's Number 5, indicating a question you had
5 about the amount of grams automatically constituting as
6 trafficking.

7 Ladies and gentlemen, I am going to read the
8 entirety of the trafficking statute again. Please
9 listen carefully.

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State vs. Gentile
Re-Charge of the Court
January 5, 2016

RE-CHARGE OF THE COURT

THE COURT: Everything that I now read from this point on has to do with the trafficking indictment, which is indictment 2015-GS-10-5473.

The defendant is charged with trafficking in heroin. The State must prove beyond a reasonable doubt that the defendant knowingly sold, manufactured, cultivated, delivered, purchased, or brought into the State, or provided financial assistance, or otherwise aided, abetted, attempted or conspired to sell, manufacture, cultivate, deliver, purchase or bring into the state, or was knowingly in actual or constructive possession, or knowingly attempted to become in actual or constructive possession, of 4 grams or more of any morphine, opium, salt, isomer, or salt of an isomer thereof, including heroin, or 4 grams or more of any mixture containing any of these substances. The State must also prove beyond a reasonable doubt that the amount of the heroin, or any mixture containing heroin, was 4 grams or more but less than 14 grams. To prove possession, the State must prove beyond a reasonable doubt that the defendant had both the power and the intent to control the disposition or use of the heroin. Possession may be either actual or constructive. Actual possession means that the heroin was in the actual physical custody of the defendant. Constructive possession means that the defendant had dominion and control, or the

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1 right to exercise dominion and control, over either the heroin
2 itself or the property on which the heroin was found. Mere
3 presence at the scene where the drugs were found is not enough
4 to prove possession. The defendant's knowledge and possession
5 may be inferred when a substance is found on the property
6 under the defendant's control. However, this inference is
7 simply an evidentiary fact to be taken into consideration by
8 you, along with the other evidence in this case, and to be
9 given the weight that you decide it should have. Two or more
10 persons may have joint possession of a drug. To deliver means
11 to actually constructively or attempt to transfer the drug.
12 To distribute means to deliver, other than by administering or
13 dispensing a drug.

14 Does that answer your question, Mr. Foreman?

15 THE FOREPERSON: Yes, ma'am.

16 THE COURT: All right. Can you check with your
17 jurors? Do I need to read it again? Would you like for
18 me to read it again?

19 THE FOREPERSON: [Indicates negatively]

20 THE COURT: Would you like for us to begin ordering
21 dinner?

22 THE FOREPERSON: No. Not yet.

23 THE COURT: Thank you. Please let us know if
24 anything changes.

25 Please continue your deliberations. Thank you.

State vs. Gentile
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1 Please rise for the jury.

2 [Whereupon, the jury exits the courtroom at
3 6:05 p.m.]

4 THE COURT: Thank you. Be seated.

5 Any objection to what just occurred?

6 MR. SOWARDS: No, Your Honor.

7 MR. KING: No, Your Honor.

8 THE COURT: All right. Thank you. Counsel
9 approach.

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

12 [Whereupon, a recess is held from 6:06 p.m. to
13 6:41 p.m.]

14 THE COURT: All right. The note says: we cannot
15 agree on both charges, so I'm going to read the Allen
16 charge and then send them back.

17 [Whereupon, Court's Exhibit Number 6 is marked by
18 the court reporter]

19 [Off the record momentarily]

20 THE COURT: Please rise for the jury.

21 [Whereupon, the jury enters the courtroom at
22 6:42 p.m.]

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State vs. Gentile
Allen Charge
January 5, 2016

ALLEN CHARGE

1
2 THE COURT: Ladies and gentlemen, you have
3 indicated to the Court that you have been unable to agree on a
4 verdict in this case. As I instructed you earlier, your
5 verdict must be unanimous on each indictment. When a matter
6 is in dispute, it isn't always easy for even two people to
7 agree, so when twelve people must agree it becomes even more
8 difficult.

9 In most cases, absolute certainty cannot be reached
10 or expected; however, you have a duty to make every reasonable
11 effort to reach a unanimous verdict. In doing this you should
12 consult with one another, express your own views, and listen
13 to the opinions of your fellow jurors. Tell each other how
14 you feel and why you feel that way. Discuss your differences
15 with open minds. Although the verdict of the jury must be
16 unanimous, every one of you has the right to your own opinion.
17 The verdict you agree to must be your own verdict, the result
18 of your own convictions, and you should not give up your
19 firmly-held beliefs merely to be in agreement with your fellow
20 jurors.

21 The majority should consider the minority's
22 opinion, and the minority should consider the majority's
23 opinion. You should carefully consider and respect the
24 opinions of each other and reevaluate your position for
25 reasonableness, correctness, and impartiality. You must lay

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Allen Charge

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1 aside all other outside matters and reexamine the questions
2 before you based upon the law that I have given you and the
3 evidence in this case.

4 If you do not agree on a verdict in this case, I
5 must declare a mistrial. In that case, it does not mean that
6 anybody wins. It just means that at some future time, I will
7 try this case with some other jury sitting exactly where you
8 are sitting today. The same participants will come in, and
9 the same lawyers will ask basically the same questions and
10 they will get basically the same answers. You were selected
11 in the same manner from the same source as any future jury
12 will be and there is no reason for me to suppose that this
13 case will ever be submitted to twelve more intelligent,
14 impartial, and conscientious jurors as sits in front of me
15 here today. I therefore ask that you return to continue your
16 deliberations.

17 Please rise for the jury.

18 [Whereupon, the jury exits the courtroom at
19 6:46 p.m.]

20 THE COURT: Thank you. Be seated.

21 Any object to the Allen charge?

22 MR. SOWARDS: No, Your Honor.

23 MR. KING: No, Your Honor.

24 THE COURT: All right. We'll be at ease.

25 [Whereupon, a recess is taken from 6:46 p.m. to

State vs. Gentile
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1 6:57 p.m.]

2 THE COURT: Please be seated.

3 All right. We have a verdict. Anything before we
4 bring in the jury?

5 MR. SOWARDS: Nothing from the State.

6 MR. KING: No, Your Honor.

7 [Off the record momentarily]

8 THE COURT: Please rise for the jury.

9 [Whereupon, the jury enters the courtroom at

10 6:57 p.m.]

11 THE BAILIFF: All jurors present, Your Honor.

12 THE COURT: Thank you. Please be seated.

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State vs. Gentile
Verdict
January 5, 2016

VERDICT

THE COURT: I understand you have reached a verdict. If you will hand the verdict forms to the bailiff.

[Whereupon, the bailiff proffers documents to the Court]

[Whereupon, the Court reviews documents]

THE CLERK OF COURT: Please have the defendant stand.

[Whereupon, Mr. Gentile complies]

THE CLERK OF COURT: The verdict forms in the matter of The State of South Carolina versus Omar Shariff Gentile, defendant: we, the jury, find the Defendant Omar Shariff Gentile guilty of possession with intent to distribute within the proximity of a school. Signed by the foreperson on January the 5th, 2016.

Ladies and gentlemen of the jury, if this was your verdict, please raise your right hand.

[Whereupon, jurors comply]

THE CLERK OF COURT: Thank you.

Please let the record reflect that all twelve jurors raised their right hand.

On the other verdict form: we, the jury, find the Defendant Omar Shariff Gentile guilty of trafficking heroin, 4 grams to 14 grams. Signed by the foreperson

State vs. Gentile
Verdict
January 5, 2016

1 of the jury on January the 5th, 2016.

2 Ladies and gentlemen of the jury, if this was your
3 verdict, please raise your right hand. Please raise
4 your right hand.

5 [Whereupon, jurors comply]

6 THE CLERK OF COURT: Thank you.

7 Please let the record reflect that all twelve
8 jurors raised their right hand.

9 THE COURT: Thank you.

10 Anything further required of the jury? From the
11 State?

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

13 MR. KING: The defense requests polling the jury.

14 THE COURT: You may poll the jury. Please use the
15 numbers. Thank you.

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State vs. Gentile
Polling of the Jury
January 5, 2016

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POLLING OF THE JURY

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THE CLERK OF COURT: Ladies and gentlemen of the jury, what is going to happen now is called polling the jury. When I call your juror number, please raise your hand. I will then acknowledge you and you can put your hand down. I will then ask you two questions: were those your verdicts, and are they still your verdicts. Please respond verbally to each question.

Juror number 14, were those your verdicts?

JUROR NUMBER 14: Yes.

THE CLERK OF COURT: Are they still your verdicts?

JUROR NUMBER 14: Yes.

THE CLERK OF COURT: Juror number 12, were those your verdicts?

JUROR NUMBER 12: Yes.

THE CLERK OF COURT: Are they still your verdicts?

JUROR NUMBER 12: Yes.

THE CLERK OF COURT: Thank you.

Juror number 51, were those your verdicts?

JUROR NUMBER 51: Yes.

THE CLERK OF COURT: Are they still your verdicts?

JUROR NUMBER 51: Yes.

THE CLERK OF COURT: Juror number 80, were those your verdicts?

JUROR NUMBER 80: Yes.

State vs. Gentile
Polling of the Jury
January 5, 2016

1 THE CLERK OF COURT: Are they still your verdicts?

2 JUROR NUMBER 80: Yes.

3 THE CLERK OF COURT: Juror number 89, were those
4 your verdicts?

5 JUROR NUMBER 89: Yes.

6 THE CLERK OF COURT: Are they still your verdicts?

7 JUROR NUMBER 89: Yes.

8 THE CLERK OF COURT: Juror number 218, were those
9 your verdicts?

10 JUROR NUMBER 218: Yes.

11 THE CLERK OF COURT: Are they still your verdicts?

12 JUROR NUMBER 218: [No response]

13 THE CLERK OF COURT: Are they still your verdicts?

14 JUROR NUMBER 218: Yes.

15 THE CLERK OF COURT: Juror number 236, were those
16 your verdicts?

17 JUROR NUMBER 236: Yes.

18 THE CLERK OF COURT: Are they still your verdicts?

19 JUROR NUMBER 236: Yes.

20 THE CLERK OF COURT: Juror number 253, were those
21 your verdicts?

22 JUROR NUMBER 253: Yes.

23 THE CLERK OF COURT: Are they still your verdicts?

24 JUROR NUMBER 253: Yes.

25 THE CLERK OF COURT: Juror number 261, were those

State vs. Gentile
Polling of the Jury
January 5, 2016

1 your verdicts?

2 JUROR NUMBER 261: Yes.

3 THE CLERK OF COURT: Are they still your verdicts?

4 JUROR NUMBER 261: Yes.

5 THE CLERK OF COURT: Juror number 277, were those
6 your verdicts?

7 JUROR NUMBER 277: Yes.

8 THE CLERK OF COURT: Are they still your verdicts?

9 JUROR NUMBER 277: Yes.

10 THE CLERK OF COURT: Juror number 318, were those
11 your verdicts?

12 JUROR NUMBER 318: Yes.

13 THE CLERK OF COURT: Are they still your verdicts?

14 JUROR NUMBER 318: Yes.

15 THE CLERK OF COURT: Juror number 323, were those
16 your verdicts?

17 JUROR NUMBER 323: Yes.

18 THE CLERK OF COURT: Are they still your verdicts?

19 JUROR NUMBER 323: Yes.

20 THE CLERK OF COURT: If there is any juror whose
21 number I did not call, please raise your right hand.

22 [Whereupon, there is no response]

23 THE CLERK OF COURT: Your Honor, the jury has been
24 polled and the verdict stands,

25 THE COURT: Mr. King, anything further from the

State vs. Gentile
Polling of the Jury
January 5, 2016

1 jury?

2 MR. KING: No, Your Honor.

3 THE COURT: All right. Please be seated.

4 Mr. Foreman, on the verdict form for 2015-GS-10-
5 5473, you have checked 1 and initialed 1, and checked 1.
6 What is your -- what was -- the verdict was guilty?

7 THE FOREPERSON: Yes, ma'am.

8 THE COURT: And so you had checked not guilty
9 previously and then your initials indicate that you
10 withdrew that checkmark?

11 THE FOREPERSON: Yes.

12 THE COURT: Counsel, I just want you to see the
13 verdict form so that it's clear what happened.

14 And then, Mr. Foreman, I'm going to have you sign
15 the indictment, which is what we typically do. It's
16 just easier just for paperwork purposes.

17 I just want it on the record. It's not so clear on
18 the form. Okay?

19 [Whereupon, counsel review documents]

20 THE COURT: Ladies and gentlemen, you have
21 completed your service to this case, and you have also
22 completed your service for the week, so please return
23 back to your jury room. I will be there in just a few
24 moments to excuse you from service.

25 Please rise for the jury.

State vs. Gentile
Polling of the Jury
January 5, 2016

1 [Whereupon, the jury exits the courtroom at
2 7:03 p.m.]

3 THE COURT: Thank you. Be seated.

4 Do you have your sentencing sheets with you?

5 MR. SOWARDS: I do not.

6 THE COURT: Do you want to do sentencing tonight?

7 MR. SOWARDS: We would prefer that --

8 THE COURT: All right. I'm going to go release the
9 jury.

10 We'll be at ease. Thank you.

11 [Off the record momentarily]

12 THE COURT: Okay. Thank you. We'll be at ease.
13 I'm going to release the jury.

14 [Whereupon, a recess is taken from 7:04 p.m. to
15 7:22 p.m.]

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State vs. Gentile
Sentencing of Mr. Gentile
January 5, 2016

SENTENCING

THE COURT: Anything further from the State regarding sentencing?

MR. SOWARDS: Nothing, Your Honor.

THE COURT: And the potential sentence on the --

MR. SOWARDS: On the trafficking, it's a mandatory twenty-five years and a 100,000-dollar fine.

The proximity is up to ten years and a fine -- and/or a fine of \$100,000.

THE COURT: 100,000?

MR. SOWARDS: Yes, ma'am.

THE COURT: Is that your understanding, Mr. King?

MR. KING: Yes, Your Honor.

THE COURT: Is that what you advised your client?

MR. KING: Yes, Your Honor.

THE COURT: Did you also advise your client that trafficking is classified as a --

MR. SOWARDS: Violent and serious.

THE COURT: Is that correct, Mr. King?

MR. KING: I have at some point in the past. We haven't discussed that recently.

THE COURT: That is not marked on the sentencing sheets. Any objection to me marking it, Mr. King?

MR. KING: Is it a violent offense, Your Honor?

THE COURT: Violent and serious; is that correct?

State vs. Gentile
Sentencing of Mr. Gentile
January 5, 2016

1 MR. KING: That's correct, Your Honor.

2 THE COURT: And the possession within proximity is
3 a serious --

4 MR. SOWARDS: Serious.

5 THE COURT: -- nonviolent. Is that correct?

6 MR. SOWARDS: Correct.

7 THE COURT: Is that what you advised your client?

8 MR. KING: Yes, Your Honor.

9 THE COURT: Mr. King --

10 Is there anything further from the State?

11 MR. SOWARDS: No, Your Honor.

12 MR. KING: Your Honor, we are asking you to
13 consider running the charges concurrent. I believe
14 that's the discretion that Your Honor has. I don't
15 think there is any -- twenty-five years.

16 He's here today with his sister, Lapronda Gentile
17 [phonetic], and his girlfriend of four years, Robin
18 Cannady [phonetic]. They've been here during the trial
19 supporting him.

20 I have advised him to remain silent at this
21 particular point in the trial. That's what I always do.

22 But I would just urge you, Your Honor, if you would
23 consider being lenient and running them concurrently.

24 He worked before this, as I brought out in trial,
25 at Saint Morris Building Supply Company. He's been

State vs. Gentile
Sentencing of Mr. Gentile
January 5, 2016

1 working, since he's been out of jail, with the Post and
2 Courier. So he has had a job.

3 He's been out since 2012, I think about March of
4 2012, and without any other convictions. He's forty-
5 two. Looking back on his record, what I saw it looks
6 like he's never hurt anybody. It appears to be maybe
7 drugs. There's one pistol charge. But not even a
8 simple assault and battery or a CDV or anything like
9 that, so he's not someone who has hurt anybody.

10 Twenty-five years is a long sentence. It's eighty-
11 five percent. We would ask you to consider just to
12 sentence him to the twenty-five and sentence him to the
13 proximity charge concurrent with that.

14 THE COURT: Mr. Gentile, do you wish to address the
15 Court?

16 MR. GENTILE: [No response]

17 THE COURT: Anything you wish to say to the Court?
18 [Whereupon, Mr. King and Mr. Gentile confer]

19 MR. KING: He does not, Your Honor.

20 THE COURT: Sir, please stand.

21 MR. KING: I believe his -- would like to just
22 briefly address Your Honor.

23 THE COURT: I can't imagine what she would want to
24 tell me, but I'll hear from her in just a moment.

25 Mr. Gentile, I need you to stand, please.

State vs. Gentile
Sentencing of Mr. Gentile
January 5, 2016

1 [Whereupon, Mr. Gentile complies]

2 THE COURT: Mr. Gentile, you understand that you
3 have been convicted of both indictments? Do you
4 understand that?

5 MR. GENTILE: Yes, ma'am.

6 THE COURT: And the trafficking is considered a
7 violent and a serious offense. Do you understand what
8 those two classifications mean to you?

9 MR. GENTILE: Yes, ma'am.

10 THE COURT: Do you understand I have absolutely no
11 discretion? It is a twenty-five year sentence and a
12 100,000-dollar fine. Do you understand what that means?

13 MR. GENTILE: Yes, ma'am.

14 THE COURT: You understand that the potential
15 sentence is up to ten years on the proximity charge?

16 MR. GENTILE: Yes, ma'am.

17 THE COURT: You have the right to appeal this
18 conviction, but you or your attorney must do so within
19 ten days. Do you understand that, Mr. Gentile?

20 MR. GENTILE: Yes, ma'am.

21 THE COURT: And you went over all of this, Mr.
22 King, with Mr. Gentile?

23 MR. KING: Yes, Your Honor.

24 THE COURT: And he understood his right to appeal?

25 MR. KING: Yes, Your Honor.

State vs. Gentile
Sentencing of Mr. Gentile
January 5, 2016

1 THE COURT: Mr. Gentile, is there anything you wish
2 to tell me? I'll hear from your sister, but is there
3 anything you wish to tell me?

4 MR. GENTILE: Just tell my family that I love them.

5 THE COURT: I'm sorry?

6 MR. GENTILE: Just telling them I love them.

7 That's all.

8 THE COURT: They heard you. They heard you.

9 Y'all may have a seat so I can hear from sister.

10 Ma'am, I just need you to -- if you will just stand
11 right there.

12 MS. GENTILE: I actually --

13 THE COURT: Hold on one second. Remember we've got
14 to make it clear for the court reporter, so I need you
15 to state your full name for the record and spell your
16 last name.

