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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Paul M. Burch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RODNEY NESMITH,

APPELLANT

APPELLATE CASE NO. 2023-001854

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**
2 COUNTY OF HORRY)

3 **ORIGINAL**

4 -----

5 September 12, 2022

6 **BEFORE:** The Honorable Paul Burch

7 -----

8 STATE OF SOUTH CAROLINA,

9 Plaintiff,

10 vs.

11 RODNEY NESMITH,

12 Defendant.

13 -----

14
15 APPEARANCES:

16
17 Pierce Haar, Esq.
18 Appearing for the State.

19 Nick O'Neil, Esq.
20 Appearing for the Defendant.

21
22 Natalie Dahl, RPR
23 Nationally Registered Professional Reporter,
24 State of South Carolina Official Court Reporter
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**NOTE: Pursuant to Rule 607 (h) (1) (B), SCACR "A COURT REPORTER SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT." All requests for a copy of the enclosed transcript shall be sent to: Natalie Dahl, RPR
P.O. Box 762
Conway, SC 29526**

P-R-O-C-E-E-D-I-N-G-S

THE COURT: Which is this -- Number 20.

Yes, sir.

MR. NESMITH: Good morning. Good morning, Clerk.

I was in court last Tuesday, September 6. At that time, I requested that this Honorable Court appoint new counsel because factual proven information was not dismissed. Today, the City of Myrtle Beach Police Department is returning my cell phone after unlawful cell phone seizure. Please keep in mind that my Fourth Amendment Constitutional right is being violated in this pending litigation. My pro se pleadings at the very beginning of this litigation will conclude. I tried to enlighten this Honorable Court and court-appointed counsel. At this time I request that this case be dismissed. The records in this case filed with the clerk clearly reflect unlimited, unlawful proven facts. Officer Knapp's (phonetic) reports and testimony is totally confusing; either was perjury. Fabrication of evidence can

1 easily be revealed.

2 That's all I got, sir. I want him relieved
3 because of the cell phone that -- he had gave me
4 misleading information about the cell phone, so
5 because of that, I couldn't trust Mr. O'Neil.

6 THE COURT: Help me out here. How long have you
7 had representation?

8 MR. NESMITH: For about -- I'd say it was in May,
9 about May, but then I got arrested in April; that was
10 my first time seeing him. So then when I seen him in
11 May, I only had him for, like, about a month, and then
12 I sent a letter to Mr. Hazzard to have him replaced.
13 Mr. Hazzard told me that I had to write him a letter,
14 and I wrote him a letter back in, you know -- no, I
15 had it in March. So when I got arrested in April,
16 that is when he came and had seen me, when I was
17 incarcerated in J. Reuben. And then I said I needed
18 new counsel; this was in May. So when I wrote
19 Mr. Hazzard, he never responded to me, but then I knew
20 he received my letter because I sent it certified. So
21 then after he talked to me and told me last week that
22 I had court, and I'm like, you know, I thought that I
23 had another attorney.

24 MR. O'NEIL: Your Honor, he wrote the Public
25 Defender of Horry County asking for me to be relieved,

1 and that is what he is talking about. He wrote a
2 letter to Mr. Hazzard, the Public Defender of Horry
3 County, asking for a different public defender, but he
4 didn't file a motion with the Court until now.

5 MR. NESMITH: I didn't even know that I had to do
6 that. Mr. Hazzard told me that I just had to write
7 him, so then I wrote him and told him the reasons why,
8 because Mr. O'Neil wasn't being truthful about the
9 cell phone and other facts that I filed with the clerk
10 of court.

11 THE COURT: All right. So let me get a little
12 background. You started out representing yourself?

13 MR. NESMITH: Yes, sir.

14 THE COURT: Then counsel was appointed around
15 May?

16 MR. NESMITH: Yes; February, somewhere along
17 there.

18 MR. HAAR: February 8th, Judge.

19 THE COURT: Okay. Well, I can't get into ruling
20 on the dismissal part, okay. Because, technically,
21 he's still representing you. Anyway, bottom line --
22 well, what is your end result? You want to represent
23 yourself?

24 MR. NESMITH: Basically, I want a new counsel,
25 but if I have to represent myself, yes, I will have to

1 do that. Because I sent them some papers with the
2 Clerk of Court showing how my Fourth Amendment, you
3 know, right was violated by seizing my cell phone. I
4 was supposed to get my cell phone back in front of
5 you, but then the evidence maybe hasn't gotten here
6 yet. I told them I wouldn't take the phone back until
7 I have consent, and I would have that done in front of
8 a judge because I don't trust Myrtle Beach Police
9 Department. So when she came here this morning, she
10 was supposed to have it. That is why I wanted to wait
11 on her before I even had this, you know.

12 THE COURT: Counsel, anything about this phone
13 situation? It seems to be --

14 MR. O'NEIL: Yes. His phone was seized as a part
15 of his arrest, but nothing -- there was never a
16 search -- he just wanted his phone back. You know,
17 he's just upset about the phone being taken and --

18 MR. NESMITH: I'm upset about my rights being
19 violated, and then they had the phone for over a year.
20 This has been since September 5th. I sent the clerk
21 of court some affidavits -- that was in December --
22 and I never had those answered.

23 THE COURT: Do you think the attorney/client
24 relationship is so strained here that I need to grant
25 relief? I'm putting you completely on the spot, but I

1 need some help.

2 MR. O'NEIL: Your Honor, Mr. Nesmith has filed a
3 lot of pro se pleadings. He certainly does not trust
4 me as an attorney, and that may strain the
5 relationship. But if Your Honor -- I would do my best
6 to repair that relationship if Your Honor kept me as
7 counsel, but it is a strained relationship at this
8 time.

9 MR. NESMITH: I don't think that -- that
10 relationship cannot be repaired because of the stuff
11 that he already tried to do; for example, with the
12 speedy trial, I told him I didn't want a speedy trial.
13 I came and answered roll. I had no letter saying I
14 had to come to court. I had to find all of this out
15 from the clerk of court. I asked him to e-mail me how
16 they can take my phone without a search warrant, and
17 he said he would do so, but he never did.

18 THE COURT: One final question: You have the
19 ability to hire you an attorney, if you want one.

20 MR. NESMITH: Basically, no. No, I do not. I
21 was hoping that they appoint another one. Like I
22 said, everything that I filed, even with the clerk of
23 court, before I even filed, they haven't answered none
24 of those questions yet.

25 THE COURT: All right. Based on what I'm

1 hearing, your motion for relief of counsel is granted.
2 The case is continued until new counsel can be
3 onboard.

4 If you will notify Mr. Galmore, please, sir. We
5 need to arrange for another attorney. Now, this will
6 be the end of it, because if you are messing around
7 with this you can easily be put in a position that you
8 have to represent yourself, and you don't need that.

9 MR. NESMITH: Yes, sir. Yes, sir.

10 MR. O'NEIL: Your Honor, a speedy trial motion
11 was granted. I know this is maybe not -- especially
12 because I was just relieved, but him saying he no
13 longer wishes for a speedy trial, I was wondering if
14 we could move to remove his speedy trial? I mean, it
15 was already granted by the Court, Your Honor, so I'm
16 not sure you can do that. He had a speedy motion
17 filed and granted.

18 THE COURT: Who signed that speedy trial order?

19 MR. HAAR: Your Honor, it would have been Judge
20 Verdin.

21 MR. NESMITH: As I spoke to Mr. Hazzard, I never
22 asked for a speedy trial. What I asked for were those
23 five questions on my affidavit to be answered. This
24 was since December, but they never got answered.

25 THE COURT: Do I need to say Hazzard or

1 Mr. Galmore?

2 MR. O'NEIL: I will let the Public Defender's
3 Office know that it requires new counsel.

4 THE COURT: Tell them that they immediately need
5 -- I just can't step in and set that order of speedy
6 trial aside. They need to file a motion to vacate
7 that with Judge Verdin.

8 MR. O'NEIL: Yes, Your Honor.

9 THE COURT: All right.

10 (Whereupon, the proceedings concluded.)
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CERTIFICATE OF REPORTER

State of South Carolina)

County of Horry)

I, Natalie Dahl, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the hearing/plea of the captioned case, relative to appeal, in the Court of General Sessions for Horry County, South Carolina, on the 12th day of September, 2022.

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

March 11, 2024

Natalie Dahl, RPR

Court Reporter

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STATE OF SOUTH CAROLINA **TRANSCRIPT OF RECORD**
COUNTY OF HORRY CASE NO.:2022-DR-26-00360

March 23, 2024

BEFORE: The Honorable Robert Bonds

STATE OF SOUTH CAROLINA,

Plaintiff,

vs.

RODNEY NESMITH,

Defendants.

APPEARANCES:

David Beamer, Esq.
 Appearing for the Plaintiff/State.

Laura Hiller, Esq.
 Appearing for Defendant.

Court Reporter: Natalie Dahl, RPR
 Registered Professional
 Stenographic Reporter &
 SC Official Court Reporter

1 NOTE: Pursuant to Rule 607 (H)(1)(B), SCACR "A
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Dahl, RPR, P.O. Box 762, Conway, SC 29526

5 **INDEX**

6 Description Page

7 (NONE)

16 **EXHIBITS**

17 (NONE)

22 **Transcript Legend**

23 Dash (--) Indicates an interruption in speech
24 Ellipses (...) Indicates trailing off in speech
25 Phonetic (ph) Indicates a phonetic word

12

P R O C E E D I N G S

1
2 THE COURT: The second case, can we hear the
3 motions?

4 MS. HILLER: He is not here, Judge.

5 THE COURT: Have either one of you had an
6 opportunity to reach out to the bondsman to find
7 out maybe he or she -- the bondsman would have an
8 idea as to where these individuals are? That is
9 sort of their job, but....

10 MS. HILLER: My client generally does appear
11 about 45 minutes after whenever we tell him to be
12 here, Judge. He is from Hemingway, and I think he
13 leaves at the time court is supposed to start. I'm
14 not trying to make excuses, I'm just telling you.
15 I do still expect him.

16 THE COURT: I'm a very patient person.

17 Bailiff, call the name of Rodney Nesmith in
18 front of the courthouse for me three times. I'll
19 get you back in here and put you on the record.
20 Thank you.

21 (A recess was taken.)

22 THE COURT: Mr. Nesmith was supposed to be
23 here -- he knew his case was up for trial and was
24 supposed to be here at 9 o'clock, and you have
25 advised him on that?

1 MS. HILLER: Yes, Your Honor.

2 THE COURT: For the record, your name is?

3 MS. HILLER: Laura Hiller.

4 THE COURT: Counsel, I am issuing a bench
5 warrant, and maybe when he gets here they'll just
6 take him into custody, because the train is not
7 waiting. It is 9:40. And while Mr. Galmore's
8 client was not here, I was looking to have motions
9 heard on your client's case so that we could
10 determine whether or not to continue it or move
11 forward with his case. But I'm going to issue a
12 bench warrant on him.

13 Mr. Bobby is coming in at my request. I
14 think he sounded that name, and as soon as he gets
15 back, I'll put that on the record. Then we'll go
16 ahead and move forward with Mr. Vereen's case.

17 Mr. Galmore, I'll be happy to entertain a
18 motion from you to continue it, and then I'm going
19 to put my findings on the record as it relates to
20 that matter.

21 Here he is. Come on in. Raise your right
22 hand.

23 (ROBERT "BOBBY" ROPP, having been duly
24 sworn, testified as follows:)

25 THE COURT: State your name.

14

1 MR. ROPP: Robert Ropp.

2 THE COURT: And, sir, let me ask you: Did
3 you, at my request, sound the name Rodney Nesmith
4 three times at the front of the courthouse?

5 MR. ROPP: Yes, sir.

6 THE COURT: Any answer?

7 MR. ROPP: No response.

8 THE COURT: Thank you very much. I'm issuing
9 a bench warrant for his arrest.

10 MS. HILLER: Yes, Your Honor.

11 (A recess was had while other cases were
12 brought before the Court.)

13 THE COURT: Mr. Nesmith -- you can take those
14 cuffs off. What I'll do is I'm going to dismiss
15 the bench warrant against him.

16 Because we got ready to start at 9:00, what I
17 have done is I -- it was not filed, but I've
18 written "rescind" on that bench warrant. So what
19 I'll do is I'll go and have them clock that in. Is
20 that sufficient, Counsel?

21 MS. HILLER: Yes, Your Honor.

22 THE COURT: And we can provide him a copy so
23 he understands and knows that that bench warrant I
24 issued this morning was rescinded this morning.

25 MR. NESMITH: Thank you.

1 THE COURT: No problem. What I want to do,
2 Mr. Nesmith, is talk to you for just a moment. We
3 talked about this briefly in chambers, and I
4 understand that there was a motion that Mr. Nesmith
5 made?

6 MS. HILLER: Your Honor, just for a quick
7 short procedural history, last Friday Mr. Nesmith
8 sent me an email asking me to have myself relieved
9 from the case.

10 THE COURT: Let me stop you there. Was that
11 the first time?

12 MS. HILLER: That he had asked for that?
13 Yes. Specifically asked for that, yes.

14 THE COURT: Yes, ma'am.

15 MS. HILLER: So I prepared it, sent a copy to
16 the Solicitor on Friday. It wasn't clocked, and I
17 had that clocked on Monday morning.

18 Monday morning, Mr. -- we came to court that
19 early afternoon in front of Judge Price.
20 Mr. Nesmith was given an opportunity to argue that
21 motion, and he argued for a continuance so that he
22 could get another attorney, which Judge Price
23 denied.

24 At this point, Mr. Nesmith has expressed over
25 the week, several times to me, through e-mail, that

16

1 he did not want me to remain his attorney, and he
2 did not want me to be his trial attorney.

3 That being said, this is our next opportunity
4 to be in front of a judge, and that is where we
5 are.

6 THE COURT: Counsel -- I'll hear from you in
7 a second, sir, but let me make sure I understand.

8 So how long have you represented Mr. Nesmith
9 on this matter?

10 MS. HILLER: I'm pretty sure that I was
11 appointed to him in November. I was appointed
12 after Attorney Nick O'Neill was relieved from the
13 case, and Mr. Nesmith and I have been in contact
14 pretty much from the beginning of the
15 representation.

16 I will tell you that from the beginning he
17 has not been pleased with what I have been doing in
18 the case. He asked to get a lot of things, which
19 we did try to get, like transcripts and different
20 things connected to the case, but when it comes
21 down to it, Mr. Nesmith has filed quite a few pro
22 se motions for dismissal for various reasons that I
23 have -- as soon as I got back all of the
24 information, transcripts and everything, and could
25 confirm that I seen a legal basis, at that point

1 our communication and our relationship completely
2 broke down.

3 THE COURT: When would that have been?

4 MS. HILLER: About a month-and-a-half ago.

5 Do you think that is fair?

6 THE COURT: I'll hear from him in one second.

7 MS. HILLER: I'm just trying to --

8 THE COURT: Yes, ma'am.

9 MS. HILLER: I think it's been about that
10 long.

11 THE COURT: So let me ask you this: Mr.
12 O'Neill, was that somebody in your office, or is
13 that -- tell me about that, ma'am.

14 MS. HILLER: He works for the Public
15 Defender's Office. I am a private attorney that
16 does contract cases, that takes 608 cases, so I
17 don't work with him directly.

18 MR. BEAMER: Just a small correction. Mr.
19 O'Neill did formerly work for the Public Defender's
20 Office. He since has left that office and is now
21 working as a Solicitor in Greenville, I believe.

22 THE COURT: But Mr. O'Neill was assigned or
23 appointed to represent Mr. Nesmith, and at some
24 point in time, Mr. O'Neill moved to be relieved?

25 MS. HILLER: No, Your Honor. The client

1 moved to have him relieved.

2 THE COURT: Okay. And at that point you were
3 appointed?

4 MS. HILLER: Correct. Mr. Nesmith's hearing
5 was September 12th having Mr. O'Neill relieved.

6 THE COURT: All right.

7 Mr. Nesmith, you filed a motion to continue
8 your case earlier this week, and that motion was
9 heard by Judge Price; is that correct?

10 MR. NESMITH: Yes, sir. But it wasn't a
11 motion to continue. I asked for it in the end;
12 however, I asked for her to be relieved at the top
13 of -- when I first started speaking with her, I
14 asked for her to be relieved.

15 THE COURT: Are you saying that Judge Price
16 denied your motion for her to be relieved?

17 MR. NESMITH: Yes, sir. He said it would
18 carry on to the next judge, and I didn't get to
19 speak at all. I probably have been to court three,
20 four times this month here where I have to check
21 and ask for the clerk of court, so the clerk of
22 court will tell me about my court date. I had a
23 bench warrant because I didn't have the time -- I
24 would have gotten a bench warrant last Thursday. I
25 had a bench warrant Monday because I didn't know I

1 had to go to court.

2 Last week Thursday, Ms. Alexis Gore told me
3 that my dismissal would be heard. When I got here
4 Thursday -- she said at 1:30. I got here. And
5 then another guy that was here, he told me -- I was
6 sitting over here by myself, and he said I'll let
7 the judge talk to you in a second. What's your
8 name? I told him my name. He went over in the
9 corner and called her. So when he called Ms.
10 Hiller, he asked -- the judge -- he said
11 Mr. Nesmith wants to speak to you, but Ms. Hiller
12 is his counsel. He said my motion was already
13 heard, but my dismissal wasn't heard, sir.

14 THE COURT: Whoa -- whoa -- he's talking.
15 Your motion wasn't heard? You are talking
16 about your motion earlier in front of Price?

17 MR. NESMITH: No. I called the Solicitor's
18 Office, and Alexis Gore told me that. I asked when
19 would my dismissal be heard, and she said it will
20 be heard Thursday at 1:30. When I came Thursday at
21 1:30, I'm the last person they get to. I'm
22 stopping everybody, and no one going to pay me no
23 attention.

24 THE COURT: I'm sorry, Mr. Nesmith, my mind
25 wandered for a second. To hear your motion to

1 what?

2 MR. NESMITH: Motion to dismiss.

3 THE COURT: Yes, sir. Go ahead.

4 MR. NESMITH: So now he said I'll let you
5 talk to the judge. So he went over there and on
6 his phone. So, now, the judge called my name, and
7 he said, Yeah, Mr. Nesmith has counsel, and his
8 counsel said that his motion was heard already, but
9 it wasn't. That's why I was here. So then they
10 told me I had to come to court Monday, but I never
11 had a notice to come to court Monday at 8:30, and
12 that is -- I have in her e-mail, No later than
13 Monday afternoon, but then I had a bench warrant
14 Monday put on me that had to be taken off because
15 it was heard at 8:30.

16 THE COURT: But in any event, you were in
17 court Monday?

18 MR. NESMITH: Yes, sir.

19 THE COURT: And you were advised on Monday
20 that this case was on the trial roster?

21 MR. NESMITH: Yes, sir.

22 THE COURT: I know Price did that. So you
23 knew this case was going to be tried?

24 MR. NESMITH: Yes, sir. Yes, sir.

25 THE COURT: All right. And you understood

1 why I issued the warrant. It was supposed to be at
2 9 o'clock, and that is why I rescinded the warrant.
3 You understand that?

4 MR. NESMITH: Yes, sir.

5 THE COURT: All right. So let me ask you
6 this, Solicitor --

7 MR. BEAMER: Yes, Your Honor.

8 THE COURT: -- what did Judge Price do on
9 Monday?

10 MR. BEAMER: On Monday, Your Honor, we called
11 the case. I read off the indictment number,
12 warrant number, and indicated to Judge Price that
13 we're here to formally arraign the defendant, that
14 he is charged with distribution third, that's an
15 offense that carries a minimum of 10, a maximum of
16 30 years. The State offered a negotiated three
17 years on a distribution second, that the defendant
18 was rejecting that offer, in which to move forward
19 to trial.

20 Mr. Price heard that and spoke with the
21 defendant to confirm that that is, in fact, what
22 his understanding is, that is what he wanted to do.
23 To my recollection, I know Mr. Nesmith started to
24 discuss -- to make some sort of a motion. I only
25 recall him asking for a continuance to hire new

1 counsel, which the judge did deny. He said his
2 motion was denied, and that they would be moving
3 forward. That is the best of my recollection on
4 that, Your Honor.

5 THE COURT: I know -- Mr. Nesmith, my concern
6 is that if Judge Price denied the motion three days
7 ago, what authority do I have to now grant that
8 motion? And I'll give you an opportunity to talk,
9 believe me. I -- because the rule basically is
10 that one judge of equal level -- and Judge Price
11 may not think that I'm on the same level, but I
12 am -- if we're on the same level, I can't overturn
13 or overrule what that judge has ordered absent some
14 change of circumstance. So what change of
15 circumstance has taken place in three days, sir,
16 because that's what I would like to hear from you
17 on?

18 MR. NESMITH: Yes, Your Honor. Basically, at
19 the end of Judge Price's statement, he said that I
20 can ask the next judge for a continuance. And then
21 my thing was a continuance. I still have the same
22 paper that I started off with in my opening where I
23 said I would like for another attorney.

24 THE COURT: So this is your second attorney,
25 and you want to get a third attorney?

1 MR. NESMITH: Yes. And if the only option is
2 for me to represent myself, I would have to do
3 that, because Ms. Hiller only believes in, I say,
4 justice for some people, with the understanding
5 that with the stuff I gave her, all of this stuff
6 is basically law. She is saying it won't work,
7 which she hasn't tried, and I'm telling her --

8 THE COURT: Whoa, whoa. You are talking a
9 touch too fast for me.

10 MR. NESMITH: Yes, sir. Pardon me. I was
11 telling her about my Constitutional rights that had
12 been violated. I hold her how they took my phone,
13 and she hasn't mentioned that. I was incarcerated
14 for 23 days, and they didn't say nothing about
15 that. I lost my job when I was making \$18 an hour,
16 never making that, all because of a cop that he was
17 messing with a girl that I was messing with before
18 me at this time, and that officer is Officer
19 Cardona (ph). And I'm going to tell them about the
20 misconduct and what they did to me for almost two
21 years now, and that's why we're here.

22 THE COURT: All right. I'm assuming that
23 your lawyer has probably told you perhaps that some
24 of the information that you just shared with me
25 might not be relevant in the case. Has she

1 indicated that?

2 MR. NESMITH: No, sir. Me and Ms. Hiller
3 don't talk. She e-mailed last night about 5
4 o'clock and telling me she has no strategy and my
5 only option is to plead guilty. I have those
6 e-mails also, sir. I also have e-mails -- if I'm
7 going to go in a battle with you, risking my life
8 for 30 years for nothing I didn't do, basically I
9 would have to have someone on the same lines as me,
10 not no misunderstanding.

11 THE COURT: What has she done wrong, sir?
12 What did your first lawyer do wrong? Let's back
13 up. What did the first lawyer --

14 MR. NESMITH: He was dishonest, and that is
15 why he was fired. When they took my cell phone, I
16 said, sir, if they can take my cell phone without a
17 warrant, then can you get that -- I mean, if they
18 can take my cell phone without a warrant from a
19 judge, can you e-mail me that they can do that, and
20 he said he would not e-mail. That is where the
21 distrust came from.

22 THE COURT: Why do you want to be relieved of
23 your counsel now?

24 MR. NESMITH: I think it is best for me to
25 go -- in this situation, they are talking about 30

1 years. I will be able to explain the situation
2 better myself.

3 THE COURT: Oh, you mean you would be able to
4 do a better job representing yourself?

5 MR. NESMITH: Yes. I will have to. If I
6 have undisputed facts that are not being litigated,
7 I would have to litigate those facts myself. It is
8 not that I'm lying on anyone. These are facts.
9 These are undisputed facts. When you come to -- so
10 for Ms. Hiller, I said so did you ever hear a case
11 about Brady violation? So then she said, Give me a
12 case where the Brady violation was violated. I
13 said, Brady versus Maryland, Miss. And that is the
14 same thing as this.

15 THE COURT: Right. Well, let me ask you
16 this: You know you are guaranteed an attorney?

17 MR. NESMITH: Yes, sir.

18 THE COURT: But you are not guaranteed an
19 attorney of your choice, okay. You have been
20 through -- you told me that one of your lawyers you
21 had issues with his veracity or truthfulness or
22 problems with him. You've now got problems with
23 your present lawyer. I'm just -- you know, I'm
24 just not inclined -- there is nothing that would
25 lead me to believe that a new lawyer would end in a

1 different result. I think if I appointed a new
2 lawyer, I don't know that there will be any
3 different result in how you feel this case needs to
4 be addressed or argued.

5 MR. NESMITH: Yes, sir. I was just looking
6 at the law, and I wasn't going to get appointed
7 another attorney. I was just saying that I would
8 rather represent myself.

9 THE COURT: So are you telling me you are
10 ready to move forward?

11 MR. NESMITH: And represent myself, yes, sir.
12 And I would have a statement to put on the record,
13 if you don't mind?

14 THE COURT: Hold on one second. There is a
15 lot of facts that don't -- hold on.

16 I don't want to get into the facts of this
17 case at this point. I don't want to get into the
18 facts of this case at this point. What I want to
19 know is: You want to your waive your right to a
20 lawyer and represent yourself; is that what you
21 want to do?

22 MR. NESMITH: Yes, sir. I think it would be
23 best for me to do that. And, also, I sent Ms.
24 Hiller a witness list last night, but she said that
25 she would not put in that witness list. So these

1 are things I would have to do to prepare and talk
2 to other witnesses that I have that -- these are
3 key witnesses.

4 THE COURT: You understand that the ship is
5 rocking and rolling today. I mean, we're not -- I
6 mean, I'm not continuing this case so you can go
7 and run witnesses down. I mean, it's your
8 obligation to have these witnesses here and ready
9 to go.

10 MR. NESMITH: Yes, sir. So suppose we would
11 go today, these witnesses are still not witnesses
12 because there are still some witnesses she don't
13 have on the list.

14 THE COURT: But if you are representing
15 yourself, sir --

16 MR. NESMITH: Your Honor -- excuse me.

17 THE COURT: You are doing fine. That's all
18 right. You understand, sir, this case is supposed
19 to go to trial this week? You knew that.

20 MR. NESMITH: Yes, sir.

21 THE COURT: These witnesses have to be ready
22 to go today.

23 MR. NESMITH: I just asked her about the
24 witness list, and I'm just getting with Ms. Hiller
25 just to say we are going to trial today. We never

1 got a discussion for not even 10, 15 minutes. We
2 have no strategy at this point to say that we are
3 going to go to trial today. So you are talking
4 about 30 years of my life just to -- like right
5 now. There will be some things I have to go
6 through in order to have a fair trial.

7 THE COURT: The problem is you have known for
8 six weeks that the relationship between you and
9 your lawyer has been falling apart. You don't want
10 to hire your own lawyer --

11 MR. NESMITH: I don't have the money to hire
12 my own lawyer. I would ask my family member to
13 help me in hiring a private investigator and
14 getting the questions I need answered -- answered,
15 and that would take at least seven days, I would
16 say, sir.

17 THE COURT: Yeah. But you have known about
18 this trial for weeks, sir.

19 MR. NESMITH: No, sir. No, sir, I have not.
20 Ms. Hiller told me two weeks ago in court that we
21 are on the trial list for the 20th. I told the
22 judge also that this is my first time hearing that.
23 And she said -- she sent me an email saying since
24 you told the judge I didn't tell you, I'm telling
25 you now, and I just got that e-mail last week.

1 THE COURT: When did he get notice?

2 MR. BEAMER: The State did send a subpoena
3 notifying this case was on the roster for this
4 week. That was sent on March 6, 2023. When the
5 defendant was present for his arraignment on
6 Monday, I did provide a copy of that subpoena, as
7 he claimed he didn't receive it.

8 THE COURT: Counsel, when did you tell him
9 this would be on the roster for trial this week?

10 MS. HILLER: I recall a phone call with him.
11 I would have to check my notes to see when, but I
12 don't recall when this roster was released. But it
13 was right about when the roster was released.

14 A little more procedural history about this
15 case. Mr. O'Neill filed for a speedy trial in this
16 case, and when I got the case, it was on the trial
17 roster, and I didn't have discovery yet. There
18 wasn't even a solicitor because there was a
19 switchover, and Mr. Beamer is new to the case as
20 well.

21 When it was on the December roster, it was
22 continued. I asked that it be lifted. Mr. Nesmith
23 was interested in his motion to dismiss being
24 heard, and I explained to him that that was
25 something that wasn't even going to be addressed

1 until we were in front of the judge on the trial
2 roster. So when the case showed up on the trial
3 roster shortly after -- I think we've known for
4 about two months. I'm not exact on that, but they
5 usually give about two months' notice. I do recall
6 having a phone conversation, which he disputes. I
7 don't have any of -- most of our communication has
8 been through e-mail. I don't have an e-mail
9 telling him about the trial roster until after
10 court two weeks ago when he told the judge I hadn't
11 told him. But we did have a phone conversation
12 about it.

13 THE COURT: Hold on. What's the State's
14 position on moving forward as opposed to -- what it
15 seems to me is the request now to represent
16 himself, but it would sound to me that you are also
17 asking for a continuance; is that what you are
18 asking for?

19 MR. NESMITH: I'm asking to represent myself
20 with enough time to --

21 THE COURT: So you want a continuance. You
22 don't want to try it today? You want some time,
23 right?

24 MR. NESMITH: That's basically --

25 THE COURT: Is that what you are asking?

1 MR. NESMITH: I'm basically asking to
2 represent myself.

3 THE COURT: I understand that, but are you
4 ready to go today?

5 MR. NESMITH: Yes. I mean, if I would have
6 to go today.

7 THE COURT: No. I'm not asking you if you
8 have to go today.

9 MR. NESMITH: I'm not prepared.

10 THE COURT: In that case, sir, are you asking
11 me to continue the case to give you time to
12 prepare; is that what you are asking?

13 MR. NESMITH: I would like you to, sir.

14 THE COURT: So in response to that, what does
15 the State say?

16 MR. BEAMER: The State's position is we're
17 ready to move forward with trial. I have some
18 concern that if we move forward today -- you know,
19 his counsel has had discovery up to this point, but
20 I don't know how much the defendant has really
21 prepared for that.

22 Your Honor, I would ask that if he's going to
23 represent himself, that we go through the Faretta
24 proceedings on the record, make some findings of
25 fact that he's able to stand and represent himself,

1 and understands the risks involved with that.

2 You know, as has already been discussed, this
3 case has been on the roster for a few months now,
4 and the defendant had notice. This is his second
5 attorney, and if he wanted another attorney, he had
6 ample time to hire one. So, you know, like I said,
7 Your Honor, the State is ready to proceed.

8 MS. HILLER: May I speak briefly on one
9 issue?

10 THE COURT: Go ahead.

11 MS. HILLER: As far as the continuance -- and
12 I know I don't have much of a dog in the fight, but
13 I do think there is a point where it becomes unfair
14 because he has been filing motions that everyone
15 has ignored because he has an attorney. If he
16 would have issued subpoenas right now, they would
17 be ignored because he has an attorney. We have no
18 dual representation in South Carolina, and right
19 now the stuff that I'm filing is taking precedent
20 over the stuff that he's filing.

21 I would say, on that grounds, he does need
22 time to actually issue subpoenas. He hasn't tried,
23 that I'm aware of, but I don't think it would have
24 gone very well if he did it on his own, just like
25 his motions are sitting in the clerk's office not

1 getting scheduled, because there is no hybrid
2 representation in South Carolina.

3 So, from my perspective, it wouldn't be
4 completely fair to throw him into a situation where
5 up to this minute he has any right to do anything
6 on his case.

7 THE COURT: One more thing, yes, sir.

8 MR. NESMITH: Excuse me. I'm sorry.
9 Basically, I'm at my daughter's house getting my
10 mail. I haven't received any mail, but when I went
11 in the Solicitor's Office, the address was wrong.
12 It was 302 instead of 304, and that is why I wasn't
13 getting no correspondence.

14 THE COURT: If you have a lawyer, it is your
15 job to make sure that they know where your address
16 is. In other words, it is called "proactive." You
17 have to be proactive -- hold on. I don't need to
18 hear anymore.

19 I think you certainly stated with
20 particularity as to why you want to represent
21 yourself, because I think you basically told me
22 that you think you can do as good a job, or a
23 better job, than the two folks who represented you,
24 because as you said, a lot of this is just law, and
25 you looked at the law. I'm not agreeing with you,

1 I'm just saying you certainly articulated that, and
2 I understand your position.

3 You know, I think your counsel brings up a
4 good point about dual representation and the fact
5 that she is filing motions and that you are filing
6 motions, and perhaps your motions are not looked at
7 as quickly or with enough emphasis because she's
8 representing you at this point. It was well said.

9 I would submit, sir, it is statements like
10 that that tell me that's why you really need a
11 lawyer, but you certainly can represent yourself,
12 if that's what you want to do.

13 Now, what I am going to do -- I think the
14 Solicitor also made an excellent point about
15 advising him of his Faretta rights, and I think
16 that is appropriate.

17 Are you familiar with your Faretta rights?

18 MR. NESMITH: No, sir, I'm not.

19 THE COURT: That's another reason, sir, why
20 having an attorney is important. She would have
21 discussed that with you, but I know she knows what
22 they are.

23 My point is -- I'll go through these with
24 you, okay. I don't think you are entitled to
25 another defender. If you want to hire your own

1 lawyer, you can. I'll continue your case, and I'll
2 give you 60 days, okay. You have 60 days.

3 MR. NESMITH: Thank you.

4 THE COURT: Well, you haven't heard
5 everything, okay. It is going to be specific. It
6 is going to say, number one, the case cannot be
7 continued beyond 60 days. I'm issuing that now.
8 Actually, the resident judge could probably grant a
9 continuance, but he's going to know that it was my
10 intention that that not be done, and he can do with
11 that what he wants. But 60 days.

12 Two, you are not to be assigned another
13 defender, which means because we're going through
14 these rights, and you are going to tell me you will
15 represent yourself, and you don't have to tell me,
16 but I think that is what you want to do, and we'll
17 go through that, and my order will say you can't
18 request a public defender because you already had
19 two. You just haven't given sufficient grounds as
20 to why she's done anything wrong. I haven't heard
21 it, okay. And I know you disagree with me, but
22 this is the finding I'm making.

23 What I would tell you is this: If you want
24 to hire a lawyer, you can hire a lawyer. That's
25 fine. You can do that. If you want to hire an

1 investigator, that is fine. But all of this has to
2 be done within 60 days and ready to go. It also
3 means you can't find a lawyer on day 59 and have
4 him or her walk in and ask for a continuance. I'm
5 putting that in my order.

6 What I'll suggest is this: I'll go through
7 the Faretta rights right now. What I want to do is
8 I'll have you -- read this document to you. I'll
9 hand the document to you. I'll have you read it.
10 I'll have you sign it.

11 Now, the only thing I would suggest is, I
12 would suggest that you and your counsel -- and you
13 can represent yourself, but I would suggest that
14 you have her be your stand-by counsel. Let me tell
15 you what make means. You control the case. You
16 are the lawyer. You represent this case, represent
17 yourself. She's not going to help with subpoenas.
18 She won't file motions. She's not going to do
19 anything other than when you are in court, if
20 something comes up, and he starts arguing something
21 that shoots over your head, if you want to, you
22 could go and say, What does that mean? She may be
23 able to tell you, and perhaps that would help you,
24 okay.

25 MR. NESMITH: Yes, sir.

1 THE COURT: But she's not your lawyer. Do
2 you see the benefit of having a stand-by lawyer?
3 You understand that?

4 MR. NESMITH: Yes, sir. Yes, sir. I
5 appreciate that.

6 THE COURT: But if you go, Oh, I don't know
7 how to subpoena somebody to get them to come to
8 court. Does a stand-by lawyer help you with that?
9 No. You represent yourself. Your stand-by lawyer
10 is only going to be when you are in court, that is
11 what she'll be doing. She's not going to do the
12 work for you.

13 In other words, it is not like, oh, good, I
14 represent myself and I'm her boss and now I can get
15 her to go do things. That is not what they do. I
16 want to make that clear right now. Stand-by means
17 in the courtroom. When you are in the courtroom,
18 if there is a motion, she can be there to perhaps
19 tell you -- to help with a question, but she's not
20 there to work this case. Do you understand that?

21 MR. NESMITH: Yes, sir.

22 THE COURT: What I'm going to do is this:
23 I'll need you to fill that out. You all stand
24 down, and I'll continue the case.

25 (A recess was taken.)

1 THE COURT: These Faretta warnings, I want
2 that to be on paper when Mr. Nesmith signs it,
3 okay?

4 MR. BEAMER: You are just talking about the
5 offenses he is charged with and potential sentences
6 he is facing?

7 THE COURT: Yeah. That is exactly what I
8 want, because that should be in the Faretta warning
9 when he signs it, because he needs to understand
10 the serious nature of this matter.

11 (A pause in the proceedings.)

12 MS. HILLER: The Solicitor has only put the
13 charge that was planning to go to trial. He's not
14 planning to change it. While Mr. Nesmith has quite
15 a few pending charges, the only thing the State
16 intends to go forward with is the charge listed
17 there.

18 THE COURT: So in moving forward with that
19 charge, sir, are you dismissing the remaining
20 charges?

21 MR. BEAMER: We would be, yes.

22 THE COURT: So, Mr. Nesmith, let me ask you
23 something before I get into this. You understand
24 the nature of the charges that you have against
25 you, correct?

1 MR. NESMITH: Yes, sir.

2 THE COURT: You know there is a litany of
3 charges?

4 MR. NESMITH: Yes, sir.

5 THE COURT: You understand that the State
6 plans to move forward -- I think they will
7 ultimately try you and are going to be dismissing,
8 potentially, these other charges, and moving
9 forward on the one and most serious charge, sir,
10 which is the distribution of cocaine third offense;
11 you understand that?

12 MR. NESMITH: Yes, sir.

13 THE COURT: You understand, sir, that if you
14 are convicted of that charge, the distribution of
15 cocaine third offense, if a jury convicts you of
16 that charge, that the judge must impose a sentence
17 of at least ten years. Do you understand that,
18 sir? I mean, I can like you and say you did a good
19 job representing yourself, and I think you are a
20 nice guy, but I can't give less than ten years; do
21 you understand that?

22 MR. NESMITH: Yes, sir.

23 THE COURT: And it won't be me. I won't be
24 coming back here. But the judge who hears the
25 case, sir, could then give you a 30-year sentence

1 if you are convicted. Do you understand that?

2 MR. NESMITH: Yes, sir.

3 THE COURT: I know nothing about the
4 strengths or weaknesses about the State's case. I
5 know nothing about the strengths or the weaknesses
6 of your case. It is kind of designed that way.
7 I'm rolling in, listening, trying to make sure we
8 have an even playing field; that is what I do.

9 Now, you also understand if you are convicted
10 of that charge, that I believe you are going to
11 have to serve 85 percent of whatever time you get
12 before you might become parole eligible? The
13 reality plan is you kind of have to plan
14 day-for-day, because you don't know what SCDC will
15 do. Anyone that tells you they know what they'll
16 do, I think is probably half crazy. Believe it or
17 not, they have lawyers who almost all but
18 specialize in doing that, because it is so
19 difficult to find out and know for sure. But I
20 think you probably could best decide that you'll
21 end up serving day-for-day on that ten.

22 What I want to know is: You are aware of the
23 present offer; are you not?

24 MR. NESMITH: Yes, sir.

25 THE COURT: And the present offer is being

1 presented -- or my understanding is it is a
2 negotiated offer. Do you know the difference
3 between a negotiated offer and a recommended offer?

4 MR. NESMITH: No, sir.

5 THE COURT: Would you like me to explain it
6 to you?

7 MR. NESMITH: Yes, sir.

8 THE COURT: Oh, we need to let the jury go.

9 THE CLERK: Thank you. That was my question.

10 THE COURT: Tell them thank you.

11 THE CLERK: I will. And the judge is done,
12 so you are done.

13 THE COURT: Okay.

14 So a negotiation is just that it's a contract
15 between you and the Solicitor. The judge either
16 accepts the negotiation or rejects the negotiation.
17 If I accept it, that means I must impose that
18 agreement. If I don't accept it, you all stand
19 down and go back to another judge, another day, and
20 deal with this another time. But negotiated means
21 the judge can't deviate from it. My understanding
22 of this case is that it was a negotiated
23 six-year --

24 MR. BEAMER: Five years, Your Honor.

25 THE COURT: Negotiated five-year sentence.

1 What that means is that if I get in here and that
2 is -- that would be pleading to what?

3 MR. BEAMER: Lesser included of distribution
4 of cocaine second offense, Your Honor, which would
5 be, I believe, 65 percent.

6 THE COURT: But that is 5 to 20?

7 MR. BEAMER: Five to 30, I believe.

8 MS. HILLER: It is considered a non-violent
9 charge, though.

10 THE COURT: But it is a -- carries a minimum
11 of five, mandatory minimum?

12 MR. BEAMER: Correct, Your Honor.

13 THE COURT: Up to?

14 MR. BEAMER: Up to 30.

15 MS. HILLER: He may be correct.

16 THE COURT: Well, in any event, what that
17 means is I either accept it or reject it. If I
18 accept it, I can't give you less, and I can't give
19 you more.

20 A recommendation is different. A
21 recommendation is they recommend this time. Your
22 lawyer may recommend some other time, but I can do
23 what I want, okay.

24 Now, I can't go below what mandatory minimum,
25 the law doesn't allow me to. But with a

1 recommendation, I can give you 20 years, 18. The
2 Court has the discretion of accepting the
3 recommendation, following or not following the
4 recommendation.

5 So a negotiation gives you, sir, a little
6 more security because you know the judge will
7 either accept it or reject that matter, and you
8 stand down and find another judge, or whatever you
9 do. If you don't have a lawyer, you deal with that
10 another day. I want to make sure that you
11 understand the difference in what is on the table,
12 and what is not on the table. I don't know if it's
13 a good case or a bad case. I just want you to
14 understand the charges they plan on going forward
15 on, with what the risk is in terms of in the event
16 that you are convicted, and what the risk is in the
17 event that I would accept an offer that they are
18 presently offering. Do you understand that, sir?

19 MR. NESMITH: Yes, sir. Yes, Your Honor.

20 THE COURT: One other thing I want you to
21 know. I want you to know, sir, that they are not
22 bound to keep that offer on the table. So what
23 that means is tomorrow they can pull that offer, or
24 pull it right now.

25 MR. BEAMER: If I may, the State would be

1 pulling it at the end --

2 THE COURT: I wasn't encouraging you to pull
3 the offer, but I wanted you to know, because when
4 you are representing yourself, if you get into the
5 case and decide -- looking at whatever it is that
6 you look at, analyzing, that that is not a bad
7 deal -- and I don't know if it is or isn't -- but
8 if you decided that it is not, I don't want you to
9 think that you can go back tomorrow and say, You
10 know what, that's not a bad offer -- or next week
11 or after you have your investigator, whatever it is
12 you are going to do. You can't go back and say,
13 Hey, that's a pretty fair deal, I'm going to take
14 it. Because their response may be, We're not
15 offering that deal. They can change their mind.
16 In other words, you can't rely upon the offer
17 today, okay, tomorrow. You follow me on that?

18 MR. NESMITH: Yes, sir.

19 THE COURT: So let me give you this, sir.
20 You have been charged with the criminal offense
21 listed above, and in this case I have distribution
22 of cocaine third offense. That carries anywhere
23 from 10 to 30 years. You understand that?

24 MR. NESMITH: Yes, sir.

25 THE COURT: Before you can plead guilty or

1 not guilty to this charge, or proceed to trial, you
2 must be informed that you have a right to an
3 attorney. You understand that?

4 MR. NESMITH: Yes, sir.

5 THE COURT: If you cannot afford an attorney
6 and meet certain income guidelines established by
7 the Court, an attorney will be appointed to
8 represent you, if you choose, and of course you
9 understand that, because you do meet the guidelines
10 because you've been appointed two different
11 court-appointed attorneys, right?

12 MR. NESMITH: Yes, sir.

13 THE COURT: If you do not meet the guidelines
14 to have an attorney represent you, you still have
15 the right to an attorney to represent you on the
16 charge listed above; however, the attorney must be
17 retained at your own expense. And I told you that
18 you can go and hire a lawyer at your own expense,
19 but I'm not going to give you another
20 court-appointed lawyer. You understand that?

21 MR. NESMITH: Yes, Your Honor.

22 THE COURT: You do have a Constitutional
23 right to represent yourself and proceed without an
24 attorney, which is what you told me that you wanted
25 to do?

1 MR. NESMITH: Correct.

2 THE COURT: However, I must inform you of the
3 following, and these are basically what is the
4 Faretta rights that we talked about a few moments
5 ago.

6 Mr. Nesmith, self-representation can be
7 dangerous, and you have the right to have the
8 assistance of a lawyer at all stages of the
9 proceedings. If you cannot afford a lawyer, a
10 lawyer can be appointed to represent you. Do you
11 understand that?

12 MR. NESMITH: Yes, Your Honor.

13 THE COURT: Criminal defense is a highly
14 specialized and technical area of the law. Do you
15 understand that, Mr. Nesmith?

16 MR. NESMITH: Yes, sir.

17 THE COURT: There may be certain factual,
18 legal, or other defenses to the charge you are
19 facing, and if you choose to proceed without the
20 services of a licensed attorney, you may not be
21 aware of any certain defenses. Do you understand
22 that?

23 MR. NESMITH: Yes, Your Honor.

24 THE COURT: There may be issues related to
25 the conduct of the trial or a guilty plea that

1 could arise in the future that you may not be aware
2 of, and it would be your attorney's responsibility
3 to be aware of those issues and how to properly
4 address them before the Court and, if necessary,
5 preserve these issues for appellant review. Do you
6 understand that?

7 MR. NESMITH: Yes, Your Honor.

8 THE COURT: There may be collateral
9 consequences of a conviction or a plea that you are
10 not aware of; including, but not limited to, you
11 could face increased penalties for subsequent
12 offenses, suspension of your driver's license,
13 restriction of the right to possess firearms and/or
14 ammunition, or your immigration status may be
15 affected. Do you understand that?

16 MR. NESMITH: Yes, Your Honor.

17 THE COURT: If you exercise your right to
18 proceed without the services of a lawyer, you are
19 responsible for complying with all applicable rules
20 of court, including the Rules of Evidence,
21 procedural rules, and proper behavior before the
22 judge and/or jury. Do you understand that?

23 MR. NESMITH: Yes, Your Honor.

24 THE COURT: Mr. Nesmith, you understand that
25 if you waive a court-appointed lawyer, you are

1 responsible for hiring a private attorney, if you
2 want one? You understand that, Mr. Nesmith,
3 because you, in fact, actually have had two
4 court-appointed lawyers, and you are asking me to
5 relieve the court-appointed lawyer, and you want to
6 proceed and represent yourself. However, you do
7 retain the right to move forward and to request or
8 hire a court-appointed lawyer. That is what you
9 want to do, correct?

10 MR. NESMITH: Yes, sir.

11 THE COURT: And that is your understanding of
12 what I just read?

13 MR. NESMITH: Yes, sir.

14 THE COURT: Okay. What it goes on to say --
15 it says right here, sir, "I state that I fully and
16 completely read this document regarding
17 self-representation, and I have had all of my
18 questions answered to my complete satisfaction at
19 this time." It has a circle, and it says, "I do,"
20 or "I do not wish to be screened for a
21 court-appointed lawyer, and I wish to proceed with
22 my trial at this time."

23 I will tell you, were's not proceeding with
24 the trial at this time. I've already continued
25 your case, all right. But these are warnings,

1 okay. I'm going to sign it and date it, and I ask
2 you to read this document, and I would ask you to
3 circle that you do or you do not -- and I'm
4 assuming it's "do not" - I want you to circle "do
5 not" if you do not want an attorney. If you would,
6 sign and date. I will give you a copy of that
7 document the same way I gave you a copy of the
8 bench warrant that I rescinded, okay.

9 MR. NESMITH: Yes, sir.

10 THE COURT: Any questions, Mr. Nesmith?

11 MR. NESMITH: No, Your Honor.

12 MR. BEAMER: The State would request a copy
13 of that document as well for our records.

14 THE COURT: Of course. I'll file it.

15 Could you give that to Mr. Nesmith?

16 If you will, take a minute and look at that.
17 Sit down and read that, and let's make sure you
18 don't have any questions.

19 Anything else, Solicitor?

20 MR. BEAMER: I want to make sure I understand
21 the terms of your order today. So, obviously, you
22 continued the case for a maximum of 60 days. It's
23 your intent that the case not be continued any
24 further than that. Obviously, the resident judge
25 may choose to do so, but that is the intent of your

1 order. So that puts us within, probably, either
2 next month or May's court roster.

3 THE COURT: And I'm going to relieve you.

4 MS. HILLER: But I still appear with him at
5 trial?

6 THE COURT: At trial.

7 MS. HILLER: But not before then? Or at any
8 hearing? I want to be sure.

9 THE COURT: At any hearing. I think having a
10 stand-by attorney would be fine at any hearing, but
11 you absolutely -- and I made it clear to
12 Mr. Nesmith -- you absolutely have no
13 responsibility to go and do work for him. You are
14 not going to be the one that is trying to get the
15 witnesses or send --

16 MR. BEAMER: Ma'am, one second on that.

17 Your Honor, I would request that with the
18 Faretta Warnings that the defendant just signed,
19 that he initial that the offer that was on the
20 table today is being withdrawn as of today -- or at
21 least have that read into the record.

22 THE COURT: I'll read it into the record. I
23 won't doctor up the form with that. I don't think
24 that is appropriate.

25 Can I look at that form, please?

1 I need you to circle one, that you do or
2 don't -- and I think you want to represent
3 yourself, so you want "do not." Do you understand
4 that?

5 MR. NESMITH: Yes.

6 THE COURT: That's no problem. So,
7 Mr. Nesmith, what I've got, sir, I have the Faretta
8 Warnings that you've signed and acknowledge that
9 I've gone over these warnings with you. You
10 circled "do not." You do not wish to screen for a
11 court-appointed attorney, and this is different in
12 that you have been screened and already been
13 approved.

14 So what I'm going to do is I'm going to
15 accept this. You circled "do not," and I've signed
16 it. I'll have this clocked and made a part of the
17 record. Each side will have a copy, and give you a
18 copy.

19 Then, the only other thing I'm going to do is
20 I'm going to relieve your lawyer as counsel of
21 record, but that relief is limited, in a sense. It
22 will say that she can appear as your stand-by
23 lawyer at any hearings, sir. Any trial or court
24 hearings that are scheduled, but beyond that --

25 MS. HILLER: Procedure only?

1 THE COURT: Yeah. You are not representing
2 him. We've explained that. He is proceeding pro
3 se. The purpose -- her purpose is only if they
4 say, We want to have a Blair hearing, or a this
5 hearing, that hearing. You are like, What in the
6 world? And she says, That means this. Okay? That
7 is all she's there to do. Do you understand that?

8 MR. NESMITH: Yes, sir.

9 THE COURT: Ma'am, that is the limit of your
10 involvement.

11 MS. HILLER: Okay.

12 THE COURT: As it relates to my continuance,
13 I'll continue it for 60 days to give him an
14 opportunity to get up to speed on the case and
15 file, and/or hire a private lawyer, but the private
16 lawyer has to be ready to go. That is up to the
17 administrative judge, but my intent is that the
18 case not be delayed beyond a reasonable 60 days.

19 MR. BEAMER: For clarity's sake. Are you
20 saying that it needs to be tried within 60 days, or
21 put on a new roster?

22 THE COURT: It needs to be put on a roster 60
23 days from now. You can put it on the roster
24 tomorrow, but it's got to be more than 60 days.
25 For instance, if you have a June 30th term of

1 court and you put this number one for trial, is
2 June 30th more than 60 days away?

3 MR. BEAMER: Yeah. I think the end of May
4 would be 60 days.

5 THE COURT: All right. However that works.
6 So, yeah, that's right. So you can be put on the
7 roster tomorrow. It's just that it has to be 60
8 days out. It is not called tomorrow or 40 days
9 from now. It has to be called at least 60 days
10 from now or longer. You know, if you don't have a
11 term of court, I'm not ordering, oh, we didn't get
12 it in 60 days so it has to be dismissed. I'm
13 saying you can't try -- 60 days has to pass before
14 you try it.

15 MR. BEAMER: That is fine, Your Honor. My
16 concern is if on day 55, the end of May, schedule
17 it for the July or August term of court, if that is
18 acceptable?

19 THE COURT: Of course. Of course.

20 MR. BEAMER: Okay.

21 THE COURT: I'm giving him 60 days to prepare
22 and get ready for the case. I'm not saying you
23 have to try it on day 60, 61, or day 62. That is
24 up to you when you call the case. I don't want
25 this gentleman to be in a situation where he's not

1 able to fully prepare. And given the age of the
2 case, the knowledge he has, I think 60 days -- he
3 was asking me for just a week, so I've given him
4 two months to get ready.

5 Beyond that, I'm not telling you when you
6 call the case. That is up to you. Just make sure
7 that he has notice.

8 Sir, what you have to make sure you do is you
9 are going to have to make sure that you've got --
10 and they've got -- proper numbers, emails,
11 addresses, because what happens is they'll mail it
12 out at whatever address they've got, and if you
13 don't get it -- you have to be proactive as it
14 relates to that.

15 MR. BEAMER: As it goes to discovery, the
16 State requests that the defendant's previous
17 attorney, Laura Hiller, provide the defendant with
18 the discovery she has in this case so he can then
19 begin to prepare.

20 MS. HILLER: Your Honor, we have done that,
21 but I don't think that that relieves the duty to
22 turn it over themselves.

23 THE COURT: I think the safest route -- I
24 think the safest route is for -- I mean, in theory,
25 you would have to file a notice requesting

1 discovery. I think you need to send him
2 everything, because it just eliminates the
3 possibility of something in his lawyer's file not
4 getting to him, and then around and around the
5 wheel goes. And so when you provide him a copy of
6 everything or make it available to him, then he
7 doesn't have the ability to come back and say, Oh,
8 I didn't get it. Okay. Not that you would, I'm
9 just saying let's not put a third party in the
10 middle of it. That is the safest way to deal with
11 it, I think.

12 MS. HILLER: I'm going to give this to the
13 client today so he has it.

14 THE COURT: We'll give it to him, but I ask
15 you to -- Mr. Nesmith, do you want him to send a
16 copy of everything he has?

17 MR. NESMITH: Yes, I do.

18 THE COURT: That's the safest way to do it.

19 MR. BEAMER: I understand.

20 THE COURT: Anything else?

21 MS. HILLER: Nothing.

22 MR. BEAMER: Nothing else.

23 THE COURT: Thank you all.

24 (Whereupon, the proceedings concluded.)
25

CERTIFICATE OF REPORTER

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State of South Carolina)
County of Horry)

I, Natalie Dahl, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Horry County, South Carolina, on the 23rd day of March, 2023.

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

March 6, 2024

Natalie Dahl, RPR

Natalie Dahl
Registered Professional Reporter
State of South Carolina Official Court Reporter

State vs. Rodney Nesmith
 Ticket/Warrant Number(s) 2022 GS2604112-4117 ; 2022GS2603350
 Offense(s) Charged Distribution of Cocaine 3rd offense
 Penalty: 10-30 years

FARETTA WARNINGS

You have been charged with the criminal offense(s) listed above. Before you can plead guilty or not guilty to this charge(s) or proceed to trial, you must be informed that you have the right to an attorney. If you cannot afford an attorney (and meet certain income guidelines established by the Court), an attorney will be appointed to represent you, if you so choose. If you do not meet the eligibility guidelines to have an attorney appointed to represent you, you still have the right to an attorney to represent you on the charge(s) listed above, however the attorney must be retained at your own expense.