17 MS. GENTILE: Latonya Gentile. G-E-N-T-I-L-E.

18 THE COURT: Yes, ma'am.

19 MS. GENTILE: And I actually just wanted to say
20 what Mr. King said. If you can at least be lenient and
21 just run concurrent, because I think twenty-five is a
22 long time. He's got two boys, both in college. It'll
23 be a long time before he sees them again. So he already
24 guilty. He already got twenty-five. Why not just give
25 him twenty-five? I would really appreciate that -- I

State vs. Gentile
Sentencing of Mr. Gentile
January 5, 2016

1 would really appreciate that.

2 THE COURT: Thank you. Anything else, Mr. King?

3 MR. KING: Your Honor, I think I've got to renew
4 all my previous trial motions and make a motion for a
5 new trial.

6 THE COURT: Anything -- any other -- anything else?

7 MR. KING: No, Your Honor.

8 THE COURT: So I'm going to address -- I haven't
9 heard anything that -- I would deny your motions to
10 reconsider all the previous motions.

11 Mr. Gentile, please stand.

12 [Whereupon, Mr. Gentile complies]

13 THE COURT: It's the order of the Court on 2015-GS-
14 10-5473 that you be committed to the State Department of
15 Corrections for a term of twenty-five years and pay a
16 100,000-dollar fine. It's the order of the Court on
17 2012-GS-10-2587 that you be committed to the State
18 Department of Corrections for a term of ten years.

19 Did he serve any time, Mr. King?

20 MR. KING: About thirty-seven days, Your Honor.

21 THE COURT: Credit for time served. They will run
22 concurrent.

23 Good luck to you, sir.

24 [JURY TRIAL CONCLUDES AT 7:29 P.M.]

25

State vs. Gentile

C E R T I F I C A T E

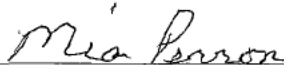
STATE OF SOUTH CAROLINA

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, January 5, 2016.

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 March, 2016.



Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Kristi Lea Harrington, Circuit Court Judge

ORIGINAL
RECEIVED
MAR 08 2017
SC Court of Appeals

THE STATE,

RESPONDENT,

v.

OMAR SHARIFF GENTILE

APPELLANT

APPELLATE CASE NO. 2016-000161

FINAL BRIEF OF APPELLANT

KATHRINE H. HUDGINS
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South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred by denying Appellant's motion to compel the State to reveal the identity of the confidential informant where the informant allegedly made a controlled drug buy at the residence only three days before a search warrant was signed by a magistrate, police obtained the search warrant because of the informant's statement that two people – one of whom was allegedly Appellant – were selling drugs inside the house, and the informant had worked with police "multiple times" on prior cases?

STATEMENT OF THE CASE

On September 14, 2015, the Charleston County Grand Jury indicted Appellant for trafficking in more than four grams of heroin and possession with intent to distribute heroin within proximity of a school. R. 264 - 268. Appellant's case proceeded to a jury trial before the Honorable Kristi L. Harrington. R. 18. Jason T. King and Tamara M. Van Pala represented Appellant. John Whitney Sowards and Stephanie B. Linder represented the State. R. 18.

Appellant was found guilty as charged. R. 249, ll. 11 – 25. Judge Harrington sentence Appellant to twenty-five years' imprisonment for the trafficking charge and ten years' imprisonment for the proximity charge, to run concurrently. R. 261, ll. 2 – 23.

Appellant appealed his conviction and sentence. This appeal follows.

STATEMENT OF FACTS

On or about January 31, 2012, a confidential informant working for the City of Charleston Police Department made a controlled drug buy at 1 Grove Street in Charleston County. R. 188, ll. 2 – 16. Fitted with audio surveillance equipment, the confidential informant purchased heroin from Maurice Gentile, Appellant's brother, who was inside the residence. R. 30, ll. 5 – 24. After the drug buy, the informant told police that heroin and crack cocaine was being sold from the home. R. 36, l. 16 – R. 37, l. 22.

On February 3, 2012, the police obtained a search warrant based on the confidential informant's statement to police describing the alleged drug activity in the Grove Street home. R. 32, ll. 1 – 24. The police asserted, however, that there were other reports of drugs being sold from the residence. R. 34, ll. 10 – 24.

On February 9, 2012, officers executed the search warrant at 1 Grove Street. R. 75, ll. 1 – 13. Upon entering the home, officers detained and handcuffed Appellant, who was sitting on the couch in the living room. R. 79, ll. 17 – 24. Officers also detained and handcuffed Appellant's uncle, John Davis, who owned the home and was inside the back bedroom. R. 80, ll. 15 – 23.

According to officers, Appellant asked them to grab a pair of his pants and a shirt to put on from the bedroom upstairs where he slept. R. 84, l. 8 – R. 85, l. 4. Appellant told officers that he came to the residence every day to take of Davis, who was handicapped. R. 92, l. 20 – R. 93, l. 1. Appellant allegedly told officers that the set of keys inside the lock of the bedroom door belonged to him. He also stated that he had over one thousand dollars located inside the bedroom. R. 84, l. 8 – R. 85, l. 4.

While searching the bedroom where Appellant indicated he slept, officers located 13.84 grams of heroin, glassine baggies, rubber bands, a digital scale, and a bank card inside a dresser drawer. R. 100, ll. 4 – 25.

Motion to Compel Disclosure of the Confidential Informant's Identity

On September 18, 2015, three months before Appellant's jury trial, defense counsel made a motion to compel the State to reveal the identity of confidential informant used to make the controlled drug buy which led to the search warrant for 1 Grove Street. R. 4, l. 5 – R. 6, l. 6. Counsel explained that the search warrant was signed by the magistrate within seventy-two hours of the controlled drug buy. R. 4, l. 5 – R. 6, l. 6.

Counsel contended that the State's entire case was based on the informant who provided information relevant to Appellant's defense. R. 4, l. 5 – R. 6, l. 6. Specifically, the informant told officers that he purchased drugs from Maurice Gentile, Appellant's brother. The informant also said that two people, named "Scope" and "Juice," were selling drugs in the residence. R. 36, l. 22 – R. 37, l. 1. Counsel argued that Appellant should be able to interview, investigate, and cross-examine the confidential informant since the informant is a material witness in Appellant's case. R. 4, l. 5 – R. 6, l. 6.

The State informed the court that the confidential informant would not be testifying at trial. R. 7, ll. 16 – 18. The State contended that the informant did not have to be revealed since Appellant was charged with trafficking heroin, not distribution. Further, law enforcement had a "genuine concern" about the informant's safety. R. 7, ll. 10 – 12.

The court denied counsel's motion. The confidential informant was not called as a witness at trial. R. 58, l. 8 – R. 59, l. 18.

ARGUMENT

The trial court erred by denying Appellant's motion to compel the State to reveal the identity of the confidential informant where the informant allegedly made a controlled drug buy at the residence only three days before a search warrant was signed by a magistrate, police obtained the search warrant because of the informant's statement that two people – one of whom was allegedly Appellant – were selling drugs inside the house, and the informant had worked with police "multiple times" on prior cases.

Appellant was entitled to know the identity of the confidential informant in his case. Police obtained the search warrant for **1** Grove Street, where Appellant was arrested, based on information given by the informant who had allegedly purchased drugs there only three days before. The informant told police how many people were allegedly selling drugs from the home and their nicknames. The informant was a *de facto* participant and, therefore, a material witness in Appellant's case.

While the State "is generally privileged from revealing the name of a confidential informant, disclosure may be required when the informant's identity is relevant and helpful to the defense or is essential for a fair determination of the State's case against the accused." State v. Humphries, 354 S.C. 87, 90, 579 S.E.2d 613, 614 – 15 (2003). "In determining whether disclosure of an informant's identity is essential to the defense, the trial court must consider whether the informant is a mere 'tipster' who has only peripheral knowledge of the crime or . . . a material witness on the issue of guilt or innocence." State v. Bultron, 318 S.C. 323, 457 S.E.2d 616 (Ct. App. 1995) citing State v. Diamond, 280 S.C. 296, 312 S.E.2d 550 (1984) (finding the trial judge erred in refusing to require the State to disclose the identity of the informant who was clearly a participant in the underlying drug transaction, and not a mere "tipster."). See State v.

Burney, 294 S.C. 61, 362 S.E.2d 635 (1987) (finding the State was not required to disclose the identity of the confidential informant in the trafficking in cocaine case where the informant was a “tipster” whose identity was not important to the issue of guilt or innocence).

Here, Appellant was entitled to know the identity of the State’s confidential informant. The controlled drug buy was completed at **1** Grove Street on January 31, 2016. Police obtained the search warrant for the residence on February 3, 2016 and executed the search on February 9, 2012, six days later. Only nine days passed between the time of the controlled buy and the search. Further, officers stated that the search warrant was signed because of the information provided by the confidential informant. Specifically, that two people were selling drugs in the home. The informant went so far as to give officers the nicknames of the individuals he claimed to see selling drugs. See R. 36, l. 22 – R. 37, l. 1.

In addition to providing police with probable cause to search the Grove Street house, the confidential informant had also worked with police “multiple times” on other cases. R. 37, ll. 11 – 24. In fact, at trial the informant was deemed “reliable.” R. 37, ll. 11 – 24. The informant was clearly more than a “mere tipster” and had more than “periphery” knowledge of what occurred inside the house. Bultron, 318 S.C. at 330, 457 S.E.2d at 620. The informant was a *de facto* “participant.” Diamond, 280 S.C. at 298, 312 S.E.2d at 551.

Because of the minimal amount of time between the controlled drug buy and the signing of the search warrant, and the detailed information the informant provided to police, the informant was clearly a “material witness” in Appellant’s case.

CONCLUSION

For the reasons argued above, Appellant Omar Gentile respectfully requests this Court to reverse his convictions and sentence and remand to the lower court for a new trial.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 8th day of March, 2017.

ORIGINAL

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Kristi Lea Harrington, Circuit Court Judge

Appellate Case No. 2016-000161

RECEIVED

FD 24 2017

SC Court of Appeals

THE STATE, ...RESPONDENT

v.

OMAR SHARIFF GENTILE, ...APPELLANT.

FINAL BRIEF OF RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

Whether the trial court properly denied Appellant's motion to require the State to disclose the identity of the confidential informant where that informant was only peripherally connected to Appellant's case through making a controlled purchase and giving information to the police that ultimately led to the issuance of a search warrant for the targeted residence, but otherwise was not connected to the heroin discovered during the search that resulted in the charges for which Appellant was on trial.

STATEMENT OF THE CASE

Appellant was indicted at the May 2012 term of the grand jury for Charleston County for possession with intent to distribute heroin within proximity of a school (2012-GS-10-2587). He was subsequently indicted at the September 2015 term for trafficking in heroin (2015-GS-10-5473). Appellant was represented by Assistant Public Defenders Jason T. King, Esquire, and Tamara M. Van Pala, Esquire, of the Ninth Circuit Public Defender's Office. The State was represented by Assistant Solicitors John Whitney Sowards, Esquire, and Stephanie B. Linder, Esquire, of the Ninth Circuit Solicitor's Office. On January 4-5, 2016, Appellant proceeded to trial by jury pursuant to which he was found guilty as indicted. He was sentenced by the Honorable Kristi Lea Harrington to a mandatory term of twenty-five (25) years' imprisonment and a \$100,000 fine for trafficking, and a concurrent term of ten (10) years' imprisonment for possession with intent to distribute within proximity of a school. (R. p.263-p.268; R.p.256-p.261). Appellant timely filed a notice of intent to appeal his convictions and sentence and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

In January of 2012, the City of Charleston Police Department received information from numerous intelligence sources that the sale of illegal drugs was being conducted at the address of 1 Grove Street in Charleston. One of these tips came from a confidential informant (CI) well known to the police, who was an ongoing informant in other cases and whose information had been consistently reliable. Additionally, officers had received tips from other sources corroborating the CI's information. Based upon this intelligence, members of the police anti-narcotics task force and agents from the State of South Carolina Law Enforcement Division (SLED) decided to attempt to conduct a controlled purchase of narcotics from the residence utilizing the CI. (R.p.27-p.48).

On or about January 31, 2012, a joint law enforcement task force initiated a controlled purchase with the CI, targeting 1 Grove Street. (R.p.34-p.37). The CI was sanitized per SLED controlled-buy procedures described by the CI's handler, Agent Jonathan Shealy. (R.p.31). SLED agents dropped off the CI several blocks away from the residence, and the CI walked to 1 Grove Street to conduct the controlled purchase. In addition to the audio/visual equipment wired to the CI, police had set up points around the residence from which they could have positive control and view the home. (R.p.38-p.39). Upon arriving at the home, the CI purchased heroin from a man later identified as Maurice Gentile, Appellant's brother. Appellant was also identified as being inside the residence at the time of the transaction. (R.p.41-p.42).

Following the sale the CI left 1 Grove Street and returned to the drop-off point, where he met Agent Shealy. Upon meeting Agent Shealy the purchased narcotics were immediately surrendered, and the CI was again searched to ensure that none of the heroin was kept by the CI. The narcotics were field tested by Agent Shealy, which returned a preliminary positive result, and then were placed into evidence. Agent Shealy then reviewed the audio and visual recordings

from the purchase and confirmed the CI had gone to the residence, conducted the purchase, and immediately returned. Finally, the CI wrote a statement detailing the exact circumstances of his participation. (R.p.31).

Based upon this controlled buy, and supplemented with the intelligence received from the CI and other police officers, Agent Shealy applied to a magistrate judge for a search warrant for 16 Grove Street in Charleston. In his affidavit in support Agent Shealy averred probable cause for the warrant based upon the controlled buy, as well as the intelligence that had been received from the CI and other law enforcement officers prior to the purchase. When Agent Shealy submitted his affidavit, he met with the judge, detailed the totality of the evidence uncovered thus far, and advocated for the issuance of the warrant. The court issued a search warrant for 16 Grove Street on February 3, 2012. (R.p.29-p.32).

In order to protect the anonymity of the CI and to prevent any compromise to other ongoing investigations, law enforcement waited six days to serve the warrant. Law enforcement executed the search warrant for the residence on February 9, 2012. (R.p.32). Officers making entry to secure the home found Appellant in the living room downstairs sitting on a couch, while Appellant's uncle, John Davis, was found in a back bedroom. (R.p.79-p.80). Both individuals were detained and placed into handcuffs for officer safety. Appellant was verbally *Mirandized*, and a *Miranda* warning card was signed by Appellant and Agent Shealy and Officer Charles Grill. Officer Grill also testified that Appellant verbally indicated that he understood his rights and did not appear impaired or incapable of making an informed *Miranda* waiver. (R.p.19-p.21; p.83).

Appellant consented to an interview with Officer Grill and Agent Shealy. He told law enforcement that he came to the residence daily to help take care of Mr. Davis, an amputee.

Additionally, Appellant maintained his domicile at the residence, and had a personal room with independent locks and keys. He considered 1 Grove Street to be his place of residence.

Appellant requested that officers retrieve pants and a shirt for him to wear from his room, as he was found in shorts and an undershirt by officers making entry serving the warrant. Appellant pointed out his room in the home. As law enforcement carried out this request, they found Appellant's keys in the lock to the door that he had indicated was his bedroom. Appellant also told law enforcement that he had over \$1,000 in cash in his bedroom. (R.p.84-p.85; p.93).

When conducting the search of Appellant's bedroom, officers discovered sixteen grams of a substance presumed to be heroin. Officers also found drug paraphernalia—specifically digital scales with the residue of heroin on them—glassine baggies, and rubber bands. According to law enforcement these items are used in the measuring and packaging of illegal narcotics. (R.p.100). Based upon the evidence obtained in the search, Appellant was charged and subsequently indicted as noted.

Motion to Disclose Identity of CI

The case was called for trial on January 4, 2016. Following jury qualification, jury selection, and a hearing on several other pretrial motions, Appellant renewed a pretrial motion he had previously made to require the State to disclose the identity of the CI who had been used for the controlled buy. First, he explained the procedural history of the motion, noting that on June 20, 2014, a hearing was convened before Judge Young to consider Appellant's motion to compel discovery from the State. Specifically, he had requested a copy of the audio/video recording made by the police of the CI's controlled buy, a recording which the State believed would have revealed the CI's identity. This request for the recording was denied by Judge Young. Next, Appellant explained that on September 18, 2015, a hearing was convened before the trial judge,

Judge Harrington, to consider a specific motion to require the State to reveal the identity of the CI. That motion was also denied.¹ As noted, when the case was called for trial in January of 2016, Appellant renewed his motion to reveal the identity of the CI. (R.p.22-p.25).

During the ensuing evidentiary hearing on Appellant's motion to suppress the evidence discovered pursuant to the search warrant, a police witness described the use of the CI to make the controlled purchase that ultimately led to securing the search warrant. Following the presentation of testimony, the parties reargued their respective positions on disclosure of the identity of the CI and the motion was again denied. (R.p.26-p.59).

At the September 18, 2015 pretrial hearing, Appellant articulated why he believed the trial court should require the State to disclose the identity of the CI. He argued he should be allowed to know the identity of the CI, be able to interview the CI, and possibly subpoena the CI for trial on the merits of the case. Appellant referenced case law about the trial court balancing the public interest of protecting the flow of criminal activities against the individual's right to prepare his defense, and he argued the CI was a material witness who would be both relevant and helpful to his defense. (R. p.1-p.6).

The solicitor responded that Appellant had raised nearly the exact same issue a year earlier before Judge Young; however, Appellant argued it was a slightly different motion because in the previous proceeding he had only asked Judge Young to compel disclosure of the DVD recording of the controlled buy. Appellant acknowledged Judge Young denied the motion. The solicitor explained there was a point on the video where you could see the CI and that law enforcement had a genuine concern about the CI's safety in this case and what watching the video of the controlled buy might reveal. In regard to Appellant's continuing attempt to learn

¹ A review of the transcript reveals that at the conclusion of the hearing Judge Harrington took the matter under advisement to conduct further research; however, it appears she advised the parties before the close of business for the day that the motion was denied. (R.p.12).

the CI's identity, the solicitor noted that the cases referenced by Appellant involved distributions for which the defendant was being tried whereas here, Appellant was not charged with the distribution/sale that was made to the CI. (R.p.6-p.8).

Appellant argued that now that they were on the brink of trial, the privilege of the informant should give way to his due process right to present a full and fair defense, particularly since the controlled buy was so close in time to the execution of the search warrant. He further argued there was another person selling drugs out of the residence, Maurice Gentile [his brother], who made the sale to the CI, and that the CI and other people present during the sale could help prove his innocence by showing he was not guilty of actually trafficking the drugs that were found in the house. Appellant continued to argue the CI's identity was relevant because he could have information that could help Appellant's defense. The solicitor agreed that if this were a distribution case based on the controlled buy Appellant would be entitled to know the CI's identity, but here the CI's identity was not important. The trial court took the motion under advisement but made a ruling later that day denying the request to reveal the identity of the CI. (R.p.8-p.12).

On January 4, 2016, when Appellant renewed his motion to require the State to disclose the identity of the CI, he made essentially the same argument, that the CI could be a witness in regard to whether there was an ongoing operation by other individuals to sell drugs from the residence. He said his defense was that the heroin discovered in the search was not his heroin and that the CI's knowledge could help that defense. (R.p.22-p.24; p.55-p.59). Ultimately, the trial court ruled as follows: "Based upon my reading of the case law and the testimony as I understand it here today, I again deny your motion to reveal the C.I. based upon the case law as I interpret it." (R.p.59).

The case then proceeded to trial with both parties making opening statements (R.p.67-p.71) and the State calling the following witnesses: Charleston Police Department Detective Charles Jacob Grill (R.p.72-p.95); Charleston Police Department Detective John Marn (R.p.97-p.124); Charleston Police Department Investigator Alexander Keith Sumner (R.p.125-p.135); Charleston Police Department evidence handler Brian Hinton (R.p.137-p.142); Charleston Police Department evidence handler Linda Wilson (R.p.144-p.146); Charleston Police Department Evidence Custodian Susan Payne (R.p.147-p.150); Charleston Police Department Laboratory Manager Renee Hilton (R.p.155-p.163); and SLED Agent and former Charleston Police Department Detective Jonathan Shealy (R.p.164-p.192). In regard to the use of the CI, Agent Shealy's testimony was consistent with the testimony offered at the pretrial hearing.

After the State rested, Appellant moved for a directed verdict and renewed all of his previous objections. The trial court denied the directed verdict motion and stood by all of its earlier rulings. (R.p.192-p.198). Appellant elected not to testify or offer evidence in his defense. Following a brief charge conference, the defense rested and the parties made closing arguments. (R.p.198-p.219). The trial court charged the jury on the law and after several notes from the jury, recharges on portions of the law, and an *Allen* charge, the jury reached guilty verdicts on both charges. (R.p.220-p.250). The trial court sentenced Appellant to a mandatory term of twenty-five (25) years' imprisonment and a \$100,000 fine for trafficking, and a concurrent term of ten (10) years' imprisonment for possession with intent to distribute within proximity of a school. (R.p. 263-268; R.p.256-p.261).

ARGUMENT

I.

The trial court properly denied Appellant's motion to require the State to disclose the identity of the confidential informant where that informant was only peripherally connected to Appellant's case through making a controlled purchase and giving information to the police that ultimately led to the issuance of a search warrant for the targeted residence, but otherwise was not connected to the heroin discovered during the search that resulted in the charges for which Appellant was on trial.

Appellant argues the trial court erred by denying his motion to compel the State to reveal the identity of the CI where that CI made a controlled drug buy at the residence only three days before a search warrant was signed by a magistrate. He contends that because the CI told police how many people were allegedly selling drugs from the house as well as their nicknames, he was a *de facto* participant in the charged crimes and a material witness in Appellant's case, and therefore, his identity was necessary for Appellant's defense. (Brief of Appellant, p.5). The State disagrees and submits Appellant's argument is without merit. The trial judge properly exercised her discretion in declining to require the disclosure of the CI's identity because the informant was only peripherally connected to Appellant's case through his provision of the information to the police that ultimately led to the issuance of a search warrant for the targeted residence. The CI was not connected to the heroin discovered during the search that resulted in Appellant's trafficking and distribution within proximity of a school charges and, thus, the identity of the CI was not necessary or essential in regard to the preparation of Appellant's defense against those charges. Appellant failed at trial to provide a valid or compelling reason justifying the disclosure of the CI's identity; therefore, the trial judge did not abuse her discretion in refusing to require such disclosure. Appellant's conviction should be affirmed.

Standard of Review

In criminal cases, the appellate courts sit to review errors of law only. *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). On appeal, a trial judge's decision not to require disclosure of an informant's identity will not be reversed unless the defendant can demonstrate that disclosure was required and prejudice resulted from the lack of disclosure. *State v. Batson*, 261 S.C. 128, 135, 198 S.E.2d 517, 520 (1973).

Law / Analysis

"Generally, the State may not be compelled to disclose the names of its confidential informants." *State v. Bultron*, 318 S.C. 323, 330, 457 S.E.2d 616, 620 (Ct. App. 1995). "The purpose of the privilege [against disclosure] is the furtherance and protection of the public interest in effective law enforcement." *Roviaro v. United States*, 353 U.S. 53, 59 (1957). "The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, by preserving their anonymity, encourages them to perform their obligation." *Id.*

However, the privilege against disclosure is limited to the extent necessary to ensure fundamental fairness for all parties to a case. *Id.* at 60. "Where the disclosure of an informant's identity, or of the contents of his communication, is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause, the privilege must give way." *Id.* at 60-61. Significantly though, there is "no fixed rule with respect to disclosure[.]" *Id.* at 62. Instead, the public's interest in perpetuating the flow of vital information to law enforcement officials must be balanced against the criminal defendant's right to prepare his defense. *Bultron*, 318 S.C. at 330, 457 S.E.2d at 620. Therefore, whether disclosure is required necessarily depends on the particular circumstances of each individual case. *Roviaro*, 353 U.S. at 62.

Typically, “[a]n informant’s identity need not be disclosed where either the informant possesses only a peripheral knowledge of the crime or is a mere tipster who supplies a lead to law enforcement authorities.” *State v. Blyther*, 287 S.C. 31, 33, 336 S.E.2d 151, 152 (Ct. App. 1985) (citations omitted). “Where, however, the informant either is a material witness to the crime or directly participates in it, disclosure may be required, particularly where, in a drug related case, he is the only witness to the transaction other than the buyer and the defendant.” *Id.* (citations omitted); see *State v. Diamond*, 280 S.C. 296, 299, 312 S.E.2d 550, 551 (1984) (“Public policy considerations for nondisclosure of an informant’s identity are absent where the informant openly participates in the criminal transaction.”). However, “[e]ven if the informant is an active participant in the criminal act and/or a material witness, the court may still sustain an invocation of the nondisclosure privilege if other factors and circumstances warrant doing so.” *Bultron*, 318 S.C. at 330, 457 S.E.2d at 620; see *State v. Riggins*, 262 S.C. 466, 468, 205 S.E.2d 376, 377 (1974) (holding the trial judge properly declined to provide the name of a confidential informant who was present when Riggins sold marijuana to an undercover officer).

In seeking the disclosure of the identity of a confidential informant, “the burden is upon the accused to show facts and circumstances giving rise to an exception to the privilege against disclosure[.]” *Batson*, 261 S.C. at 134, 198 S.E.2d at 520. “[T]he onus is on the defendant to ‘come forward with something more than speculation as to the usefulness of such disclosure.’” *United States v. Blevins*, 960 F.2d 1252, 1259 (4th Cir. 1992) (citations omitted). In deciding whether to require the disclosure of a confidential informant’s identity, the trial judge has “considerable discretion” on the matter. *Batson*, 261 S.C. at 134-35, 198 S.E.2d at 520. Thus, as noted above, a trial judge’s decision not to require disclosure of an informant’s identity will not

be reversed unless the defendant can demonstrate that disclosure was required and prejudice resulted from the lack of disclosure. *Id.* at 135, 198 S.E.2d at 520.

Here, the trial judge properly declined to require the disclosure of the CI's identity because the disclosure of that information was not relevant, significant, or essential to any aspect of Appellant's defense. Indeed, the CI in Appellant's case merely provided information regarding a drug transaction for which Appellant was *not* criminally charged, and the information provided by the CI was solely used to obtain a search warrant as opposed to being used to prove Appellant's guilt or to obtain a warrant for Appellant's arrest in connection to the drug transactions in which the CI actually participated. Appellant was *not* indicted for any offense related to the transactions in which the CI participated but, instead, was charged with trafficking in heroin and distribution of heroin within proximity of a school based solely on the discovery of narcotics during the search of the targeted residence. *See Bultron*, 318 S.C. at 331, 457 S.E.2d at 621 (finding disclosure of the identity of a confidential informant was not required where "[t]he State presented evidence Appellants were in constructive possession of the narcotics independent of the information offered by the informant"). The CI was not involved with and was not connected to the heroin discovered in the search of the targeted residence in any way. *See Roviato*, 353 U.S. at 64 (finding the prosecutor was required to reveal the identity of an informant in "a case where the Government's informer was the sole participant, other than the accused, in the transaction charged"); *Diamond*, 280 S.C. at 298, 312 S.E.2d at 551 ("The informant was clearly a participant in the transaction, not a mere 'tipster' or witness or, as the trial judge ruled, a 'conduit.'"). Accordingly, there was no compelling reason requiring disclosure of the identity of the CI in Appellant's case, and the informant's identity was not essential to any aspect of Appellant's defense.

As his basis for arguing that the CI's identity should have been disclosed, Appellant contends the CI's presence was needed at trial to answer questions about the two people he named by nickname and claimed to see selling drugs from the house. He argues this information demonstrates the CI was more than a "mere tipster" and had more than a "periphery" knowledge of what occurred inside the house. However, Appellant confuses knowledge of the controlled buy itself with knowledge of the trafficking and proximity charges for which he was indicted. Besides the buy providing probable cause for the search of the residence, the incidents are distinct. As noted by the solicitor, Appellant was charged with trafficking solely based on his possession of a large quantity of heroin discovered during the search, not based on the heroin purchased in the controlled buy. As a result, Appellant failed to articulate a valid reason for the identity of the confidential informant to be disclosed. *See State v. Shupper*, 263 S.C. 53, 57, 207 S.E.2d 799, 800 (1974) (finding no error in the refusal to require disclosure of the confidential informant's identity where "the defendant made no showing whatever that his lot may have been improved by the informer's testimony").

The CI's testimony was irrelevant to any material issue in dispute in Appellant's trial. Because it was not necessary for establishing Appellant's guilt or innocence or towards aiding in the preparation of Appellant's defense, there was no compelling reason justifying or mandating the disclosure of the confidential informant's identity. Therefore, the trial judge did not abuse her broad discretion in declining to do so, and Appellant failed to articulate any meaningful reason either at trial or on appeal that would justify a conclusion to the contrary. *Batson*, 261 S.C. at 134-35, 198 S.E.2d at 520. Appellant's convictions should be affirmed.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
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SCARLETT A. WILSON
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ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
February 24, 2017

STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

FEB 24 2017

APPEAL FROM CHARLESTON COUNTY
Kristi Lea Harrington, Circuit Court Judge

SC Court of Appeals

Appellate Case No. 2016-000161

THE STATE,.....RESPONDENT

v.

OMAR SHARIFF GENTILE,.....APPELLANT.

CERTIFICATE OF COUNSEL

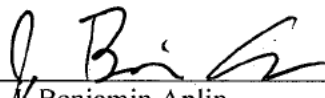
The undersigned hereby certifies Final Brief of Respondent complies with Rule 211(b), SCACR.

ALAN WILSON
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J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General

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ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
February 24, 2017

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Omar Shariff Gentile, Appellant.

Appellate Case No. 2016-000161

Appeal From Charleston County
Kristi Lea Harrington, Circuit Court Judge

Unpublished Opinion No. 2018-UP-386
Submitted September 6, 2018 – Filed October 17, 2018

AFFIRMED

Appellate Defender Kathrine Haggard Hudgins, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General John Benjamin Aplin,
both of Columbia; and Solicitor Scarlett Anne Wilson, of
Charleston, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Bultron*, 318 S.C. 323, 330, 457 S.E.2d 616, 620 (Ct. App.

1995) ("Generally, the State may not be compelled to disclose the names of its confidential informants."); *Roviaro v. U.S.*, 353 U.S. 53, 59 (1957) ("What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law."); *Bultron*, 318 S.C. at 330, 457 S.E.2d at 620 ("[The] privilege of nondisclosure must give way to the rights of the accused where the informant's identity is relevant and helpful to the defense or is essential for a fair determination of the State's case against the accused."); *id.* ("In short, the trial court must balance the public's interest in perpetuating the flow of vital information to law enforcement officials against the right of an individual to prepare his defense."); *Roviaro*, 353 U.S. at 62 ("Whether a proper balance renders nondisclosure erroneous must depend on the particular circumstances of each case, taking into consideration the crime charged, the possible defenses, the possible significance of the informer's testimony, and other relevant factors."); *Bultron*, 318 S.C. at 330, 457 S.E.2d at 620 ("In determining whether disclosure of an informant's identity is essential to the defense, the trial court must consider whether the informant is a mere 'tipster' who has only peripheral knowledge of the crime or an active participant in the criminal act and/or a material witness on the issue of guilt or innocence."); *State v. Batson*, 261 S.C. 128, 134, 198 S.E.2d 517, 520 (1973) ("The disclosure of the identity of one who is merely an informer and not a participant nor a material witness is not generally required."); *id.* ("[T]he burden is upon the accused to show facts and circumstances giving rise to an exception to the privilege against disclosure."); *id.* at 134-35, 198 S.E.2d at 520 ("[T]he trial court has considerable discretion as to ordering, or refusing to require, disclosure and that in the event of refusal, the burden is upon the accused to show prejudice resulting therefrom."); *see also State v. Burney*, 294 S.C. 61, 62-63, 362 S.E.2d 635, 636 (1987) (noting the informant did not participate in the pertinent drug bust or in any other transaction involving the possessory offenses for which the appellant was tried and convicted, and holding disclosure of the confidential informant's identity was not required, as the informant "was a 'tipster' whose identity was not important to the issue of guilt or innocence" (emphasis added)).

AFFIRMED.¹

HUFF, SHORT, and WILLIAMS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

STATE OF SOUTH CAROLINA)

County of Charleston)Omar Shariff Gentile)

Full name and prison number (if any) of Applicant)

289079)

v.)

State of South Carolina)

2018-CP-10-5819
IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2018 DEC -7 PM 2:52
JULIE J. AUSTIN, CLERK
CLERK OF COURT**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 South Carolina Dept. of Corrections - Lieber Correctional Institution
2. Name and location of Court which imposed sentence Charleston Co. Court of General Sessions, Charleston, South Carolina
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: 2012-GS-10-2587; poss. with intent to dis-
 - (a) tribute heroin within proximity of a school
 - (b) 2018-GS-10-5473; trafficking in heroin

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) January 5, 2016; mandatory twenty-five (25) years and
 (b) and \$100,000 fine
 (c) January 5, 2016; ten (10) years concurrent
6. Check whether a finding of guilty was made:
 (a) after a plea of guilty N/A
 (b) after a plea of not guilty ✓
 (c) after a plea of nolo contendere N/A
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. Convictions and Sentences affirmed
 ii. _____
 iii. _____
 (c) the date of each such result:
 i. October 17, 2018
 ii. _____
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. Unpublished Opinion No. 2018-UP-386 (Per
 ii. Curiam)
 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 Trial Counsel
- (b) Due Process violation, 5th, 14 Amendments to U.S.
- (c) Const. and Art. I, § 3 and 14 of S.C. State Const.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) counsel failed to object to hearsay evidence
- (b) denied due process when video was muted, no test
- (c) imony (in search warrant) concerning CJ's "snitch" file and reliability, whether he/she was paid and/or working off charges
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?

N/A

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: PCR is the only avenue for
 (a) raising ineffective assistance of counsel
 (b) claims.
 (c) _____
17. Were you represented by an attorney at any time during the course of:
 (a) your arraignment and plea? _____
 (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?
No
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. Jason T. King, Esq., Assistant Public Defender
Ninth Circuit Public Defender's Office
 ii. Tamara M. Van Pala, Esquire, Assistant Public
Defender, Ninth Circuit Public Defender's Office
 iii. Katherine H. Hudgins, Esq., S.C. Comm. on Indigent Defense
Div. of Appellate Defense, P.O. Box 11589, Columbia, S.C. 29211-
1589
 (b) the proceedings at which each such attorney represented you:
 i. trial and sentencing
 ii. trial and sentencing
 iii. direct appeal (replaced Ms. Tiffany L. Butler
(Esq.))

19. State clearly the relief you seek in filing this application: Convictions and sentences vacated or, in the alternative, reversed and remanded for a new trial.

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Dorchester)

VERIFICATION

I, Omar Shquiff Gentile #289079, 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.

x Omar Gentile

SWORN to and subscribed before me this 16th
day of NOVEMBER, 2018.

Lid K. Ben (L.S.)
Notary Public

My Commission Expires: 6-20-26

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Omar Shariff Gentile #289079, 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.

Omar Gentile
Applicant

SWORN or affirmed to and subscribed before me this
16th day of NOVEMBER, 2018.

Linda K. Bon
Notary Public

My Commission Expires: 6-20-26

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Omar Shariff Gentile, #289079

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Case No.: 2018-CP-10-5819

RETURN

FILED
2019 MAR 14 PM 2:08
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The State (Respondent), making its Return to the application for Post-Conviction Relief ("PCR") filed on December 7, 2018, would respectfully show this Court:

I. Procedural History

Applicant was indicted at the May 2012 term of the grand jury for Charleston County for possession with intent to distribute heroin within proximity of a school (2012-GS- 10-2587). He was subsequently indicted at the September 2015 term for trafficking in heroin (20 15-GS- 10-5473). Applicant was represented by Assistant Public Defenders Jason T. King, Esquire, and Tamara M. Van Pala, Esquire, of the Ninth Circuit Public Defender's Office. The State was represented by Assistant Solicitors John Whitney Sowards, Esquire, and Stephanie B. Linder, Esquire, of the Ninth Circuit Solicitor's Office. On January 4-5, 2016, Applicant proceeded to trial by jury pursuant to which he was found guilty as indicted. He was sentenced by the Honorable Kristi Lea Harrington to a mandatory term of twenty-five (25) years' imprisonment and a \$100,000 fine for trafficking, and a concurrent term of ten (10) years' imprisonment for possession with intent to distribute within proximity of a school. (R. p.263-p.268; R.p.256- p.261).

Applicant filed a timely notice of appeal. Kathrine Hudgins, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed

Applicant's conviction on October 17, 2018. State v. Gentile, Op. No. 2018-UP-386 (S.C. Ct. App. filed October 17, 2018). The remittitur was returned to the circuit court on November 6, 2018.

Attached to this Return and incorporated by reference are the records of the Charleston County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II. Factual History

In January of 2012, the City of Charleston Police Department received information from numerous intelligence sources that the sale of illegal drugs was being conducted at the address of 16 Grove Street in Charleston. One of these tips came from a confidential informant (CI) well known to the police, who was an ongoing informant in other cases and whose information had been consistently reliable. Additionally, officers had received tips from other sources corroborating the CI's information. Based upon this intelligence, members of the police antinarcotics task force and agents from the State of South Carolina Law Enforcement Division (SLED) decided to attempt to conduct a controlled purchase of narcotics from the residence utilizing the CI. (R.p.27-p.48).