You do have the constitutional right to represent yourself and proceed without an attorney; however, I must inform you of the following:

- Self-representation can be dangerous and you have the right to have the assistance of a lawyer at all stages of the proceedings, and if you cannot afford a lawyer, a lawyer can be appointed to represent you.
- Criminal defense is a highly specialized and technical area of the law.
- There may be certain factual, legal, or other defenses to the charge(s) you are facing and if you choose to proceed without the services of a licensed attorney, you may not be aware of certain defenses.
- There may be issues related to the conduct of trial or a guilty plea that could arise in the future that you may not be aware of and it would be your attorney's responsibility to be aware of those issues and how to properly address them before the Court, and, if necessary, preserve the issues for appellate review.
- There may be collateral consequences of a conviction or plea that you are not aware of, including, but not limited to, you could face increased penalties for subsequent offenses, suspension of your driver's license, the restriction of the right to possess firearms and/or ammunition, or your immigration status may be affected.
- If you exercise your right to proceed without the services of an attorney, you are responsible for complying with all applicable rules of court, including rules of evidence, procedural rules, and proper behavior before the Judge and/or Jury.
- You understand that if you waive screening for a court-appointed attorney, that you are responsible for hiring a private attorney if you want one.

I state that I have fully and completely read this document regarding self-representation and I have had any and all of my questions answered to my complete satisfaction. At this time, I **DO NOT** (circle one) wish to be screened for a court-appointed attorney and I wish to proceed with my trial at this time.

[Signature]
 Signature of Defendant 3/23/2023
 Date

[Signature] 2170
 Signature of Judge 3/23/23
 Date

HENRY COUNTY
 CLERK OF COURT
 HENRY COUNTY, SC
 2023 MAR 23 AM 11:29

1 STATE OF SOUTH CAROLINA * GENERAL SESSIONS
 *
 2 COUNTY OF HORRY * TRANSCRIPT OF RECORD

3 -----X
 4 STATE OF SOUTH CAROLINA, *
 *
 5 Plaintiff, *
 *
 6 vs. * Case No. 2022-GS-26-04117
 *
 7 RODNEY NESMITH, *
 *
 8 Defendant. *
 -----X

9 November 27-28, 2023

10 B E F O R E:

11 The Honorable Paul Burch, Presiding Judge

12 A P P E A R A N C E S:

13 David Beamer, Esq.
 14 David Caraker, Esq.
 Attorney for the Plaintiff

15 Rodney Nesmith, Pro Se Defendant

16 Laura Hiller, Esq.
 17 Standby Attorney for the Defendant

18
 19
 20
 21
 22
 23 Court Reporter: Bobbi Fisher, RPR
 24 SC Official Court Reporter III
 25

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E X H I B I T S

(Exhibits on file in Clerk of Court's Office.)

State's Exhibit

No.	Description	ID.	REC'D
1	DVD re: Rodney Nesmith	26	62
2	HCPD Drug Analysis Report	26	81
3	Drugs in Evidence Bag	77	86

P R O C E E D I N G S

(The following proceedings started at 10:38 a.m.):

MR. CARAKER: Good morning, Your Honor.

THE COURT: Solicitor?

MR. CARAKER: Thank you, Your Honor. Just for some housekeeping matters, Your Honor, it's my understanding that the number one case, State vs. Rodney Nesmith, is going to be a trial. The State is ready to proceed with trial this morning. I believe Mr. Nesmith is here.

And in addition to that, Your Honor, there are a number of pleas for cases that are on the roster if Your Honor would be willing to hear them this morning.

Mr. Nesmith, do you have anything for the judge before we get started?

MR. NESMITH: Yes. I just wanted to address the Court.

Yes, sir. Good morning, Your Honor.

THE COURT: Good morning.

MR. NESMITH: Comes now to Rodney Nesmith, pro se, respectfully ask this Court to hold this pro se pleadings to a lesser standard drafted by a professional counsel. In this above case, the record fails to demonstrate how many violations of constitutional rights --

MR. CARAKER: Excuse me.

(Mr. Caraker and Mr. Nesmith confer off the record.)

1 MR. NESMITH: Yes, sir. I wanted to basically read
2 this right here to address the Court on some stuff that
3 had happened prior to me going to trial because,
4 basically, I had some stuff that Mr. Beamer had to answer,
5 but I never got an answer to him. And then I had motions
6 on the docket that I never got that -- that they never got
7 to but then they're trying to tell me about trial.

8 So then that's why I had put in this motion last
9 week that got filed. I had another motion set last week,
10 but then they told me that the judge wasn't seeing nobody.

11 So then just like I started reading right here, it
12 will show and then prove that, basically, what I'm going
13 through right now.

14 THE COURT: All right. Tell me what your motion is.

15 MR. NESMITH: Yes. It's basically a -- it's
16 basically a motion to dismiss. And I just wanted to clear
17 the record and then just put it on file what I was saying
18 before he had stopped me.

19 [As read] In this above case, the record fails to
20 demonstrate how many violations of constitutional rights
21 exist and have been proven unlawful from the records and
22 can again be proven via emails to solicitor office Luann
23 Best, James Battle, and Ms. Laura Hiller. These emails
24 will establish proof that this case must be dismissed.

25 To verify the claims regarding fiduciary

1 responsibility and conduct of professionals who take an
2 oath would demonstrate issues that must be addressed by
3 this honorable court.

4 First of all, the Myrtle Beach Police Department
5 alleged a traffic stop was conducted. This is false.
6 According to the video footage, additionally, the seized
7 money was awarded to Jimmy Richardson on behalf of the
8 Myrtle Beach Police Department in the Court of Common
9 Pleas.

10 Prior to trial, the default judgment was set aside
11 after I was not served and being kidnapped and detained --
12 actually, in my eye, I call it kidnapping -- by a former
13 bondsman.

14 All of these claims and documents from the booking
15 reports are filed in the clerk's office marked as letters
16 on the docket sheet. After receiving cell phones that
17 were held for more than a year by the Myrtle Beach Police
18 Department unlawfully, also a successful recovery
19 pro se -- also successful recovery of pro se was a check,
20 not the money was evidence, not a check.

21 James Battle alleged in oral arguments that money is
22 not seized until a trial is completed and judges act like
23 a stopgate. In this -- it is a fact that Jimmy Richardson
24 and/or James Battle, in parenthesis, (David Beamer), knew
25 that this case was not resolved and taken into evidence

1 violated the discovery motion.

2 I have also asked for transcripts from the grand
3 jury proceedings because Officer Knapp has perjured by
4 alleging that a traffic stop was conducted, which is
5 false. The video footage proved this claim and a serious
6 violation of his oath.

7 Both court-appointed counsel failed in recovery of
8 two cell phones. Laura Hiller told the Court that she
9 blocked my motions from being heard. The case would have
10 been dismissed. The records in this case are silent
11 regarding the violation of the constitutional rights
12 protected that warrants dismissal and reprimand.

13 I have provided copies because my pleadings are
14 documented as letters, not motions. Hopefully,
15 Mr. Beamer, will provide the Court of the errors which are
16 served and dismissal is warranted.

17 In summation, I respectfully ask this honorable
18 court to grant relief by asking for a review of docu-sheet
19 and letters and ask Solicitor Beamer to respond. This
20 case is ripe for immediate dismissal after evidence is
21 reviewed by the honorable court due to the undisputed
22 evidence.

23 Thank you.

24 THE COURT: All right. First of all, as far as the
25 grand jury transcripts, there's no such thing. Grand jury

1 proceedings in South Carolina are secret. There are no
2 transcripts.

3 Your motion to dismiss is denied at this time.

4 When we go forward in the trial, we'll see how the
5 evidence develops and take it from there.

6 Now, Solicitor, Faretta hearings have already been
7 held in this regard?

8 MR. CARAKER: To my knowledge, yes, Your Honor. I
9 believe that shadow counsel has been appointed to
10 Mr. Nesmith.

11 MS. HILLER: I'm here, Your Honor.

12 MR. CARAKER: And she is here, Your Honor.

13 We're ready to proceed at the appropriate time, Your
14 Honor. We're also ready if the Court will hear. We have
15 got several pleas to get through this morning if the Court
16 will hear them.

17 THE COURT: It's my understanding that the jury is
18 being qualified downstairs so be ready to go. If there's
19 any room for negotiations concerning this case, please do
20 so while we take these pleas and wait on the jury.

21 MR. CARAKER: Thank you, Your Honor.

22 MR. NESMITH: Yes, sir. Thank you.

23 (Pause in the proceedings.)

24 THE COURT: I apologize; I misunderstood about that
25 jury list. Normally, we don't do that, but this case is

1 fine.

2 MS. HILLER: And, Your Honor, I have a question. I
3 am the attorney that was given the role of shadow counsel.
4 I would love to hear what Your Honor believes that my role
5 encompasses, so I make sure I do what you expect, what,
6 you know, the last attorney -- what the last judge had
7 told me it would be. I just -- this isn't a role I do
8 everyday, so...

9 THE COURT: You're standby counsel; right?

10 MS. HILLER: Yes, Your Honor.

11 THE COURT: And you're there just to answer his
12 questions.

13 MS. HILLER: That's what we'll do then.

14 And then my law clerk, Vick Singh, he does not have
15 his 403. Is this an opportunity for him to get them?

16 THE COURT: Sure is.

17 MS. HILLER: Perfect. So he'll be here for the
18 whole time, too.

19 (Pause in the proceedings while Judge Seals
20 qualifies the jury.)

21 (The jury panel enters the courtroom at 12:52 p.m.)

22 THE COURT: Good afternoon, I'm Paul Burch. I'm a
23 resident circuit judge for the Fourth Circuit, which is
24 north of here. As you know, in South Carolina, circuit
25 judges are assigned around the state at the pleasure of

1 Court Administration to hold court.

2 There have been changes made in the last few years
3 where you might stay in your region a little more than
4 what you're used to, but it is my pleasure to be assigned
5 to Horry County this week. I have been in Horry County
6 for many, many terms. I was chief judge for
7 administrative purposes for several six-month periods
8 about 20 years ago. I have family that lives here, so
9 it's always a pleasure to be down this way.

10 I want to thank all of you for reporting and being
11 willing to serve. What we're going to do, we're going to
12 seat a jury, and then we'll be able to free the rest of
13 you up. I assume -- we'll have to double-check on that --
14 but maybe call in to report later on, unless you have been
15 instructed differently by Judge Seals or by the Court of
16 Clerk.

17 All right. The matter that we will need to seat a
18 jury on -- and the Court at this time is calling the case
19 of the State versus Rodney Nesmith charged in the bill of
20 indictment by the grand jury of Horry County with the
21 offense of distribution of cocaine.

22 Looking at the indictment, the allegations are that
23 Rodney Nesmith did, in Horry County on or about September
24 the 18th, 2020, committed the offense of distribution of
25 cocaine.

1 Mr. Nesmith is present in court and has entered a
2 plea of not guilty. So we will proceed to draw a jury at
3 this time after I have asked some questions. They're
4 called case specific voir dire questions.

5 The first I have for you is: Is anybody on the
6 panel related by blood or by marriage to Rodney Nesmith
7 who is seated to my left, to your right, here at the
8 table? If you are connected by blood or by marriage or
9 you have any business, social, religious, fraternal
10 relationship with Mr. Nesmith, we need you to raise your
11 right hand at this time.

12 (No response given.)

13 THE COURT: Solicitor, I'm going to rely on you to
14 call the witnesses you have in the case so I can pose the
15 next question.

16 MR. BEAMER: Yes, Your Honor. The State intends to
17 call John Cardona; Andrea Kobithen, formerly Andrea
18 Warner; Malinda Shadoan; Amanda Hudnall, and Courtney
19 Johnson.

20 THE COURT: My next question: Is anybody on the
21 panel related by blood or by marriage or have any
22 business, social, or religious relationship with any of
23 those potential witnesses? If so, we need you to raise
24 your right hand.

25 (No response given.)

1 THE COURT: All right. Mr. Nesmith or by counsel,
2 do we have any potential witnesses that I need to review
3 with the jury?

4 MR. NESMITH: No, sir.

5 THE COURT: Thank you, sir.

6 MR. NESMITH: Yes, Your Honor.

7 THE COURT: At this time, the counsel that are
8 involved in this case, either directly or indirectly, I'm
9 going to ask that they introduce themselves and with the
10 firms that they may be with and state your representation.
11 We'll begin with the State.

12 Solicitor?

13 MR. BEAMER: Thank you, Your Honor.

14 My name is David Beamer. I'm an assistant solicitor
15 with the Fifteenth Circuit Solicitor's Office.

16 MR. CARAKER: Good afternoon. Had to check the
17 time. My name is David Caraker. I'm the senior solicitor
18 in the solicitor's office. I'm just here as an assistant
19 to Mr. Beamer during the course of this trial. This is
20 going to be his first General Sessions trial.

21 MS. HILLER: Good afternoon. My name is Lauren
22 Hiller, and I am what is called standby counsel.
23 Mr. Nesmith is representing himself, but I'm here
24 answering questions for him. I work for a firm,
25 Thompson & Hiller defense firm. And Vick Singh is my law

1 clerk, and he works with us as well.

2 THE COURT: Thank you, counsel.

3 Do I have anybody on the panel who is related by
4 blood or marriage or has any business relationship with
5 any of these attorneys or you are presently represented by
6 these attorneys or by the solicitor's office, either past
7 or present? If you will raise your right hand.

8 (No response given.)

9 THE COURT: Do I have anybody on the panel who has
10 any reason whatsoever that you could not be fair to both
11 the State of South Carolina and to the defendant, Rodney
12 Nesmith, for any reason whatsoever? You should not be a
13 jury [verbatim], without making any comment, unless I
14 bring you up to the bench to discuss that with counsel.

15 So I'll repeat that: Anybody on the panel
16 represented in the past or presently by the solicitor's
17 office or by these attorneys or are you related to them in
18 any way? Please raise your right hand.

19 (No response given.)

20 THE COURT: Any further questions, voir dire from
21 the State?

22 MR. BEAMER: Nothing further, Your Honor.

23 THE COURT: From the defense?

24 MR. NESMITH: No, sir. No, Your Honor.

25 THE COURT: All right. Strikes? Five and five?

1 MR. BEAMER: Yes, Your Honor.

2 MS. HILLER: Yes, Your Honor, is my understanding.

3 THE COURT: Five and five.

4 THE CLERK: When I call your name and juror number,
5 please come to the front of the courtroom, bringing any
6 belongings with you. If you'll turn around and face the
7 back wall.

8 Juror No. 55, Matthew Carom.

9 (Juror No. 55, a white male, presented.)

10 THE CLERK: What say the State?

11 MR. BEAMER: Please seat this juror.

12 THE CLERK: Defense?

13 MR. NESMITH: You can seat the juror.

14 THE CLERK: Please be seated in the jury box.

15 Juror No. 319, Michael Reiss.

16 (Juror No. 319, a white male, presented.)

17 THE COURT: I didn't say this, but you're more than
18 welcome -- I give you permission from the bench -- I feel
19 awkward in doing this.

20 THE CLERK: What say the State?

21 MR. BEAMER: Please seat this juror.

22 THE CLERK: Defense?

23 MR. NESMITH: Strike this juror.

24 THE CLERK: You're excused from this particular
25 case.

1 Juror 323, Jared Rice.

2 (Juror No. 323, a white male, presented.)

3 THE CLERK: What say the State?

4 MR. BEAMER: Please seat this juror.

5 THE CLERK: Defense?

6 MR. NESMITH: Strike this juror.

7 THE CLERK: You're excused from this particular
8 case.

9 Juror No. 261, Hailey Melton.

10 (Juror No. 261, a white female, presented.)

11 THE CLERK: What say the State?

12 MR. BEAMER: Please seat this juror.

13 THE CLERK: Defense?

14 MR. NESMITH: Please seat this juror.

15 THE CLERK: Please be seated in the jury box.

16 Juror 117, Catherine Floyd.

17 (Juror No. 117, a white female, presented.)

18 THE CLERK: What say the State?

19 MR. BEAMER: Please seat this juror.

20 THE CLERK: Defense?

21 MR. NESMITH: Please seat this juror.

22 THE CLERK: Please be seated in the jury box.

23 Juror No. 282, Susan Neal.

24 (Juror No. 282, a white female, presented.)

25 MR. CARAKER: Can you please repeat that, Madam

1 Clerk?

2 THE CLERK: 282.

3 MR. CARAKER: Thank you.

4 THE CLERK: What say the State?

5 MR. BEAMER: Please seat this juror.

6 THE CLERK: Defense?

7 MR. NESMITH: Please seat this juror.

8 THE CLERK: Please be seated in the jury box.

9 Juror No. 75, Charles Coston.

10 (Juror No. 75, a black male, presented.)

11 THE CLERK: What say the State?

12 MR. BEAMER: Please seat this juror.

13 THE CLERK: Defense?

14 MR. NESMITH: Please seat this juror.

15 THE CLERK: Please be seated in the jury box.

16 Juror No. 66, Richard Clinton.

17 (Juror No. 66, a white male, presented.)

18 THE CLERK: What say the State?

19 MR. BEAMER: Please seat this juror.

20 THE CLERK: Defense?

21 MR. NESMITH: Please seat this juror.

22 THE CLERK: Please be seated in the jury box.

23 Juror No. 236, Johnston Long.

24 (Juror No. 236, a white male, presented.)

25 THE CLERK: What say the State?

1 MR. BEAMER: Please excuse this juror.

2 THE CLERK: You're excused from this particular
3 case.

4 Juror No. 128, William Gargiulo.

5 (Juror No. 128, a white male, presented.)

6 THE CLERK: What say the State?

7 MR. BEAMER: Please seat this juror.

8 THE CLERK: Defense?

9 MR. NESMITH: Strike this juror.

10 THE CLERK: You're excused from this particular
11 case.

12 Juror No. 230, Robert Lewis.

13 (Juror No. 230, a white male, presented.)

14 THE CLERK: What say the State?

15 MR. BEAMER: Please excuse this juror.

16 THE CLERK: You're excused from this particular
17 case.

18 Juror No. 116, Ralph Fiore.

19 (Juror No. 116, a white male, presented.)

20 THE CLERK: What say the State?

21 MR. BEAMER: Please seat this juror.

22 THE CLERK: Defense?

23 MR. NESMITH: Strike this juror.

24 THE CLERK: You're excused from this particular
25 case.

1 Juror No. 279, Debra Mozingo.
2 (Juror No. 279, a white female, presented.)
3 THE CLERK: What say the State?
4 MR. BEAMER: Please seat this juror.
5 THE CLERK: Defense?
6 MR. NESMITH: Please seat this juror.
7 THE CLERK: Please be seated in the jury box.
8 Juror No. 378, Candice Thompson.
9 (Juror No. 378, a white female, presented.)
10 THE CLERK: What say the State?
11 MR. BEAMER: Please seat this juror.
12 THE CLERK: Defense?
13 MR. NESMITH: Please seat this juror.
14 THE CLERK: Please be seated in the jury box.
15 Juror 201, David Kaufman.
16 (Juror No. 201, a white male, presented.)
17 THE CLERK: What say the State?
18 MR. BEAMER: Please seat this juror.
19 THE CLERK: Defense?
20 MR. NESMITH: Strike this juror.
21 THE CLERK: You're excused from this particular
22 case.
23 THE COURT: Mr. Nesmith, I will point out that you
24 have exercised five strikes.
25 For the State, two strikes.

1 MR. BEAMER: Thank you, Your Honor.

2 THE CLERK: Juror 204, Ryan Weaver.

3 (Juror No. 204, a white male, presented.)

4 THE CLERK: What say the State?

5 MR. BEAMER: Please strike this juror.

6 THE CLERK: You're excused from this particular
7 case.

8 Juror 299, Rylan Pennington.

9 (Juror No. 299, a white male, presented.)

10 THE CLERK: What say the State?

11 MR. BEAMER: Please seat this juror.

12 THE CLERK: Please be seated in the jury box.

13 Juror No. 420, Whitney Wilson.

14 (Juror No. 420, a white male, presented.)

15 THE CLERK: What say the State?

16 MR. CARAKER: Please be seated in the jury box.

17 THE CLERK: Juror No. 11, Toni Angerome.

18 (Juror No. 11, a white female, presented.)

19 THE CLERK: What say the State?

20 MR. BEAMER: Please seat this juror.

21 THE CLERK: Please be seated in the jury box.

22 Juror No. 167, Lisa Hodge.

23 (Juror No. 167, a white female, presented.)

24 THE CLERK: What say the State?

25 MR. BEAMER: Please seat this juror.

1 THE CLERK: Please be seated in the jury box.

2 THE COURT: All right. We will seat two alternates.
3 The strikes are one and two. One for the State, two for
4 the defense per alternate.

5 THE CLERK: Juror No. 252, Sandra Mascho.

6 MR. BEAMER: I'm sorry, Madam Clerk; could you
7 repeat that?

8 THE CLERK: 252.

9 (Juror No. 252, a white female, presented.)

10 THE CLERK: What say the State?

11 MR. BEAMER: Please seat this juror.

12 THE CLERK: Defense?

13 MR. NESMITH: Strike this juror.

14 THE CLERK: You're excused from this particular
15 case.

16 Juror No. 289, Ryan Ocean.

17 (Juror No. 289, a white male, presented.)

18 THE CLERK: What say the State?

19 MR. BEAMER: Please excuse this juror.

20 THE CLERK: You're excused from this particular
21 case.

22 Juror 81, Gilbert De Cicco.

23 (Juror No. 81, a white male, presented.)

24 THE CLERK: What say the State?

25 MR. BEAMER: Please seat this juror.

1 THE CLERK: Defense?

2 MR. NESMITH: Strike this juror.

3 THE CLERK: You're excused from this particular
4 case.

5 Juror No. 71 --

6 THE COURT: Anything for cause?

7 MR. BEAMER: No, Your Honor.

8 THE COURT: The juror will be seated unless there's
9 cause.

10 MS. HILLER: No, I don't believe there's any cause,
11 Your Honor.

12 THE COURT: You may be seated. Alternate 1.

13 THE CLERK: Juror No. 396, Mark Walantus.

14 (Juror No. 396, a white male, presented.)

15 THE CLERK: What say the State?

16 MR. BEAMER: I'm sorry, Madam Clerk; could you
17 repeat the number?

18 THE CLERK: 396.

19 MR. BEAMER: Please seat this juror.

20 THE CLERK: Defense?

21 MR. NESMITH: Strike this juror.

22 THE CLERK: You're excused from this particular
23 case.

24 Juror No. 400, Tammy Warren.

25 (Juror No. 400, a white female, presented.)

1 THE CLERK: What say the State?

2 MR. BEAMER: Please seat this juror.

3 THE CLERK: Defense?

4 MR. NESMITH: Strike this juror.

5 THE CLERK: You're excused from this particular
6 case.

7 Juror No. 104, Mya Eagles.

8 (Juror No. 104, a black female, presented.)

9 THE CLERK: What say the State?

10 MR. BEAMER: Please seat this juror.

11 THE CLERK: Please be seated in the jury box.

12 THE COURT: Any matters concerning jury selection
13 from the State?

14 MR. BEAMER: Nothing, Your Honor.

15 THE COURT: From the defense?

16 MR. NESMITH: No, sir. No, Your Honor.

17 THE COURT: Okay. We're well into the lunch hour.
18 Thank y'all so much for your patience.

19 We will begin this case at 2:30. Y'all probably
20 know more about lunch places here in Conway and elsewhere
21 in the county, but we do need you back here at 2:30 so we
22 can begin this case. We'll put you under oath at that
23 time.

24 Please do not discuss this case with anyone. Do not
25 even discuss it amongst yourselves. The time to

1 deliberate is always at the conclusion of the case. It
2 would be improper to let anybody approach you in any form
3 or fashion to discuss this case with you. Also, it would
4 be improper for you to discuss the case amongst
5 yourselves.

6 I'm going to ask you, if you will, to follow the
7 clerk, bailiff staff. They will show you the room that
8 you will need to report to when you come back after lunch.

9 Do you have any questions?

10 All right. We will try to stay on time and begin
11 this case.

12 Now, for those of you that weren't drawn, we may
13 need you for another case later today or later in the week
14 but I am going to defer to the clerk's office to instruct
15 the exact instructions we need about that because we have
16 two other courts running. I can only speak for this
17 courtroom. Since the other two courtrooms are active
18 today, I will defer to Madam Clerk.

19 THE CLERK: Usually we have them call back at 6 p.m.
20 but I'll check with the courtrooms. As of right now,
21 we'll call back at 6 p.m. tonight, and they were provided
22 a phone number.

23 THE COURT: All right. That takes care of that. We
24 need you to call into that number to get an update this
25 evening after 6:00. Don't wait too late though. Usually

1 try to get you to call in between 6:00 and 8:00.

2 Thank you so much. We may need you back up here
3 later in the week.

4 (The jury panel exited the courtroom at 1:15 p.m.)

5 THE COURT: Any matters for the Court at this time?

6 MR. BEAMER: Your Honor, the State doesn't have any
7 matters at this time. We'll have some pretrial motions at
8 the appropriate time, but I think those can wait until
9 after lunch.

10 THE COURT: Okay.

11 MR. NESMITH: Yes, Your Honor. I would like to do a
12 pretrial motion after lunch for the warrant, in particular
13 the official warrant that I got arrested on.

14 THE COURT: All right. I will hear you out on that,
15 but you may want to speak with counsel. The warrant does
16 not control at this time once that indictment is true
17 billed. The indictment stands. But I'll let you discuss
18 that with her and we will take that up if that doesn't
19 resolve it.

20 But, listen, before we leave here, both sides has
21 gotten a look at the triers of fact. So if there's any
22 room for possible resolution of this case before we
23 proceed, I would request that y'all take a few minutes
24 before you break for lunch and discuss any possible
25 resolution. All right?

1 We will see you at 2:30.

2 MR. CARAKER: Thank you, Your Honor.

3 (A lunch recess was taken from 1:18 p.m. to 2:30
4 p.m.)

5 (State's Exhibit No. 1, DVD re: Rodney Nesmith, was
6 marked for identification.)

7 (State's Exhibit No. 2, HCPD Drug Analysis Report,
8 was marked for identification.)

9 MR. BEAMER: Your Honor, at the moment, the
10 defendant is not present. He obviously had notice that
11 trial would begin today, and you told him that we'd be
12 starting back at 2:30.

13 Solicitor Caraker has gone to see if he's somewhere
14 in the building. Maybe give him a few moments to see if
15 we can rustle him up, but barring that, the State would
16 move to go forward with a trial in absentia if he has
17 fled.

18 THE COURT: Ms. Hiller, did he leave you any
19 information?

20 MS. HILLER: He said he would meet us back here at
21 2:30. It may be early for this, but if he does not come,
22 I would ask to be relieved as shadow counsel. I can't
23 very well answer questions to an empty chair.

24 THE COURT: Maybe he'll be here.

25 MS. HILLER: I hope so.

1 (Pause in the proceedings from 2:33 p.m. to
2 2:34 p.m.)

3 MR. CARAKER: Judge, I've got a couple of people out
4 looking for Mr. Nesmith. I called his name in the hallway
5 four times, checked all the waiting rooms and the
6 restrooms, and have yet to locate him.

7 THE COURT: All right. We'll give him a few minutes
8 and see. Y'all keep an eye out for him for the next few
9 minutes.

10 (Pause in the proceedings from 2:34 p.m. to 2:40
11 p.m.)

12 THE COURT: Welcome back, Mr. Nesmith. You're ten
13 minutes late. We've been sitting here, ready to go.

14 MR. NESMITH: Yes, sir. I apologize to the Court.
15 I apologize to the Court, Your Honor.

16 THE COURT: All right.

17 Ready for the jury or is there anything we need to
18 cover before we bring them in?

19 MR. BEAMER: Your Honor, just a couple of brief
20 pretrial matters. The first motion the State would have
21 would be regarding some of the issues Defendant has
22 brought up over the course of this case. Just for the
23 Court's clarity, we're only here for one charge today, and
24 that is the charge for distribution that occurred on or
25 about September 18th, 2020, and our dealings with the

1 defendant previously, he has made numerous references and
2 complaints regarding subsequent charges that occurred
3 about a year later. We would ask the Court that any
4 questioning or testimony today be restricted to the matter
5 that's before the Court today, being the events of
6 September 18th, 2020.