On or about January 31, 2012, a joint law enforcement task force initiated a controlled purchase with the CI, targeting 1 Grove Street. (R.p.34-p.37). The CI was sanitized per SLED controlled-buy procedures described by the CI's handler, Agent Jonathan Shealy. (R.p.31). SLED agents dropped off the CI several blocks away from the residence, and the CI walked to 1 Grove Street to conduct the controlled purchase. In addition to the audio/visual equipment wired to the

CI, police had set up points around the residence from which they could have positive control and view the home. (R.p.38-p.39). Upon arriving at the home, the CI purchased heroin from a man later identified as Maurice Gentile, Applicant's brother. Applicant was also identified as being inside the residence at the time of the transaction. (R.p.41-p.42).

Following the sale the CI left 16 Grove Street and returned to the drop-off point, where he met Agent Shealy. Upon meeting Agent Shealy the purchased narcotics were immediately surrendered, and the CI was again searched to ensure that none of the heroin was kept by the CI. The narcotics were field tested by Agent Shealy, which returned a preliminary positive result, and then were placed into evidence. Agent Shealy then reviewed the audio and visual recordings from the purchase and confirmed the CI had gone to the residence, conducted the purchase, and immediately returned. Finally, the CI wrote a statement detailing the exact circumstances of his participation. (R.p.31).

Based upon this controlled buy, and supplemented with the intelligence received from the CI and other police officers, Agent Shealy applied to a magistrate judge for a search warrant for 16 Grove Street in Charleston. In his affidavit in support Agent Shealy averred probable cause for the warrant based upon the controlled buy, as well as the intelligence that had been received from the CI and other law enforcement officers prior to the purchase. When Agent Shealy submitted his affidavit, he met with the judge, detailed the totality of the evidence uncovered thus far, and advocated for the issuance of the warrant. The court issued a search warrant for 16 Grove Street on February 3, 2012. (R.p.29-p.32).

In order to protect the anonymity of the CI and to prevent any compromise to other ongoing investigations, law enforcement waited six days to serve the warrant. Law enforcement executed the search warrant for the residence on February 9, 2012. (R.p.32). Officers making entry to secure

the home found Applicant in the living room downstairs sitting on a couch, while Applicant's uncle, John Davis, was found in a back bedroom. (R.p.79-p.80). Both individuals were detained and placed into handcuffs for officer safety. Applicant was verbally Mirandized, and a Miranda warning card was signed by Applicant and Agent Shealy and Officer Charles Grill. Officer Grill also testified that Applicant verbally indicated that he understood his rights and did not appear impaired or incapable of making an informed Miranda waiver. (R.p.19-p.21; p.83). Applicant consented to an interview with Officer Grill and Agent Shealy. He told law enforcement that he came to the residence daily to help take care of Mr. Davis, an amputee.

Additionally, Applicant maintained his domicile at the residence, and had a personal room with independent locks and keys. He considered 1 Grove Street to be his place of residence. Applicant requested that officers retrieve pants and a shirt for him to wear from his room, as he was found in shorts and an undershirt by officers making entry serving the warrant. Applicant pointed out his room in the home. As law enforcement carried out this request, they found Applicant's keys in the lock to the door that he had indicated was his bedroom. Applicant also told law enforcement that he had over \$1,000 in cash in his bedroom. (R.p.84-p.85; p.93). When conducting the search of Applicant's bedroom, officers discovered sixteen grams of a substance presumed to be heroin. Officers also found drug paraphernalia—specifically digital scales with the residue of heroin on them—glassine baggies, and rubber bands.

According to law enforcement these items are used in the measuring and packaging of illegal narcotics. (R.p.100). Based upon the evidence obtained in the search, Applicant was charged and subsequently indicted as noted.

Motion to Disclose Identity of CI

The case was called for trial on January 4, 2016. Following jury qualification, jury selection, and a hearing on several other pretrial motions, Applicant renewed a pretrial motion he had previously made to require the State to disclose the identity of the CI who had been used for the controlled buy. First, he explained the procedural history of the motion, noting that on June 20, 2014, a hearing was convened before Judge Young to consider Applicant's motion to compel discovery from the State. Specifically, he had requested a copy of the audio/video recording made by the police of the CI's controlled buy, a recording which the State believed would have revealed the CI's identity. This request for the recording was denied by Judge Young. Next, Applicant explained that on September 18, 2015, a hearing was convened before the trial judge, Judge Harrington, to consider a specific motion to require the State to reveal the identity of the CI. That motion was also denied.¹ As noted, when the case was called for trial in January of 2016, Applicant renewed his motion to reveal the identity of the CI. (R.p.22-p.25).

During the ensuing evidentiary hearing on Applicant's motion to suppress the evidence discovered pursuant to the search warrant, a police witness described the use of the CI to make the controlled purchase that ultimately led to securing the search warrant. Following the presentation of testimony, the parties reargued their respective positions on disclosure of the identity of the CI and the motion was again denied. (R.p.26-p.59).

At the September 18, 2015 pretrial hearing, Applicant articulated why he believed the trial court should require the State to disclose the identity of the CI. He argued he should be allowed to know the identity of the CI, be able to interview the CI, and possibly subpoena the CI for trial on

¹ A review of the transcript reveals that at the conclusion of the hearing Judge Harrington took the matter under advisement to conduct further research; however, it appears she advised the parties before the close of business for the day that the motion was denied. (R.p.12).

the merits of the case. Applicant referenced case law about the trial court balancing the public interest of protecting the flow of criminal activities against the individual's right to prepare his defense, and he argued the CI was a material witness who would be both relevant and helpful to his defense. (R. p.1-p.6).

The solicitor responded that Applicant had raised nearly the exact same issue a year earlier before Judge Young; however, Applicant argued it was a slightly different motion because in the previous proceeding he had only asked Judge Young to compel disclosure of the DVD recording of the controlled buy. Applicant acknowledged Judge Young denied the motion. The solicitor explained there was a point on the video where you could see the CI and that law enforcement had a genuine concern about the CI's safety in this case and what watching the video of the controlled buy might reveal. In regard to Applicant's continuing attempt to learn the CIs identity, the solicitor noted that the cases referenced by Applicant involved distributions for which the defendant was being tried whereas here, Applicant was not charged with the distribution/sale that was made to the CI. (R.p.6-p.8).

Applicant argued that now that they were on the brink of trial, the privilege of the informant should give way to his due process right to present a full and fair defense, particularly since the controlled buy was so close in time to the execution of the search warrant. He further argued there was another person selling drugs out of the residence, Maurice Gentile [his brother], who made the sale to the CI, and that the CI and other people present during the sale could help prove his innocence by showing he was not guilty of actually trafficking the drugs that were found in the house. Applicant continued to argue the CIs identity was relevant because he could have information that could help Applicant's defense. The solicitor agreed that if this were a distribution case based on the controlled buy, Applicant would be entitled to know the CIs identity, but here

the CPs identity was not important. The trial court took the motion under advisement but made a ruling later that day denying the request to reveal the identity of the CI. (R.p.8-p.12).

On January 4, 2016, when Applicant renewed his motion to require the State to disclose the identity of the CI, he made essentially the same argument, that the CI could be a witness in regard to whether there was an ongoing operation by other individuals to sell drugs from the residence. He said his defense was that the heroin discovered in the search was not his heroin and that the CIs knowledge could help that defense. (R.p.22-p.24; p.55-p.59). Ultimately, the trial court ruled as follows: "Based upon my reading of the case law and the testimony as I understand it here today, I again deny your motion to reveal the C.I. based upon the case law as I interpret it." (R.p.59).

The case then proceeded to trial with both parties making opening statements (R.p.67-p.71) and the State calling the following witnesses: Charleston Police Department Detective Charles Jacob Grill (R.p.72-p.95); Charleston Police Department Detective John Mam (R.p.97-p.124); Charleston Police Department Investigator Alexander Keith Sumner (R.p.125-p.135); Charleston Police Department evidence handler Brian Hinton (R.p.137-p.142); Charleston Police Department evidence handler Linda Wilson (R.p.144-p.146); Charleston Police Department Evidence Custodian Susan Payne (R.p.147-p.150); Charleston Police Department Laboratory Manager Renee Hilton (R.p.155-p.163); and SLED Agent and former Charleston Police Department Detective Jonathan Shealy (R.p.164-p.192). In regard to the use of the CI, Agent Shealy's testimony was consistent with the testimony offered at the pretrial hearing.

After the State rested, Applicant moved for a directed verdict and renewed all of his previous objections. The trial court denied the directed verdict motion and stood by all of its earlier rulings. (R.p.192-p.198). Applicant elected not to testify or offer evidence in his defense. Following

a brief charge conference, the defense rested and the parties made closing arguments. (R.p.198-p.219). The trial court charged the jury on the law and after several notes from the jury, recharges on portions of the law, and an Allen charge, the jury reached guilty verdicts on both charges. (R.p.220-p.250). The trial court sentenced Applicant to a mandatory term of twenty-five (25) years' imprisonment and a \$100,000 fine for trafficking, and a concurrent term of ten (10) years' imprisonment for possession with intent to distribute within proximity of a school. (R.p.263-268; R.p.256-p.261).

III. Current Application

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
2. "Due process violations"
3. "Counsel failed to object to hearsay evidence"
4. "Denied due process when video was muted, no testimony (in search warrant) concerning CI's snitch file and reliability whether he/she was paid and/or working off charges"

IV. Response to Allegations of Ineffective Assistance of Counsel

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his 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, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. Therefore, Respondent requests Applicant be required to amend his application to set forth specifically the grounds on which his claims are based. Respondent reserves the right to move for dismissal of this allegation should Applicant fail to amend the application.

V. Response to Allegations of Due Process Violations

Applicant alleges a denial of due process of law. Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, Applicant fails to set forth with specificity grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "...

specifically set forth the grounds upon which the application is based.” S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing that his due process and other constitutional rights were violated, the Respondent would submit that this allegation should be summarily dismissed for failing to specifically set forth the grounds upon which the application is based.

VI. Any Future Amendments

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

VII. Response to Any and All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VIII. Request for an Evidentiary Hearing and Partial Summary Dismissal

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BENJAMIN LIMBAUGH
Assistant Attorney General

By: *Benjamin Limbaugh*
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Telephone: (803) 734-3737

March 13, 2019

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

OMAR GENTILE, #289079

Applicant,

v.

State of South Carolina

Respondent,

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

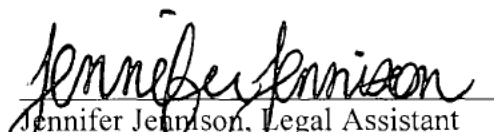
Case No.: 2018-CP-10-5819

Affidavit of Service by Mail

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:

Christopher L. Murphy, Esquire
Murphy Law Offices, LLC
234 Seven Farms Drive, Suite 128
Charleston, SC 29492

DATED this 13th day of March, 2019.


Jennifer Jennison, Legal Assistant
For Respondent

2019 MAR 14 PM 2:08
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

FILED

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
CHARLESTON COUNTY	Case No. 2018-CP-10-5819
Omar S. Gentile	
v.	
State of South Carolina	AMENDMENT TO APPLICATION FOR POST-CONVICTION RELIEF, AND BRIEF IN SUPPORT

FILED
2020 MAR 10 PM 12:37
JULIE J. ARMSTRONG
CLERK OF COURT

COMES NOW the Applicant Omar Gentile, by and through undersigned Counsel, and submits this Amendment to his PCR Application, originally filed on December 7, 2018. In support thereof, applicant respectfully shows the Court as follows:

I. Summary of Relevant Facts

In this case, the Applicant Omar Gentile was accused of Trafficking Heroin (more than 4 grams) and PWID within proximity of a school. After trial, Gentile was convicted and sentenced to twenty-five years for Trafficking Heroin (2nd Offense), and ten years for PWID within proximity of a school. (Tr. 318).

The facts presented at trial are as follows. On January 31, 2012, investigators conducted a controlled purchase of drugs at 1 Grove Street in Charleston. (Tr. 71). The CI successfully made the purchase from Omar Gentile's brother, Maurice Gentile. (Tr. 245). Based on the controlled purchase, officers obtained a search warrant for the Grove Street residence. (Tr. 224).

On February 9, 2012, the police executed a search warrant at the Grove Street residence. (Tr. 222). When they entered the home, they encountered Omar Gentile sitting on a couch in the living room. (Tr. 135). They also encountered Gentile's relative, John Davis, who owned the home. (Tr. 135). Davis was found in one of the rear bedrooms. (Tr. 135). Omar Gentile gave a statement to police at that time, stating that he came to the Grove Street residence daily to care for Mr. Davis. (Tr. 140). Gentile further stated that he would stay at the Grove Street residence "from time to time." (Tr. 149). Gentile asked the officers to get his pants, shoes, and shirt from the upstairs bedroom. (Tr. 230).

In the upstairs bedroom, officers found approximately 13.84 grams of heroin, digital scales, baggies, and other items associated with narcotics activity. (Tr. 156, 219). The heroin was found in a plastic bag in the dresser in the bedroom. (Tr. 160, 186). Assorted personal items belonging to Omar Gentile were found in the same upstairs bedroom, including a social security card, a bank statement, and a pay stub. (Tr. 231). Omar did not have any narcotics on his person, and did not claim ownership of any of the narcotics found in the house. (Tr. 147, 150).

a. Comments About the Upstairs Bedroom

During the testimony of Detective John Marn, the following exchange took place:

Q: Okay. Do you believe a social security card is important?

A: Yes, ma'am I do.

Q: Do you think a bank statement is important?

A: Yes, ma'am.

Q: Or a paystub?

A: Yes, ma'am.

Q: These important items kept in a stranger's home?

A: Not likely.

(Tr. 177-78). Trial counsel did not object to these statements. Later, during SLED Agent Jonathan Shealy's testimony, the following exchange took place:

A: ...There was also a box of ammo in [the upstairs bedroom], which is commonly found in rooms or homes that drug dealers have where—"

(Tr. 231). Agent Shealy's testimony was cut off when the trial judge interjected and asked the attorneys to approach the bench. (Tr. 232). When his testimony resumed, Shealy did not offer further commentary on this issue. However, moments later, the following exchange took place:

Q: Was there any doubt in your mind who that bedroom belonged to?

A: No, sir, no doubt whatsoever whose bedroom that belonged to.

(Tr. 238). Again, there was no objection from trial counsel in response to this testimony from Agent Shealy.

b. Jury Questions and *Allen* Charge During Deliberations

On the final day of trial, the jury was excused to begin its deliberations at 3:22 pm. (Tr. 293). Minutes later, the jury sent out a question, and in response the trial court re-charged the jury on trafficking heroin and PWID within proximity of a school. (Tr. 295-97). At 6:02 pm the jury sent out a second note, asking a clarifying about trafficking heroin, and the court instructed the jury accordingly. (Tr. 298-300). Finally, at 6:41 pm, the jury sent out a note saying that they “cannot agree on both charges.” (Tr. 302). In response, the court delivered an *Allen* charge, without objection, as follows:

Ladies and gentlemen, you have indicated to the Court that you have been unable to agree on a verdict in this case. As I instructed you earlier, your verdict must be unanimous on each indictment. When a matter is in dispute, it isn’t always easy for even two people to agree, so when twelve people must agree it becomes even more difficult.

In most cases, absolute certainty cannot be reached or expected however, you have a duty to make every reasonable effort to reach a unanimous verdict. In doing this you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Tell each other how you feel and why you feel that way. Discuss your differences with open minds. Although the verdict of the jury must be unanimous, every one of you has the right to your own convictions, and you should not give up your firmly-held beliefs merely to be in agreement with your fellow jurors.

The majority should consider the minority’s opinion, and the minority should consider the majority’s opinion. You should carefully consider and respect the opinions of each other and reevaluate your position for reasonableness, correctness, and impartiality. You must lay aside all other outside matters and reexamine the questions before you based upon the law that I have given you and the evidence in this case.

If you do not agree on a verdict in this case, I must declare a mistrial. In that case, it does not mean that anybody wins. It just means that at some future time, I will try this case with some other jury sitting exactly where you are sitting today. The same participants will come in, and the same lawyers will ask basically the same questions and they will get basically the same answers. You were selected in the same manner from the same source as any future jury will be and there is no reason for me to suppose that this case will ever be submitted to twelve more intelligent, impartial, and conscientious jurors as sits in front of

me here today. I therefore ask that you return to continue your deliberations.

(Tr. 303-04). Eleven minutes later, the jury returned a verdict, convicting Gentile on both counts. (Tr. 305-06).

c. Sentencing

After the jury returned guilty verdicts on both counts, the trial court proceeded with sentencing. (Tr. 313). The State claimed that Gentile was subject to a mandatory minimum 25-year sentence on the charge of trafficking heroin. (Tr. 313). Defense counsel agreed. (Tr. 313). Gentile was ultimately sentenced to twenty-five years for the trafficking charge, stating “I have absolutely no discretion.” (Tr. 316).¹

II. Statement of Grounds for Relief, and Facts in Support

Ground One: Trial counsel was constitutionally ineffective pursuant to *Strickland v. Washington* when he failed to object to improper lay-opinion and “ultimate issue” testimony regarding the upstairs bedroom.

“An opinion may be offered on the ultimate issue of the case only when the witness is otherwise qualified [as an expert]. *State v. Andrews*, 424 S.C. 304, 318 (2018)(holding that it was error to allow witness to offer opinion testimony on the ultimate issue).

As noted, trial counsel failed to object to testimony from non-experts that (1) it is unlikely that Gentile’s personal items would be found in the upstairs bedroom if it were not his personal living space, (2) the ammunition found in the upstairs bedroom is “commonly found” in the homes/bedrooms of drug dealers, and (3) that the investigating officer had “no doubt” that the upstairs bedroom belonged to Omar Gentile. At trial, the defense denied that Gentile had exclusive control of that bedroom, and therefore argued that the State had failed to prove

¹ Gentile received a ten-year concurrent sentence on the PWID in proximity of a school charge. (Tr. 318).

Gentile's possession of the heroin in the upstairs bedroom. (Tr. 269).² The State argued against this, claiming that their evidence demonstrated Gentile's control of the upstairs bedroom implied his constructive possession of the heroin found in the bedroom dresser. (Tr. 266).³

Because Gentile's control of the upstairs bedroom and his alleged knowledge of items contained in the bedroom were strongly contested issues at trial, it was objectively unreasonable for trial counsel to fail to object to lay-opinion and "ultimate issue" testimony regarding Gentile's control over the bedroom. Additionally, trial counsel's failure to object was prejudicial to Gentile under *Strickland*. Specifically, the defense at trial was simply that Gentile had occasional access to the upstairs bedroom, but counsel argued that the bedroom was not under his exclusive control. Allowing multiple witnesses to opine that this defense was inconsistent with the State's evidence was harmful to Gentile, and should cause this Court to question the verdict rendered in this case. Consequently, Gentile is entitled to relief on this ground.