7 THE COURT: Mr. Nesmith?

8 MR. NESMITH: Yes, sir. It was -- yes, Your Honor.
9 It was some things prior to this charge right here that
10 relates to this charge. For example, Officer Knapp is on
11 the -- he's in the -- he isn't testifying today; however,
12 Mr. John Cardona was the name -- basically, he was the
13 arresting officer; however, Knapp was basically giving
14 testimony in his place.

15 And then, you know, I don't see how he could have
16 done that, and that's why the case basically went forward.
17 So then the stuff that Knapp had mentioned, you know, I
18 feel that that should be irrelevant because he was the
19 arresting officer on this case but another guy's name was
20 on the arrest warrant.

21 All the stuff that got brought up dealing with
22 Officer Knapp, that's when they had came to me, and then
23 Knapp, basically the way I see it, you know, being that
24 Cardona wasn't on the force, that they are in -- like, you
25 know, with all the perjury and the lying.

1 THE COURT: Well, we're not concerned with previous
2 charges, previous arrest incidents. All we're concerned
3 with here is the incident that occurred on or about
4 September the 18th, 2020.

5 Now, case law gives you protections about prior bad
6 acts. If you get into asking any witnesses about prior
7 instances, that could be to your detriment and you could
8 be opening the door --

9 MR. NESMITH: Yes, sir.

10 THE COURT: -- for the State to get into all kinds
11 of things that you have protection by case law from.

12 MR. NESMITH: Yes, sir.

13 THE COURT: So, I mean, you try to get into
14 something like that, it's a dual-edged sword.

15 MR. NESMITH: Yes, sir. I was also saying for the
16 record with the girl that said that she had purchased or
17 she had got something from me. Basically, on the date
18 that it happened, I don't know about that date because
19 she's contradicting herself where she committed perjury
20 also, and that's also in the records. However, today, I
21 don't happen to have all of my notes because I just came
22 in here with the motion. So all the stuff that I have
23 pertaining to that case is not -- I don't have none of
24 those papers with me so I can cross-examine the witness or
25 anything.

1 THE COURT: Well, you're not going to need that.
2 We're talking about this incident that occurred on this
3 date. And if you --

4 MR. NESMITH: That's on the date -- excuse me, Your
5 Honor. That's on the date in question that I'm talking
6 about. On or around September, she -- on or about
7 September, the notes that I had dealing with that, I have
8 it in one folder.

9 THE COURT: Your motion's granted.

10 MR. BEAMER: Your Honor, Defendant received a trial
11 subpoena specifying that today the case was going to
12 trial. This was not a motion hearing. He's been well
13 aware of this. He's been told multiple times. Your
14 Honor, we're ready to proceed with trial.

15 THE COURT: We're not getting into any other acts or
16 any other arrests unless something very unusual comes out
17 on this stand. We're going to try this case based on this
18 charge on that date. And you didn't bring your notes?
19 That's not your problem. That's not the solicitor's
20 problem. That's not my problem.

21 MR. NESMITH: Yes, sir.

22 THE COURT: You have known for quite some time this
23 case was coming for trial.

24 What else you got?

25 MR. BEAMER: Yes, Your Honor. On a related note,

1 the defendant has also made a number of accusations
2 regarding some of the officers involved in this case,
3 specifically with reference to the witness, John Cardona.
4 He's made some, as far as I can tell, baseless claims that
5 he and Mr. Cardona were sleeping with the same woman.

6 I spoke with Mr. Cardona. He says that is
7 completely false. He's been married to his wife for four
8 years and does not sleep around. I just ask that the
9 defendant be prohibited from getting into that sort of
10 issue, unless he has some proof of that, and if so, we'd
11 very much like to see it.

12 THE COURT: Let's try this case on the evidence
13 that's proper before the Court. Let's not get into
14 matters -- personal matters and slanderous and liable
15 allegations unless something comes out on this stand to
16 open that up.

17 MR. NESMITH: Yes, Your Honor. And that's the same
18 thing I was saying. I didn't have -- when you asked me
19 about my witness list, I didn't have my witness list
20 together; however, in the motion that I filed previously,
21 I had asked for, you know, numerous witnesses. And then,
22 you know, so when I said that earlier, that I didn't have
23 no witnesses, I do have, you know, a few witnesses. I
24 just need to be protected on the record for my due process
25 right for appeal.

1 I have numerous witnesses: Laura Hiller. James
2 Battle. My former counsel O'Neill. Officer Knapp. Amy
3 Propp (ph). Officer Belue who was also an arresting
4 officer on that case, which he is no longer with the force
5 either. And I have been denied access to the grand jury
6 transcripts when I had asked in a motion --

7 THE COURT: Didn't I tell you about two hours ago
8 that you're not entitled to grand jury transcripts?
9 There's no such thing. Grand juries in South Carolina
10 meet in secrecy. There are no records made.

11 MR. NESMITH: Yes, sir. Yes, sir, Your Honor.

12 THE COURT: Sit down.

13 You have known for quite some time this case was
14 today. Don't be complaining to the Court that you didn't
15 subpoena any witnesses. You sat right here two hours ago
16 and told me you didn't have any witnesses for me to voir
17 dire this jury with.

18 MR. NESMITH: I just -- excuse me, Your Honor. I
19 just didn't have them on hand.

20 THE COURT: That's your fault, not mine and not his.

21 MR. NESMITH: And I --

22 THE COURT: Sit down.

23 Get the jury in.

24 Anything else?

25 MR. BEAMER: Yes, Your Honor. One final matter.

1 I'll try to be brief.

2 As the case has now come to trial, the defendant's
3 bond is extinguished. Given that he was arriving late
4 today and has in the past either failed to appear for the
5 call of the court or arrive significantly late, the State
6 would request that he be remanded in custody for the
7 duration of the trial.

8 THE COURT: That's granted. He was over ten minutes
9 late.

10 You have had that problem before?

11 MR. BEAMER: Yes, Your Honor.

12 THE COURT: He'll be in the custody of the sheriff
13 during the pendency of this trial.

14 MR. BEAMER: Thank you, Your Honor.

15 THE COURT: Okay. Let's get started here. You
16 wanted to go forward, both sides. Let's get it done.

17 MR. BEAMER: Yes, sir, Your Honor.

18 (The jury entered the courtroom at 2:50 p.m.)

19 THE COURT: Ladies and gentlemen of the jury, thank
20 you so much for promptly reporting. We had to cover some
21 matters of law. I'm going to explain that to you whenever
22 we get you sworn and get started, how this process is
23 going to work.

24 Juror Pennington? And Juror Wilson? I want to make
25 sure I got everything lined --

1 All right. Juror Wilson, when we take a break, if
2 you'll take the foreperson's chair. Don't have to change
3 now, but you'll be the foreperson.

4 Let's see. Juror Thompson? All right.

5 Don't have to keep the same chairs. I'm just trying
6 to get my mind, how we originally were seated.

7 All right. Madam Clerk, if you'll put them under
8 oath.

9 THE CLERK: Please stand and raise your right hand
10 to be sworn.

11 (The jury was duly sworn.)

12 THE COURT: I just have a few opening remarks to
13 make to you at this point about how we're going to go
14 forward in this case. There's different phases of the
15 case. Mine is this opening statement, just to brief you
16 about the procedure.

17 The next phase will be opening statements by the
18 parties if they so desire. It's completely optional.

19 Opening statements are basically an outline as to
20 what will be presented to you in court.

21 This, of course, is a criminal case that's pending
22 in the Court of General Sessions. That makes the burden
23 of proof on the State or puts the burden of proof on the
24 State, since it is a criminal case; that means the State's
25 got to prove the guilt of the defendant beyond a

1 reasonable doubt.

2 In my closing charge to you, I will give some
3 definitions of certain terms that we use. If this were a
4 civil case, the burden of proof would be different. Most
5 civil cases it's by what we call a preponderance of the
6 evidence or by the greater weight of the evidence.

7 But all defendants in the United States, in all 50
8 states, are presumed innocent, and the burden is upon the
9 State to prove the guilt of the defendant beyond a
10 reasonable doubt.

11 After the opening statements will come the
12 evidentiary portion of the case where you will receive the
13 evidence. Evidence may take many different forms. It may
14 be testimony given from the witness stand. It may be
15 documents. It may be physical-type items. Whatever the
16 evidence is, it's critical that you listen and observe the
17 evidence because, in this case, you will be the triers of
18 the fact.

19 The judge in all cases in South Carolina are the
20 judges of the law. Judges in South Carolina do not
21 comment upon the facts. I sit as a mutual referee.

22 From time to time, there may be objections that may
23 be entered, and I will have to rule and maybe have to take
24 time outside of your presence to decide matters of law.

25 So, once again, you are the triers of the fact.

1 That's why you need to listen and observe the evidence. I
2 am the judge of the law.

3 Now, the end result of any case is to reach a
4 verdict, so that means, in the long run, the goal that you
5 have, of course, is a verdict. And how do you do that?
6 You take the evidence as you find it, and you apply the
7 law of the case that I will give to you, and the judge
8 will charge you on the law to that evidence, and thus,
9 reach a verdict.

10 Now, during -- prior to trial, counsel or parties
11 made comments that are not necessarily the evidence. The
12 evidence comes from that witness stand, so you have to be
13 careful. The parties and counsel may quote the evidence
14 or repeat the evidence, but what they say is not
15 necessarily evidence. It has to come from that witness
16 stand or from the exhibits that are put into the record.

17 That's the evidentiary portion of the case. After
18 that is complete, both sides will be given an opportunity
19 to make closing arguments to you. That's where they try
20 to persuade you to see the evidence as that particular
21 side sees it.

22 After the closing arguments will come the judge's
23 charge of the law where you will receive the law of the
24 State of South Carolina to thus apply to the evidence as
25 you find it.

1 Only after all those phases are completed will you
2 be asked to deliberate this case. So, once again, please
3 do not deliberate this case until you are instructed to
4 after the judge's charge of the law.

5 Please be very careful not to allow anybody to
6 approach you, whether it is in court or at home or
7 wherever. Do not allow any person to approach you and try
8 to discuss this case with you.

9 Now, there's many different kinds of communication
10 in today's world, so I would instruct you at this time
11 just avoid any local press coverage until this case is
12 completed, because press sometimes, they don't know what
13 the true evidence is. They just go by what is reported to
14 them, so we have to be careful about that.

15 In regards also to people trying to contact you, it
16 may be directly or indirectly. It could be by phone,
17 could be by fax, could be by the internet, or whatever.
18 Don't allow that to happen.

19 One other thing that's become an issue in the last
20 several years: I instructed you not to do any independent
21 research regarding this matter. This case is to be
22 decided upon the evidence that's presented in court.

23 Breaks. We'll try to take a break every hour or so,
24 but if anybody needs a restroom break, just let us know.
25 We'll take the necessary breaks as we need to. Now, quite

1 often after lunch, sometimes we human beings get a little
2 sleepy, and very seldom happens, but if you feel like
3 you're going to fall asleep on me, you let me know, and
4 we'll take a coffee break. Okay? We don't want that to
5 happen.

6 I think I have covered everything I need to say to
7 you at this time, so we'll proceed with me saying one more
8 thing: The State has the burden of proof. Since they
9 have the burden of proof, they get to go first. So we'll
10 allow the solicitors representing the State to make
11 opening statements if he so desires.

12 Solicitor?

13 MR. BEAMER: Yes, Your Honor. And may it please the
14 Court?

15 OPENING STATEMENT ON BEHALF OF THE STATE

16 MR. BEAMER: Actions have consequences. Actions
17 have consequences. On September 18th, 2020, officers with
18 the Myrtle Beach Police Department conducted an undercover
19 operations on Foster's Cafe & Bar located in the City of
20 Myrtle Beach. They received numerous narcotics complaints
21 about this location. Those complaints have been backed up
22 by some investigations that were being done and some
23 information they received.

24 So they put together this undercover operation to
25 try and see if they could get to the heart of what was

1 going on there. They had officers go to the bar in plain
2 clothes, just act like normal patrons, and see what they
3 could discover.

4 One of those officers, Andrea Kobithen, observed
5 numerous hand-to-hand transactions and what, from her
6 training and experience, could be identified as narcotic
7 activity.

8 Over the course of that evening, she was able to
9 make contact with an individual identified as Flav, who
10 was later identified as the defendant, Rodney Nesmith.

11 She struck up a conversation with him, and in the
12 course of their interaction, he proceeded to give her two
13 little baggies of what he identified as blow or cocaine.

14 Ladies and gentlemen of the jury, my name is David
15 Beamer, and along with my co-counsel, David Caraker, I
16 represent the State in this matter and the charge against
17 Mr. Rodney Nesmith.

18 As the Judge just told you, as the State, we have
19 the burden of proving to you that the defendant is guilty
20 of this charge, and that is a burden I welcome. We have
21 to prove to you beyond a reasonable doubt that the
22 defendant committed this crime.

23 Now, reasonable doubt isn't beyond any doubt. It's
24 not beyond the shadow of a doubt. It's exactly what it
25 sounds like: a reasonable doubt. Something that would

1 cause a reasonable person to have pause.

2 And ladies and gentlemen of the jury, I believe,
3 over the course of this trial, the evidence is going to
4 show you that the defendant is, beyond a reasonable doubt,
5 guilty of this charge.

6 The evidence is going to show you three important
7 things: that the defendant had possession of and control
8 of a controlled substance; two, that he distributed that
9 substance to the undercover officer; and three, that
10 substance was, in fact, cocaine. Seems pretty
11 straightforward.

12 But I want to clarify one point because I believe
13 it's going to come up. Distribute. That word has a lot
14 of meaning behind it. But under the law of South
15 Carolina, distribute does not mean a sale. It does not
16 mean an exchange of favors. Distribution is simply a
17 transfer of control.

18 Actions have consequences. We all understand, as we
19 grow up, that we are responsible for the choices that we
20 make and what arises out of those choices. The evidence
21 today is going to show you that the choices and the
22 actions that the defendant took. I believe, after seeing
23 all the evidence, you'll return the only verdict that's
24 possible in this case, and that is a verdict of guilty.
25 Thank you.

1 THE COURT: All right. Mr. Nesmith, would you like
2 to make an opening statement?

3 OPENING STATEMENT ON BEHALF OF THE DEFENDANT

4 MR. NESMITH: Yeah, good afternoon. Yeah, as
5 Mr. Beamer stated, we're going to put emphasis on not to
6 distribute but distribution, however it's pronounced,
7 because, basically, it would have to be an exchange
8 because of what someone is doing, but I'm going to show
9 y'all that whatever took place and, even with the video,
10 that it couldn't have took place because I couldn't have
11 got the charge before the crime took place and then I will
12 show y'all that. That's all I have.

13 THE COURT: Thank you, sir.

14 All right. Call your first witness.

15 MR. BEAMER: Thank you, Your Honor. The State, at
16 this time, calls John Cardona.

17 THE COURT: Come around and be sworn, please.

18 JOHN CARDONA,

19 after having been duly sworn, was examined and
20 testified to as follows:

21 THE CLERK: Please state your name.

22 THE WITNESS: My name is John Gabriel Cardona.
23 John. Gabriel is G-a-b-r-i-e-l. Last name Cardona,
24 C-a-r-d-o-n-a.

25 DIRECT EXAMINATION

1 BY MR. BEAMER:

2 Q Good afternoon, Mr. Cardona. Could you please tell
3 us where you are currently employed.

4 A I currently am a construction superintendant with
5 D.R. Horton. I work construction.

6 Q And did you formerly work for the Myrtle Beach
7 Police Department?

8 A Yes, sir.

9 Q When were you employed with the Myrtle Beach Police?

10 A For approximately, give or take, seven years or so.

11 Q And were you involved with the case that we're here
12 for today?

13 A Yes.

14 Q Can you kind of describe to us your involvement in
15 that case?

16 A Yes. I was the case officer, so I was pretty much
17 in charge. That was my case.

18 Q Tell us how the investigation began.

19 A Okay. So part of my duties is to interview people,
20 go to the jail, see if there's anybody in there that I'd
21 like to interview.

22 We had been receiving complaints about a bar in the
23 north end of the city, which is Foster's Bar, a lot of
24 narcotics complaints. Just so happens I did a jail
25 interview, and within that interview, the person that I

1 was speaking to had also made narcotics complaints coming
2 from Foster's Cafe & Bar.

3 Q And so based on these complaints and the information
4 you gathered, how did you proceed with developing this
5 operation?

6 A So I first went to speak to my corporal about it,
7 and he also informed me that this had been an ongoing
8 thing, so it's something that we needed to jump on and we
9 needed to do something about.

10 So I kind of just came up with an operational plan.
11 I vetted that through my supervisors, and then that plan
12 goes through to the chief of police, and then the chief of
13 police is ultimately the person that gives the okay to go
14 along with the operation.

15 Q And so, in this case, did you receive approval from
16 your supervisors and the chief of police?

17 A Yes, I did.

18 Q Can you tell us a little bit about the details of
19 the operation, what all exactly it entailed?

20 A Yeah. So the operation, in basic form to explain it
21 is we were going to send undercover officers inside to see
22 if they could purchase narcotics, to see if those
23 complaints was valid. And that was the purpose of this
24 operation, to see if the narcotics complaints from
25 Foster's Cafe & Bar were valid.

1 Q This operational plan that you developed, was the
2 defendant the target of this operation?

3 A No. It was just the bar. The narcotics complaints
4 were coming from the bar.

5 Q So let's turn to the night of September 18th. How
6 did that operation that evening begin?

7 A So, you know, after we get our teams together, we
8 all set up in our positions. The undercover officers were
9 released into the bar. They went inside, and they kind of
10 were just looking around, trying to get a feel for the
11 place, and then they noticed that there was a subject that
12 was, you know, making a lot of hand-to-hands, talking with
13 a lot of people, talking with the staff of the bar.

14 So once that information got back to us, you know,
15 we ultimately made the decision that we wanted the
16 undercovers to make contact with that person.

17 Q And did the undercover officers make contact with
18 that individual?

19 A Yes.

20 Q Can you tell us a little about what happened at that
21 point?

22 A So the undercover officer made contact with the
23 defendant while he was outside in his vehicle, and then he
24 distributed some narcotics to her.

25 Q I want to back up just for a moment. Were you

1 on-scene that night as well?

2 A Yes.

3 Q Were you working in an undercover capacity?

4 A No, not necessarily. Since I was the case officer,
5 there was a lot of moving parts that I had control of,
6 what I was in charge of. So I was there kind of just
7 trying to move pieces around and kind of gather
8 information and stuff like that. I was not one of the two
9 undercover officers that went into the bar.

10 Q So you say the undercover officer made contact with
11 this defendant. They spoke and went back to his car, and
12 that he then handed her some narcotics?

13 A Correct.

14 Q Is that correct?

15 How was she able to identify those substances?

16 A I'm sorry?

17 Q Did she recognize the substance as narcotics or --

18 A Oh, yeah.

19 Q Once she -- the defendant handed her those
20 substances, what happened then?

21 A So after he handed her the first bag that contained
22 the white powdery substance, she went to go back inside
23 the bar and noticed that she had accidentally taken his
24 keys with her. So she went back outside to return the
25 keys, and that's where he distributed the second package

1 to her.

2 Q Did the operation continue beyond that point?

3 A No. After we had gotten what of what we went there
4 for, we kind of called it after that.

5 Q What happened to the narcotics after the end of the
6 operation?

7 A So once Officer Kobithen and I met up at the police
8 department, she gave me the narcotics, and then I weighed,
9 photographed, field tested, and dropped it into Property
10 and Evidence.

11 Q And did you have any further involvement with this
12 case?

13 A I did the arrest warrant.

14 Q Okay. And you elected to charge the defendant with
15 distribution; correct?

16 A Yes, sir.

17 Q Why was that?

18 A Because he distributed narcotics to an undercover
19 officer.

20 Q Even though there was no sale of the narcotics?

21 A Correct.

22 Q When did you leave Myrtle Beach?

23 A September 1st of 2021 was, I believe, my last day.

24 Q And did you have any further involvement with this
25 case beyond that point?

1 A No.

2 Q And did you leave the Myrtle Beach police force in
3 good standing?

4 A Yes.

5 MR. BEAMER: Your Honor, I have no further questions
6 at this time. If you'll just answer any questions the
7 defendant has for you.

8 CROSS-EXAMINATION

9 BY MR. NESMITH:

10 Q How are you doing, Mr. Cardona?

11 A Good, sir. How are you?

12 Q I'm all right.

13 Okay. And you said you was on-site September 18th
14 when they brought or when they supposed to have -- when
15 they had supposed to was -- on operations?

16 A I was there, yes, sir.

17 Q September 18th?

18 A I was there at Foster's September 18th, yes.

19 Q Okay. Yes, sir. Because what I want you to
20 understand is that, on the same warrant that you had
21 signed, that was September 1st. So now if it happened
22 September 1st in 2020, how did I commit the offense on the
23 18th but then the warrant got signed before it even
24 happened?

25 A Do you have the warrant so I can see it?

1 Q I don't have it with me, but I do have it.

2 And then what it also has on the paper, it's a
3 stamp. Like when you get your stamped file copy from
4 the -- when you get the stamped file copy from the clerk
5 of court -- so the stamp is usually here. On this
6 particular warrant, the stamp is over September 1st. The
7 first day you wrote out --

8 MR. BEAMER: Objection, Your Honor. The defendant
9 is testifying at this point.

10 THE COURT: You need to pose a question.

11 BY MR. NESMITH:

12 Q Yes. So the day that you wrote out the warrant,
13 September 1st, how did I commit that offense before it
14 happened?

15 A So I don't really understand the question kind of,
16 but I think what you're getting at is, a lot of times when
17 we do undercover activity, if we use informants or things
18 like that, then we would just use the month and the year
19 to protect the confidential status of that informant.

20 Q Okay. So -- okay. Now, back to filling out the
21 warrant. So then when you fill out the warrant,
22 basically -- you tell me you can -- you basically know
23 that this person is going to do this? If this was
24 September 1st but the offense didn't happen until the
25 18th, how is that possible?

1 A So I think I would like to see the warrant to see
2 what you're talking about.

3 Q Yes. And then once you see the warrant, you will
4 also see, as you're filling out a warrant, as you usually
5 do, and it has the date -- and it has the date and then it
6 has what happened at approximately -- but there's no date
7 on that. There's no date in that spot where I have, like,
8 several other warrants, but the date are on those, but
9 they're not on yours.

10 However, you stated that -- okay. You got this
11 information from a jail interview.

12 A Mm-hmm.

13 Q But you said it was a jail interview that the person
14 was complaining also?

15 A Yeah. He told me that there was drugs being sold at
16 Foster's Cafe & Bar.

17 Q What else did he tell you, being that he was -- what
18 charges was he facing?

19 MR. BEAMER: Objection, Your Honor. Relevance.

20 THE COURT: Sustained.

21 BY MR. NESMITH:

22 Q Yes. So, okay. You said you was -- have you ever
23 worked with -- you worked on the same operation and then
24 -- on that same operation with Mrs. Covington. It has
25 everybody who had worked, all the arresting officers.

1 A That name doesn't ring a bell.

2 Q Now, I didn't know -- Covington was the one who they
3 said had came into the bar. What I want you to understand
4 is that the reason what I'm asking you this is because you
5 had worked with the other officers -- it says, "Arresting
6 officers." It has you, and it has a few more officers.

7 Are you familiar with Officer Belue?

8 A I am.

9 Q Okay. So then is Officer Belue still with the
10 police department?

11 A I haven't talked to him in some time but I would
12 imagine so.

13 Q Officer Belue was still with the police department
14 after having previous charges? Because, from my
15 understanding, Officer Belue took the charge when another
16 incident occurred and this whole operation that y'all was
17 running this street team or whatever, it got dismantled.
18 And, Officer Belue, he went to federal court --

19 MR. BEAMER: Objection, Your Honor. Both relevance
20 and the defendant is testifying again.

21 THE COURT: Sustained.

22 BY MR. NESMITH:

23 Q Okay. And Mrs. Covington, she stated that you gave
24 her money to buy beer.

25 A I still don't know who Mrs. Covington is.

1 Q The one with the -- the one who had came into the
2 bar. The girl who had got the stuff. That's
3 Ms. Covington?

4 MR. BEAMER: Kobithen.

5 A Kobithen?

6 Q Oh, Kobithen. Yes. Pardon me, pardon me.

7 A Yes, sir.

8 Q Yes, her. So you gave her -- what did you give her
9 money for?

10 A We provided her with currency to purchase her
11 alcohol and also to purchase narcotics.

12 Q And what did she get?

13 A What did she get? As far as...

14 Q She must have bought the alcohol.

15 A That's probably a question you would have to ask
16 her.

17 Q What purchase did she make with -- what's she
18 supposed to be buying? How much did she buy?

19 A Of alcohol?

20 Q No, of drugs.

21 A Well, she didn't spend any money to buy drugs
22 because it was distributed to her.

23 Q So what happened to the \$40?

24 A Well, any funds that we give for an operation like
25 that are then turned back in if they're not used.

1 Q So she didn't buy no beer?

2 A That's probably a question you would have to ask
3 her.

4 Q Okay. Because you said that I was talking to people
5 inside the bar. I mean, I had to order something. How am
6 I going to order something if I don't talk to them?

7 A Okay.

8 Q Yes. And when did you stop working with the Myrtle
9 Beach -- when did you resign from the Myrtle Beach Police
10 Department?

11 A I believe that September 1st of 2021 was my last
12 day.

13 Q September --

14 A -- 1st of 2021.

15 Q September 1st of 2021.

16 Because, on your resignation, it says September --
17 you gave them your resignation on what date?

18 MR. BEAMER: Objection, Your Honor. I don't know
19 where the defendant is -- what document he's reading off
20 of as far as the witness's resignation.

21 MR. NESMITH: I was just showing he wasn't working
22 there -- I was just showing he was not working there at
23 the time that he said.

24 MR. BEAMER: This is hearsay. He's providing some
25 sort of out-of-statement -- or out-of-court statement.

1 MR. NESMITH: No, I have the proof, but I just don't
2 have it here, and I'm telling you what I read.

3 BY MR. NESMITH:

4 Q You had resigned on September -- you gave them
5 your resignation --

6 MR. BEAMER: Your Honor, I maintain my hearsay
7 objection on this.

8 THE COURT: If you have got a document there that
9 you want to show him --

10 MR. NESMITH: No, sir. I don't have any documents
11 right now. But then I also --

12 THE COURT: He testified that his last day was
13 September the 1st.

14 MR. NESMITH: Okay, yes. So I want to prove that
15 that's not true.

16 THE COURT: Objection is sustained.

17 BY MR. NESMITH:

18 Q Why did you resign?

19 A It was just -- law enforcement was kind of tough on
20 my family life. I needed a job that was a lot easier.

21 Q So, in this resignation, you said that the officers
22 can come back and then, you know, if you need -- just if
23 how you were testifying now, if they need you, you will
24 come back and then, you know, help them out or whatever?
25 On the resignation on the second page, it says, if you

1 need me in the future, that I will come back, and I guess
2 testify or whatever or help you out or whatever.

3 What I want you to understand is that you said that
4 and then -- however, you still didn't come to the
5 preliminary hearing. At the preliminary hearing, Officer
6 Knapp said you're no longer with the department.

7 A Yep.

8 Q Okay. And back to September 1st. And I want to ask
9 you this, and I would like an answer. How can a person
10 commit an offense before --

11 THE COURT: Mr. Nesmith, I have already discussed
12 the issue with you. This is the official document,
13 true-billed indictment that the jury will have. It is the
14 controlling document. It states, "On or about September
15 the 18th, 2020."

16 MR. NESMITH: Yes, sir.

17 THE COURT: Previous objection of the solicitor is
18 sustained.

19 MR. BEAMER: Thank you, Your Honor.

20 MR. NESMITH: Yes, sir. Thank you.

21 MR. BEAMER: Brief redirect, Your Honor?

22 THE COURT: Yes, sir.

23 REDIRECT EXAMINATION

24 BY MR. BEAMER:

25 Q Mr. Cardona, I just want to touch on a couple of

1 points that came up on cross-examination. Regarding the
2 arrest warrant that you drafted in this case, is it common
3 practice when working with undercover officers or
4 confidential informants to put the first day of the month
5 that the conduct occurred in as the date on the warrant?