Ground Two: Trial counsel was constitutionally ineffective pursuant to *Strickland v. Washington* when he failed to object to the court's premature and impermissibly coercive *Allen* charge.

After the jury had deliberated for less than three hours, the trial court announced its intention to administer an *Allen* charge. (Tr. 302). Trial counsel did not voice any opposition to this proposal on the record, either before the charge was administered or afterwards. (Tr. 302-04). Counsel's failure to pose an objection to the premature and coercive *Allen* charge was not the product of his professional judgment or trial strategy, and thus it was objectively unreasonable under the *Strickland* framework. Furthermore, this objectively unreasonable omission was prejudicial to Gentile, as is clearly demonstrated by the immediate guilty verdict that was

² "He stays in that room from time to time. From the scene, it looks like he comes in that day, takes off his pants, puts them on the bed . . . there was testimony that [the heroin] was in the dresser . . . in that dresser drawer where you wouldn't see it if you walked in, put your pants on the bed, changed clothes, and walked out and sat on the couch . . . but it appears his brother is a drug dealer. He can't help what his brother does or who his brother is involved with." (Tr. 269-70).

³ ". . . it's reasonable to assume that what's in that bedroom belongs to him." (Tr. 266).

returned by the jury moments after the *Allen* charge was given. Workman v. State, 412 S.C. 128 (2015) (holding that coerciveness of *Allen* charge can be demonstrated by the “time between when the charge was given, and when the jury returned a verdict.”). Trial counsel’s deficient performance was therefore prejudicial to Gentile, and consequently Gentile is entitled to relief in this action.

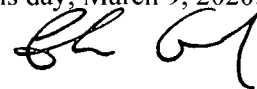
In light of the foregoing, Gentile respectfully requests that this Court grant his application for post-conviction relief, reversing his conviction and sentence in this case.

On this day, March 9, 2020 it is
RESPECTFULLY SUBMITTED,



Christopher R. Geel
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CERTIFICATE OF SERVICE: I hereby
certify that I have served a copy of this
document upon the Attorney General’s Office
via U.S. Mail, on this day, March 9, 2020.



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EXHIBITS

(None marked)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS
REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

PROCEEDING

1

2

THE COURT: All right. Mr. Gentile, this is your VCR.

3

It looks like you went to trial and was -- convicted at trial on

4

trafficking and possession (indiscernible) to distribute it

5

looks like and it looks like you received the mandatory 25 year

6

sentence (indiscernible) ineffective assistance of counsel; is

7

that correct?

8

MR. GENTILE: Yes, sir.

9

THE COURT: All right. Mr. Geel is representing you?

10

MR. GENTILE: Yes, sir.

11

THE COURT: All right. Mr. Geel, I'll be happy to

12

hear from you.

13

MR. GEEL: Thank you, Your Honor. So just by way of a

14

brief outline, as you've mentioned, Mr. Omar Gentile was

15

convicted of trafficking heroin. This incident stems from a

16

January 31, 2012, undercover CI buy conducted by CPD detectives

17

at a residence at 60 Grove Street in Charleston.

18

That CIA buy was conducted and a purchase was made

19

from a relative of Mr. Gentile, his brother, Maurice Gentile.

20

So there was no allegation here that Omar was the individual who

21

sold to the CI, but nevertheless, based on that transaction at

22

the Grove Street address, agents and detectives obtained a

23

search warrant and conducted it on February 9, 2012.

24

So 10 days after the actual CI buy. When they

25

conducted the search warrant at that residence, Omar was present

1 along with another gentleman, John Davis, and this residence is
2 two-story and there were multiple bedrooms and everything like
3 that, and in one of the bedrooms upstairs they located -- the
4 officers located the heroin at issue in this case.

5 So the issue here was essentially who the heroin
6 belonged to. The state presented evidence essentially tying
7 Omar to that particular room. He did give a statement on scene
8 and indicated that he stays at that residence -- stayed at that
9 residence from time to time, but the defense at trial
10 essentially came down to -- they claim that although Omar stayed
11 at the residence from time to time, that the heroin did not
12 belong to him.

13 He did not have exclusive control over the bedroom, so
14 it's essentially a constructive possession type of case whereby
15 defense counsel argued that the state did not have sufficient
16 evidence that Omar possessed the actual -- pardon me, owned the
17 actual heroin in question.

18 So we've raised two issues in this PCR application.
19 The first actually deals with testimony by numerous -- or by two
20 of the witnesses where I'll get into more detail obviously with
21 Mr. King, but our allegation here is that these officers were
22 permitted to offer their opinion that based on the evidence in
23 this case that Omar had exclusive control of the bedroom and
24 that the heroin belonged to him.

25 There is no objection from defense counsel to this

1 testimony and there's multiple locations of this sort of
2 testimony being offered without objection. So that's the first
3 issue that we -- the first ground we've raised in our
4 application, and the second ground relates to an Allen charge
5 that was delivered during deliberations, and again, I'll get
6 into that in more detail, but our allegation here is essentially
7 that the Allen charge was premature and coercive to the extent
8 that the jury indicated that it was deadlocked and had
9 deliberated for several hours, and that the Allen charge was
10 delivered and they immediately rendered a verdict.

11 And when I say immediately, it was 11 minutes after
12 the Allen charge was given. Again, that Allen charge was
13 delivered with no objection before or after the charge. So that
14 is the second ground that we have alleged as ineffective as this
15 counsel -- defense counsel's failure to object to the Allen
16 charge in terms of its timeliness.

17 So those are our two issues, Your Honor, and when the
18 Court is prepared, our only witness -- the only evidence we have
19 to present today is the testimony of defense counsel Jason King
20 and I believe he is present and ready to go.

21 THE COURT: All right. Call your first witness.

22 MR. GEEL: Thank you, Your Honor. The Petitioner
23 calls Jason King.

24 THE COURT: All right, Mr. King, raise your right
25 hand. Do you swear or affirm the testimony you give will be the

1 truth, the whole truth and nothing but the truth?

2 MR. KING: I do, Your Honor.

3 THE COURT: All right. Mr. Geel.

4 MR. GEEL: Thank you, Your Honor. Mr. King, to start
5 off with, could you just give us sort of a 30,000 foot view of
6 your defense in this case in terms of what the charges were and
7 what you argued to the jury?

8 MR. KING: Yes, as you have said before, there was a
9 search warrant that was obtained because my client's brother
10 sold cocaine out of the front door to an informant. That
11 (indiscernible) the search warrant to come in and the police
12 come in and execute the search warrant.

13 Mr. Gentile is sitting on the couch in sort of lounge
14 clothes and the police began obtaining him. He gives a
15 statement to the police which is basically what I had to work
16 with. His statement was that he comes there every day and takes
17 care of his cousin.

18 There was an elderly man there who had an amputated
19 leg that was -- I think it was, yeah, it was his cousin that he
20 helped take care of. He said he stayed there from time to time
21 and when he does stay there his bedroom is upstairs. He
22 indicated to the police where his bedroom was upstairs.

23 He asked the police to get his clothes out of that
24 room because he had went in that room, taken off his jeans and
25 put on some more comfortable clothes, so there were clothes in

1 that room that he asked police to get for him. Told them there
2 was \$1000 cash in the room.

3 So that was -- you know, I had his statement to work
4 with because Mr. Gentile didn't testify. So they found the
5 heroin in a dresser drawer in this bedroom and the bedroom has
6 Mr. Gentile's pants, his (indiscernible) and those pants that he
7 had taken off.

8 Inside the dresser drawer with the heroin there was a
9 Bank of America card with Mr. Gentile's name. There are pay
10 stubs. There is a Social Security card in the drawer. So, you
11 know, it's a difficult case for the defense because that room
12 didn't appear to be his room and there was heroin found in the
13 dresser drawer with his Social Security card and other
14 information right there with it.

15 So my defense was is that he didn't actually live
16 there. I went with his statement, which was that he comes there
17 from time to time, but he comes there every day to take care of
18 his cousin, and when he stays there he does use that room, but
19 (indiscernible) that he wouldn't have known about the drugs that
20 were in the dresser drawer that somebody else must have put them
21 in there.

22 That was really my defense is that the drugs --
23 somebody else put them there and that Mr. Gentile was not aware
24 of it. He did not knowingly traffic any drugs. I had somebody
25 to blame it on because his brother lived in the house and we

1 know that he was selling cocaine and that he is a drug dealer.

2 So I had him to blame it on and I also had, during
3 surveillance, before the search warrant, a man exited the house,
4 a neighbor exited and left. They ended up getting consent to
5 search that house and arrested that person for drugs as well so
6 I had another person who had left the house right before the
7 search warrant was executed that I could blame as well.

8 So that was -- that was my basic defense was that
9 other people had access to the room, but unfortunately there
10 were a lot of things in that room to indicate that, you know, it
11 was either his room or that he used it.

12 MR. GEEL: So would it be fair to say then that you
13 had already essentially centered around the fact that the state
14 didn't have sufficient evidence to prove that Omar owned the
15 heroin in question. Is that a fair sort of summary of what the
16 kind of (indiscernible) was during the --

17 MR. KING: Yes, I would say knowledge that the state
18 didn't prove that he had knowledge of the drugs. Yes, and I'm
19 my explanation being that they must belong to somebody else.
20 Somebody else must have put them there, but ultimately that he
21 didn't know that they were there.

22 MR. GEEL: Right. Do you have a copy of the trial
23 transcript in front of you, Mr. King, or do you have access to
24 it?

25 MR. KING: Yes.

1 MR. GEEL: If you could, I would like to direct your
2 attention to page 125 of that transcript. I have a transcript
3 that has got two sets of paginations, so I'm looking at the page
4 numbers on the bottom right, just in case you have the same copy
5 with two sets of page numbers.

6 MR. KING: Is this my opening statement?

7 MR. GEEL: Yes, sir.

8 MR. KING: Okay.

9 MR. GEEL: All right. So I would like to just direct
10 your attention to the beginning of your opening statement where
11 you say Mr. Gentile had come to this residence like he does most
12 days to take care of his cousin, and then down on line seven you
13 say Mr. Gentile comes there.

14 He doesn't live there, but he comes there every day to
15 help take care of this man. Skipping down to line 10 you said
16 he's not involved in drugs, but he's at the wrong place at the
17 wrong time because he's sitting on the couch. So obviously
18 that's just one portion of your opening statement, but that's
19 where it begins, correct, that the allegation that the evidence
20 will show that Omar was not involved in drugs.

21 He was just in the wrong place at the wrong time. Is
22 that a fair characterization of what you're arguing there?

23 MR. KING: Yes.

24 MR. GEEL: Okay. And turning to page 269, if you
25 could again using the bottom right hand pagination, and this is

1 closing argument. Are you with me on that page?

2 MR. KING: Yes.

3 MR. GEEL: Okay. And so starting at the top. This is
4 the beginning of your closing argument. You say the solicitor
5 talked about constructive possession. During the instruction on
6 the law that the point to remember is that knowledge is the most
7 important thing.

8 He has to have knowledge that those drugs are in the
9 drawer before he's guilty. If he's merely present at the scene
10 and he's just there, he's not guilty. He comes in every day to
11 take care of his cousin. That's when you alert (indiscernible)
12 the evidence and he stays in that room from time to time.

13 And, again, this is just a portion of your opening
14 argument, but is it a fair characterization to say that what
15 you're arguing is again that he was just merely present and that
16 he did not have knowledge or control over the narcotics in the
17 bedroom?

18 MR. KING: Well, he didn't have knowledge. Control
19 might be harder argument. He didn't specifically -- he didn't
20 have knowledge of drugs.

21 MR. GEEL: Okay. So I would like to dive right into
22 the testimony that we're talking about in our first issue, if I
23 could. Could you turn to page 177?

24 MR. KING: Yes.

25 MR. GEEL: And now, Mr. King, this is the testimony of

1 Alexander Sumner (phonetic) and they're discussing items in the
2 room, just for your information. Down at the bottom at line 24
3 the question says, okay, do you believe that a Social Security
4 card is important.

5 Just as an aside, could you tell the Court, the Social
6 Security card, what was the relevance of that item in this case?

7 MR. KING: It was found in the dresser drawer where
8 the heroin was found.

9 MR. GEEL: Okay. So the question is, do you believe a
10 Social Security card is important and then at the top of page
11 178 the answer is, yes, ma'am, I do. And then the next question
12 is, do you think a bank statement is important and the answer is
13 yes, ma'am.

14 The question is, or a paystub, and the answer is yes,
15 ma'am. Then the question, these important items catch in a
16 stranger's home and then the answer is not likely. Would you
17 agree that the detective there is offering his opinion that
18 these items would not be found in a location that someone
19 doesn't have control over?

20 MR. KING: Yes.

21 MR. GEEL: And this is that detective's opinion that
22 that's what the evidence says. Would you agree with that
23 characterization?

24 MR. KING: Right. His opinion that a person wouldn't
25 keep those important items in a stranger's house.

1 MR. GEEL: Right. Do you have an opinion as to
2 whether this detective's opinion on that issue is relevant in
3 this case, or (indiscernible)?

4 MR. KING: Right. Maybe I should have objected to
5 that, but I did not object to that.

6 MR. GEEL: Okay. I know it's been a while since the
7 trial happened, but are you able to recall or state any kind of
8 strategic purpose for why you would not object to that question
9 and answer?

10 MR. KING: You know, I would think that I didn't
11 really run from that issue. You know, that there were things in
12 that room that indicated it was his room. There was a Social
13 Security card right in the drawer of where the drugs were.

14 So that was going to be an argument and the solicitor
15 was going to argue during the trial that that's his room. He
16 kept important things in that room because it's his room,
17 therefore the drugs are his. So I guess I just didn't think it
18 was that strong of a point because that was -- that was what we
19 were going to fight over during the trial.

20 And I think I tried to argue it in closing that the
21 police were maybe biased or didn't do a proper investigation, so
22 I was trying to argue in closing that the police were just
23 trying to push this through without having done any real
24 investigation.

25 MR. GEEL: Understood. And there is no need to beat

1 the point to death. I'm sure the Court understands where I'm
2 going with this, but you would agree, wouldn't you, that there's
3 a difference between a witness testifying about their opinion
4 versus the solicitor arguing their opinion about what the
5 evidence shows. You would agree that those are different things
6 in the trial, correct?

7 MR. KING: I think the question -- the solicitor's
8 question was argumentative. Is that what you mean? I think her
9 question -- it might have been objectionable as being
10 argumentative, in addition to giving this opinion evidence, but
11 I'm not sure --

12 MR. GEEL: Well, let me try and clarify my question.
13 I understand your last answer to be that this was going to be an
14 issue you were going to be arguing over anyway, so that's a
15 plausible reason why you might not object to it because you felt
16 that you had to address that. You would be addressing that
17 argument anyway. Is that a fair summary of your answer?

18 MR. KING: Right, right.

19 MR. GEEL: And so based on that -- but nevertheless
20 you would agree that there's a difference between a solicitor
21 arguing that this is what the evidence shows versus a witness
22 testifying to their personal opinion that that's what the
23 evidence shows? You would agree with that?

24 MR. KING: Yes. Yeah, I understand that, yes.

25 MR. GEEL: Okay. All right. And if I could Mr. King,

1 can I direct your attention, please, to page 231? This is
2 during the testimony of Jonathan Shealy (phonetic). This is
3 again talking about the items in the bedroom. This is on line
4 18. There was various identification for Mr.
5 Omar Gentile such as pay stubs, South Carolina ID card, Social
6 Security card belonging to Mr. Omar Gentile, Bank of America
7 cards. There was also a box of ammo in that room, which is
8 commonly found in rooms or a home that drug dealers have where -
9 - and then the Court cuts in and says hold on. Are you with me
10 on that particular page?

11 MR. KING: Yes.

12 MR. GEEL: Okay. Now, obviously the witness was cut
13 off after saying this, but you would agree that the witness was
14 essentially testifying that ammo is consistent with the
15 residence of a drug dealer, or something to that effect. You
16 would agree with that?

17 MR. KING: Yes.

18 MR. GEEL: Do you have an opinion now as to whether
19 that testimony is admissible or relevant?

20 MR. KING: Well, let me try and explain the way that
21 went down. I had agreed with the solicitor pretrial not to go
22 into the box of ammo. It was something we had discussed
23 pretrial. I was going to object to the ammunition. I was going
24 to make an objection in referring to the ammunition was
25 irrelevant and prejudicial.

1 So the solicitor said, well, I won't put that
2 photograph back in. So we just called Mr. Shealy as testifying.
3 He blurts that out and the judge interrupts and the judge says
4 she's having a hard time hearing because of (indiscernible). So
5 at that point I ask to approach and if you click on page 250 of
6 the transcript, that's part of the record.

7 What happened is that bench conference. So we
8 approached and I was explaining to the judge that we had agreed
9 about the ammunition not coming in and the solicitor agreed not
10 to go anymore into it and to move on. So when they started back
11 up with the evidence, they just moved on.

12 I did not make an objection. I didn't ask the judge
13 to give a jury instruction or to strike or anything like that
14 because somebody had -- what I think happened was somebody was
15 coughing while the officer is testifying. The judge interrupts
16 the witness midsentence.

17 So maybe I thought did the jurors actually hear all of
18 that and if I made some sort of motion for a period of
19 instruction, you're faced with that (indiscernible) just calling
20 more attention back to that statement that was let in. I would
21 have objected to that.

22 I think it is objectionable and I did approach and
23 make at least an objection relating to the ammo, but I think I
24 was more focused on the fact that the ammo came in at all. You
25 know, the first part of (indiscernible) ammo, that's when my

1 instincts kicked in that something was not right and I didn't
2 ask for any sort of (indiscernible) instruction because I didn't
3 want to go back and draw more attention to that statement. The
4 solicitor agreed to move on and there was no more reference made
5 to that.

6 MR. GEEL: So I'm understanding, if I'm understanding
7 you correctly, it seems like there's two issues entangled here.
8 Setting aside the issue of the admissibility of the box of ammo
9 itself, do you have any opinion or commentary on the testimony,
10 the suggestion from this witness that ammo is commonly found in
11 rooms where homes that drug dealers have?

12 MR. KING: I would object to that and I know there is
13 some law about there being a nexus between drug dealers and
14 weapons. I don't know how a judge would rule on that. I would
15 -- I would -- in the normal course of things, I would object to
16 that statement.

17 MR. GEEL: Do you think that this testimony would
18 constitute sort of a profile testimony which, you know, the
19 suggestion being that ammo in a bedroom indicates that there is
20 drug dealing happening in that bedroom?

21 MR. KING: Right. I think it's objectionable. I
22 haven't researched that. I don't know that I've researched that
23 recently but, right, I would -- I think that's objectionable.