6 A Correct.

7 Q Additionally, defense counsel asked about alcohol
8 purchases done by the undercover officers. Was there a
9 policy in your department or in your department's team
10 regarding purchasing alcohol while undercover?

11 A Yes, sir.

12 Q Could you tell us a little bit about what that
13 policy was?

14 A The policy was no more than two drinks.

15 Q But you stated that they were provided police funds
16 to purchase those drinks?

17 A Yes, sir.

18 Q Why would you have an undercover officer purchasing
19 alcohol while they're on the job?

20 A Well, there's very few people that go inside of a
21 bar to hang out and don't have a drink. So you don't want
22 an undercover officer on or confidential informant to
23 stick out like a sore thumb in a bar that's, you know,
24 someone that's not consuming alcohol.

25 Q And I believe you stated on cross but just to be

1 certain, if the funds that were allocated for that
2 operation, if any, weren't spent, those were then returned
3 to the Department; correct?

4 A Yes, sir.

5 Q And were accounted for?

6 A Yes, sir.

7 MR. BEAMER: Nothing further, Your Honor.

8 THE COURT: You may step down.

9 THE WITNESS: Thank you.

10 MR. BEAMER: Your Honor, may this witness be
11 relieved from his subpoena?

12 THE COURT: Any objection from him being released at
13 this time?

14 MR. NESMITH: I may need him for another -- I may
15 need him again. I may call him again if I can.

16 MR. BEAMER: Your Honor, I believe, if he had more
17 questions for him, he should have brought them up on
18 cross-examination.

19 MR. NESMITH: Yes. I was going to wait until I
20 cross-examined Mrs. -- what's her name? Kobithen.

21 THE COURT: We'll need him to stay for a while.

22 MR. BEAMER: Yes, Your Honor.

23 The State would next call Andrea Kobithen to the
24 stand.

25 ANDREA KOBITHEN,

1 after having been duly sworn, was examined and
2 testified to as follows:

3 THE WITNESS: My name is Andrea Kobithen.
4 A-n-d-r-e-a. Last name, K-o-b-i-t-h-e-n.

5 DIRECT EXAMINATION

6 BY MR. BEAMER:

7 Q Good afternoon, Ms. Kobithen. Where are you
8 currently employed?

9 A I am self-employed doing marketing/advertising.

10 Q And did you formerly work for the Myrtle Beach
11 Police Department?

12 A Yes, I did.

13 Q At the time when you were working there, was your
14 name Andrea Warner?

15 A Yes, it was.

16 Q You remarried or married since then?

17 A I have since been married.

18 Q So if there were any documents -- if your name was
19 on any documents pertaining to this case, those would say
20 Andrea Warner; is that right?

21 A That's correct.

22 Q How long were you employed with Myrtle Beach?

23 A About four years.

24 Q And were you involved in the undercover operation
25 related to this case today?

1 A Yes, I was.

2 Q And what capacity were you involved?

3 A I was one of the two undercover officers inside
4 Foster's that night.

5 Q Can you tell us a little bit about how that
6 operation played out on September 18th?

7 A Yeah. So we all briefed at the police department
8 and then headed out to Foster's. I was dressed in plain
9 clothes to blend in. That can be anything, you know,
10 shorts, T-shirt, jeans, just to blend in with the crowd.
11 And I was provided a certain amount of funds -- police
12 funds from the fund that we have for these types of
13 operations to purchase any narcotics or alcohol while on
14 scene.

15 And I entered the bar with another undercover
16 officer. We did have recording equipment as well. And we
17 were kind of just observing in the bar. We were looking
18 around, looking for any illegal activity that we noticed,
19 and this could be anything from hand-to-hand transactions
20 or anything that we have learned from training or past
21 experience to have anything to do with illegal activity.

22 So, from there, we noticed a male doing multiple
23 hand-to-hand transactions, talking to a lot of people. He
24 was going behind the kitchen staff, exchanging what
25 appeared to be large amounts of currency with the kitchen

1 from behind a half door, it looked like, but in the
2 kitchen.

3 I asked somebody in the bar where I could get some
4 narcotics, and they told me that I needed to speak to Flav
5 and pointed him out to me, and that's when I approached
6 him.

7 Q And based on what you saw, how did you proceed from
8 there?

9 A So based on what I saw, I saw Flav walk outside, and
10 I approached him and asked him where I could get some
11 blow. At that point, he directed me to go to his car with
12 him, which was in the parking lot at Foster's Cafe. And,
13 from there, he had reached under his seat and got like a
14 medium-size bag, I would say, containing a bunch of
15 smaller bags filled with a white substance, which, based
16 on training, knowledge, and experience, I have found to be
17 narcotics.

18 He then handed me one of the small plastic baggies,
19 and I asked him how much I owed him, and he said some --
20 it was on the house or nothing or I didn't owe him
21 anything.

22 And, at that point, I went back inside the bar. And
23 I noticed that I still had his keys, which he gave to me
24 when I was skeptical about getting in his car with him.
25 He let me hold onto his keys. So I went inside the bar,

1 noticed I had his keys, went back out to give them to him,
2 and that's when he gave me a second plastic baggie with
3 around the same amount of narcotic in it.

4 Q I just want to take a few steps back and let's kind
5 of do that piece by piece here.

6 You said you approached him and you asked him if he
7 knew where you could get some blow. Can you tell us what
8 blow is?

9 A So blow is a street term or a slang term for
10 cocaine.

11 Q So then you say he asked you to come to his car and
12 you're going to proceed with a transaction of sorts from
13 there; right?

14 A Correct.

15 Q Did you get in the car with him?

16 A I didn't. I had the door open, and I kind of had my
17 foot in, but I was skeptical about getting in the car with
18 him.

19 Q And you say you saw him basically procure some
20 narcotics and then hand them to you. Where did he grab
21 those from?

22 A It appeared to be under the driver's seat where he
23 was sitting.

24 Q And then he handed you a baggie of white powdery
25 substance, you said?

1 A Correct.

2 Q And then what did you do with that, that first
3 baggie?

4 A So I just slipped it in my pocket, and I went right
5 into the bathroom at Foster's, and I had called the case
6 manager, Mr. Cardona. I sent him a picture of it, and I
7 was just instructed to secure it until the operation was
8 over, so I had just put it in my front pocket.

9 Q So what happened after you secured that first
10 baggie?

11 A After I secured the first baggie, as I was still in
12 the bathroom, I noticed I had his keys. So I went outside
13 and approached the vehicle the second time to give him his
14 keys back that I had. And, at that point, I observed
15 another male in the car, and Mr. Flav gave -- was doing a
16 cash transaction, it looked like. And then, once the male
17 left, I had given him his keys back, and he handed me a
18 second bag of a white powdery substance and said it was to
19 get me through.

20 Q So you mentioned you had this interaction with
21 someone named Flav?

22 A Correct.

23 Q Is Flav here in the courtroom today?

24 A Yes.

25 Q Could you identify for us, please.

1 **A** Yes. He's sitting over there with the gray and
2 black.

3 **Q** Thank you.

4 I'm approaching with what has been marked as State's
5 Exhibit 1 in this case. Do you recognize that item?

6 **A** Yes. That is the DVD of the undercover distribution
7 that we had gotten on camera that night. And I viewed it
8 and put my initials on it on March 23rd of '23.

9 **Q** You previously renewed and initialled this?

10 **A** I have.

11 **Q** You said you had recording equipment that was
12 operating in the course of this investigation?

13 **A** Correct.

14 **Q** Did it appear to be operating properly that night?

15 **A** Yes. We always check it and make sure it's
16 operating.

17 **Q** If you'll bear with us one minute, Ms. Kobithen.

18 **MR. BEAMER:** Your Honor, at this time, the State
19 would move State's Exhibit 1 into evidence and publish it
20 to the jury.

21 **THE COURT:** All right. It's in without objection.
22 (State's Exhibit No. 1 was received into evidence.)

23 **MR. BEAMER:** Your Honor, may the witness step down
24 while we get this up and operational?

25 **THE COURT:** Sure.

1 (Pause in the proceedings while setting up TV
2 equipment.)

3 (Video plays.)

4 BY MR. BEAMER:

5 Q Ms. Kobithen, is this the substance you were saying
6 that he gave you that night?

7 A Yes, that's correct.

8 Q And what did it appear to be to you?

9 A It appeared to be cocaine.

10 Q And what are you basing that on?

11 A Based off of knowledge from prior dealings with
12 cocaine and training and experience.

13 (Video continues to play.)

14 BY MR. BEAMER:

15 Q Okay. Ms. Kobithen, was that an accurate
16 representation of what occurred that night?

17 A Yes.

18 Q And just to recap, so you approached him, asked
19 where you could get some blow, and effectively just played
20 out as we saw there?

21 A Correct.

22 Q And you went back to the bathroom and secured the
23 substance in your pocket?

24 A Correct.

25 Q I'm going to play the next recording. That occurred

1 just after what we just saw?

2 A Yes.

3 (Video continues to play.)

4 BY MR. BEAMER:

5 Q So is that a fair and accurate representation of
6 what occurred during that second distribution?

7 A Yes.

8 Q You didn't give him any money for these narcotics;
9 correct?

10 A Correct.

11 Q And he actually just stated there this was worth
12 about \$80 what he gave you?

13 A Correct.

14 Q But he had just given you that to kind of get you
15 started for the night?

16 A Correct.

17 Q You can take the stand back.

18 So was that the extent of the operation that night?

19 A Yes. We did -- we kept the case open to see if we
20 could gather any other information or typically that's
21 what we do with narcotics investigations, we keep it open
22 until we feel we have gathered all the information,
23 whether it be on the suspect or anyone pertaining to the
24 case.

25 Q What did you do with the narcotics at the end of

1 that night?

2 A At end of that night, I had given them to the case
3 officer, Officer Cardona.

4 Q Did you have any further involvement in this case?

5 A I did enter them into a BEST packet, which is a
6 sealed packet which we use for all narcotics to eventually
7 get tested for narcotics.

8 Q Is it unusual with Street Crimes to have not put
9 them in a BEST packet immediately?

10 A No. That's typical practice.

11 Q When did you leave Myrtle Beach Police Department?

12 A June of 2021.

13 Q Did you leave in good standing?

14 A I did.

15 Q I don't have any further questions. If you'll just
16 answer any questions defense has.

17 CROSS-EXAMINATION

18 BY MR. NESMITH:

19 Q Yes, how are you doing, Ms. Kobithen?

20 A Good. How are you?

21 Q Yes, I got a few questions for you. Okay. And how
22 much money did they give you to purchase?

23 A I don't recall the exact amount.

24 Q But they gave you that to purchase?

25 A To purchase anything illegal -- you know, narcotics

1 or the two drinks that I was allowed to purchase that
2 night.

3 Q How much did you give me?

4 A I did not give you anything.

5 Q And on the bottom of the camera, it says 9/18/2020.

6 A Correct.

7 Q At this same point, what my thing occurred or when I
8 caught my offense, like I said, it was 9/1/2020 when they
9 first wrote the warrant. And then that's where things
10 seemed kind of difficult for me.

11 And you go to parties a lot?

12 A I do not.

13 Q Have you ever heard of a party favor?

14 A I have.

15 Q Do you know what party favors are?

16 A I do.

17 Q Could you give me one example or give me three?

18 A Three examples of party favors? A lollipop, if
19 you're referring to maybe illegal narcotics, or a toy.

20 Q No more questions. Thank you.

21 MR. BEAMER: Brief redirect, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. BEAMER:

24 Q I apologize, Ms. Kobithen. I forgot to ask you this
25 earlier: This operation, this occurred at Foster's Bar &

1 Cafe; right?

2 A That's correct.

3 Q Is that within the city limits of Myrtle Beach?

4 A Yes.

5 Q And that's here in Horry County?

6 A Correct.

7 MR. BEAMER: Nothing further, Your Honor. Just ask
8 that this witness be excused and/or released from her
9 subpoena.

10 MR. NESMITH: Yes, I have something further.

11 RE-CROSS-EXAMINATION

12 BY MR. NESMITH:

13 Q And, Ms. Kobithen, okay, you said you seen me in the
14 back of the bar -- in the back where they serve drinks at?

15 A I did not see you in the back of the bar. I saw you
16 around the bar -- in the bar.

17 Q So I will have to call you back up here because I
18 will have my notes tomorrow and then I will show you where
19 you said that you had that.

20 And then, also, was I the only black person in the
21 bar?

22 A I don't recall, but I would imagine not. Probably
23 not.

24 Q You said you seen some people in the back and you
25 seen me in the back in your statement.

1 A From I recall --

2 Q I never been in the back of that club.

3 A Okay.

4 Q And then I will show you this tomorrow or at --

5 MR. BEAMER: Objection, Your Honor. I'd ask that
6 she be allowed to answer the questions that he's posing.

7 THE COURT: I believe her testimony was she didn't
8 see you in the back of the car -- the bar, but she saw you
9 around the bar. Anyway, the record will speak for itself.
10 Go ahead.

11 BY MR. NESMITH:

12 Q Yes. So then that's a -- you know, I would have to
13 point out -- like I said, I don't have my notes today, and
14 I don't want to keep on contradicting and everything. But
15 then...

16 How many beers did you have that night?

17 A I did not have any beers.

18 Q No more questions. Thank you.

19 MR. BEAMER: Nothing further from this witness, Your
20 Honor. I just ask that she be allowed to step down and be
21 excused from her subpoena.

22 THE COURT: She may step down; however, the defense
23 requests, when we get to the defense case, she needs to be
24 able to be where we can contact her.

25 MR. BEAMER: Yes, Your Honor.

1 A I house and store all the property and evidence as
2 well as lost and found, found property. Within our unit,
3 we have limited access. Only three of us have access to
4 that. It's all in a secured location. I house it until
5 I'm told to do something otherwise, such as maybe bring it
6 to the State Law Enforcement Division, take it to court,
7 and days like this. It's all directed by the officer
8 that's in charge.

9 Q And did you have a chance to become involved in this
10 matter where you handled some evidence?

11 A I did.

12 Q Okay. Please tell the jury about that.

13 A Can I refer to my notes?

14 Q Please.

15 A I took in a white powdery substance. It was two
16 separate pink clear baggies containing a white powdery
17 substance. It looked like it was from Officer, at the
18 time, Cardona.

19 Q And how did you come to become in possession of that
20 evidence?

21 A We have temporary storage lockers, so we were there
22 only during the day, and Officer Cardona had worked at
23 night. There are secured lockers where he puts something
24 in and he pushes the pin through so nobody else has access
25 to that until I come in, in the morning, with a specific

1 key. And I took that out of that locker, made sure that
2 the voucher electronically here matched what it said was
3 on the envelope, and I was able to process it and store it
4 in my location.

5 Q Now, is there a set of policies and procedures that
6 you use to check evidence in?

7 A Yes. So one of those policies are we have to make
8 sure that there's what's called a tamper-resistant seal,
9 and it is a piece of tape and it says "evidence" right
10 across. They have to seal it to make sure that,
11 obviously, no one else can get into it. They put their
12 dates and initial on there from the time that they drop
13 it. So if I tried to open it up or somebody else tries to
14 open it up, you can obviously tell.

15 I make sure that that seal is intact before I accept
16 it, make sure that the item is written with the case
17 number that it has associated with that particular case,
18 and the amount of the drug. For instance, this particular
19 one matches what was on the voucher.

20 Q Okay. And did you do by those circumstance -- by
21 those policies in this case?

22 A I did.

23 Q And when you checked the evidence in from the
24 evidence locker, was the tape intact?

25 A It was.

1 Q It didn't appear to be tampered with?

2 A Absolutely not.

3 Q When you got it, what did you then do with it?

4 A So, again, I check and make sure that the amounts on
5 the envelope match what's on the voucher because that's
6 what gets put into the electronic system. For this case,
7 it was .367 grams on the white powdery substance, which is
8 what it said on the coin-size envelope that Officer
9 Cardona had initially dropped it in.

10 Q Did that end your involvement in this matter?

11 A It did.

12 Q Thank you.

13 A You're welcome.

14 Q Please answer any questions the defendant has.

15 A Sure.

16 CROSS-EXAMINATION

17 BY MR. NESMITH:

18 Q Yes. How you doing?

19 A Good. How are you?

20 Q All right.

21 Yes. In your statement just now and on, you know,
22 the notes that I have, you said that it was two clear
23 baggies?

24 A That's correct. That's what it says in the note
25 sections, yes.

1 Q Okay, yes. Because I also witnessed that too;
2 however, it was two red bags.

3 A It says, "A pink clear baggie containing white
4 powdery substance."

5 Q Oh, pink clear bag?

6 A Right.

7 Q Yes. And you came into the bar on 9/18/2020, and
8 you gave military time at what time it was?

9 A I didn't go into the bar, sir.

10 Q Yeah. I guess someone who had went -- someone who
11 was with her?

12 A I'm not sure. I was not even working at those
13 hours.

14 Q Okay. No more questions.

15 A Thank you.

16 Q And I still have some more questions later on once I
17 get my notes because I have a statement with your name on
18 it.

19 THE COURT: You can step down.

20 THE WITNESS: Thank you.

21 MR. CARAKER: Nothing further from the State.

22 Your Honor, next we call Amanda Hudnall.

23 AMANDA HUDNALL,

24 after having been duly sworn, was examined and
25 testified to as follows:

1 THE WITNESS: My name is Amanda Hudnall. First
2 name, A-m-a-n-d-a. Last name, H-u-d-n-a-l-l.

3 MR. CARAKER: May it please the Court, Your Honor?

4 DIRECT EXAMINATION

5 BY MR. CARAKER:

6 Q Good afternoon.

7 A Good afternoon.

8 Q How are you?

9 A I'm good. Thank you for having me.

10 Q A little nervous?

11 A Yeah, a little bit.

12 Q That's all right.

13 With whom are you employed?

14 A The City of Myrtle Beach Police Department.

15 Q And what's your job there?

16 A I'm an evidence technician.

17 Q And tell us -- I know we just heard from
18 Ms. Shadoan. Do you kind of do the same thing she does?

19 A Yes, sir. I do the same job. We take in all of the
20 evidence that comes in from various cases, as well as
21 found property. We are in a secure room that the only --
22 the three of us that work in there have access to, and we
23 basically keep it until we're told to do otherwise.

24 Q Did you come into contact with evidence in this
25 particular case at some point?

1 **A** Yes, sir, I did.

2 **Q** Please tell the jury how that came about.

3 **A** I came into Evidence on this case because, on April
4 15th, Andrea Kobithen came to the property and evidence
5 room and asked to retrieve the drugs that were dropped
6 previously from the buy. So I looked it up in the
7 computer, saw where it was located in the drug vault,
8 which is also secure inside a secure room, went to the
9 drug vault, retrieved the drugs, and then took them to
10 her.

11 The purpose of that was so that she could put them
12 inside of a BEST packet so that they could be tested. So
13 I took the drugs to her. We signed them out for chain of
14 custody purposes to show that they went directly from me
15 to her, and then she took them and put them in a BEST
16 packet.

17 **Q** And what happened with the drugs after that?

18 **A** After that, the drugs came back to me to show chain
19 of custody, and then they were signed out to her so that
20 she could take them to the Horry County drug lab.

21 **Q** While they were in your possession, did you alter
22 the substance or tamper with it in any way?

23 **A** Absolutely not.

24 **Q** And you said this is around April of 2021; is that
25 correct?

1 A Yes, sir.

2 Q Okay. During the -- between the time that this
3 incident occurred and the time you got them out of the
4 drug vault, were they in that vault the entire time?

5 A Yes, sir. Once they come into the room, they get a
6 bar code, and they have a specific place that they go, and
7 they are stored inside of the drug vault.

8 Q And anyone who comes in contact with the drugs has
9 to go through one of the three of you; is that correct?

10 A Yes, sir.

11 Q And then is there a certain set of policies and
12 procedures that you use in order to sign those items out
13 of the vault?

14 A Yes, sir.

15 Q And did you follow those procedures in this matter?

16 A Absolutely.

17 Q Did that end your involvement in this case?

18 A Yes, sir.

19 Q Thank you. Please answer any questions the defense
20 has.

21 CROSS-EXAMINATION

22 BY MR. NESMITH:

23 Q Yes. How you doing?

24 A I'm good. Thank you.

25 Q All right. So you said you had got the drugs on

1 April 15th?

2 A I retrieved them from the drug vault on April the
3 15th.

4 Q Of what year?

5 A 2021.

6 Q 2021. So then that's almost -- that's almost like
7 seven months later.

8 A Yes, sir.

9 Q All right. No more questions. Thank you.

10 MR. CARAKER: Nothing further from the State, Your
11 Honor.

12 THE COURT: Please step down. Thank you.

13 MR. CARAKER: Judge, due to the speed we're moving,
14 we didn't have our chemist here quite yet, but she is on
15 the way from just downtown. If we can have maybe a brief
16 recess until she gets here, we'll be ready to proceed in
17 just a couple of minutes.

18 THE COURT: That will work. I promised the jury
19 we'd break every hour. So let's take ten minutes and see
20 where we stand.

21 (The jury exited the courtroom at 3:59 p.m.)

22 THE COURT: Court stands at ease.

23 (A recess was taken from 4:09 p.m. to 4:10 p.m.)

24 (State's Exhibit No. 3, Drugs in Evidence Bag, was
25 marked for identification.)

1 THE COURT: Ready?

2 MR. CARAKER: Yes, sir, Your Honor.

3 (The jury entered the courtroom at 4:22 p.m.)

4 THE COURT: All right.

5 MR. CARAKER: Thank you, Your Honor. May it please
6 the Court? We call Courtney Johnson to the stand.

7 THE COURT: Come around and be sworn, please.

8 COURTNEY JOHNSON,

9 after having been duly sworn, was examined and
10 testified to as follows:

11 THE CLERK: Please state your name and spell it for
12 the Court.

13 THE WITNESS: Courtney Johnson. C-o-u-r-t-n-e-y
14 J-o-h-n-s-o-n.

15 MR. CARAKER: May it please the Court, Your Honor?

16 THE COURT: Yes, sir.

17 DIRECT EXAMINATION

18 BY MR. CARAKER:

19 Q Good afternoon, Ms. Johnson.

20 A Good afternoon.

21 Q With whom are you employed, ma'am?

22 A I'm with the Horry County Police Department.

23 Q And what's your job there?

24 A I'm a forensic chemist assigned to the drug analysis
25 lab.

1 Q And what does a forensic chemist do?

2 A My primary job responsibility to analyze and
3 identify suspected controlled substances that are
4 submitted to me.

5 Q And do you have any specialized education or
6 training for that?

7 A I received my bachelor's of chemistry from Southern
8 Wesleyan University, as well as my bachelor's in biology
9 and forensic science from Southern Wesleyan University.

10 Upon being hired on by the Horry County Police
11 Department, I completed my training at the South Carolina
12 Law Enforcement Division in the analysis of controlled
13 substances.

14 I have also completed the Agilent GCMS maintenance
15 and training seminar as well as the Drug Enforcement
16 Administration's forensic chemist training seminar, and we
17 also do a proficiency testing annually through
18 Collaborative Testing Services.

19 Q Have you had an occasion to testify in court before
20 as to the area of forensic drug analysis?

21 A I have.

22 Q And in what capacity for the State, for example?

23 A As an expert witness in drug chemistry, yes, sir.

24 Q How many times?

25 A 13 times total between State and federal.

1 MR. CARAKER: Your Honor, at this time, I'd like to
2 move Ms. Johnson in as an expert in the area of forensic
3 drug analysis.

4 MR. NESMITH: No, I don't object to her being an
5 expert.

6 THE COURT: So qualified without objection.

7 MR. CARAKER: Thank you, Your Honor.

8 BY MR. CARAKER:

9 Q Ms. Johnson, did you come -- did there come a time
10 where you tested some drugs in the case involving Rodney
11 Nesmith?

12 A Yes, sir.

13 Q Okay. Did you render a report in that case?

14 A Yes, sir, I did.

15 MR. CARAKER: May I approach, Your Honor?

16 BY MR. CARAKER:

17 Q Ms. Johnson, I'm handing you what's previously been
18 marked as State's Exhibit No. 2 for identification. Can
19 you identify that for the jury, please?

20 A Yes, sir. This is our drug analysis report that we
21 generate for each case that we complete.

22 Q And did you yourself generate that report?

23 A Yes, sir, I did.

24 Q Is that done in the regular course of business there
25 in the drug lab?

1 A Yes, sir. We have to do it for every case that we
2 analyze.

3 Q Is it the regular course of business that you, in
4 fact, generate that report?

5 A Yes, sir.

6 MR. CARAKER: Your Honor, I'd like to move State's
7 Exhibit 2 into evidence.

8 MR. NESMITH: Sir?

9 MR. CARAKER: I'm moving the drug report into
10 evidence.

11 MR. NESMITH: Yes.

12 THE COURT: In without objection.

13 (State's Exhibit No. 2 was received into evidence.)

14 BY MR. NESMITH:

15 Q Ms. Johnson, can you please tell the jury sort of
16 the procedures that you go through when you test
17 substances?

18 A Sure. So after I receive the drugs from the
19 evidence custodian, I make sure that all the seals on the
20 kit is intact. I then open it up and itemize the
21 evidence, separate it.

22 Once I have it itemized, I take a weight and perform
23 a presumptive test on each item of evidence, and then I
24 take a representative sample from each item to perform an
25 extraction so that I can do a confirmatory analysis.

1 Q And is that done with some sort of specialized
2 machinery?

3 A Yes, sir. We use a gas chromatograph mass
4 spectrometer for our confirmatory analysis.

5 MR. CARAKER: May I approach, Your Honor?

6 BY MR. CARAKER:

7 Q I'm handing you what's been marked as State's
8 Exhibit No. 3 for identification. Can you please identify
9 that for the jury?

10 A Yes, sir. So this outer bag is what we actually
11 call a K-Pack bag, and we seal any evidence that we have
12 worked back inside of this K-Pack bag. On the inside,
13 you'll see the bag that there's with the blue swirl
14 pattern around the outside. We refer to that a BEST kit
15 or BEST evidence sample testing kit. And it is a
16 tamper-evident bag that we use that is marked with a
17 control number that's printed from the factory, and the
18 drugs are stored inside of that bag.

19 Q And where did you receive that from?

20 A May I refer to my notes?

21 Q Please.

22 A I received this in person from an Andrea Warner on
23 April 15th of 2021.

24 Q And what did you do with it when you received it?

25 A I placed it into a secured locker inside of the

1 laboratory until I was ready to perform the analysis.

2 Q Is that generally how things are done?

3 A Yes, sir.

4 Q And does anyone have access to that locker?

5 A It's just me.

6 Q Just you alone?

7 A Yeah. At this time, it was just me in the lab, yes,
8 sir.

9 Q And let's talk about the BEST kit there. You were
10 talking about earlier it's a tamper-evident seal; is that
11 correct?

12 A Yes, sir. So along the dark blue -- I'm not sure if
13 you can see it too well, but the dark blue is the top
14 seal, and it actually -- if it's tampered with in any way
15 -- stretched, becomes distorted -- it will show letters
16 that say "open, void, broken." And then the outer swirl
17 patterns, they will also show distortion if anyone has
18 tried to pull it open or cut it and put something in it
19 and fuse it back together. So all of those things we look
20 for before we ever start the analysis on a case.

21 Q Okay. And that particular BEST bag, did that appear
22 to have been tampered with before you tested the drugs?

23 A No, sir.

24 Q What would you have done had it shown any tampering?

25 A If it had shown any forms of tampering at all, I

1 would not have worked the case. I would have returned it
2 back to the Myrtle Beach Police Department.

3 Q So looking inside the BEST kit now, can you describe
4 the contents?

5 A Yes. So, on the back, there's actually two items
6 kind of squished together, but this is one item and this
7 is another item. And I put these bags that you see there.
8 And then the bags that were originally in the kit are
9 inside of my packaging that I put back into.