24 MR. GEEL: Okay. So just to clarify that point,
25 sitting here today, setting aside the admissibility of the ammo

1 itself, can you identify any strategic purpose at the time,
2 other than not wanting to draw attention to the testimony, for
3 not objecting?

4 MR. KING: No. That was it. Ideally I would have
5 liked that statement took out but like I said, asking to strike
6 that or disregard that or (indiscernible) instruction would have
7 just (indiscernible) more attention back to it but ideally I
8 would have liked to have objected to the whole statement.

9 MR. GEEL: Okay.

10 MR. KING: I would not have let it come in -- if there
11 was a way I could have kept that out I would have. The only
12 reason I didn't try to instruct is because I didn't want to
13 bring more attention to it.

14 MR. GEEL: Okay. And if I could direct your
15 attention, please, to page 237. So on line 17, do you see the
16 question and why again did you believe that bedroom number three
17 belonged to defendant Omar Gentile? Do you see that question on
18 line 17? I'm on page 237, the bottom right is the pagination.

19 MR. KING: Yes, I found it.

20 MR. GEEL: Okay. And so the question was and why
21 again did you believe that bedroom number three belonged to the
22 defendant Omar Gentile, and again, before I get into the -- what
23 followed, would you agree that this question is soliciting the
24 witness's opinion as to whether that bedroom was under Mr.
25 Gentile's control. Would you agree with that?

1 MR. KING: Yes.

2 MR. GEEL: Okay. And then going down to the bottom
3 where the answer -- excuse me, line 24, name from his
4 identification card, the most important things that we take with
5 us every day, your ID, and then going to the top of page 238,
6 card, and you never leave home without it, your bank card, and
7 your Social Security card.

8 Now, again, would you agree that this witness is
9 essentially offering their opinion that each person
10 (indiscernible) anywhere but Mr. Gentile's bedroom?

11 MR. KING: Yes.

12 MR. GEEL: Do you have an opinion as to whether that
13 testimony is objectionable today?

14 MR. KING: I went back and read, you know, lay opinion
15 testimony is allowed if it's -- I guess if the witness is within
16 -- if the witness is qualified to testify to that, so
17 (indiscernible) police officer give a lay opinion that
18 (indiscernible) in the room means it's your room.

19 I don't know. I don't know. I don't know that I
20 would just rule on that. You know, it comes down to again is it
21 was his room in a sense. I couldn't really get around that. He
22 told Shealy that it was his room. You know, Shealy had just
23 testified that when he talked to Mr. Gentile he indicated it was
24 his room. So again, this is going back to that same
25 issue is that I can't get away from all of these items being in

1 this room. I can't argue that he has no control over this room
2 because if he's associated with any room in this house, it's
3 that room. I just had to sort of work around that, and that's
4 why I guess I'm not objecting to that stuff is because I can't -
5 - I can't get around the fact that all these things with his
6 name on it are in the room and he's told the police that it's my
7 room.

8 MR. GEEL: I understand. So I get the right -- the
9 notion that you would have to address that argument during the
10 course of the trial, you would agree, again, that there is a
11 difference between that proposition versus a witness offering
12 their opinion on that particular issue. You would agree with
13 that, correct?

14 MR. KING: Right, right.

15 MR. GEEL: All right. And then still on page 238,
16 down on line 13, the question was there any doubt in your mind
17 who that (indiscernible) belonged to and then the answer on line
18 15, no, sir. No doubt whatsoever whose bedroom that belonged
19 to. Again, would you agree that this witness is offering his
20 opinion that there is no doubt that the bedroom belonged to Omar
21 Gentile?

22 MR. KING: Yes.

23 MR. GEEL: Okay. And again, sitting here today, can
24 you identify a strategic reason for not objecting to that
25 testimony?

1 MR. KING: Just as I said before, you know, I mean it
2 would look bad with me standing to objecting when he's
3 testifying that it's his room when I'm conceding that. I'm
4 conceding that he uses this room, that all of these items are in
5 this room and he went to this room when he came in that day,
6 changed clothes, left his clothes in that room.

7 So again, that's my explanation is that it was his
8 room in a sense. So I wound up bickering over that point when
9 I'm conceding that to some extent it's his room. I'm just
10 trying to go around that and say even though it's his room,
11 other people could have got in there and put the drugs there.

12 MR. GEEL: And just to put a pin in this, this is the
13 last example I'm going over, but just to put a pin in it,
14 sitting here today, do you believe that it's appropriate or
15 admissible for an individual to offer their opinion as to the
16 control of the room by Mr. Gentile?

17 MR. KING: Yeah. If you look at the rules, lay
18 opinion testimony was allowed by Rule 701. This is a rationally
19 based on the perception of the witness. It's helpful to a clear
20 understanding of the testimony. Does it require a special
21 knowledge skill (indiscernible). I don't mean this requires any
22 sort of an expert to give an opinion that the place where you
23 keep these really important documents is the place where you
24 live, and Rule 704 allows an opinion on the (indiscernible)
25 issue testimony in the form of an opinion or inference otherwise

1 admissible.

2 It's not objectionable because it raises an ultimate
3 issue. So if you're asking me is his opinion admissible, I
4 don't -- I could come up with an argument for and against it.

5 MR. GEEL: Again, sitting here today, I guess we've
6 already been over it. Is there a difference (indiscernible)
7 purpose than what we've already discussed that you can identify
8 for not objecting to that. Is there anything else you can add
9 other than what we've already covered?

10 MR. KING: No.

11 MR. GEEL: Okay. And if I could, turn to the -- could
12 you talk a little bit about -- well, I should (indiscernible)
13 just identify first. Could you turn to page 302 of the
14 transcript, please?

15 MR. KING: Yes.

16 MR. GEEL: Are you there? Okay. On line 14 this is
17 where the Court indicates that it intends to give an Allen
18 charge. It's all right -- the note says you cannot agree on
19 both charges. I'm going to read the Allen charge and then send
20 them back and at that point the record indicates that there was
21 no objection, correct?

22 MR. KING: Right.

23 MR. GEEL: Again, I know it's been a while since the
24 trial took place, but can you recall what your thought process
25 was in terms of whether you considered objecting or what your

1 thought process was in that moment?

2 MR. KING: I don't think I can sit here objecting --
3 the jury had sent a note stating that they couldn't agree on
4 both charges and so my understanding is that the judge wanted to
5 read an Allen charge. I didn't really have an objection at that
6 point.

7 MR. GEEL: Okay. So if I'm understanding you
8 correctly, are you saying that you did think about objecting or
9 you didn't think about objecting or --

10 MR. KING: No, I did not. I did not. I did not
11 object or have a reason to object.

12 MR. GEEL: Okay. The Court's indulgence, please, Your
13 Honor. All right, Your Honor. That's all I have for Mr. King.
14 Thank you. Thank you, Mr. King.

15 MR. KING: Sure.

16 THE COURT: All right. Mr. Limbaugh.

17 MR. LIMBAUGH: It please the Court, Your Honor.

18 THE COURT: Yes, sir.

19 MR. LIMBAUGH: Good afternoon, Mr. King.

20 MR. KING: Good afternoon.

21 MR. LIMBAUGH: I'll kind of just jump right to the
22 (indiscernible) this here, and maybe I'm just misunderstanding,
23 but how is it opinion testimony of these officers if Mr. Gentile
24 literally said that was his bedroom?

25 MR. KING: Right. I think we're kind of arguing over

1 a subtle point, which is the same point I had to argue in the
2 trial. It appeared to be his bedroom but, you know, the
3 question is, does that mean that he lived there a full-time.
4 I'm arguing that he stays somewhere else.

5 So, yeah, I think we're kind of quibbling over a
6 subtle point of whether it's his bedroom or not his bedroom.

7 MR. LIMBAUGH: Right.

8 MR. KING: I'm not answering it. I'm sorry.

9 MR. LIMBAUGH: No, you did. And at the end of the day
10 I mean he did have that is very personal effects in that same
11 drawer as the drugs were found in, correct?

12 MR. KING: Yes.

13 MR. LIMBAUGH: Okay. I believe there was also keys
14 found in the lock in the door that he indicated were his as
15 well. Is that accurate?

16 MR. KING: Right. That was kind of a bad fact for me
17 as well that the door had a lock and Mr. Gentile had a key.
18 When the police got there the door was open with the key inside
19 the door and Mr. Gentile had asked the police to return his
20 keys, that they were his keys and to get them.

21 MR. LIMBAUGH: Okay. And he did specifically tell
22 them to go to that bedroom to get his clothes or his personal
23 effects, correct?

24 MR. KING: Right. And it was his pants were in there
25 with his ID card in his pants pocket.

1 MR. LIMBAUGH: Okay. So kind of getting towards the
2 last part of the direct, even if it was somehow opinion
3 testimony, it doesn't take an expert to determine that where you
4 keep some of your most important, personal effects in a place
5 you have said is your bedroom, is in fact your bedroom, correct?

6 MR. KING: Right. I mean I don't think it's -- it's
7 lay testimony. I don't think it requires an expert.

8 MR. LIMBAUGH: Okay. And again, as you cited on
9 direct, it would be perfectly fine in this case, correct? It's
10 admissible. I won't say perfect, but it would be admissible?

11 MR. KING: Arguably, yes.

12 MR. LIMBAUGH: Okay. Let's see here. So go to the
13 testimony with the ammo briefly. Is it my understanding that
14 from your direct testimony that it's perfectly likely that the
15 jurors didn't even really hear that clearly because there was
16 some coughing in the court room, is that accurate?

17 MR. KING: I don't know. I hoped they didn't hear it
18 because I knew -- the judge is commenting about the coughing, so
19 the judge was hearing coughing that was making it difficult for
20 her to hear, you know, and I'm kind of piecing this back going
21 back, you know, a couple of years ago, but I think that's what I
22 was hoping since he was interrupted midsentence as well is, you
23 know, maybe the jury didn't hear all of this or if we just move
24 on and not dwell on it anymore then that's the best I can hope
25 out of the situation.

1 MR. LIMBAUGH: Okay. It's one of the singular, brief
2 (indiscernible) instance about the ammo in front of the jury,
3 correct?

4 MR. KING: I'm sorry?

5 MR. LIMBAUGH: It was only that singular, brief
6 mention of the ammo in front of the jury. Is that accurate?

7 MR. KING: That's right.

8 MR. LIMBAUGH: Okay. Again, kind of walk me through -
9 - I know we (indiscernible) but your general defense theory in
10 this case?

11 MR. KING: It was I had somebody to blame it on
12 because his brother sold drugs to an informant, all right? So
13 I've got somebody to point the finger at. So my argument was
14 that he -- I went with his statement, you know, which I was
15 stuck with, the statement that the police said he gave to them,
16 that he comes there every day, stays there from time to time so
17 I used that to argue that he doesn't live there full time.

18 He only comes there every day and stays there from
19 time to time. But somebody who does live there, his brother,
20 that sells drugs and I was trying to, you know, blame that
21 person or another person that left the house right before the
22 search warrant, a neighbor that was arrested for drugs as well.

23 MR. LIMBAUGH: Okay. So clearly it's not helpful that
24 he submitted it was his bedroom, but in terms of your actual
25 rule of defense theory, it wasn't conclusive, was it? It could

1 have been his bedroom, but your defense theory was that you
2 didn't -- somebody else put the drugs in that drawer. Is that
3 accurate?

4 MR. KING: Right, right, right. Because it was so
5 clear that it looked like a house where his family stayed like
6 maybe, you know, a childhood home where his bedroom -- like his
7 childhood bedroom or something, but he maintained at that house
8 but then lived somewhere else. So right, it didn't come down to
9 whose room it was.

10 It came down to did Mr. Gentile know about the drugs
11 being in there and did somebody else had put the drugs in there.
12 Which is -- that was difficult (indiscernible), too, because the
13 door was locked and there was a key to the door, you know, so I
14 had to make that argument by saying, well, maybe he locks the
15 door because he's worried about somebody putting something in
16 there.

17 I tried to make that argument (indiscernible) but the
18 key in the door was not a good fact (indiscernible).

19 MR. LIMBAUGH: Okay. And there was that
20 (indiscernible) sitting out in the bedroom that you indicated
21 was there. Is that accurate?

22 MR. KING: Yes.

23 MR. LIMBAUGH: Moving on from that to the Allen
24 charge, again, you didn't see any reason to object to that, did
25 you?

1 MR. KING: No, according to the note, the jury could
2 not come to an agreement. It says we can't agree on both
3 charges. So I did not object to an Allen charge.

4 MR. LIMBAUGH: Okay. And then you have the transcript
5 in front of you. Are you looking at the charge given?

6 MR. KING: Yes.

7 MR. LIMBAUGH: In that it seems to be a pretty
8 standard Allen charge. There is no (indiscernible) language in
9 there that you see?

10 MR. KING: Right. I didn't think that the Allen
11 charge was coercive. It doesn't seem to single out any jurors.
12 It doesn't say -- the judge didn't say that she hopes they come
13 to a verdict. There's (indiscernible) objectionable language in
14 the case law. So it didn't appear to be coercive to me.

15 MR. LIMBAUGH: And I believe it includes the language
16 about working together but ultimately don't let go of your
17 manifestly held beliefs or something to that --

18 MR. KING: Yes. Right, right. You shouldn't give up
19 your firmly held beliefs merely to be in agreement with your
20 fellow jurors.

21 MR. LIMBAUGH: That's all I have with this witness,
22 Your Honor.

23 THE COURT: All right. Mr. Geel, you have any other
24 follow-up?

25 MR. GEEL: No, Your Honor, thank you.

1 THE COURT: All right. Call your next witness.

2 MR. GEEL: We have no further evidence, Your Honor.

3 Just argument.

4 THE COURT: All right. Mr. Limbaugh?

5 MR. LIMBAUGH: Your Honor, nothing from the state.

6 Just that of course (indiscernible) review the provided
7 materials, included the transcript. The state would rest at
8 this time.

9 THE COURT: All right. Mr. Geel, I'll be happy to
10 hear from you.

11 MR. GEEL: Your Honor, would you like me to present
12 argument now or would you like the attorneys to follow up in
13 writing?

14 THE COURT: Arguments now is fine.

15 MR. GEEL: Yes, sir. Thank you, Your Honor. So the
16 ultimate issue, one, is obviously a little bit (indiscernible)
17 so I'll just handle the Allen charge issue or a second ground as
18 I can dispense with it a little bit more quickly. As the
19 transcript demonstrates, the jury was initially sent out to
20 being deliberating at approximately 3:22 p.m.

21 At 5:00 p.m., Your Honor, there was an ask -- a note
22 from the jury asking for a recharge on the trafficking heroin
23 instruction. The Court recharged the jury at that time and sent
24 them back to deliberate at 5:05 p.m.. They sent out a second
25 note about an hour later at 6:02, which asked another question

1 about trafficking and they were recharged once again on the
2 trafficking instruction.

3 Then at 6:41 is when they sent out the final note
4 indicating they were deadlocked and they were given the Allen
5 charges. Your Honor, as you can see from the record, there was
6 no objection to that Allen charge happening at that time and
7 they are given the Allen charge and then sent back to continue
8 deliberating at 6:46 p.m. and then at 6:57 p.m. there is a
9 verdict.

10 So in other words, they deliberated for three hours
11 and 24 minutes before informing the Court that they were
12 deadlocked. The Court gave an Allen charge and they deliberated
13 for 11 minutes thereafter before rendering a verdict. So, Your
14 Honor, the case that we cited in our brief Workman, it just
15 cites the general standard here for whether an Allen charge is
16 coercive, and obviously there's lots of case law that deals with
17 the actual substance of the Allen charge itself concerning the
18 text but Workman and the other case I'm going to discuss in a
19 moment, point to is that you can also look to the time between
20 when the charge is given and when a jury returns a verdict to
21 demonstrate the course and nature, and in Tucker v. Catoe, 346
22 S.C. 483, that's discussed in a little bit more detail, Your
23 Honor.

24 That case specifically addressed -- well, first of
25 all, I should say, Your Honor, on page 491 of that case what

1 they say is that whether an Allen charge is unconstitutionally
2 coercive must be judged in its context and under all
3 circumstances. So it's kind of a totality of the circumstances
4 type of analysis here.

5 So there isn't any one factor that you would need to
6 point to to demonstrate it's coercive, but one of the factors
7 that they clearly identify is the time to return a verdict. I
8 can show coerciveness in an Allen charge, and I'll direct the
9 Court's attention to page 494 of the Catoe case wherein they say
10 the petitioner's jury returned a death sentence at 12:27 p.m.,
11 approximately an hour and a half after receiving an Allen
12 charge.

13 This is a relatively short period of time, given the
14 fact that the dissenting juror had been holding out since at
15 least 5:00 p.m. the day before. And then later on
16 (indiscernible) say this factor weighed in favor of a finding of
17 coercion.

18 So obviously, Your Honor, there is some other things
19 that the Court discusses there, but this issue that we're
20 raising here is essentially that the time between the Allen
21 charge -- pardon me, the time that they deliberated, then the
22 time that the Allen charge was given and then the amount of time
23 that remained after the Allen charge where the verdict
24 demonstrates the coerciveness.

25 Mr. King has indicated that he didn't give serious

1 consideration to whether to object (indiscernible) and so under
2 the Strickland standard that we're held to here, Mr. King hasn't
3 identified a strategic purpose for not objecting other than in
4 feeling that he didn't have grounds to object at that time, and
5 nevertheless we have an 11 minute verdict after the Allen charge
6 is given which we submit respectively to the Court demonstrates
7 the coerciveness giving an Allen charge at that time after just
8 such a brief deliberation period.

9 So as to ground two, we will submit that to Your
10 Honor's consideration that trial counsel (indiscernible)
11 effective in failing to object either before or after the Allen
12 charge was given, and certainly effective for failing to object
13 to its coerciveness after the very quick verdict.

14 So that's all I have on ground two. So turning to the
15 kind of larger issue here, Your Honor, is the ultimate issue in
16 question. One thing I wanted to clarify, you know, I didn't see
17 any need to argue with Mr. King on the stand, so Rule 704, Your
18 Honor, that deals with whether testimony that touches on the
19 ultimate issue can be admissible, the rule notes that that
20 testimony is okay if it's, quote, otherwise admissible.

21 Now in the context of all of the rules, Rule 703, the
22 rule that immediately precedes that rule, Your Honor is aware is
23 a rule that deals with the admissibility of expert testimony.
24 It's very clear from the way the rules are laid out, Your Honor,
25 that Rule 704 contemplates the admissibility of opinion

1 testimony that touches on the ultimate issue, most primarily
2 when it comes from an expert who is otherwise qualified to offer
3 their opinion. Textbook examples of this type of testimony are
4 things like in homicide cases where, you know, the cause of
5 death. Obviously these things bear directly on an ultimate
6 issue. And so what these rules contemplate is that experts can
7 offer their opinion if it touches on the ultimate issue of the
8 case provided that it's otherwise admissible.