10 Q So just for -- I know it's a long way away, but just
11 for clarification, is it your testimony that the clear
12 bags with the writing on it came from you; is that
13 correct?

14 A Yes, sir. You'll actually see my initials on that
15 bag as well as a "BA" or a plus mark on each Ziploc bag
16 with a red line.

17 Q And then the sort of pinkish clear baggies that are
18 in there, is that what you got the evidence in?

19 A Yes, sir.

20 Q Okay. All right. And can you describe -- you said
21 you did a presumptive test?

22 A Yes, sir.

23 Q And you took a weight?

24 A Yes, sir.

25 Q Now, when you do the weight, do you weigh the

1 substance in the bag or out of the bag?

2 A No, sir. We remove all packaging before obtaining a
3 weight.

4 Q And so, if you could refer to your report, what does
5 your report show that those bags contain?

6 A For Item 1.1, the heat-sealed pouch that was labeled
7 "A" containing a Ziploc bag containing powder substance,
8 cocaine, Schedule II, found 0.2 grams, 3.0 grains.

9 And Item 1.2 was a heat-sealed pouch labeled "B"
10 containing a Ziploc bag containing a powder substance.
11 The results were cocaine Schedule II found, 0.1 grams or
12 1.5 grains.

13 Q And did that come directly off your report?

14 A Yes, sir.

15 Q The one that you generated?

16 A Yes.

17 Q Where have the drugs been since you tested them?

18 A They have been stored in the secured location inside
19 of the lab.

20 Q Okay. And did you bring them here today?

21 A Yes, sir, I did.

22 MR. CARAKER: Your Honor, at this time, I would move
23 Item 3 into evidence, Your Honor. I would submit that we
24 have completed the chain of custody.

25 MR. NESMITH: Yes.

1 THE COURT: In without objection.

2 (State's Exhibit No. 3 was received into evidence.)

3 BY MR. CARAKER:

4 Q Ms. Johnson, did you have any other involvement in
5 this matter?

6 A No, sir.

7 Q Did you perform any investigative endeavors into
8 this matter at all?

9 A No, sir.

10 Q Just testing the drugs?

11 A Yes, sir.

12 Q Thank you. Please answer any questions the defense
13 may have.

14 CROSS-EXAMINATION

15 BY MR. NESMITH:

16 Q Yes. How you doing?

17 A Good. How are you?

18 Q I'm all right.

19 Yes, how long have you been the analyst at the
20 Myrtle Beach Police Department?

21 A So ten years and almost two months.

22 Q Okay. So then, in that pack right there, how much
23 exactly is cocaine?

24 A We do not perform quantitative analysis. We only do
25 qualitative analysis on the drugs.

1 Q So that could be fake?

2 A No, sir. There is cocaine in the sample itself.

3 Q How much is it?

4 A We just don't quantify how much cocaine is actually
5 in the powder.

6 Q Well, it could be all powder and then all nothing,
7 but then it would have to specify how much cocaine is in
8 it, because it may not be cocaine at all.

9 A There is cocaine in it. I confirmed that through my
10 analysis; however, we just don't quantify that amount.

11 Q Okay. So you don't --

12 A So we don't have, like, a percentage -- 50 percent
13 cocaine, 50 percent cut, because South Carolina law does
14 not require us to do that, yes, sir.

15 Q Okay. So then you don't know how much of that is --

16 A We do not perform a quantitative analysis. No, sir.
17 We only do qualitative analysis, yes, sir.

18 Q You can't just tell how many -- how much --

19 MR. CARAKER: Judge, I believe this has been asked
20 and answered several times.

21 BY MR. NESMITH:

22 Q I'm talking about all the cocaine that's in it
23 separate from -- I'm talking about the deadly part from
24 the whatever part. Cocaine is the deadly or whatever, so
25 then how much -- you don't know how much that is?

1 A No, sir. Again, we don't do a quantitative
2 analysis. South Carolina law only requires us to do a
3 qualitative analysis. So we just have to confirm the
4 presence of cocaine, and it's any combination or mixture
5 thereof is then deemed cocaine, yes, sir.

6 Q And, again, that could be fake?

7 THE COURT: With that, I sustain the objection.

8 MR. CARAKER: Thank you, Your Honor.

9 MR. NESMITH: Yes, thank you.

10 THE WITNESS: Yes, no problem.

11 MR. CARAKER: Nothing further, Your Honor. Thank
12 you.

13 THE COURT: You may step down.

14 MR. CARAKER: May she be released from her subpoena,
15 Your Honor?

16 MR. NESMITH: Yes.

17 THE COURT: Thank you. You may step down. The
18 witness is excused.

19 MR. BEAMER: Your Honor, at this time, the State has
20 no further witnesses. I believe there will be a matter
21 that needs to be heard outside the presence of the jury.

22 THE COURT: Thank you, Solicitor.

23 Ladies and gentlemen, if you'll step back to your
24 room; I have to take up a matter of law.

25 (The jury exited the courtroom at 4:33 p.m.)

1 MR. BEAMER: Your Honor, at this time, the State has
2 rested its case-in-chief. This would normally be the time
3 a motion for a directed verdict would be heard from the
4 defense if he wants to make such a motion.

5 THE COURT: That's correct.

6 (Defendant conferring with Ms. Hiller.)

7 MR. NESMITH: Yes, Your Honor, I'm not making a
8 motion right now.

9 MR. BEAMER: Your Honor, just for the sake of the
10 record, I want it to be clear the defendant understands
11 that, if he does not make that motion now, he loses the
12 opportunity to do so through the rest of his case.

13 (Defendant conferring with Ms. Hiller.)

14 MR. NESMITH: Yes, sir, I would like to move for a
15 motion because the State has not presented enough evidence
16 to go forward with the case.

17 THE COURT: Thank you, sir.

18 MR. NESMITH: Yes. You're welcome.

19 THE COURT: With the evidence that's been presented
20 at this point, I'll have to deny that motion.

21 MR. BEAMER: Thank you, Your Honor.

22 THE COURT: All right.

23 MR. NESMITH: Your Honor, I would like to start my
24 defense and present my case tomorrow morning, if that's
25 okay with the Court.

1 THE COURT: What say the State?

2 MR. BEAMER: Your Honor, the State has no objection
3 to hearing the defendant's case-in-chief in the morning.

4 THE COURT: Got a question: Any of these witnesses
5 have to travel up here, can any of them be released or
6 does the defendant still feel that you need all of them
7 that weren't excused?

8 MR. NESMITH: Just the ones that I said that I would
9 ask questions later.

10 MS. HILLER: Which ones are those?

11 MR. NESMITH: McKeitha (ph) and Mr. Cardona. Yeah,
12 that's it.

13 MR. BEAMER: I'm sorry? Can he repeat those names?
14 I heard Cardona. I didn't --

15 MR. NESMITH: And Ms. -- and Ms. Shadoan.

16 THE COURT: Shadoan?

17 MR. NESMITH: Yes.

18 THE COURT: Who else?

19 MR. NESMITH: Ms. McKeitha (ph).

20 MR. BEAMER: Your Honor, I don't know who a
21 Ms. McKeitha is.

22 MS. HILLER: Kobithen.

23 MR. NESMITH: Kobithen. Yes, pardon me.

24 MR. BEAMER: So Cardona, Kobithen, and Shadoan?

25 MR. NESMITH: Yes.

1 THE COURT: All right. Let's think about it. I
2 remember this morning we had something scheduled at 9:30
3 in the morning.

4 MR. CARAKER: Yes, Your Honor said that you would do
5 a plea off the roster in the morning.

6 THE COURT: All right. So let's plan to fire back
7 up on this case at -- let's just say 9:45. Hopefully we
8 can stay on track with the plea.

9 MR. CARAKER: Yes, sir.

10 THE COURT: All right.

11 MR. BEAMER: Yes, Your Honor.

12 THE COURT: Okay. We'll send the jury home for the
13 evening.

14 (The jury entered the courtroom at 4:39 p.m.)

15 THE COURT: Mr. Foreman, ladies and gentlemen of the
16 jury, it is now 20 minutes to 5:00. The bosses in
17 Columbia don't like us working unless there's special
18 circumstances past 5:30 because court staff and many other
19 folks within the courthouse have families and obligations.
20 About ten years ago, we were asked not to work late in the
21 evenings unless it's absolutely necessary, so we're going
22 to stop.

23 Now, this is the situation: In the morning, I have
24 got another matter that was scheduled ahead of time for
25 9:30. So I'm going to ask y'all to be back to the jury

1 room, that you have already been to, at 9:45. It
2 shouldn't take but 15 minutes or so on that first one.

3 Remember: Don't discuss the case with anyone.
4 Don't allow anybody to contact you in any form or fashion
5 and don't do any independent research. Y'all have a good
6 evening. Thank you for your patience, and we will see you
7 in the morning.

8 (The jury exited the courtroom at 4:41 p.m.)

9 THE COURT: All right. Everybody be back at 9:45 on
10 this matter.

11 MR. NESMITH: Yes, sir, Your Honor. I would like to
12 be heard before the remand, please, because basically, I
13 would be better prepared tomorrow. Like, I wasn't -- I'm
14 not prepared today. And then I would have my papers ready
15 for cross-examination and everything, if you don't mind.

16 I apologize for being late, but I never missed a
17 court date before, but it was a mistake where I didn't get
18 the -- I didn't get the paper to come to court. That's
19 the only court date that I had missed.

20 But other than that, I made all my court dates;
21 however, I may have been late and I apologize for that.
22 My stomach was messed up today and I was in the bathroom,
23 sir. But I will be better prepared tomorrow if you could
24 lift that remand, if you don't mind, please.

25 THE COURT: No, sir. Can't do that.

1 All right. In the morning.

2 MR. CARAKER: Thank you, Your Honor.

3 MR. BEAMER: Thank you, Judge.

4 (The trial adjourned for the day at 4:42 p.m.)

5 NOVEMBER 18, 2023

6 (The trial resumed at 10:17 a.m.)

7 THE COURT: All right. Are we ready for the jury?

8 MR. BEAMER: Yes, Your Honor, the State's ready.

9 MR. NESMITH: Excuse me, Your Honor. I have some
10 issues that I would like to go over first.

11 I have a few issues that I would like to go over
12 first.

13 THE COURT: Hold up just a minute.

14 Yes, sir?

15 MR. NESMITH: Good morning, Your Honor. Like I told
16 you yesterday -- and you said that I didn't have the paper
17 -- it was concerning the warrant in general, and I was
18 saying how can I possibly have done this, like, crime that
19 they say, and I would have to -- I would have to -- I have
20 some more questions for Officer Cardona that Mr. Beamer
21 would not like me to ask because it goes along with
22 everything that has been done here.

23 He was the officer that filled out the warrant, and
24 I'm going to show you why he had did all this right here.
25 And then that's it. Because the purchase -- so they said

1 the purchase was done and a warrant was filed -- it was
2 written out on September 1st saying I did this on
3 September 1st; however, on the camera, it says September
4 18th because everything was vindictive and it made this
5 look real. I could have been already pled guilty and this
6 would have still looked real, which it is untrue. If you
7 would like to see it...

8 THE COURT: Didn't I tell you yesterday that this
9 indictment controls?

10 MR. NESMITH: Yes, sir. And then this is all
11 leading -- this is all leading from the indictment because
12 they said that I made a controlled buy -- that the girl
13 made the control buy on the 18th of September.

14 THE COURT: All that was explained on this stand
15 yesterday.

16 MR. NESMITH: Yes, sir.

17 THE COURT: But I will let you go forward and you
18 can call her whenever you want and you can ask her about
19 it.

20 MR. NESMITH: Yes, sir.

21 THE COURT: Do you understand all that was explained
22 yesterday?

23 MR. NESMITH: Yes. But then you wouldn't let me go
24 into it because I didn't have the paper. You said it was
25 just hearsay. So then I was just -- I couldn't touch on

1 it like how I wanted to. But then now that I have the
2 paperwork --

3 THE COURT: I'm not going to deny you the right to
4 cross-examine on that. Okay?

5 MR. NESMITH: Yes, sir.

6 THE COURT: Or direct now.

7 MR. NESMITH: Yes, sir.

8 THE COURT: But do you understand what I told you,
9 that the indictment date controls? That warrant is
10 irrelevant.

11 MR. NESMITH: What I'm saying is they wouldn't have
12 came at me unless this -- they couldn't have come at me
13 with just the indictment, period, because this right here
14 started the indictment.

15 THE COURT: I'm going to let you cross-examine her,
16 but all that's been explained as to how that works.

17 MR. NESMITH: Yes, but I wouldn't be here today,
18 Your Honor, if these lies wasn't put on me.

19 THE COURT: Okay. You can cross-examine her on it.

20 MR. NESMITH: Yes, thank you.

21 THE COURT: Apparently, I'm not getting through to
22 you.

23 All right. Bring the jury in.

24 (The jury entered the courtroom at 10:21 a.m.)

25 THE COURT: Good morning, ladies and gentlemen of

1 the jury.

2 JURORS: Good morning.

3 THE COURT: And I know what you want to ask me:

4 "Why did you tell me to be back here at 9:45 and here it
5 is 10:20?" Well, the simple answer to that is, we had two
6 other matters that we were able to take care of that were
7 scheduled later on, and we were able to free up several
8 attorneys. And we did that because I knew you would be
9 patient with us, and I appreciate that.

10 We are clearing as many people out so they can get
11 back to work whenever they can be here, and that's the
12 simple explanation for it. So thank you so much for being
13 patient with us. I understand you maybe had some good
14 food back there this morning.

15 All right. We'd ready to get started here.

16 To the defense?

17 MR. NESMITH: Yes. At this time, I would like to
18 call Mrs. Kobithen to the stand.

19 ANDREA KOBITHEN,

20 after having been duly sworn, was examined and
21 testified to as follows:

22 THE CLERK: State your name for the record.

23 THE WITNESS: Andrea Kobithen. A-n-d-r-e-a.
24 K-o-b-i-t-h-e-n.

25 DIRECT EXAMINATION

1 BY MR. NESMITH:

2 Q Yes. How you doing, Ms. Kobithen?

3 A Good. How are you?

4 Q On this -- this is your statement right here that
5 you wrote after coming inside Foster's Bar & Grill?

6 A Yes. That looks like my statement.

7 Q Okay. Okay. In this, it says that, prior to your
8 arrival, you were issued \$30 to -- for purchase of alcohol
9 and to purchase and make the buy.

10 A I was given funds to purchase alcohol and narcotics,
11 yes.

12 Q Okay. And how much narcotics did you purchase from
13 Nesmith, Flav?

14 A So I did not give you any money in exchange for the
15 narcotics, but you gave them to me just, I guess, for
16 free.

17 Q With no purchase?

18 A You distributed them to me without exchanging any
19 money. That's correct.

20 Q What do you mean -- can you explain "distribute" --

21 A Distribute?

22 Q -- for the jury?

23 A Absolutely. So, in South Carolina law, "distribute"
24 is just --

25 Q Hold on. Excuse me.

1 **A** Yes.

2 **Q** And that's South Carolina law?

3 **A** Correct.

4 **Q** And which book is that in? Does it also have
5 distribution or undercover buy?

6 **A** So a distribution is a transfer of control. It
7 doesn't necessarily mean you have to exchange any currency
8 or anything for the product. It's just a transfer of
9 control from one person to the next.

10 **Q** Remind you, you're on the stand, miss.

11 **A** Okay.

12 **Q** Because, on this warrant right here from September
13 1st, it reads, "In the month of September 2020, the
14 affiant conducted a controlled narcotic purchase." And
15 that was -- this paper is 9/1/2020.

16 **A** I did not write the warrant, so that's not my
17 writing.

18 **Q** Yes, but then my arrest is from -- it said that,
19 during the controlled narcotic purchase, the defendant was
20 given and tested positive for the presence of cocaine, an
21 amount of less than four grams.

22 **A** That's correct.

23 **Q** Okay. And how many times have you been to Foster's
24 Bar & Grill?

25 **A** That was my first time, so just one.

1 Q And on the camera, we can see you go into the
2 bathroom.

3 A Mm-hmm.

4 Q Why did you cover up the camera?

5 A I don't recall covering up the camera, but I went in
6 the bathroom to call the case agent and let him know that
7 I had received narcotics and asked him what he wanted me
8 to do with them since I couldn't safely give them to him.

9 Q Would you like to see the camera [verbatim] again?
10 Would you like to see the tape again?

11 A I don't need to see the tape again.

12 Q So why did you cover up the camera, Ms. Kobithen,
13 when you went inside the ladies bathroom?

14 A I'm not sure why the camera was covered or if it
15 was, but the device I was using -- I'm not sure why it was
16 covered or why you're thinking I covered it.

17 Q Have you ever used drugs?

18 A I have not.

19 Q How many times have you worked with Mr. Cardona?

20 A We were in the same unit, so we worked together
21 daily.

22 Q How many years?

23 A How many years did I work with him? I guess around
24 four years.

25 Q Okay. And he never asked you to do him a favor?

1 recorded that night. What sort of device were you using
2 to record that video?

3 A A cell phone.

4 Q So you had a cell phone camera that was basically
5 set to record the video parts of that?

6 A Correct.

7 Q And you were just holding onto that phone throughout
8 this whole exchange?

9 A Correct.

10 Q So, at some point, you probably would have held it
11 down at your side or set it in your pocket or your jacket
12 or anything like that?

13 A Correct.

14 Q So would it be feasible that, in the course of
15 moving that phone around, the camera might have been
16 briefly obscured as you went to the restroom?

17 A Yes.

18 MR. BEAMER: I have no further questions, Your
19 Honor.

20 MR. NESMITH: Yes, I have another question.

21 REDIRECT EXAMINATION

22 BY MR. NESMITH:

23 Q So as you have read just now about the distribution,
24 so then where does the money come in at? Because if I
25 drop you off something, I would have to drop it off and

1 get something in return. I'm not talking about the main
2 part about the distribution. I'm talking about the main
3 part where the illegal stuff coming at, as far as the
4 money exchanging hands.

5 A What are you asking?

6 Q Okay. If I dropped something off to you and then I
7 distribute it to you, so then that's the distribution
8 part. But then I would also have to get, you know, money
9 if I was selling drugs because I'm in here right now for
10 selling drugs.

11 A You're in here for distributing narcotics. So
12 distribute just means to transfer the control of the
13 narcotics, which is what I -- what you did to me that
14 night.

15 Q So I can have a drug charge just from distribution?

16 A Correct. That's what the charge is: distribution.
17 So you distributed me the narcotics. I did not give you
18 money for the narcotics, but under law, I don't have to
19 give you any money for the narcotics. You still
20 distributed them to me that night.

21 Q Yes, I mean, that's -- okay. And you did this with
22 -- the recording was with your personal cell phone or with
23 the station's cell phone?

24 A It was with an agency cell phone. The police
25 department gave me a phone to record.

1 Q Do you have the number to that phone?

2 A The phone number, I don't --

3 Q Is the phone in evidence?

4 A It is not.

5 Q Okay. No more questions.

6 MR. BEAMER: Nothing further, Your Honor. I'd just
7 ask that the witness be allowed to step down and be
8 relieved from her subpoena.

9 MR. NESMITH: Yes, I may have some further
10 questions.

11 THE COURT: No, sir. You're through.

12 MR. NESMITH: Oh, okay.

13 THE COURT: You're excused.

14 Next witness?

15 MR. NESMITH: Yes. I would like to call
16 Mr. Cardona.

17 THE COURT: Come around, please.

18 JOHN CARDONA,

19 after having been duly sworn, was examined and
20 testified to as follows:

21 THE CLERK: State your name for the record.

22 THE WITNESS: John, J-o-h-n. Cardona,
23 C-a-r-d-o-n-a.

24 DIRECT EXAMINATION

25

1 BY MR. NESMITH:

2 Q How are you doing, Mr. Cardona?

3 A Good. Good morning.

4 Q Yes. Is this the warrant that you wrote up right
5 here?

6 A Yes, sir.

7 Q So with this warrant right here, it says 9/1/2020,
8 doesn't it?

9 A It does.

10 Q And can you read this right here on the bottom for
11 me, please?

12 But before you do that, with the policy -- no, I
13 will show you that on another warrant. Can you just read
14 this middle part for me?

15 A Looks cut off, so there's words that are missing on
16 the left and the right.

17 Q Yeah, it is words cut off that are missing. This is
18 the same paper right here.

19 A Okay.

20 Q Can you tell me what's missing from the front?

21 A So you'd like me to read this?

22 Q Can you tell me what's missing from the front in
23 writing out the actual -- like you said -- you see how
24 this is --

25 A Yeah, this is just blown up. I can read it off this

1 one if you'd like.

2 Q No. What I'm asking you is that, what's supposed to
3 be in the front of "in the month of September"?

4 A That's what you'd like me to read off -- start?

5 Q No. See right here on this paper, you said it's
6 supposed to be -- it had, "In the month of September."

7 A Yeah, it's just blown up, so it's cut off up here,
8 but I can read it off here.

9 Q Is this the end that -- it's just the "i" that's cut
10 off. However, on the actual warrant, it has the date and
11 "at approximately." This doesn't have that.

12 A Okay.

13 Q However, I have other warrants that do. This was
14 the only warrant that had just the writing, because it's
15 supposed to start at the date and "at approximately." So
16 with this warrant right here, it doesn't have a date, so
17 it can still start with that right in the month of
18 September 2020.

19 A So you want me to start reading from there?

20 Q Yes.

21 A "In the month of September of 2020, the affiant
22 conducted a controlled narcotics purchase from Defendant."
23 It's kind of hard to read. It's blurry.

24 Q And that's "in the month of September," but it don't
25 say approximately what day it was.

1 A Okay.

2 Q But at the top, it does.

3 A At the top where?

4 Q Where it has the stamped copy. What does it say?

5 A This is pretty difficult to read. This top portion
6 right here?

7 Q Right here.

8 A That says -- that's the date, yeah. It says,
9 9/1/2020.

10 Q Okay. So now I want to ask you again, if this was
11 written out on 9/1/2020 and the actual event happened --
12 how did the actual event happen on 9/18/2020, and you can
13 write out a warrant before the event happened?

14 A So like we discussed yesterday, we use an
15 approximate, you know, time frame within the months to
16 keep the information from the purchase and the informants
17 or the officers confidential.

18 Q I want to remind you that you are under oath,
19 Mr. Cardona, because what happened -- you were talking at
20 least about two weeks prior. So you're telling me that
21 you knew what this person was going to do?

22 A I don't understand that question.

23 Q If you wrote out this warrant on 9/1/2020 and the
24 offense didn't happen until 9/18, you had to -- how did
25 you know that this was going to take place?

1 A Well, I couldn't have wrote the warrant on 9/1, if
2 you understand what I'm saying. I mean, I'm not a time
3 traveler.

4 Q But you did.

5 MR. BEAMER: Objection, Your Honor. I think this
6 question has been asked and answered at this point. The
7 witness has explained why the warrant was written the way
8 it was, and Defendant keeps just reiterating the same
9 questions over and over at this point.

10 BY MR. NESMITH:

11 Q Yesterday, I didn't have my paperwork, but then,
12 today, I have the paperwork. And what I'm saying is that
13 you wrote out the warrant on 9/1/2020, and you said that
14 they purchased narcotics on that day. That's in the
15 middle.

16 A So, to reiterate, the date of 9/1/2020, that would
17 be used to keep the information from the purchase and/or
18 from the informant or the undercover officer confidential.

19 THE COURT: Your objection is sustained with that
20 completed answer.

21 MR. BEAMER: Thank you, Your Honor.

22 BY MR. NESMITH:

23 Q And you said that you -- why did you resign?

24 A I think we touched on that yesterday, but it was
25 just easier for my family life.

1 Q Oh, so you didn't want to be a cop no more?

2 A It was just easier for my family life.

3 Q And why did -- I mean, besides that, you didn't get
4 reprimanded for anything?

5 A Before I left or over the course of my career?

6 Q Before you had left the police force, did you get
7 charged --

8 THE COURT: We have an objection. Did I hear an
9 objection?

10 MR. BEAMER: Objection, Your Honor. Relevance.

11 MR. NESMITH: Yeah, because I'm asking him this
12 because of a prior -- I'm asking him this because of a
13 prior -- a prior charge for assault and battery on a
14 woman. You have two --

15 MR. BEAMER: Your Honor, if the defendant is wishing
16 to impeach this witness, there's rules that have to be
17 followed by that and that needs to be taken up outside the
18 presence of the jury.

19 THE COURT: Ladies and gentlemen of the jury, if
20 you'd step back to your room, please.

21 (The jury exited the courtroom at 10:39 a.m.)

22 MR. NESMITH: Yes, Your Honor. I'm trying to get
23 the credibility of the witness.

24 THE COURT: You got any convictions there in the
25 last ten years?

1 MR. NESMITH: Do I have any convictions in the last
2 ten years?

3 THE COURT: A record? Any convictions?

4 MR. NESMITH: No. This is -- basically like I said,
5 I have it in my notes, but then I don't have it here. And
6 then that's the same as what I was telling you yesterday
7 with the warrant and then other stuff I didn't have.
8 However --

9 THE COURT: Do you have a record of any convictions
10 in the last ten years?

11 MR. NESMITH: No, sir.

12 THE COURT: Solicitor, anything you want to put on
13 the record?

14 MR. BEAMER: Your Honor, if he has no prior
15 convictions or any other impeachable things on his record,
16 I don't think it's appropriate to get into what the
17 defendant is asking about.

18 MR. NESMITH: Yes. Basically, I don't have the
19 paper here, but I seen it on the public index when I put
20 in his name. I don't have none of that stuff here.
21 That's why I said that I didn't --

22 THE COURT: What did you see in the public index?

23 MR. NESMITH: He had two domestic -- he had two
24 domestic violence charges.

25 THE COURT: But you don't have any convictions.

1 MR. NESMITH: No, it wasn't a conviction. So then
2 what I'm getting at is that that's maybe why he got --
3 that's why he resigned. Because I got his first
4 resignation and then he had gave a date to when he had
5 resigned but then that wasn't the date that I have.

6 MR. BEAMER: Your Honor, if the shoe was on the
7 other foot and I was seeking to introduce prior arrests of
8 the defendant that weren't convictions, this case would be
9 thrown out. I don't think it's appropriate for him to
10 impeach the witness based on arrests that were not
11 convictions, if they are even his arrests. It could be,
12 you know, a similar name in the public index or anything.
13 We have no proof of this.

14 MR. NESMITH: Yes. It says that the warrant was
15 signed on 8/31/2021, but Mr. Cardona stated yesterday that
16 he didn't work there, that he had left in July of 2021.

17 MR. BEAMER: I believe he stated he left in
18 September of 2021.

19 MR. NESMITH: Well, we can look at the record again.
20 Even if it was...

21 MR. BEAMER: Your Honor, so I would object to this
22 line of questioning of the witness. I don't think the
23 appropriate grounds has been laid for him to impeach his
24 credibility. I'd ask that these questions be stricken.

25 THE COURT: It's improper impeachment. Sustained on

1 that. I don't see any connection with present charges
2 this defendant's got.

3 MR. NESMITH: Yes, this is the connection --

4 THE COURT: I have ruled.

5 Bring the jury back.

6 Mr. Nesmith, I know you're not an attorney but don't
7 you ever argue with a judge after they rule.

8 MR. NESMITH: Yes, sir. Pardon me. I don't know
9 that. Thank you.

10 THE COURT: And let that be a lesson to all the
11 attorneys in the room.

12 MR. BEAMER: Yes, Your Honor.

13 THE COURT: Including you.

14 [Courtroom laughter].

15 (The jury entered the courtroom at 10:43 a.m.)

16 THE COURT: All right. The jury is back.

17 MR. NESMITH: Okay. Yes.

18 BY MR. NESMITH:

19 Q Yes, Mr. Cardona. You said that, in the month of
20 September, they officially conducted a controlled
21 narcotics purchase. Is that right? Is that yes or no?