9 Now, turning to the facts of this case, the detectives
10 in question here, their opinion that the evidence demonstrated
11 Mr. Gentile's exclusive control of the bedroom or knowledge of
12 the drugs or knowledge of the items is not admissible under the
13 rules.

14 There are certain lending opinion testimony -- lay
15 opinion testimony is admissible under certain circumstances, but
16 the case law says that it's dealing with issues again in the
17 sort of normal person's perception, sort of height, demeanor,
18 things that are basically any layperson could sort of perceive.

19 Your Honor, this is very distinct from the type of
20 testimony that was offered here, where these witnesses were
21 offering their personal opinion as to what the evidence showed.
22 And not only that, but their personal opinion that the defense
23 argument was incorrect.

24 Again, what we're attaching on here is the defense was
25 essentially that Mr. Gentile did not have exclusive control of

1 the bedroom and didn't have knowledge of the contents of the
2 dresser, and we have more than one witness essentially
3 expressing their personal opinion that the evidence disproves
4 that claim, or in other words, the state meets its verdict based
5 on the items found in the room.

6 Those witness's opinions are not admissible at all.
7 One thing I felt it bears pointing out as well, again, I didn't
8 see the need to argue with Mr. King, the record speaks for
9 itself. But what Mr. Gentile told the authorities when he was
10 interviewed is that it stays in the room from time to time.

11 So that's, again, very different sort of saying that
12 it's his bedroom or anything along those lines. And Your Honor,
13 if you read the whole transcript, it's very clear that the
14 defense did essentially (indiscernible) that Mr. Gentile only
15 had occasional control of the bedroom.

16 There's no evidence or -- the state failed to prove
17 essentially that he had exclusive control over it and knowledge
18 of the items there. So to simply stand by and allow more than
19 one witness on multiple occasions to offer their personal
20 opinion is essentially that the defense is wrong, that they
21 don't agree with the defense's characterization of the evidence,
22 that's just admissible.

23 And Mr. King hasn't identified any kind of strategic
24 reason for objecting to those statements. If I could, Your
25 Honor, just touch very briefly on the two cases. There's one

1 that's cited in our brief which is State v. Andrews 424 S.C.
2 304.

3 Your Honor, this is a voluntary manslaughter case
4 where there was a dispute that the defendant shot the victim in
5 that case and there was a dispute at trial and at the pretrial
6 immunity hearing as to where the victim was when he was shot.
7 So in other words, whether he was coming at the defendant or
8 whether he was standing still, it took place at a residence,
9 whether he was -- the victim was shot on the porch or whether he
10 was a threat to the defendant.

11 In the context of this trial, the state presented the
12 testimony of an EMT, a paramedic. When the paramedic
13 essentially said when the victim was shot the amount of force
14 that it takes to go through (indiscernible) the skull and to go
15 through the brain, my opinion is whenever the victim was shot,
16 he dropped and then the state followed up by asking so based on
17 your observation of the body, the observation of the injury,
18 where was the victim when he got shot to which he answered he
19 was standing on the porch.

20 And this conviction was ultimately a (indiscernible)
21 and based on that testimony the Court said an opinion may be
22 offered on the ultimate issue of the case only when the witness
23 is otherwise qualified. Again, this is what we touched on
24 previously.

25 The Court said at the top of page -- excuse me, on

1 318, however, we find that the circuit court used its discretion
2 in allowing opinion testimony from the EMT paramedic regarding
3 the victim's location at the time of the shooting. In effect,
4 by admitting into evidence (indiscernible) challenge testimony
5 that the victim was on the porch when he was shot, the Circuit
6 Court allowed Graham, that's the EMT, to give her opinion about
7 the ultimate issue, whether Andrew had acted in self-defense
8 when he shot and killed the victim.

9 The Court found that (indiscernible) was not harmless
10 and that the defendant was entitled to a new trial on those
11 grounds. Again, this is identical to what we have here. I mean
12 in this case (indiscernible) Andrews, the defendant was arguing
13 that he acted in self-defense, and here we have a witness
14 offering their opinion as to whether that was a valid defense.

15 And that's exactly what we have here in this case. We
16 have two officers testifying that the evidence demonstrates, in
17 their opinion, that Mr. Gentile has control of the room or the
18 items prove that. Your Honor, turning also the State v. Ellis,
19 this is 547 S.E. 2nd 490.

20 In that case again it's another shooting case where
21 the appellant there, he admitted to shooting the victim but
22 again, he contended that he was acting in self-defense. He
23 testified that the victim dropped the bicycle (indiscernible)
24 bicycle and approached the appellant in a menacing fashion
25 holding a knife.

1 At that point the appellant shot him. During this
2 trial the police officer testified to his opinion that the
3 victim was, they say, astride the bike -- I guess riding on the
4 bike. The Court said that the officer's testimony exceeded the
5 scope of his expertise when he was permitted to impart to the
6 jury his conclusion, drawn from the measurements and
7 observations regarding the location of the victim and the
8 position of his body, vis-à-vis the bicycle, at the time of the
9 shooting.

10 In effect, Sgt. Walker (indiscernible) the witness was
11 allowed to give his opinion on the ultimate issue whether the
12 appellant was acting in self-defense when he shot the victim.
13 This was error, and the case actually cites to Rule 704 right
14 there, Your Honor, which is the rule that we've just been
15 discussing.

16 The Court goes on to say in our opinion the error in
17 allowing Sgt. Walter to give his opinion on the position of the
18 victim cannot be deemed harmless in light of the appellant's
19 assertion that he was acting in self-defense. While the state
20 was free to argue that the evidence supported an inference that
21 the victim is astride the bicycle when shot, and while the jury
22 can certainly have concluded that he was, Sgt. Walter was not
23 qualified to give such expert opinion.

24 The officer's improper opinion, which goes to the
25 heart of the case, is not harmless. And again, Your Honor, I

1 submit that it's directly parallel to the situation that we have
2 here. This testimony goes directly to the heart of
3 (indiscernible). Mr. King said in his opening and in his
4 closing essentially the contention was that this wasn't Omar
5 Gentile's bedroom and here we have multiple witnesses offering
6 their opinion that the evidence is contrary to that, or that the
7 evidence demonstrates that it was his bedroom.

8 So, Your Honor, I believe with these two cases, and
9 bearing in mind what Rule 704 really authorizes, this testimony
10 was completely inadmissible. And, Your Honor, during Mr. King's
11 testimony here, essentially I want to clarify this one point.

12 Essentially Mr. King had said that he didn't want --
13 or excuse me, he felt he needed to address this point in the
14 trial which makes all the sense in the world to me. He
15 certainly did have to address this issue but again, Your Honor,
16 that is completely separate from permitting a witness to offer
17 their opinion on this matter.

18 I mean it's those are the things that Mr. King could
19 anticipate the state arguing that Omar had exclusive control
20 over the room and that therefore again constructive possession
21 and knowledge of the items in there, that was going to be an
22 argument during the trial, but what was not inevitable was that
23 the state would be permitted to offer these witness's opinion
24 essentially that that defense is no good, which is essentially
25 what happened here.

1 He had two witnesses on multiple occasions being
2 permitted to essentially offer their opinion as to an ultimate
3 issue in the case, what the verdict should be and again, Your
4 Honor, like the cases I've cited, like Andrews and Ellis, this
5 is the core of the defense essentially here. So it was error in
6 those cases and it's error in this case.

7 Again, Mr. King's strategic purpose essentially
8 offered here, I submit under Strickland is not sufficient. It's
9 subjectively unreasonable simply because when asked to address
10 an argument where it anticipates that the state will make an
11 argument, it doesn't mean that you have to allow the witnesses
12 to present argumentative opinion testimony.

13 Those are two separate things, as Your Honor is aware.
14 And again, this is the heart of the defense, just like in the
15 cases cited, Andrews and Ellis, it's prejudicial or was
16 prejudicial to Mr. Gentile because, again, this is the only
17 defense that he had that there was no argument that the drugs
18 were present, that there was a confidential informant by that
19 Omar was present when the search warrant was conducted.

20 The only dispute and the only thing that Mr. King did
21 argue was simply that the state had failed to show exclusive
22 control of the bedroom and knowledge of those items. So
23 allowing those witnesses to offer their testimony, their
24 opinion, essentially that the defense was no good.

25 That was error under Strickland. It was prejudicial

1 to Mr. Gentile. So bearing that in mind, we would ask the Court
2 to grant the application for postconviction relief on both
3 grounds and I have nothing further at this time. Thank you,
4 Your Honor.

5 THE COURT: All right. Mr. Limbaugh.

6 MR. LIMBAUGH: If it please the Court, Your Honor. So
7 I'll just (indiscernible) Mr. Geel. As to the Allen charge,
8 there is no language in the Allen charge given by the Court that
9 was coercive in itself in nature. It didn't divide or make note
10 of any numbers of the jurors who were against the court
11 conviction, nothing of that nature.

12 And to be frank, Your Honor, it looks like the Allen
13 charge did what it was supposed to do and what it was designed
14 and written for was to get a jury who is almost there there on a
15 verdict. It specifically says in there if Your Honor looks and,
16 you know, coming together and respecting each other's views and,
17 you know, if you have a strongly held view then keep your view.

18 Don't let somebody convince you otherwise if that's
19 your opinion about this case and they came out to give a
20 verdict. It wasn't like the case of Mr. Geel cited about, you
21 know, a juror was deadlocked from 12 hours ago, and they did an
22 Allen charge and come back in an hour and a half.

23 They had been gone a number of hours and come back in
24 11 minutes and the percentage is (indiscernible) equivalent. It
25 (indiscernible) to be opinion testimony, the alleged opinion

1 testimony. Your Honor, I will submit that that is not the
2 opinions of the officers coming out and (indiscernible) the
3 ultimate issue.

4 I don't see how it's the opinion of the officers that
5 it's his bedroom when Mr. Gentile told them it was his bedroom,
6 and his clothes and his very personal, private effects are in
7 the drawer where the drugs are found, the keys that are found
8 that could unlock the door knob, are admitted by Mr. Geel to be
9 his keys.

10 So his clothes in fact have, you know, have possession
11 and control and dominion of that bedroom, and he told them as
12 much. And as Mr. King testified to on cross, that wasn't his
13 defense strategy in the first place. You know, (indiscernible)
14 that Mr. Gentile's statements to law enforcement.

15 His defense strategy was, yeah, it might have been his
16 bedroom, but he wasn't aware those drugs were there. Somebody
17 else put them there. And again, even if it was opinion
18 testimony, which again I don't believe it was, it's not
19 something that exceeds the balance of a layperson's
20 understanding that someone who tells you it's their bedroom has
21 keys to the bedroom, has their personal effects in that bedroom
22 and also has clothing in that bedroom that the officers come and
23 bring to them.

24 It's their bedroom. I mean if it, you know, looks
25 like a duck, quacks like a duck and walks like it duck, it's

1 probably a duck, Your Honor. And so Ellis I don't believe is
2 prejudicial. Even if that testimony is included and you just
3 look at the statements from Mr. Gentile and evidence that was
4 found, I believe there's plenty of evidence to show that he had
5 exercised dominion and control of that bedroom.

6 You just have to own those drugs. You don't have to
7 be (indiscernible) drugs. It's just to exercise dominion and
8 control over the space where they are found. The keys -- him
9 saying it's his bedroom I think is plenty, Your Honor, and the
10 state would rest on that. Thank you.

11 MR. GEEL: Your Honor, may I respond very briefly?

12 THE COURT: Sure.

13 MR. GEEL: So just this one point. With respect to
14 Mr. Limbaugh and Mr. King, they both seem to be complaining of
15 two things, Your Honor. The presence of evidence that Mr.
16 Gentile had some tie to the room or his property being there
17 versus a propriety of a witness offering their own opinion as to
18 what that evidence shows, these are two very distinct things,
19 simply saying that there's evidence to show that Mr. Gentile had
20 connections to the room, it does not authorize the state's
21 witnesses to say -- offer their opinion as to what the evidence
22 shows.

23 And again, Your Honor, (indiscernible) to be quoted
24 from State v. Ellis, this is what the Court says. While the
25 state is free to argue that the evidence supported in inference

1 that the victim was astride a bicycle when shot, and while the
2 jury could certainly have concluded that he was, Sgt. Walters
3 was not authorized to give such opinion.

4 That's what this case says. It draws that exact
5 distinction. So respectfully I understand Mr. Limbaugh's
6 position, but simply pointing to other evidence or pointing to
7 the evidence that these detectives were relying on to reach that
8 conclusion, it doesn't mean they're allowed to testify to that
9 conclusion.

10 Those are completely two totally different things, and
11 the other thing (indiscernible) feel it bears pointing out, Your
12 Honor, is again to -- on this point, Mr. Gentile indicated that
13 he stays in the bedroom from time to time. And again, if you
14 read the entire transcript it's very clear that this was a
15 contested point in terms of whether he had exclusive control
16 over the bedroom.

17 This is sort of throughout the trial transcript. So I
18 understand -- again, I understand Mr. Limbaugh's point and I
19 understand what Mr. King said in terms of Mr. Gentile saying
20 that he had a connection to the room. This is distinct from the
21 ultimate issue in the case which is it's undeniable that there
22 is a connection to the room.

23 He's there when the search warrant takes place, but
24 the issue -- the issue at trial was whether that evidence
25 demonstrates his exclusive control and knowledge of the drugs

1 therein, and that's what the state used this evidence for, and
2 they put up their witnesses to offer their opinion essentially
3 that the state's theory was correct and that is what these cases
4 stand for and you can't do that.

5 And that is what Rule 703 and 704 prohibit. So having
6 said that, Your Honor, we do ask that the application be
7 granted. Thank you.

8 THE COURT: All right. I'll take it under advisement,
9 but you will have my answer by the end of the day, okay?

10 MR. GEEL: Thank you, Your Honor.

11 MR. LIMBAUGH: Thank you, Your Honor.

12 THE COURT: All right.

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CERTIFICATE OF TRANSCRIBER

I, BARBARA J. ENNEKING, CVR-M, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 9, Charleston County, South Carolina, on the 17th day of February, 2021.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 30, 2023

Barbara J. Enneking, CVR-M

Barbara J. Enneking, CVR-M

Transcriber

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Omar Shariff Gentile, #289079

Applicant,

v.

State of South Carolina,

Respondent.

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Case No.: 2018-CP-10-5819

ORDER OF DISMISSAL

BY

DC2

JULIE J. ARMSTRONG
CLERK OF COURT

2024 APR 11 AM 9:19

FILED

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Omar Shariff Gentile (Applicant) on December 7, 2018. On February 17, 2021, an evidentiary hearing convened before the Honorable Bentley D. Price. Applicant was present and represented by Christopher R. Geel, Esquire. Assistant Attorney General Benjamin Limbaugh represented the State. At the hearing, Applicant called as a witness Jason King, Esquire (trial counsel). Following a thorough review of the records before this Court and the testimony and evidence presented at the hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections serving an aggregate twenty-five-year sentence. In May 2012, the Charleston County Grand Jury indicted Applicant for possession with intent to distribute (PWID) heroin within proximity of a school (2012-GS-10-2587). In September 2015, the Charleston County Grand Jury indicted Applicant for trafficking heroin (2015-GS-10-5473). These charges arose following the execution of a search warrant on a home on February 9, 2012.

On January 4-5, 2016, Applicant proceeded to jury trial before the Honorable Kristi Lea

Harrington. Assistant Public Defenders Jason T. King and Tamara M. Van Pala represented Applicant, and Assistant Solicitors John Whitney Sowards and Stephanie B. Linder prosecuted the case. The jury convicted Applicant as indicted, and Judge Harrington sentenced him concurrently to twenty-five years for trafficking and ten years for PWID heroin.

Applicant filed a timely notice of appeal, which was perfected by Appellate Defender Kathrine Hudgins (2016-000161). On appeal, Applicant argued the trial court erred in not requiring the State to disclose the name of a confidential informant (CI) who made a controlled-buy at the home that formed the basis of probable cause for the search warrant. The Court of Appeals affirmed in an unpublished Rule 220(b)-style opinion. State v. Gentile, Op. No. 2018-UP-386 (Ct. App. filed Oct. 17, 2018). The remittitur was sent November 6, 2018.

Summary of Underlying Facts

Applicant's charges arose from the execution of a search warrant on February 9, 2012.¹ Upon executing the warrant, officers found Applicant in the living room and Applicant's relative, John Davis, in a back bedroom. (Tr. 135). After waiving his Miranda rights, Applicant spoke with law enforcement and told them he went to the home daily to care for Davis, an amputee. He further told law enforcement he had a room in the home with independent locks and keys, and he considered the home to be his residence. Applicant pointed out his room, and law enforcement found keys in the door. Applicant also told law enforcement that he had over \$1,000 in cash in his bedroom. (Tr. 137-38, 140-41). After searching the bedroom, officers found sixteen grams of heroin and drug paraphernalia, including digital scales with heroin residue, glassine baggies, and rubber bands. Police also found paperwork belonging to Applicant in the drawer with the drugs, including a paycheck stub, a driver's license, and a social security card. (Tr. 156).

¹ Probable cause for the warrant was developed by a CI's controlled purchase of drugs from the home on January 31, 2012. The CI purchased the drugs from Applicant's brother.

Applicant did not testify or call any witnesses at trial. Applicant's trial strategy centered on the argument that he was only at the home caring for his relative, the drugs belonged to his brother (who had previously sold to the CI), and Applicant did not know the heroin was in the drawer or constructively possess the heroin. (Tr. 69-70, 269-70).

Current Application

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel: Counsel failed to object to hearsay.
2. Due process violations: Applicant was "[d]enied due process when video was muted, no testimony (in search warrant) concerning CI's snitch file and reliability whether he/she was paid and/or working off charges."

On March 9, 2020, Applicant served on Respondent an amended application alleging counsel was ineffective for:

1. Not objecting to improper lay-opinion and "ultimate issue" testimony regarding the upstairs bedroom, and
2. Not objecting to the Court's premature and impermissibly coercive Allen charge.

At the PCR hearing, Applicant proceeded only on the two grounds of his amended application. ,

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including Charleston County Clerk of Court records of the underlying convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and records of this PCR action. This Court also had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony. After a careful review based

on the Strickland standard set forth below, this Court finds Applicant failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

INEFFECTIVE ASSISTANCE OF COUNSEL

To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice because of counsel's deficient performance. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." Watson v. State, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To prove prejudice, the applicant must show "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.