22 A Yep.

23 Q Okay. So during the controlled substance, you also
24 stated it was 4 grams.

25 A I'm sorry?

1 Q You said it was 4 grams. Less than 4 grams?

2 A I believe that's the statute, yes, sir.

3 Q Yes. It says, "Tested positive for the presence of
4 cocaine in an amount of less than 4 grams." And then it
5 has another -- but did you see the two bags yesterday?
6 Did you see the amount yesterday?

7 A Did I see the bags yesterday? I did not.

8 Q Because, with those amounts, you know, I would say
9 that that's a discrepancy because that's not the same
10 thing I seen yesterday. I just seen two small bags, and
11 then that's not nearly 2 grams.

12 A Okay.

13 Q So that's another discrepancy.

14 And before -- and you said that you had got a -- you
15 went to the jailhouse and got a -- and obtained this
16 information?

17 A This information in reference to what, sir?

18 Q The bar.

19 A The bar? Yes, I conducted a jail interview and that
20 information led --

21 Q Who did you conduct the jail interview with?

22 A I don't remember the person's name.

23 Q Because, see, you know that's just hearsay as if
24 you're saying that, you know, you could be making it up.

25 Did they mention my name?

1 A I don't remember. It's been some time now, sir.

2 Q You said yesterday that they didn't mention my name.

3 A Okay.

4 Q So I'm just contradicting what you said.

5 So -- and then -- okay. So you left the force. You
6 have resigned, and you told them that you would be back
7 and everything. And I want to know why you wasn't at the
8 preliminary hearing if you was going to help them in
9 future endeavors and everything. I asked you that
10 yesterday, but you never answered. You just shook your
11 head.

12 A I wasn't subpoenaed to the preliminary hearing. You
13 know, they didn't send anything to my house. I didn't
14 even know it was happening, to be honest with you.

15 Q Okay. So they never told you about nothing
16 happening in this case right here?

17 A In reference to the preliminary hearing?

18 Q Yeah.

19 A No.

20 Q Okay. How many times have you seen me before this?

21 A Today is the first time that I -- well, yesterday
22 and today are the first times that I'm physically seeing
23 you.

24 Q That you are physically seeing me?

25 A Like this close, yes, sir.

1 Q Have you ever heard of me before?

2 A Mm-mmm.

3 Q Do you know a Rebecca Biscoff?

4 A Doesn't ring a bell.

5 Q You know, I would like to have you deposed and then
6 with -- with a lot of technical -- technical, because you
7 are being untruthful, Mr. --

8 THE COURT: All right. That's totally out of line.

9 MR. BEAMER: Objection, Your Honor.

10 THE COURT: The jury will disregard that.

11 MR. NESMITH: No more questions. No more questions.

12 THE COURT: Ladies and gentlemen, step out, please.

13 (The jury exited the courtroom at 10:47 a.m.)

14 THE COURT: Mr. Nesmith?

15 MR. NESMITH: Yes, sir. Yes, Your Honor.

16 THE COURT: Lawyer or no lawyer, that was totally
17 uncalled for. We're going to start with contempt right
18 now. I'm not going to sentence you, but I'm finding you
19 in contempt. I'm going to hold sentencing in abeyance.
20 Do that one more time and it will be another contempt. Do
21 not do that again. Do you and I have an understanding?

22 MR. NESMITH: Yes, I understand you.

23 THE COURT: You wanted to represent yourself.

24 MR. NESMITH: Yes, sir, Judge.

25 THE COURT: You put yourself in that position. Do

1 not attempt to do that again.

2 All right. Hold up. Yes?

3 MR. NESMITH: Yes. I would like to know -- I was
4 trying to be, you know, cordial at the end and respectful,
5 but I don't even know what I did, Your Honor.

6 THE COURT: I'm going to give you a little help
7 there. Don't you accuse any witness on this stand of
8 being a liar.

9 MR. NESMITH: Oh, okay.

10 THE COURT: You are up there to ask questions.

11 MR. NESMITH: Okay. Yes, sir.

12 THE COURT: You knew better than that. Don't play
13 that on me.

14 MR. NESMITH: I didn't, Your Honor. And I'm just
15 being honest. I do apologize.

16 THE COURT: See if they're ready to come back. They
17 may not be.

18 (The jury entered the courtroom at 10:50 a.m.)

19 THE COURT: Any further questions?

20 MR. NESMITH: I have no more questions, Your Honor.

21 THE COURT: Thank you.

22 MR. BEAMER: Cross-exam, Your Honor?

23 THE COURT: Yes, sir.

24 CROSS-EXAMINATION

25

1 BY MR. BEAMER:

2 Q Good morning, Mr. Cardona.

3 A Good morning, sir.

4 Q I just have a brief few questions for you. The
5 defendant has discussed the arrest warrant in this case a
6 lot, and I'm handing you a copy from my file of that
7 arrest warrant.

8 A Yes, sir.

9 Q Now, is that arrest warrant dated September 1st,
10 2020?

11 A On the very top it is.

12 Q But the conduct in this case occurred on
13 September 18th, 2020; correct?

14 A Yes.

15 Q Is it true that you would normally date arrest
16 warrants related to controlled buys, either conducted by
17 undercover officers or confidential informants, with a
18 general date?

19 A Correct.

20 Q And you would do that to protect the identity of the
21 informants or the undercover officers?

22 A Correct.

23 Q On that arrest warrant, is it signed or dated and
24 signed by a judge on October 31st, 2021?

25 A Correct.

1 Q So the arrest warrant was presented to a judge and
2 drafted up after September 18th of 2020?

3 A Yes.

4 MR. BEAMER: No further questions, Your Honor.

5 MR. NESMITH: I would like to --

6 REDIRECT EXAMINATION

7 BY MR. NESMITH:

8 Q Yes. So Mr. Cardona, it has -- you gave your
9 resignation on the 21st. You said you gave them ten days.
10 October 28th was your last day.

11 A Is that a question?

12 Q Yes.

13 A Okay. What's the question?

14 Q October 28th was the last day for your resignation.

15 A I believe my last day was September 1st of 2021.

16 Q Yes. So what I was saying -- you said August 1st?
17 Because, on this paper, it says August 31st, 2021, was
18 your -- I'm understanding that was your last day, but this
19 paper still got signed on the last day that you worked.

20 A 8/31/2021.

21 Q By the judge?

22 A Okay.

23 Q Yes. So my question is -- okay. If you knew that
24 you was resigning, why did you -- if you knew -- this was
25 a whole year after. You understand that; right?

1 A I do.

2 Q Okay. And on this right here, I have my phone back,
3 and it says you were the case officer. And this is from
4 8/25/2022.

5 A 8/25/2022?

6 Q Do you see where it's circled that you're the case
7 officer?

8 A Yep. Right underneath there, it says the seizing
9 officer was T.J. Knapp.

10 Q And the case officer is --

11 A Me. Correct.

12 Q So you was on the force then on 8/25/2022?

13 A No.

14 MR. NESMITH: No more questions. Thank you.

15 MR. BEAMER: Very brief recross, Your Honor.

16 RECCROSS-EXAMINATION

17 BY MR. BEAMER:

18 Q You have already established that you had left the
19 force in September of 2021; correct?

20 A Yes, sir.

21 Q Would your name have been continued to be listed as
22 the case officer on this case for some time after that?

23 A Until the case is closed.

24 MR. BEAMER: Nothing further, Your Honor.

25 I'd just ask that the witness be allowed to step

1 down and be relieved from his subpoena.

2 THE COURT: Granted.

3 THE WITNESS: Thank you.

4 MR. NESMITH: Yes, I would like to call Ms. Shadoan
5 from Property.

6 THE COURT: Come around, please.

7 MALINDA SHADOAN,

8 after having been duly sworn, was examined and
9 testified to as follows:

10 THE CLERK: State your name and spell it for the
11 record.

12 THE WITNESS: Malinda Shadoan. M-a-l-i-n-d-a.
13 Shadoan, S-h-a-d-o-a-n.

14 DIRECT EXAMINATION

15 BY MR. NESMITH:

16 Q Yes. How are you doing, Ms. Shadoan?

17 A Good. How are you?

18 Q Yes. I have some property that's in the property
19 room. Basically, it was evidence in this case right here.

20 A Okay.

21 Q And, you know, I would like to -- you know, if it's
22 all right with the Court, I would like to, you know, see
23 that evidence because, basically, the evidence that was
24 money is now in a check.

25 MR. CARAKER: Objection, Your Honor. I believe

1 Mr. Nesmith is talking about another matter that's
2 completely separate from this matter, and I think it's
3 irrelevant in this particular case. I believe Your Honor
4 has already ruled on that.

5 THE COURT: Is it a totally different matter?

6 MR. NESMITH: It is a different matter.

7 THE COURT: Sustained.

8 MR. NESMITH: When I got arrested, this money was in
9 my pocket and then --

10 THE COURT: Move on to your next question.

11 MR. NESMITH: Okay.

12 BY MR. NESMITH:

13 Q You have -- when I went to pick my phone up, you had
14 had Mr. Cardona down as the case officer, but then
15 Mr. Dona [verbatim] isn't working there no more. Can you
16 explain why?

17 A Sure. What I believe what you showed him was an
18 evidence property sheet, and that shows the case officer
19 and the seizing officer of those said cellphones. They
20 will always remain as the case officer and the seizing
21 officer for that case no matter if they're there or not.

22 Q Okay. Are you still -- do you know if -- like, if
23 someone is fined or something like that, that there will
24 still be a ticket under Mr. Cardona's name?

25 A I have nothing to do with that so I would not know.

1 Q Yes. I would just ask her about the property in
2 evidence. I have no more questions.

3 MR. CARAKER: No cross. Thank you, Your Honor. May
4 she be released from her subpoena?

5 THE COURT: Granted.

6 MR. CARAKER: Thank you, Your Honor.

7 (Defendant conferring with Ms. Hiller.)

8 MR. NESMITH: Yes, I have no more questions, Your
9 Honor.

10 THE COURT: Ladies and gentlemen of the jury, if
11 you'd step back to your room, please.

12 (The jury exited the courtroom at 10:58 a.m.)

13 DEFENDANT'S RIGHTS

14 THE COURT: Mr. Nesmith?

15 MR. NESMITH: Yes, sir. I would --

16 THE COURT: Under the Fifth Amendment of the United
17 States Constitution, summary counterpart provisions of
18 South Carolina Constitution, I have to advise you at this
19 time about your right to testify and your right not to
20 testify. And before you make a final decision on it, I
21 would request that you speak with your standby counsel
22 before you make any final decisions.

23 Certainly you have a right to take this stand and
24 testify, but under those constitutional provisions, you
25 have a right to remain silent. If you elect not to

1 testify, it cannot mitigate against you in any way, this
2 jury's considerations. They cannot take that under
3 consideration in any kind of mitigation against you.

4 You have a right, under the federal law and under
5 state law, to remain silent. Any decision as to whether
6 you wish to testify or if you wish not to testify -- in
7 other words, if you elect not to testify, it has to be a
8 decision made freely, intelligently, and voluntarily by
9 you.

10 Now, with what I have just told you about your
11 rights concerning incrimination and your right to testify
12 or not testify, do you wish to discuss that with your
13 counsel?

14 MR. NESMITH: Yes, sir. Yes, Your Honor.

15 THE COURT: Take a few minutes.

16 (Defendant conferring with Ms. Hiller.)

17 MR. NESMITH: Yes, Judge, I choose not to testify at
18 this time.

19 THE COURT: All right. One other thing I needed to
20 cover with you, if you were to testify -- I wasn't clear
21 about that -- you understand you'd be treated like any
22 other witness and you could be cross-examined and
23 impeached just like any other witness.

24 All right. You're telling me that you wish not to
25 testify?

1 MR. NESMITH: Yes, sir.

2 THE COURT: And that decision is yours and yours
3 alone?

4 MR. NESMITH: Yes, sir.

5 THE COURT: Okay. And nobody has told you what you
6 have to do? In other words, there's no -- no duress, no
7 threats, no intimidation whatsoever anybody has put on you
8 concerning this matter?

9 MR. NESMITH: No, sir.

10 THE COURT: All right. Okay. Everybody let's --
11 unless there's something for the record, let's take a
12 brief recess.

13 MR. BEAMER: Your Honor, I don't know if you want to
14 hear it at this time, but, again, this would normally be
15 the time that a directed verdict motion would be renewed.
16 I just want to make sure that that's being covered, if
17 necessary.

18 MR. NESMITH: Yes, I would like a motion to renew
19 for a direct verdict for insufficient evidence.

20 THE COURT: Do you need to add something?

21 MS. HILLER: I was just going to say, Your Honor,
22 has he officially rested his case?

23 MR. CARAKER: I thought he had.

24 MS. HILLER: I mean, he didn't say it.

25 THE COURT: He didn't say it.

1 MS. HILLER: And I didn't teach him to say it, so I
2 was just bringing that up.

3 If you're done with calling all your witnesses and
4 you're not testifying, you need to rest the defense case.
5 Just stand up.

6 But isn't that done in front of the jury?

7 THE COURT: Technically, yes. He didn't say that
8 even though he said no witnesses, and then I needed to
9 cover those rights.

10 MS. HILLER: Of course.

11 THE COURT: Technically, you're right.

12 So let's bring them back and then we'll take a brief
13 recess because the court staff needs a break too.

14 (The jury entered the courtroom at 11:05 a.m.)

15 THE COURT: All right. Does the defense rest?

16 MR. NESMITH: Yes. I rest my case, Your Honor.

17 THE COURT: Any rebuttal or reply from the State?

18 MR. BEAMER: No, Your Honor.

19 THE COURT: Okay. Ladies and gentlemen of the jury,
20 I apologize I'm playing musical chairs with you, but as
21 these phases come along, then we have to get ready, so the
22 next phase will be closing arguments. I'll give counsel a
23 little time to prepare for that, plus the court staff
24 needs a brief recess too. Please be patient with us, and
25 we will come back in just a few minutes with closing

1 arguments. Y'all may step back, relax just a few more
2 minutes, please.

3 (The jury exited the courtroom at 11:06 a.m.)

4 THE COURT: The Court will stand at ease for about
5 ten minutes.

6 Any proposed charges will certainly be invited.

7 (A recess was taken from 11:06 a.m. to 11:20 a.m.)

8 MR. CARAKER: Judge, we have gotten together some
9 jury charges. I have shared them with Defense. They're
10 going over them right now, and Mr. Beamer is just running
11 off some copies in the back right here on distribution.
12 Just took a little while to get them put together.

13 THE COURT: All right.

14 (Pause in the proceedings.)

15 (Defendant confers with Ms. Hiller.)

16 MR. BEAMER: Your Honor, may I approach?

17 THE COURT: Yes, sir.

18 MR. BEAMER: These are the jury charges agreed on by
19 the parties.

20 (Pause in the proceedings while the Court reviews
21 documents.)

22 THE COURT: Are we ready to go with closing?

23 MR. BEAMER: The State is ready, Your Honor.

24 MR. NESMITH: I need a few more minutes, Your Honor.

25 THE COURT: All right.

1 (Pause in the proceedings.)

2 MR. BEAMER: Your Honor, I have a question for
3 clarification purposes regarding closings. Is it your
4 understanding that we would have the State close in full,
5 defense close in full, and then the State rebut, or would
6 you have the defense do their close in full and then the
7 State close?

8 MR. CARAKER: He closes and then you close.

9 THE COURT: All right. He didn't put in any
10 evidence.

11 MR. BEAMER: He called witnesses, Your Honor.

12 THE COURT: Unless y'all showed me something
13 different that's changed, since he didn't put any evidence
14 in, y'all have to open in full and he gets to close.

15 MR. BEAMER: Yes, Your Honor.

16 (Pause in the proceedings.)

17 THE COURT: Standby counsel, if y'all will help me a
18 little bit here. We need to make sure that Mr. Nesmith
19 understands that his closing argument is to be a closing
20 argument. It's not for him to testify because he elected
21 not to testify.

22 MS. HILLER: Absolutely, Your Honor. We have been
23 trying, but Your Honor, we have -- I'm standby counsel.
24 I'm not his attorney. He's not listening to my advice,
25 generally. That's why we're in this situation we're in.

1 Okay?

2 THE COURT: Can't use it to testify. You can only
3 argue to the jury what's in evidence.

4 MR. NESMITH: Yes.

5 THE COURT: You can't use it as a position that you
6 can testify to them. And if you attempt to, the last
7 thing I want to do is interrupt anybody in a closing
8 argument.

9 MR. NESMITH: Yes, sir. I totally understand.

10 THE COURT: But I will do that if you attempt to
11 start testifying.

12 MR. NESMITH: Okay.

13 THE COURT: With that said, are we ready?

14 MR. NESMITH: Sir?

15 THE COURT: Are we ready?

16 MR. NESMITH: I need two -- at least two more
17 minutes.

18 THE COURT: Okay.

19 (Pause in the proceedings.)

20 THE COURT: All right. Two minutes has turned into
21 about 10.

22 MR. NESMITH: Yes, sir. I'm ready, Your Honor.

23 MS. HILLER: He's ready. We were going through
24 procedural of what's next and what's next. He's ready to
25 go.

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

2 (The jury entered the courtroom at 11:47 a.m.)

3 THE COURT: Solicitor?

4 MR. BEAMER: Thank you, Your Honor.

5 CLOSING ARGUMENT ON BEHALF OF THE STATE

6 MR. BEAMER: May it please the Court?

7 THE COURT: Yes, sir.

8 MR. BEAMER: Actions have consequences. I told you
9 that at the beginning of this trial. I also told you that
10 the State had to prove three things to you: That the
11 defendant had actual control or the right to exercise
12 control over a controlled substance; that the defendant
13 knowingly distributed or delivered that substance; and
14 that that substance was cocaine.

15 I believe the State has met its burden today to show
16 that these three factors to you beyond a reasonable doubt.

17 Now, the Judge is going to instruct you on the law
18 and tell you exactly what reasonable doubt means, but I'll
19 reiterate to you it doesn't mean beyond any doubt. It
20 means that you have been left firmly convinced of the
21 defendant's guilt. A reasonable doubt is simply something
22 that would cause a reasonable person to hesitate to act.

23 So let's look at these three elements that I have
24 discussed. You have heard all the testimony and seen all
25 the evidence at this point that goes towards proving

1 these. Let's start with the easy one: that the substance,
2 upon analysis, was, in fact, cocaine.

3 You heard from the County chemist, Courtney Johnson.
4 She explained her methodology, how they go about testing
5 the substance, and she told you, yes, those two baggies
6 did, in fact, contain cocaine. She explained to you that,
7 under South Carolina law and the way things are tested,
8 you don't distinguish between pure cocaine or cocaine
9 that's cut with any other substance. It was cocaine in
10 those bags. The substance was cocaine.

11 Next, did the defendant have control or the right to
12 exercise control over that substance? Ladies and
13 gentlemen, you heard from Andrea Kobithen on the stand and
14 saw the video that she recorded in the course of that
15 undercover operation. You saw her get into the
16 defendant's vehicle, saw him get in, and from under the
17 driver's seat of his vehicle, he pulled out a bag that
18 contained several smaller baggies of cocaine. It's no
19 doubt that the defendant had control over that substance.

20 So let me come to the heart of the matter here and
21 it's: Did the defendant distribute that cocaine to
22 Ms. Kobithen? Now, you saw in the video and you see here
23 on these images that he hands that baggie off. Is that
24 distribution? Yes, it is.

25 The law defines "distribution" as to deliver, other

1 than by administering or dispensing, a controlled
2 substance. It means the actual or constructive transfer
3 of a controlled substance with or without payment.

4 And I cite that because that came up a lot in trial
5 over these past few minutes. The defendant is hung up on
6 the fact that, "Oh, well, you were given money by the
7 police department to purchase narcotics, but you didn't
8 give me any of that money." She didn't have to. It's
9 still a distribution even without payment. It doesn't
10 mean favors have to be exchanged. Money didn't have to be
11 exchanged. The simple act of handing those drugs over is
12 a distribution.

13 So we have shown through evidence and testimony
14 three factors of distribution of cocaine for you today:
15 the control, the distribution itself, and the fact that it
16 was cocaine.

17 You also heard from Officer Cardona who explained
18 the whole procedure of the operation, and he also
19 clarified some issues the defendant had with the arrest
20 warrant on the dates on it, and he explained that they're
21 usually given general dates to protect the identity of the
22 undercover officers or confidential informants. If the
23 defendant is able to know exactly what day something
24 occurred, that can often put their lives in jeopardy.

25 Ladies and gentlemen of the jury, we're not saying

1 he's Pablo Escobar here or anything, that he's slinging
2 kilos upon kilos, but the question you have to ask
3 yourself is: Did the defendant, Rodney Nesmith, give
4 cocaine to Andrea Kobithen?

5 And you have seen all the evidence. You saw the
6 same video I did. And if you believe that he gave her
7 that cocaine, then we are entitled to a verdict of guilty
8 in this case.

9 Thank you.

10 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

11 MR. NESMITH: Yes, jury. How are y'all doing?

12 The vehicle that moved me to go to jail was a
13 warrant that was -- had discrepancies. None of the dates
14 add up. The amount of drugs was incorrect. And I know
15 that I did not sell her any drugs. How can you send
16 someone to jail for a sale that never took place? And
17 there was no money at evidence.

18 The officer in this case was not an officer at the
19 time, and he was not an officer that arrested me. The
20 credibility of Officer John Cardona is not credible
21 because he was not an officer at the time. I don't think
22 that made the standard of pointing me -- I don't think
23 they met the standard of proving me guilty beyond a
24 reasonable doubt.

25 The prosecution will say distribution of drugs,

1 however, under oath, Ms. Kobithen said that she purchased
2 and that was incorrect. Both of the witnesses in this
3 case are not officers at this present time. And as I
4 stated again, they were under oath when they said
5 purchased.

6 The time does not match with the offense in this
7 case. I summitation (ph), ask that you find me not guilty
8 because of the inaccuracies in this case on the lines of
9 -- on the lines of drug amount and discrepancies of the
10 warrant and also credibility of the witnesses.

11 In the bag from this point -- from this standpoint,
12 however, the drug analysis did not say how much cocaine
13 and how much cut was in the pack, and as Ms. Kobithen
14 said, she has heard about a party favor. What
15 Ms. Kobithen had gotten was a party favor, was distributed
16 to her with the understanding that she knew what a party
17 favor was.

18 Thank you.

19 JURY CHARGE

20 THE COURT: Mr. Foreman, ladies and gentlemen of the
21 jury, now becomes my duty to charge you the law of the
22 case. The State of South Carolina, by the indictment,
23 charges the defendant, Rodney Smith, with the offense of
24 distribution of cocaine.

25 The indictment, which I point out to you, is not

1 evidence in this case, but the allegations are that Rodney
2 Nesmith did, in Horry County on or about September the
3 18th, 2020, distribute, dispense, or deliver a quantity of
4 cocaine, a controlled substance under the provisions of
5 Section 44-53-110 of the Code of Laws of South Carolina,
6 1976, as amended, such distribution not having been
7 authorized by law and being in violation of Section
8 44-53-370(B)(1) of the South Carolina Code of Laws, 1976,
9 as amended.

10 To this charge and to the indictment, the defendant
11 has pled not guilty. The plea of not guilty by a
12 defendant places the burden of proof on the State to prove
13 the guilt of the defendant beyond a reasonable doubt
14 before you, the jury, can convict the defendant and find
15 him guilty.

16 Now, when I use the word "defendant" in these
17 instructions, I refer to Mr. Rodney Nesmith. The
18 defendant is presumed in law innocent of the charges
19 contained in the indictment. This presumption of
20 innocence accompanies a defendant from the time of his
21 appearance in the court throughout every stage of the
22 trial, until you, the jury, have reached a verdict of
23 guilty based upon the evidence which satisfies you of the
24 guilt of the defendant beyond a reasonable doubt. The
25 presumption of innocence is a substantial right to which

1 every defendant, including this defendant, is entitled.

2 I will now explain to you the words "reasonable
3 doubt." The Government has the burden of proving the
4 defendant guilty beyond a reasonable doubt. Some of you
5 may have served as jurors in civil cases where you were
6 told it is only necessary to prove that a fact is more
7 likely true than not true. In criminal cases, the
8 Government's proof must be more powerful than that. It
9 must be beyond a reasonable doubt.

10 Proof beyond a reasonable doubt is proof that leaves
11 you firmly convinced of the defendant's guilt. There are
12 very few things in this world that we know with absolute
13 certainty, and in criminal cases, the law does not require
14 proof that overcomes every possible doubt.

15 If, based on your consideration of the evidence, you
16 are firmly convinced that the defendant is guilty of the
17 crime charged, you must find him guilty. If, on the other
18 hand, you think there's a real possibility that he's not
19 guilty, you must give him the benefit of the doubt and
20 find him not guilty.

21 I instruct you that this defendant is entitled to
22 every reasonable doubt arising in the case. If then, upon
23 any issue essential to conviction or verdict of guilty,
24 you have a reasonable doubt as to how that issue should be
25 resolved, it would be your duty to resolve that reasonable

1 doubt in favor of the defendant.

2 Ladies and gentlemen, a defendant is not required to
3 prove his innocence. The State is required to prove every
4 essential element of the offenses charged against the
5 defendant by evidence which satisfies you, the jury,
6 beyond a reasonable doubt before you can convict the
7 defendant and find him guilty.

8 Now, during the trial, ladies and gentlemen, you and
9 I have certain duties to perform. These duties are fixed
10 by the law of the State of South Carolina. You, the jury,
11 are the sole judges of the facts in the case, and the
12 Court is the sole judge of the law in the case. Your
13 decision on the facts must be based upon the competent
14 evidence before you; that is, the sworn testimony from the
15 witness stand and any exhibits presented or admitted into
16 the record and any stipulations, if any, made by the
17 solicitor and counsel or by the defendant.

18 You must accept and apply the law as I state it to
19 you. In every case tried in this court before a jury, the
20 jury, as I have stated, is the sole and exclusive judge of
21 the facts. The Constitution of our state has declared
22 that a trial judge may not intimate, comment upon, or make
23 any statement to a jury about the facts in a case. It is
24 your exclusive duty as jurors to determine the effect, the
25 value, and the weight of the evidence in the case. Then,

1 to those facts, as determined by you, the jury, then take
2 and apply the law which I state to you and thus arrive at
3 a verdict.

4 I'll speak with you more about presumption of
5 evidence. The defendant has pled not guilty in this case.
6 That plea puts the burden on the State to prove the
7 defendant guilty charged in this indictment with
8 committing a criminal offense in South Carolina. A
9 defendant, as I said, is not required to prove himself
10 innocent. I charge you that it's an important rule of the
11 law that a defendant in a criminal case, no matter what
12 the seriousness of the charge may be, will always be
13 presumed to be innocent of the crime for which the
14 indictment was issued unless guilt has been proven by
15 evidence satisfying you of the guilt beyond a reasonable
16 doubt.

17 The presumption of innocent does not end when you
18 begin your deliberations but it accompanies the defendant
19 throughout the trial until you reach a verdict of guilty
20 based on the evidence satisfying you of guilt beyond a
21 reasonable doubt.

22 The presumption of innocence is like a robe of
23 righteousness placed about the shoulders of the defendant
24 which remain with him until that robe has been stripped
25 from the defendant by evidence satisfying you of the

1 jury's guilt beyond a reasonable doubt.

2 Presumption of innocence is not just a legal theory
3 and it's not just a legal phrase. It is a substantial
4 right which every defendant is entitled, and you, the
5 jury, have to be satisfied from the evidence that the
6 defendant's guilt is beyond a reasonable doubt.

7 The rules of evidence ordinarily do not permit
8 witnesses to testify to opinions or conclusions. An
9 exception to this rule exists for witnesses we call expert
10 witnesses, a witness who, by education and experience, has
11 become expert in some art, science, profession, or calling
12 may state an opinion as to the relevant and material
13 matter in which the witness claims to be an expert and may
14 also state the reasons for the opinion.

15 You should consider any expert opinion received in
16 evidence in this case and consider it like any other
17 evidence, give it the weight that you think it deserves.
18 If you decide that the opinion of an expert witness is not
19 based on sufficient education and experience or if you
20 conclude that the reasons given in support of the opinion
21 are not sound or that the opinion is outweighed by other
22 evidence, you may disregard the opinion entirely.

23 An expert witness's testimony is to be given no
24 greater weight than that of other witnesses simply because
25 the witness is an expert. Further, you are not required

1 to accept an expert's opinion even though it may be not
2 contradicted.

3 All right. Necessarily then, you must evaluate the
4 credibility of the witnesses who have testified.
5 "Credibility" is simply a legalistic word which means
6 believability. I instruct you that, in determining the
7 believability of witnesses, you may believe several
8 witnesses as against one witness or one witness as against
9 several witnesses; you may believe the testimony of a
10 witness in its entirety or reject the testimony of a
11 witness in its entirety. You may believe a part of a
12 witness's testimony or a reject the other part of a
13 witness's testimony. You may consider whether a witness
14 has exhibited any interest, any bias, or any prejudice.
15 You may consider the demeanor of a witness and the
16 appearance of a witness from the witness stand, and you
17 may consider the opportunity for knowledge concerning
18 those things about which a witness testified.

19 I'm going to speak with you about direct and
20 circumstantial evidence. There are two types of evidence
21 which are generally presented during a trial: direct
22 evidence and circumstantial evidence.

23 Direct evidence is the testimony of a person who
24 claims to have actual knowledge of a fact such as an
25 eyewitness. Circumstantial evidence is proof of a chain

1 of facts and circumstances indicating the existence of a
2 fact. The law makes absolutely no distinction between the
3 weight or the value to be given to either direct or
4 circumstantial evidence, nor is a greater degree of
5 certainty required of circumstantial evidence than of
6 direct evidence.

7 You should weigh all of the evidence in the case.
8 After weighing all the evidence, if you are not convinced
9 of the guilt of the defendant beyond a reasonable doubt,
10 you must find the defendant not guilty.

11 There are two types of evidence which are generally
12 presented during a trial: direct evidence and
13 circumstantial evidence. As I said, direct evidence
14 directly proves the existence of a fact and does not
15 require deduction. Circumstantial evidence is proof of a
16 chain of facts and circumstances indicating the existence
17 of a fact.

18 I, in no way, indicate to you -- what's present in
19 this case is solely up to the jury to determine from the
20 types of evidence and the weight that you give it.

21 I'm going to speak with you about the failure of the
22 defendant to testify. I instruct you and emphasize to you
23 that the fact the defendant did not testify is not a
24 factor to be considered by you in any way in your
25 deliberation, in your consideration on the question of the

1 guilt or innocence of the defendant. It must not be
2 considered by you in any manner whatsoever.

3 A defendant has the constitutional right to remain
4 silent, and the assertion of this right must not be
5 considered by you in your deliberations. I repeat: Under
6 your oath, you are not to draw any conclusion whatsoever
7 from the fact that the defendant in the case did not
8 testify.

9 The fact that the defendant did not testify should
10 not even be discussed in the jury room. The burden of
11 proof, as I have stated to you, is on the State.

12 Now, I'm going to give you charge instructions on
13 the crime that has been indicted in this case. As I told
14 you, the defendant, Rodney Nesmith, is charged with
15 distributing cocaine. I remind you: the fact that the
16 defendant was arrested, charged, and indicted in this case
17 is not evidence in the case nor does it create any
18 presumption or inference of guilt. These documents are
19 simply the formal written instruments which contain the
20 charges made against the defendant. They are formal
21 documents by which the case is brought into the court.

22 As I said, the defendant is charged with
23 distribution of cocaine. Section 44-53-370(a)(1) of the
24 South Carolina Code of Laws provides, "Except as
25 authorized by this article, it shall be unlawful for any

1 person to distribute a controlled substance."

2 There are three elements to the offense of
3 distribution of cocaine that the State must prove beyond a
4 reasonable doubt: One, that the substance involved was,
5 in fact, cocaine; two, that the defendant had possession
6 of that cocaine, either actual possession or constructive
7 possession; and, three, that the defendant distributed or
8 sold at the time and place and in the manner alleged the
9 controlled substance, in this case: cocaine.

10 Section 44-53-210(b)(4) of the South Carolina Code
11 of Laws provides that cocaine in any form is a controlled
12 substance under the law of this state. The substance must
13 be cocaine. The defendant must have actual or
14 constructive possession of the cocaine, and the defendant
15 must have distributed or sold the cocaine at the time and
16 place and in the manner alleged.

17 The State must prove that the substance involved, in
18 fact, was cocaine. The State must prove -- further prove
19 the defendant had actual or constructive possession of the
20 cocaine.

21 What does possession of cocaine mean under the law?
22 The law says cocaine is a controlled substance.
23 Possession means more than simply having a controlled
24 substance in one's possession. There must be knowing
25 possession. The State must prove possession of the

1 cocaine by the defendant and the further act that the
2 defendant knew he had cocaine in his possession.

3 By way of illustration, something may be found in
4 the possession of a person, and if that person did not
5 know that he had possession of the item and had not
6 exercised any affirmative act to get possession of the
7 item, but, by some accident, it came into his possession
8 without his knowledge, there would be no violation of the
9 law.

10 However, if one knowingly had in his possession a
11 controlled substance, then he is unlawfully in possession
12 of that item. The State must demonstrate beyond a
13 reasonable doubt that the defendant was in possession of
14 the cocaine, that he knew he had it in his possession, and
15 that he knew the item was a controlled substance under the
16 law of the State.

17 The State is not required to show the purpose for
18 which the defendant may have had possession of the
19 cocaine. That is not part of the State's required degree
20 of proof. The State must show beyond a reasonable doubt
21 that there was possession of the cocaine and that the
22 defendant knew he had the cocaine in his possession.

23 There are two kinds of possession recognized in the
24 law of this state: one, actual possession; and, two,
25 constructive possession. Actual possession occurs when

1 the controlled substance is found to be in the actual
2 physical custody of the person charged with possession.
3 Constructive possession is when a person has dominion or
4 control or the right to exercise dominion or control over
5 either the object or the premises upon which the object is
6 located.

7 Possession may be inferred from the circumstances
8 and it may be imputed to anyone who has the power and
9 intent to control the disposition and use of the object.
10 In other words, possession of an object or -- repeat that.
11 In other words, possession of an object or premises gives
12 rise to an inference that the person charged has both the
13 power and intent to control the use and disposition of the
14 object. Actual knowledge of the presence of the
15 controlled substance is strong evidence of intent to
16 control his disposition or use.

17 Mere presence of a person in the area where the
18 object is found is not enough, in and of itself, to give
19 rise to the necessary inference.

20 Proof of possession requires more than proof of mere
21 presence at the place where the controlled substance is
22 found. The State must prove the defendant had both: one,
23 the power -- that is, actual or constructive control --
24 and two, the intent to control its disposition or use.

25 Actual control occurs when the controlled substance

1 is found to be in actual physical custody of the person
2 charged. Constructive control occurs when the person
3 charged with possession has dominion and control over
4 either the controlled substance or the premises upon which
5 the controlled substance is found.

6 Constructive control means the defendant's knowledge
7 and possession may be inferred if the controlled substance
8 was found on premises under the defendant's control. This
9 is a permissive inference. The jury is free to accept or
10 reject permissive inference of knowledge or possession
11 depending upon your view of the evidence.

12 Constructive control may be established by
13 circumstantial evidence as well as by direct evidence, and
14 constructive control may be jointly shared by two or more
15 individuals, because active knowledge of the presence of a
16 controlled substance is such strong evidence of intent to
17 control its disposition of use or use, that knowledge may
18 be equated with or substituted for the intent element.

19 Now, however, actual knowledge of the presence of
20 the controlled substance is not the only circumstances
21 under which the intent to control the position --
22 disposition or use of a controlled substance can be
23 inferred.

24 The mere presence of a defendant where the
25 controlled substance is found or the mere association by a

1 defendant with people who possess the controlled substance
2 is insufficient proof that the defendant himself possessed
3 the controlled substance. Possession requires more than
4 mere presence.

5 Evidence that an individual is present at the time
6 the controlled substance is found or located is not in and
7 of itself sufficient proof that the individual has active
8 or constructive possession of the controlled substance.

9 Proof of constructive possession by a defendant
10 requires that the State show beyond a reasonable doubt
11 that the defendant had dominion and control over the
12 controlled substance or had the right to exercise dominion
13 and control over the controlled substance.

14 Stated in other terms, the State must prove beyond a
15 reasonable doubt that the defendant had the power and
16 intent to control the disposition or use of the controlled
17 substance. If you find from the evidence or the lack of
18 evidence that the defendant was merely present at the
19 scene where the cocaine was found or merely associated
20 with the persons who possessed cocaine and do not find
21 beyond a reasonable doubt that the defendant had dominion
22 or control or the right to exercise dominion and control
23 over the cocaine, then the defendant would be not guilty.

24 Finally, the State must prove the defendant
25 distributed or sold the cocaine at the time and place and

1 in the manner alleged. Section 44-53-110 of the Code of
2 Laws provides, "Distribute means to deliver, other than by
3 administering or dispensing, a controlled substance. It
4 means the actual or constructive transfer of the
5 controlled substance with or without payment."

6 Section 44-53-110 further states, "Deliver or
7 delivery means the actual constructive or attempted
8 transfer of a controlled drug or paraphernalia, whether or
9 not there exists an agency relationship. Sale is defined
10 in the law as an act of selling an exchange of property of
11 any kind for an agreed sum of money or other valuable
12 consideration."

13 In summary, before you can find the defendant guilty
14 of the distribution of cocaine, the State must prove the
15 following elements beyond a reasonable doubt: The
16 substance was, in fact, cocaine, a controlled substance
17 under the law of this state; two, the defendant had
18 possession of the cocaine, either actual or constructive;
19 and three, the defendant distributed or sold the cocaine
20 at the time and place and in the manner alleged.

21 I will now instruct on the form of verdict in this
22 case. Mr. Foreman, here is the indictment. On the very
23 back of this indictment, you're going to find down here in
24 this left-hand corner an area that is labeled "Verdict."

25 Once the jury has deliberated and reached a verdict,

1 it will be your duty to write in the appropriate verdict,
2 sign your name and date right down here at the very
3 bottom.

4 I instruct you that your verdict must be the verdict
5 of each and every one of you. It must be a unanimous
6 verdict. I ask you, do not begin your deliberations until
7 you are instructed to do so. The 12 original jurors that
8 were selected will go back to the jury room and the two
9 alternates, we're going to ask that you go to a separate
10 room.

11 Now, once again, if the State has not proved the
12 guilt of the defendant beyond a reasonable doubt, your
13 verdict will be not guilty. If the State has met its
14 burden of proof and proved the defendant guilty beyond a
15 reasonable doubt, your verdict will be one word: Guilty.

16 Do not give any weight as to how I listed them two.
17 Whatever the verdict is, it's your verdict. No one else
18 is involved in this verdict process except you, the jury.

19 Mr. Foreman, if you go back to the jury room after
20 you have received this verdict form and all of the
21 exhibits over there and you attempt to begin your
22 deliberations, if you have a juror or jurors that refuse
23 to deliberate -- in other words, they don't even begin to
24 deliberate with you; that's why we have alternates -- I
25 would rely on you to immediately notify the bailiff, who

1 will, in turn, notify me, and we will take care of such a
2 situation.

3 Now, that very rarely ever occurs, but I still need
4 to instruct you on that in case something like that were
5 to happen.

6 If you need to take a smoke break or get some fresh
7 air or whatever or somebody has to leave the room or
8 somebody needs a restroom break, stop your deliberations
9 until you get all 12 jurors reassembled.

10 Whenever you have reached a verdict, if you'll knock
11 on the door. We will reconvene in the courtroom, and we
12 will receive the verdict.

13 All right. Madam Clerk...

14 (Clerk and judge confer off the record.)

15 THE COURT: All right. Madam Clerk is going to be
16 back there. If y'all desire lunch -- she has attempted to
17 notify. We're trying to get that arranged when they can
18 get through.

19 Mr. Foreman, if y'all need lunch or whatever, just
20 let Madam Clerk know, and we'll take care of that, because
21 I know it's after 12 now.

22 All right. I'm going to ask y'all to step back.
23 Separate rooms. Alternates in one room and the original
24 12 jurors in the other room.

25 (The jury exited the courtroom at 12:24 p.m.)

1 THE COURT: Any exceptions to the charge from the
2 State?

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

4 THE COURT: From the defense?

5 MR. NESMITH: No, sir.

6 THE COURT: Thank you.

7 Thank y'all for getting this case to the jury. I
8 need everybody involved to check off and make sure the
9 exhibits are ready to go back.

10 (Exhibits reviewed with counsel.)

11 THE COURT: They may begin their deliberations.

12 (Jury deliberations commenced at 12:26 p.m.)

13 THE COURT: Court will stand at ease.

14 (A recess was taken from 12:26 p.m. to 2:10 p.m.)

15 VERDICT

16 THE COURT: Sheriff, has the jury reached a verdict?

17 THE DEPUTY: Yes, sir.

18 (Pause in the proceedings.)

19 THE COURT: We'll proceed with the jury if they're
20 ready.

21 (The jury entered the courtroom at 2:19 p.m.)

22 THE COURT: Mr. Foreman, has the jury reached a
23 verdict?

24 JUROR FOREMAN: Yes, Your Honor.

25 THE COURT: Madam Clerk, will you come around and

1 receive the verdict.

2 (Clerk handed verdict form to judge.)

3 THE COURT: Signed and dated. You may publish the
4 verdict.

5 THE CLERK: Indictment No. 2022-GS-26-04117, State
6 of South Carolina, County of Horry, versus Rodney Nesmith:
7 We, the jury, by unanimous consent, find the defendant
8 guilty. Signed by Foreperson Whitney Wilson, dated
9 11/28/2023.

10 Ladies and gentlemen of the jury, if this is your
11 verdict so signify by raising your right hand.

12 (All jurors raise their right hand.)

13 THE COURT: Thank you, Madam Clerk.

14 Anything further from the jury?

15 MR. CARAKER: For the jury?

16 MR. BEAMER: Nothing further, Your Honor.

17 THE COURT: Anything further from the jury?

18 MR. NESMITH: Not the --

19 THE COURT: Pardon?

20 MS. HILLER: Nothing further for the jury.

21 MR. NESMITH: Nothing further for the jury, sir.

22 Thank you, Your Honor.

23 THE COURT: Sheriff, if you will secure the
24 defendant.

25 (The defendant was placed into custody.)

1 THE COURT: Thank you, Sheriff.

2 Ladies and gentlemen of the jury, the next phase of
3 this case will be mitigation and sentencing. I would
4 invite you to stay if you would like to hear the
5 mitigation and sentencing that will be coming up in just a
6 few seconds. If you need to leave, that will be fine too,
7 but I would encourage you to stay and watch. I'll leave
8 that up to you.

9 Thank you so much for your service and thank you
10 immensely for your patience with us. I told you, the jury
11 is the finder of the facts, and the judge is the judge of
12 the law and that means I have to handle a lot of things
13 outside the presence of the jury and that's just the way
14 the system works. Thank you so much for working with us.

15 All right, Solicitor. Be glad to hear from you as
16 far as mitigation.

17 MR. BEAMER: Thank you, Your Honor. As far as
18 sentencing goes, the defendant has a prior conviction for
19 PWID in 2002. That was a federal conviction. He received
20 a 10-year sentence for that, followed by a five-year
21 supervised release.

22 Subsequently, in 2015, he received a second PWID
23 first conviction. He received 90 days for that. That's
24 what gives rise now to the third offense nature of this
25 charge.

1 Additionally, Your Honor, as you can see, we had to
2 reveal the identity of an undercover officer in this case,
3 who is now a private citizen, so there's safety concerns
4 regarding that. And, additionally, the defendant has
5 pending trafficking charges that could be resolved by a
6 substantial sentence today.

7 All of that combined, Your Honor, we believe -- you
8 know, this charge carries 10 to 30 years. We believe
9 something in the 15- to 20-year range would be appropriate
10 to satisfy both the needs of this case as well as those
11 other pending charges.

12 Additionally, there is the matter of contempt charge
13 from earlier in court. The State would leave that in Your
14 Honor's discretion.

15 THE COURT: Thank you, Solicitor.

16 Anything from the defense?

17 MR. NESMITH: Yes. I would just basically ask for
18 mercy on the Court. Basically, I was having fun that day.
19 You know, I was out, had got a little bit of money through
20 some inheritance. And, you know, like I said, at this
21 time, you know, I'm just asking for mercy of the Court.
22 Thank you.

23 THE COURT: I need a sentencing sheet.

24 MR. BEAMER: Your Honor, I didn't know the verdict
25 at the time, so I didn't have one prepared, but if we can

1 take a brief recess for five minutes or so, I can go have
2 one ready for you.

3 THE COURT: All right. If you'll just get the
4 necessary information on it so we can proceed.

5 MR. BEAMER: Yes, Your Honor.

6 THE COURT: Everybody stand at ease.

7 (A brief recess was taken from 2:24 p.m. to
8 2:29 p.m.)

9 MR. BEAMER: Thank you for your patience, Your
10 Honor. May I approach?

11 THE COURT: Yes, sir. Thank you.

12 Mr. Nesmith, having been convicted by the jury in
13 this case, I'm normally very reserved in my comments about
14 sentencing, but I noted that the initial offense on your
15 criminal record, you were sentenced to 10 years by a
16 federal court and then had five years, some type of
17 probation after that. And then you get a 90-day sentence
18 on that second drug charge. I have a lot of questions
19 about possible rehabilitation.

20 Do I have the number of days jail time calculated?
21 If not, I'll leave it up to the Department of Corrections.

22 MR. BEAMER: Your Honor, I do not have that number
23 on hand. He served at least two on the initial arrest.

24 SENTENCING

25 THE COURT: All right. All right. On Indictment

1 2022-GS-26-04117, the sentence of the Court is that Rodney
2 Nesmith be confined to the State Department of Corrections
3 for a period of 20 years. He will get credit for time
4 served pursuant to South Carolina Code 24-13-40, be
5 calculated and applied by the South Carolina Department of
6 Corrections.

7 Mr. Nesmith, at this time, I advise you that you
8 certainly have a right to appeal; however, to perfect an
9 appeal, you have to file a notice of appeal within 10 days
10 of sentencing.

11 Standby counsel, I would certainly respectfully
12 request that you assist him if that is his desire to do
13 so. All you would be responsible for would be the notice
14 of appeal to his other --

15 MS. HILLER: Absolutely, Your Honor. We have
16 already spoken about it, and I will be filing that within
17 the ten-day period.

18 THE COURT: And, of course, that will be taken up by
19 other entities over in Columbia. Thank you so much for
20 both of you sitting in and assisting.

21 All right. Anything further of the Court?

22 MR. BEAMER: Your Honor, I believe there was the
23 matter of the contempt charge.

24 THE COURT: That's correct. I forgot.

25 Well, considering the conviction and the sentence

1 imposed, I'm just going to say time served on that rather
2 than get into a discussion about sentencing.

3 MR. BEAMER: Yes, Your Honor.

4 THE COURT: Okay. All right.

5 MR. BEAMER: Nothing further from the State, Your
6 Honor.

7 THE COURT: All right. Ladies and gentlemen of the
8 jury, after all these years being on the bench, I could
9 tell from the expression on your face -- some of you --
10 "Why didn't we get to know about that prior record?" That
11 question has popped up many, many times, and the answer is
12 quite simple. The appellate courts have been adamant in
13 their rulings that the trial courts cannot allow prior
14 records in unless there's some type of exceptional
15 circumstances. The appellate courts have been very
16 protective of that.

17 In other countries, that's not the way it works, but
18 in our country, the way the Constitution is set up and the
19 way the appellate courts apply the Constitution and the
20 principles that we have, they're adamant that we don't
21 allow that to be admitted. So there's an explanation of
22 that.

23 Right here at the old courthouse many years ago, we
24 had a jury, five or six of them waited on the back steps
25 to ask me why they did not hear about the prior record.

1 Because of that incident over there where there was
2 concern that they didn't get to hear it, you know, every
3 trial after that where that situation comes up, I have
4 studied the jurors and I could tell, after all these years
5 from the sixth sense, I guess, just an expression on their
6 face that there's some concern about why that happens.
7 And the answer is relatively simple: We can't do it
8 unless the Supreme Court changes their mind on it.

9 All right. The good news is this case is over.
10 There is no bad news in that the other court, they have a
11 jury trial going, and they will resume tomorrow, and
12 therefore, I'm going to do pleas for the rest of the week
13 and we're not going to seat another jury. So you don't
14 have to call in.

15 Madam Clerk, even better news: What about their
16 pay?

17 THE CLERK: It should be available on the cards that
18 you were given on Friday.

19 THE COURT: Okay. If you don't get paid by Friday
20 or whatever, get back to the clerk's office and make sure
21 you do. And when you see the amount that you're getting
22 paid, don't be upset with her and don't be upset with me.
23 The County Council controls the pursestrings. So we have
24 no control over that.

25 Thank you very much. The jury is dismissed at this

1 time. If you're chosen to serve in the future, I hope you
2 will.

3 (The jury exited the courtroom at 2:37 p.m.)

4 THE COURT: All right. If there's nothing further,
5 we'll be back at 10:00 in the morning.

6 MR. BEAMER: Nothing further from the State, Your
7 Honor.

8 MR. CARAKER: Nothing further, Your Honor.

9 (The above trial concluded at 2:38 p.m.)
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CERTIFICATE OF COURT REPORTER

CASE NAME/NUMBER: State v. Rodney Nesmith
2022-GS-26-04117

DATE OF HEARING: November 27-28, 2023

I, Bobbi Fisher, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings to the best of my ability, and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

Bobbi Fisher

/s/ Bobbi Fisher_____

Bobbi Fisher, RPR, Court Reporter III

Date Submitted: 2/29/24

NOTE: PURSUANT TO RULE 607(h)(1)(B), SCACR, "A COURT REPORTER SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT." ALL REQUESTS FOR COPIES OF THE ATTACHED TRANSCRIPT (FORM 800) FROM OPPOSING PARTY OR NON-PARTIES MUST BE SENT TO THIS REPORTER AT BFISHER@SCCOURTS.ORG.

216 WITNESSES

John G Cardona Myrtle Beach Police Department

White

DOCKET NO. 2022GS2604117

The State of South Carolina
County of Horry

Pierce Haar

21H04695

COURT OF GENERAL SESSIONS

September, 2022 TERM

HORRY COUNTY

2022 SEP -7 P 3:59

RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

DATE RECEIVED FROM
GRAND JURY

ARREST WARRANT NUMBER

2022DI2600360

CDR: 0185 44-53-0370(b)(1)

DOA: 9/6/2021

THE STATE

vs.

Rodney Nesmith
B/ M



ATTORNEY: Nicholas O'Neill

ACTION OF GRAND JURY

TRUE BILL

Randy Kind

Foreperson of Grand Jury

Date:

SEP 07 2022

VERDICT

Guilty

Indictment for

Distribution of Cocaine

Jimmy A. Richardson, II, Solicitor

Foreperson of Petit Jury

Date:

11-28-2023

ORIGINAL

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

INDICTMENT

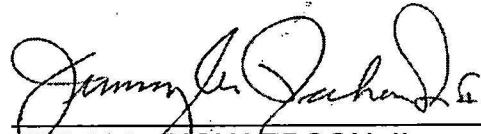
At a Court of General Sessions, convened on September 07, 2022, the Grand Jurors of Horry County present upon their oath:

DISTRIBUTION OF COCAINE

CDR: 0185 44-53-0370(b)(1)

That Rodney Nesmith did in Horry County, on or about September 18, 2020, distribute, dispense or deliver a quantity of Cocaine, a controlled substance under provisions of Section 44-53-110, et. seq., Code of Laws of South Carolina, 1976, as amended, such distribution not having been authorized by law, and being in violation of Section 44-53-370(b)(1), S. C. 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.



JIMMY A. RICHARDSON, II
 FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry

STATE

VS.

Rodney Nesmith

INDICTMENT/CASE#: 2022GS2604117

AKA: _____
Race: BLACK Sex: M Age: 52
DOB: _____
Address: _____
City, S: _____
DL#: _____

A/W#: 2022DI2600360
Date of Offense: 9/18/2020
S.C. Code §: 44-53-0370(b)(1)
CDR Code #: 0185

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the above indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Dist. of Cocaine, 3rd offense

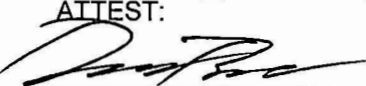
in violation of § 44-53-0370(b)(1) of the S.C. Code of Laws, bearing CDR Code # 0185

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

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:

 102918
Beamer, David SC Bar #


Hillier, Laura L. Defendant
Attorney for Defendant

~~SCB76199~~
~~SC Bar#~~

WHEREFORE, the Defendant is committed to the State Department of Correction, County Detention Center,

for a determinate term of 20 days/months/years/Time Served Youthful Offender Act not to exceed ___ years

and/or to pay a fine of \$ _____ ; provided that upon the service of ___ days/months/years/Time Served 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 Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

CONCURRENT or CONSECUTIVE to sentence on: _____

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC, _____ days/months

To include time spent on monitored house arrest prior to trial and sentencing.

The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

FILED
Horry County
2022 NOV 28 P 3:23
RENEE R. ELYS
CLERK OF COURT
HORRY COUNTY, SC

SPECIAL CONDITIONS:

- PTUP** after _____ months/years
- And Other Terms Listed Below:**
- Substance Abuse Counseling Completion of GED Random Drug/Alcohol Testing
- Attend Voc. Rehab. or Job Corp No Contact with Victim Domestic Violence Intervention Program
- Mental Health Counseling May serve W/E beginning: _____
- Sex Offender Registry pursuant to S.C. Code § 23-3-430 Public Service Employment 0 _____ days/hours
- Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- Other: _____

- RESTITUTION:** **Deferred** **Def. Waives Hearing** **Ordered**

Total: \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ Set by SCDPPPS

Recipient: _____

FILED
 HURRY COUNTY
 2023 NOV 28 P 3:23
 RENE E. ELVIS
 CLERK OF COURT
 HURRY COUNTY, SC

*Fine:

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 25.00 Beginning 12/28/23

§14-1-206 (Assessments 107.5 %)	\$	
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$ <u>150.00</u>
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	TBD	\$ <u>8.25</u>
<input type="checkbox"/> Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.	\$500	\$
<input type="checkbox"/> § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$
TOTAL		\$ <u>283.25</u>

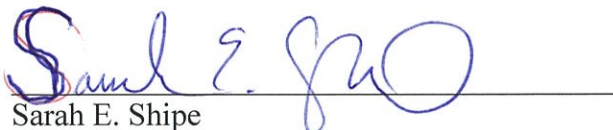
Clerk of Court/ Deputy Clerk: Renee Elvis
 Court Reporter: Bobbi Fisher

Presiding Judge: _____
 Judge Code: 2048
 Sentence Date: 11/28/2023

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Sarah E. Shipe
Appellate Defender

RECEIVED

Feb 03 2025

SC Court of Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 3RD day of February, 2025.

RECEIVED

Feb 03 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Paul M. Burch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

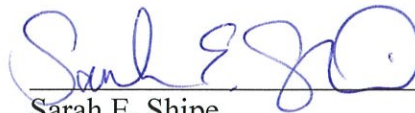
RODNEY NESMITH,

APPELLANT

APPELLATE CASE NO. 2023-001854

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon Brian H Gibbs, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 3rd day of February, 2025.



Sarah E. Shipe
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

From: [Warren, Kaylynn](#)
To: [Brian Gibbs](#)
Cc: [Shipe, Sarah](#); [Grace Sommer](#)
Subject: 2023-001854 The State v. Rodney Nesmith
Date: Monday, February 3, 2025 10:55:00 AM
Attachments: [2023-001854 The State v. Rodney Nesmith Record on Appeal.pdf](#)

Good Morning,

Attached for service in the above-referenced case is the Record on Appeal which will be filed today, February 3, 2025, with the Court of Appeals via email filing.

Respectfully,

Kaylynn

Kaylynn Warren

Administrative Assistant

South Carolina Commission on Indigent Defense

Division of Appellate Defense

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