Failure to object – Testimony the room belonged to Applicant

Applicant first contends counsel was ineffective for not objecting

to testimony from non-experts that (1) it is unlikely that Gentile's personal items would be found in the upstairs bedroom if it were not his personal living space, (2) the ammunition found in the upstairs bedroom is 'commonly found' in the homes/bedrooms of drug dealers, and (3) that the investigating officer had 'no doubt' that the upstairs bedroom belonged to Omar Gentile.

Applicant contends this was an opinion on the ultimate issue that counsel should have objected to. He further contends he was prejudiced by counsel's failure to object because this testimony undermined his defense strategy. This Court finds Applicant did not prove this ground.²

At trial, the following exchange occurred during Investigator John Marn's redirect

² This Court will address the allegation related to ammunition separately below.

testimony:

Q. . . . Do you believe a social security card is important?

A. Yes, ma'am, I do.

Q. Do you think a bank statement is important?

A. Yes, ma'am.

Q. Or a pay stub?

A. Yes, ma'am.

Q. These important items kept in a stranger's home?

A. Not likely.

(Tr. 177-78).

During Investigator Shealy's direct testimony, the following exchange occurred:

Q. And why, again, did you believe that bedroom number three belonged to the defendant, Omar Gentile?

A. **Bedroom number three belonged to the defendant, Omar Gentile, because of this statement stating that that was his—indeed his bedroom.**

He told us that was his bedroom. There was numerous identifiers located in that bedroom to place him in that bedroom. Being from his identification card—the most important thing that we take with use every day: your ID card, you never leave home without it; your bank card; your social security card.

Also, a set of keys in a locked door that I asked Mr. Omar Gentile if he wanted the keys out of the lock that was in his door and he stated that he did want his keys. And he took his keys.

Also from him asking me to get pants, shirt, and shoes from his bedroom.

So, basically, the answer to your question is from the items that we located from the bedroom, from the key we located in the door, and **from his verbal statements admitting to that was—to us, admitting that it was his bedroom.**

Q. And was there any doubt in your mind who that bedroom belonged to?

A. No, sir, no doubt whatsoever whose bedroom that belonged to.

(Tr. 237-38, emphasis added).

During the PCR hearing, trial counsel testified his primary strategy was to argue Applicant did not have knowledge of the drugs. Although he averred he “maybe” should have objected to the redirect examination of Investigator Marn, he explained that Applicant’s paperwork (including his social security card) being in the drawer with the drugs was an issue he was going to have to deal with in argument, so he did not believe the redirect questioning was that strong of a point for the State. Regarding his failure to object to Investigator Shealy’s testimony that the room belonged to Applicant, counsel explained that although he could come up with an argument for and against it being admissible under Rule 701, SCRE, he could not get around the fact that Applicant told Investigator Shealy it was his room. He averred there was no reason to object when he was conceding the room belonged to Applicant. Counsel stated he focused on arguing that even though it was Applicant’s room, other people could have accessed the room and left the drugs there.

This Court finds counsel’s strategy for not objecting was reasonable under prevailing professional norms and not deficient. Critically, Applicant himself told Investigator Shealy the bedroom belonged to him—making it difficult for counsel to then argue the bedroom did *not* belong to Applicant. Using the evidence and the facts that existed (and that he could not avoid), counsel formulated a reasonable strategy in arguing that although the bedroom belonged to Applicant, the drugs themselves were put in the room without Applicant’s knowledge. This Court finds Applicant has not set forth a better strategy counsel should have employed under the facts and evidence that existed, and thus did not meet his burden of proving deficiency.

Likewise, it is not reasonably likely an objection would have changed the outcome. Investigator Shealy's testimony that Applicant said the room belonged to him and testimony that officers found Applicant's paperwork in the drawer was admissible, and Applicant has not articulated a valid, legal objection for excluding that evidence. Further, this Court finds Investigator Marn's testimony that bank statements, social security cards, and paycheck stubs are important documents that are not normally kept in a stranger's home was rationally based on Investigator Marn's perception, helpful to a clear understanding of his testimony or a fact in issue, and did not require special knowledge, skill, experience, or training. See Rule 701, SCRE ("If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience or training."). This Court likewise finds Investigator Shealy's testimony that Applicant's numerous items in the bedroom supported Applicant's statement that the bedroom belonged to him was rationally based on Investigator Shealy's perception, helpful to a clear understanding of his testimony or a fact in issue, and did not require special knowledge, skill, experience, or training. Thus, it is not reasonably likely an objection would have excluded this testimony. Finally—and critically—due to testimony that Applicant himself admitted the room belonged to him, it is not reasonably likely the outcome would have been different had counsel successfully objected to Investigator Marn's testimony about not storing important documents in a stranger's home or Investigator Shealy's testimony that Applicant's items in the bedroom corroborated Applicant's statement that the room was his. Thus, Applicant did not prove deficiency or prejudice, and this claim is denied.

Failure to Object – Testimony about Ammunition

During Investigator Shealy's direct testimony, as he was recounting items recovered from the bedroom identified as Applicant's room, the following exchange occurred:

There was various identification for Mr. Omar Gentile, such as pay stubs, South Carolina ID card, social security card belonging to Mr. Omar Gentile, Bank of America cards.

There was also a box of ammo in that room, which is commonly found in rooms or homes that drug dealers have where—

The Court: Hold on. I'm having a hard time with the coughing.

Mr. King: May we approach?

The Court: Yes, you may.

(Whereupon, an off-the record bench conference is held)

[The Court]: Mr. Sowards, if you need to re-ask the question so that it's clear. It's been a while. Thank you.

Mr. Sowards: Yes, ma'am. I'll move on to something else, Your Honor.

The Court: All right. Thank you.

(Tr. 231-32).

At the PCR hearing, counsel testified the solicitor agreed pretrial not to introduce evidence of the ammunition, but Investigator Shealy blurted it out during his testimony. Counsel explained someone was coughing at the time and the judge cut off Investigator Shealy's testimony. He testified he told the judge at the bench conference that the State had agreed not to introduce evidence of the ammunition, and the solicitor agreed not to go into it anymore and just move on. Trial counsel testified he did not object or request the judge strike the testimony because someone was coughing during the testimony and he believed the jurors may not have heard it. He also averred further instruction by the court could have drawn more attention to the statement—which

he did not want to do. Counsel testified he would have otherwise objected, but his primary concern was that evidence about the ammunition had been introduced at all.

This Court finds counsel articulated a valid, strategic reason for not objecting and thus was not deficient. Critically, counsel explained that although he *did* believe the testimony was objectionable—both as improper lay testimony and because the State agreed not to introduce evidence of the ammunition—he decided an objection would draw more attention to the issue. Based on the record, this testimony occurred as someone was coughing, and counsel was able to accomplish his primary purpose of having the State move on from the testimony. Thus, counsel’s decision to not object because he did not want to draw more attention to the issue was objectively reasonable and not deficient.

Likewise, it is not reasonably likely an objection would have changed the outcome. Officers recovered heroin from the drawers of a room Applicant claimed as his own, and the ultimate issue for the jury was whether Applicant was aware of the drugs. The fact ammunition was also found (which Investigator Shealy stated was commonly found in rooms or homes of drug dealers) did not make it more or less likely Applicant had knowledge of the drugs. It was uncontradicted heroin was found, and the fact ammunition was also found did not go to the ultimate issue before the jury—Applicant’s awareness or knowledge of the drugs. Thus, Applicant did not prove deficiency or prejudice, and this claim is denied.

Failure to object to premature Allen charge

Finally, Applicant contends counsel was ineffective for not objecting to the premature Allen charge that was impermissibly coercive. This Court finds Applicant did not prove this claim.

“Whether an Allen charge is unconstitutionally coercive must be judged ‘in its context and under all the circumstances.’” Tucker v. Catoe, 346 S.C. 483, 491, 552 S.E.2d 712, 716 (2001)

(quoting Lowenfield v. Phelps, 484 U.S. 231 (1988)). “South Carolina approves the use of a modified Allen charge, which must be neutral and even-handed, instruct both the majority and minority to reconsider their views, and cannot be directed at the jurors in the minority.” State v. Taylor, 427 S.C. 208, 214, 829 S.E.2d 723, 727 (Ct. App. 2019).

No set definition of coercion has emerged; instead, we detect its presence by viewing the charge in context and in light of four factors: (1) whether the charge speaks “specifically to minority jurors”; (2) whether the charge includes “you must return a verdict” type language; (3) whether there was an “inquiry into the jury’s numerical division,” which is generally coercive; and (4) whether the time between when the charge was given and when the jury returned a verdict demonstrates coercion.

Id. at 214-15, 829 S.E.2d at 727 (citing Tucker, 346 S.C. at 492-95, 552 S.E.2d at 178-19). “Like most multi-factor constructs, the Tucker test does not tell us the relative weight each factor carries, nor is the list of factors exclusive.” Id. at 215, 829 S.E.2d at 727.

Here, the jury began deliberating around 3:22 p.m. (Tr. 293). After asking two questions and being recharged on trafficking and possession twice, the jury sent a note around 6:41 p.m. indicating it could not “agree on both charges.” (Tr. 302). The Court responded it would read an Allen charge. Following the charge, (Tr. 303-04), the jury reached a verdict.

At the PCR hearing, counsel testified he did not see a reason to object to the court’s decision to give an Allen charge, and this Court agrees. Ultimately it was within the trial court’s discretion to give the charge, and under these circumstances, counsel’s decision to not object to the *giving* of the charge was reasonable under prevailing professional norms. State v. Darr, 262 S.C. 585, 587, 206 S.E.2d 870, 870 (1974) (“It is the duty of the trial judge to urge the jury to agree upon a verdict provided he does not coerce them.”); id. (finding trial court did not err in “urging the jury to reach an agreement” two hours and thirty-two minutes after the jury began deliberating).³ Applicant did

³ Here, the charge was given more than three hours after the jury began deliberating.

not set forth a valid, legal objection to the court's *decision* to give the charge, and Applicant thus did not prove deficiency or prejudice in this regard.

Further, counsel testified he did not believe the charge was coercive, and this Court agrees. The charge did not speak specifically to minority jurors but rather addressed both minority and majority jurors. (Tr. 303). The charge did not include language that "you must reach a verdict" but rather informed the jurors that if they were unable to agree, the court would declare a mistrial. (Tr. 304). Additionally, the court never inquired into—or received—the numerical division. Viewed in context and under all circumstances, this charge was not unconstitutionally coercive.

Applicant's argument at the PCR hearing related to the coerciveness of the charge centered on his contention that the jury reached a verdict only eleven minutes after receiving the charge. This fact, however, is not dispositive. Cf. Darr, 262 S.C. at 586-87, 206 S.E.2d at 870 (finding trial court did not coerce a jury that deliberated for only thirty-two minutes after the court "urged it" to reach a verdict). Ultimately Applicant did not point to any language in the charge that he believed was unconstitutionally coercive, and this Court has reviewed the charge and did not find any. Applicant has not met his burden of proving deficiency or prejudice related to counsel's failure to object the court's decision to give the charge or the language of the charge itself. Thus, this claim is denied.

CONCLUSION

Based on the foregoing, this Court concludes Applicant has not established any constitutional violations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

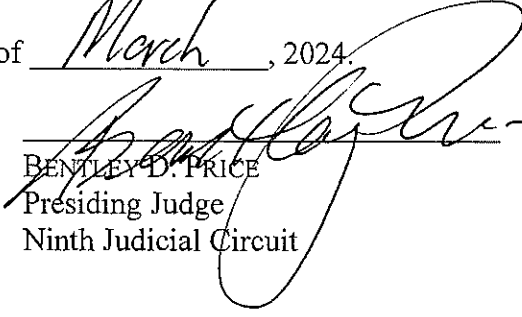
Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203,

SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 27th day of March, 2024.


BENTLEY D. PRICE
Presiding Judge
Ninth Judicial Circuit

Charles A. ..., South Carolina

456

JWS/0214213/20120201143
WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1202203

ARREST WARRANT NUMBER

2015-GS-10-05473

DATE OF ARREST

02/10/2012

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: SEP 14 2015

VERDICT

Guilty -

Jonathan Butler 1/5/15

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-10-05473

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2015

THE STATE

VS.

OMAR SHARIFF GENTILE

Indictment for

TRAFFICKING IN HEROIN

SC Code: § 44-53-0370(e)(3)

CDR Code: 0287

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

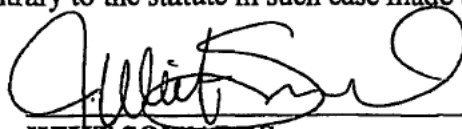
INDICTMENT

At a Court of General Sessions, convened on September 14, 2015, the Grand Jurors of Charleston County present upon their oath:

Trafficking in Heroin

The defendant, Omar Shariff Gentile, did on or about February 9, 2012, in Charleston County, South Carolina, knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of four (4) grams or more of any morphine, opium, salt, isomer, or salt of an isomer thereof, namely Heroin, as described in Section 44-53-190 or 44-53-210, or four (4) grams or more of any mixture containing any of these. All in violation of 44-53-0370(e)(3) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


WHIT SOWARDS
ASSISTANT SOLICITOR

458

LMC20120201143

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1202203

ARREST WARRANT NUMBER

M996334

DATE OF ARREST

February 10, 2012

ACTION OF GRAND JURY

TRUE BILL
TRUE BILL

Foreperson of Grand Jury
Date.

MAY 07 2012

VERDICT

Guilty - Jonathan Bates 1/5/15

Foreperson of Petit Jury

Date

INDICT

DOCKET NO. 2012GS1002587

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

May Term 2012

THE STATE

vs.

OMAR SHARIFF GENTILE

~~XXXXXXXXXX~~
~~XXXX~~

Indictment for

Possession With Intent To Distribute Heroin
Within Proximity Of A School

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

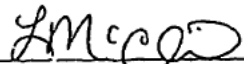
INDICTMENT

At a Court of General Sessions, convened on May 7, 2012 the Grand Jurors of Charleston County present upon their oath:

Possession With Intent To Distribute Heroin Within Proximity Of A School

That in Charleston County, South Carolina, on or about February 9, 2012, the Defendant, OMAR SHARIFF GENTILE, knowingly and unlawfully did distribute, sell, purchase, manufacture, or possess with intent to distribute Heroin, a controlled substance, within a one-half mile radius of the grounds of Charleston School of Math and Science located at 1002 King Street, Charleston, South Carolina, all in violation of Section 44-53-445 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 LINDSEY MCCLAIN
 ASSISTANT SOLICITOR

BY _____
 JOEL G. STRONG
 CLERK OF COURT
 2016 JAN 11 PM 12:00



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

OMAR SHARIFF GENTILE

AKA: Omar Shariff Gentile, Omar Gentile

Race: Hispanic Sex: MDOB: 01/15/1988 SS#: 123456789Address: 1234 StCity, State, Zip: Charleston, SC 29401DL# 123456789 SID# SC00807572*CDL Yes ☐ No ☒ CMV Yes ☐ No ☒ Hazmat Yes ☐ No ☒

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: Traff Opium/Heroin 4g to 14gIn violation of § 44-53-0370(e)(3)(a) of the S.C. Code of Laws, bearing CDR Code # 0158☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Whit Sowards, Assistant Solicitor 101021 SC Bar #

Defendant

Attorney for Defendant 68630 SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed 1 years and/or to pay a fine of \$ 100,000 provided that upon the service of 25 days/months/years and or payment of \$ 100,000; plus costs and assessments as applicable*; the balance is suspended with probation for 25 months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2012-GS-10-2587☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing☐ Ordered PTUPTotal: \$ 100,000 plus 20% fee: \$ 20,000100 days/hours Public Service EmploymentPayment Terms: 100,000Obtain GED ☐☐ Set by SCDPPPS 100,000Attend Voc. Rehab. Or Job Corp. 100,000Recipient: 100,000May serve W/E beginning 100,000*Fine: 100,000Self-Start Abuse Counseling ☐§14-1-206 (Assessments 107.5%) 107,500.00Random Drug/Alcohol Testing ☐§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

Fine may be pd. in equal consecutive weekly/monthly

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ 100.00pmts. of \$ 100.00 Beginning 1/15/16§56-5-2995 (DUI Assessment) \$12 \$ 12.00\$ 100,000 Paid to Public Defender Fund§56-1-286 (DUI Breath Test) \$25 \$ 25.00Other: 100,000Proviso 47.9 (Public Def/Prqb) \$500 \$ 500.00§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ 150.00§50-21-114 (BUI Breath Test Fee) \$50 \$ 50.00§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 40.00☐ Appointed PD or appointed other counsel,Proviso 90.5 (SCJA Surcharge) \$5 \$ 5.00

\$47.12 requires \$500 be paid to Clerk

3% to County (if paid in installments) \$ 3,333.40during probation 100,000TOTAL 214,013.40Clerk of Court/Deputy Clerk: Susan PerronPresiding Judge: 1/15/16Court Reporter: Susan PerronJudge Code: 218Sentence Date: 1/15/16

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON
STATE VS

OMAR SHARIFF GENTILE

AKA: Omar Shariff Gentile, Omar Gentile

Race Sex: DOB: SS# Address: City, State, Zip: DL# SID# SC00807572*CDL Yes ☐ No ☒ CMV Yes ☐ No ☒ Hazmat Yes ☐ No ☒

In disposition of the said indictment comes now the Defendant who was

TO: Dist/PWID/Manuf Cont Subs in ProxIn violation of § 44-53-0445(A) of the S.C. Code of Laws, bearing CDR Code # 0107☐ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)The charge is ☒ As indicted, ☐ Lesser Included Offense,The plea is ☐ Without Negotiations or Recommendation,

ATTEST.

 101021
Whit Sowards, Assistant Solicitor SC Bar #

Defendant

 68630
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$ provided that upon the service of days/months/years and or payment
of \$, plus costs and assessments as applicable*; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on 2015-GS-10-5473☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives HearingTotal: \$ plus 20% fee: \$ Payment Terms ☐ Set by SCDPPPS Recipient: *Fine: \$ §14-1-206 (Assessments 107.5%) \$ §14-1-211 (A)(1)(Conv Surcharge) \$100 \$ 100.00§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ §56-5-2995 (DUI Assessment) \$12 \$ §56-1-286 (DUI Breath Test) \$25 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ §14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ 150.00§50-21-114 (BUI Breath Test Fee) \$50 \$ §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ \$ 8.40TOTAL \$ 288.40Clerk of Court/Deputy Clerk: Court Reporter: INDICTMENT/CASE#: 2012GS1002587A/W: M996334Date of Offense: 02/09/2012S.C. Code §: 44-53-0445(A)CDR Code #: 0107

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS☐ Defendant Waives Presentment to Grand Jury (def's initials)
☐ Negotiated Sentence, ☐ Recommendation by the State☐ Ordered PTUP
 days/hours Public Service Employment
Obtain GED ☐Attend Voc. Rehab Or Job Corp May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts of \$ Beginning \$ Paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,
§47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge: Judge Code: Sentence Date: