

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

RECEIVED

NOV 19 2013

S.C. Supreme Court

ERNEST BATTLE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001776

APPENDIX

ROBERT M. PACHAK
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ASHLEIGH R WILSON
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX..... i, ii

APPENDIX FROM PRIOR PCR..... 1

FINAL ANDERS BRIEF OF APPELLANT517

REMITTITUR.....529

SUPREME COURT ORDER (FEBRUARY 5, 2004)530

COURT OF APPEALS OPINION NO. 2004-UP-348531

APPLICATION FOR POST-CONVICTION RELIEF532

RETURN578

POST-CONVICTION RELIEF HEARING TRANSCRIPT585

ORDER (JULY 5, 2006).....771

CLERK OF COURT RECORDS772

ORDER (MAY 30, 2006)796

LETTER FROM DEATON LAW FIRM (JULY 5, 2006).....797

BRIEF OF PETITIONER.....798

BRIEF OF RESPONDENT810

ERNEST BATTLE V. STATE OF SOUTH CAROLINA,
382 S.C. 197, 675 S.E.2d 736822

APPLICATION FOR POST-CONVICTION RELIEF827

RETURN AND MOTION TO DISMISS.....844

CONDITIONAL ORDER OF DISMISSAL850

OBJECTION AND RESPONSE TO CONDITIONAL
ORDER OF DISMISSAL856

ORDER (MAY 30, 2006)859

LETTERS FROM DEATON LAW FIRM.....861

FINAL ORDER.....864

PETITION FOR WRIT OF CERTIORARI867

SUPREME COURT OPINION NO. 2013-MO-010 (FILED MARCH 13, 2013)877

CONSENT ORDER GRANTING AN APPEAL PURSUANT TO
AUSTIN V. STATE.....879

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO CHARLESTON COUNTY
Court of Common Pleas

The Honorable Thomas L. Hughston, Jr., Circuit Court Judge

Case No. 2004-CP-10-3794

Ernest Battle,.....Respondent,

v.

State of South Carolina,.....Petitioner.

APPENDIX

HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

COLLEEN E. DIXON
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

ATTORNEYS FOR PETITIONER

KATHRINE H. HUDGINS
SC Commission on Indigent Defense

Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211
(803) 734-1343

ATTORNEY FOR RESPONDENT

INDEX

INDEX.....i

TRIAL TRANSCRIPT.....1

SENTENCING TRANSCRIPT.....463

INDICTMENTS.....476

LETTER TO JUDGE FROM APPELLANT POST-TRIAL.....482

EXHIBITS.....483

CERTIFICATE OF APPELLANT.....514

VOLUME 1 OF 2

STATE OF SOUTH CAROLINA

RECEIVED

In The Court of Appeals

SEP 19 2002

APPEAL FROM CHARLESTON COUNTY ATTORNEY GENERALS
OFFICE

Thomas L. Hughston, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

EARNEST BATTLE,

APPELLANT

RECORD ON APPEAL

DANIEL T. STACEY
Chief Attorney

CHARLES M. CONDON
Attorney General

SOUTH CAROLINA OFFICE
OF APPELLATE DEFENSE
1122 Lady Street, Suite 940
Columbia, SC 29201
(803) 734-1330

JOHN W. MCINTOSH
Chief Deputy Attorney General

CHARLES H. RICHARDSON
Assistant Deputy Attorney General

Attorney for Appellant

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

RALPH E. HOISINGTON
Solicitor, Ninth Judicial Circuit
Post Office Box 70100
N. Charleston, SC 29415-0100
(843) 740-5850

Attorneys for Respondent



INDEX

RECORD ON APPEAL (Volumes One and Two) 1

FINAL ANDERS BRIEF OF APPELLANT 525

REMITTITUR 537

ORDER DENYING PETITION FOR WRIT OF CERTIORARI 538

UNPUBLISHED OPINION (2003-UP-348) 539

POST-CONVICTION RELIEF APPLICATION 541

RETURN 587

TRANSCRIPT FROM POST-CONVICTION RELIEF HEARING 594

ORDER GRANTING PETITION AND ORDERING NEW TRIAL 777

CLERK OF COURT RECORDS 798

RECORDS FROM SC DEPARTMENT OF CORRECTIONS 815

STATE OF SOUTH CAROLINA) THE COURT OF GENERAL SESSIONS
 COUNTY OF CHARLESTON) THE NINTH JUDICIAL CIRCUIT
 THE STATE OF SOUTH CAROLINA)
)
)
 VS.) CASE NO. 99-GS-10-7109,
) 99-GS-10-7110,
 EARNEST BATTLE,) 99-GS-10-7111
)
 DEFENDANT.)

VOLUME I OF II
 (PAGES 1-240)

TRANSCRIPT OF RECORD

JUNE 4, 6, 7, 8, 2001

CHARLESTON, SOUTH CAROLINA

B E F O R E:

THE HON. THOMAS L. HUGHSTON, JR., JUDGE

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

MIKE BOSNAK, ESQ.
 MARK BOURDON, ESQ.
 JOHN CROUT, ESQ.
 ATTORNEYS FOR THE STATE

WILLIAM MCGUIRE, ESQ.
 LESLIE SARJI, ESQ.
 ATTORNEYS FOR THE DEFENDANT

BRENDA COOLEY
 CIRCUIT COURT REPORTER

I N D E X

PAGE

EXHIBITS 2-E

VOLUME I OF II

MONDAY, JUNE 4, 2001

PROCEEDINGS 3

JURY PANEL VOIR DIRE. 3

WEDNESDAY, JUNE 6, 2001

PROCEEDINGS 13

JURY VOIR DIRE. 13

JURY SELECTION. 25

DEFENSE BATSON MOTION 32

COURT'S RULING ON THE MOTION. 33

DEFENSE MOTION TO SUPPRESS PORTION OF TAPE RECORDING 37

COURT'S RULING ON THE MOTION. 45, 50

DEFENSE MOTION. 50

COURT'S RULING ON THE MOTION. 51

DEFENSE MOTION TO SEQUESTER WITNESSES 51

COURT'S RULING ON THE MOTION. 51

DEFENSE MOTION TO EXCLUDE LYLE EVIDENCE 53

COURT'S RULING ON THE MOTION. 53

DEFENSE REQUEST TO ALLOW DEFENDANT TO
REMAIN OUT ON BOND. 53

COURT'S RULING. 54

LASER BOND FORM B • PENCAD • 1-800-431-8989

THURSDAY, JUNE 7, 2001

PROCEEDINGS 55
DEFENSE MOTION TO REDACT PORTIONS OF LETTER 55
COURT'S RULING ON THE MOTION. 57, 263
JURY SWORN. 58
OPENING STATEMENT BY MR. BOSNAK 65
OPENING STATEMENT BY MR. MCGUIRE. 75

STATE'S WITNESSES:

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE-CROSS</u>
<u>JENNIFER VANHOOTEGHAM</u>				
BY MR. BOSNAK	84			
BY THE COURT (IN CAMERA)		88		
BY MR. MCGUIRE		115		
<u>RICHARD GLEN CAMPBELL</u>				
BY MR. BOSNAK	121			
<u>CHARLES W. HARDIN</u>				
BY MR. BOSNAK	129			
<u>MICHAEL ALAN MILLER</u>				
BY MR. BOURDON	132			
MR. MCGUIRE				
<u>CHARLES W. HARDIN (RECALLED)</u>				
BY MR. BOURDON	146		169	
BY THE COURT (IN CAMERA)		162		
MR. MCGUIRE		167		
<u>MICHAEL ALAN MILLER (RECALLED)</u>				
BY MR. BOSNAK	171			
MR. MCGUIRE		182		
<u>PATRICK WILEY MORRIS</u>				
BY MR. BOSNAK	184			
MR. MCGUIRE		193		

JUROR VOIR DIRE BY THE COURT. 197

STATE'S WITNESSES:

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE-CROSS</u>
--	---------------	--------------	-----------------	-----------------

GREG LEE GOULD

BY MR. BOSNAK	201			
MR. MCGUIRE		206		

KEVIN O. HUX

BY MR. BOSNAK	208		212	
MR. MCGUIRE		212		

JAMES NELSON

BY MR. BOSNAK	213		237	
MR. MCGUIRE		222		

VOLUME II OF II

THURSDAY, JUNE 7, 2001

(AFTERNOON SESSION CONTINUED)

PROCEEDINGS. 241

STATE'S WITNESSES:

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE-CROSS</u>
--	---------------	--------------	-----------------	-----------------

LASHAWN FLOYD

BY MR. BOSNAK	241		299, 361	
BY MR. MCGUIRE		282, 346		

DEFENSE MOTION TO REDACT PORTIONS OF LETTER (RENEWED) . . . 259

COURT'S RULING ON THE MOTION 263

DEFENSE MOTION TO DISMISS CHARGES AGAINST MR. NELSON 263

COURT'S RULING ON THE MOTION 264

LASER BOND FORM B • PENGAD • 1-800-631-6999

STATE'S WITNESSES:

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE-CROSS</u>
<u>ALFRED KUECHLER, JR.</u>				
BY MR. BURDON	302			
MR. MCGUIRE		328		

FRIDAY, JUNE 8, 2001

PROCEEDINGS. 335

STATE'S WITNESSES:

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE-CROSS</u>
<u>DENISE MERRITT</u>				
BY MR. BOSNAK	336			

MOTIONS. 341

COURT'S RULING ON THE MOTIONS. 343

STATE'S WITNESSES:

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE-CROSS</u>
<u>LASHAWN FLOYD (RECALLED)</u>				
BY MR. MCGUIRE (CONTINUED)		346		
BY MR. BOZNAK			361	

STATE RESTS. 341, 366

DEFENSE MOTION FOR DIRECTED VERDICT. 367

COURT'S RULING ON THE MOTION 367

COURT'S INSTRUCTION TO ATTACH COPY OF TRANSCRIPT OF TAPERECORDING TO TRANSCRIPT OF RECORD (APPENDIX B). 369

REQUESTS TO CHARGE. 370

DEFENSE RESTS 374

CLOSING ARGUMENT BY MR. MCGUIRE 375

CLOSING ARGUMENT BY MR. MCGUIRE 395

DEFENSE MOTION FOR DIRECTED VERDICT ON CONSPIRACY INDICTMENT 409

STATE'S MOTION TO AMEND INDICTMENT. 410

COURT'S RULING ON THE MOTIONS 412

JURY CHARGE 413

NOTE FROM THE JURY AND COURT'S INSTRUCTIONS 427

DEFENSE FURTHER REQUEST TO CHARGE. 431

COURT'S RULING ON DEFENSE REQUEST 431

VERDICT OF THE JURY 432

POLLING OF THE JURY 433

SENTENCING BY THE COURT TO BE DEFERRED. 443

DEFENSE MOTION FOR NEW TRIAL. 443

COURT'S RULING ON THE MOTION. 443

CERTIFICATE OF THE REPORTER 444

BATSON LIST. APPENDIX A

TRANSCRIPT OF TAPERECORDING. APPENDIX B

LASER BOND FORM B
PENGAD 1-800-851-8888

E X H I B I T S

<u>STATE'S NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>REC'D.</u>
1	PHOTO OF INCICENT LOCATION	107	114
2	PHOTO OF INCIDENT LOCATION	107	114
3	PHOTO OF INCIDENT LOCATION	107	114
4	PHOTO OF INCICENT LOCATION	107	191
5	PHOTO OF INCIDENT LOCATION	107	192
6	PHOTO OF INCIDENT LOCATION	107	114
7	PHOTO OF INCICENT LOCATION	107	114
8	PHOTO OF INCIDENT LOCATION	107	114
9	PHOTO OF INCIDENT LOCATION	107	190
10	PHOTO OF INCICENT LOCATION	107	114
11	PHOTO OF INCIDENT LOCATION	107	114
12	PHOTO OF INCIDENT LOCATION	107	114
13	COCAINE IN BEST KIT	107	340
14	ORIGINAL LETTER TO SHAWN FROM MR. BATTLE	107	
14-A	REDACTED COPY OF LETTER TO SHAWN FROM MR. BATTLE	265	
14-B	SECOND REDACTED COPY OF LETTER TO SHAWN FROM MR. BATTLE - (COPY SUBSTITUTED FOR PLAINTIFF'S EXHIBIT NO. 14)	265	271
15	COPY OF MAP	107	114
16	FORM C RULE 6, CHAIN OF CUSTODY FORM (COPY SUBSTITUTED FOR ORIGINAL)	145 178	181
17	CHAIN OF CUSTODY FORM OF NORTH CHARLESTON POLICE DEPARTMENT	326	

E X H I B I T S (CONTINUED)

DEFENDANT'S EXHIBITS:

(THERE WERE NO DEFENSE EXHIBITS.)

<u>COURT'S NO.:</u>	<u>DESCRIPTION</u>	<u>F.I.D.</u>	<u>REC'D.</u>
1	DEFENSE REQUESTED VOIR DIRE	413	413
2	STATE'S REQUESTED VOIR DIRE	413	413

* * *

(THE EXHIBITS WERE RETAINED BY THE CLERK OF COURT.)

(STATE'S EXHIBIT 13 WAS RETURNED TO THE CUSTODY OF THE NORTH CHARLESTON POLICE DEPARTMENT.)

LASER BOND FORM B
PENGAD • 1-800-631-6889

1 (On Monday, June 4, 2001, the following proceedings
2 were had:)

3 THE COURT: Members of the jury panel, as the bailiff
4 indicated, my name is Thomas Hughston, and I work as a
5 Circuit Judge in the State of South Carolina. I've been
6 assigned by the Chief Justice to preside over a term of
7 General Sessions Court here in Charleston County.

8 The Circuit Court of this State, which is the general
9 trial level court, is divided really into two divisions. One
10 we call the Court of Common Pleas or what we normally think
11 of as Civil Court. The other we call the Court of General
12 Sessions or what we normally think of as criminal court.

13 You've been summoned as potential jurors for this week
14 of General Sessions or criminal court here in Charleston
15 County. We will be involved this week in the trial and the
16 disposition of cases in which the State of South Carolina
17 claims that someone has violated one of the laws of this
18 State. We've asked you to come in this morning, anticipating
19 that we will need you to serve on a trial jury on cases this
20 week. I believe the Clerk has already called the roll of the
21 jury so we know who all we have here.

22 I need to ask you some additional questions at this
23 point in time to make sure that you are qualified to serve on
24 the jury. I'm going to ask a series of about ten or twelve
25 questions to you as a group. If your answer is yes to any

LASER BOND FORM B PENNAD • 1-800-331-4399

1 question, please stand from where you're seated so that I can
2 see that you are answering yes. I may need to follow up with
3 some additional questions to you.

4 So as I said, I'm going to ask a series of about ten
5 or twelve questions to you as a group. If your answer is yes
6 to any question, please stand. 1

7 Is anyone present for jury duty who is not a citizen
8 of the United States of America? If so, please stand.
9 Anyone not a citizen of the United States of America, please
10 stand.

11 No one standing.

12 Is anyone here on the jury who is not now a resident
13 of Charleston County? You may have lived in Charleston in
14 the past, but you've since moved elsewhere, but you still got
15 your notice to be here today. Anyone not now a resident of
16 Charleston County? If so, please stand.

17 No one standing.

18 Is anyone here for the jury who is under the age of
19 18? If so, please stand. Anyone under 18, please stand.

20 No one standing.

21 Is anyone here on the jury who is over the age of 65?
22 If so, please stand. Anyone over 65?

23 Yes, ma'am. Your name, please.

24 A POTENTIAL JUROR: My name is Esther Machowski.

25 THE COURT: All right. Under the law, you have the

1 option of serving or not serving. You can choose to serve if
2 you want to, or you can choose to be excused. Which would
3 you like to do?

4 MS. MACHOWSKI: I'll stay.

5 THE COURT: Thank you. Thank you very much.

6 Anyone else over the age of 65? If so, please stand.

7 No one standing.

8 Is anyone here for jury duty who is unable to read,
9 write, speak, or understand the English language? If so,
10 please stand.

11 No one standing.

12 Does anyone on the jury have less than a sixth-grade
13 education or its equivalent? If so, please stand. Anyone
14 with less than a sixth-grade education or its equivalent,
15 please stand.

16 No one standing.

17 Is there anyone on the jury who has been convicted or
18 pled guilty in a state or federal court to a crime punishable
19 by imprisonment for more than one year and whose civil rights
20 have not been restored by pardon or amnesty? If so, please
21 stand.

22 No one standing.

23 Is there anyone on the jury who is a full-time teacher
24 or a full-time student? If so, please stand.

25 No one standing.

1 Is there anyone on the jury who has a medical problem
 2 of some type, such as a problem with your heart, a back
 3 problem, or something of that sort that you think would
 4 interfere with your ability to serve on the jury this week?
 5 If so, please stand. Anyone with any type of medical
 6 problem?

7 Yes, sir. If you would, come down front, and I'll
 8 discuss that with you. Tell me your name, please, sir.

9 A POTENTIAL JUROR: Joshua Robinson.

10 (There was off-the-record discussion at the bench.)

11 THE COURT: All right. Thank you.

12 (Mr. Robinson returns to the jury panel.)

13 THE COURT: All right. Anyone else with any type of
 14 medical problem that you think might interfere with your
 15 ability to serve on the jury this week? If so, please stand.

16 No one else standing.

17 Is anyone on the jury a county officer, a law
 18 enforcement officer, employed within the walls of any
 19 courthouse? If so, please stand. Anyone a county officer
 20 employed within the walls of any courthouse, please stand.

21 No one standing.

22 Is there anyone on the jury who has a child under the
 23 age of seven for whom you have the duty of custody and care
 24 and you have not been able to make arrangements for someone
 25 to care for your child while you're serving on the jury this

1 week? If so, please stand. Anyone with a problem in regard
2 to caring for a small child while you're serving on the jury
3 this week? If so, please stand.

4 No one standing.

5 In addition to those reasons I've just gone over for
6 which I can excuse you from serving on the jury, there may be
7 some particular compelling personal situation, such as a
8 problem with your job or family obligation or something of
9 that sort that makes it particularly inconvenient for you to
10 serve this week. I cannot excuse you from jury duty on the
11 basis of such a personal reason, but I can consider
12 transferring you to a later term of court when you might be
13 able to make better arrangements to serve on the jury or that
14 problem might not exist.

15 So as I said, I cannot excuse you from jury duty on
16 the basis of such a personal reason, but I can consider
17 transferring you to a later term of court. So is there
18 anyone who would like to be considered for a possible
19 transfer to a later term of court? If you would, come down
20 front, and I'll discuss that with you.

21 THE BAILIFF: Juror number 56.

22 THE COURT: Yes, ma'am.

23 (There was off-the-record discussion at the bench.)

24 THE COURT: Transfer number 56. They've got a
25 schedule there. Look and see when you would like to try it.

LABER BOND FORM B PERIOD • 1-800-831-6888

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MS. FAUST: All right. Thank you.

THE BAILIFF: Juror 143.

(There was off-the-record discussion at the bench.)

THE COURT: 143 will be transferred. Step around there and look at the schedule. She wants in the fall or later on.

THE BAILIFF: Juror 157.

THE COURT: 157.

(There was off-the-record discussion at the bench.)

THE COURT: 157 will be transferred.

THE BAILIFF: Juror 209.

(There was off-the-record discussion at the bench.)

THE COURT: 209 is going to be excused for medical reasons. You're free to go. 209 is excused.

THE BAILIFF: Juror 147.

(There was off-the-record discussion at the bench.)

THE COURT: You don't have to worry about that.

(Mr. Robertson returns to the jury panel.)

THE BAILIFF: Juror 100.

(There was off-the-record discussion at the bench.)

THE COURT: 100 will be transferred.

THE BAILIFF: Juror 183.

(There was off-the-record discussion at the bench.)

THE COURT: Juror 183 is excused.

All right. Anyone else who would like to be

LASER BOND FORM B
PENAD • 1-800-531-8888

1 considered for a possible transfer?

2 No one else standing.

3 Let me tell you a little bit about how we'll operate.
4 Normally we start work at 9:30 in the morning, 9:00 or 9:30
5 in the morning. We work till about one o'clock and take a
6 lunch break from 1:00 to 2:00, and we come back and we work
7 till about 5:00 or 5:30 in the evening. So those are the
8 hours that you should expect to be with us this week if you
9 are actually selected to be on a trial jury.

10 Normally we select thirteen jurors, twelve regular
11 jurors and one alternate for the trial of each case. If
12 you're not one of the thirteen people selected to be on the
13 trial jury, I'll release you and ask you to come back at a
14 later time, actually to call in. We have a call-in system
15 where you can call in and get instructions as to when we want
16 you to come back so that we can pick a jury for the trial of
17 the next case.

18 So I'll try to keep you here for only such periods of
19 time as it's absolutely necessary for you to be here in order
20 for us to pick a jury and get started with the trial of a
21 case. If you're not on the jury that's actually going to try
22 the case, then I'll release you, as I said, and ask you to
23 come back later on.

24 All right. You all can go ahead and put the names in
25 the box. And do we have the first case for trial?

LASER BOND FORM B PENGAD • 1-800-531-8939

1 (There was an off-the-record bench conference in the
2 presence of the jury panel but out of the hearing of the jury
3 panel.)

4 (Said bench conference being concluded, the following
5 proceedings were had:)

6 THE COURT: All right. Let's see. Is juror number
7 ten -- Otto Bell, I believe it is. Is he present? Juror
8 number ten, I believe it is. Otto Bell?

9 THE CLERK: Your Honor, that's not one of the jurors
10 that was here this morning.

11 THE COURT: Oh, he's not here? He's not here. All
12 right. And then how about juror number 64, Charles Frierson?

13 THE CLERK: Another juror that's not here, Your Honor.

14 THE COURT: Not here? How about juror number 69,
15 Rodney Dale Gordon? Is he present?

16 THE CLERK: Yes, sir.

17 THE COURT: If you would come up, Mr. Gordon, just a
18 minute. I want to ask you one thing.

19 (Mr. Gordon complies.)

20 (There was off-the-record discussion at the bench.)

21 THE COURT: Thank you very much. You're free to go.
22 Mr. Gordon, number 69, will be excused.

23 (The Court gave the following instruction to the Court
24 Reporter in the presence of the jury panel but out of the
25 hearing of the jury panel:)

1 THE COURT: That's on the basis that he was convicted
2 of a crime carrying more than a one-year prison sentence.
3 Put that on the record.

4 THE COURT REPORTER: Yes, sir.

5 (Whereupon, a jury is selected for another matter and
6 said jury goes to a jury room, after which the following
7 proceedings are had:)

8 THE COURT: Members of the jury panel, I'm going to
9 ask you to leave the courtroom if you would for just a few
10 minutes. I need to discuss some procedural matters with the
11 lawyers. I need you to go out in the hallway. All members
12 of the jury panel, if you would please go out in the hallway.
13 Don't go too far. I think I'll call you back in just a few
14 minutes.

15 (Whereupon, the jury panel leaves the courtroom at
16 approximately 11:11 a.m.)

17 (There was discussion regarding another matter, after
18 which the following proceedings were had:)

19 THE COURT: All right. Bring the jury back in. Bring
20 all that panel back in. Bring that jury back in.

21 (Whereupon, a jury and the jury panel return to the
22 courtroom at approximately 11:25 a.m.)

23 (There was discussion regarding another matter,
24 and the jury for the other matter goes to a jury room at
25 approximately 11:25 a.m.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: All right. Members of the jury panel that's still seated in the audience, I can release you at this time. Of course, we'll be glad to have you stay with us if you'd like to, to observe the trial of this case today.

What I would ask you to do is to call back in this evening after six o'clock to receive a recorded message. You should have already been given, I believe, a slip of paper with a telephone number on it, and there will be a recorded message on there telling you whether we want you to come back tomorrow at 9:30 or 10:00 or tomorrow afternoon or perhaps not until Thursday, depending upon how this case goes and so forth.

So we'll be glad to have you stay with us if you'd like to, to observe the trial of this case today, but you do not have to.

Call that number that you've been given. If you don't have that number, come forward, and we'll give it to you before you leave.

Thank you very much. You're free to go.

After six o'clock.

(Whereupon, the jury panel leaves the courtroom at approximately 11:26 a.m.)

(Whereupon, the hearing was recessed to the following day, Wednesday, June 6, 2001, and other matters were heard before the Court.)

LASER BOND FORMS • PENGAD • 1-800-621-8888

1 (On Wednesday, June 6, 2001, at approximately
2 2:52 p.m., the defendant being present with Counsel, the
3 following proceedings were had:)

4 THE COURT: All right. Members of the jury panel,
5 please give me your attention. I apologize for having to
6 send you out into the hallway and all. Hopefully, when we
7 get into the new courthouse downtown, we'll have one central
8 jury assembly room. I'm hoping that they have included that
9 in the plans, where we won't have to have jurors in the
10 courtroom and then send them out like I just did.

11 The reason I did that was because I needed to discuss
12 some matters with the attorneys and the defendant in actually
13 the case that was set for trial, number one for trial this
14 afternoon. That case has been disposed of by the entry of a
15 plea, and I had to go over all that with the defendant and
16 the lawyers. And I couldn't have you sitting in here while I
17 was doing that, discussing the case, because I wasn't sure
18 how it was going to turn out. So that's why I had to send
19 you out into the hallway so I could go over those matters and
20 make sure that case was going to be disposed of.

21 Hopefully, as I said, in some of the counties now,
22 they have included in the courthouse what we call a jury
23 assembly room, and that's a room separate from the courtroom
24 where the jury goes and they stay until such time as we
25 actually need you in the courtroom. And we send for you, and

1 they come in and pick a jury and get started that way. And
2 hopefully we'll have that when we get downtown.

3 But we're ready now for the trial of the case, the
4 State against Earnest, E-A-R-N-E-S-T, Battle, B-A-T-T-L-E.

5 Is this Mr. Battle?

6 MR. MCGUIRE: He is.

7 THE COURT: If you would stand up, please, Mr. Battle,
8 and turn that way so the jury can see you.

9 (The Defendant complies.)

10 THE COURT: Thank you. That's Mr. Earnest Battle.

11 Mr. Battle, you can be seated now.

12 He is the defendant in this case. The State claims
13 that he did violate some of the -- actually, three different
14 violations; but they all relate to illegal drugs, cocaine, on
15 July 15, 1999, here in Charleston County in the
16 North Charleston county area.

17 Where in North Charleston did this take place? Where
18 did it take place?

19 MR. BOSNAK: Johns Street and ---

20 THE COURT: Johns Street?

21 MR. BOSNAK: Yes, sir. And Reddin Street.

22 THE COURT: Johns and Reddin Street. In the vicinit
23 of Johns and Reddin Street in North Charleston on July 15,
24 1999, is where the State claims this happened, some illegal
25 drug activity involving Mr. Battle on that date at that

LASER BOND FORM B • PENNAD • 1-800-531-6989

1 location. And Mr. Battle has said, "I'm not guilty of any of
2 those charges," and that's why we're going to have this trial
3 to see if the State can prove him guilty or not.

4 I give you that as background information. Just in
5 case any of you happen to know anything or think anything at
6 all about any factual circumstance that may be involved in
7 the trial of this case, I'd like to know that now.

8 So is there any member of the jury panel who knows
9 anything or thinks anything at all about anything to do with
10 this case? If so, please stand. Anyone on the jury panel
11 have any knowledge of anything at all to do with this case?
12 If so, please stand.

13 No one standing.

14 Is any member of the jury panel related by blood or
15 marriage or do you know in any way Mr. Earnest Battle, the
16 defendant, the gentleman down here at the front that stood
17 and turned that I introduced to you a moment ago? If so,
18 please stand. Anyone on the jury panel related by blood or
19 marriage or do you know in any way Earnest Battle? If so,
20 please stand.

21 No one standing.

22 I'd ask the attorneys involved, starting with the
23 Solicitor who is going to be trying this case, to introduce
24 yourself and call out the names of potential witnesses for
25 the State.

1 MR. BOSNAK: My name is Mike Bosnak. I'm an assistant
2 solicitor, and I'll be trying this case.

3 We will have a Gregg Gould with the Charleston Airport
4 Police. Anybody know Mr. Gould?

5 We'll also have an Al Kuechler. He is with the North
6 Charleston Police Department. Anybody know Al?

7 We'll also have ---

8 THE COURT: Well, we've got some hands coming up.
9 I'll get them. You go ahead and call out all the names.

10 MR. BOSNAK: And we have a Detective Glen Campbell
11 with the North Charleston Police Department; a William Hardin
12 with the North Charleston Police Department; a
13 Lieutenant Melvin Cumbee with the North Charleston Police
14 Department; a Charles Hardin with the North Charleston Police
15 Department; a Mike Miller, formerly of SLED, the State Law
16 Enforcement Division. We'll also have a
17 Jennifer Vanootegham, formerly with the North Charleston
18 Police Department, a LaShawn Floyd, and also a James Nelson.

19 THE COURT: All right. Anyone on the jury panel
20 related by blood or marriage or do you know in any way any of
21 those persons whose names were just called out to you? We
22 had several people raise their hands. Stand up now if you
23 would, please. Anybody on the jury panel related by blood or
24 marriage or do you know in any way any of those people whose
25 names were just called out to you by the Solicitor as

1 potential witnesses for the State?

2 Yes, ma'am. Your name, please.

3 A POTENTIAL JUROR: Ninety-seven, Karen Lindow. I
4 believe Police Officer Cumbee. His wife Christy worked with
5 me a few months with the Commissioners of Public Works. She
6 no longer works with me or for the commission.

7 THE COURT: All right. Thank you very much for that
8 information.

9 The lady over this side, in the blue dress, tell me
10 your name.

11 A POTENTIAL JUROR: Nancy Wilson.

12 THE COURT: Nancy what?

13 MS. WILSON: Nancy Wilson.

14 THE COURT: Your number?

15 MS. WILSON: Forty-seven -- 217.

16 THE COURT: What?

17 MS. WILSON: 217.

18 THE COURT: 217. All right. What do you want to tell
19 me?

20 MS. WILSON: I'm employed at Charleston County
21 Aviation Authority as a Delta ticket agent. I know the
22 officer that works there. Vaguely, though. I don't know him
23 personally. But I don't know if that has any place or not.

24 THE COURT: Which officer is that do you know?

25 MS. WILSON: I believe it's Michael.

1 MR. BOSNAK: It's a Gregg Gould?

2 MS. WILSON: Yes, sir.

3 THE COURT: All right. You just know him when you see
4 him; is that what you're saying?

5 MS. WILSON: Yes.

6 THE COURT: All right. Thank you very much for that
7 information.

8 Yes, ma'am, your name and number?

9 A POTENTIAL JUROR: My name is Karen Meyer, and my
10 number is 113. And I know Al Kuechler from my children, at
11 least from my business.

12 THE COURT: What do you mean by that?

13 MS. MEYER: He -- I own an upholstery shop, and I've
14 done work for him.

15 THE COURT: You own what kind of shop?

16 MS. MEYER: An upholstery.

17 THE COURT: Upholstery shop?

18 MS. MEYER: Uh-huh.

19 THE COURT: And you've done some upholstery work for
20 him?

21 MS. MEYER: Uh-huh. And I sort of know him because of
22 him stopping by saying "hi," "hello."

23 THE COURT: I see. So how long ago was the last time
24 you would have seen him?

25 MS. MEYER: Probably a good six months.

1 THE COURT: All right. Thank you very much for that
2 information.

3 Anyone else with a positive response to that question?
4 If so, please stand.

5 No one else standing.

6 And, well, Mr. Crout also is an assistant solicitor
7 who's going to be involved in this case.

8 MR. CROUT: I think I've already appeared before some
9 of you all yesterday. Thank you.

10 THE COURT: All right. Is anybody on the jury panel
11 related by blood or marriage or do you know in any way either
12 of these attorneys, Mr. Bosnak or Mr. Crout, the assistant
13 solicitors that are going to be prosecuting this case? Has
14 anybody ever had any dealings with them other than sitting on
15 the jury yesterday? If so, please stand.

16 MR. CROUT: And, Your Honor, I also need to tell them
17 a Mark Bourdon from our office. He lives on Folly Beach.

18 THE COURT: All right.

19 MR. CROUT: He will also be assisting in this case.

20 THE COURT: All right. We'll include him, also.
21 Anyone have any connection of any sort with any of the
22 prosecuting attorneys? If so, please stand.

23 No one standing.

24 Mr. McGuire, we'll let you introduce yourself and
25 co-counsel for the jury.

1 MR. MCGUIRE: Thank you, Your Honor.

2 I'm Bill McGuire. To my left is Ms. Leslie Sarji.
3 She'll also be representing Mr. Earnest Battle.

4 Defendant's witnesses in the case:

5 A Mr. Santonio Jones, a Richard Anderson, a Matt Wallace.

6 THE COURT: All right. Anyone on the jury panel
7 related by blood or marriage or do you know in any way any of
8 those potential witnesses or either one of these lawyers? If
9 so, please stand.

10 MR. MCGUIRE: And, Your Honor, I should also add that
11 a Mr. James Nelson also goes by Eddie Nelson.

12 THE COURT: All right. With that addition, anyone on
13 the jury panel related by blood or marriage or do you know in
14 any way either the witnesses or the attorneys involved for
15 the defendant in this case? If so, please stand.

16 No one standing.

17 All right. Mr. McGuire, do you want me to ask number
18 one and number two? Did you get that yesterday? Have you
19 gotten what that is?

20 MR. BOSNAK: Your Honor, may I approach?

21 THE COURT: Yes. Both of you.

22 (There was an off-the-record bench conference in the
23 presence of the jury panel but out of the hearing of the jury
24 panel.)

25 (Said bench conference being concluded, the following

1 proceedings were had:)

2 THE COURT: All right. Is any member of the jury
3 panel or member of your immediate family -- and I would
4 define "immediate family" to be your mother; father; brother;
5 sister; a child or children; a spouse, husband and wife.
6 Anyone on the jury panel or a member of your immediate family
7 ever been employed by a law enforcement agency of any type?
8 Police? Sheriff? Highway patrol? Anything like that? Anyone
9 on the jury panel or member of your immediate family ever
10 been employed by a law enforcement agency of any type?

11 Yes, sir. Your name and number, please.

12 A POTENTIAL JUROR: David Fender, 202. My stepfather
13 is in law enforcement with the South Carolina DNR.

14 THE COURT: Thank you.

15 Yes, ma'am. Your name and number?

16 A POTENTIAL JUROR: I'm Suzanne Carroll Ramsey,
17 number 26. My father was employed with the Virginia
18 Correctional Institute, and he's deceased.

19 THE COURT: Thank you.

20 Yes, ma'am. Your name and number?

21 A POTENTIAL JUROR: Willia Mae Smalls, 163. My dad
22 was with...

23 THE COURT REPORTER: I can't hear her.

24 THE COURT: 163, Willia Mae Smalls.

25 All right. Anyone else?

LASER BOND FORM B PERIOD 1-800-331-9888

1 No one else standing.

2 THE COURT: Has any member of the jury panel formed or
3 expressed an opinion about any issue or matter that may be
4 involved in the trial of this case? If so, please stand.

5 No one standing.

6 Is any member of the jury panel aware of any bias or
7 prejudice either in favor of or against the State of South
8 Carolina or the Defendant Earnest Battle? If so, please
9 stand.

10 No one standing.

11 Does any member of the jury panel know of any reason
12 why you cannot give both the State of South Carolina and the
13 Defendant Earnest Battle a fair and impartial trial in this
14 case? If so, please stand.

15 No one standing.

16 Does any member of the jury panel know of any reason
17 whatsoever why you should not be picked and serve as a juror
18 in this case? If so, please stand.

19 No one standing.

20 Any additional questions from the State?

21 MR. BOSNAK: Only the ones I've submitted, Your Honor.

22 THE COURT: All right. From the defendant?

23 MR. MCGUIRE: Not in addition to the ones I've already
24 submitted.

25 THE COURT: All right. I'll give these to the Clerk

1 of Court, and we'll put them in the record. Court's
2 exhibits.

3 (Court's Exhibits No. 1 and 2 were marked for
4 identification.)

5 THE COURT: All right. Have you got a list?

6 THE CLERK: Yes, Your Honor.

7 THE COURT: Okay. All right. We're going to follow
8 the same procedures that we followed yesterday, in picking a
9 jury in this case. I've asked the Clerk to prepare a list.
10 The first person drawn is at the top of the list, number one,
11 all the way down through the maximum number that we would
12 use. Actually, I've asked him to put more than that on
13 there. They are placed on the list in the order in which
14 they were drawn. As soon as he finishes getting that list,
15 I'm going to give it to the lawyers, and then we're going to
16 proceed to go over that list as we did yesterday.

17 I'd ask the lawyers to come up here a minute if you
18 would.

19 (There was an off-the-record bench conference in the
20 presence of the jury panel but out of the hearing of the jury
21 panel.)

22 (Said bench conference being concluded, the following
23 proceedings were had:)

24 THE COURT: All right. Members of the jury panel, I'm
25 going to call out the names now on the list. If I call your

LASER BOND FORM B • PENNAD • 1-800-531-6699

1 name, please stand so that everybody involved here can see
2 who's standing in response to that name. And if you would,
3 mentally count to about five so that they can have time to
4 look at you and locate you on the list, and then you can sit
5 down. So if I call your name, please stand for about five
6 seconds.

7 Nancy Wilson. Thank you.

8 Diane Lathen. Thank you.

9 Jack Bennett, Jr. Thank you.

10 Mario Prioleau.

11 Gloria Hilker.

12 Frank Butler.

13 James Simpson.

14 Nicholas Sudano.

15 Vivian Huguley.

16 Kahron Nathaniel -- and I'm not sure of the last name.

17 I can't read y'all's writing.

18 THE CLERK: Snype.

19 THE COURT: Snype. Number 165.

20 Nancy Levi.

21 Willia Mae Smalls.

22 Karan Walker, number 183.

23 Louise Hudson.

24 Joseph Amundsen.

25 MR. AMUNDSEN: Yes, sir. It's Amundsen.

1 THE COURT: Oh, I'm sorry.

2 MR. AMUNDSEN: That's okay.

3 THE COURT: I was close. I apologize.

4 Melinda Turner.

5 Gloria Smalls.

6 Elizabeth Dettrey.

7 Kathleen Brooks.

8 Joshua Robinson, Jr.

9 Jennifer Godwin. (Jennifer L. Marshall Godwin)

10 Elaine Wilson.

11 Lana Nelson.

12 Eunjoo Yun.

13 Patricia McLoughlin.

14 Randall Hutchinson.

15 Joyce Dimartino, number 45.

16 Terry Newberry.

17 Jane Aldrich.

18 Teresa Davis Puckett.

19 David Fender.

20 Thank you. I must say for some of you, you can sure
21 count to five fast.

22 (Laughter.)

23 THE COURT: Your life would go by in a hurry if it
24 were that quick. All right. We're ready to pick the jury.

25 Will the State accept or excuse juror number one?

1 MR. BOSNAK: Yes, sir. May I briefly -- just a
2 second, Your Honor.

3 MR. CROUT: Your Honor, the State accepts
4 juror number...

5 THE COURT: One?

6 MR. CROUT: One.

7 THE COURT: All right.

8 MR. MCGUIRE: Defense accepts number one, Your Honor.

9 THE COURT: Number two.

10 MR. CROUT: The State accepts defendant number two,
11 Your Honor.

12 MR. MCGUIRE: Defense accepts number two, Your Honor.

13 THE COURT: Three.

14 MR. CROUT: Your Honor, the State accepts defendant
15 number 3 -- excuse me -- juror number three.

16 THE COURT: I knew what you meant.

17 How about the defendant?

18 MR. MCGUIRE: Accepts number three, Your Honor.

19 THE COURT: Number four.

20 MR. CROUT: Your Honor, the State would excuse juror
21 number four.

22 THE COURT: Number five.

23 MR. CROUT: Your Honor, the State accepts juror numbe
24 five.

25 MR. MCGUIRE: Defense excuses number five, Your Honor

1 THE COURT: Number six.

2 MR. CROUT: Your Honor, the State would excuse juror
3 number six.

4 THE COURT: Number seven.

5 MR. CROUT: Your Honor, the State would accept juror
6 number seven.

7 MR. MCGUIRE: Defense accepts number seven,
8 Your Honor.

9 THE COURT: Number eight.

10 MR. CROUT: Your Honor, the State accepts
11 number eight.

12 MR. MCGUIRE: Defense accepts number eight,
13 Your Honor.

14 THE COURT: Number nine.

15 MR. CROUT: Your Honor, the State accepts number nine.

16 MR. MCGUIRE: Defense accepts number nine, Your Honor.

17 THE COURT: Ten.

18 MR. CROUT: Your Honor, the State accepts number ten.

19 MR. MCGUIRE: Defense accepts number ten, Your Honor.

20 THE COURT: Eleven.

21 MR. CROUT: Your Honor, the State accepts
22 juror number 11.

23 MR. MCGUIRE: Defense accepts number 11, Your Honor.

24 THE COURT: Twelve.

25 MR. CROUT: Your Honor, the State accepts

LASER BOND FORM B PENGAD • 1-800-631-9989

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

juror number 12.

MR. MCGUIRE: Defense accepts number 12, Your Honor.

THE COURT: Thirteen.

MR. CROUT: Your Honor, the State accepts number 13.

MR. MCGUIRE: One moment, Your Honor, if I could.

(Defense counsel confer.)

MR. MCGUIRE: Defense accepts number 13, Your Honor.

THE COURT: Fourteen.

MR. CROUT: Your Honor, the State accepts

juror number 14.

MR. MCGUIRE: Defense excuses number 14, Your Honor.

THE COURT: Fifteen.

MR. CROUT: Your Honor, the State accepts

juror number 15.

MR. MCGUIRE: Defense excuses number 15, Your Honor.

THE COURT: Sixteen.

MR. CROUT: Your Honor, the State accepts

juror number 16.

MR. MCGUIRE: Defense accepts number 16, Your Honor.

THE COURT: Seventeen.

MR. CROUT: Your Honor, the State accepts

juror number 17.

MR. MCGUIRE: Defense excuses number 17, Your Honor.

THE COURT: Eighteen.

MR. CROUT: Your Honor, the State accepts

LASER BOND FORM B • PENNADO • 1-800-651-0989

1 juror number 18.

2 MR. MCGUIRE: The defense excuses number 18,
3 Your Honor.

4 THE COURT: All right. That's five.
5 Nineteen.

6 MR. CROUT: Your Honor, the State would excuse
7 juror number 19.

8 THE COURT: Twenty.

9 MR. CROUT: Your Honor, the State accepts
10 juror number 20.

11 THE COURT: Any challenge for cause by the defendant?

12 MR. MCGUIRE: No challenge, Your Honor.

13 THE COURT: All right. I believe that's our twelve.
14 Everybody agree?

15 MR. CROUT: Yes, Your Honor.

16 MR. MCGUIRE: Yes, Your Honor.

17 THE COURT: All right. We'll pick an alternate now.
18 Will the State accept or excuse juror number 21 as the
19 alternate?

20 MR. CROUT: Your Honor, the State accepts
21 juror number 21.

22 THE COURT: Defendant?

23 MR. MCGUIRE: Defense excuses number 21, Your Honor.

24 THE COURT: Twenty-two.

25 MR. CROUT: Your Honor, the State would excuse

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

juror number 22.

THE COURT: Twenty-three.

MR. CROUT: Your Honor, the State accepts

juror number 23.

MR. MCGUIRE: Defense excuses number 23, Your Honor.

THE COURT: Any challenge for cause by either side to number 24? State?

MR. CROUT: No challenge from the State, Your Honor.

THE COURT: Defendant?

MR. MCGUIRE: No, Your Honor.

THE COURT: All right. We have serving then -- you all check to make sure I've recorded these correctly:

Number 1, 2, 3, 7, 8, 9, 10, 11, 12, 13, 16 and 20 as the regular twelve jurors and number 24 as the alternate juror.

Everybody agree on that?

MR. CROUT: Yes, Your Honor. The State agrees.

THE COURT: All right. Defendant agree?

MR. MCGUIRE: Yes, Your Honor. We agree.

THE COURT: Okay. All right.

Members of the jury panel, if I call your name, please come forward and have a seat over here in the jury-box:

Willia Mae Smalls. (Black female approaches.)

Melinda Turner. (White female approaches.)

Kathleen Brooks. (Black female approaches.)

Joshua Robinson, Jr. (Black male approaches.)

1 Jennifer Godwin. (White female approaches.)
 2 Elaine Wilson. (Black female approaches.)
 3 Lana Nelson. (Black female approaches.)
 4 Eunjoo Yun. (Asian female approaches.)
 5 Patricia McLoughlin. (White female approaches.)
 6 Jane Aldrich. (White female approaches.)
 7 Teresa Davis Puckett. (White female approaches.)
 8 David Fender. (White male approaches.)
 9 And the alternate, Nicholas Sudano. (White male
 10 approaches.)

11 All right. The first thing I'm going to ask this jury
 12 to do is, if you would file out of the jury-box, follow the
 13 Bailiff out of the courtroom to a jury room. I'll send for
 14 you just as soon as I can.

15 (Whereupon, the jury goes to the jury room at
 16 approximately 3:23 p.m.)

17 THE COURT: All right. Any challenge to the jury as
 18 it's presently constituted? By the State?

19 MR. CROUT: No challenge from the State, Your Honor.

20 THE COURT: Defendant?

21 MR. MCGUIRE: Yes, sir, Your Honor.

22 THE COURT: I didn't understand you.

23 MR. MCGUIRE: Yes, sir.

24 THE COURT: There is?

25 MR. MCGUIRE: Yes, sir.

LASER BOND FORM B PENGAD - 1-800-831-0989

1 THE COURT: All right. Members of the jury panel, I
 2 need you to go out into the hallway for a few minutes. I'll
 3 send for you just as soon as I can.

4 (Whereupon, the jury panel leaves the courtroom at
 5 approximately 3:24 p.m.)

6 THE COURT: All right. Mr. McGuire, what's your
 7 challenge?

8 MR. MCGUIRE: Thank you, Your Honor. I would make a
 9 Batson motion as to jurors -- on your sheet, to the left,
 10 it's number 19 and 22, both black males.

11 THE COURT: Why did you strike number 19?

12 MR. CROUT: Your Honor, with respect to juror
 13 number 19, Mr. Karan Walker, our review of NCI records
 14 indicates that he has a conviction for aggravated assault --
 15 excuse me, Your Honor. Yes, sir. Mr. Walker has a
 16 conviction for aggravated assault, Your Honor.

17 THE COURT: Where was that and when?

18 MR. MCGUIRE: He shouldn't be on the panel if that's
 19 the case.

20 THE COURT: Well, anyway, nevertheless, he is. Still
 21 though -- show him that. Show him the record, what you're
 22 looking at.

23 (Mr. Crout and Mr. McGuire review document.)

24 MR. MCGUIRE: Your Honor, it appears to be a military
 25 charge, maybe even overseas. There's no disposition. So it

LASER BOND FORM B ● PENGAD • 1-800-631-6889

1 was just an arrest charge.

2 If he states as an officer of the Court that he sat no
3 one else with a pending arrest charge, I'm satisfied.

4 MR. CROUT: We sat no one else with a pending arrest
5 charge.

6 THE COURT: All right, okay. All right. How about
7 then for the alternate, number 32 -- excuse me -- 22, why did
8 you strike that one?

9 MR. CROUT: I apologize. That was the record I was
10 looking at earlier. There appears to be, from a review of
11 his NCIC report, a trespassing conviction from '95.

12 THE COURT: And did you seat anybody else -- did you
13 seat anybody on the jury that has a trespassing conviction or
14 similar-type conviction?

15 MR. CROUT: No, Your Honor.

16 MR. MCGUIRE: I'm satisfied.

17 THE COURT: All right. All right. I find that he's
18 stated then sufficient racially neutral and gender neutral
19 reasons for striking those two jurors. So I do not uphold
20 the challenge to the jury.

21 Any other challenge to the jury as it's presently
22 constituted? By either side?

23 (There was no response.)

24 THE COURT: None. All right. Bring the jury back in.
25 What do you want me to tell the jury?

1 MR. CROUT: Your Honor, if I may?

2 THE COURT: Yes, sir.

3 MR. CROUT: I'd like to approach.

4 THE COURT: Come on up. Mr. McGuire, you might as
5 well come up, too.

6 (There was an off-the-record bench conference, after
7 which the following proceedings were had:)

8 (Whereupon, the jury panel returns to the courtroom at
9 approximately 3:28 p.m.)

10 THE COURT: Members of the jury panel, I've got some
11 good news for you. I've been informed by the Solicitor's
12 office that this is the last case that they intend to call
13 for trial this week. So your service on the jury is just
14 about over.

15 I want to thank you for serving on the jury. I know
16 there's been some inconvenience to have to have you come in
17 as we have, to be here to help us in regard to picking a
18 jury. We're not always able to control the docket and have
19 everything set up on the schedule as we'd like to have it
20 done, but I assure you we try to accommodate you and make it
21 as much of a small inconvenience to you as we possibly can.

22 I want to ask you before you leave: You know, I think
23 that you've been exposed to two methods of picking a jury for
24 the trial of a criminal case this week; you know, the method
25 that I use involving a strike sheet and then the other method

1 where you come down front, I believe, and stand and are
2 accepted and excused. I'd like to have a show of hands from
3 the jury panel as far as which method you prefer.

4 (There was off-the-record discussion by the Court and
5 the jury panel.)

6 THE COURT: All right. Well, anyway, thank you very
7 much for being on the jury this week. You're free to go.

8 The Clerk will be mailing your paychecks to you. You
9 do get paid a small amount for serving on the jury. It's not
10 very much. If you don't get your paycheck within the next
11 couple of days, call the Clerk of Court's office and tell
12 them, and they'll be sure to try to get one to you.

13 Thank you very much. You're free to go.

14 (Whereupon, the jury panel was excused at
15 approximately 3:32 p.m.)

16 (A brief recess was taken, and another matter was
17 heard before the Court.)

18 (After said recess, the defendant being present with
19 Counsel, the following proceedings were had:)

20 THE COURT: All right. Now, you all are not wanting
21 to do anything with witnesses or anything with this case
22 today?

23 MR. BOSNAK: That's correct, Your Honor, unless you'd
24 like to hear the motion today.

25 THE COURT: Well, I was going to do the motion, yes.

1 But, I mean, as far as after that? I'm just wondering
2 whether to go ahead and send the jury home or whether you
3 want to do the opening statements after that.

4 MR. BOSNAK: No, sir. We would ask that you send the
5 jury home and let's start first thing in the morning.

6 THE COURT: All right. Bring the jury out.

7 (Whereupon, the jury enters the courtroom at
8 approximately 3:44 p.m.)

9 THE BAILIFF: The jurors are present, Your Honor.

10 THE COURT: All right. We do have the jury with us;
11 and the defendant is present, along with his attorney.

12 I apologize for keeping you back there in the jury
13 room for this length of time, but we were working on some
14 pretrial matters and so forth in your absence, doing some
15 other things, and the procedures require that I have you out
16 of the courtroom while I'm doing those things.

17 We're actually not going to be able to get started
18 with the presentation of the testimony and the evidence in
19 this case today. So I'm going to let you go home. I've got
20 to do some more work with the lawyers.

21 So I'm going to let you go home. I'd ask that you be
22 back in the jury room tomorrow morning at nine o'clock.
23 We'll get started just as soon as we can after that.

24 Is nine o'clock a problem for anybody? I saw a coup-
25 of looks and some grimaces and -- just grimaces in general,

1 grimacing not at the particular hour or anything like that.
2 So everybody can be here at nine o'clock tomorrow morning.
3 Any dissent?

4 (There was no response.)

5 THE COURT: Everybody agrees with that.

6 Of course, you cannot discuss the case. You don't
7 know anything about it, really, other than the fact that the
8 charges have been made. But don't talk about it with family
9 or friends or anyone else over the evening recess. If they
10 want to know what you're doing, you tell them that you're on
11 the jury for the trial of a case, and the judge -- blame it
12 on me -- the judge specifically told you not to say anything
13 at all about the case until the case is over. Once it is
14 over, then you can discuss it with family, friends, or anyone
15 else. The only time you're to discuss it is when the twelve
16 of you are together at the conclusion of the case, in the
17 jury room, discussing and deciding on your verdict.

18 So I'll let you go home. I'd ask you to re-assemble
19 in this jury room back here, not out here in the courtroom,
20 in this jury room nine o'clock tomorrow morning. We'll get
21 started just as soon as we can after that.

22 Have a nice evening.

23 (Whereupon, the jury leaves the courtroom at
24 approximately 3:47 p.m.)

25 THE COURT: All right. Now we have Mr. McGuire's

1 motion to suppress evidence not disclosed by the prosecution
2 that I've read, and I presume a copy has been furnished to
3 the State and -- well, actually it's Ms. Sarji's motion to
4 suppress rather than Mr. McGuire's motion to suppress.

5 So is what he says in here true, Mr. Bosnak?

6 MR. BOSNAK: Your Honor, some of it's true. There are
7 certain circumstances behind this.

8 THE COURT: All right. Well, what he says is that
9 somebody, on behalf of the defendant, anyway, made a Rule 5
10 motion which requires upon request by a defendant: "The
11 prosecution shall permit the defendant to inspect and copy or
12 photograph any relevant written or recorded statements made
13 by the defendant or copies thereof in the possession,
14 custody, and control of the prosecution, the existence of
15 which is known or by the exercise of due diligence may become
16 known to the attorney for the prosecution." And that has to
17 be complied with within 30 days of the request.

18 When did you make the request?

19 MR. MCGUIRE: October of 1999, Your Honor.

20 THE COURT: October of '99. They say that yesterday,
21 I guess it was, he was informed that there was a statement,
22 recorded statement of the defendant, that y'all intend to us
23 in the trial of the case.

24 MR. BOSNAK: Your Honor, I don't know if it was Monday
25 or Tuesday. Let me explain.

1 THE COURT: Well, let's see here. When do you say you
2 got it?

3 MR. BOSNAK: Your Honor, I didn't find out
4 about it ---

5 THE COURT: When do you say you got it?

6 MR. MCGUIRE: Yesterday.

7 THE COURT: Yesterday.

8 MR. MCGUIRE: About three o'clock.

9 THE COURT: About three o'clock, now 25 hours ago.

10 MR. BOSNAK: Your Honor, I didn't know there were any
11 audiotapes until Tuesday, myself.

12 THE COURT: Okay.

13 MR. BOSNAK: This case belonged to Mr. Rodney Davis
14 who is no longer with us. This case was Rule 5. The
15 discovery was made back in 1999. As far as I knew at the
16 time, everything had been sent.

17 We called this case for trial, and I started going
18 through all the evidence. And on the front of the police
19 report, there is a note that says: "Has audio of defendant
20 E. Battle talking with witness Shawn and C.I." -- which is
21 confidential informant.

22 I tried to find those tapes. I think I called --
23 nobody in our office had them. They were not in my file.
24 Our investigators did not have copies of it. I called
25 Al Kuechler, which ---

1 THE COURT: When did you start looking for them?

2 MR. BOSNAK: Friday, Your Honor. And I called --
3 well, I called Officer North of the Charleston Police
4 Department also. And I called the case officer, Al Kuechler,
5 on this, and he got back in touch with me Monday.

6 And I said, "Aren't there some tapes to this? I have
7 a note here that says there are some tapes."

8 He said, "Well, I can't remember if there are any or
9 not. I will look and I'll check."

10 I think he called me back Tuesday morning and said,
11 "Yes, there are some tapes."

12 I said, "Well, you need to bring them to my office as
13 soon as possible because I don't have a copy of them."

14 And I called Mr. McGuire at that time to let him know
15 that there were some tapes. I at that time did not know if
16 Mr. McGuire had the tapes or not, but I wanted to inform
17 Mr. McGuire. And I felt like he would, of course, call me
18 back if he didn't and he would probably call me if he did.

19 The tapes came to our office that afternoon. They
20 were on a micro-cassette. I had to have them transcribed on
21 regular cassettes, and I told Mr. McGuire when I had them
22 transcribed. Actually, Mr. McGuire listened to it before I
23 did, Your Honor.

24 THE COURT: All right. Anything else you want to say

25 MR. MCGUIRE: Your Honor, well, the police report say

1 the deal was captured on audio. That police report, I would
2 imagine, has been in -- the police report says that the deal,
3 the drug deal, was captured on audio. That police report, I
4 assume, has been in their file for about a year and a half.
5 I had it for a little bit less than that.

6 But in all of my conversations with Rodney Davis, the
7 former prosecutor, we agreed on basically two things:

8 One is that he made representations that the police
9 officers did not actually see the drug transaction take place
10 and that the audiotape involved conversations of only the
11 confidential informant, Mr. Matt Wallace, who I've recently
12 learned his name. I just knew that he was the C.I. and that
13 he had conversations with LaShawn Floyd.

14 We were both operating under the fact that my client
15 was not on any tape. So I had, actually, information to the
16 contrary, that he was not on any tape.

17 I've prepared this case. I've been ready for trial on
18 three separate terms of court for this case. This case has,
19 figuratively speaking, been on the eve of trial three
20 separate times. I've prepared that case, all the information
21 that's been provided to me over the past year and seven
22 months, and I was ready. I'm just not ready to deal with
23 that statement that I got 25 hours ago.

24 MR. BOSNAK: Your Honor, if I may. I cannot speak to
25 what has happened in the past with Mr. Davis. There are no

1 notes in the file, talking about what's been turned over and
 2 what has not been turned over. I have not talked to
 3 Mr. Davis. I don't know Mr. Davis.

4 The State has made a good faith effort in this case.
 5 There is only a short part, maybe 20 or 30 seconds, if that
 6 long, of the defendant on the tape, Your Honor. The rest of
 7 the tape basically concerns the confidential informant and
 8 Ms. LaShawn Floyd.

9 MR. MCGUIRE: Your Honor, of course, brevity of any
 10 statements made by my client certainly is no indication it's
 11 going to take me a short time to deal with that statement. I
 12 can give you sort of a paraphrasing of it if you'd like to
 13 hear that.

14 THE COURT: Have you got a transcript of it?

15 MR. BOSNAK: Yes, sir.

16 THE COURT: Well, let me see it.

17 MR. BOSNAK: Well, I don't have a transcript. I've
 18 just got the tape. We haven't even had a chance to make a
 19 transcript.

20 THE COURT: You haven't transcribed it?

21 MR. BOSNAK: No, sir, but we can. We will for
 22 tomorrow.

23 THE COURT: Well, what all does it say?

24 MR. MCGUIRE: Your Honor, I'll tell you what it says.
 25 Basically, Shawn -- LaShawn Floyd and the confidential

LASER BOND FORM B PENGAD • 1-800-631-6888

1 informant were speaking.

2 THE COURT: LaShawn Floyd. And who is that?

3 MR. MCGUIRE: LaShawn Floyd. She is a testifying
4 co-defendant ---

5 THE COURT: Okay.

6 MR. MCGUIRE: --- charged with the exact same charges
7 that Mr. Battle has. She'll be testifying in this trial.

8 THE COURT: All right. Floyd and the confidential
9 person or whatever. Floyd and somebody else are talking, and
10 what do they say?

11 MR. MCGUIRE: Yes, sir.

12 And then she basically says, "Well, hold on," puts the
13 confidential informant on hold, patches another black male in
14 on a three-way conference call basically. And this is being
15 recorded. And she says, "E." She calls somebody by the
16 initial "E."

17 And that person responds, "Yes."

18 And she said, "I have a man on the phone."

19 "E" responds, "Okay."

20 And then she states, "He wants seven, not nine,"
21 referring to ounces of cocaine.

22 And the black male responds something to the effect
23 of, "Oh, okay. So he's working -- he's working on seven.
24 He's working on seven."

25 She says, "Yes."

1 And then he says, "Well, Shawn, I'm around the corner.
 2 You go and talk to him for a couple of minutes, and I'll be
 3 there in a second."

4 That's basically it. I think that's pretty accurate.

5 MR. BOSNAK: Like I said, Your Honor, we'll make a
 6 transcript of it for tomorrow.

7 MR. MCGUIRE: And, Your Honor, we don't have to pause
 8 very long. Does that statement fall within the rule? It
 9 clearly does. Should I have gotten it within 30 days of
 10 October 27, '99? Yes. And I got it 25 hours ago. And now
 11 I'm ready to go forward, just not with that statement, and I
 12 want to ask for more time if I have to address that
 13 statement.

14 THE COURT: Of course, you've got two of the -- of
 15 course, we've got the first part of the rule that applies to
 16 it. That is 5(A)(1) and then (a), of course. And then
 17 you've got the last part of that, paragraph three, time for
 18 disclosure. And then you've got a continuing duty to
 19 disclose. And then you get down to failure to disclose,
 20 failure to comply.

21 MR. MCGUIRE: And, Your Honor, I think I mentioned i
 22 my motion that my client faces a mandatory minimum of
 23 25 years if convicted. It's just not fair that he has
 24 13 hours to deal with this statement.

25 THE COURT: Well, I don't know whether a lot more ti

LASER BOND FORM B PENGAD • 1-800-831-9989

1 would help you or not.

2 MR. MCGUIRE: Well, Your Honor, I did prepare the case
3 over the past year and seven months based on the information
4 provided to me and based on the conversations with
5 Rodney Davis that my client was not on the tape. This
6 changes everything. Not only do I have to adjust ---

7 THE COURT: I agree. In view of the length of time
8 particularly involved and all, since October of '99, you
9 know, I'm going to grant the motion to suppress the use of
10 what the State claims is a recorded statement from the
11 defendant that was not disclosed until yesterday.

12 All right. Anything else?

13 MR. CROUT: Your Honor, with respect to that ruling,
14 as Mr. McGuire stated, that if he had this case ready for
15 trial three times, it seems some diligence on the defense
16 part would be to listen to the audiotape to hear exactly what
17 is on it, especially in the ruling of Rule 5(C) which is the
18 continuing duty to disclose, once Mr. Bosnak was aware that
19 this tape was in existence and that Mr. Battle may be on the
20 tape. Actually, it was given to the defense before trial.

21 The defense will have the opportunity to cross-examine
22 Ms. Floyd since she is going to testify and testify that she
23 was talking to this gentleman on the telephone, then patched
24 the call to her uncle, Mr. Battle, the defendant in this
25 case.

1 So certainly that tape should be coming into evidence
2 and then subject to cross-examination as to who the person
3 was that's on the other end of this phone conversation.

4 Certainly, the remedy that the defense is proposing is
5 overly harsh and prejudices the State too much for the error,
6 of the ruling itself. I mean, he's had two days to prepare,
7 and he's ---

8 THE COURT: Well, both sides have had since October
9 of '99 to prepare. I presume that report -- let me see.
10 When was that report written up that says that the tape was
11 -- that you were looking for it when you -- that you
12 suddenly -- when was that written up?

13 MR. BOSNAK: Your Honor, I don't have any idea ---

14 THE COURT: Well, let's look at it.

15 MR. BOSNAK: --- who wrote this or ---

16 THE COURT: Well, that's when you found that, right?

17 MR. BOSNAK: Yes, sir. But I didn't start on this
18 case until about a few days ago.

19 THE COURT: Well, I know that. But it's been in the
20 possession of the police since it was done. I would presume
21 it was done within a few days after the -- after the date of
22 the report. 7-15-99. 7-15-99? When is the date this
23 supposedly took place? I don't have the indictment.

24 MR. BOSNAK: 7-15-99, Your Honor.

25 THE COURT: All right. So the date of the report is

1 7-15-99. So it's been in existence and in the -- and with
2 the ability of the prosecution to obtain it since then.

3 So...

4 MR. BOSNAK: Your Honor, let me just restate this.

5 THE COURT: Okay.

6 MR. BOSNAK: Everything had been Rule 5 when I
7 obtained the case. There was no record of what had been
8 given to Mr. McGuire. Mr. McGuire did not send us a letter
9 back, stating what he had received under Rule 5.

10 THE COURT: Well, I don't know. Did he get anything?

11 MR. BOSNAK: Yes, sir. He got the drug report.

12 THE COURT: Well, what was in your file showing what
13 was sent to him?

14 MR. BOSNAK: I don't have anything, Your Honor. I
15 mean, I have everything stamped Rule 5, all the paper
16 documents that we sent him.

17 THE COURT: Okay.

18 MR. BOSNAK: But I didn't know if he was in possession
19 of those tapes or not, but I was just going to double-check.
20 I called him as soon as I found out about these tapes and we
21 were moving forward with them, Your Honor.

22 THE COURT: Anything else?

23 MR. MCGUIRE: I don't think I have to respond,
24 Your Honor.

25 THE COURT: Anything else?

1 MR. CROUT: Your Honor, once again, the diligence on
2 the defense part, they were aware of the existence of these
3 tapes. Mr. Bosnak was not in our office when this case was
4 initially assigned.

5 THE COURT: How was the defendant aware?

6 MR. MCGUIRE: Your Honor, I've got to respond to that.

7 THE COURT: Well, I mean, how was he aware?

8 MR. CROUT: Apparently, he's saying that Davis had
9 conversation with him about what was and wasn't on the tape.

10 THE COURT: After he found out yesterday?

11 MR. MCGUIRE: No, sir.

12 MR. CROUT: No.

13 MR. MCGUIRE: Your Honor, I can shed some light on
14 this.

15 THE COURT: Okay. June 6. "Further, defense counsel
16 spoke to former prosecutor Rodney Davis on June 6, 2001" is
17 what he says.

18 MR. MCGUIRE: And, Your Honor, that conversation was
19 to verify previous conversations that I've had with Mr. Davis
20 in preparing this case for trial.

21 THE COURT: Okay. That's the way I read it, but
22 anyway...

23 MR. MCGUIRE: In an effort to ---

24 THE COURT: As I understand it, the defense didn't
25 find out about the tape until yesterday.

1 MR. MCGUIRE: That's true.

2 MR. CROUT: No. The defense knew that there was a
3 tape that was made. The defense wasn't aware that their
4 client allegedly was on this tape.

5 THE COURT: Okay. Well, that's the guts of it.
6 That's the guts of it.

7 MR. MCGUIRE: And, Your Honor, I was told that my
8 client was not on the tape.

9 MR. CROUT: What I'm saying, there has to be some
10 diligence on the defense part to listen to the tapes at some
11 point if this case was being called for trial.

12 MR. MCGUIRE: And I got them yesterday and listened to
13 them.

14 MR. CROUT: Apparently this case was notified that it
15 was going to be a life without parole or some notice of that
16 made on the 12th of June of 2000. My point is: If the case
17 had been ready for trial with other solicitors and the same
18 defense attorney and that he was aware that at least there
19 was a tape made, it seems like there should be diligence on
20 his part to listen to the tape and see what is and what isn't
21 on it.

22 THE COURT: Well, I mean, he could presume. He could
23 presume that his client wasn't on it.

24 MR. MCGUIRE: And, Your Honor, the police don't give
25 me those tapes. They give them to the prosecutor and ---

1 THE COURT: Well, I appreciate the position. I
2 appreciate your position. I've ruled. I grant the motion to
3 suppress.

4 MR. CROUT: Thank you, Your Honor.

5 THE COURT: All right.

6 MR. MCGUIRE: Your Honor, I can move this along pretty
7 fast, I think. I don't have any objection to the remainder
8 of the tape at this point. I'm still actually listening to
9 it.

10 The only other motions I would have would just be to
11 verify that there's no other statements from my client that
12 are going to be in evidence against him. In compliance with
13 Rule 5, I'd request a Jackson-Denno hearing if necessary.

14 MR. BOSNAK: Your Honor, he went through the records
15 yesterday. I went over to his office and went through the
16 whole record that I had; and anything else he wanted to make
17 copies of, of course, I made copies for him.

18 THE COURT: If he looked through the records, is there
19 anything else he'd want?

20 MR. MCGUIRE: No, Your Honor. Your Honor, I've had a
21 lot of officers take the stand and say, "Well, by the way,
22 it's not recorded, but your client said this." And I'm
23 asking -- if that's going to happen, I need to know it.

24 THE COURT: Do you know of any other statements that
25 the defendant's made to anybody that you haven't disclosed?

1 MR. BOSNAK: No, sir.

2 THE COURT: All right.

3 MR. BOSNAK: We have disclosed a letter that he sent
4 to LaShawn Floyd. Mr. McGuire has a copy of that.

5 THE COURT: You know about that?

6 MR. MCGUIRE: I have that, Your Honor.

7 THE COURT: All right.

8 MR. MCGUIRE: I'd move to sequester all of the
9 witnesses involved in the case.

10 THE COURT: Any reason not to?

11 MR. BOSNAK: No, sir.

12 (The Rule being invoked, the Court gave the following
13 instructions:)

14 THE COURT: All right. Both sides do that. Both
15 sides keep your witnesses out.

16 Of course, you have one witness if you need to --
17 you'll have to have that -- keep them in there.

18 Anything else?

19 MR. CROUT: Yes, Your Honor. To clarify one point,
20 now that the Court's ruled that the copy of the tape cannot
21 be played to the jury, is the State still precluded from
22 having its witness testify as to the substance of the
23 conversation between her and the defendant?

24 THE COURT: I haven't had that question come up yet.
25 I haven't been asked to rule on that. As I understand it,

1 the motion was to suppress.

2 Well, let's see what you did ask for: Suppression of
3 the portion of the audiotape that contains statements
4 allegedly made by the defendant.

5 Let me see your rule book back again.

6 (Mr. McGuire complies.)

7 THE COURT: All right.

8 MR. MCGUIRE: Your Honor, I might be able to speed
9 things up.

10 THE COURT: All right.

11 MR. MCGUIRE: I can't make a good faith objection to
12 the testifying co-defendant, Ms. Floyd, from talking about
13 any statements made by my client. I don't think it would be
14 hearsay. I think it would be a statement of my client, a
15 party-opponent, used against him, and I just can't make a
16 good faith objection to that.

17 THE COURT: Well, apparently, he's saying he's not
18 going to object to it. If he doesn't object, then you don't
19 have a problem ---

20 MR. CROUT: Yes, sir.

21 THE COURT: --- in view of that.

22 MR. CROUT: Yes, sir.

23 MR. MCGUIRE: I, really, object to the recorded
24 statement.

25 THE COURT: Your motion is to suppress the playing of

1 the tape?

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

3 THE COURT: All right. And I've granted that motion.

4 MR. CROUT: Your Honor, I thought we were just -- the
5 playing of the portion that talks about his client.

6 THE COURT: Are you going to try to play -- are you
7 going to try to edit it out where there's nothing -- where
8 the responses from his client are not played to the jury?

9 MR. CROUT: Yes, sir.

10 THE COURT: Well, we'll see how that goes. All right.
11 We'll see how that goes. Anything else?

12 MR. MCGUIRE: Your Honor, I would make a motion to
13 exclude any Lyle evidence if there is any. I'm not aware of
14 any.

15 THE COURT: Then I'll deal with that if it comes up.
16 All right.

17 MR. MCGUIRE: That's all I have, Your Honor.

18 THE COURT: All right. We'll be in recess then till
19 nine o'clock tomorrow morning.

20 Here's your book back.

21 MR. MCGUIRE: Oh, Your Honor. I would ask that my
22 client remain out on bond.

23 THE COURT: Is he out on bond?

24 MR. MCGUIRE: He is, Your Honor.

25 THE COURT: All right. Mr. Battle.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: I could keep you in jail overnight, but
3 I'm going to let you go if you promise to be back tomorrow
4 morning at nine o'clock.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Will you be back tomorrow morning at
7 nine o'clock?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: If you're not back, the trial will go on
10 in your absence. Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right.

13 MR. MCGUIRE: Thank you, Your Honor.

14 THE COURT: Nine o'clock tomorrow morning.

15 (Whereupon, at approximately 5:08 p.m., the hearing
16 was recessed to the following day, Thursday, June 7, 2001,
17 at 9:00 a.m.)

18

19

20

21

22

23

24

25

1 (On Thursday, June 7, 2001, at approximately
 2 9:00 a.m., defendant being present with Counsel Mr. McGuire,
 3 the hearing reconvened, and the following proceedings were
 4 had:)

5 THE COURT: Thank you. Please be seated.
 6 Are you ready to go ahead with the trial?

7 MR. MCGUIRE: Yes, sir. She'll come right in.
 8 (Refers to Ms. Sarji.)

9 THE COURT: Okay.

10 MR. MCGUIRE: The only matter I would have: There is
 11 a letter. There is a letter allegedly written by Mr. Battle
 12 and sent to a co-defendant, Ms. Shawn Floyd, LaShawn Floyd,
 13 and I would move to redact a portion of the letter where my
 14 client apparently seems to indicate that he and the
 15 co-defendant Eddie Nelson are facing life. And I think that
 16 the jury could surmise that that's based on his prior record,
 17 that they're going to know what the co-defendant
 18 LaShawn Floyd is facing when I ask her how many years she's
 19 facing if she was convicted and ---

20 THE COURT: Do you intend to introduce the letter?

21 MR. BOSNAK: Yes, sir.

22 THE COURT: Let me see it.

23 MR. BOSNAK: I just have a copy of it right now.

24 THE COURT: Okay. Let me see the copy.

25 (Document tendered to the Court.)

LASER BOND FORM B • PENKAD • 1-800-831-9888

1 THE COURT: Your motion is what, Mr. McGuire?

2 MR. MCGUIRE: Your Honor, my motion would be to redac
3 two portions of the letter. Sort of in the first maybe five
4 inches of the first page where it states: "You know me and
5 Eddie is facing life." And then ---

6 THE COURT: All right. Okay. What else?

7 MR. MCGUIRE: And then on the second page towards the
8 very -- at the very bottom it indicates that this is her
9 first offense. "You won't be in much trouble. It's your
10 first offense," or something to that effect, by implication
11 saying that he and Eddie have a prior record.

12 I can barely read the bottom part, but I see the
13 phrase "It's your first offense." It says
14 something-something "because this is your first offense."
15 I think by implication that the jury can figure out that my
16 client has a prior record.

17 So I'd just move to exclude those two parts.

18 THE COURT: What do you all want to say about that?
19 Do you oppose the motion?

20 MR. BOSNAK: Yes, sir, I do.

21 THE COURT: All right. Why?

22 MR. BOSNAK: Your Honor, under the rule of
23 completeness, I think when you leave out parts of it and
24 leaves some things out -- the defendant was intentionally
25 trying to -- intentionally, to bribe, if you will, by using

1 Mr. Condon's name and the bail bondsman to get this young
2 lady to plea because she didn't have a prior criminal record.
3 And basically he's trying to go play on her sympathies and
4 things, Your Honor.

5 MR. MCGUIRE: And, Your Honor ---

6 THE COURT: I'll deny your motion at this time. But
7 when it comes up, if you want to present this, you can renew
8 your motion at that time. I'll think about it between now
9 and then. I deny your motion.

10 MR. MCGUIRE: Thank you, Your Honor.

11 THE COURT: I deny your motion.

12 MR. BOSNAK: Thank you, Your Honor. It also shows
13 guilt, Your Honor.

14 THE COURT: All right. Anything else before we bring
15 the jury out?

16 Did you discuss the situation with your client?

17 MR. MCGUIRE: I did, Your Honor. We're ready to go
18 forward.

19 MR. BOURDON: Well, Your Honor, with respect, you
20 know, the State may have one issue to address with the Court
21 at this time.

22 THE COURT: All right.

23 MR. BOURDON: Sir, with respect to the Court's ruling
24 yesterday on ---

25 THE COURT: Well, if you've got the tape, let's just

1 deal with it when you get to the tape. I'd rather deal with
2 it when we get to the tape.

3 MR. BOURDON: Yes, sir. Thank you.

4 THE COURT: Bring the jury in. Let's get the jury.
5 Let's get going. I'm going to appoint Mr. Fender as the
6 foreman, so hold him back.

7 (Whereupon, the jury enters the courtroom at
8 approximately 9:25 a.m.)

9 THE COURT: All right. We have the jury with us. I
10 hope you had a nice evening.

11 Mr. Fender, I am appointing you as foreman of the
12 jury. If you would, occupy that seat at all times during the
13 trial.

14 And the alternate juror, Mr. Sudano. That's the seat
15 we reserve for the alternate juror. So if you would, occupy
16 that seat at all times during the trial.

17 The rest of you are free to sit anywhere you like in
18 the jury-box at such time as you come and go from the
19 courtroom. But if you would, let the foreman sit and the
20 alternate sit back there.

21 I'd ask the Clerk to swear the jury, please.

22 THE CLERK: Yes, Your Honor.

23 (Whereupon, the jury was duly sworn by the Clerk.)

24 (Ms. Sarji enters the courtroom.)

25 THE COURT: Thank you.

1 Mr. Fender, in addition to sitting in that seat, it
 2 will be your job as foreman of the jury to preside over the
 3 jury deliberations at the end of the case when you're
 4 considering your verdict. Your vote counts no more than
 5 anybody else's vote in deciding this case; but it's your job
 6 to get the discussion going, keep it on track, and report to
 7 us when you've reached a verdict. Also, if there is any need
 8 for you as the jury to communicate with me about any matter
 9 during the course of the trial, you would be the jury
 10 spokesperson here in court for that purpose.

11 The oath that you just took was an oath whereby you
 12 swore you would decide this case based on the evidence
 13 presented to you from this witness stand and my instructions
 14 to you on the law.

15 I really don't know any more about this case at this
 16 point in time than you do. All I know is what I've told you
 17 earlier. The State of South Carolina claims that
 18 Mr. Earnest Battle, that I introduced to you yesterday --
 19 that Mr. Earnest Battle did on July 15, 1999, up on Reddin,
 20 R-E-D-D-I-N, Reddin Road in North Charleston violate some of
 21 the laws of this State. One of the charges is what is called
 22 trafficking in cocaine; another one that's charged,
 23 conspiracy to violate the narcotics laws of South Carolina;
 24 and then the other charge is possession with intent to
 25 distribute cocaine within a half mile of a school.

LASER BOND FORM B PENGAD - 1-800-651-6989

1 Those are the charges that the State has made against
 2 Mr. Battle. Mr. Battle has said, "I'm not guilty of those
 3 charges." And that's why we're going to have this trial, to
 4 see if the State can prove him guilty or not.

5 A person who is charged is never required to prove
 6 himself innocent. The burden of proof is on the State to
 7 convince you by the evidence presented here in court that
 8 he's guilty beyond a reasonable doubt. If the State doesn't
 9 do that, then he's entitled to a verdict of not guilty.

10 Really, the question that you will answer when you go
 11 back into the jury room at the conclusion of this case, the
 12 ultimate question is: Has the State met the burden of proof
 13 in regard to the charges that it has made against Mr. Battle?

14 You are the sole judges of the facts of this case. I
 15 don't have anything to do with the facts. My job is to make
 16 sure that both sides follow the rules in presenting the facts
 17 to you. We have certain rules of evidence and rules of
 18 procedure that they are supposed to follow during the
 19 presentation of the facts. My job is to make sure that they
 20 follow those rules.

21 Probably during the course of the trial, one or more
 22 of the attorneys will get up and say something like "Your
 23 Honor, I object" and hopefully state some reason as to why h
 24 or she objects to a question that's been asked or an answer
 25 that's been given. When the lawyers do that, they are

LASER BOND FORM B PERIOD • 1-800-631-6888

1 talking to me. They are not talking to you. They are
2 talking to me. They are calling a possible violation of one
3 of those rules to my attention.

4 Don't you concern yourselves with those objections or
5 how I may rule on those objections, whether I overrule it,
6 sustain it, whatever, because it has absolutely nothing to do
7 with your job in the case, which is to be the finders or the
8 judges of the facts of this case.

9 Probably if that occurs, I'll ask you to go to the
10 jury room so that I can discuss those rules with the lawyers
11 and make a decision. We're not trying to hide anything from
12 you or anything of that sort. It's just we've found that
13 that's the best way to deal with those type of situations;
14 ask you to go to the jury room, let me discuss the rule and
15 the application of the rule with the lawyers, and then bring
16 you back out after I've made a decision.

17 As I said, you are the sole judges of the facts of
18 this case. Now, the way we're going to go about learning
19 about the facts is, first of all, I'm going to allow each
20 side to make a brief opening statement. These are not
21 arguments. The arguments will come at the conclusion of the
22 case. But I do allow each side to introduce themselves and
23 to tell you their respective positions: The claim, the
24 charges made by the State against Mr. Battle, and any
25 response to that charge or those claims by Mr. Battle.

1 After that, we'll have the presentation of the
 2 testimony and evidence. People will come up here and sit in
 3 this witness chair, and they'll tell you what they know
 4 insofar as this case is concerned.

5 After all of that evidence has been presented, then
 6 we'll have summations or arguments from the lawyers. And
 7 after that, I'll talk to you some more. I'll talk with you
 8 some more and explain to you more fully what your duties and
 9 responsibilities are as a jury in the case and the law that
 10 applies in the case. And then you'll go to the jury room and
 11 you'll answer that question: Has the State met the burden of
 12 proof in this case?

13 Now, I do allow jurors to take notes during the course
 14 of a trial. Each of you has a notebook and a pen or a
 15 pencil? Everybody have one?

16 You didn't bring one out. Was there one back there
 17 for you?

18 THE FOREMAN: I won't take any notes.

19 THE COURT: Well, I was looking at the alternate. I
 20 didn't know if you -- but anyway, does everybody have access?
 21 Do you want a notebook?

22 MR. SUDANO: Sure.

23 THE COURT: Okay. You need to get one now.

24 But you didn't want one?

25 THE FOREMAN: No.

LASER BOND FORM B PENGAD • 1-800-631-6888

1 THE COURT: "Go back in the jury room and see if there
 2 are some back there. You can go ahead and give that one to
 3 her.

4 (The Bailiff complies.)

5 THE COURT: Anybody else that doesn't have one? We've
 6 got another juror down here that doesn't have one.

7 (Notebooks are distributed to said jurors.)

8 THE COURT: All right.
 9 One other thing, while I'm thinking about it, if at
 10 any time during the course of the trial you have a problem
 11 hearing the witness, don't be -- raise your hand and say
 12 "Judge, I can't hear" or something like that, and let me know
 13 that you're having a problem hearing.

14 This witness chair is a good distance from the
 15 jury-box. I wish it was over here on this side. But
 16 sometimes it's difficult, I know, for me to hear, and I know
 17 it's difficult for jurors to hear sometimes when we have a
 18 soft-spoken witness or whatever.

19 So don't hesitate to let me know if you have a problem
 20 hearing or understanding something that a witness says or for
 21 that matter what the questions are from the attorney, you
 22 know, because it's very important for you to hear and
 23 understand everything that's said and done during the course
 24 of the trial.

25 Also, if at any time you need a break -- I usually try

LASER BOND FORM B PENDING 1-800-431-9989

1 to take a break about every hour or hour and a half,
 2 something like that. If anybody feels they need to take a
 3 break, get up and move around or whatever, if it's
 4 interfering with your concentration or anything, again, let
 5 me know. Raise your hand and say "Judge, I need to take a
 6 break" or something like that, and we'll take a break.

7 As I said, I do allow jurors to take notes during the
 8 course of a trial. You're not obligated to take any notes.
 9 Some people feel it's not a good idea. They think it
 10 distracts jurors from what is actually being said and done
 11 during the presentation of the testimony and evidence.

12 If you do take notes, do not allow your note-taking to
 13 distract you from what is actually being said and done during
 14 the course of the trial.

15 Notes are to be used only as memory aids. Notes are
 16 not entitled to any greater weight than the recollection or
 17 the impression of each juror as to what the testimony or
 18 evidence actually was.

19 Those will be your notes and your notes only. No one
 20 will be looking at them, checking on them, or anything of
 21 that sort.

22 At the conclusion of the trial, I'll ask you to tear
 23 out any notes you may have made, take them with you, tear
 24 them up, whatever you want to do with them at that time.

25 But those are your notes and your notes only. And as

LASER BOND FORM B • PENCAD • 1-800-831-6888

1 I said, the notes are not entitled to any greater weight than
2 the recollection or the impression of each juror as to what
3 the testimony or evidence actually was.

4 I'd ask you to give your attention now to the
5 attorneys as they make their opening statements to you.

6 Solicitor.

7 MR. BOSNAK: Your Honor, can we approach the bench
8 just for one minute, please?

9 (There was an off-the-record bench conference in the
10 presence of the jury but out of the hearing of the jury.)

11 (Said bench conference being concluded, the following
12 proceedings were had:)

13 MR. BOSNAK: May it please the Court.

14 THE COURT: Yes, sir.

15 OPENING STATEMENT

16 BY MR. BOSNAK:

17 Ladies and gentlemen, the whole incident started on
18 July the 14th of 1999. Officer Al Kuechler, sitting right
19 there in front of you, is the person who started this.

20 A gentleman by the name of Jason Wallace had gotten in
21 some trouble over in Mt. Pleasant, and he had talked to the
22 detectives over there and asked them if there's something
23 that he could do to help him get out of trouble in
24 Mt. Pleasant. He told the detectives at that time that he
25 knew something about the drug business, he knew things in the

1 drug business, and he could help the North Charleston Police
2 Department. They, in turn, told the North Charleston Police
3 Department about this; and he was turned over to
4 Officer Kuechler, right there. He's sitting right there.

5 When they got together, Mr. Wallace says that he could
6 buy large amounts of dope. He knew certain people who could
7 find and turn over or show them -- buy large amounts of dope,
8 for the North Charleston Police Department. What we call him
9 is a "confidential informant."

10 Now, during this trial you're going to get a view of
11 what drug dealing is all about and the different things
12 involved in drug dealing and how drug dealing actually
13 happens and the people involved including the police
14 officers.

15 Now, a confidential informant, we talk about those
16 that work for the police department. They do it for two
17 reasons: Either for money, the police pay them; or either
18 they're in trouble and the police department promises them
19 that they'll either drop the charges or do something to
20 reduce the charges, and this is why this gentleman was
21 helping the North Charleston Police Department.

22 They had the name of a LaShawn Floyd. Now,
23 Ms. Floyd -- I'm going to try to give you a background of
24 everybody and try to paint a better picture.

25 Ms. Floyd is a single mother. She's never been in

1 trouble before. She had a relationship with a gentleman that
2 was a drug dealer. Something happened to that relationship.
3 She was left without any means. She wasn't selling drugs.
4 He was providing money for her. And she was left without any
5 means to support herself.

6 She let it be known that "Hey, if somebody needs
7 drugs, I can hook them up." In other words, "I don't have
8 the drugs, but I know people that do have the drugs, and I
9 can bring the buyer to the seller." And that's what she was
10 trying to do.

11 As you'll see when we show all this evidence, you'll
12 see that she's not very good at this. She's a young lady
13 that had a lot of good quality about her. As I said, she's
14 never been in any kind of trouble before. But as you'll see,
15 she was wasn't very smart, and a lot of things she did were
16 kind of dangerous, and we'll show that.

17 Officer Kuechler and Matt Wallace, the confidential
18 informant, got a hold of LaShawn. And they called her and
19 said, "We want a large amount of drugs. We want seven
20 ounces." Seven ounces of drugs, that's a lot of money. A
21 large amount of drugs, probably about that much of cocaine.

22 They had a couple of conversations on the 14th. She
23 said, "Well, I'm not sure I can get seven." She said, "Well,
24 I think I can get you four."

25 Well, that went on into the evening. They decided to

1 go back on the 15th, and on the 15th they made a deal.
 2 "It's a deal. We think we can get you four ounces of
 3 cocaine."

4 Well, at that time this guy is working as a dope
 5 buyer. The North Charleston Police Department, they want to
 6 put together the best front. They want to make this look
 7 like a real dope deal.

8 So they got an old police car that's painted yellow,
 9 looks like a Yellow Cab.

10 And they have a Ms. Jennifer Vanootegham. And you'll
 11 see her. She'll be the first witness up. Very pretty young
 12 lady, she's a single mother also. She was working with the
 13 North Charleston Narcotics Division. They let her drive, and
 14 the story is that she drives this dope dealer back and forth
 15 and goes and picks up dope for him and delivers money and --
 16 just kind of his driver.

17 That's not farfetched, ladies and gentlemen. That
 18 does happen. Drug dealers do use cab drivers and cab
 19 companies to do that because it's not conspicuous. It's just
 20 a person driving around in a cab, getting delivered
 21 somewhere. Cab companies are all over different
 22 neighborhoods and everything else. But this is one of the
 23 reasons why they use this technique.

24 They talk with LaShawn three times on the 15th. Three
 25 times. The first time, they went over there and met her.

LASER BOND FORM B • PENGAD • 1-800-431-6995

1 She said, "Yeah, yeah. I'm going to get it, but I've
 2 got to get it from my uncle. I've got to get it from my
 3 uncle." My "E." She used the name "E." "I've got to get it
 4 from him."

5 Now, LaShawn is going to testify for us. She has
 6 turned State's evidence, and she's going to testify to it. I
 7 haven't made any deal. I haven't promised her or her
 8 attorney anything, but I can promise you I'm going to be
 9 lenient on her. I'm going to tell you the truth right off
 10 the bat. Because people that come to our office that have no
 11 criminal record, and they come forward and they admit what
 12 they did was wrong and they say "we want to help," we do. We
 13 do things for them, just like anybody else that admits wrong
 14 and tries to amend for what they've done wrong. I don't know
 15 what I'm going to give her, but she will get something. She
 16 will get some help from the Solicitor's office. So I want to
 17 tell you that right up front when you do hear her testify.

18 She contacted the defendant Earnest Battle which is
 19 her cousin, not her uncle. She'll testify to that. She'll
 20 testify when she called him and when she talked to him.

21 So when they first had the original meeting, she
 22 met and she felt okay. She called Earnest back.

23 Earnest said, "Well, have they got the money?"

24 Because one thing that the drug buyers and drug
 25 sellers are afraid of is being ripped off. Because we're

LASER BOND FORM B PENCAD • 1-800-531-6988

1 talking about -- about \$4700. A lot of times a person will
 2 say "Hey, you know, I've got the drugs. Have you got the
 3 money?" You show them the money and they put a gun in your
 4 face, say "Give me the money and I'm going to keep the drugs"
 5 or vice versa. And that happens a lot. So the police were
 6 worried about a rip-off; LaShawn, Earnest Battle, were
 7 concerned about a rip-off.

8 They meet a second time. LaShawn calls him and tells
 9 him to come back over to her house again on Reddin Road --
 10 he comes back over -- and says, "I want to see the money."

11 Ms. Vanooteham, she has the money in the glove
 12 compartment of the cab in, like, a Wendy's bag, and they
 13 count it.

14 She says, "Okay. I'm going to tell him you got the
 15 money. I don't -- he's not here right now."

16 She goes back to make a third phone call.

17 He tells LaShawn, says, "Look. We'll make this deal,
 18 but I'm not going to meet the buyer. I don't want to be seen
 19 with the buyer. I'll give you the dope where nobody can see
 20 us, and then you make the transaction, and then I'll get the
 21 money from you later."

22 Well, that's what drug dealers do. They don't want
 23 anybody to identify them. You know?

24 And she'll testify to that. And we'll tell you right
 25 now: She is the only person who can testify to the

LASER BOND FORM B PENGAD • 1-800-531-5589

1 transaction. The police didn't see it. Nobody else saw it,
2 just she and Mr. Battle.

3 And we'll show you where it took place and show you
4 where all of this took place, with diagrams and pictures,
5 because it's kind of complicated. It's easier for me to show
6 you.

7 The third time, she made the exchange with him. She's
8 taking the drugs out to the confidential informant.

9 Jennifer Vanootegham called on the radio. She was
10 wired. She was in contact with the police department for
11 safety reasons. She called and said, "The deal's gone down.
12 Come on. Let's bust everybody."

13 The police were parked about a block away, a block,
14 block and a half away, so it took them a little while to get
15 there. They came in. They busted LaShawn.

16 Mr. Battle, the defendant, he was at the corner of the
17 road where he could see the cab and the person that bought
18 the drug. I guess, when they left he was going to go get his
19 money.

20 There's also another person with him that can confirm
21 what Earnest Battle did that day, because he was with
22 Mr. Battle that whole day, by the name of James Nelson. And
23 Mr. Nelson is going to tell you about Mr. Battle getting the
24 drugs and the telephone calls and stuff.

25 So we're going to have LaShawn tell you what she did,

1 on one side. And then we're going to have Mr. James Nelson,
2 another co-defendant, and he's going to tell you where
3 Earnest Battle was. And he was with Earnest Battle the whole
4 time except -- when the transaction was made, he was not.

5 But Mr. Battle was sitting on the corner, and
6 Mr. James Nelson was with him. They saw the police. They
7 said, "Oh, man, the police."

8 The police had pulled up behind Mr. Battle's Cadillac
9 that was parked on the side of the road next to a hedge.
10 Well, who would drive the Cadillac and get away? Because the
11 police were behind it. So they said, "Let's walk back
12 through the cut. We don't have any drugs or money on us.
13 Nothing the police can do."

14 Well, the police arrested LaShawn Floyd and arrested
15 Mr. Earnest Battle and James Nelson, too, because they were
16 the only people in the area.

17 We knew by what LaShawn had told the confidential
18 informant, Jennifer Vanootegham, that the exchange was going
19 to be made. That's why LaShawn Floyd had been waiting all
20 day to make the exchange. And she told us, too, "The guy
21 doesn't want you to see him. So I'll get it from him. Then
22 I'll bring it back out.

23 Those were the only people that were in that area.

24 Now, ladies and gentlemen, I'm going to talk to you
25 just a little bit about the law. I'm not going to talk a

1 whole lot about it.

2 The judge said something about the trafficking is the
3 most serious drug offense we have of the possession crimes.

4 We have simple possession. That would be just a small
5 amount of drugs more or less for your use. We have
6 possession with intent to distribute. And I call those
7 people kind of "street dealers," maybe an addict that's got a
8 little drugs that he or she is trying to sell to kind of
9 support their habit. Kids, a lot of kids are trying to make
10 a little money. They're selling a little coke, a little
11 crack, a little marijuana, that type of stuff. That's
12 possession with an intent to distribute.

13 But trafficking, you have to have at least ten grams
14 of cocaine, the drug that we're talking about in this case.
15 This gentleman had 72 grams, seven times as much. Four
16 ounces. So it's very serious.

17 Also, conspiracy. Well, you know, we all hear
18 "conspiracy" all the time. There's movies made about
19 conspiracy. I guess the most famous thing is the JFK
20 conspiracy about killing President Kennedy. All that is, is
21 two people, two people or more, come together to devise a
22 plan or scheme to do a criminal act. They never have to do
23 the criminal act; they just come together and plan a criminal
24 act.

25 And the last thing is possession with intent to

1 distribute within a proximity, a half-mile proximity, of a
2 school. This transaction happened less -- a school was less
3 than a half a mile away. Why we have that is: We don't want
4 people selling drugs around a school. That's why our
5 legislature made that statute and made it a crime.

6 Those are the three charges. So they are very, very
7 serious.

8 Now, ladies and gentlemen, I introduced myself when we
9 picked you. My name is Mike Bosnak. This is Mark Bourdon.
10 I'll introduce the police officer, Al Kuechler, there. We
11 are both -- Mr. Bourdon and I are both pleased to be
12 representing the County of Charleston as solicitors in this
13 case.

14 And what an opening statement is: It's basically a
15 picture and it's a description of the evidence. It's a
16 description that will make that picture for you. I'm just
17 trying to give you kind of a picture of what's to come, but
18 from that picture should come the truth. So everything I've
19 told you, pay close attention to what both of us tell you.

20 And then at the end of the trial say, "Well, who told
21 me the truth in their opening statement? Did what Mr. Bosnak
22 say, was that actually presented on the stand, or did he
23 promise something that he just couldn't keep?"

24 Because I promise you, the State promises you, that
25 will give you the truth, the truth as we know it, to the best

1 of our knowledge, and in return we just ask for full and
2 complete justice.

3 Thank you.

4 THE COURT: Mr. McGuire.

5 MR. MCGUIRE: Thank you, Your Honor. Mr. Bosnak,
6 Mr. Bourdon.

7 OPENING STATEMENT

8 BY MR. MCGUIRE:

9 The truth. The truth is, Eddie Nelson -- he called
10 him James Nelson. The truth is: Eddie Nelson is a convicted
11 drug dealer. You heard a lot about LaShawn Floyd. You
12 didn't hear a whole lot about Eddie in Mr. Bosnak's
13 statement. He's a convicted drug dealer.

14 This whole thing starts because Shawn Floyd's name is
15 on the street. "I can get you dope. I can get you a lot of
16 dope." Do you think this is a one-time deal for her? A
17 single mom? I'll tell you more about that in a little bit.
18 LaShawn Floyd, to make money, has her name on the street as a
19 drug dealer.

20 A confidential informant who says "Hey, I'm in a whole
21 lot of trouble in Mt. Pleasant. Officers, let me set
22 somebody up for you." So he contacts Shawn Floyd, LaShawn
23 Floyd. He wants to make a big deal.

24 And she says, "Oh, yeah, I can help you out."

25 This was a big drug deal. Over \$5,000 was the

1 purchase price. It was supposed to be for more, but Eddie
2 couldn't come up with that much cocaine. So it was actually
3 less, but it was going to be about nine ounces of cocaine.
4 That's a lot of cocaine.

5 LaShawn's name is on the street as a drug dealer.
6 What she does is: She calls Eddie Nelson, her uncle or who
7 goes by "Uncle," and she puts in the order for her fee.
8 "Eddie, I've got somebody that wants some cocaine. Come to
9 me, and I'll set you up." She calls Eddie Nelson.

10 Now, Eddie does go to Earnest Battle, my client, and
11 says, "I want a ride up to Shawn's house. I've got a big
12 deal."

13 Earnie drove the car, not -- Earnie's guilty of giving
14 Eddie Nelson a ride. There's not going to be any evidence
15 that Earnest Battle even knew what Eddie was really up to.

16 Eddie said, "Look, I need a ride." Earnie gave him a
17 ride. Eddie's the one who knew where to park. Eddie gets
18 out of the car.

19 And Earnie's there. He's guilty of being merely
20 present. And the Judge will tell you that mere presence is
21 not enough to convict anybody. It's not against the law to
22 give somebody a ride. And if they happen to have drugs on
23 them, as long as you're not helping them and knowing what
24 they're doing, you're not guilty of anything. That's what
25 Earnie did.

1 So anyway, Eddie meets Shawn. Eddie turns over the
2 cocaine to LaShawn Floyd. This is, like, in the shadows and
3 behind the bushes in a little yard.

4 And the officers are honest with you. They don't
5 know. They didn't see who did what. The only people who
6 know what happened that day is LaShawn and Eddie who are both
7 facing 50 years in prison.

8 Do you think they're motivated to say, "Hey, I really
9 didn't have anything to do with that, sir. This is a
10 one-time drug deal for me. Let me help you. This is what I
11 can do"? Fifty years. Do you think they're motivated to
12 come in and help the prosecutor to get some leniency? You
13 better believe it.

14 So let's go back to that yard and the shadows, behind
15 the bushes, behind the hedges. Eddie turns the drugs over to
16 Shawn. She's got a little bag. She walks back to her
17 apartment, behind the cut, behind the little house.

18 And Jennifer Vanootegham, undercover officer, says,
19 "Move in. Let's get them. They've got the dope."

20 Officers converge from all locations. She's caught
21 red-handed with the cocaine in her hands. And the officer
22 will say she sees the police, and she starts to run back up
23 to her apartment, and she throws the cocaine down, and they
24 get it.

25 And it's true Earnie and Eddie were there. Earnie's

1 there because Eddie said he wanted a ride. Eddie was there
2 because he was making a drug deal.

3 And you will hear that Eddie had a little bit more
4 participation than Mr. Bosnak told you about. Eddie walks by
5 the Yellow Cab, the car painted like a Yellow Cab. It's
6 parked in front of LaShawn's apartment. They see him walking
7 down the street, looking at the cab.

8 Do you know what he's doing? He's security. He's
9 watching over his drugs. He's watching over Shawn who is
10 making the deal for him.

11 But Jennifer Vanotegham will testify, I believe, that
12 she saw Eddie kind of surveilling the cab. He walks by the
13 cab and turns and walks back, because he was looking over his
14 dope and he was looking his shoulder.

15 I assume that Shawn's kids were home with her that
16 night about midnight when she was making a drug deal and the
17 police said "We got you red-handed. We saw you throw the
18 dope down. We gotcha. We got you."

19 She probably knew what she was facing, about 50 years
20 if convicted. And they said, "We want to know something.
21 Which one of these guys brought the dope?" She had to decide
22 who to throw up to the cops. An innocent fellow who just
23 drove a guy there; or her uncle who goes by "Uncle," the one
24 she's a little bit closer with?

25 She gave Earnie's name to the police, and they bit.

1 It made sense. They've got a tape-recording referring to "E"
2 and they have these guys' I.D.'s. And one guy's says "James
3 Nelson" and one says "Earnie Battle." And she was on the
4 tape saying "E." Nobody knew that James Nelson goes by
5 "Eddie."

6 James Nelson's lawyer is in the courtroom, and he may
7 testify if I call him to the stand; but when he calls
8 Mr. Nelson's house, I'll bet you they ask for Eddie.

9 I think Eddie will tell you, "Yeah, I go by Eddie." I
10 don't think they're going to hide that from you.

11 So Shawn's story made sense, and she throws Earnie to
12 the police.

13 Let's talk about a single mom, a drug dealer. At
14 midnight the police, I guess, are in her living room. "We
15 got you cold. We want some information." Maybe the kids are
16 crying. All these uniformed police officers in attack
17 uniforms in her living room, knowing she's going to prison
18 for 50 years maybe. And when they say, "These are your
19 rights. Let's explain the rights to you. You have the right
20 to be quiet, the right to a lawyer," do you know what she
21 does? She won't even sign the piece of paper. It says
22 "refused to sign." She doesn't know nothing about nothing.
23 She ain't talking.

24 So they say, "We got you red-handed. We can put you
25 in prison for 50 years. All we're asking for is a statement

1 from you. You could lose your kids. We could make sure you
2 don't -- even if you walk out of this thing, we'll get your
3 kids from you, report you to DSS."

4 She goes from not knowing nothing about nothing, not
5 signing her name, to saying "Yes, I understand my rights," to
6 giving a statement, like that, because they had her under the
7 barrel. And they explained that to her, and she was in a
8 position to help herself. All she had to do was give a name
9 and she did. She gave "Earnie Battle."

10 And she's a liar, and I'll be able to prove that to
11 you. Because in her statement she says, "Well, it's not
12 really my uncle who was coming even though I said that, even
13 though you have a tape-recording of me saying, 'Yes, my uncl
14 is going to bring the dope.' Earnie is really just a cousin
15 and I don't even know his full name. I just know he's a
16 distant cousin by 'E.'"

17 well, she's also on the tape saying "Hey, I think
18 Earnie's at the door" at about four o'clock in the afternoon.
19 He did go over there. These people are cousins. Earnie is
20 her cousin. They know each other. And she sold him out
21 because she was facing 50 years. And she threw him up to
22 sacrifice him to save her own soul, her life basically. No
23 her soul, she didn't do that, but her life. Would she not
24 save her life? Absolutely. Absolutely.

25 So in her statement, she says "E, my distant cousin

1 who I don't even know his name. E is my supplier."

2 Well, she lied. Because Earnie came over earlier that
3 day, I think, about lunchtime, maybe a little bit after that.
4 And you can hear her on the tape, talking to one of her
5 daughters, who she's probably going to lose for the rest of
6 her life. And she says, "See if that's Earnie at the door."
7 She knew who Earnie was. She knew right off the bat. She's
8 already lying to the police. I think I've already proven it
9 to you. There'll be no doubt in your mind. No doubt in your
10 mind.

11 Let's talk about Eddie. Convicted drug dealer.
12 Convicted drug dealer. Are you going to believe him? Does
13 Eddie say, "Hey, Officers, don't arrest me. I'm just riding
14 with this fellow. I don't know what you're talking about. I
15 just happen to be here"? Did he give a nice statement? No.
16 He was silent. He didn't give any statement to anybody.

17 And he went to jail. And then after about a year in
18 jail, his lawyer and the solicitor come up to him and say,
19 "Hey, we'll help you out. In fact, we'll even try to get you
20 out of jail today if you give us a statement."

21 And he knew what Shawn was saying. So basically all
22 he had to do was just go along with it. And do you know what
23 happened? He got out of jail that day.

24 Imagine being in jail for almost a year and somebody
25 comes up to you and says, "This is what we think happened.

1 Give us a statement, and we'll work on your bond and get you
2 out of jail." And it happened.

3 Do you think Eddie is playing on this team over here?
4 Not only is he going to avoid 50 years in prison, they've
5 already proven they can get him out of jail. Do you think
6 he's got to stick to that story now? You better believe it.

7 Do you think he'd get any leniency for coming in here
8 and saying, "Look, I'm just going to tell the truth. That's
9 not the truth"? Do you think he can go back on that
10 statement now? Do you think he'd get any leniency?
11 Absolutely not. He'd probably get the full 50 years. It's
12 actually 47.5, I believe, is what it is.

13 So that's what happened in this case.

14 When you get all the evidence in the case, when you go
15 in there to deliberate, the only way that you could possibly
16 deliver a verdict of guilty would be if you can imagine
17 yourself getting out of your chair, walking up to the witness
18 stand, embracing Shawn and Eddie and saying, "Yes. I believe
19 you beyond a reasonable doubt." And not one of you will ever
20 get close to believing that.

21 Thank you.

22 THE COURT: All right. Members of the jury panel, I
23 need you to go to the jury room just a moment please.

24 (Whereupon, the jury goes to the jury room at
25 approximately 10:02 a.m.)

1 THE COURT: All right. I need to talk with a
2 probation agent about something they sent me a note about.
3 That's why I sent the jury out for just a moment.

4 Both of you made good opening arguments.

5 Next time, I'm going to interrupt you and tell you
6 you're not supposed to do that. You're supposed to talk
7 about the charges and the response to that charge, the burden
8 of proof, and presumption of innocence. I'm telling you and
9 putting you on notice: You get problems when you start
10 talking about all the facts and the circumstances and
11 everything, you know, with the jury, when you don't know
12 whether you're going to be able to present those witnesses or
13 not. I just tell you that's probably going to get you --
14 it's dangerous when you do that. You can take my advice or
15 not.

16 (There was off-the-record discussion by the Court and
17 a Probation Officer.)

18 THE COURT: All right. Bring the jury back out.

19 (Whereupon, the jury returns to the courtroom at
20 approximately 10:03 a.m.)

21 THE BAILIFF: All present, Your Honor.

22 THE COURT: Good. Thank you very much.

23 All right. I think I mentioned this to you yesterday
24 before we took a break: The only time you're to discuss the
25 case is when the twelve of you are together at the conclusion

1 of the case when you're considering your verdict.

2 So when we take these breaks or whatever and
3 everything, don't talk about what may have been going on as
4 far as the case is concerned. Talk about something else, the
5 nice rain hopefully we'll get today or what you've been doing
6 during Spoleto or whatever. You know, don't talk about the
7 case.

8 All right. The only time, as I said, you're to
9 discuss it is at the conclusion of the case when you consider
10 your verdict.

11 All right. Mr. Bosnak, call your first witness.

12 MR. BOSNAK: Call Jennifer Vanootegham.

13 THE COURT: All right. Bring her in.

14 (Ms. Vanootegham enters the courtroom.)

15 JENNIFER VANOOTEGHAM,
16 being first duly sworn by the Clerk, was examined and
17 testified as follows:

18 THE CLERK: Please be seated. Watch your step.
19 Please state your full name for the record and spell your
20 last.

21 THE WITNESS: Jennifer Vanootegham,
22 V, as in Victor, A-N-O-O-T-E-G-H-A-M.

23 DIRECT EXAMINATION

24 BY MR. BOSNAK:

25 Q. Jennifer, would you please introduce yourself to the

1 jury?

2 A. My name is Jennifer Vanootegham. At the time of this
3 incident, I was a narcotics agent for the North Charleston
4 Police Department. I currently work for attorney Andy Savage
5 as a paralegal.

6 Q. I butchered your last name. So is it all right if I
7 just call you Jennifer?

8 A. Yes, sir.

9 Q. Thank you. Were you working for North Charleston on
10 July the 15th of 1999?

11 A. Yes, sir.

12 Q. And what were your duties on that day?

13 A. I was in an undercover capacity, driving a vehicle,
14 carrying a confidential informant.

15 Q. What type of vehicle were you in?

16 A. It was an old Crown Victoria which we have turned into
17 a Yellow Cab.

18 Q. Okay. And why did you turn it into a cab?

19 A. We turned it into a cab to act in undercover capacity
20 to -- to carry informants to different places. So that way
21 then we can monitor. We can put an undercover officer in a
22 vehicle so that we may monitor firsthand what is going on
23 during transactions.

24 Q. Were you with a confidential informant that day?

25 A. Yes, sir.

1 THE COURT: Listen. Everybody knows who it is. Why
2 don't you use his name, Solicitor.

3 MR. BOSNAK: I will.

4 Q. So you were with Matt Wallace?

5 A. Yes, sir.

6 THE COURT: Matt who?

7 THE WITNESS: Wallace.

8 MR. BOSNAK: Matt Wallace. Jason Matt Wallace. He
9 goes by Matt.

10 THE COURT: All right.

11 BY MR. BOSNAK:

12 Q. And what were you doing with him?

13 A. I was instructed to drive Mr. Wallace to a location on
14 1855-B Reddin Road to purchase a quantity of powder cocaine.

15 Q. How much cocaine?

16 A. We had originally only ordered seven ounces of powder
17 cocaine. By the time we actually got to the residence, the
18 -- the supplier stated he only had four ounces of cocaine.
19 After the purchase, it was less than that when we actually
20 received the dope.

21 Q. Okay. Now, you say "he." Were you dealing with a he
22 or a she as far as buying this dope?

23 A. She. We were dealing with a girl by the name of
24 LaShawn, is who we were making all of our contacts through.

25 Q. Does she live at the location you just stated?

JENNIFER VANOOTEGHAM - DIRECT EXAM. BY MR. BOSNAK

87

1 A. From my recollection that's what we were told, that
2 she lived there. I did not check the address. So I'm not
3 really sure.

4 Q. But you went by and met with her. Is that correct?

5 A. Yes, sir.

6 Q. What happened at that first meeting?

7 A. Our first meeting -- before we left the narcotics
8 office, Mr. Wallace had made telephone conversation with
9 LaShawn. That's when they set up the deal. She told us to
10 come to her residence and her uncle would meet us there with
11 the powder cocaine.

12 I drove Mr. Wallace from the narcotics office to
13 1855-B Reddin road. When we got there, the -- Mr. Wallace
14 got out of my vehicle, went up the stairs, and met with
15 LaShawn. They had a conversation. She told him that ---

16 Q. Don't get into what she said. Okay?

17 A. Okay.

18 Q. Don't do that. So they had a conversation?

19 A. Yes.

20 Q. What was your understanding when the confidential
21 informant -- don't tell me what he said. Just what was your
22 understanding of what the confidential informant told you
23 when he got back in the car?

24 A. When he returned to my vehicle, the plan was that --
25 that LaShawn ---

1 MR. MCGUIRE: Your Honor, I would object to hearsay at
2 that point.

3 THE COURT: Well, I don't know whether it is or not.
4 Do you want to be heard?

5 MR. BOSNAK: Yes, sir.

6 THE COURT: Members of the jury panel, I need you to
7 go to the jury room, please.

8 (Whereupon, the jury goes to the jury room at
9 approximately 10:09 a.m.)

10 THE COURT: All right. The jury is out now.

11 EXAMINATION (IN CAMERA)

12 BY THE COURT:

13 Q. I believe the question was basically: What happened
14 when Mr. Wallace came back to the car?

15 A. Once Mr. Wallace returned to the car, the plan was
16 that ---

17 Q. When he said "plan," what does he -- obviously, it's
18 something that Mr. Wallace must have told you.

19 A. Yes, sir.

20 Q. What did he say?

21 A. Mr. Wallace told me that LaShawn's uncle was on -- w
22 going to come to the house and bring the powder cocaine to
23 him -- to her.

24 THE COURT: Do you object to that?

25 MR. MCGUIRE: Yes, sir.

1 THE COURT: I sustain the objection.

2 Bring the jury back in.

3 (Whereupon, the jury returns to the courtroom at
4 approximately 10:10 a.m.)

5 THE COURT: All right. We have the jury back with us.
6 You know, you're getting a little exercise this morning. Got
7 to keep you on your toes.

8 I might mention to the ladies, my wife carries her
9 pocketbook everywhere she goes. I see y'all are carrying
10 your pocketbooks back and forth. They'll be secure in the
11 jury room if you want to leave them back there. I'm not
12 telling you to leave them back there; but if you want to,
13 there's a bailiff back there, you know, at all times. So
14 they will be secure in the jury room if you want to leave
15 them back there.

16 All right. Ask another question.

17 DIRECT EXAMINATION (CONTINUED)

18 BY MR. BOSNAK:

19 Q. Yes, ma'am. Let's just bring us back to the context
20 of where we are. Because I think I've kind of forgotten,
21 myself. You had met with Ms. LaShawn Floyd. Correct?

22 A. Yes.

23 Q. And the confidential informant had gone out and talked
24 with her. Correct?

25 A. Yes, sir.

LASER BOND FORM B PENDING 1-800-631-6885

1 Q. What did you do after the confidential informant
2 returned to the cab that you got?

3 A. After Mr. Wallace returned to the -- the cab, I
4 instructed him to get into the vehicle and to tell LaShawn
5 that we were going to leave and we were going to go to the
6 store until -- and we'd be back, to have her call us when her
7 uncle arrived with the powder cocaine and then we would
8 return to her residence. He told her that in my presence.
9 We then got in the vehicle and left the area.

10 Q. Where did you go?

11 A. We went to the Exxon at the corner of Rivers Avenue
12 and McMillan Avenue.

13 Q. I want to back up just a minute because I don't think
14 I explained enough to the jury or had you explain enough to
15 the jury about your background.

16 A. Okay.

17 Q. Tell us about your training and years in law
18 enforcement.

19 A. I worked for North Charleston Police Department for
20 four years. Prior to that, I did an internship with the
21 United States Marshals Service. And I have a four-year
22 degree from Illinois State University.

23 THE COURT: From where?

24 THE WITNESS: Illinois State University.

25 THE COURT: What did you do with the Marshals Service

1 THE WITNESS: An internship, sir.

2 THE COURT: Internship?

3 THE WITNESS: Yes, sir. During my time at North
4 Charleston, I spent a little over a year doing uniformed
5 patrol. I spent about seven months in the detective division
6 doing city crimes, such as simple assault, domestic violence.
7 After that, I served two years in the narcotics division. My
8 primary duties in the narcotics division was undercover.

9 BY MR. BOSNAK:

10 Q. Have you done this type of thing before?

11 A. Yes, sir.

12 Q. Before this time?

13 A. Yes, sir.

14 Q. All right. Let's go back then. You went to an Exxon
15 station, I think you stated?

16 A. Yes, sir.

17 Q. What did you do at the Exxon station?

18 A. We went to the Exxon station to utilize a pay phone so
19 that we could call LaShawn back to see if -- to see if her
20 uncle had -- had arrived at that point.

21 Q. Did you ever return back and see LaShawn again?

22 A. Yes, sir. We had a pager number for LaShawn. We
23 paged her, and she called the pay phone back to -- and to see
24 if the uncle, her uncle, had arrived. When she called us
25 back, she stated that her uncle wanted her to count the money

1 first. So we returned to the residence so that she could do
2 that, so she could count the money.

3 Q. Okay. Did she come down to the car?

4 A. Yes, sir.

5 Q. All right. Tell us where she got -- you're driving
6 the car?

7 A. Yes, sir.

8 Q. All right. Where is the C.I.?

9 A. The informant went up ---

10 THE COURT: Is that Wallace or who?

11 THE WITNESS: Mr. Wallace, yes, sir.

12 THE COURT: Use the name.

13 BY MR. BOSNAK:

14 Q. Where is Matt Wallace?

15 A. Matt Wallace exited my vehicle and went up there and
16 got LaShawn. They both returned to my vehicle. LaShawn got
17 in the front seat of the vehicle, and Mr. Wallace returned u
18 to the stairway to listen for the uncle to call so they
19 didn't miss their call. So LaShawn was in my car, and
20 Mr. Wallace was up on the stairwell right by her front door.

21 Q. Did this uncle call?

22 A. Not at that time.

23 Q. Okay. What happened then once LaShawn was in the
24 front seat of your car?

25 A. LaShawn sat down in the vehicle in the front seat of

1 my car. I retrieved a paper bag from the glovebox which
2 contained the pre-recorded buy money. I handed it back to
3 LaShawn. She at that point counted the money in front of me.

4 Q. Could you tell us how much this dope deal was supposed
5 to cost?

6 A. We had made the deal we are going to purchase four
7 ounces of powder cocaine for \$4700.

8 Q. How much money did you have on you?

9 A. We were short. I'm not for sure to the dollar amount
10 exactly how much we had. I know that we were short. We did
11 not have exactly \$4700.

12 Q. Did LaShawn count the money?

13 A. Yes, sir.

14 Q. Did she notice that you all were short on the money?

15 A. She had a hard time counting it. She was asking for
16 my help. You know, saying, "Was that 14? 16?" She kept
17 asking for my help, but at the end she did know that we were
18 short.

19 Q. Okay. And what did she say when she found out that
20 you were short on money?

21 A. Just that we were short. She didn't make a big deal
22 about it. She just stated it was short, exited my vehicle,
23 and went back to Mr. Wallace.

24 Q. And what did Mr. Wallace do?

25 A. Mr. Wallace at that point returned to the vehicle.

1 And Lieutenant Cumbee had instructed us to leave until her
2 uncle had arrived.

3 Q. Okay. So you left again?

4 A. Yes, sir.

5 Q. Okay. Where did you go this time?

6 A. At that time we went back to the Exxon station.

7 Q. Now, during this whole time, were you in touch with
8 any other officers with the North Charleston Police
9 Department in any way?

10 A. Yes, sir. I had constant -- constant connection with
11 all the other agents via radio.

12 Q. Via radio?

13 A. Uh-huh.

14 Q. Why do you do that?

15 A. For personal safety, officer safety, informant safety,
16 and so that I know what's going on. I cannot hear the wire
17 from my vehicle. So they are relaying everything that's
18 happening on the wire inside the residence to me through the
19 radio. So that way I'm aware of anything for potential
20 danger or...

21 Q. So it's for safety?

22 A. Yes, sir.

23 Q. Okay. So you left a third time. Right?

24 A. Yes, sir.

25 Q. And you still didn't have any dope. Is that right?

1 A. No, sir.

2 Q. All right. Where did you go this third time?

3 A. We went back to the Exxon station.

4 Q. Back to the Exxon station?

5 A. Yes, sir.

6 Q. And what did you do? Just wait around?

7 A. We waited again. We made another phone call to
8 LaShawn to see if her uncle was there yet. And she -- at
9 that time we were informed that he was at I-26 on his way.

10 Q. Okay. What time of the evening? Was this daytime?
11 Evening? When was it?

12 A. The -- when we originally met with the informant, it
13 was around 1:30 in the afternoon. The -- the process
14 throughout the day went on till about 11:30 at night, is when
15 the actual deal -- around that time the actual deal took
16 place.

17 Q. Okay. Can you tell us the approximate time when you
18 went back the third time?

19 A. I'd say around 10:15, 10:30.

20 Q. 10:15, 10:30. Okay. And when you went back the third
21 time, what did you all do?

22 A. Went back. When we went back to the residence the
23 third time, we -- I pulled up. Mr. Wallace exited the
24 vehicle and went up, spoke with LaShawn, and then -- and she
25 made a phone call. I could see her. She was standing in the

1 doorway. I could see her. She was on the telephone. Then
2 Mr. Wallace returned to my car, and LaShawn left the
3 residence.

4 Q. Now, when you say the "doorway," tell us a little bit
5 about where you were in relationship to where her house,
6 apartment, whatever it was?

7 A. Reddin Road and Saint Johns. Reddin Road is a
8 horseshoe road that comes off of Saint Johns Road -- Saint
9 Johns Street. The road at this -- there's only -- there's
10 one residence on the corner, and then LaShawn's residence is
11 right there in the curve of the road. When I pulled into --
12 when I pulled up to the house, I parked my vehicle so that I
13 was pulling in toward Saint Johns Road. So I could see -- I
14 could see the -- LaShawn's doorway. There was a two-story
15 house with a stairwell that went up to -- she had an outside
16 entrance. The upstairs was her residence at that point.

17 Q. Could you draw that for us if we had something for you
18 to draw on?

19 A. Yes, sir.

20 MR. BOSNAK: Beg the Court's indulgence.

21 Q. If you would step down, please.

22 A. (The witness leaves the witness stand and goes to
23 exhibit stand in front of the jury.)

24 MR. BOSNAK: Can everybody see?

25 Q. Draw for them, if you will, Saint Johns and Reddin

1 Road, to the best of your recollection.

2 A. This is Saint Johns.

3 MR. BOSNAK: Okay. One second.

4 Let the record reflect that the witness has drawn a
5 diagram and has labeled one area Saint Johns Road, please.

6 THE WITNESS: This road is Reddin Road.

7 Q. Okay. Now, show us where LaShawn's house was, please.

8 A. There are bushes here and a building here, and there
9 is a little bit of grass here, and then right here on this
10 curve is where LaShawn's residence is.

11 Q. Now, is it that far from this other residence?

12 A. Probably not quite that far.

13 Q. Okay.

14 THE COURT: Both of you keep your voice up. I have to
15 hear everything you say.

16 MR. BOSNAK: Yes, sir.

17 THE WITNESS: Yes, sir.

18 BY MR. BOSNAK:

19 Q. Would you say what type of residence this was?

20 A. It's a two-story residence.

21 Q. And where did LaShawn live?

22 A. It was a two-story residence. There was -- there was
23 -- there's a front porch here, which is one residence. And
24 then there's a stairwell on this side, which is LaShawn's
25 residence upstairs.

1 Q. Okay. And where were you parked in the cab?

2 A. There's a driveway right here, and there's also a
3 fence that separates the roadway from the residence. The
4 house is back a little bit further, as well. I parked my
5 vehicle just off the road, right here. So that way, facing
6 Saint Johns Avenue at that point, I could see the doorway of
7 LaShawn's residence.

8 I could also see my escape route in case of danger.
9 And I can see behind me, utilizing the rearview mirror, for
10 danger behind me and if any vehicles were to approach past
11 this corner of Saint Johns and Reddin Road.

12 Q. Now, you've talked about it twice. You've mentioned
13 danger.

14 A. Yes, sir.

15 Q. Then you stated that you're wired ---

16 A. Yeah.

17 Q. --- so you could communicate with other police
18 officers. Were you afraid of anything that day?

19 A. There is always a potential in -- in any kind of drug
20 transaction for a rip-off where the person that we're dealing
21 with is going to take our money. That puts me as an
22 undercover officer and all my other agents in a very
23 dangerous position. At this point all we wanted to do: We
24 just wanted to go there, make a drug transaction, and leave,
25 making sure that everybody was safe, all officers involved,

1 the informant, and the defendants.

2 Q. Jennifer, was it strange to go back three times to
3 make a drug deal?

4 A. Yes. Normally they don't take that long. We did that
5 for officer safety. We did not -- they wanted us to stay
6 until the uncle arrived with the -- the dope. We did not
7 want to do that due to safety. I wanted to be able to come
8 into a situation and not be surprised being in a situation.

9 Q. Okay. So the third time did the uncle show up?

10 A. Yes, sir.

11 Q. How do you know he showed up?

12 A. Via radio. I was informed that the -- a blue Cadillac
13 which we were informed previously ---

14 MR. MCGUIRE: I object to hearsay, Your Honor.

15 THE COURT: Do you want to be heard?

16 MR. BOSNAK: No, sir.

17 THE COURT: Ask another question.

18 MR. BOSNAK: We'll withdraw ---

19 THE COURT: Ask another question.

20 BY MR. BOSNAK:

21 Q. How did you know ---

22 MR. MCGUIRE: Same objection, Your Honor.

23 THE COURT: Do you want to be heard?

24 BY MR. BOSNAK:

25 Q. What happened next?

1 A. Okay. After that, I had told the informant to go up
2 and meet LaShawn. He went and met LaShawn, returned to the
3 vehicle. At that point, LaShawn came down the stairs and
4 walked through her yard past this building. Once she passed
5 up on this side, I could not -- no longer see her. But I did
6 witness her walk out of -- down the stairs and -- and to the
7 other side of this building right here on the corner.

8 Q. Could you see her?

9 A. I could see her until she passed the corner of that
10 building.

11 Q. But you couldn't see her behind the building?

12 A. No, sir.

13 Q. Okay. Before that happened, were there any people in
14 this area in here?

15 A. No, sir, none.

16 Q. Did anybody live in this house?

17 A. I do not know, sir.

18 Q. Okay. But there's no people in this area?

19 A. No people in that area at all.

20 Q. Just LaShawn?

21 A. Just LaShawn and the informant.

22 Q. Okay. And the informant, okay. Were there any people
23 on the side of the road or across the street, walking around,
24 out and about?

25 A. No, not -- not anywhere near my vehicle on this half

1 of the curb. Down further, I'm not for sure.

2 Q. Did anybody walk past your car ---

3 A. Yes, sir.

4 Q. --- that night? Tell us about that.

5 A. After LaShawn had come down out of the stairs, she
6 came down off the stairs, she walked -- she was walking
7 towards the corner of that house.

8 There was a black gentleman that came around this
9 corner from -- this would be McMillan Avenue on that side.
10 He came from McMillan, down Saint Johns, walking. And I
11 couldn't see until he hit this corner. There are bushes
12 there. But he came from that direction. Came down Reddin
13 Road.

14 He walked down Reddin Road on this side of the road,
15 past my vehicle or the driveway, just past the curb.
16 Approximately in the area of the driveway, he turned around
17 and walked back and went around that corner.

18 Q. Okay. This gentleman was walking here and around
19 here. Where was LaShawn?

20 A. LaShawn was walking to the other side of this building
21 and disappeared from me.

22 Q. Disappeared?

23 A. Uh-huh.

24 Q. How long did she stay behind that building?

25 A. A matter of minutes.

1 Q. A matter of minutes?

2 A. Five minutes maybe.

3 Q. Then what did she do?

4 A. Then she returned to my vehicle, told the informant
5 that she had the powder cocaine and to -- told the informant
6 in my presence to get the money and they would go up to her
7 residence and make the drug transaction.

8 Q. All right. During that period of time that she's
9 behind the building, coming back out with the dope, where is
10 this gentleman that was walking around out here? Where is
11 he?

12 A. This gentleman who walked around the corner walked
13 past my car, turns around -- turns around and walks back and
14 goes back around that corner where he came from.

15 Q. I want you to be more specific. Where is he when
16 LaShawn is making -- has come back and said she's got the
17 dope?

18 A. Oh. Yes, sir. Yes, sir. By the time LaShawn
19 returned back to me, the gentleman that walked past me was
20 back around the corner. And when LaShawn returned to my
21 vehicle, the gentleman that I saw walk past my car and
22 another gentleman came out from behind this building.

23 Q. No, no, no. Let me rephrase it.

24 A. Sorry.

25 Q. Say, you see this gentleman walking.

1 A. Yes, sir.

2 Q. And you said you saw LaShawn going back behind the
3 building.

4 A. Yes, sir.

5 Q. LaShawn comes back from around this building,
6 hopefully with the drugs, with the drugs. Where is this
7 gentleman at that time if you remember?

8 A. Oh. I cannot see him at that point.

9 Q. You cannot see him?

10 A. No, sir. He went back around the corner.

11 Q. So he's back around the corner?

12 A. Yes, sir. Yes, sir.

13 Q. Would there be any way, in your opinion, that that
14 gentleman could have given LaShawn the drugs?

15 A. No, sir.

16 Q. Okay. Did you recognize who that gentleman was?

17 A. As he walked past me, no. I don't know who he was
18 when he walked past me.

19 Q. Do you know who he is now?

20 A. Yes, sir.

21 Q. Who is he?

22 A. He is the -- James. I don't know his last name.

23 Q. James Nelson?

24 A. Yes, James Nelson. And he was one of the people that
25 we had taken into custody that night.

1 Q. If I brought him in here, could you identify him?

2 A. Yes, sir.

3 MR. BOSNAK: Your Honor, may I bring James Nelson in
4 here to let her identify him?

5 THE COURT: Sure.

6 MR. BOSNAK: If you'll get James Nelson for me,
7 please.

8 (Mr. Nelson enters the courtroom.)

9 BY MR. BOSNAK:

10 Q. Jennifer, I would ask you to tell the Court if that's
11 the man you saw.

12 A. Yes, it is.

13 MR. BOSNAK: Would you please identify yourself,
14 please, sir?

15 MR. NELSON: I'm James Nelson.

16 MR. BOSNAK: Thank you so much.

17 (Mr. Nelson leaves the courtroom.)

18 BY MR. BOSNAK:

19 Q. Now, and you're absolutely sure that he could not have
20 been behind that building ---

21 A. No, sir.

22 Q. --- giving LaShawn those drugs?

23 A. He could not be.

24 Q. Okay. Now, LaShawn comes back to the car with the
25 drugs?

LASER BOND FORM B • PENGAD • 1-800-531-6389

1 A. Yes, sir.

2 Q. Okay. What happens next?

3 A. He -- LaShawn walked back to my vehicle at that point.
4 In my presence tells me -- Mr. Wallace that she had the
5 powder cocaine, to get the money, and that they would go up
6 to her residence and make a drug transaction.

7 At that time, as they were starting to walk away from
8 the vehicle -- Mr. Wallace was getting in my vehicle as I'm
9 stalling him, trying to get the money out. I don't want the
10 money to leave my presence. I gave a take-down signal, and
11 units moved in and came to the location.

12 Q. Explain to us what a take-down signal is.

13 A. Well, once I know that the subject has the -- the
14 dope, whatever we are purchasing, in this case the powder
15 cocaine, once I know that they have that, then what I do is I
16 tell the unit that she does -- that the subject does have the
17 dope in their possession so that the -- and I give them --
18 tell them to come in and -- and make the arrest.

19 Q. Okay. You can take the stand again. Thank you.

20 A. (The witness returns to the witness stand.)

21 BY MR. BOSNAK:

22 Q. Jennifer, after you gave the take-down signal, then
23 what happened?

24 A. After I gave the take-down signal, units moved in and
25 placed the -- all the parties involved in custody.

1 Q. Now, tell us what do you mean by "all of the parties
2 involved."

3 A. The two gentlemen, Earnest Battle, James Nelson, and
4 LaShawn Floyd.

5 Q. Okay. Where did they arrest Mr. Battle and
6 Ms. Floyd?

7 A. Mr. Battle and Ms. Floyd were next to my vehicle. One
8 was around the area in front of my vehicle, and one was
9 around the rear of my vehicle, but they were right there at
10 my vehicle.

11 Q. Where did Mr. Battle come from? Did you see where he
12 came from?

13 A. Yes, sir.

14 Q. And where did he come from?

15 A. They -- the white building on the corner of Saint
16 Johns and Reddin Road. I -- where I watched LaShawn walk
17 from when she returned and told me she had the dope. At tha
18 point I saw Mr. Battle and Mr. Nelson walk from the same
19 corner of that building and walk towards my vehicle.

20 Q. Let me show you some pictures, if you'll come down,
21 because I want to show you some pictures and see if you can
22 identify them.

23 A. (The witness leaves the witness stand.)

24 Q. Can you identify this building?

25 A. Yes, sir. That is the front of LaShawn Floyd's

1 residence.

2 Q. Could you show that to the jury please?

3 MR. MCGUIRE: Your Honor.

4 THE COURT: Any objection?

5 MR. MCGUIRE: I've never seen these pictures.

6 THE COURT: Do you want to look at it now?

7 MR. MCGUIRE: Yes, sir.

8 THE COURT: All right.

9 MR. BOURDON: Your Honor, this may be a good time to
10 take a recess.

11 THE COURT: Members of the jury panel, I'll let you go
12 to the jury room while we go over these pictures.

13 (Whereupon, the jury goes to the jury room at
14 approximately 10:35 a.m.)

15 (Counsel review photographs.)

16 THE COURT: Bring them up and let the court reporter
17 go ahead and mark them. If he is going to offer all of
18 those, you come up and after he gives them to the court
19 reporter to mark them -- get them in the order you're going
20 to use them.

21 (State's Exhibits No. 1 through 14 and State's Exhibit
22 No. 15 were marked for identification.)

23 THE COURT: Assuming they're properly identified, do
24 you have any objection to any of those photographs?

25 MR. MCGUIRE: No, Your Honor.

1 THE COURT: That's just a letter. You got that and
2 everything?

3 MR. BOSNAK: Yes, sir.

4 MR. MCGUIRE: Your Honor, if this is coming in ---

5 THE COURT: Well, he hasn't offered it yet.

6 MR. MCGUIRE: Okay.

7 THE COURT: They're just trying to identify them.
8 I'll deal with that when he gets ready to offer it.

9 All right. We're ready to bring the jury back in.
10 Bring the jury back in.

11 (Whereupon, the jury returns to the courtroom at
12 approximately 10:45 a.m.)

13 THE BAILIFF: All present, Your Honor.

14 THE COURT: All right. You may continue to examine
15 the witness.

16 BY MR. BOSNAK:

17 Q. Jennifer, if you'll step down, please, for a minute,
18 I'm going to get you to identify some photographs.

19 (The photographs are displayed on overhead projector.)

20 THE COURT: Turn off the light so we can see better.

21 BY MR. BOSNAK:

22 Q. Would you please identify what that is, please?

23 A. That is LaShawn Floyd's residence.

24 Q. Okay. And was that the place where she was making
25 phone calls and things?

1 A. Yes, sir.

2 Q. Okay.

3 THE COURT: Is that number one?

4 MR. BOSNAK: That's exhibit number one.

5 THE COURT: All right. Call the number out.

6 MR. BOSNAK: Yes, sir.

7 BY MR. BOSNAK:

8 Q. I'm showing the witness State's exhibit number two.

9 Could you tell us what that is?

10 A. That is the front door, downstairs apartment, of that
11 -- of LaShawn's building.

12 Q. So exhibit one was what?

13 A. It was a side view. And that shows where you go into
14 LaShawn's apartment upstairs in the same building. This is
15 the front door.

16 Q. I'm showing the witness State's exhibit three. Could
17 you please identify -- could you identify what that is?

18 A. That is the view that I had, where I was sitting in my
19 vehicle, of the staircase leading up to LaShawn Floyd's
20 residence. And then behind that tree in the center of the
21 picture, that's going to be the front door, which is another
22 apartment of that same residence.

23 Q. I don't know if you can testify to State's exhibit
24 four. Did you ever go behind the house?

25 A. No.

1 Q. Okay.

2 THE COURT: Set that one aside. Set it aside.

3 BY MR. BOSNAK:

4 Q. I'm going to show you State's exhibit number six.
5 Would you tell us what that is, once we get it straight?

6 A. That is the stop sign at the corner of Reddin Road and
7 Saint Johns Road. The road that you're standing on where the
8 picture was taken is Saint Johns Road. This is -- oh, excuse
9 me. This is Reddin Road right here. This out here is Saint
10 Johns Road. This right here is going to be the driveway
11 portion, and LaShawn's residence is going to be back behind
12 to the right.

13 Q. Now, the front of your car was pointed in what
14 direction here?

15 A. This is the view that I saw as I was sitting in my
16 vehicle, facing forward.

17 Q. And this is where you saw James Nelson?

18 A. Yes.

19 Q. Show us where he came.

20 A. He came from behind this bush right here, came down
21 across the road at an angle and walked down the side of this
22 street and passed my vehicle.

23 MR. BOSNAK: I'm going to show the defendant exhibit
24 number seven and ask her to please identify it.

25 Q. Would you please identify that?

JENNIFER VANOOTEGHAM - DIRECT EXAM. BY MR. BOSNAK

111

1 A. There is the building, the residence, on the corner of
2 Saint Johns and Reddin Road. This is going to be the
3 building that he walked around when I first saw him.

4 Q. Let me bring that -- was that the first building you
5 drew?

6 A. Yes, sir. That's the first building that I drew, on
7 the corner.

8 Q. Okay. On the corner?

9 A. Yes, sir.

10 Q. I want to show you State's exhibit number eight. And
11 could you identify what that is, please, if you can?

12 A. Yes.

13 Q. If you can't, just tell us.

14 A. No, sir. I'm not for sure what that view is. I'm
15 sorry. Can I look at it like that?

16 Q. See if that refreshes you.

17 A. (The witness further reviews exhibit.) Yes. I know
18 what that is now.

19 Q. Okay. Let's put it up here. I'm sorry.

20 A. That's okay.

21 Q. I want you to look at State's exhibit number eight
22 again, please, and could you tell us what it is now?

23 A. Yes, sir. This, this road right here is Saint Johns.
24 This is a view looking towards -- LaShawn's house is going to
25 be about -- this is the corner. This is the house on the

1 corner that we had just looked at. And LaShawn's residence
2 is going to be back behind these trees, set off.

3 Q. Show us where you were parked.

4 A. I was parked right here, facing me, facing -- I would
5 have been looking at me sitting right there.

6 Q. Can you show us the way James Nelson walked, please?

7 A. Yes. He came from this area over here, walked around
8 this corner, walked to this side of the road, walked past my
9 vehicle, and kept going right around the curve.

10 Q. Okay. I'm going to show you what's been marked
11 State's exhibit number ten, and could you please tell us what
12 that is?

13 A. Yes, sir. This portion right here is that house on
14 the corner of Saint Johns and Reddin Road. This is the
15 garage that sits just behind the house. My vehicle was here.
16 LaShawn's residence was right here.

17 Q. Okay. And when LaShawn went to go get the drugs,
18 where did she go in relationship to this picture?

19 A. She walked out of -- down her stairs and walked behind
20 this building.

21 Q. She was behind that building?

22 A. Yes, sir.

23 Q. Is this the type of view you had from your car or not?

24 A. Back a little bit further. I could see her a little
25 bit longer past the corner of that building. I was set back

1 over -- Yes, sir.

2 Q. Would this be close?

3 A. Yes, sir.

4 Q. I'm going to show you what's been marked as State's
5 exhibit number 15 and see if you can identify that. If you
6 need to look at it first, that's fine.

7 A. (The witness reviews exhibit.)

8 Q. Okay. Would you please use the laser pointer and tell
9 us about where you were?

10 THE COURT: What is that? A street map or something?

11 MR. BOSNAK: Yes, sir, it is.

12 THE COURT: All right.

13 THE WITNESS: Yes. This area, this street right here
14 is Saint Johns Avenue. This little circle right here, that's
15 going to be Reddin Road. This first entrance to Reddin Road,
16 I was right here on the curve.

17 BY MR. BOSNAK:

18 Q. And that's where everything took place?

19 A. That's where everything took place.

20 Q. Okay. Thank you.

21 A. (The witness returns to the witness stand.)

22 THE COURT: Do you want to move those that she
23 identified into evidence?

24 MR. BOSNAK: Yes, sir, please. The State would ask to
25 move these.

1 THE COURT: Did you keep them separate as to which
2 ones she identified and which ones she didn't?

3 MR. BOSNAK: Yes, sir, I did.

4 MR. MCGUIRE: Your Honor, I don't have any objection
5 to any of the pictures.

6 THE COURT: All right. Give them to the Court
7 Reporter so she can mark them, the ones that have been
8 admitted into evidence.

9 (State's Exhibits No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10,
10 11, 12, and 15, previously marked for identification, were
11 received in evidence.)

12 THE COURT: All right. Go ahead.

13 BY MR. BOSNAK:

14 Q. Okay, Jennifer. You've identified all that. After
15 LaShawn was arrested, what did you do then? What was your
16 part in that?

17 A. My part after the take-down signal was given was to
18 retrieve the -- Mr. Wallace, the informant, put him back in
19 my vehicle and leave the area, to secure him and to secure
20 the money.

21 Q. Did you do that?

22 A. Yes, sir.

23 Q. And where did you go?

24 A. We went back to the narcotics office.

25 Q. And was that basically all for you ---

1 A. Yes, sir.

2 Q. --- in this operation?

3 A. Yes, sir.

4 MR. BOSNAK: Thank you. Would you answer any
5 questions that Mr. McGuire might have for you.

6 THE WITNESS: Yes, sir.

7 THE COURT: Cross-examination.

8 MR. MCGUIRE: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. MCGUIRE:

11 Q. Jennifer, since you and I know each other, I'd just
12 like to call you Jennifer, too.

13 A. That's fine.

14 THE COURT: Are you going to use this?

15 MR. MCGUIRE: No, Your Honor. I don't think so.

16 THE COURT: Okay. Let's cut it off and move it out of
17 the way. Go ahead and take the screen up, too.

18 (The overhead projector and screen were moved.)

19 THE COURT: All right.

20 MR. MCGUIRE: Thank you, Your Honor.

21 Q. Jennifer, you don't know how many times Shawn made
22 drug deals at all. Do you?

23 A. No, sir.

24 Q. Okay. And you wouldn't know if she had a system
25 worked out with her supplier where he would drop the drugs

1 down there behind that cut and then he walks away as she goes
2 to the spot and picks them up? You wouldn't know that?

3 A. No, sir.

4 Q. Okay. And did you go out to the scene when Shawn's
5 lawyer took the prosecutor out there?

6 A. No, sir.

7 Q. You weren't there for that. Okay. So the man that
8 you identified in the courtroom, do you know him as
9 James Nelson or Eddie Nelson?

10 A. James Nelson.

11 Q. You didn't know he went by "Eddie"?

12 A. No, sir.

13 Q. Okay. And he's the man who emerges from around the
14 corner and walks down the street, passes your Yellow Cab, and
15 then turns around and then comes back and then he goes back
16 around the corner?

17 A. Yes, sir.

18 Q. Okay. And he doesn't do anything except just kind of
19 walk down the street to where you are, kind of hangs around
20 and then walks back?

21 A. Yes, sir.

22 Q. He didn't have any business on the street as you could
23 tell?

24 A. No, sir.

25 Q. Okay. He just sort of checked you all out?

1 A. Yes, sir.

2 Q. Okay. And that was the man? James Nelson?

3 A. Yes, sir.

4 Q. Now, on the telephone it was clear that the uncle was
5 the supplier. Is that your understanding?

6 A. That -- yes.

7 Q. Okay. Are you aware that Earnie Battle, my client, is
8 Shawn Floyd's distant cousin?

9 A. Yes, sir.

10 Q. And not her uncle?

11 A. Yes, sir. That's what she calls him.

12 Q. Well, according to her?

13 A. Yes.

14 Q. And you're taking her word for that?

15 A. Yes.

16 Q. You don't have any knowledge of that whatsoever except
17 what she tells you?

18 A. Yes, sir.

19 Q. And if she's lying, then you don't know how to prove
20 that?

21 A. Right.

22 Q. Were you there when she gave her statement?

23 A. Not in the room, no, sir.

24 Q. This happens around midnight, close to midnight?

25 A. Her statement?

1 Q. The drug deal.

2 A. 11:30-ish, yes, sir.

3 Q. 11-30-ish? Okay. And were her kids in the house?

4 A. When we first arrived, I saw children. I do not know
5 if they were there when the transaction took place or not.

6 Q. Okay. And was she taken into her house and
7 interrogated? Is that where ---

8 A. Sir, I left the area.

9 Q. You weren't there?

10 A. I left the area.

11 Q. Okay. So you wouldn't know about that?

12 A. No, sir.

13 Q. Okay. Are you aware that Earnie's car was searched?

14 A. Yes, sir.

15 Q. And there was nothing to indicate drug activity in the
16 car?

17 A. Not to my knowledge.

18 Q. Nothing?

19 A. Not to my knowledge.

20 Q. And he was searched?

21 A. Yes, sir.

22 Q. And there wasn't a thing on him to indicate drug ---

23 MR. BOSNAK: Objection, Your Honor.

24 THE WITNESS: I cannot say that.

25 MR. BOSNAK: She doesn't have any knowledge about any

1 of this. She left the scene.

2 THE COURT: Ask a question about something she knows
3 about.

4 If you don't know, just say "I don't know."

5 BY MR. MCGUIRE:

6 Q. Do you know the results of the search or not?

7 THE COURT: He's asking for your firsthand
8 information, not what the -- as I understand, the objection
9 is: The question has to relate to what she knows, not what
10 somebody told her.

11 BY MR. MCGUIRE:

12 Q. Jennifer, if you know, do you know the results of the
13 search on Earnie's house?

14 A. No, sir.

15 THE COURT: No. It's not the results.

16 That's your objection, right?

17 MR. BOSNAK: Yes, sir.

18 THE COURT: All right.

19 MR. BOSNAK: She can only testify to what she has
20 knowledge of.

21 THE COURT: I sustain the objection to that question.

22 BY MR. MCGUIRE:

23 Q. Did you participate in the search of Mr. Battle's
24 house at all?

25 A. No, sir.

1 Q. Or the car?

2 A. No, sir.

3 Q. Or his person?

4 A. No, sir.

5 Q. Do you know who did that?

6 A. No, sir.

7 Q. You actually saw Shawn with the bag of cocaine?

8 A. Yes, sir.

9 Q. You caught her red-handed?

10 A. Yes, sir.

11 Q. And the cocaine, what kind of bag was it in?

12 A. It was in a plastic bag. That's all I could see.

13 Q. Was it a brown paper bag, or was there a plastic bag
14 inside a brown paper bag, or do you know?

15 A. I don't know.

16 Q. Did you actually see the cocaine?

17 A. I saw something in her hand.

18 Q. Okay. And then you saw her throw it down?

19 A. Yes.

20 MR. MCGUIRE: That's all I have. Thank you.

21 MR. BOSNAK: Jennifer, I don't have anymore questions.

22 THE COURT: Thank you very much. You can step down.

23 Call your next witness.

24 MR. BOSNAK: Can she leave, Your Honor?

25 MR. MCGUIRE: Without objection.

RICHARD GLEN CAMPBELL - DIRECT EXAM. BY MR. BOSNAK 121

1 THE COURT: Without objection. Thank you so much for
2 coming. You're free to go.

3 MR. BOSNAK: Well, I tell you what. Just stay.
4 The prosecution might need to recall her.
5 Thank you.

6 (The witness is excused from the witness stand and
7 leaves the courtroom.)

8 THE COURT: All right. Call your next witness.

9 MR. BOSNAK: We call Glen Campbell.

10 THE COURT: Glen Campbell?

11 MR. BOSNAK: Yes, sir. Officer Campbell.

12 (Officer Campbell enters the courtroom.)

13 RICHARD GLEN CAMPBELL,

14 being first duly sworn by the Clerk, was examined and
15 testified as follows:

16 THE CLERK: Please have a seat.

17 Would you give your full name for the Court and spell
18 your last.

19 THE WITNESS: Richard Glen Campbell,

20 C-A-M-P-B-E-L-L.

21 DIRECT EXAMINATION

22 BY MR. BOSNAK:

23 Q. Detective Campbell, would you introduce yourself to
24 the jury, please?

25 A. Yes, sir. My name is Richard Glen Campbell. I'm a

1 detective in narcotics, North Charleston Police Department.
2 I've been currently assigned there for four years now.

3 Q. Would you give us something about your educational
4 background, please?

5 A. Yes, sir. High school diploma. Also, I graduated
6 from college. I have a Bachelor of Science in education.

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

8 A. Almost 14 years.

9 Q. How long have you been with the North Charleston
10 Police Department?

11 A. Eight years.

12 Q. And how long have you been a detective?

13 A. Five years.

14 Q. And how long have you been with the narcotics
15 division?

16 A. Almost five years.

17 Q. Were you working in Charleston County on the night of
18 July the 15th, 1999?

19 A. Yes, sir.

20 Q. Okay. What were you doing that evening?

21 A. That evening I was supposed to be an entry man. We
22 were going to do a controlled purchase of a quantity of
23 cocaine. I believe it was from 1855-B Reddin Road. Myself
24 and a Detective Gould were in a undercover vehicle, a Z-71
25 pickup truck. While we were -- once we were given a

LASER BOND FORM B PENDING - 1-800-851-9889

RICHARD GLEN CAMPBELL - DIRECT EXAM. BY MR. BOSNAK

123

1 take-down, we would go to the residence and take the
2 individuals down. During the course, we were given a
3 take-down ---

4 THE COURT: By that you mean arrested?

5 THE WITNESS: Yes, sir. We effected a take-down of
6 everyone who was there at the time of the purchase.

7 BY MR. BOSNAK:

8 Q. All right. You said you were in what type of vehicle?

9 A. We're in a undercover. It was a Z-71 Chevy pickup
10 truck.

11 Q. Okay. Did it have police lights and things like that
12 on it?

13 A. No, sir.

14 Q. No police lights. Did it have anything to identify it
15 as a police vehicle?

16 A. No, sir. It was a surveillance vehicle.

17 Q. Okay. Would it look just like an ordinary truck?

18 A. Yes, sir.

19 Q. Okay. Now, where were you? What location were you at
20 when all this was going down?

21 A. We were at Reddin Road and Saint Johns.

22 Q. Any particular location there?

23 A. Beside St. Thomas Church.

24 Q. St. Thomas Church?

25 A. Catholic church.

1 Q. How far was that from the place where the drug deal
2 was supposed to go down?

3 A. Less than a half a mile. It's ---

4 THE COURT: Speak up.

5 THE WITNESS: Probably about three football fields.

6 BY MR. BOSNAK:

7 Q. Three football fields. And how did you know what was
8 going on?

9 A. By radio communications. We were being advised on the
10 radio.

11 Q. All right. Explain again to the jury just so we'll
12 have it clear on the record, what does a take-down signal
13 mean?

14 A. It means for the units to move in to the designated
15 area that we had been assigned to before we went to the
16 location.

17 Q. When is a take-down signal given?

18 A. Upon completion of the purchase.

19 Q. Okay. Did the take-down signal happen that night?

20 A. Yes, sir.

21 Q. Okay. And how long did it take you to get to the
22 location where the drug deal was?

23 A. Less than 15 seconds.

24 Q. Less than 15 seconds. Now, who did you say was with
25 you that night?

RICHARD GLEN CAMPBELL - DIRECT EXAM. BY MR. BOSNAK

125

1 A. Detective Greg Gould.

2 Q. Greg Gould. Who was driving?

3 A. Detective Greg Gould was.

4 Q. Where were you sitting?

5 A. I was a passenger.

6 Q. Passenger side, all right. When you got there, what
7 did you do?

8 A. I exited the vehicle and immediately proceeded towards
9 the front of the -- front steps of the residence where I
10 encountered a black female going up the steps.

11 Q. Okay. Did you arrest her at that time?

12 A. I detained her at that time. As I approached her, she
13 -- I observed her to throw a -- an object over the side of
14 the guardrail. I placed her down on the steps. The rest of
15 the entry team passed me and went up into the apartment. I
16 secured her. Once the residence was secured, I went down and
17 retrieved what she had thrown down, and it was a plastic bag.

18 Q. And what did the plastic bag contain?

19 A. Once we got it back to the office, it contained a
20 white powder substance which tested -- field tested
21 presumptive for cocaine.

22 Q. Now, tell us a little bit about how you tell --
23 explain what field tested presumptive for cocaine is,
24 presumption for cocaine?

25 A. Field test presumptive for cocaine is: We have a test

1 kit. It has three ampules that we put a little bit of the
2 white powder in it. Break the ampules, and it does a
3 chemical breakdown. If it turns blue, it means it's positive
4 for traces of cocaine.

5 Q. Why would you do that?

6 A. Just to make sure it's actually cocaine and not flour
7 or sugar or something like that.

8 Q. Okay. I want to show you what's been marked as
9 State's exhibit 13 and see if you can identify this.

10 A. (The witness reviews exhibit.) Yes, sir.

11 Q. How can you identify that?

12 A. That was the packet that my initials are on the bag
13 that I sealed here. My -- that's my handwriting.

14 Q. Okay. Let's go back just a minute --- let the record
15 show that he has identified State's exhibit 13.

16 Let's go back a minute. When you went down to pick up
17 the dope, was anybody around it?

18 A. No, sir.

19 Q. Had you had your eye on it the whole time?

20 A. Yes, sir.

21 Q. Okay.

22 A. I placed her on the ground and kept control of her and
23 monitored the -- where I saw the object thrown.

24 Q. And then what did you do? You went down -- tell us
25 what you did.

RICHARD GLEN CAMPBELL - DIRECT EXAM. BY MR. BOSNAK 127

1 A. When somebody else came down to secure the female, I
2 immediately went over and picked up the object that was
3 laying on the ground.

4 Q. Did the dope ever leave your hands until you got back
5 to the station?

6 A. No, sir.

7 Q. Okay. And what did you do after you had tested it?

8 A. Once we test it, I place it in the SLED BEST Kit. I
9 believe that was B-111717 to be the BEST Kit number. I
10 placed it in that BEST Kit, sealed it, and then turned it
11 over to ---

12 THE COURT: What do you call it?

13 THE WITNESS: SLED BEST Kit.

14 THE COURT: Best? B-E-S-T?

15 THE WITNESS: Yes, sir.

16 THE COURT: Okay.

17 THE WITNESS: Then I turned it over. Once I had
18 processed it and sealed the bag, I then turned it over to
19 Detective Kuechler who is the case agent.

20 BY MR. BOSNAK:

21 Q. Now, why did you do that?

22 A. He's a case agent; and he physically takes custody and
23 drops it off in the box, due to the fact that it's his case
24 and he can testify later that he physically dropped it there.

25 THE COURT: Who was it you gave it to?

1 THE WITNESS: Detective Al Kuechler.

2 THE COURT: Kuechler?

3 THE WITNESS: Yes, sir. K-U-E-C-H-L-E-R.

4 BY MR. BOSNAK:

5 Q. Now, Detective Campbell, did you play any other role
6 in this drug bust that evening?

7 A. Besides the take-down, taking custody of the dope and
8 once it was signed over, no, sir.

9 Q. You didn't do anything else?

10 A. No, sir.

11 MR. BOSNAK: I don't have any further questions.

12 THE COURT: Any questions from you, Mr. McGuire?

13 MR. MCGUIRE: No questions, Your Honor.

14 THE COURT: Thank you very much. You can step down.

15 (The witness is excused from the witness stand and
16 leaves the courtroom.)

17 THE COURT: Call your next witness.

18 MR. BOSNAK: We call Charles Hardin.

19 (Officer Hardin enters the courtroom.)

20 CHARLES W. HARDIN,

21 being first duly sworn by the Clerk, was examined and
22 testified as follows:

23 THE CLERK: Please be seated. Please give your full
24 name to the Court and spell your last.

25 THE WITNESS: My name is Charles W. Hardin. My last

CHARLES W. HARDIN - DIRECT EXAM. BY MR. BOSNAK

129

1 name is spelled H-A-R-D-I-N.

2

DIRECT EXAMINATION

3

BY MR. BOSNAK:

4

Q. Mr. Hardin, would you tell us who you are employed by?

5

A. The City of North Charleston Police Department.

6

Q. How long have you been working for the City of North

7

Charleston Police Department?

8

A. Approximately four years, sir.

9

Q. Four years. And what are your duties there?

10

A. My responsibilities are the -- the safekeeping of all

11

evidence that's turned in by the City of North Charleston.

12

Q. Okay. And I want to show you what's been marked

13

State's exhibit number 13. Would you tell us if you had

14

any ---

15

A. Yes, sir. This is a BEST Kit which was turned in by

16

one of our officers.

17

Q. Right.

18

A. It was transported to SLED.

19

Q. Who transported it to SLED?

20

A. I did, sir.

21

Q. Okay. And did you leave it at SLED? For what reason?

22

A. We take all Best kits to SLED for testing.

23

Q. Would you explain to the jury a little bit about what

24

a BEST Kit is?

25

A. Yes. A BEST Kit is a envelope with a packaging on the

1 inside. When an officer makes an arrest, if they -- if there
2 are suspected drugs, these drugs are placed inside. The BEST
3 Kit is sealed. The BEST Kit has a unique number. And once
4 it's transported to the evidence room, I in turn take it to
5 SLED. SLED assigns a lab number and a unique "B" number to
6 that particular BEST Kit. And once the test is concluded, I
7 go to SLED, pick up the drugs, bring them back, and place
8 them back in location in the evidence room.

9 Q. So since this has been returned from SLED, has it been
10 in your custody?

11 A. It has.

12 MR. BOSNAK: Just one moment, Your Honor.

13 Q. Do you have any security in your building for these
14 type things?

15 A. Yes, sir. The evidence room is a -- is a secure room.
16 It's monitored with cameras. Myself, an assistant,
17 Lieutenant Potanic, Sergeant Steve Shephard, and our chief
18 are the only personnel that have keys that will unlock the
19 evidence room.

20 Q. Do you check the Best kits to see if they've been
21 tampered with?

22 A. Yes, I do.

23 Q. What would you do if you found one that looked like it
24 had been tampered with?

25 A. The evidence would not be processed. I would notify

1 the officer, and it would be determined by him on what he
2 would do with it.

3 Q. So it's your testimony that anything that looks like
4 it's tampered with would not go to SLED to be tested.

5 A. No, sir.

6 MR. BOSNAK: That's all the questions I have.

7 THE COURT: Any questions?

8 MR. MCGUIRE: No questions and no objection to him
9 being excused.

10 THE COURT: You haven't told who you got that from.
11 You didn't tell us who you got it from. Do you remember who
12 you got it from?

13 THE WITNESS: Are you addressing me, Your Honor?

14 THE COURT: Yes.

15 THE WITNESS: Normally when evidence is turned in ---

16 THE COURT: Do you remember who you got it from?

17 THE WITNESS: No, sir. I got it out of the drop box.

18 THE COURT: Okay. Go ahead.

19 BY MR. BOSNAK:

20 Q. Explain to the jury what a drop box is, please, sir.

21 A. The evidence room is not manned 24 hours a day. As a
22 result, when officers make an arrest, it may be after work
23 hours. We have something similar to a mailbox that has metal
24 bars with a metal lock. They drop evidence into this drop
25 box. Once it is dropped in that box, the only way it can be

1 retrieved is the -- someone with a lock to unlock that box.
 2 We also have -- the front of the evidence room is metal.
 3 There's also a opening, a slip opening that you can pull back
 4 and drop evidence into that slip, and the evidence is secured
 5 that way. When I come in every morning, I have keys to
 6 unlock these two boxes and retrieve the evidence.

7 MR. BOSNAK: Thank you.

8 THE COURT: Now, any cross-examination?

9 MR. MCGUIRE: No questions. Thank you, sir.

10 THE COURT: Thank you very much. You can step down.

11 THE WITNESS: Thank you.

12 (The witness is excused from the witness stand and
 13 leaves the courtroom.)

14 THE COURT: Call your next witness.

15 MR. BOSNAK: We call Mike Miller.

16 (Mr. Miller enters the courtroom.)

17 MICHAEL ALAN MILLER,

18 being first duly sworn by the Clerk, was examined and
 19 testified as follows:

20 THE CLERK: Please be seated. Please give your full
 21 name to the Court and spell your last.

22 THE WITNESS: Michael Alan Miller, M-I-L-L-E-R.

23 DIRECT EXAMINATION

24 BY MR. BOURDON:

25 Q. And where are you employed now?

MICHAEL ALAN MILLER - DIRECT EXAM. BY MR. BOURDON

133

1 A. I'm the director of the Anderson-Oconee Regional
2 Forensics Laboratory.

3 Q. And prior to being with that laboratory, where were
4 you employed?

5 A. I was employed with the State Law Enforcement
6 Division, more commonly known in South Carolina as SLED.

7 Q. And what were your duties at SLED?

8 A. I was a special agent assigned to the Forensics
9 Division in the Department of Drug Analysis.

10 Q. And tell the jury what you did in that department with
11 SLED.

12 A. Certainly. I received evidence in from Charleston,
13 Berkeley, and Beaufort counties. Evidence was submitted by
14 law enforcement agencies in those counties. I received in
15 that evidence, performed forensic chemical analysis on it,
16 and then performed forensic analysis and reported on those
17 findings.

18 Q. And what education do you have in that field of
19 training?

20 A. I have a Bachelor of Science degree, certified by the
21 American Chemical Society from the College of Charleston, two
22 years of work towards my doctoral degree in medicinal organic
23 chemistry. I've been certified as a clandestine lab
24 investigator by the Drug Enforcement Administration and also
25 the State Law Enforcement Division. I've been certified as a

1 forensic chemist in drug analysis by both the Drug
2 Enforcement Administration and the State Law Enforcement
3 Division.

4 Q. And have you testified in court before as an expert?

5 A. Yes, I have. In federal, state, and military courts
6 of law.

7 MR. BOURDON: Your Honor, at this point the State
8 would move that he is ---

9 THE COURT: Any questions you want to ask about his
10 qualifications?

11 MR. MCGUIRE: No objection, Your Honor.

12 THE COURT: All right. Go ahead.

13 MR. BOURDON: Expert in forensic chemistry.

14 THE COURT: Go ahead.

15 MR. BOURDON: Thank you, Your Honor.

16 BY MR. BOURDON:

17 Q. Tell us what tests are performed once the substance
18 comes to your laboratory.

19 A. We generally perform an initial screening test,
20 sometimes called a chemical spot test, to give us an idea of
21 the type or class of drug that we're looking at. Then we do
22 a confirmational determination using instrumental analysis to
23 specifically determine what types of substances were
24 submitted as evidence.

25 Q. And we've heard some evidence or some testimony about

LASER BOND FORM B PENDING 1-800-631-6888

MICHAEL ALAN MILLER -- DIRECT EXAM. BY MR. BOURDON

135

1 the BEST Kit. Can you tell the jury what a BEST Kit is?

2 A. Certainly. The BEST Kit, "BEST" stands for the Best
3 Evidence Sample Testing. It is a uniform system of
4 submission that all law enforcement agencies in the State of
5 South Carolina use to submit controlled substance evidence to
6 the State crime lab.

7 Q. And what's unique about the BEST Kit? Why is it used?

8 A. It's used because it's -- the envelope was designed to
9 be tamper proof and tamper evident. The paperwork that goes
10 with it all stays with the case throughout. It's a unique
11 way of identifying each particular case.

12 Q. And then who actually receives the evidence in at the
13 SLED laboratory?

14 A. The evidence comes in from the submitting agency by
15 either an evidence custodian or the offerer who seized the
16 evidence. It's placed into a submission locker, and then
17 only the chemist who is assigned to that evidence will go
18 down and pick that evidence up.

19 Q. And when the investigators submit it to your initial
20 person who receives it at SLED, is there an examination done
21 of the bag?

22 A. Yes, there is.

23 Q. And if there's any evidence of tampering, what is done
24 with the substance?

25 A. The evidence is then marked as being non-sealed or

1 that some tampering was noted. The law enforcement agency is
2 immediately notified.

3 Q. And would the sample be tested if there was any
4 indication of tampering or something?

5 A. No. In fact, the -- the initial examination is done
6 by the evidence log-in person. And if there is some evidence
7 that the -- that the evidence has not been sealed, then it
8 will not be accepted in our laboratory.

9 Q. And with respect to the bag itself, is there a system
10 or a method that would detect some tampering?

11 A. Yes. The bag is designed such that any -- any type of
12 movement or tampering of the seal is immediately noted. The
13 plastic shows any stretch marks if the bag were to be
14 stretched open or cut open. There is a -- a blue filigree
15 down both sides that you can measure the distance on the
16 envelope that shows if it's been cut and re-sealed.

17 Q. Now, I want to call your attention to what's been
18 marked as State's exhibit number 13. Do you recognize this
19 piece of evidence?

20 A. Yes. This is evidence that was submitted to our
21 laboratory from the North Charleston Police Department.

22 Q. And when did you receive that piece of evidence? Who
23 did the SLED laboratory receive it?

24 A. It was logged into the SLED laboratory on July 28th
25 1999, and I also received it on the same day.

MICHAEL ALAN MILLER - DIRECT EXAM. BY MR. BOURDON

137

1 Q. And after you received that evidence -- how do you
2 know that you received it on that day?

3 A. The front of our case jacket, which is part of the
4 BEST evidence system, I mark it with the date that I received
5 it and my last name.

6 Q. And do you have an indication from that evidence tag
7 who submitted the substance to your laboratory in Columbia?

8 A. The chain of custody paperwork that comes in with the
9 evidence, it shows who the last person to touch the evidence
10 before it came into our possession. It was -- it was
11 Charles Hardin of the North Charleston Police Department.

12 Q. And that was the gentleman that was just in the court
13 here testifying?

14 A. That's correct.

15 Q. And have you worked with Mr. Hardin in the past?

16 A. Yes, I have.

17 Q. And tell us what test you performed on that substance,
18 State's exhibit number 13.

19 A. It underwent an initial chemical screen to determine
20 the class of compound that we use. I then used an instrument
21 known as a gas chromatograph mass spectrometer to positively
22 identify the substance that was submitted.

23 Q. And are those machines calibrated and in proper
24 working order when you perform your test?

25 A. Yes, they are.

1 Q. And how do you know that?

2 A. We know that because initially a -- a set standard is
3 run of the classic compounds that we're going to be looking
4 for. There is a known calibration standard. In addition to
5 that, all maintenance logs are kept, and the instrument is
6 checked daily for proper working condition.

7 Q. Was there any problem in your laboratory at that time
8 while this substance was being tested?

9 A. No, there was not.

10 Q. And after you did the gas chromatography test, did you
11 perform any other tests on it?

12 A. No.

13 Q. What were the results of your testing?

14 A. The results that I reported were that the evidence was
15 found to be cocaine in the amount of 73.20 grams.

16 Q. And is cocaine a controlled substance?

17 A. Yes, it is. It is a Schedule II controlled substance.

18 Q. And by that, is it legal to possess it?

19 A. I'm unsure how you mean "legal."

20 Q. Illegal?

21 A. It -- it is illegal to possess it, yes.

22 Q. After you performed your testing and concluded that
23 contained cocaine, what did you then do with the substance?

24 A. The evidence gets re-sealed into this outer poly-bag
25 A heat seal is generated across the strip, the bottom here.

MICHAEL ALAN MILLER - DIRECT EXAM. BY MR. BOURDON

139

1 Before it's sealed, the date that it was sealed and my last
2 name appears here. It then goes into our -- our SLED secure
3 evidence vault until such time as it can be returned to the
4 submitting agency.

5 Q. And then does it indicate on that chain of custody
6 when it was returned back to North Charleston?

7 A. Yes. We provide a chain of custody to the officer and
8 make them sign for it before we deliver the evidence to them,
9 and it was returned on January 14th of 2000.

10 Q. And who was it returned to?

11 A. It was returned to Charles Hardin, the evidence
12 custodian for North Charleston Police Department.

13 Q. And, Agent Miller, when you seal that bag -- can you
14 come out of the box and show the jury how that was done?

15 A. Yes, sir.

16 Q. And also show them what the BEST Kit is.

17 THE WITNESS: May I approach the jury, Your Honor?

18 THE COURT: Yes.

19 (The witness leaves the witness stand and goes to the
20 jury.)

21 THE WITNESS: This outer plastic bag is provided by
22 our laboratory. That's what we seal all of our evidence in
23 after we've performed our analysis prior to sealing it. Down
24 here you'll see the word "sealed," the date that it was
25 sealed, some -- and my initials and my handwriting. I then

1 seal through that. That way I know that when this bag was
2 sealed, I wrote down all that information there. If anybody
3 were to tamper with this or open it, this seal would not be
4 on the bag. That seal comes through my name. That way it
5 can't be erased and tampered with.

6 BY MR. BOURDON:

7 Q. Does it indicate that there was any tampering with
8 that exhibit?

9 A. No, sir. No. It doesn't -- it does not seem to have
10 been opened or tampered with in any way.

11 Q. Can you show us what the BEST Kit is? Is that inside
12 that bag?

13 A. Certainly. This is the blue plastic envelope which is
14 known as the BEST Kit. At the top you'll see a control
15 number. There is a numerically numbered, sequential number,
16 that appears on every evidence kit that SLED uses. This
17 number is used on all paperwork and all pieces of evidence,
18 copied in and goes in the report.

19 You can see down the side, the blue filigree that I
20 mentioned earlier. It can show if the bag has been cut in
21 any way. You'll see a difference in the -- the amount of
22 blue that's shown there.

23 There is a red seal across the top that once the
24 adhesive backing has been removed and the bag is sealed
25 together it cannot be taken apart without distorting the

1 seal.

2 And that's how we can tell if this bag has been
3 tampered with, messed with in any way.

4 Then you also see on the side the lab number that's
5 assigned, the date that seal was checked, and my initials,
6 showing that this bag was intact when it came into my
7 possession.

8 Q. And can you show the jury the cocaine itself? You may
9 have to move down so that all the jurors can see.

10 A. (The witness complies.) This is a plastic bag.
11 Inside, the white powder substance.

12 Q. Thank you. You can resume your seat.

13 A. (The witness returns to the witness stand.)

14 Q. Agent Miller, you're not any longer with SLED. Where
15 are you currently employed?

16 A. I am currently the director of the Anderson-Oconee
17 Regional Forensics Laboratory.

18 Q. Do you perform the same type of testing that you did
19 at SLED?

20 A. Yes, I do.

21 Q. So this is, in fact, a promotion for you?

22 A. Yes, it is.

23 Q. In your expert opinion, what is that substance that is
24 in the exhibit 13?

25 A. This substance is cocaine.

1 Q. And what is the weight, please?

2 A. 73.2 grams.

3 MR. BOURDON: Thank you. No further questions.

4 MR. MCGUIRE: Thank you. I have no questions.

5 THE COURT: All right. You said that you received
6 that on July 28, '99. You didn't tell us where you got it.
7 I'm asking you.

8 THE WITNESS: Yes, sir. It was -- I physically
9 removed it from the drug evidence locker in evidence log-in
10 in the SLED evidence division.

11 THE COURT: You got it from where?

12 THE WITNESS: The SLED drug locker.

13 THE COURT: The SLED drug locker?

14 THE WITNESS: Yes, sir.

15 THE COURT: Okay. Anything else?

16 MR. BOURDON: Your Honor, in light of ---

17 MR. MCGUIRE: No, sir, Your Honor. Thank you.

18 THE COURT: Thank you very much. You can step down.

19 MR. BOURDON: Your Honor, in light of that question,
20 would just ask...

21 BY MR. BOURDON:

22 Q. The SLED drug locker that you talked about, where is
23 that located?

24 A. That is a -- a secure mailbox-type depository that is
25 located in the evidence log-in department at the SLED

MICHAEL ALAN MILLER - DIRECT EXAM. BY MR. BOURDON

143

1 forensics laboratory.

2 Q. And that's in Columbia?

3 A. Yes, it is.

4 Q. Who has access to that area?

5 A. Currently, I do not know. At the time of my
6 employment there ---

7 Q. Yes, sir.

8 A. --- the supervisor for the department of drug analysis
9 had access to it, and I believe also the captain of the
10 forensics building had access to it. Those were the only
11 keys, to my knowledge.

12 Q. So it wasn't a public access-type area?

13 A. No, it was not. And no one from any other department
14 had access to it.

15 Q. Had you received that BEST Kit with any sign of
16 tampering, would you have performed the test that you did?

17 A. No, I would not.

18 MR. BOURDON: No further questions, Your Honor.

19 THE COURT: All right. Thank you very much. You can
20 step down.

21 (The witness is excused from the witness stand and
22 leaves the courtroom.)

23 MR. BOURDON: Your Honor, at this time the State would
24 move for admission of State's 13.

25 MR. MCGUIRE: I would have a Rule 6 objection to that,

1 Your Honor.

2 THE COURT: Members of the jury panel, I need you to
3 go to the jury room. We'll take a short break at this time,
4 about five, ten minutes. I'm going to be occupied with them
5 for a while, for about five minutes hopefully, and then I
6 want a five-minute break. So I'll give you all about 10 to
7 15 minutes. If you want a coke or coffee or anything like
8 that, let the Bailiffs know.

9 (Whereupon, the jury goes to the jury room at
10 approximately 11:27 a.m.)

11 THE COURT: All right. Now, what's your objection,
12 Mr. McGuire?

13 MR. MCGUIRE: The chain has not been hooked up.

14 THE COURT: I agree. At this point it has not been
15 hooked up.

16 MR. BOURDON: Yes, sir. The State will call
17 Detective Kuechler. I was just trying to ---

18 THE COURT: Well, I mean, as I sit, I want to make
19 sure that I understand it and everything and all.
20 Mr. Campbell said he gave it to Kuechler.

21 MR. MCGUIRE: Yes, sir.

22 THE COURT: Hardin said he got it out of a drop box
23 and took it to SLED. He didn't say what he did with it when
24 he got to SLED. So I see at least two loopholes or two
25 missing links in the chain, at least two thus far.

1 MR. BOURDON: Yes, sir. The State could recall
2 Mr. Hardin.

3 THE COURT: All right. Well, okay.

4 MR. BOURDON: We'll do that, Your Honor.

5 THE COURT: Well, Kuechler, maybe you don't need him.
6 I don't know.

7 All right. We'll take a break. I see at least two
8 missing links.

9 MR. BOURDON: Thank you, Your Honor.

10 (A brief break was taken.)

11 THE COURT: Thank you. Please be seated. All right.
12 Bring the jury in.

13 MR. BOURDON: Your Honor.

14 THE COURT: Yes, sir.

15 MR. BOURDON: The State is going to recall Mr. Hardin.

16 THE COURT: All right. Bring him back up. Bring the
17 jury in.

18 (Whereupon, the jury returns to the courtroom at
19 approximately 11:44 a.m.)

20 (State's Exhibit No. 16 was marked for
21 identification.)

22 (Officer Hardin enters the courtroom.)

23 THE COURT: We have the jury with us now. Everybody's
24 here.

25 You're recalling Mr. Hardin. Is that right?

1 MR. BOURDON: Yes, Your Honor.

2 CHARLES W. HARDIN,

3 previously duly sworn by the clerk, resumed the witness stand
4 and was examined and testified further as follows:

5 THE COURT: All right. Go ahead.

6 You're still under oath.

7 THE WITNESS: Yes, sir.

8 DIRECT EXAMINATION

9 BY MR. BOURDON:

10 Q. Mr. Hardin, you were already on the stand, talking a
11 little bit about your job as the evidence custodian. Once
12 again, if you could just back up a little bit, tell us about
13 the way that this piece of evidence was submitted to you.
14 Where did you receive it?

15 A. Sir, I received it from a drop box outside the
16 evidence room.

17 Q. And you testified earlier that only you have access to
18 the drop box in a secured facility?

19 A. Yes, sir.

20 Q. And the drugs were in the BEST Kit that we see before
21 us in exhibit 13?

22 A. That's correct, sir.

23 Q. And then when did you take the drugs up to SLED?

24 A. I delivered the drugs to SLED on July the 28 of 1999.

25 Q. From the time that they were put in your drop box by

CHARLES W. HARDIN - DIRECT EXAM. BY MR. BOURDON

147

1 the detectives, where did it remain until the 29th of July?

2 A. They -- after it was processed on my desk, I put them
3 in the vault which is inside the evidence room.

4 Q. And who has access to the vault?

5 A. Myself, an assistant William Tagle (phonetic); my
6 immediate supervisors, Sergeant Steve Shephard and Lieutenant
7 George Depack (phonetic), and the chief. They ---

8 Q. I'm sorry. Go ahead, please.

9 A. They are the only ones that has a key to the evidence
10 room.

11 Q. And is the evidence room a secured facility, in
12 itself?

13 A. Yes, it is.

14 Q. So basically the drugs are inside a vault inside a
15 secured office?

16 A. Yes, sir.

17 Q. Now, why did you wait until the 29th of July to go to
18 SLED with this exhibit?

19 THE COURT: Did you say the 29th or the 28th?

20 MR. BOURDON: I'm sorry.

21 THE WITNESS: 28th, sir.

22 THE COURT: You got it out of the drop box when?

23 THE WITNESS: Sir, I processed it on July 20th.

24 THE COURT: Okay. All right.

25 BY MR. BOURDON:

1 Q. When did it enter your evidence box, the drop box
2 itself?

3 THE COURT: Do you remember? You got it out on the
4 20th. You don't know when it got in there; do you?

5 THE WITNESS: No, sir.

6 THE COURT: All right.

7 BY MR. BOURDON:

8 Q. So you picked it up on the 20th?

9 A. Sir, I processed it July the 20th. Because I
10 processed it July the 20th doesn't mean that I take it to
11 SLED on that date. Normally, because at the time I was the
12 only person in the evidence room, I didn't have an assistant.
13 Because of time and manpower shortages, I would go to SLED
14 every other week or sometimes every third week. But after
15 the drugs were processed by myself, they were placed in a
16 vault, and they were delivered to SLED on July the 28th of
17 1999.

18 THE COURT: When you say "delivered them to SLED,"
19 what do you mean? What did you actually do with it?

20 THE WITNESS: I physically took the drugs. I put them
21 in the trunk of a cruiser. I transported the drugs to SLED
22 headquarters in Columbia.

23 THE COURT: And what did you do with them when you go
24 there?

25 THE WITNESS: After I got to SLED, I went to the

1 receiving -- receiving evidence room. At the present time
2 there's four, maybe five, evidence custodians or workers that
3 work in to the evidence room. At that point, I take the
4 drugs, I gave it to one of them. And after they processed
5 the evidence, they gave it back to me, and I dropped it in a
6 lock-box inside that room.

7 BY MR. BOURDON:

8 Q. And that was done on the 20th of July of '99?

9 A. No, sir. That was done on July the 28th of 1999. I
10 processed the drugs on July the 20th.

11 Q. By "processing," what do you mean?

12 A. That means that I open the envelope. I look at the
13 chain of custody. I make sure the drugs are secure in the
14 evidence -- in the evidence bag, that there's no seals
15 broken. I compare the chain of custody to the markings that
16 are on the bag inside the envelope and also the -- the
17 "B" number that's on the outside of the bag.

18 Q. And the drugs were dropped into your drop box on the
19 16th of July. Is that correct?

20 A. Well, sir, that's what's on the chain of custody. It
21 could have been that morning at 9:00. It could have been on
22 the weekend. I don't remember. But I do know that I took
23 them out of the drop box.

24 Q. And so you took them out of the drop box before the
25 20th and you processed them?

1 THE COURT: Took them out on the 20th is what I
2 understood. Isn't that right?

3 THE WITNESS: Yes, sir.

4 THE COURT: All right.

5 BY MR. BOURDON:

6 Q. And the 16th to the 20th, where was that bag of
7 narcotics in State's exhibit 13 that you brought into court
8 today?

9 A. From the time it was dropped in the drop box to the
10 20th? I didn't understand your question, sir.

11 Q. On the 16th it's put in the drop box. Is that
12 correct?

13 A. Yes, sir.

14 Q. Okay. And then you processed it on the 20th ---

15 A. Yes, sir.

16 Q. --- of July of '99? Where is it between the 16th and
17 the 20th?

18 A. It was still in the drop box, sir.

19 Q. And that's secured in North Charleston's evidence
20 compound?

21 A. Yes, sir.

22 Q. And where is your evidence compound located at?

23 A. It's at the -- the North Charleston Police Department
24 City Hall, the first floor at the -- I don't know what end o
25 the building that is, sir, but it's on the first floor.

CHARLES W. HARDIN - DIRECT EXAM. BY MR. BOURDON

151

1 Q. So the drugs are in a secured evidence locker or the
2 drop box until you processed them on the 20th?

3 A. That's correct, sir.

4 Q. Now, Judge Hughston asked, once you got to SLED who
5 did you give the drugs to?

6 A. Sir, I don't remember which one of the ladies that I
7 gave it to. Normally, when I go I take numerous Best kits.
8 And normally the ladies that process the Best kits, they'll
9 share. Normally, I'll give -- if they're sitting ---

10 THE COURT: Don't tell us "normally." You gave it to
11 a lady in SLED. Did it get out of your sight, or did she do
12 something with it while she was standing right there, or
13 what? You gave it to a lady at SLED.

14 THE WITNESS: Yes, sir.

15 THE COURT: What happened then?

16 THE WITNESS: I gave it to a lady at SLED. She took
17 the -- the information out of the envelope. She signed the
18 paperwork. She put the -- and, sir, I don't know their
19 process, but I do know that they sign the -- the subsequent
20 chain of custody. She put the information back into the BEST
21 Kit. She gave me the yellow copy of the kit with a date on
22 it that shows that it was processed. She gave me the kit. I
23 took the kit and placed it -- dropped it into a drop box at
24 SLED.

25 THE COURT: Was all that done in your presence?

1 THE WITNESS: Yes, it was.

2 THE COURT: All right.

3 BY MR. BOURDON:

4 Q. So you never lost sight of this, State's exhibit
5 number 13, the BEST Kit?

6 A. No, sir.

7 Q. And the woman that processed it, would her name appear
8 in any of this paperwork?

9 A. None of the paperwork that I got back, sir.

10 Q. Okay. And after you placed the evidence in the drop
11 box, what did you then do? Did you have any more contact
12 with that narcotic in State's exhibit 13?

13 A. Yes, sir, I did. I have in my hand a copy of the
14 chain of custody that's dated January the 14th of 2000. It
15 shows where Officer Special Agent Michael Miller from SLED
16 signed it to me. I transferred it back to our evidence room

17 Q. And that piece of evidence has remained secured in
18 your facility until court this morning?

19 A. Yes, sir.

20 Q. Has it been tampered with in any way that you are
21 aware of?

22 A. No, it hasn't.

23 Q. Now, the lady that you deal with in Columbia when you
24 go to the SLED laboratory, are they basically just filling
25 out the paperwork that's associated with these drugs?

1 A. Yes, sir. And they also ensure that the -- that the
2 paperwork that I give them is in order. They have to sign a
3 chain of custody as well as I do. So if there's any missing
4 numbers or if the numbers don't match up or the names don't
5 match up, if the case number is wrong, generally they'll
6 point that out.

7 Q. Mr. Hardin, I want to hand you what's been marked as
8 State's exhibit 16. Would you look at that document, please?

9 A. Yes.

10 Q. Tell us what that document is, please, sir.

11 A. This is a Form C Rule 6, a subsequent chain of
12 custody. What this --- what this chain shows is that ---

13 MR. MCGUIRE: Your Honor, I'd have to object to
14 hearsay.

15 THE COURT: I sustain the objection to that question
16 at this point.

17 MR. BOURDON: Your Honor, I would argue that this is a
18 business record kept in the ordinary course of business.

19 THE COURT: We'll see, if you want to be heard in
20 regard to that.

21 Members of the jury panel, I need you to go to the
22 jury room, please.

23 (Whereupon, the jury goes to the jury room at
24 approximately 11:53 a.m.)

25 THE COURT: Get your rule books out. Hearsay

1 exception to business records, let's see what it says.

2 MR. BOURDON: Your Honor, if I may just ask
3 Mr. Hardin a question?

4 THE COURT: All right. Go ahead.

5 MR. BOURDON: Is this the chain of custody document
6 that you're talking about that she signed?

7 THE WITNESS: Yes, it is, sir.

8 MR. BOURDON: Do you recognize the signature on that?

9 THE COURT: And who signed it?

10 THE WITNESS: Yes, sir, I do.

11 THE COURT: And who signed it? You said that she
12 signed?

13 THE WITNESS: Yes, Your Honor.

14 THE COURT: Who are you talking about?

15 THE WITNESS: The person, the lady at SLED, sir.

16 THE COURT: Okay.

17 MR. BOURDON: Do you know her name?

18 THE WITNESS: Yes, I do.

19 MR. BOURDON: Who is it, please, sir?

20 THE WITNESS: Denise Merritt.

21 MR. BOURDON: Denise Merritt.

22 THE COURT: Let me see it.

23 (The witness tenders document to the Court.)

24 THE COURT: Now, this is your signature down at the
25 bottom?

1 THE WITNESS: Yes, sir.

2 THE COURT: Okay. All right. Now, the objection is
3 that you haven't -- as I understand the objection at this
4 point is that you haven't qualified it under the business
5 records exception. So read the business records exception,
6 Mr. McGuire, and let's see what's missing.

7 MR. MCGUIRE: Well, Your Honor, it would have to be a
8 memorandum or a report or record or data compilation in any
9 form of actual -- in any form of diagnosis made at or near
10 the time by or from information transmitted by a person with
11 knowledge, if kept in the course of a regularly conducted
12 business activity and if it was the regular practice of that
13 business activity to make a memo, report, record, or a data
14 compilation.

15 All that's shown by the testimony of the custodian or
16 qualified witness unless the source of information or the
17 method of circumstances of preparation indicate that the
18 document was kept, provided, however, opinions are not
19 admissible.

20 THE COURT: Do you think you've covered all those?

21 MR. MCGUIRE: I don't believe so.

22 MR. BOURDON: Yes, Your Honor.

23 THE COURT: You do?

24 MR. MCGUIRE: No. I don't think he has.

25 THE COURT: Do you think you have?

1 MR. BOURDON: No, sir, not at this point. I need to
2 establish that.

3 THE COURT: Then you need to cover it.
4 Bring the jury back in.

5 (Whereupon, the jury enters the courtroom at
6 approximately at 11:57 a.m.)

7 THE BAILIFF: All present, Your Honor.

8 THE COURT: All right. You may continue to examine
9 the witness.

10 MR. BOURDON: Thank you, Your Honor.

11 BY MR. BOURDON:

12 Q. Mr. Hardin, please explain what that document is that
13 you have with you in State's exhibit 16, I believe.

14 A. Sir, this document is a part of the BEST Kit. It's a
15 subsequent chain of custody form that whenever I receive the
16 BEST Kit I sign it and verify that the BEST Kit information
17 has Officer Glen Campbell's name on it. It also states the
18 date that I delivered the BEST Kit to SLED.

19 MR. MCGUIRE: Your Honor, until the foundation is
20 laid ---

21 THE COURT: I agree.

22 MR. BOURDON: Yes, Your Honor.

23 THE COURT: Ask a direct question that will get a
24 direct answer.

25 MR. BOURDON: Yes, sir.

1 BY MR. BOURDON:

2 Q. And is that document -- is that a document that's
3 required to be kept in the ordinary course of your business
4 as an evidence custodian?

5 A. Yes, it is, sir.

6 Q. Is there any State laws that govern with respect to
7 filling out those documents, Form B Rule 6?

8 A. Yes, sir.

9 Q. What are those, please?

10 A. Sir, I can't quote them. The only thing I know is
11 that I was trained how to fill this out, but I don't know the
12 -- know the law.

13 Q. All right. You know that you have to fill that out in
14 each and every case that is submitted in the BEST Kit?

15 A. Yes, sir.

16 Q. Is one required in every BEST Kit to be submitted, to
17 fill out that paperwork that you have in your hand?

18 A. Yes, sir, there is.

19 Q. And you do that in the ordinary course of your
20 business as the evidence custodian?

21 A. Yes, sir.

22 Q. Okay. Did you execute that document with respect to
23 this case in State's exhibit 13, the narcotics?

24 A. Yes, I did, sir.

25 Q. Okay. And please tell us what that document is that

1 was executed with respect to these drugs.

2 A. This document says that I received the BEST Kit
3 from ---

4 Q. Okay. Without reading what it says, I'm just asking
5 you ---

6 THE COURT: You filled it out. Let me ask a question.
7 You filled it out. What did you do with it then? What did
8 you do with that document after you filled it out?

9 THE WITNESS: I placed it back in the BEST Kit, sir.

10 THE COURT: Well, how did you get it back then?

11 THE WITNESS: How did I get it back personally?

12 THE COURT: How did you get it back? You put it in
13 the BEST Kit. When did you get it back? How did you get it
14 back? Where has it been since then?

15 THE WITNESS: I enclosed this form inside the BEST
16 Kit, and I delivered it to SLED. I do not get this form
17 back. It was delivered to SLED with the BEST Kit.

18 THE COURT: Who keeps it?

19 THE WITNESS: Sir, I assume that SLED keeps it and
20 sends it back to the case officer.

21 THE COURT: Okay.

22 BY MR. BOURDON:

23 Q. And was that document executed in your presence when
24 you went to the SLED laboratory?

25 A. Yes, it was, sir.

1 Q. And who signed that document at the end?

2 A. Denise Merritt, sir.

3 Q. Who is Denise Merritt, please?

4 A. She is one of the ladies that works in the evidence
5 receiving area.

6 Q. And did you physically watch her sign that document?

7 A. Yes, I did, sir.

8 Q. And how often have you dealt with Ms. Merritt?

9 A. Sir, at least twice a month for the last three years.

10 Q. She is an employee of SLED. Correct?

11 A. Yes, sir.

12 Q. And did she take custody of these drugs?

13 A. Yes, she did, sir.

14 Q. What did she do with them?

15 A. She'd take the information. She took the BEST Kit and
16 took the information out and filled out her part of the chain
17 of custody, examined -- I really don't know what they are
18 trained to do. But I do know that whatever she did, she
19 signed her part off on the chain of custody, gave it back to
20 me, and I took the BEST Kit and put it in the drop box.

21 Q. And you were physically observing her with this
22 evidence as she was processing it?

23 A. Yes, sir.

24 Q. And how far away were you from her?

25 A. Four feet or closer.

1 Q. If you could, please describe the area where you
2 delivered the substance to the -- that was submitted to the
3 SLED laboratory.

4 A. Sir, you walk into a room that's basically half the
5 size of this one long-ways and maybe not quite as long.
6 There's approximately five or six desks in there and
7 generally -- well, when I go in I sit right beside the desk.
8 I give the receiving evidence lady the evidence, and she
9 processes the evidence while I sit there at the desk.

10 Q. So this exhibit, State's 13, never left your sight the
11 day that you brought it to SLED on July the 28th of 1999?

12 A. No, sir, it did not.

13 Q. And when you received it back from Agent Miller, did
14 he personally deliver it to you ---

15 A. No, sir.

16 Q. --- or did you pick it up from ---

17 A. No, sir.

18 Q. Tell us who you picked it up from?

19 A. I picked it up from SLED, sir.

20 Q. And who did you receive it from at SLED?

21 A. Special Agent Miller, sir.

22 Q. And after Special Agent Miller had given it to you
23 from SLED, what did you then do with it?

24 A. I transported it back to our evidence room in
25 North Charleston and I placed it in the vault, sir.

CHARLES W. HARDIN - DIRECT EXAM. BY MR. BOURDON

161

1 Q. And has it remained in the vault until court this
2 morning?

3 A. Yes, it has, sir.

4 MR. BOURDON: Your Honor, the State would move for
5 admission of State's 16 at this point.

6 MR. MCGUIRE: Same objection.

7 THE COURT: I sustain the objection.

8 MR. BOURDON: Your Honor, if I could have a ruling as
9 to the basis for that?

10 THE COURT: Members of the jury panel, I need you to
11 go to the jury room, please.

12 (Whereupon, the jury goes to the jury room at
13 approximately 12:30 p.m.)

14 THE COURT: Well, right offhand, I can think of one
15 thing. It hasn't been identified by the person who keeps it
16 and so forth, whose record it is. That's the record
17 custodian, isn't it? Custodian of the records? Who keeps
18 it?

19 MR. BOURDON: I think that would be Mr. Hardin as the
20 custodian.

21 THE COURT: I don't agree with that. He said it was
22 -- who keeps it? Where has it been? Maybe you're right, but
23 I don't know. I asked him where it had been and so forth.
24 Who keeps the records? Nobody's told me who keeps the
25 records.

1 THE WITNESS: Could I ---

2 THE COURT: If you want to ask him the question.
3 That's one thing.

4 Now, let me see the rule, Mr. McGuire.

5 (Mr. McGuire tenders book to the Court.)

6 THE COURT: Let me see the document.

7 (The witness tenders document to the Court.)

8 MR. BOURDON: Your Honor, the State would also
9 look at ---

10 THE COURT: Let me look at it, first.

11 MR. BOURDON: I'm sorry, Your Honor.

12 THE COURT: All right. Let me make sure I understand
13 it.

14 EXAMINATION (IN CAMERA)

15 BY THE COURT:

16 Q. You filled this out. That's your signature at the
17 end, and it's notarized by somebody. But anyway, you filled
18 out this Form C Rule 6. Is that right?

19 A. That's correct, Your Honor.

20 Q. And what did you do with it after that?

21 A. That information is placed in ---

22 Q. What did you do with this after that?

23 A. I placed it in the BEST Kit, sir.

24 Q. All right. Okay. You placed it in the BEST kit?

25 A. Yes, sir.

1 Q. And then did it come back with the BEST Kit?

2 A. No.

3 Q. This is a copy, of course.

4 A. No, sir. I don't see the BEST Kit at all after that
5 except when I go back ---

6 Q. I didn't ask you about the BEST Kit. I'm asking about
7 this document.

8 A. Yes, sir.

9 Q. Where did you get this copy of this document?

10 A. It's inside the BEST Kit, sir.

11 Q. Okay. Is it still inside the BEST Kit?

12 A. Your Honor, could I explain the paperwork as far as
13 I'm concerned? And maybe -- I think it would clarify this.

14 Q. All right.

15 A. Okay. When I receive the BEST kit, I receive it on a
16 chain of custody, and that BEST Kit which has the -- a chain
17 of custody on the inside of it. When I fill out the BEST Kit
18 and take it to Columbia and observe what we've already
19 mentioned so far as the ladies doing their part in Columbia
20 and put it in the drop box, the only thing that I get back at
21 that point is a yellow copy of the analysis sheet, period.
22 When I go and pick up the drugs, the only thing I get back is
23 this material delivery docket, period.

24 So, so far as how this paperwork and the BEST kit is
25 disseminated, I don't know. I can only testify to what -- the

1 paperwork that I handle, which is the BEST Kit itself and the
2 yellow copy that's given back to me when the drugs are taken
3 to SLED.

4 Q. What I'm really interested in is where is the
5 original? Where is the original of this item that I have in
6 my hand? Where is the original? Do you know?

7 A. No, sir, I don't.

8 THE COURT: I sustain the objection.

9 BY MR. BOURDON:

10 Q. Is it in the BEST kit?

11 A. Sir?

12 Q. Mr. Hardin, do you know if it's in the BEST kit
13 itself?

14 A. I don't understand your question, sir.

15 Q. The judge asked you a question. This is a copy of
16 your chain of custody document?

17 A. Yes.

18 Q. Where is the original copy, the original piece of
19 paper that you originally sign?

20 A. The green copy?

21 Q. Any copy.

22 THE COURT: The one that you put your signature on.

23 BY MR. BOURDON:

24 Q. Your ink pen. Which one did you sign? Where is the
25 original?

LASER BOND FORM B PENGAD - 1-800-531-6888

1 A. That's it right there, sir.

2 THE COURT: That's not it. That's a copy. Right?

3 MR. BOURDON: It's a photocopy.

4 THE WITNESS: Sir, when I submit it to SLED, I do not
5 get a copy of the chain of custody back. When I submit the
6 BEST kit to SLED, the only thing I get back is a yellow copy
7 of the analysis sleet. But so far as that chain of custody,
8 that is not given back to me. That's retained by SLED, and
9 how they disseminate it back to North Charleston ---

10 THE COURT: That's all we needed to know.

11 MR. BOURDON: Yes, sir.

12 THE COURT: Bring the jury back in.

13 MR. BOURDON: Thank you.

14 (Whereupon, the jury returns to the courtroom at
15 approximately 12:10 p.m.)

16 THE BAILIFF: All present, Your Honor.

17 THE COURT: All right. Do you have any other
18 questions of this witness?

19 MR. BOURDON: Your Honor, just to summarize.

20 BY MR. BOURDON:

21 Q. Once again, Mr. Hardin, when did this evidence get
22 submitted to your evidence locker?

23 THE COURT: Well, I don't think he knows that. He
24 knows when he picked it up. Right?

25 THE WITNESS: I know when I ---

1 THE COURT: He picked it up from the drop box on 7-20.

2 Right?

3 THE WITNESS: That's correct, sir.

4 BY MR. BOURDON:

5 Q. And you delivered it to SLED personally on what date?

6 A. July 28th of 1999.

7 Q. And who did you turn the paperwork over to at that
8 time, sir, to the best of your knowledge?

9 A. Denise Merritt.

10 Q. And how long did Ms. Merritt have it in her
11 possession?

12 A. Maybe three minutes, four minutes.

13 Q. And how far away from her when she had the bag?

14 A. Approximately four feet.

15 Q. Then what did she do with the bag?

16 A. She gave it back to me after she processed it, and I
17 put it in the drop box.

18 Q. And then you received the drugs from Agent Miller?

19 A. That's correct, sir.

20 Q. And when did you receive them from him?

21 A. January 14th, 2000.

22 Q. And then what did you do with them after Agent Miller
23 gave you the drugs?

24 A. I transported -- I transported them back to the
25 North Charleston Police Department evidence room.

1 Q. And have they been secured in the evidence room until
2 this date?

3 A. That's correct, sir.

4 Q. Any tampering, any untoward, anything happen to that
5 exhibit since you received it back or at any time that you've
6 handled that substance?

7 A. No, sir.

8 MR. BOURDON: No further questions.

9 THE COURT: Anything on cross-examination?

10 MR. MCGUIRE: Just briefly, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. MCGUIRE:

13 Q. I thought you testified that Agent Miller didn't
14 personally hand it to you.

15 A. Agent Miller was the one that relinquished those,
16 those drugs, to me.

17 Q. Right. But not personally? Or you don't know?

18 A. Yes, sir. He did.

19 Q. Personally handed them to you?

20 A. Yes, sir.

21 Q. And you testified that you go up there to SLED maybe
22 twice a month. Is that about right?

23 A. Yes, sir.

24 Q. And do you bring all of the drugs for testing that
25 have been taken into custody by North Charleston?

1 A. The ones that have been processed, yes, sir.

2 Q. I would imagine that would be a lot.

3 A. Well, it depends on what you consider "a lot."

4 Q. What do you consider to be a lot?

5 A. Well, I can tell you what I take up there. Average,
6 about 25 or 30 BEST kits.

7 Q. Okay. And when you go into the room and you give them
8 to -- I think you described them as "ladies at SLED," do they
9 ever -- did one lady take a couple, one lady take a couple,
10 and they start processing them?

11 A. Sir, most of the time when I take them up there, one
12 lady.

13 Q. Sure, most of the time. But have they ever done that?
14 You bring in a big box and they split it up, and one lady ---

15 A. Yes, sir. Yes, they have, sir.

16 Q. Okay. And until you testified that you recognized
17 Ms. Miller's signature there, you had no recollection of who
18 you gave it to. Did you?

19 A. No, sir. I did not.

20 Q. Right. And you're basing this -- your testimony is
21 just based on that signature?

22 A. Yes, sir.

23 Q. You don't have a recollection in your memory of having
24 an interaction with Ms. Miller?

25 A. No, sir.

1 Q. Okay. And you can't say beyond any shadow of a doubt
2 that this wasn't one of those days where you took the box up
3 there and they split it up and one lady did some and one lady
4 did some? You can't say that for sure. Can you?

5 A. No, sir.

6 MR. MCGUIRE: Thank you. That's all I have.

7 THE COURT: Thank you very much.

8 MR. BOURDON: Your Honor, if I may, just one
9 question ---

10 THE COURT: Okay.

11 MR. BOURDON: --- in light of the cross.

12 REDIRECT EXAMINATION

13 BY MR. BOURDON:

14 Q. Did any of the ladies, whether it was Ms. Merritt or
15 someone else, did anyone open that BEST kit in front of you?

16 A. Yes.

17 Q. Physically open the kit?

18 A. Yes, sir.

19 Q. Okay. Did you observe them opening the kit?

20 A. Sir, I observe them opening every BEST kit when I go
21 up there.

22 Q. They actually break the seal on it?

23 A. Oh. They open the envelope itself but not the seal.
24 I've got the sealed drugs.

25 Q. So the drugs are still in the BEST kits sealed?

1 A. Yes, sir.

2 Q. So whether it was Ms. Merritt or someone else, no one
3 opened that BEST kit, that sealed BEST kit, in your presence?

4 A. No, sir. That's right.

5 Q. And then your testimony is that Ms. Merritt handed you
6 the drugs and you put them in the box?

7 A. Sir, the only reason that I know that Ms. Merritt
8 processed this particular BEST kit is because earlier I seen
9 her name on the chain of custody. Because of the fact that I
10 take so many drugs up there, it would be hard for me to
11 remember which one of the ladies processed the BEST kit.

12 Q. And that chain of custody is State's exhibit 16 that
13 you refer to?

14 A. Yes, sir.

15 MR. BOURDON: No further questions, Your Honor.

16 MR. MCGUIRE: Nothing further, Your Honor.

17 THE COURT: Thank you very much. You can step down.

18 (The witness is excused from the witness stand and
19 leaves the courtroom.)

20 THE COURT: All right. Do you have another witness?

21 MR. BOURDON: Your Honor, the State would recall
22 Agent Miller.

23 THE COURT: All right.

24 (Agent Miller enters the courtroom.)

25 THE COURT: Agent Miller, you're still under oath.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE WITNESS: Yes, sir.

MICHAEL ALAN MILLER,

previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION

BY MR. BOURDON:

Q. Agent Miller, we've already heard your testimony in reference to the testing of this substance. I need to ask you a little bit more about the process end of your business when you were with SLED.

A. Certainly.

Q. How many years were you with SLED in the laboratory?

A. About four and a half.

Q. Okay. And are you familiar with the processes used in order to submit drugs for testing to your laboratory?

A. Yes, I am.

Q. Could you tell the jury, please, how that physically is done, in a step-by-step manner, if you would?

A. Certainly. When -- when a submitting agency is bringing evidence for analysis, they are checked in at the front door by the administrative assistant. They then go to the evidence log-in department.

The evidence log-in department handles the cataloging and in-turn of all cases into the SLED's laboratory software system. That way we track all the evidence that way.

1 Once someone brings in drug evidence, they will sit
2 down with one of the log-in technicians. The log-in
3 technician will enter the suspect's name, the case number,
4 things like that, into the computer.

5 With drug evidence, the -- the evidence stays in the
6 possession of the submitting person who brought it. They
7 then, after the evidence is logged in, put it into the drug
8 evidence box.

9 Q. Do the people that -- the evidence log-in custodians,
10 do they ever take possession of the drugs?

11 A. No, they do not.

12 Q. Are they on the chain of custody?

13 A. No, they are not.

14 Q. Why is that?

15 A. Because they -- they are there for the purpose of
16 entering data into a computer system. They are not to handle
17 or -- or process evidence to a department.

18 Q. Do they ever have any occasion to open a BEST kit to
19 actually look at the drugs or touch the drugs or weigh the
20 drugs or anything?

21 A. They should not. No.

22 Q. And then what does the submitting officer do once the
23 log-in process is complete?

24 A. Once the log-in process is complete, they take the
25 entire BEST evidence kit and they physically place it into

MICHAEL ALAN MILLER - DIRECT EXAM. BY MR. BOURDON

173

1 the SLED drop box which is where all drug evidence goes.

2 Q. And that BEST kit that you have in your hand, is that
3 a BEST kit or is that just an envelope?

4 A. This is the envelope of the original BEST kit. What
5 happens is, as the evidence gets analyzed, the evidence in
6 the actual plastic envelope that I showed to you earlier gets
7 removed. The only thing that stays inside the original
8 envelope is paperwork related to the case. This then gets
9 filed in the SLED department of drug analysis.

10 Q. Now, the drop box at SLED, I think I asked you before,
11 but who has access to the drop box?

12 A. During my tenure there, the only people that I knew
13 had access to it was the immediate supervisor or the
14 lieutenant over the Department of Drug Analysis and the
15 captain of the forensic services building.

16 Q. Now, you received the drugs on what date?

17 A. I received this evidence on July 28th of 1999.

18 Q. And then you tested on what date?

19 A. On December 30th of 1999, I believe.

20 Q. And why the delay from the time you received it until
21 the time you tested it?

22 A. I received an average of anywhere from a thousand to
23 1800 cases a year from the Charleston-Berkeley-Beaufort area.
24 So it's impossible to process every case immediately. The
25 evidence is stored in the Department of Drug Analysis vault

1 until which time I can -- I can get to a particular case and
2 work it.

3 Q. Who has access to that vault until you can test the
4 substance?

5 A. The -- the people -- only the agents employed in the
6 Department of Drug Analysis have access to that vault, as
7 well as the captain of the forensics building.

8 Q. And after you tested the substance, what did you then
9 do with it?

10 A. It gets sealed into that outer plastic pouch that I
11 had showed you earlier with my initials and the date when it
12 was sealed. That evidence goes back into the drug vault
13 until it gets returned to the submitting agency.

14 Q. In that case it would have been Mr. Hardin who picked
15 this drug up?

16 A. That's correct.

17 Q. Who has access to that "out-vault," if you will?

18 A. It's the -- it's the same evidence vault in drug
19 analysis. Only the personnel working in the Department of
20 Drug Analysis have access to it.

21 Q. Agent Miller, where would the original chain of
22 custody documents be with respect to this exhibit?

23 A. They stay within the case jacket. It stays filed at
24 the State Law Enforcement Division.

25 Q. And is there any evidence custodian that's listed on

MICHAEL ALAN MILLER - DIRECT EXAM: BY MR. BOURDON

175

1 that document?

2 A. Yes. The evidence custodian listed here is
3 Charles W. Hardin with the North Charleston Police Department
4 and employed in the capacity as property officer.

5 Q. And with respect to any evidence technician on that
6 case, would there be an indication of who that person at SLED
7 is?

8 A. The form was notarized by Denise Merritt, which is one
9 of the log-in technicians.

10 Q. Okay. And that would indicate that she had some
11 connection with this paperwork?

12 A. That's correct.

13 Q. And is that paperwork done contemporaneous with the
14 processing of evidence when it's brought in by an agency?

15 A. Yes, it is. All of this paperwork stays together. It
16 stays within this envelope with the evidence until it comes
17 into my possession.

18 Q. So there isn't a pile that's just left for people to
19 sign weeks and days later?

20 A. No.

21 Q. So if Ms. Merritt had signed that document, that would
22 indicate what, in your opinion and experience?

23 A. That she was the evidence technician that logged this
24 case in.

25 Q. And she doesn't appear in a physical chain of custody

1 as officers and chemists do for what reason?

2 A. Because they -- they never assume physical custody of
3 the actual evidence.

4 Q. Agent Miller, are you familiar with this
5 Form C Rule 6?

6 A. Yes, I am.

7 Q. And please tell the jury what that document is.

8 A. This is a copy of the original proof or certificate of
9 chain of custody submitted to us with this evidence from
10 Charles Hardin, the property officer for the North Charleston
11 Police Department.

12 Q. And how do you know that's submitted by
13 Officer Hardin?

14 A. I know that because he has written the control number,
15 the sequential number that I showed you on each BEST kit.
16 That has appeared here, describing the evidence, and I have
17 written -- written the lab number and my last name on this
18 piece of paper, denoting that it is from this piece -- from
19 this case.

20 Q. Let me ask you, are you familiar with Mr. Hardin's
21 signature in your experience with him in the past?

22 A. Yes, I am. I've worked with him for a number of
23 years. I have had the opportunity to observe him signing his
24 signature, and it has appeared on many documents that passed
25 between us.

MICHAEL ALAN MILLER - DIRECT EXAM. BY MR. BOURDON

177

1 Q. How about Ms. Merritt?

2 A. Yes.

3 Q. Where does her signature appear?

4 A. Her signature appears in the notary public area down
5 at the bottom of the form. Each chain of custody form is
6 notarized by a sworn notary public.

7 Q. And how do you recognize her signature?

8 A. For the same reason. I've worked with her for a
9 number of years. She has signed numerous documents that have
10 had to pass between us.

11 Q. Is that form kept in the regular course of business?

12 A. Yes, it is.

13 Q. And are you required under any law or any guidelines
14 to keep that paperwork?

15 A. It is SLED's policy that all casework that goes with a
16 particular case -- or all paperwork that goes with a
17 particular case stays in the case jacket and maintained -- is
18 maintained on file in the Department of Drug Analysis.

19 Q. And where is the original of that?

20 A. The original of this is in my case jacket, yes.

21 Q. So you would be the actual custodian of that record.
22 Is that correct?

23 A. No. SLED would be the actual custodian of that.

24 THE COURT: The original is where?

25 THE WITNESS: The original is with the case jacket.

1 THE COURT: In that envelope? Is that what you said?

2 THE WITNESS: Yes, sir.

3 THE COURT: Get it out.

4 (The witness complies.)

5 THE COURT: Give it to him.

6 (The witness tenders document to Mr. Bourdon.)

7 THE COURT: We'll substitute that for number 16.

8 That's now number 16.

9 MR. MCGUIRE: Yes, sir.

10 MR. BOURDON: Your Honor, would it be possible to make
11 a copy?

12 THE COURT: You can have the copy back. Is that
13 agreed?

14 Do you want to look at that and see if it's a copy of
15 it, Mr. McGuire? They want to use a copy rather than the
16 original.

17 (Mr. McGuire reviews exhibit.)

18 MR. MCGUIRE: I would have no objection to the copy.

19 THE COURT: All right.

20 MR. MCGUIRE: Well, using the copy, I still have a
21 continuing objection.

22 THE COURT: Okay. Number 16 is a copy of what he had
23 in his hands. Okay? No objection to using the copy. Your
24 other objection is still continued.

25 (Photocopy is substituted as State's Exhibit No. 16

MICHAEL ALAN MILLER - DIRECT EXAM. BY MR. BOURDON

179

1 previously marked for identification.)

2 THE COURT: All right. Go ahead.

3 BY MR. BOURDON:

4 Q. And so this Form C Rule 6 is a required document
5 that's to be kept in the case file, and it's required to be
6 filled out in every case in which evidence is submitted to
7 your laboratory?

8 A. That's correct. Evidence -- evidence must come into
9 our laboratory -- or SLED's laboratory properly sealed, and
10 it must have the completed proper chain of custody form
11 before it is ever accepted.

12 Q. All right. So is it fair to state this is a business
13 record kept in the ordinary course of your business?

14 A. Yes, it is.

15 Q. And it would also be a public record, given the fact
16 that SLED is a public agency?

17 A. Yes, it is.

18 MR. BOURDON: Your Honor, at this time the State would
19 move it into evidence.

20 THE COURT: All right. Any objection?

21 MR. MCGUIRE: I would make the same objection,
22 Your Honor.

23 THE COURT: What objection is it?

24 MR. MCGUIRE: That it's hearsay. The foundation has
25 not been laid.

1 THE COURT: Any particular thing you want to point out
2 to me that you think he's not covered?

3 MR. MCGUIRE: First of all, the document, it's ---

4 THE COURT: Members of the jury panel, I need you to
5 go to the jury room for just a few minutes, please.

6 (Whereupon, the jury goes to the jury room at
7 approximately 12:28 p.m.)

8 THE COURT: I think he's finally gotten to it. So I'm
9 asking you to be specific in regard to your objection.

10 MR. MCGUIRE: Specifically, Your Honor, first off, I
11 believe that Agent Miller said that Mr. Hardin was the
12 custodian of the record.

13 THE COURT: Well, now, he finally said that -- we got
14 it out, what was the original. So it's in the case jacket,
15 according to him, and he took out what he says was the
16 original that you agreed to use a copy of in place of the
17 original. For some reason he didn't want us to have the
18 original. But anyway, so I think we've got the custodian or
19 we've got somebody that keeps it. He got it from the case
20 jacket. All right.

21 MR. MCGUIRE: Okay.

22 THE COURT: All right.

23 MR. MCGUIRE: Again, Your Honor, I don't believe ---

24 THE COURT: It was his. Anyway, go ahead. What else?

25 MR. MCGUIRE: That I don't believe he would be able to

MICHAEL ALAN MILLER - DIRECT EXAM. BY MR. BOURDON

181

1 testify as to the information that Mr. Hardin puts on the
2 document. I mean, if the information is from him and he's
3 putting it on there, that's one thing. He can say, "Yeah,
4 it's provided by me."

5 THE COURT: Well, that's the purpose of the business
6 record exception. If it's made in the course of the business
7 and kept in the course of the business and it's properly
8 identified and so forth and so on, that's the purpose. It's
9 doesn't have to be his. It's a business record.

10 All right. Go ahead.

11 MR. MCGUIRE: And I'm not sure he can state that the
12 information put on the form was made by someone with
13 knowledge contemporaneous with the preparation of the
14 document, and I think Mr. Hardin would have to do that.

15 THE COURT: All right. I appreciate your position. I
16 overrule the objection.

17 MR. MCGUIRE: Thank you.

18 THE COURT: Bring the jury back in.

19 (Whereupon, the jury returns to the courtroom at
20 approximately 12:31 p.m.)

21 THE COURT: All right. We have the jury back with us.
22 All right. Number sixteen is admitted into evidence.

23 (State's Exhibit No. 16, previously marked for
24 identification, was received in evidence.)

25 THE COURT: Do you have any more questions of this

1 witness?

2 MR. BOURDON: Just one moment, Your Honor.

3 No further questions. Thank you, sir.

4 THE COURT: Any cross-examination?

5 MR. MCGUIRE: Very briefly, Your Honor.

6 THE COURT: All right.

7 CROSS-EXAMINATION

8 BY MR. MCGUIRE:

9 Q. When the BEST kit and the drugs inside it are
10 transmitted back to North Charleston, do you hand it to them
11 personally?

12 A. Yes, I do.

13 Q. Okay. So that would be done by you personally?

14 A. Yes.

15 Q. And who puts it in the box before you get it? Is it
16 the ladies at SLED or would it be the agent?

17 A. I am usually not present when evidence is placed in
18 the box, but SLED's policy is that the person submitting the
19 evidence that day is responsible for physically placing that
20 evidence in the drop box.

21 Q. And how many SLED people actually handle it before it
22 gets into the box? Is it two people, did you say? An admin
23 assistant and then the evidence log-in technician?

24 A. There should be no one that handles the evidence
25 because they never assume custody of the evidence. The only

MICHAEL ALAN MILLER - CROSS-EXAM. BY MR. MCGUIRE

183

1 person who maintains custody of that evidence is the
2 submitting officer while he is present in evidence log-in.

3 Q. Sure. But let's assume that somebody would walk in
4 with a box of drugs and divide it up amongst the ladies and
5 they actually get the kits. I mean, based on that, if that
6 happened, how many people would touch it before it gets to
7 the box?

8 A. That's not a question I can answer because I'm not
9 present.

10 MR. MCGUIRE: Fair enough. Thank you.

11 THE COURT: Thank you very much. You can step down.

12 (The witness is excused from the witness stand and
13 leaves the courtroom.)

14 THE COURT: Do you have another witness?

15 MR. BOURDON: Yes, sir. The State calls Pat Morris,
16 please.

17 THE COURT: Pat Morris.

18 (Mr. Morris enters the courtroom.)

19 PATRICK WILEY MORRIS,

20 being first duly sworn by the Clerk, was examined and
21 testified as follows:

22 THE CLERK: Please be seated. Please give your full
23 name for the Court and spell your last.

24 THE WITNESS: Patrick Wiley Morris,
25 M-O-R-R-I-S.

DIRECT EXAMINATION

BY MR. BOSNAK:

Q. Who are you employed by?

A. The City of North Charleston Police Department.

Q. And how long have you worked for North Charleston Police Department?

A. Over seven years.

Q. And where are you working presently?

A. I am currently assigned to the North Charleston narcotics unit.

Q. And how long have you been assigned to that unit?

A. Three years.

Q. Three years. Were you with the North Charleston county -- North Charleston Police Department narcotics unit back on July the 15th of 1999?

A. Yes, sir, I was.

Q. And do you recall a drug bust that evening?

A. Yes, sir.

Q. And what was your role in that, please, sir?

A. I was employed as a take-down unit or a unit that was used to apprehend the suspects involved in the operation.

Q. Do you know the suspects involved in that operation?

A. Yes, sir.

Q. Who were they?

A. There was a -- two male subjects and one female

1 subject. The defendant and a female subject by the name of
2 LaShawn Floyd and another male subject by the name of
3 James Nelson.

4 Q. And tell us what your role was that night, please.

5 A. My role was that I was the outer perimeter unit and,
6 again, a take-down unit. I was utilized ---

7 Q. Stop just a minute. Tell us what you mean by "outer
8 perimeter."

9 A. My job was to stay close to the operation but far
10 enough away so when they're approaching, when the defendant
11 and the person with him -- Mr. Nelson was with him -- when
12 they approached, they wouldn't see me or see a suspicious
13 vehicle, a police vehicle, in the area. I stayed probably
14 about 200 yards away, behind a club by the name of Caylou
15 (phonetic), Caylou Lounge on Spruill and -- I'm sorry -- on
16 McMillan and Saint Johns.

17 I watched for the defendant to approach. I was
18 advised of the type of vehicle that possibly the defendant
19 might be driving. I waited. I saw the vehicle pass by. A
20 few minutes later I was told to move in -- or to move in to
21 apprehend the defendants involved in the -- in that action.

22 Q. Now, let's go back a minute. You said you were
23 advised of particular suspects that you should be looking
24 for. Is that correct?

25 A. I was apprised of the vehicle, a vehicle description

1 of the vehicle that -- by the case agents, of what the -- a
2 possible vehicle that the suspects would be driving.

3 Q. And what type of vehicle was that?

4 A. A Cadillac, a blue color Cadillac.

5 Q. A blue color Cadillac. When did you first see this
6 blue color Cadillac, or did you see a blue color Cadillac?

7 A. Yes, sir, I did. Approximately eleven o'clock that
8 night, I was sitting behind Caylou's Lounge, waiting for the
9 operation to take place. I observed a blue Cadillac turn off
10 of McMillan on Saint Johns.

11 From where I was sitting -- I was actually behind the
12 building -- I had a clear shot of Saint Johns. I wasn't --
13 but I couldn't be seen, necessarily, unless you were actually
14 looking for me. And I saw it pass by. A few minutes later,
15 actually a few seconds later, Sergeant Hux came across the
16 radio, stating that he observed the same car.

17 Q. Okay. And what did you do after that?

18 A. The deal, the transaction, took place. I was advised
19 that it had taken place and to move in to place the subjects
20 under arrest. I pulled in behind Sergeant Hux's vehicle
21 which was behind the defendant's car, the blue Cadillac.

22 I was advised by Detective Kuechler which way everyone
23 had gone. I cut through a -- a path between two trucks -- or
24 two bushes, into a dark backyard, passed through into the
25 yard where the transaction was taking place.

1 Detective Vanootegham, the undercover officer, was
2 standing outside the vehicle and was directing me to place
3 the defendant and Mr. Nelson into custody.

4 Q. Okay. Let's go back just a minute. Let me get our
5 map a minute so we can put this in perspective. If you'd
6 step down, please?

7 A. Yes, sir. (The witness leaves the witness stand and
8 goes to the jury with the Solicitor.)

9 Q. In relationship to this map, where were you? You said
10 a lounge?

11 A. Let's see. This is ---

12 THE COURT: You've got to speak loud enough for
13 everybody to hear you.

14 MR. BOURDON: Yes, Your Honor.

15 THE WITNESS: This is Spruill Avenue. I would have
16 been right here. This is McMillan, I believe. I would have
17 been right here on the corner, just approximately 75 yards, a
18 hundred yards, from Reddin Road.

19 MR. BOSNAK: Let's pull this back up where everybody
20 can see it.

21 THE COURT: Why don't you just get him to mark it on
22 there where he was.

23 BY MR. BOSNAK:

24 Q. Officer, would you please show us again where you were
25 in relationship -- where you were when this incident went

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

down?
A. Yes, sir. I was approximately here. There are two buildings here, the Caylou Lounge and another abandoned club. As the defendant pulled through -- I was actually behind the building here. As the defendant pulled up, I could observe him between the two buildings. He pulled up and parked right here on the corner of Reddin Road and Saint Johns.

Q. Okay. I'm going to show you what's been marked State's exhibit number 11. And tell us if you can identify that for us, please.

A. (The witness reviews exhibit.)

Q. Can you identify that for us, please?

A. Yes, sir. I believe this is the spot where the defendant had parked his vehicle and cut through these bushes right here.

Q. Did you see the defendant cut through those bushes?

A. No, sir, I did not.

Q. You did not. Did you see him get out of his vehicle?

A. No, sir, I did not.

Q. You did not. Did you see anybody else get out of the vehicle?

A. No, sir, I did not.

Q. Okay. Now, when the take-down signal was given, what did you do?

A. I was actually -- the clubs I had mentioned earlier

LASER BOND FORM B • PENNAD • 1-800-851-6989

1 were actually -- if the picture continued down the street, it
 2 would have been down further this way. I pulled -- I pulled
 3 my vehicle up here. The defendant's vehicle had been parked
 4 here. Sergeant Hux's vehicle had been parked along here. I
 5 pulled in next to it or actually behind it. Detective
 6 Kuechler was standing here. He advised where they had cut
 7 through. Sergeant Hux had already gone forward, and I -- I
 8 followed through.

9 Q. Followed through?

10 A. Into the cut.

11 Q. I'm going to show you what's been marked exhibit 12.
 12 See if you can please tell us what that is.

13 A. Yes, sir. This right here, this is the cut or the
 14 path through the bushes. This area right here -- this is
 15 actually deceptive. This is actually a large lot or fairly
 16 large lot. And this right here is the steps going up into a
 17 co-defendant's residence. And on the other side of this
 18 white building here is where the defendants were taken down.

19 Q. I've got something marked State's exhibit number nine.
 20 If you would, please, tell us what that is.

21 A. Now, I believe that this is actually the -- still
 22 again, the shrubs that we cut through. And this would be the
 23 yard.

24 Q. In the same area you were talking about?

25 A. Yes, sir. This would be the -- the open field or

1 actually that -- it's a backyard to the residence that's just
2 here to the left.

3 MR. BOSNAK: We would ask that this be submitted into
4 evidence at this time.

5 THE COURT: Any objection?

6 MR. MCGUIRE: No objection, Your Honor.

7 THE COURT: Thank you. Now, that's number what?

8 MR. BOSNAK: Number nine, Your Honor.

9 THE COURT: All right.

10 (State's Exhibit No. 9, previously marked for
11 identification, was received in evidence.)

12 BY MR. BOSNAK:

13 Q. I am also showing the witness State's exhibit number
14 four. And see if you can identify that, please. If you can
15 would you please identify that for us?

16 A. Yes, sir. This is still -- this is the same yard
17 right here. If I am not mistaken, this is again the shrubs.
18 The cut that's shown earlier is over in this direction. Thi
19 is the large field behind the house with a large backyard.
20 And just this way, towards us, would be the yard of the
21 residence where the incident -- or where the arrest was made

22 Q. Okay. Now, tell us where you were. Did you come
23 through this area that night?

24 A. Yes, sir. That evening I cut through this path here
25 in the shrubbery, came this way, and I circled to the left.

PATRICK WILEY MORRIS - DIRECT EXAM. BY MR. BOSNAK

191

1 Or, in my case, I was actually going to the right. But
2 according to the picture, I was going to the left.

3 Q. Okay. I'm going to show you another picture that's
4 marked State's ---

5 MR. BOSNAK: We would ask that State's exhibit number
6 four be admitted into evidence.

7 MR. MCGUIRE: No objection, Judge.

8 THE COURT: Without objection. Good.

9 (State's Exhibit No. 4, previously marked for
10 identification, was received in evidence.)

11 BY MR. BOSNAK:

12 Q. Now I'm going to show you what's been marked State's
13 exhibit number five. See if you can identify that.

14 MR. MCGUIRE: Your Honor, just to maybe help things
15 out, I don't have any objection to any of these pictures.
16 I've seen them all.

17 THE COURT: All right. Well, let him tell us what
18 they are. Go ahead.

19 THE WITNESS: Yes, sir. This is still the -- the
20 vacant lot or the backyard, the large backyard. I cut
21 through here. This is the gas tank that I passed by. Or
22 propane tank, I'm not really sure. It was a big tank, and I
23 passed by to the right.

24 THE COURT: And that's admitted without objection.
25 Number what?

1 MR. BOSNAK: That is number five, Your Honor.

2 THE COURT: Five. All right. Give those to the Court
3 Reporter when you're through with them.

4 (State's Exhibit No. 5, previously marked for
5 identification, was received in evidence.)

6 BY MR. BOSNAK:

7 Q. I think you testified you parked behind the
8 defendant's car, went through the cut, went through the
9 backyard, turned and came up where Detective Vanootegham was.
10 Okay. What did you do then?

11 A. Detective Vanootegham advised me ---

12 THE COURT: What did you do? That was the question.
13 What did you do?

14 MR. BOSNAK: What did you do?

15 THE WITNESS: Yes, Your honor. I was -- I arrested
16 the defendant and the co-defendant.

17 BY MR. BOSNAK:

18 Q. Okay. Any reason why you arrested them?

19 A. Yes, sir. Because Detective Vanootegham directed me
20 to do so.

21 Q. And you advised them of their rights?

22 A. No, sir. I didn't speak with them at all. I placed
23 them under arrest and that was it.

24 Q. Did you have anything else to do with the action that
25 night?

PATRICK WILEY MORRIS -- CROSS-EXAM. BY MR. MCGUIRE

193

1 A. No, sir.

2 Q. Did you check the perimeter or anything like that?

3 A. Yes, sir, I did. I actually -- I was advised to check
4 around to see if there were possibly any drugs or money still
5 laying around. I was advised by Detective Vanootegham to
6 check behind in the area where the tank was observed in the
7 pictures. I found nothing.

8 Q. Okay. And it was dark that night. Did you have a
9 flashlight with you?

10 A. Yes, sir. I did.

11 Q. And did you check the area that we just showed when
12 you showed to the jury?

13 A. Yes, sir.

14 MR. BOSNAK: That's all the questions I have,
15 Your Honor.

16 THE COURT: Cross-examination.

17 MR. MCGUIRE: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. MCGUIRE:

20 Q. You looked around the yard by the tank for perhaps
21 another stash of drugs? Or for anything, I guess?

22 A. For anything. Yes, sir.

23 Q. And in your experience, it's not uncommon for somebody
24 who's dealing drugs to use, like, a drop or a stash location
25 to go back to?

1 A. In my experience, it's uncommon for somebody to leave
2 a large amount of drugs laying anywhere ---

3 Q. Oh, sure.

4 A. --- outside of a residence.

5 Q. I don't disagree with you. But you guys make tons of
6 arrests where somebody takes a little stash and they keep it
7 on a fence line or in an alley, that sort of thing?

8 A. We have made arrests where that's been indicated.

9 Q. And certainly you never saw Mr. Battle with any drugs?

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

11 Q. And where does your involvement in this end? Once
12 people are arrested and that's it?

13 A. In this particular case, yes, sir.

14 Q. Okay. Although you did have the opportunity to search
15 the area, did you also search Mr. Battle's car?

16 A. I did not. No, sir.

17 Q. Do you know who did?

18 A. I'm not sure, but I believe Detective Kuechler did.

19 Q. Okay. And do you know if a search warrant was
20 obtained for my client's house?

21 A. I don't recall.

22 Q. Or how about Eddie Nelson's house?

23 A. Again, sir, I don't recall.

24 Q. Okay. And the co-defendant that was arrested,
25 Mr. Nelson, do you know that he goes by "Eddie" or no?

1 A. I don't know.

2 Q. You certainly weren't aware of that at the time, I
3 guess?

4 A. No, sir.

5 MR. MCGUIRE: That's all I have. Thank you.

6 THE COURT: Thank you very much. You can step down.

7 THE WITNESS: Thank you, Your Honor.

8 (The witness is excused from the witness stand and
9 leaves the courtroom.)

10 THE COURT: We'll take our lunch break now. Members
11 of the jury panel, I'll let you go to lunch.

12 Leave your notepads in the jury room. If you have not
13 already done so, put your name or initial or something on the
14 front so you can easily identify it and bring it back with
15 you after lunch.

16 Again, I'll tell you not to discuss the case. If two
17 or more of you happen to go to lunch together, talk about
18 something but not this case.

19 Leave your notebooks in the jury room. Be back in the
20 jury room at two o'clock. We'll get started just as soon as
21 we can after that. Have a nice lunch.

22 (Whereupon, the jury leaves the courtroom at
23 approximately 12:51 p.m.)

24 THE COURT: Proposed State's exhibit number 13 in the
25 cabinet; is that agreeable with the defendant's attorney? Do

1 you have any objection to that? We're going to lock that up
2 in this cabinet right here in the courtroom.

3 MR. MCGUIRE: No objection, Your Honor.

4 THE COURT: All right. You don't have to prove the
5 chain of custody on that, from that to that. I'm not talking
6 about -- I haven't ruled on the other one yet. All right.

7 Okay. Thank you very much.

8 MR. BOURDON: Thank you, Your Honor.

9 MR. MCGUIRE: Thank you, Your Honor.

10 THE COURT: Now, you all wait just a few minutes.

11 Let's let the jury -- everybody, let's wait till the jury
12 clears the courthouse. It will be about five minutes before
13 you go down. Okay? All right.

14 (A lunch recess was taken.)

15 (After said lunch recess, the defendant being present
16 with counsel, the following proceedings were had:)

17 THE BAILIFF: All rise.

18 THE COURT: Thank you. Please be seated.

19 All right. At the break I shared with the attorneys
20 on both sides the information that's on one of the juror's
21 response forms that the jurors fill out and send back in.

22 During the course of a trial, oftentimes I look over
23 these just to have some idea about who the jurors are and
24 their background and so forth. It's just something that I
25 do, and I happened to take note of this one.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

This is juror number 19 on the master list, Kathleen H. Brooks, and she wrote on there that "as one of Jehovah's Witnesses, I would be going against my religion. So it's for this reason that I'm asking to be excused. Thank you." And then her name.

And, of course, this was not brought to my attention by anyone, and she didn't bring it to my attention when I qualified the jury on Monday of this week.

But I've shared this information with the attorneys, and I believe it's the State's request that I make further inquiry with her concerning what this means and whether she would be able to follow my instructions at the conclusion of the case. Is that right?

MR. BOURDON: Yes, sir. That's correct, Your Honor.

THE COURT: All right. Okay. If you would, bring Kathleen Brooks out here, please.

(The Bailiff complies and Ms. Brooks enters the courtroom.)

EXAMINATION

THE COURT: Ms. Brooks, just stand right there if you would. Come around right in front of the court reporter there where she can see you, you know, and I can see you.

The reason I asked you to come out here, Ms. Brooks -- you haven't done anything wrong or anything like that. The reason I asked you to come out here is I happened to be

1 looking over the juror response ---

2 MS. BROOKS: Oh, okay.

3 THE COURT: --- responses that you send in. And you
4 sent in one before you came here?

5 MS. BROOKS: Uh-huh.

6 THE COURT: And you wrote at the bottom: "As one of
7 Jehovah's Witnesses, I would be going against my religion.
8 So it's for this reason I'm asking to be excused"?

9 MS. BROOKS: Uh-huh.

10 THE COURT: This did not come to my attention until
11 today, and you didn't say anything to me about that when I
12 was questioning the jury. That's fine. That's no problem.
13 There's nothing wrong with that, but I just wanted to ask
14 exactly what you mean by that. Can you tell me any more what
15 you mean by that?

16 MS. BROOKS: Well, see, I was thinking if it was
17 anything that would make me feel like I was going against
18 Bible principle then I didn't feel like that, you know, I
19 would have been fair to judge. But now that I've heard the
20 case, I've seen that it has nothing to do with me. I just
21 have to give a -- listen at the case, give an honest opinion

22 THE COURT: That's correct.

23 MS. BROOKS: Yes.

24 THE COURT: Okay. That's what I wanted to know. At
25 the end of the case, I'm going to tell you what your duties

KATHLEEN BROOKS - EXAMINATION BY THE COURT

199

1 -- what the jurors' duties are.

2 MS. BROOKS: Yes, sir.

3 THE COURT: And the bottom line of that is: If in
4 your opinion, if after hearing all of the evidence, you
5 conclude that the State has not met the burden of proof of
6 proving Mr. Battle guilty of this charge beyond a reasonable
7 doubt, as I would define that for you ---

8 MS. BROOKS: Uh-huh.

9 THE COURT: --- would you find him not guilty?

10 MS. BROOKS: Yes, sir.

11 THE COURT: All right. And on the other hand, if
12 after hearing all of the evidence and you evaluate that
13 evidence, if you conclude that the State has met its burden
14 of proof in proving him guilty, can you vote to find him
15 guilty?

16 MS. BROOKS: Yes, sir.

17 THE COURT: All right. You can follow my instructions
18 then to you ---

19 MS. BROOKS: Yes, sir.

20 THE COURT: --- as a juror?

21 MS. BROOKS: Yes, sir.

22 THE COURT: All right. Anything else that the State
23 wants me to ask her?

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

25 THE COURT: Defendant?

1 MR. MCGUIRE: No, sir, Your Honor.

2 THE COURT: All right. Thank you very much. I'll let
3 you go back.

4 (Ms. Brooks returns to the jury room.)

5 THE COURT: Anything else before we bring the jury
6 out?

7 MR. BOSNAK: Nothing from the State, Your Honor.

8 THE COURT: Defendant?

9 MR. MCGUIRE: No, Your Honor.

10 THE COURT: All right. Bring the jury out.

11 (Whereupon, the jury returns to the courtroom at
12 approximately 2:04 p.m.)

13 THE BAILIFF: All present, Your Honor.

14 THE COURT: Good. Thank you. I hope you had a nice
15 lunch. I want to thank you for being back here promptly at
16 two o'clock. I appreciate that very much.

17 We'll continue now. Call your next witness.

18 MR. BOSNAK: The State calls Greg Gould, please.

19 GREG LEE GOULD,

20 being first duly sworn by the Clerk, was examined and
21 testified as follows:

22 THE CLERK: Please be seated. Please give your full
23 name for the Court and spell your last name.

24 THE WITNESS: My Full name is Greg Lee Gould. My Last
25 name is G-O-U-L-D.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DIRECT EXAMINATION

BY MR. BOSNAK:

Q. Officer Gould, how are you?

A. Good. Thank you.

Q. Would you please tell us where you work, sir?

A. I presently work for the Charleston County Aviation Authority Police Department.

THE COURT: Charleston County what?

THE WITNESS: Aviation Authority Police Department.

Prior to August I worked for the City of North Charleston Police Department and at the time with the drug enforcement narcotics unit.

Q. How long were you with North Charleston Police Department?

A. A little over three years.

Q. And how long were you with their narcotics unit?

A. A little over two and a half. Two and a half.

Q. Were you working with the narcotics unit on July the 15th of 1999?

A. Yes, sir.

Q. Did you happen to be involved in a drug bust that evening?

A. Yes, I was.

Q. Could you tell us about that, please, sir?

A. It was a -- what's referred to as a "buy-bust"

1 operation where we were trying to purchase some drugs.

2 Q. Stop right there. Explain to the jury what a
3 buy-bust is, please, sir.

4 A. A buy-bust is when we would call some -- have
5 information on someone who's a suspected drug seller. We
6 would make contact with this person through another informant
7 or an undercover officer to set up an arrangement to purchase
8 possible drugs from that person.

9 MR. MCGUIRE: Your Honor, I have an objection ---

10 THE COURT: I sustain the objection. Are you
11 objecting?

12 MR. MCGUIRE: Just because it's so cumulative.

13 THE COURT: Ask about what he did in this case.
14 That's what you're supposed to ask about. Ask what he did in
15 this case.

16 MR. BOSNAK: I was getting to it, Your Honor.

17 THE COURT: Ask what he did in this case.

18 MR. BOSNAK: Yes, sir.

19 BY MR. BOSNAK:

20 Q. Would you tell us about what you did in the case?

21 A. In this case I was a take-down unit, which would be a
22 unit which once a sign is given that the deal has -- the
23 transaction has finished, I would go in and secure suspects
24 at that time and secure any residents or area which might be
25 part of the crime scene where the crime's taking place.

1 Q. Were you working with another officer?

2 A. I was working with Glen Campbell. Myself and
3 Officer Campbell were in the pickup together as a take-out
4 team.

5 Q. Okay. And tell me what your duties were again that
6 night, please?

7 A. Our duties ---

8 THE COURT: Tell us what you did.

9 THE WITNESS: Myself and Officer Campbell waited
10 outside the immediate area. We were parked about a block
11 away from the actual incident location, in radio contact with
12 the rest of the unit.

13 Once the word was given to move in, myself and
14 Officer Campbell pulled out of our waiting spot, drove down
15 the road and come around the back side of the house. And
16 from the back end of Saint Johns, I believe it was,
17 approached the house. The -- we knew we were dealing with a
18 female, and we knew there were two other people there,
19 through radio communications. At that time, myself and
20 Officer Campbell exited the truck, advanced to the house.

21 As we were advancing to the house, two black males
22 were near the gate. We ordered them to get on the ground,
23 bypassing them, allowing the other take-out team to handle
24 them.

25 We encountered a black female on the stairs of the

1 apartment. Officer Campbell encountered a black female,
2 passed her back to me. I encountered her, took her down to
3 the ground, handcuffed her, and she was turned over to
4 another officer who was behind me, and myself and Officer
5 Campbell proceeded into the house to secure the house.

6 Q. All right. Stop just one second. Let's go back a
7 minute. Did you recognize the two black males that you told
8 to get down on the ground?

9 A. No, I didn't.

10 Q. You did not recognize them. Okay. After you had
11 secured the female, what did you do then?

12 A. After we secured the female ---

13 Q. What did you do?

14 A. I proceeded to follow Officer Campbell into the house.
15 As we were going up the stairs, someone said that -- someone
16 hollered out, "It was thrown on the ground." And I looked on
17 the ground. There is a package on the ground. And whoever
18 was behind me -- I don't recall who that was -- secured her
19 and that immediate area. And then I followed Campbell,
20 Officer Campbell, into the house to secure the house to make
21 sure that no one else was there.

22 Q. And what did you do once you were in the house?

23 A. We got to the house, secured the house, secured the
24 scene, identified everybody. At that time the female was
25 brought upstairs, and I took her witness statement.

GREG LEE GOULD - DIRECT EXAM. BY MR. BOSNAK

205

1 Q. Who was in the house?

2 A. When we took the statement?

3 Q. When you went in to enter the house.

4 A. There was no one else in the house.

5 Q. No one else was in there. Did you search the house?

6 A. Yes. We searched through the house, but I don't
7 recall anyone else being in there.

8 Q. Did you find any other drugs in the house?

9 A. At that time we just did a search for people. I
10 didn't search the house for drugs.

11 Q. Okay. Did you take the statement of the defendant?

12 A. I took a statement from the female, yes.

13 Q. Did you read her rights?

14 A. Yes. And I read her an advice of rights form.

15 Q. Did she sign that?

16 A. I believe she did, yes.

17 MR. BOSNAK: May I approach the witness to refresh his
18 memory?

19 MR. MCGUIRE: Mind if I take a look at that?

20 (Mr. McGuire reviews document.)

21 BY MR. BOSNAK:

22 Q. Let me let you look at that. I'll ask you the same
23 questions.

24 A. (The witness reviews document.) No, she didn't.

25 Q. Okay. Let me ask you again: Did she sign her advice

1 of Constitutional rights?

2 A. She didn't sign the advice of rights, no, sir.

3 Q. Okay. Then you took a statement from her. Correct?

4 A. Yes. Yes, I did.

5 Q. And did she sign that?

6 A. She signed the statement.

7 Q. She signed the statement, but she didn't sign the
8 advice of Constitutional rights?

9 A. Yes, sir.

10 MR. BOSNAK: I don't have any further questions.

11 Answer anything Mr. McGuire might have for you.

12 THE COURT: Any questions?

13 CROSS-EXAMINATION

14 BY MR. MCGUIRE:

15 Q. Did you actually see Shawn Floyd throw down the drugs?

16 A. No, I did not.

17 Q. You were behind Glen Campbell?

18 A. Yes, sir.

19 Q. And she was alone in the house when y'all went in?

20 A. I don't remember seeing anyone else in the house, no,
21 sir.

22 Q. Do you remember if her kids were there or not?

23 A. I don't remember.

24 Q. That's fair enough. And what time did you take the
25 statement from her?

LASER BOND FORM 8 • PENGAD • 1-800-331-6989

1 A. It was in the -- it was in the late evening. I'm not
2 sure of the exact time.

3 THE COURT: By "late evening," what do you mean? This
4 was 11:00, 11:30 at night?

5 THE WITNESS: Yes, sir. It was around 11:00. That
6 was late evening.

7 THE COURT: So you're saying you took the statement at
8 11:30 or so that night?

9 THE WITNESS: Approximately, Your Honor. I'm not sure
10 of the exact time. It's on this witness statement.

11 BY MR. MCGUIRE:

12 Q. Sure. And you were able to take the statement at her
13 house because you had a laptop computer?

14 A. Yes.

15 Q. And she told you the statement and you typed it in?

16 A. Yes.

17 MR. MCGUIRE: That's all I have. Thank you.

18 MR. BOSNAK: Nothing else, Your Honor.

19 THE COURT: Thank you very much. You can step down.

20 (The witness is excused from the witness stand and
21 leaves the courtroom.)

22 THE COURT: Do you have another witness?

23 MR. BOSNAK: We would call Officer Sergeant Hux,
24 please.

25 (Officer Hux enters the courtroom.)

KEVIN O. HUX - DIRECT EXAM. BY MR. BOSNAK

209

1 Q. And what was your role in that?

2 A. Acting supervisor on the scene.

3 Q. Okay. And where did that take place?

4 A. Over on Reddin Road. The exact address would be

5

6 Q. Okay. Is that in Charleston?

7 A. In North Charleston, South Carolina.

8 Q. North Charleston, South Carolina. And what were your
9 duties that night? I mean, what did you do?

10 A. The drug action supervisor, to be on the scene as the
11 deal went down. I was on perimeter outside of the actual
12 target location.

13 Q. Was there another officer with you?

14 A. Detective Kuechler was with me.

15 Q. Detective Kuechler. And working the outer perimeter,
16 what did y'all do?

17 A. We mainly stayed in the area of Reddin Road, Saint
18 Johns, Spruill Avenue area. While doing that -- I don't know
19 the exact time -- in the eleven o'clock area, myself and
20 Detective Kuechler, me being the driver, pulled off of Saint
21 Johns Avenue onto McMillan which is a short little street
22 there, turned left on Spruill when I observed turning onto
23 Cosgrove a dark colored, a blue Cadillac coming off of
24 Cosgrove and taking a left onto Spruill, driven by a black
25 male.

1 Q. Now, why did that get your attention?

2 A. We were waiting for what we call the "target" to show
3 up to make a delivery of narcotics.

4 Q. And to the best of your belief, that was the type of
5 car?

6 A. I just seen that. We were waiting any time for that
7 particular vehicle to show up or the -- what we call the
8 "target" to show up. When I seen the vehicle, I turned
9 around and tried to get behind him. He traveled on, and I
10 actually lost sight of him.

11 When I turned back onto McMillan, as soon as you do,
12 Saint Johns is right there. And as I traveled -- of course,
13 this is at nighttime, but there's a clear view right up to
14 where Reddin and Saint Johns Road is. And I noticed a car,
15 which looked exactly like the one I'd seen pulling off of
16 Cosgrove onto Spruill, parked near some shrubberies just off
17 the shoulder of Saint Johns Avenue.

18 As I traveled closer, confirmed, yes, it looks like
19 the same vehicle. And we didn't see anybody inside of it.
20 I travelled past probably 200 feet, made a U-turn in the
21 road, and come back and parked in front of it. Again, still
22 didn't see nobody inside the vehicle.

23 Q. Did you see anybody around the vehicle?

24 A. No, sir.

25 Q. Did you see anybody in the road?

KEVIN O. HUX - DIRECT EXAM. BY MR. BOSNAK

211

1 A. No, sir.

2 Q. All right. What did you do next?

3 A. I positioned my car in front of the car that was
4 parked beside the shrubbery, and Detective Kuechler stayed
5 there. In this happening, what I call "the deal went down,"
6 they took down two people I believe come from that vehicle,
7 in front of the 1855-B address.

8 Q. Where were you when you heard the take-down signal?

9 A. Parked in front of the car.

10 Q. What did you do when you heard that?

11 A. I got out and walked down Reddin Road, which is
12 probably 150, 200 feet to where the two defendants were at
13 that time and already cuffed.

14 Q. Okay. Can you identify the defendant today?

15 A. That defendant there, Mr. Battle, and there was
16 another defendant somewhere.

17 Q. And do you remember what Mr. Battle had on at that
18 time?

19 A. I recollect a white shirt, but I don't recall directly
20 exactly what all he had on.

21 Q. Is there a school anywhere close?

22 A. There's a Saint Johns Catholic School.

23 Q. Do you know how far it is?

24 A. It's exactly one-tenth of a mile from 1855-B Reddin.

25 Q. So it's one-tenth of a mile from where this dope deal

1 went down?

2 A. Yes, sir, approximately.

3 MR. BOSNAK: Thank you. Answer any questions

4 Mr. McGuire might have for you.

5 CROSS-EXAMINATION

6 BY MR. MCGUIRE:

7 Q. You never saw Mr. Battle with any drugs?

8 A. I -- I did not, no.

9 Q. No. And were you part of the search of his vehicle?

10 A. I don't recollect that I personally searched that
11 vehicle.

12 Q. Do you know who did?

13 A. I have no idea at this point.

14 Q. Okay. And what about the search of his house? Were
15 you involved in that?

16 A. No, sir.

17 MR. MCGUIRE: Okay. That's all I have for you.

18 Thank you.

19 MR. BOSNAK: Two more questions on redirect, please,

20 Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. BOSNAK:

23 Q. What county did this occur in?

24 MR. MCGUIRE: Beyond the scope of my cross,

25 Your Honor.

JAMES NELSON - DIRECT EXAM. BY MR. BOSNAK

213

1 THE COURT: That's all right. The charges are going
2 to be Charleston County.

3 THE WITNESS: Charleston County. It occurred in
4 Charleston County.

5 BY MR. BOSNAK:

6 Q. And one thing about the school, do you know what type
7 of school it is?

8 A. It's a private Catholic school.

9 MR. BOSNAK: That's all. Thank you.

10 THE COURT: Thank you very much. You can step down.

11 THE WITNESS: Thank you, Your Honor.

12 (The witness is excused from the witness stand and
13 leaves the courtroom.)

14 THE COURT: Call your next witness.

15 MR. BOSNAK: The next witness we call will be
16 James Nelson.

17 JAMES NELSON,

18 being first duly sworn by the Clerk, was examined and
19 testified as follows:

20 THE CLERK: Please give your full name and spell your
21 last.

22 THE WITNESS: James Nelson, N-E-L-S-O-N.

23 DIRECT EXAMINATION

24 BY MR. BOSNAK:

25 Q. Mr. Nelson, where do you work?

1 A. I work for WSI.

2 THE COURT: Where?

3 THE WITNESS: WSI.

4 THE COURT: W?

5 THE WITNESS: S-I.

6 THE COURT: What is that?

7 THE WITNESS: That's a stevedoring company.

8 BY MR. BOSNAK:

9 Q. How long have you worked there?

10 A. I worked for them two years, but I worked for another
11 stevedore company for another two.

12 Q. Okay. Are you any relationship to the defendant
13 Earnest Battle?

14 A. Yes, I am.

15 Q. What relationship are you to him?

16 A. First cousin.

17 Q. Oh, first cousin. Are you any relationship -- are you
18 related to LaShawn Floyd?

19 A. It's a distant relationship. I think eighth, ninth
20 cousin, something like that.

21 Q. Eighth or ninth cousin. So you are related to her?

22 A. Yes.

23 Q. Does everybody call you James?

24 A. Well, everybody in the family call me Eddie.

25 Q. Eddie?

- 1 A. Right.
- 2 Q. People at work, would they call you Eddie or James?
- 3 A. James.
- 4 Q. Only people in the family call you Eddie?
- 5 A. Right.
- 6 Q. Now, you've been in some trouble before, haven't you?
- 7 A. Yes, I have.
- 8 Q. Tell us what kind of trouble you've been in.
- 9 A. I've been in some trouble with some marijuana, and I
- 10 had a burglary charge, and that's -- that's about the extent
- 11 of it. Marijuana and a burglary.
- 12 Q. You can't think of anything else?
- 13 A. No.
- 14 Q. Okay. There might be something else, but that's all
- 15 you recall. Right?
- 16 A. Right.
- 17 Q. Okay. Now, I'm going to take you back to July the
- 18 15th of 1999, that afternoon. Do you recall what you were
- 19 doing?
- 20 A. Yes.
- 21 Q. Tell us what you were doing.
- 22 A. Well, early that day I was -- me and my girlfriend had
- 23 an argument. So I came down to my mother's house. Then she
- 24 called me back, telling me to bring -- bring the stuff back.
- 25 So I carried some of my stuff back on the bus and ---

- 1 Q. Excuse me. Is this to your girlfriend's or to your
2 mother's house?
- 3 A. My girlfriend.
- 4 Q. To your girlfriend's. All right.
- 5 A. And on the way back down, I ran into Earnest, and I
6 tell him I need a ride back to my apartment. And he tell me,
7 you know, he'd give me a ride.
- 8 Q. Okay. Now, when you saw Earnest, where were you? The
9 location?
- 10 A. On Cooper and American Street.
- 11 Q. Okay. In Charleston?
- 12 A. Right.
- 13 Q. And did Earnest give you a ride?
- 14 A. Yes, he did.
- 15 Q. And where did y'all go?
- 16 A. We came to North Charleston to LaShawn's mother's
17 house.
- 18 Q. Where does she live?
- 19 A. On Reddin Road.
- 20 Q. Reddin Road. How far from LaShawn?
- 21 A. Maybe three houses.
- 22 Q. Three houses. Did you stop in to see LaShawn?
- 23 A. On the way out.
- 24 Q. On the way out. What did you do at LaShawn's mother'
25 house?

1 A. I got out of the car and sit on the step, talked to
2 her brother. He went inside. And after he came outside, we
3 went down to LaShawn's house, and I sit in the car, and he
4 went and talked to LaShawn for a while. And he came back
5 out, and we went and got something to eat.

6 Q. Where did you go to get something to eat?

7 A. A little restaurant in the plaza right down on
8 McMillan.

9 Q. Okay. How long did you stay there?

10 A. Approximately about 30 minutes.

11 Q. Who paid for the lunch?

12 A. He did.

13 Q. Did you have any money on you?

14 A. No, I didn't.

15 Q. After that where did you go?

16 A. We went downtown. And on the way downtown, he -- he
17 got a phone call. And he got a phone call, and he told me it
18 was LaShawn. Right? And so he told her ---

19 Q. No. Don't tell us what he said. Just he got a call?

20 A. He got a phone call, and he stopped to a phone booth
21 and made another phone call.

22 Q. Okay. So he got a phone call. Was that on a cell
23 phone?

24 A. Yes.

25 Q. And you're saying he stopped the car and made another

1 phone call at a pay phone?

2 A. Right.

3 Q. Okay. After he made the call at the pay phone, what
4 did y'all do?

5 A. Went to his apartment and to his room.

6 Q. All right. Where is his apartment?

7 A. On Radcliffe Street.

8 Q. Radcliffe Street. Does he live with anybody?

9 A. His sister.

10 Q. His sister. All right. When you're in the apartment
11 on Radcliffe Street, what did y'all do then?

12 A. Well, he -- he got a little stuffed animal, and he
13 pulled a white bag out -- I mean, a bag out with white
14 substance in it, and he started mixing it with another white
15 substance. And after that he put it in his pocket, and we
16 came back to North Charleston.

17 Q. Okay. A bag of white substance?

18 A. Right.

19 Q. I'm going to show you what's been marked State's
20 exhibit 13. Did it look like that? Is that the type of bag
21 he put it in?

22 A. Yes.

23 MR. BOSNAK: Let the record show that he identified
24 the plastic bag and white powder in the plastic bag.

25 THE COURT: Of what? State's exhibit?

JAMES NELSON - DIRECT EXAM. BY MR. BOSNAK

219

1 MR. BOSNAK: Thirteen.

2 THE COURT: Proposed exhibit 13?

3 MR. BOSNAK: Yes, sir. Proposed exhibit 13.

4 BY MR. BOSNAK:

5 Q. I'm just asking: In your opinion, what did you think
6 was in the bag?

7 A. Cocaine.

8 Q. Did he say anything -- scratch that. I withdraw that
9 question.

10 What time of the evening was that?

11 A. Around about 8:30 or 9:00.

12 Q. 8:30 or nine o'clock. Okay. And where did y'all go
13 then?

14 A. We came back to North Charleston and parked on Saint
15 Johns. And he got out of the car, and I got out of the car.
16 And I walked down Reddin, and he went in the yard. And I
17 walked down Reddin apiece, and I turned around and came back,
18 and he was standing on the corner of Reddin and Saint Johns.
19 He called me. He asked me for a cigarette.

20 Q. Okay. Did you give him a cigarette?

21 A. Yes, I did.

22 Q. Then what happened?

23 A. Then a car pulled up, a white car, and he said that
24 was the police. So he walked in the yard. He walked through
25 the yard, came around the front gate, and he was arrested at

1 that point.

2 Q. Why did he walk back through the yard?

3 A. I really don't know why he walked back through the
4 yard. But I did -- I followed him through the yard and came
5 back to the other side.

6 Q. What were you wearing that night?

7 A. I don't remember. I think I had on a sweatpants and
8 -- and a T-shirt, I think. But I don't remember what. I
9 think, you know.

10 Q. Now, did he ever tell you that he was going to sell
11 drugs to LaShawn?

12 A. He told me that he had a sale, and LaShawn knew the
13 guy.

14 Q. Did you know where he was going when he went through
15 that cut-through?

16 A. No. I sure didn't.

17 Q. Were the drugs yours?

18 A. No.

19 Q. Did you have anything to do with the drugs?

20 A. No.

21 Q. But you knew they were drugs?

22 A. Correct.

23 Q. And do you feel like he was going to go sell them?

24 A. Sir?

25 Q. Did you feel like he was going to go sell them or tak

1 them somewhere?

2 A. Yes.

3 Q. But you went along. Right?

4 A. Right.

5 Q. Okay. Now, you were arrested. You didn't give a
6 statement, did you?

7 A. No, I didn't.

8 Q. Okay. When did you decide to come forward?

9 A. After about eight, nine months in jail.

10 Q. Why did you decide to come forward?

11 A. Because I didn't have nothing to do with it.

12 Q. Is that why you're testifying here today?

13 A. Yes.

14 Q. Have I offered you any kind of deal? Or anybody from
15 the Solicitor's office?

16 A. No, sir.

17 Q. To the best of your knowledge, have I or anybody from
18 the Solicitor's office offered your attorney anything for
19 exchange for your testimony today?

20 A. No, sir.

21 Q. Let me ask you: Why did you park on Johns Street?
22 Why did y'all park right there on Johns Street where you
23 parked on the side of the road?

24 A. I don't know why he parked on Johns Street.

25 Q. Earlier that day, though, when you went to LaShawn's

1 house, where did you park?

2 A. In front.

3 Q. Just right up front?

4 A. Right.

5 Q. Okay. Other than you and Earnest being cousins, are
6 y'all friends?

7 A. We really don't hang out. He -- he might come by our
8 apartment once in a while, but we really don't hang out.

9 MR. BOSNAK: Okay. Answer any questions Mr. McGuire
10 may have you.

11 CROSS-EXAMINATION

12 BY MR. MCGUIRE:

13 Q. Eddie, you were on foot because your -- I think your
14 car was broken?

15 A. Yes.

16 Q. Was that a Toyota Cressida?

17 A. Yes.

18 Q. Okay. And it blew a head gasket or something?

19 A. Blew the engine.

20 Q. Blew the engine? So you were needing rides, huh?

21 A. Yes.

22 Q. And Eddie is not your real name. That's just your
23 street name?

24 A. No. That's a nickname my mother gave me when I was
25 born.

- 1 Q. And people that know you call you Eddie?
- 2 A. Only family.
- 3 Q. Only family?
- 4 A. Correct.
- 5 Q. Okay. So Shawn's family?
- 6 A. Yeah. Just the family, yes.
- 7 Q. She calls you that?
- 8 A. Correct.
- 9 Q. Now, Eddie, you were the one who walked down the
10 street by the Yellow Cab. Right?
- 11 A. Past the Yellow Cab, yes.
- 12 Q. Past the Yellow Cab. And then you turned around and
13 you came back past the Yellow Cab again?
- 14 A. Yes.
- 15 Q. Okay. And Shawn's mama, she lives down that street?
- 16 A. Yes, she does.
- 17 Q. And her name is Sonia?
- 18 A. Yes.
- 19 Q. And you know Sonia?
- 20 A. Right.
- 21 Q. And, Eddie, you have a brother named John?
- 22 A. Yes.
- 23 Q. John is deceased now?
- 24 A. Yes.
- 25 Q. And John was pretty close to Sonia?

1 MR. BOSNAK: Your Honor, objection. I don't see the
2 relevancy of this. This wasn't on direct examination.

3 MR. MCGUIRE: I'll hook it up, Your Honor. It's
4 relevant.

5 THE COURT: Go ahead.

6 MR. MCGUIRE: Thank you, Your Honor.

7 BY MR. MCGUIRE:

8 Q. John was pretty close with Sonia, LaShawn's mom?

9 A. Yes, he was.

10 Q. Were you at the bond hearing when Shawn told Earnie
11 that she gave his name to the police?

12 A. I didn't hear that.

13 Q. You didn't hear that?

14 A. No.

15 Q. And, Eddie, you didn't give a statement that night,
16 did you?

17 A. No, I didn't.

18 Q. You stayed quiet?

19 A. Yes.

20 Q. And you stayed quiet in the county jail for about ten
21 months?

22 A. Yes.

23 Q. And then, Eddie, you were given an opportunity at the
24 jail, weren't you?

25 A. Yes.

JAMES NELSON - CROSS-EXAM. BY MR. MCGUIRE

225

1 Q. And what was that?

2 A. I was to give a statement, one of the ground.

3 Q. And, Eddie, as you understand it, your about to give a
4 statement is what got you out of jail that day?

5 A. No.

6 Q. Did you get out of jail that day?

7 A. I did.

8 Q. So your bond just magically got lowered after you gave
9 a statement?

10 A. No. I had a bond before I gave a statement.

11 Q. Right. You got out of jail because your bond got
12 lowered because you gave a statement?

13 A. No. The bond was still the same.

14 Q. Your bond was still the same?

15 A. Yeah.

16 Q. It wasn't lowered?

17 A. No. I got a bond at 35,000, and the other one is
18 35,000.

19 Q. You got out of jail the same day you gave a statement?

20 A. Yes.

21 Q. Eddie, are you an honest man?

22 A. Yes.

23 Q. You are? Were you an honest man when you were a drug
24 dealer?

25 MR. BOSNAK: Objection, Your Honor.

1 THE COURT: What's the objection?

2 MR. BOSNAK: Badgering the witness, and it calls for a
3 conclusion that isn't in the evidence of what he's testified
4 to at this point.

5 THE COURT: I appreciate your position. I overrule
6 your objection.

7 BY MR. MCGUIRE:

8 Q. So, Eddie, your testimony is that you were an honest
9 man when you were a drug dealer?

10 A. In the sense of selling the marijuana I was selling,
11 yes.

12 Q. Okay. Were you an honest man when you took the TVs
13 and VCRs from AllStar Rental?

14 A. I didn't take them.

15 Q. You pled guilty to it, though?

16 A. Yeah, because there was a witness saying that I did.
17 And I didn't. I didn't take them.

18 Q. But you pled guilty to it?

19 A. I did.

20 Q. And you got in front of a judge and said you were
21 guilty?

22 A. Yes.

23 MR. BOURDON: Your Honor, I object to this line of
24 questions. If we could approach or have the jury excused at
25 this point?

1 THE COURT: Members of the jury panel, I need you to
2 go to the jury room a moment, please.

3 (Whereupon, the jury leaves the courtroom at
4 approximately 2:37 p.m.)

5 MR. MCGUIRE: I believe Mr. Bosnak -- he's making the
6 objections.

7 THE COURT: Now, what's your objection? Well, there's
8 supposed to be one lawyer that appears with each witness.
9 You all decide which one. I haven't been keeping score.

10 MR. MCGUIRE: Mr. Bosnak already did the direct
11 examination, Your Honor.

12 THE COURT: That's true. So I guess if he's objecting
13 on that basis, I'll have to sustain him on that also.

14 MR. BOSNAK: Mr. McGuire is bringing up a conviction
15 that is over ten years old. And like these burglaries, this
16 was back in '86. They're older ---

17 THE COURT: Let's see the rule. I forgot to bring it
18 back out here. Mr. McGuire, you're going to have to use that
19 other copy.

20 MR. MCGUIRE: I still have my spare, Your Honor.

21 THE COURT: Let's see what it says.
22 Now, your objection is what?

23 MR. BOSNAK: Your Honor, that these convictions ---

24 THE COURT: When was the conviction?

25 MR. BOSNAK: In 1986.

1 THE COURT: 1986, he was convicted of what?

2 MR. BOSNAK: He was convicted of burglary.

3 THE COURT: Burglary?

4 MR. BOSNAK: Yes, sir.

5 THE COURT: Is that what you're talking about,
6 Mr. McGuire?

7 MR. MCGUIRE: Yes, sir. And there's also a grand
8 larceny that was concurrent with that.

9 THE COURT: Grand larceny. All right. But that's
10 what you're referencing?

11 MR. MCGUIRE: Yes, sir.

12 THE COURT: All right. And you agree that the
13 conviction was in '86?

14 MR. MCGUIRE: I agree with that.

15 THE COURT: Beg your pardon?

16 MR. MCGUIRE: I agree with that.

17 THE COURT: Okay. And what's the ---

18 MR. MCGUIRE: Your Honor, to kind of cut to the bottom
19 line, it was brought up in direct.

20 THE COURT: Beg your pardon?

21 MR. MCGUIRE: It was brought up in direct examination.

22 THE COURT: About his conviction?

23 MR. MCGUIRE: Yes, sir.

24 THE COURT: Well, the conviction itself was, but I
25 mean -- all right.

JAMES NELSON - CROSS-EXAM. BY MR. MCGUIRE

229

1 MR. BOSNAK: And you can't go into particulars of the
2 conviction, Your Honor.

3 THE COURT: I agree with that, too, if that's what
4 your question is. Anything else you want to ask him about
5 that?

6 MR. MCGUIRE: Yes, sir, Your Honor. I want to ask him
7 about -- let me just tell you, Your Honor, just briefly what
8 I want to ask him.

9 THE COURT: All right. I appreciate that.

10 MR. MCGUIRE: A 1980 arrest for possession with intent
11 to distribute marijuana, conspiracy ---

12 THE COURT: What year?

13 MR. MCGUIRE: 1980.

14 THE COURT: Eighty?

15 MR. MCGUIRE: Yes, sir.

16 THE COURT: Marijuana. What was the charge?

17 MR. MCGUIRE: PWID marijuana and a conspiracy to
18 violate the narcotic laws.

19 THE COURT: Was he convicted of that?

20 MR. MCGUIRE: He pled guilty October of 1980. He
21 received a 30 ---

22 THE COURT: He pled guilty to both of those charges?

23 MR. MCGUIRE: I believe so, yes.

24 THE COURT: All right. And what do you want to ask
25 him about that?

1 MR. MCGUIRE: Well, that he does, in fact, have that
2 conviction and that he pled guilty to it and received the
3 benefit of a plea bargain.

4 THE COURT: And I believe you all brought that out on
5 direct. Right?

6 MR. BOSNAK: I just asked him about his convictions.
7 He just said he had one for simple possession of marijuana,
8 if I'm not mistaken, and one other ---

9 THE COURT: I don't remember him classifying, really.
10 I think he just said something on marijuana.

11 MR. BOSNAK: Yes, sir. Marijuana and burglary.

12 THE COURT: And burglary.

13 MR. BOSNAK: Yes, sir. I think that's the only two.

14 THE COURT: All right. And what is your position in
15 regard to that?

16 MR. MCGUIRE: Your Honor, his exact words, I believe,
17 were: "I've had some trouble with marijuana and burglary."
18 He didn't exactly say what kind of crime it was.

19 And, Your Honor, I've passed up a case, State vs.
20 Jones, which is there in front of you. I think the Solicitor
21 has a copy. It's a case right on point which says that I'm
22 allowed to go into an extensive criminal record if there is a
23 history of plea bargaining to show that this witness has a
24 knowledge of how the system works and how plea bargains work.

25 And that's the position that he's in, in this case.

JAMES NELSON - CROSS-EXAM. BY MR. MCGUIRE

231

1 And to show that knowledge, that case is on point and I'm
2 allowed to go into old convictions.

3 MR. BOSNAK: First of all, Your Honor, this is the
4 first we've seen of this. And number two, saying you have
5 trouble with marijuana doesn't say you have a conviction. He
6 could have been addicted to marijuana. That doesn't mean he
7 had to be in any trouble about it.

8 THE COURT: No. I think it's fair, and the jury can
9 certainly surmise that and everything. I appreciate your
10 position. I overrule your objection at this point to this
11 line of questions. If you think of something else or want to
12 raise something else, you feel free to do so.

13 Bring the jury back in.

14 (Whereupon, the jury returns to the courtroom at
15 approximately 2:42 p.m.)

16 THE COURT: All right. You may continue to
17 cross-examine the witness.

18 MR. MCGUIRE: Thank you, Your Honor.

19 BY MR. MCGUIRE:

20 Q. Eddie, you have a conviction for possession with
21 intent to distribute marijuana and conspiracy to violate the
22 narcotics Act from 1980. Is that right?

23 A. Yes, I do.

24 Q. And you pled guilty?

25 A. Yes.

1 Q. In November of 1980, you had a distribution of
2 marijuana charge and a possession with intent to distribute
3 marijuana charge and you pled guilty again?

4 A. Yes.

5 Q. And you went to prison that time?

6 A. Yes.

7 Q. In 1984, Eddie, you pled guilty to possession with
8 intent to distribute marijuana again. Is that right?

9 A. '84?

10 Q. October of 1984.

11 A. I don't remember that one.

12 Q. You don't remember that one?

13 A. No. I didn't.

14 Q. Okay. And do you remember the 1987 plea to burglary
15 and grand larceny? I believe you do remember that one.

16 A. Yes.

17 Q. You went to prison again?

18 A. Right.

19 Q. 1989, Eddie, you were arrested, and in April of 1990
20 you pled guilty to possession with intent to distribute
21 marijuana and you went to prison again?

22 A. Yes.

23 Q. And your testimony still remains that you were an
24 honest drug dealer?

25 A. I -- I break the law; but, you know, I'm honest.

JAMES NELSON - CROSS-EXAM. BY MR. MCGUIRE

233

1 Q. Okay. Okay. You break the law, but you're honest.

2 A. I mean, you know, the drug part of it, but I'm -- but
3 I'm a honest person.

4 Q. And you do that for money?

5 A. Right.

6 Q. So you break the law for money. You agree with that?

7 A. Then I did.

8 Q. Okay. Eddie, have you told the whole truth today?

9 A. Yes.

10 Q. Can we rely on you to tell the truth?

11 A. Yes.

12 Q. Is there any reason why you would not be truthful?

13 MR. BOSNAK: Your Honor, objection. It's been asked
14 and answered twice now.

15 THE COURT: I'll allow the question. Go ahead.

16 MR. MCGUIRE: Thank you, Your Honor.

17 BY MR. MCGUIRE:

18 Q. Is there any reason why you would not tell the truth?

19 A. No reason why I shouldn't tell the truth.

20 Q. No reason at all? Eddie, how much time are you facing
21 on these charges? Your charges are still pending, by the
22 way, aren't they?

23 A. Yes.

24 Q. And how much time could you get?

25 A. I don't know exactly.

1 Q. If I told you it was almost 50 years, you would agree
2 with that?

3 A. Could be.

4 Q. Could be. Are you concerned about that?

5 A. Yes, I'm concerned about it.

6 Q. Are you very concerned about it?

7 A. I'm concerned.

8 Q. Concerned. Eddie, is there anybody looking over your
9 shoulder to make sure you say the right thing today?

10 A. No.

11 Q. No? Eddie, when you met the prosecutor -- and you've
12 met Mr. Bosnak?

13 A. Yes.

14 Q. He is the man in the darker jacket in the middle here?

15 A. Yes.

16 Q. Okay. And you signed sort of like an agreement with
17 him. Do you remember signing a piece of paper?

18 A. I signed the statement I gave him.

19 Q. Okay. And you remember also signing a piece of paper
20 called a "proffer agreement"?

21 A. Proffer? Yes.

22 Q. Okay. And, Eddie, it says that if they want to, they
23 can polygraph you and make sure you're telling the truth.

24 They haven't done that to you, have they?

25 A. No.

JAMES NELSON - CROSS-EXAM. BY MR. MCGUIRE

235

1 Q. No. Eddie, why are your charges still pending now if
2 you've come forward and given this statement saying you
3 didn't have anything to do with it?

4 MR. BOSNAK: Your Honor, he wouldn't have any
5 knowledge of that.

6 THE COURT: Well, can you answer that?

7 THE WITNESS: No, sir.

8 THE COURT: Okay.

9 BY MR. MCGUIRE:

10 Q. Eddie, when you gave your statement, that was after
11 being in the Charleston County jail for about ten months.
12 Right?

13 A. Right.

14 Q. And you were given an opportunity to, I guess, turn
15 State's evidence. Is that how you understand it? Help them?

16 A. Help them and me.

17 Q. Help them ---

18 A. Possibly.

19 Q. Help them and you?

20 A. Possibly.

21 Q. And what kind of help do you expect, Eddie?

22 A. Anything they can do for me.

23 Q. And what can they do for you, Eddie? They can make
24 you not go to jail, can't they?

25 A. Possible.

1 Q. Possible. You have a pretty clear understanding,
2 Eddie, that the only person in this courtroom that has any
3 influence over how long you go to prison and for what charges
4 or if you just get your case dismissed are these fellows.
5 Right? The prosecutor? I can't dismiss your case; can I,
6 Eddie?

7 A. No.

8 Q. And you've pled guilty a lot, and you know how the
9 system works. Your lawyer goes and negotiates on your behalf
10 with the prosecutor. Isn't that right?

11 A. I pled guilty because I was wrong.

12 Q. Well, except in the burglary because you said you
13 weren't guilty of that one.

14 A. Not really.

15 Q. Okay. But you told the judge you were guilty?

16 A. Yes.

17 Q. So how does it work in this case, Eddie? Did your
18 lawyer negotiate with Mr. Bosnak for you? Is that how it's
19 working?

20 A. No. They haven't talked about that.

21 Q. Eddie, who is being prosecuted today? Who is on trial
22 today?

23 A. Mr. Battle.

24 Q. Mr. Battle. Do you have a clear understanding that
25 the prosecutor wants to convict Earnest Battle today? You

1 know that. Right?

2 A. Yeah, I guess.

3 Q. Right. And like you said, your statement can possibly
4 help them and help you. Right?

5 A. Yes.

6 Q. And when I say "help you," you know that I'm talking
7 about those 50 years. Right?

8 A. (There was no response.)

9 Q. Eddie, you said you broke the law for money. Would
10 you lie to save your life?

11 A. To save my life?

12 Q. Yes.

13 A. My life, it ain't on the line.

14 Q. Fifty years wouldn't be the end of your life, Eddie?

15 A. Fifty years, yeah. End of my life on the street or in
16 jail.

17 Q. Well, let me ask you this. Please pay attention to
18 the question: Would you lie to save your life?

19 A. At point -- gunpoint maybe.

20 MR. MCGUIRE: That's all I have.

21 REDIRECT EXAMINATION

22 BY MR. BOSNAK:

23 Q. Eddie, how old are you?

24 A. Forty-six.

25 Q. Forty-six. And this first charge that Mr. McGuire is

LASER BOND FORM B • PENGAD - 1-800-631-9999

1 talking about back in 1980, how old were you?

2 A. In 1980?

3 THE COURT: When were you born? Just ask it that way.

4 THE WITNESS: Fifty-four.

5 THE COURT: Fifty-four?

6 THE WITNESS: Yes, sir.

7 BY MR. BOSNAK:

8 Q. So how old were you in 1980?

9 A. In 1980 I was -- I would say 26.

10 Q. Twenty-six. So these marijuana charges that you had
11 basically were in your twenties?

12 A. Correct.

13 Q. Twenties? Early thirties? Correct?

14 A. Right.

15 Q. And the last charge you have here, isn't it 1990?

16 A. 1990, yes.

17 Q. Okay. And that's over 11 years ago?

18 A. Yes, sir.

19 Q. You haven't been in any trouble in the last 11 years,
20 have you?

21 A. No, sir.

22 Q. Is there any reason for that?

23 A. I decided to go straight and work.

24 Q. Okay. Now, you've never been -- you've never been in
25 any trouble from cocaine, have you?

JAMES NELSON - REDIRECT EXAM. BY MR. BOSNAK

239

1 A. No, I haven't.

2 Q. Just marijuana?

3 A. Yes.

4 Q. Okay. Now, let's go back to this about when you
5 bonded out. Okay. Who paid for the bond?

6 A. Well, I had an income tax check, and I got some money
7 from my sister, and my daughter sent me some money, and we
8 got enough to get me out.

9 Q. Okay. Did the prosecutor release you?

10 A. No, he hasn't. He didn't.

11 Q. Okay. Do you have a lawyer?

12 A. Yes, I do.

13 Q. Okay. And is he in the court?

14 A. Yes.

15 Q. Okay. And what did he tell you to say today? What
16 did he tell you to say today?

17 A. He tell me to tell the truth.

18 Q. Okay. Now, Mr. McGuire made a big deal about all the
19 solicitors, me, and that type of stuff. When was the first
20 time you ever met me?

21 A. I'd say Monday or Tuesday.

22 Q. Monday or Tuesday. Have you ever met me before?

23 A. No, I haven't.

24 Q. Okay. And do you remember the proffer I got you to
25 sign?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A. Yes.

Q. Do you remember why I told you I asked you to sign it?

A. No.

MR. BOSNAK: Okay. That's all. Thank you.

THE COURT: Thank you very much. You can step down.

THE WITNESS: All right.

THE COURT: Call your next witness.

MR. BOSNAK: One minute on Ms. LaShawn Floyd? My understanding was that her child had to go to the hospital. Oh, she is ---

MR. CADMUS: Your Honor, may my client be excused?

THE COURT: Yes.

(The witness is excused from the witness stand and leaves the courtroom.)

(The afternoon session of Thursday, June 8, 2001, is continued on page 241 in Volume II of the transcript.)

LASER BOND FORM B
PENGAD - 1-800-831-6888

STATE OF SOUTH CAROLINA) THE COURT OF GENERAL SESSIONS
 COUNTY OF CHARLESTON) THE NINTH JUDICIAL CIRCUIT
 THE STATE OF SOUTH CAROLINA)
)
)
 VS.) CASE NO. 99-GS-10-7109,
) 99-GS-10-7110,
 EARNEST BATTLE,) 99-GS-10-7111
)
 DEFENDANT.)

VOLUME II OF II
 (PAGES 241-244)

TRANSCRIPT OF RECORD

JUNE 4, 6, 7, 8, 2001

CHARLESTON, SOUTH CAROLINA

B E F O R E:

THE HON. THOMAS L. HUGHSTON, JR., JUDGE

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

MIKE BOSNAK, ESQ.
 MARK BOURDON, ESQ.
 JOHN CROUT, ESQ.
 ATTORNEYS FOR THE STATE

WILLIAM MCGUIRE, ESQ.
 LESLIE SARJI, ESQ.
 ATTORNEYS FOR THE DEFENDANT

BRENDA COOLEY
 CIRCUIT COURT REPORTER

1 (The afternoon session of Thursday, June 7, 2001,
2 continues from page 240 of Volume I as follows:)

3 (Ms. Floyd enters the courtroom.)

4 THE COURT: Everybody on the jury comfortable?
5 Anybody need a break? Everybody okay? All right.

6 LASHAWN FLOYD,
7 being first duly sworn by the Clerk, was examined and
8 testified as follows:

9 THE CLERK: Please be seated, and watch your step.
10 Please give your full name to the Court and spell your last.

11 THE WITNESS: My name is LaShawn Floyd. My last name
12 is spelled F-L-O-Y-D.

13 DIRECT EXAMINATION

14 BY MR. BOSNAK:

15 Q. Good afternoon, Ms. Floyd.

16 A. How you doing?

17 Q. Can you tell me, do you go to school or do you work
18 now?

19 A. Both.

20 Q. Both. Where do you go to school?

21 A. I go at Trident Technical College.

22 Q. How long have you been there?

23 A. A year and a half.

24 Q. A year and a half?

25 A. (The witness nods head up and down.)

1 Q. A year and a half. Okay. And do you know the
2 defendant?

3 A. Yes, I do.

4 Q. How do you know him?

5 A. He is my cousin.

6 Q. He is your cousin?

7 A. Yes.

8 Q. Do you refer to him as your cousin?

9 A. No, I don't.

10 Q. How do you refer to him as?

11 A. I call him my uncle.

12 Q. Oh, okay. And do you know Mr. James Nelson?

13 A. Yes, I do.

14 Q. Are you related to him?

15 A. Yes.

16 Q. How are you related to him?

17 A. My cousin, also.

18 Q. Cousin, also. Is he a closer cousin or a distant
19 cousin?

20 A. Distant.

21 Q. A distant cousin. Mr. Battle, the defendant, how
22 close is he to you?

23 A. We were real close.

24 Q. You were real close. Okay. I'm going to take you
25 back to July the 14th of 1999. Do you recall that evening?

1 A. Yes, I do.

2 Q. Do you recall getting a phone call from a
3 Matthew Wallace?

4 A. Yes.

5 Q. Okay. What was that phone call about?

6 A. He called me because he wanted to get some -- he
7 wanted to get some coke and he wanted to know can I get some
8 for him.

9 Q. Do you have any cocaine?

10 A. No, I didn't.

11 Q. Did you tell him that?

12 A. No. I told him I could probably get it for him.

13 Q. Okay. Who were you going to get the cocaine from?

14 A. From Earnest Battle.

15 Q. Earnest Battle. So what did you tell Mr. Wallace?

16 A. I told him that -- when he called me, we talked on the
17 phone a little while. The conversation was he wanted seven,
18 seven or nine. First it was nine. Then I talked to him
19 again, and he said "seven." And I said ---

20 Q. Seven what?

21 A. Ounces of pot.

22 Q. Of what?

23 A. Cocaine.

24 Q. Okay.

25 A. And I told him that probably, you know, I couldn't --

LASHAWN FLOYD - DIRECT EXAM. BY MR. BOSNAK

244

1 myself, probably I couldn't do seven or nine but maybe less
2 than that, probably like four or five.

3 And he told me, "Well, when could you get it to me,"
4 you know.

5 And I told him where I need a number that I can call
6 you back; you can call me back, you can page me back, or
7 whatever.

8 And he told me, well, he was at a pay phone right now
9 and he would be calling me back.

10 So I talked to him, and I told him -- I called
11 Earnest, and I told him that somebody wanted to get some
12 cocaine. And he didn't want to talk on the phone. So he
13 told me he'll be by because he was nearby, like, around the
14 corner or something.

15 Q. Okay. Let me stop you a minute. Did you call him on
16 a cell phone or on a regular phone?

17 A. On a cell phone.

18 Q. Okay. Go ahead. Continue. I'm sorry.

19 A. He told me he was around the corner and he would be
20 there in a few minutes. I told him if I'm not in front of
21 the door that I would be down the street, which is at my
22 mother's house. At the time she stayed down the street from
23 me.

24 And I was walking down the street, and I get in front
25 of her door, and I seen him. Like, he been pulling up in my

1 driveway, but he came down there. We were talking, and I
2 told him that the guy paged me.

3 And he asked me questions, like, "Do you know him real
4 well?"

5 And I said, "Well, you know, a friend of mine said
6 that he dealt with him before and he was okay." You know, h
7 was okay.

8 Q. So let's stop there. So Earnest Battle was asking yo
9 if you knew this guy that wanted to buy the dope?

10 A. Yes.

11 Q. And did he ask you how you knew him?

12 A. Yes.

13 Q. And tell us that again, how you -- how you said you
14 met him.

15 A. I met him -- actually, I had never seen him before.
16 How that I meet him, a friend of mine gave him my pager
17 number and I talked to him, like, the day before all of tha
18 happened. I talked to him for a long period of time, like,
19 think, once or twice.

20 Q. And that's Matt? Matthew Wallace, right?

21 A. Yes.

22 Q. You talked to him before?

23 A. Uh-huh.

24 Q. What day was that? Now, what day was that?

25 A. It was the day before that happened.

LASHAWN FLOYD - DIRECT EXAM. BY MR. BOSNAK

246

1 Q. Okay. The day before the bust?

2 A. Uh-huh.

3 Q. Okay. Go ahead and continue with what you were
4 saying.

5 A. Well, me and Earnest discussed -- we discussed that I
6 told him that the guy said that he wanted seven, you know, at
7 first. First he said nine. And then the second day, like I
8 said to you earlier, the actual day of the bust, he said he
9 wanted seven. But the day before he wanted nine.

10 So I had told him. And he, Earnest, told me that,
11 "Well, I ain't got seven." You know, "I only got, like,
12 four, maybe four and a half."

13 And I said, "Well, what do you want to do?" I mean,
14 "What do you want me to tell him?"

15 And he said, "Well, when he page you back, you just
16 call me and let me know. Tell him I got four and a half
17 ounces of cocaine, and then we'll work from there."

18 So Matt -- that's the C.I. That's the name that he
19 gave me -- he called me, paged me back that afternoon. And I
20 told him what Earnest said. And Earnest was -- like, I told
21 him everything Earnest said, that he only had four and a half
22 ounces left or whatever and he could do it for a price of --
23 I think it was 6200.

24 Q. 6200?

25 A. But the guy had told me he could -- when I talked to

1 him on the phone, he told me that that's too much. He can't
2 -- you know, he don't have 6200. He could maybe do, like,
3 40? 48? I think it was 4800.

4 And I said, "Well, call me back in a minute," you
5 know. And "Let me call and find out if that will be" -- you
6 know.

7 So I clicked the line over. I hang him up. I click
8 over, and I call Earnest back on the cell phone, and I told
9 him.

10 And he said, "Well" -- he thought about it and he
11 said, "Well, that'll be fine. Call him back and, you know,
12 just say that I'd have to go to a house first. Go ahead and
13 set it up then."

14 Q. Excuse me. Do you know where Earnest lives?

15 A. Yes, at the time.

16 Q. Where did he live at the time?

17 A. Downtown, off of -- I think it's Radcliffe?

18 Radcliffe.

19 Q. Okay.

20 A. And he said he had to go back to the house, so go
21 ahead and set it up.

22 So I told him that, you know, the guy is going to get
23 in touch with me later. I say, "My uncle is going to get in
24 touch with me later."

25 Q. Now, wait a minute... Who did you talk to? Who did yo

1 say "your uncle"? Who were you telling ---

2 A. Earnest.

3 Q. Who were you telling "your uncle"?

4 A. I told Matt that.

5 Q. You're telling Matt?

6 A. Yeah.

7 Q. That you were getting it from your uncle?

8 A. Uh-huh.

9 Q. Okay.

10 A. And I told him that he going to need a little bit of

11 time. So he asked about how much time. And I said,

12 "Probably about an hour."

13 And he said, "Well, an hour is fine."

14 So later on that afternoon, Matt called me back and

15 said, "Is everything" -- you know, "Is everything going to go

16 through?"

17 And I told him, "Well" -- we were just talking on the

18 phone. And I said, "Well, he hasn't gotten in touch back

19 with me yet. I'm going to call him and find out whether or

20 not that -- if he's still going to come, bring it, or

21 whatever."

22 And he was, like, "Well, call and find out and let me

23 know because, you know, I don't want to be sitting around

24 with all the money, you know, driving around in this area

25 with all this money on me."

LASER BOND FORM B • PENGAD • 1-800-831-6888

1 And I said, "Well, where are you? You can come where
2 I'm at."

3 And he said, "Well, give me your address and give me
4 the information to your house."

5 So I did. I gave him the information to the house,
6 and he told me he would be there in a little while. So I sit
7 -- I never saw no one came to the house. I was outside. I
8 never saw anyone came to the house. So I got another page
9 when I went back, you know, from another -- a different
10 number.

11 So when I called back he told me, he said, if
12 everything was fine, he said. With Matt.

13 I said, "Well, I thought you were coming from this
14 side."

15 He said, "I did. I drive through in a white BMW. You
16 didn't see me?"

17 I said, "No, I did not," I said. Because I was
18 standing outside. You know, I had a cordless phone, so I wa
19 standing outside.

20 And he said, "Well, I'm going to come back through in
21 probably another 15-20 minutes because I already get back
22 on to..."

23 And I'm, like, "Well, that's fine because he didn't
24 even never call me back anyway yet."

25 Q. Did he eventually come by your house?

LASER BOND FORM B PENGAD • 1-800-831-6989

- 1 A. Yes, he did.
- 2 Q. What kind of car was he in?
- 3 A. He was in a cab.
- 4 Q. In a cab. What color cab?
- 5 A. A Yellow Cab.
- 6 Q. Do you remember who was driving the cab?
- 7 A. It was a young lady.
- 8 Q. A young lady. Did you go out and talk to him in the
- 9 cab?
- 10 A. Yes, I did.
- 11 Q. What did y'all talk about?
- 12 A. Well, after he meet me, he came up, half up my stairs.
- 13 Me and him talked. And he said, "Do you want to see the
- 14 money?" That's when I went back to the cab and went, like,
- 15 inside the cab with the door open, and he went and sit in the
- 16 front.
- 17 Q. Who sat in the front?
- 18 A. Matt. He sat in the front, the passenger.
- 19 Q. Matt sat in the front ---
- 20 A. Uh-uh.
- 21 Q. --- on the passenger side?
- 22 A. And I was in the back.
- 23 Q. Okay.
- 24 A. And he said, "You can count the money. It's all
- 25 there." And I count the money and everything and went back

1 upstairs.

2 Q. Did he go with you?

3 A. No. He left. He said he'll be back. He wanted to go
4 to the store or something, I don't know, but he said he
5 wanted to go to the store and he'll be back.

6 Q. Do you know what time this was during the day?

7 A. No. I don't remember. It was, like, after 6:00
8 probably. Probably after 6:00.

9 Q. Did he leave?

10 A. Did he leave?

11 Q. Yes.

12 A. Yes, he leave.

13 Q. Did he come back?

14 A. Yeah, he came back.

15 Q. Okay. What happened then?

16 A. By the time he came back, he already -- he came back
17 to my house. He pulled up to the curb.

18 And I saw Earnie's car pulling up on the other side of
19 my street. I have, like, a little -- where I used to stay I
20 had, like, a little cut. You could see from -- I stayed --
21 was staying in a two-story apartment. I stayed upstairs.
22 You could see Earnie from afar, from the path -- Earnest.
23 I'm sorry.

24 Q. That's okay.

25 A. And he was signalling to me. You know, I was on the

1 phone, and he was signalling to me. I guess the signal to
2 see if the guy was already there or whatever.

3 But he started up -- like, he was walking towards me,
4 but I did like this (demonstrates). And Matt came up talking
5 -- walking towards me, and I walked towards him because I
6 told him to come here for a minute.

7 Q. Who did you tell to come here?

8 A. Matt.

9 Q. Okay.

10 A. I told him to come here for a minute. And I told him
11 that, "Well, he here" or whatever; and, you know, "you can
12 just stand right here or whatever, and I'll go walk to him."

13 He said, "Well, I don't want to be standing around
14 here, like, because, you know, I told you I have all this
15 money. And, you know, I ain't scared or nothing; but, you
16 know, I am kind of nervous."

17 So I said, "Okay. Fine. You stand" ---

18 Q. Go ahead. I'm sorry.

19 A. "You stand right here, and I'll be back." So I
20 started walking, walking towards Earnest.

21 Q. One minute. Is there any reason why Earnest didn't
22 want to make the deal?

23 A. Well, the only way I could figure is he didn't want to
24 meet the person that -- well, actually, he didn't know of
25 him. He -- he just really went on what I told him, and

1 that's the only reason I can see why he didn't want to meet
2 him. He did not want to be seen or anything, but...

3 Q. Did you go out and meet Earnest?

4 A. Yes, I did.

5 Q. Where did you meet him at?

6 A. I meet him, like, as he coming from the cut. I meet
7 him -- like, I have a old abandoned house in my yard. I meet
8 him -- I met him right behind of it. Like, in between I can
9 see. Like, in between the house and my front, I can see. I
10 was standing right there, and he was standing right in front
11 of me, and we were talking.

12 And I told him where the guy was. You know, he got
13 all the money and everything looked all right. You know,
14 everything looked fine.

15 So he said, "Well, all right."

16 Q. Was anybody else around?

17 A. No.

18 Q. Nobody else in the cut?

19 A. No.

20 Q. Could anybody see you make the transaction?

21 A. No.

22 Q. Where was James Nelson?

23 A. He already had walked around. Like, the street they
24 were parked on, where the car was at, he walked -- like, he
25 walked around the corner, just walking, walking around, but

LASHAWN FLOYD -- DIRECT EXAM. BY MR. BOSNAK

254

1 thought he was going down the street to my mother's house and
2 -- but he wasn't in the cut.

3 Q. Did James Nelson have anything to do with this drug
4 deal?

5 A. No, he didn't.

6 Q. Have you got any reason -- would there be any reason
7 why you would not say he had anything to do with it if he
8 did?

9 A. Well, I would tell the truth. And he didn't have
10 anything to do with it. But, you know, might have had
11 knowledge of it. He wasn't around it. He wasn't in the cut
12 when it happened or anything. So whatever they talked about,
13 you know, on the way out to come to my house, I don't have no
14 acknowledge of it, like.

15 Q. All right. After you got the dope from Earnest, where
16 did you go then?

17 A. I started walking away from him. I was going to walk
18 and take it straight to Matt.

19 But he looked like he was, like, hesitant. So he
20 started walking, like, to the cab. He was standing right
21 there by the cab. And I wasn't going to walk -- just go and
22 walk on out of the gate. So I went, like, walking toward my
23 steps. I heard my phone ring for a long period of time. I
24 didn't bother to worry about the phone at first.

25 I walked back to Earnie. I walked back to Earnie,

1 tell him I'll be right back, put it in his hands.

2 Ran up the steps, going in the house because the phone
3 had rang again. I ran in the house because I didn't want my
4 daughter to wake up and see that, you know, I had people in
5 the yard or whatever. But I didn't want her to wake up, and
6 I know the phone rang really loud. I went upstairs, and I
7 shut the door behind me. And the next thing I hear all this
8 noise, somebody bawming on the door.

9 And the guy named Matt said, "You set me up, you 'B.'"

10 And I come outside real fast, coming down the stairs
11 real fast, and all I see is lights and everything surrounding
12 me.

13 Q. You saw lights surrounding you?

14 A. (The witness nods head up and down.)

15 Q. So you never tried to sell the dope to Matt?

16 A. No. It never -- I never -- it never got in contact or
17 nothing with him.

18 Q. What happened to the dope?

19 A. It -- it was there. They found it on the ground.
20 They came in my house and said they found it. It was on the
21 ground around by my house, by a tree, I guess, or whatever.
22 But they took a lot of pictures and everything, and I was
23 sitting in the house. I don't know what happened to it as
24 far as that.

25 Q. Where did they arrest you?

LASHAWN FLOYD - DIRECT EXAM. BY MR. BOSNAK

256

1 A. I was, like -- since I stayed to -- the two-stories,
2 since I stay upstairs, you have to go, like, two sets of
3 stairs. I was in between the two sets of stairs. They
4 arrest me right there. They put me down on the ground -- put
5 me down on the steps. And they just -- and they took --
6 right in my house.

7 Q. Okay. You went to the police station?

8 A. Yeah. Later on that night.

9 Q. And did you give a statement?

10 A. Yes.

11 Q. And did you give Mr. Battle's name up then?

12 Earnest Battle? Did you tell them?

13 A. I didn't -- I didn't went to the station to give them
14 -- you know, to actually give the statement.

15 Q. Right.

16 A. We -- after they arrested me, I sat in the house.
17 They, you know, took me in my house. They asked me to please
18 first identify the two guys that they had downstairs. They
19 flashed the lights. I identify the two guys, which was
20 Earnest Battle and James Nelson. Then after, I guess, they
21 took them on.

22 I sat in the house. They sat in the house with me.
23 They got the statement right then. They brought computers
24 and everything in the house, and they got the statement right
25 then.

1 Q. You didn't tell them in your statement that you got
2 the drugs from Earnest Battle, did you?

3 A. I say "E."

4 Q. You said "E"?

5 A. Uh-huh.

6 Q. What else did you say about it?

7 A. What else did I ----

8 Q. Did you say anything else in your statement about
9 that?

10 A. No. I just basically tell them -- you know, I
11 answered all of their questions and everything that I was
12 asked.

13 Q. Now, who do you refer to? Who would be "E"? Who's
14 "E" to you?

15 A. Earnest Battle.

16 Q. Earnest Battle. Okay. Were you put in jail?

17 A. Yes, I was.

18 Q. And how long did you stay in jail?

19 A. Three weeks and four days.

20 Q. Did you receive any mail while you were in jail?

21 A. Yes, I did.

22 MR. MCGUIRE: Your Honor, I have an objection to that

23 THE COURT: Members of the jury panel, I need you to
24 go to the jury room. We're going to take about a five-minut
25 break. Go to the jury room, please. Take five minutes,

LASHAWN FLOYD - DIRECT EXAM. BY MR. BOSNAK

258

1 hopefully five.

2 (Whereupon, the jury goes to the jury room at
3 approximately 3:14 p.m.)

4 THE COURT: All right. We're getting to the point of
5 introducing the letter. Is that right?

6 MR. BOSNAK: Yes, sir.

7 THE COURT: Let me see the letter. Is it marked as a
8 State's exhibit yet? Has it been marked?

9 MR. BOSNAK: Yes, sir, 14.

10 THE COURT: All right. We're looking at State's
11 exhibit 14. All right. I guess this is the letter that she
12 got. Is that right?

13 MR. BOSNAK: Yes, sir.

14 THE WITNESS: Yes.

15 THE COURT: From supposedly the defendant Mr. Battle?

16 THE WITNESS: Yes, sir.

17 THE COURT: Is that right?

18 THE WITNESS: Yes, sir.

19 THE COURT: You got it in the mail, or how did you get
20 it?

21 THE WITNESS: I was still in the county jail.

22 THE COURT: Still in the county jail?

23 THE WITNESS: Uh-huh.

24 THE COURT: How did you get it?

25 THE WITNESS: It was under the door at night. I guess

1 that's how they do the mail in the jail.

2 THE COURT: Was it in an envelope?

3 THE WITNESS: Yes, it was.

4 THE COURT: Dated 7-21-99. All right. And let's see.
5 This took place on what date?

6 MR. BOSNAK: The 15th.

7 THE COURT: The 15th? Okay.

8 MR. BOSNAK: Yes, sir.

9 THE COURT: All right. Are you going to have her
10 identify this as the letter she got supposedly when she was
11 in jail? And it's from -- signed "Earnest." Is that right?

12 THE WITNESS: Yes, sir.

13 THE COURT: All right. And what is your objection?

14 MR. MCGUIRE: Your Honor, I object to the language
15 about a third of the way down, stating, "You know me and
16 Eddie is facing life." I would object to that statement
17 because when you hook it up with the bottom of the second
18 page where it says something-something-something "because
19 this is your first offense," those two lines ---

20 THE COURT: Well, wait. Let me read this.

21 All right. What else?

22 MR. MCGUIRE: Just those two portions, Your Honor. I
23 move that they be redacted. I believe that if you were to
24 take those together, the jury would easily conclude that my
25 client has a prior record. That's why he says he's facing

1 life, and that's why he's saying "she'll get off. This is
2 her first offense." If you read between the lines, it says
3 my guy's got a prior record.

4 THE COURT: What do you all want to say about that?

5 MR. BOSNAK: Your Honor, first of all, her first
6 offense, I don't see how that prejudices his client at all.
7 The other thing, "life," I mean, these people don't really
8 understand what different sentences are and all this kind of
9 stuff. I don't see how it prejudices his client about
10 inferring that he might have a past record.

11 MR. MCGUIRE: Well, Your Honor, I mean, I'm very much
12 prejudiced if they infer my client has a prior record. I
13 think that's just a matter of fact. And on the opposite side
14 of the coin, what prejudice is there to the State?

15 MR. BOSNAK: Your Honor, he also talks about
16 Mr. Nelson in there. It could be inferred that they're
17 talking about Mr. Nelson since Mr. McGuire brings up the
18 point that it would end his life if he went to jail.

19 MR. MCGUIRE: But the letter clearly says "we."
20 "Eddie and I are facing life." It's explicit that my client
21 believes he's facing a harsher penalty than Ms. Floyd when he
22 states that this -- she's going to be okay because this is
23 her first offense. The clear implication is he's got a prior
24 record. And I don't see how taking it out would thwart any
25 purpose that the State has in introducing the letter at all.

1 I mean, it's just kind of a convenient back-door way to try
2 to dirty my client's character.

3 THE COURT: How do you suggest that I redact it? Take
4 it out? Do you want me to just get some white-out and white
5 it out on the original?

6 MR. MCGUIRE: I can't think of any other way to do it.

7 THE COURT: Have we got any white-out?

8 MR. MCGUIRE: Or just take a black magic marker and
9 strike through.

10 THE COURT: Do we have a black magic marker?

11 MR. MCGUIRE: I believe we do.

12 MR. BOSNAK: We've got one right there, Your Honor.

13 THE COURT: Beg your pardon?

14 MR. BOSNAK: Okay. We've got one right here.

15 MR. MCGUIRE: And, Your Honor, what I would propose is
16 to make a photocopy of the letter and then black-out through
17 the photocopy and then make a photocopy of that.

18 THE COURT: Do you want to do that? Do you have a
19 photocopy that's good enough where everything can be read?

20 MR. BOSNAK: I hope so, Your Honor. We're just going
21 to redact that part about "life"?

22 THE COURT: Yes. As I understand it, your motion is
23 to take out the sentence on the first page: "Shawn, this is
24 a very serious situation" -- no, not that. Just the line:
25 "You know me and Eddie is facing life."

1 MR. MCGUIRE: Yes, sir.

2 MR. BOSNAK: Just that sentence?

3 THE COURT: Yes.

4 MR. MCGUIRE: And then, Your Honor, I would also ask
5 that the bottom line of the second page be redacted -- I
6 can't read my copy that well -- where it indicates it will be
7 okay because it's her first offense.

8 THE COURT: Well, I don't see any reason to do that if
9 I take the other out.

10 MR. MCGUIRE: Because I think if you get a letter from
11 somebody saying "you'll be okay because this is your first
12 offense." And I don't see how it would prejudice the State
13 at all. I mean, her position -- it's already in evidence
14 that she has no prior record. Mr. Bosnak said that in
15 opening argument. I certainly can't dispute that. I mean,
16 it does no harm to the State whatsoever, and it removes the
17 danger of unfair prejudice.

18 MR. BOSNAK: Your Honor, I think that it's also these
19 -- he's also charged with conspiracy here, and this also
20 could show that he's furthering his conspiracy.

21 MR. MCGUIRE: Sure. And you can do that without that
22 last line on that second page. I mean, I haven't heard it
23 articulated why that's necessary, that line.

24 MR. BOSNAK: I haven't heard it articulated why it's
25 not necessary other than you just don't want it in there.

1 MR. MCGUIRE: No. I've been very clear. The danger
2 of unfair is clear.

3 THE COURT: Let's get a good copy.

4 MR. BOSNAK: Yes, sir.

5 THE COURT: Unless you want to use the original. Do
6 you want to use the original, or do you want to use a copy?

7 MR. BOSNAK: If you could just instruct the jury, Your
8 Honor, that we do have the original and we had to take
9 something out?

10 THE COURT: I'll do that. A copy. Okay.

11 MR. BOSNAK: Yes, sir. Do you want me to make a copy
12 of that, then take the black-out, then make another copy?

13 THE COURT: Yes.

14 MR. BOSNAK: Okay. I sure will, Your Honor.

15 MR. MCGUIRE: Your Honor, I would have another motion.

16 THE COURT: Let's go get a couple of good copies.

17 MR. MCGUIRE: Your Honor, I would have another motion.
18 As an officer of the court and a lawyer in South Carolina, I
19 would make a motion that the State dismiss the charges
20 against James Nelson because they've either suborned perjury
21 with this witness or they're proceeding against James Nelson
22 in bad faith were there's no probable cause. Against the
23 ethical rules. So I believe they are required to dismiss
24 this case.

25 THE COURT: I'm not going to require them to do it at

1 this juncture. I'm not sure I understand your motion.

2 MR. MCGUIRE: Well, they asked Ms. Floyd: Did
3 James Nelson have anything at all to do with this drug deal?

4 And she said, no, he had nothing to do with it.

5 And if they have pending indictments against
6 Mr. Nelson, they are proceeding against a man where there's
7 no probable cause, and that's in violation of the ethical
8 rules. If her testimony is truthful, there is no probable
9 cause to proceed against Mr. Nelson. So it's either perjury
10 or they're proceeding against a man in bad faith.

11 THE COURT: I'm not going to require them to do that,
12 at this juncture anyway. All right. Anything else?

13 MR. MCGUIRE: No, sir.

14 MR. CADMUS: I'd concur with Mr. McGuire.

15 THE COURT: I don't know that you have any standing at
16 this point. You're not before the Court. All right? I'm
17 dealing with this case at this time.

18 All right. We'll wait till we get the copies back.

19 (A brief break was taken.)

20 THE COURT: All right. Come on up. Let's make sure
21 we've got this in final form. Let's deal with the letter
22 first. We've got it back in the courtroom. Show it to him,
23 the one we're going to put into evidence.

24 (Mr. McGuire reviews document.)

25 MR. MCGUIRE: This is fine.

1 THE COURT: All right. Without objection then, we're
2 going to put in the State's exhibit 14, a copy. Actually, is
3 this going to be 14? I guess it is. Okay. This is going to
4 be referred to as State's exhibit 14, which is a copy of the
5 real, original State's exhibit 14.

6 (State's Exhibits No. 14-A and 14-B were marked for
7 identification.)

8 MR. MCGUIRE: Your Honor, that's assuming they lay th
9 foundation for getting the letter in.

10 THE COURT: Well, okay. I'm not sure -- okay. I
11 mean, I don't believe you asked her -- I don't remember what
12 your last question was. Something about "Did you get a
13 letter?" Or something like that. We're going to pick up on
14 that. You know, "While you were in jail, did you get a
15 letter" or whatever, and then you can identify it. Go from
16 there.

17 All right. Solicitor, let's go ahead now. What is
18 you want me to think about as far as the tape that I
19 suppressed yesterday? Page 161 is where I am in the Rule
20 book.

21 MR. BOURDON: Thank you, Your Honor.

22 Sir, with respect to Rule 5(B), it talks about a
23 continuing duty to disclose: "If prior to trial a party
24 discovers additional evidence or material previously
25 requested or ordered which is subject to discovery, he shall

1 promptly notify the other party or his attorney or the Court
2 of the existence of the additional evidence or materials."

3 Your Honor, this tape was provided to the defense
4 counsel on Tuesday, I believe, which gave them at least two
5 days to get prepared for it.

6 THE COURT: He said the day before.

7 MR. MCGUIRE: That's true. It was.

8 THE COURT: We picked the jury on when?

9 MS. SARJI: Yesterday.

10 THE COURT: Yesterday?

11 MR. BOURDON: Yes, Your Honor. They had it on
12 Tuesday. I think that ---

13 THE COURT: The day before we picked the jury?

14 MR. MCGUIRE: Yes, sir.

15 THE COURT: All right. Okay.

16 MR. BOURDON: Your Honor, the tape was discovered that
17 had information containing the defendant on there, allegedly
18 on there, through no subterfuge by the government.
19 Mr. Bosnak received the tape, heard the tape, gave it to
20 Mr. McGuire; and I think at the same time they both
21 discovered that, indeed, Mr. Battle or what purports to be
22 Mr. Battle was also recorded on that conversation.

23 I think the Court's options are several, with
24 suppression being the most harsh remedy if you look
25 at (B) (2).

1 THE COURT: I agree with you. I agree with you. I've
2 read the rule. You know, at some point you have to draw a
3 line and say that if you intend to use something at trial and
4 if it's been in the possession of the Solicitor's office or
5 any law enforcement agency and it's been almost two years
6 since the act took place and the object was created, that's
7 too long. And you've got an obligation to find out what's in
8 existence and turn it over if there's been a request by the
9 defendant. And that's two years, almost two years. It's too
10 long. It should have been disclosed much sooner than that.

11 MR. BOURDON: Yes, sir. I know that the defense did
12 submit their discovery request in a timely fashion, but it's
13 a blanket discovery that certainly could have been more of a
14 request for the tape. And it may have been provided earlier.

15 THE COURT: They didn't know.

16 MR. BOURDON: Yes, Your Honor. But just for
17 completeness, they knew the tapes were in existence.

18 In addition, I would argue that even if they had known
19 about the tape earlier on, that their client was on it, I
20 don't know what they could have done in order to prepare for
21 it that they couldn't have done in the last two days to
22 prepare for rebutting this piece of evidence.

23 THE COURT: I'm not sure either. I guess, you know,
24 theoretically they could have had it examined to see if it
25 had been tampered with. They could have had a voice expert

LASHAWN FLOYD - DIRECT EXAM. BY MR. BOSNAK

268

1 listen to it and see who and what and so forth. There's a
2 lot of things that theoretically they could have done, you
3 know.

4 But it's just that when something is required to be
5 disclosed under the rules and almost two years go by and it
6 hasn't been disclosed, that's just too long. Somehow or
7 another we've got to send a message to somebody that you've
8 got to find out if it's in existence and turn it over sooner
9 than two years or the day before the trial.

10 That's my feeling, and that's what I'm doing.

11 MR. BOURDON: Thank you, Your Honor.

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

13 (Whereupon, the jury returns to the courtroom at
14 approximately 3:40 p.m.)

15 THE COURT: All right. We have the jury with us. You
16 may continue to examine the witness.

17 DIRECT EXAMINATION (CONTINUED)

18 BY MR. BOSNAK:

19 Q. LaShawn, I think we were discussing a letter. Is that
20 correct?

21 A. Yes, we were.

22 Q. Did you receive a letter while you were in jail?

23 A. Yes, I did.

24 Q. Do you know who you received that letter from?

25 A. Yes, I did. Yes, I do.

1 Q. Okay. Who did you receive the letter from?

2 A. Earnest Battle.

3 Q. And I'm going to show you a copy of the letter. I
4 want you to tell us how you recognize it's from
5 Earnest Battle.

6 A. Well, I don't really know his handwriting.

7 Q. Okay.

8 A. But I received a call once I got ---

9 MR. MCGUIRE: Your Honor.

10 THE COURT: Well, let's do this. How did you get that
11 letter?

12 THE WITNESS: I got it while I was in the county jail.

13 THE COURT: You were in the jail?

14 THE WITNESS: Uh-huh.

15 THE COURT: Where did you find the letter? How did
16 you first come into possession of it?

17 THE WITNESS: Under the door. It was under the door.

18 THE COURT: You mean, were you in the cell ---

19 THE WITNESS: Yes.

20 THE COURT: --- and somebody slipped it under the
21 door, or did you come back to the cell after being gone and
22 it was there, or what?

23 THE WITNESS: I was in the cell.

24 THE COURT: You were in the cell?

25 THE WITNESS: And I get up to go to the -- to use the

LASHAWN FLOYD - DIRECT EXAM. BY MR. BOSNAK

270

1 -- I was in the cell. I get up to use the bathroom and then
2 I saw the letter.

3 THE COURT: Was it in that envelope?

4 THE WITNESS: Yes, it was.

5 THE COURT: Did it have your name on it?

6 THE WITNESS: Yes, it did.

7 THE COURT: All right. Go ahead.

8 BY MR. BOSNAK:

9 Q. Is there any other way -- can you tell through the
10 contents of the letter that it was from Mr. Battle? What it
11 says?

12 A. What does it say?

13 Q. I mean, from the contents in the letter, from what the
14 letter says, can you tell that it's from Mr. Battle by
15 reading it?

16 A. Yes, I can.

17 Q. Okay. How can you do that?

18 A. Because as it speaks about what happened and it says
19 "me and" -- I didn't wrote the letter. So it -- I didn't
20 wrote the letter. And he didn't wrote the letter because his
21 name was in there. It was mentioned. So, you know, it said
22 "me and...."

23 THE COURT: So you believe that letter is from
24 Mr. Battle. Is that right?

25 THE WITNESS: Yes, sir.

1 THE COURT: Okay. Ask another question.

2 MR. BOSNAK: Your Honor, I'd like to publish this
3 letter to the jury and have her read it.

4 MR. MCGUIRE: I object on foundation, Your Honor. I
5 object on foundation.

6 THE COURT: What do you mean "on foundation"?

7 MR. MCGUIRE: Rule 901. I believe her testimony
8 was ---

9 THE COURT: Let me read it.

10 MR. MCGUIRE: Yes, sir.

11 THE COURT: I overrule your objection. I think that
12 901(B)(4) allows it. All right. Do you want to be heard
13 further?

14 MR. MCGUIRE: Only that she stated that she does not
15 know Mr. Battle's handwriting.

16 THE COURT: I agree with that, but I say -- I believe
17 901(B)(4) allows me to admit it into evidence and allows it
18 to be published.

19 (State's Exhibit No. 14-B, previously marked for
20 identification, was received in evidence.)

21 THE COURT: All right. Go ahead.

22 MR. BOSNAK: We'll set this up on the overhead,
23 Your Honor, and have her read it.

24 THE COURT: All right.

25 BY MR. BOSNAK:

1 Q. Shawn, would you please come down? I'm going to give
2 you a copy of the letter.

3 A. (The witness leaves the witness stand and goes to the
4 overhead projector.)

5 THE COURT: I might say to the jury also at this point
6 that there were some matters -- well, I'm not giving any
7 opinion about anything that's in this letter. But there were
8 two matters in there that were definitely not relevant to
9 anything insofar as this case is concerned, and so I struck
10 through those with a black magic marker.

11 That's why you'll see, during the course of looking at
12 this and everything now and later on, that there are some
13 places where there's some black magic marker. And that's
14 because there were words that were in there that definitely
15 had nothing to do with this case. I don't know whether
16 anything else has to do with it, but definitely those didn't
17 have anything to do with it.

18 So I just wanted to make you -- so you wouldn't wonder
19 why those things were struck through. I struck through them
20 because they were about something that didn't have anything
21 at all to do with this case.

22 Anything else you want to say, Mr. McGuire?

23 MR. MCGUIRE: No, Your Honor.

24 THE COURT: All right.

25 Can you read that? Can you all read that, members of

1 the jury, from where you are or not? How about the last
2 person down here, these last two people? Can you all read
3 it?

4 A JUROR: I can.

5 THE COURT: Beg your pardon?

6 A JUROR: I can.

7 THE COURT: I don't think you can. But they are going
8 to have that with them in the jury room at the end of the
9 case when they consider the verdict. Why don't you just let
10 her read it to the jury? They're going to have it with them.

11 BY MR. BOSNAK:

12 Q. LaShawn, we'll do that. LaShawn, if you'll just --
13 let me give you this copy. We'll just go ahead and have you
14 read the letter. We will give it to the jury. They'll have
15 it in the jury room.

16 A. (The witness returns to the witness stand.)

17 Q. Okay. If you'd please start.

18 A. (Reading): "Dear Shawn, I hope and pray that you are
19 hanging in there. This is a very F-up position to be in.
20 I'm not going into details about what happened. The main
21 concern is where we -- where do we go from here. Well, I
22 will tell you although this thing happened is -- although
23 this thing happened, it doesn't make me love you or care for
24 you any less. The only person can save us is you.

25 "My attorney name is Joseph Condon. You may have

1 already spoken with him. I told him that you was willing to
2 give a statement to the fact that me and Eddie had nothing to
3 do with what happened at your -- at your apartment that
4 night, and that you and I never had any physical contact with
5 each other or attempt in any way to conspire to sell or
6 deliver any drugs to anyone, that me and Eddie was just --
7 happened to be walking through the cut going to your mother's
8 house. Many people use this -- this cut day and night,
9 24-7. During this time of the incident, as me and Eddie
10 walked through your front gate, because that's where the cut
11 lead to, we were thrown to the ground with guns drawn on us
12 and arrested.

13 "Shawn, you know everything that -- everything they
14 said in the charge paper is a lie. They are saying that you
15 met me and Eddie on the corner of Saint John and Reddin Road
16 where we discussed making this drug deal, and I was supposed
17 to have gave you the stuff, then you took the -- this cocaine
18 back to your apartment, and when you saw these detectives you
19 threw the cocaine to the ground and ran upstairs. You know
20 as well as I do, Shawn, this never happened. We never met or
21 discussed any drug transaction, period. They don't have..."

22 THE COURT: Go ahead and say what it says.

23 THE WITNESS: Okay. (Reading): "They don't have shit
24 and they're trying to put something together. Shawn, listen
25 to me. Trust me. I know how these..."

1 THE COURT: Go ahead.

2 THE WITNESS: (Reading): --- "motherfuckers work.
3 They try to make you turn on each other. I know Eddie would
4 never turn on you. You are our family. Shawn, do what I ask
5 you to and what you promised to do so that I can help all of
6 us out of this messed up situation.

7 "They also seized my car although they did not find
8 anything in it or on me or on Eddie and is giving my sister
9 and mom the runaround. My lawyer is supposed to handle that,
10 and he is also working on getting my bond down. And the
11 bondsman is on standby. I know him for a long time. Me and
12 him are good friends.

13 "Once I get out, I can get you and Eddie out. Then we
14 can go from there. Me and my attorney already done discussed
15 our -- done discussed your situation. Once I get out on
16 bond, you will sign up for Judge Guedalia's drug class which
17 is \$500. I'll pay for it, and you will be guaranteed
18 probation, and your statement will cut me and Eddie loose.

19 "Do not listen to police because the only thing they
20 are going to do is lie to you and try to have you turn on me
21 and Eddie. As I said earlier, you are our family and we must
22 stick together and be strong. I promise you everything will
23 be all right as long as you listen to me and do as I say.
24 Okay? We are all in this together.

25 "I don't know if Jim Smiley is working on your case or

LASHAWN FLOYD - DIRECT EXAM. BY MR. BOSNAK

276

1 Eddie's case. I was told by his secretary that he -- that
2 his office was handling one of y'all's case. That's a good
3 thing because my lawyer Mr. Condon and J. Smiley and the
4 bondsman Wally all work together. Okay? Their office is
5 across the street.

6 "If you haven't spoken to my attorney Mr. Condon yet,
7 call him collect and give him the statement. His number is
8 554-1000. His cousin is the attorney general for
9 South Carolina. Charlie Condon, top solicitor. They own
10 half of Charleston.

11 "Much ~~more~~ do as I say and everything will be all
12 right. We will be out and be able to put our life back
13 together soon.

14 "I am going to call for reinforcement. You know what
15 I mean. Don't say anything to anybody.

16 "Do as I say and let me handle this. Okay?

17 "Shawn, if the question comes up about where you got
18 the stuff from, tell them you got it from this guy you met in
19 the club Big Boy a few days ago, and he wanted to spend the
20 night with you, but he only had about \$50 after he had bought
21 you and him drinks. So you told him that won't do -- so you
22 told him that won't do. That's when he offered you the stuff
23 to make up the difference.

24 "And you told him, What was you supposed to do with
25 it -- do with that?

1 "And he said sell it and that you could have made
2 about three or four thousand if it -- of it since you had
3 started using cocaine about three months ago and you -- you
4 both were overdue.

5 "You decided to take it with the intentions of giving
6 it to someone else to sell. Are you -- but after a few days
7 after you had it, your friend from Mt. Pleasant called you
8 asking about it.

9 "You called. You could get him some stuff.

10 "You already had some stuff put outside your
11 apartment. But you did not want him, your friend from Mt.
12 Pleasant, to know, just because he may have took it from you
13 So that's why you kept stalling him, to make him think it wa
14 coming from someone or somewhere else besides you.

15 "Earnie and Eddie didn't have anything to do with wha
16 happened that night.

17 "Write the statement -- write the statement down also
18 and give to Mr. Condon. Okay? But I got -- in parenthesis
19 -- have you?

20 "Love, Your Cousin."

21 That's it.

22 THE COURT: Is there a name at the end of it?

23 THE WITNESS: Yes, sir.

24 THE COURT: Just tell it, please.

25 THE WITNESS: Just say what's the name?

1 THE COURT: No. Is there somebody -- is there a name
2 written at the end of it?

3 THE WITNESS: No. Just "Your Cousin."

4 MR. BOSNAK: I'm going to let her see this copy.

5 THE WITNESS: (The witness reviews document.) I don't
6 know what that says.

7 MR. BOSNAK: You can't read that?

8 THE COURT: I can't hear what you said. What did you
9 say?

10 THE WITNESS: I said I don't know -- recognize the
11 name at the bottom.

12 THE COURT: Okay.

13 MR. BOSNAK: Your Honor, we would ask that this be put
14 into evidence at this time.

15 THE COURT: All right. It's already been admitted
16 into evidence over objection.

17 All right. Any other questions?

18 MR. BOSNAK: Yes, sir.

19 BY MR. BOSNAK:

20 Q. In the statement at one point it says: "Shawn, do
21 what I ask you to do and what you promised to do." What's he
22 talking about there?

23 A. He's talking about -- when they carry us down to --
24 after we left City Hall, they carried us down to the county
25 jail, the back entrance, I guess, to get into the jail. And

1 we had to stand there, and we were talking. Eddie told me
2 just to don't worry about anything. And just tell them that
3 -- tell them that it was mine and he -- they had no -- him
4 and Eddie had no acknowledge of it, so they can hurry up and
5 get out and help me get out of jail.

6 Q. Okay. Now, also it said in the letter: "I'm going to
7 call for reinforcements. You know what that means. Don't
8 say anything." What was he talking about there?

9 A. He is talking about going to get some more
10 drugs. Cocaine.

11 Q. He didn't want you to talk about it?

12 A. Yeah.

13 Q. Okay. Now, a little while ago you said that you and
14 your cousin were real close. What do you mean by "real
15 close"?

16 A. Well, I don't call him my cousin. I call him my
17 uncle.

18 Q. Right.

19 A. So we were very close. I could talk to him about
20 anything. And just if I have a problem or something that I
21 need help with anything, as far as him giving me advice on
22 something, then I'll call him and we'll talk about it.

23 Q. I don't think I had you do this; but just for the
24 record, could you stand up and point to who you refer to as
25 your uncle?

1 A. Okay. (The witness stands.) Earnest Battle, the guy
2 right here.

3 MR. BOSNAK: The guy on the end of the table. Let the
4 record reflect that she identified Earnest Battle as the one
5 she talked to and refers to as her uncle.

6 BY MR. BOSNAK:

7 Q. Now, could you describe Matt Wallace to us, please?

8 A. White male, tall, about five-eight, black hair, and he
9 had on a baseball cap. And that's all. And he had a gold
10 tooth.

11 Q. Did you ever suspect him of being -- did you ever
12 suspect him of working with the police?

13 A. No, I didn't.

14 Q. Okay. And could Matt see you when you and Earnest
15 exchanged -- when Earnest gave you the dope?

16 A. He can; but, no, he didn't. He could have. Like if
17 he had walked a little, you know, further, like he was -- he
18 was outside the gate. If he was coming, like, towards --
19 back towards the gate, then he probably could have. Paying
20 attention, he could have seen it.

21 Q. Okay. How do you feel about testifying against
22 Earnest?

23 A. Well, I just came to tell the truth.

24 MR. BOSNAK: Okay. Just one moment, Your Honor.

25 (Mr. Bosnak and Mr. Bourdon confer.)

1 BY MR. BOSNAK:

2 Q. I just want you to look at some pictures that already
3 have been marked as State's exhibits. And I want you to show
4 us where the transaction took place, where Earnest Battle
5 gave you the drugs.

6 MR. BOSNAK: I'm showing the witness State's exhibit
7 four.

8 THE WITNESS: Show it?

9 BY MR. BOSNAK:

10 Q. Just go ahead and tell where. Is that the picture?

11 A. Uh-huh.

12 Q. And where in the picture?

13 A. We were standing right here.

14 MR. BOSNAK: Let the record show that she said ---

15 MR. MCGUIRE: Your Honor, I object to that narration.

16 THE COURT: Just take her over there and show it to
17 the jury. They're the ones that need to see it.

18 (The witness leaves the witness stand, and Mr. Bosnak
19 and the witness stand in front of the jury.)

20 BY MR. BOSNAK:

21 Q. Please show the jury where y'all were standing.

22 THE COURT: You've got to talk -- anything you say,
23 I've got to hear over here.

24 BY MR. BOSNAK:

25 Q. Please show the jury where you and Earnest made the --

1 where Earnest gave you the drugs.

2 A. We were standing right here. Like, in between the
3 house -- you know, I told you earlier that there was an
4 abandoned house in front of my house. We were standing at
5 the end of it, like about right here.

6 Q. Go ahead and show it to everybody. Show them where
7 you were standing.

8 A. (The witness complies.) Right here.

9 (The witness returns to the witness stand.)

10 Q. The young lady that was driving the cab, could she
11 have seen you?

12 A. Yes, she did.

13 Q. The young lady in the cab could see you?

14 A. Oh. You asked could she see me? No.

15 Q. She couldn't see you?

16 A. No.

17 MR. BOSNAK: Okay. Thank you. That's all the
18 questions I have. If you'll please answer any that
19 Mr. McGuire has for you.

CROSS-EXAMINATION

21 BY MR. MCGUIRE:

22 Q. Shawn, let's listen to the tape where you set this
23 drug deal up.

24 (The tape is played, then stopped.)

25 THE COURT: Do you all have a transcript of this or

LASER BOND FORM B PENOAD 1-800-331-6333

1 anything? I can't understand any of it, and I'm sure the
2 jury can't.

3 MR. BOSNAK: No, sir. We haven't had time to make
4 one.

5 MR. MCGUIRE: It becomes a little bit clearer in a
6 second.

7 (The tape is played.)

8 THE COURT: Turn it off.

9 (Mr. McGuire complies.)

10 THE COURT: Members of the jury panel, I need you to
11 go to the jury room, please.

12 (Whereupon, the jury goes to the jury room at
13 approximately 4:08 p.m.)

14 MR. MCGUIRE: Your Honor, it gets a little bit
15 clearer.

16 THE COURT: Well, I can't -- I haven't understood a
17 word that's been said, and I doubt if the jury has. You've
18 got to do better than that.

19 MR. MCGUIRE: I was about to say if we can put a
20 microphone on it I think that will work out.

21 THE COURT: Do whatever you want to do, but
22 something's got to be done. It's going to just confuse the
23 jury. It's worth absolutely nothing as it's being done, in
24 my opinion. I'm not going to let you do it. I'm not going
25 to let you play it unless you can get it better where

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

somebody can understand it.

(There was off-the-record discussion.)

THE COURT: Do you know what this is?

THE WITNESS: Yes.

THE COURT: What is it?

THE WITNESS: Me and the informant.

THE COURT: Matt? Whatever his name is?

THE WITNESS: Matt.

THE COURT: It's a phone conversation that you had with Matt?

THE WITNESS: Yes.

THE COURT: Okay. On the day that this took place or the day before or when?

THE WITNESS: It was actually -- actually, I don't know if it was the day before, but we had conversation the day before the bust and the day of the bust.

THE COURT: And you don't know when this was, but it was one of those two days. Is that right?

THE WITNESS: (There was no response.)

(The cassette tape is played, then stopped.)

THE COURT: I'll give you over the recess to transcribe it if you want to. Because I can't understand a thing they're saying. I don't think it would be worth anything to the jury.

MR. MCGUIRE: Okay.

LASER BOND FORM 8 PENDING • 1-800-631-8899

1 THE COURT: I'll give you the evening recess to
2 transcribe it if you want to.

3 MR. MCGUIRE: Okay.

4 MR. BOSNAK: Your Honor, I will do some research, but
5 I think under the rule of completeness that if he
6 introduces ----

7 THE COURT: And you object when -- you'll get a chance
8 then.

9 MR. BOSNAK: Okay.

10 THE COURT: At this point I'm going to give him a
11 chance to transcribe it.

12 MR. BOSNAK: But we need time to check it.

13 THE COURT: Well, you need to try to transcribe it,
14 too, then.

15 MR. BOSNAK: We're not introducing that.

16 THE COURT: I know that. But I'm telling you, you
17 ought to go -- I'm asking you to make every effort so we can
18 move it along.

19 All right. Are you ready to go ahead?

20 MR. MCGUIRE: Yes, sir.

21 THE COURT: Bring the jury back out.

22 (Whereupon, the jury returns to the courtroom at
23 approximately 4:14 p.m.)

24 THE COURT: All right. We have the jury back with us.
25 We may get back to the tape. In my opinion, it's

1 unintelligible. You know, you can't hear enough of it at
2 this point to be able to tell what's being said or anything.
3 So I've asked them to try to figure out -- if they want to
4 use it, try to figure out how to be able to use it, and we
5 may get back to it later on.

6 All right. Anything else you want to say?

7 MR. MCGUIRE: No, Your Honor. That's fine.

8 THE COURT: All right. Go ahead.

9 MR. MCGUIRE: We'll try to have it transcribed if
10 possible.

11 THE COURT: All right.

12 BY MR. MCGUIRE:

13 Q. Shawn, you were caught red-handed that night by the
14 police?

15 A. Could you explain "caught red-handed"?

16 Q. The police officers saw you throw down the cocaine?

17 A. No.

18 Q. No? It's not true?

19 A. (The witness shakes head from side to side.)

20 Q. And, Shawn, you weren't cooperative with the police at
21 first, were you?

22 A. Yes, I was cooperative.

23 Q. When they asked you to sign that you understand your
24 rights, you wouldn't even sign the paper, would you?

25 A. They -- they didn't really read my rights for me to

1 understand what was going on at first.

2 Q. They didn't give you a piece of paper and ask you to
3 sign it saying that they've explained your rights to you, and
4 you refused to sign that? That's not true?

5 A. No.

6 Q. No? Shawn, the police were pretty hard with you in
7 your apartment, weren't they?

8 A. Can you explain "hard"?

9 Q. Didn't they tell you that you were going to lose your
10 kids if you didn't help them?

11 A. Yes.

12 Q. They did tell you that, didn't they?

13 A. Yes.

14 Q. And your kids are important to you, aren't they?

15 A. My daughter. Yes.

16 THE COURT: How many children do you have?

17 THE WITNESS: One.

18 THE COURT: Just one, okay. One child.

19 BY MR. MCGUIRE:

20 Q. One child. And your daughter is important to you?

21 A. Of course.

22 Q. And they told you, you could lose your daughter?

23 A. Yes.

24 Q. And they asked you to give a statement?

25 A. Yes.

LASHAWN FLOYD - CROSS-EXAM. BY MR. MCGUIRE

288

1 Q. And you gave a statement saying that "E," somebody by
2 the name of "E," was your supplier. Is that right?

3 A. It wasn't somebody by the name of "E." It was
4 Earnest Battle.

5 Q. What does your statement say?

6 A. My statement says "E."

7 Q. It says "E"?

8 A. (The witness nods head up and down.)

9 Q. And, Shawn, what the police wanted to know was: Who
10 brought the cocaine? Right?

11 A. Yes.

12 Q. And they were very clear about that to you. Right?

13 A. Yes.

14 Q. And they were clear that they wanted you to give a
15 statement?

16 A. No. Not at first.

17 Q. Not at first, but eventually they were very clear they
18 wanted you to give a statement?

19 A. Yes.

20 Q. And that was after they told you about losing your
21 kids?

22 A. Yes.

23 Q. Shawn, how many years are you facing because of these
24 pending charges?

25 A. I don't know.

1 Q. Your lawyer didn't tell you?

2 A. Really -- at the time?

3 Q. Anytime.

4 A. Well, I really don't remember. But he said probably
5 like 15 or 25. I don't know -- know the exact, the amount.
6 I don't remember. I don't know.

7 Q. See if this sounds familiar to you, Shawn: That for
8 trafficking cocaine you can get up to 25 years just on that
9 one charge. The proximity charge, you can get up to ten
10 years on, and the conspiracy ---

11 MR. BOSNAK: Objection, Your Honor.

12 THE COURT: I overrule your objection.

13 BY MR. MCGUIRE:

14 Q. And the conspiracy charge, Shawn, you can get 12 and a
15 half years. Do you know what that is all totaled up?

16 A. No.

17 Q. It's 47 and a half years. No one ever told you that?

18 A. He probably did. I mean, I didn't say that he didn't.
19 I just don't know the exact, you know, how many years. But
20 he did say, you know, that it was a very serious situation.
21 You know, he said -- explained that. And I just don't
22 remember the exact total.

23 Q. Did your lawyer tell you that based on his
24 negotiations with the prosecutor that you were "golden"?

25 A. No. Could you please explain it?

1 Q. That you weren't going to jail.

2 A. No. He don't know whether or not I'm going to jail.
3 He didn't say anything about that. He just told me to be
4 calm and tell the truth.

5 Q. Of course, you admit that you lied to the police when
6 you gave your statement?

7 A. About what?

8 Q. About "E." If what you're saying today is true, then
9 you knew it was Earnest Battle and you just said "E" and you
10 were not telling them the whole truth?

11 A. They asked me -- what they asked me when they had me
12 in the house is to identify the two guys that were
13 downstairs, and that's what I did. And I did say that that's
14 Earnest Battle. And at the time I didn't know my other
15 cousin's last name because he is not a cousin that I see all
16 the time, and I said "Eddie."

17 Q. Eddie?

18 A. And I told them, "Earnest. That's Earnest Battle. I
19 call him Earnie and that's my uncle."

20 Q. And Eddie was there?

21 A. He was.

22 Q. Eddie was there?

23 A. Downstairs, yeah.

24 Q. Right. Now, Shawn, how many times have you met with
25 the prosecutor?

1 A. About two or three times. About twice ---

2 THE COURT: Speak so the jury can hear you.

3 THE WITNESS: Probably two or three times.

4 BY MR. MCGUIRE:

5 Q. Okay. And, Shawn, do you realize that one of your
6 charges carries a mandatory minimum of seven years? Do you
7 know that?

8 A. No, I didn't.

9 Q. Do you know that the only person who can reduce the
10 charge and take you out of mandatory prison time is the
11 prosecutor?

12 A. No. I mean...

13 Q. Who else can do it, Shawn?

14 A. Well, I thought the judge. I'm not...

15 Q. Well, I can tell you the judge ---

16 A. I didn't ask so much of questions about who can do
17 this or who can do that. I just came here to -- to tell the
18 truth. That's all. I didn't ask whether the judge could be
19 lenient with me or the prosecution could be lenient with me
20 and -- no. I didn't even brought none of that up.

21 Q. Well, Shawn, let me ask you this: Do you want to
22 plead to a charge that carries a mandatory seven years of
23 prison time?

24 A. If I want to plead to a charge?

25 Q. Do you?

1 A. No.

2 Q. Do you want somebody to help you get that charge
3 reduced?

4 A. If possible.

5 Q. And who, Shawn, can do that?

6 A. You're telling me they can do it, but what I'm telling
7 you is that I did not know they could do it. As far as me
8 coming here today, that has never came up about who can do
9 what. I didn't ask my lawyer, "Well, could they do this?"
10 Or whoever can do what.

11 I thought I'd come and I'd sit here and tell the
12 truth, and I thought maybe the judge or the jury or whoever
13 decides. That's all.

14 Q. Maybe cut you a break?

15 A. Maybe cut me a break.

16 Q. Let me ask you this, Shawn: Do you think that you're
17 going to prison?

18 A. I don't know.

19 Q. You don't know?

20 A. I know it's a possible chance, but I don't know.

21 Q. Do you have any doubt that the prosecutor is in charge
22 of your case, Shawn?

23 A. Do I have any doubt?

24 Q. Who is prosecuting you, Shawn?

25 A. I know the solicitor, Mike Bosnak, is supposed to be

1 the solicitor in the case. Right?

2 Q. And he is this guy right here in the dark jacket?

3 A. Yeah, but...

4 Q. Shawn, is it your testimony that you don't know
5 anything about the prosecutor and how he can help you through
6 your testimony?

7 A. That's right.

8 Q. That you just don't know anything about that?

9 A. No. I didn't bring up too many questions. I didn't
10 ask about it.

11 Q. You're just coming in here to basically confess, and
12 you could go to prison for 47 and a half years, and you don't
13 expect anything good to happen to you because of that. Is
14 that your testimony?

15 A. I'm not coming here confessing to anything. I came
16 here to tell the truth about what happened that night.

17 Q. Well, what did happen that night? Did you set up a
18 drug deal?

19 A. Yes, I did.

20 Q. And did you hand cocaine to Matt Wallace?

21 A. No, I did not.

22 Q. How did Matt Wallace get cocaine, Shawn?

23 A. He did not got the cocaine.

24 Q. He never got it?

25 A. No.

1 Q. Okay. Were you going to hand it to him?

2 A. Yes. I was going to hand it to him.

3 Q. So basically you are confessing to trying to sell
4 cocaine to Matt Wallace. True or not?

5 A. True.

6 Q. Okay. So basically your testimony, Shawn, is that
7 you're coming here today to confess to charges that could put
8 you in prison for up to about 50 years, and you don't expect
9 anything to happen to you, and you don't even know that they
10 can help you at all? Is that your testimony?

11 A. That's right. I did not come here thinking that
12 anyone could help me with anything. If they want to offer me
13 help, then that's different. But I didn't come here thinking
14 -- I didn't ask any questions about can someone help me out
15 or anything, but -- so I didn't believe that the evidence up
16 here was concerning the case about me. I thought I was here
17 to tell the truth about what happened.

18 Q. Well, that has nothing to do with your case at all?

19 A. Of course it has something to do with my case. We all
20 were together, me and the other two co-defendants in my case.
21 So it is part about what happened.

22 Q. Let me ask you this, Shawn: How did Matt Wallace get
23 in touch with you?

24 A. He paged me.

25 Q. Because your name was out on the street as somebody

1 who sold cocaine. Right?

2 A. No.

3 Q. He just called your number randomly?

4 A. No, he did not. He got my number from a friend who
5 told him that maybe he could get -- or call someone about
6 getting some cocaine.

7 Q. So your name was on the street as somebody who can
8 produce cocaine?

9 A. Yeah.

10 Q. Yeah. Shawn, you were selling cocaine for money.
11 Right?

12 A. That night? Are we talking about that night?

13 Q. Or other times.

14 A. No. I have never sold cocaine. I have never sold any
15 drugs.

16 Q. You sold drugs to Santonio Jones?

17 A. No.

18 MR. BOSNAK: Objection, Your Honor.

19 THE WITNESS: I have not. Who is Santonio Jones?

20 THE COURT: Yes, sir.

21 MR. BOSNAK: Objection, Your Honor.

22 THE COURT: Members of the jury panel, I need you to
23 go to the jury room, please.

24 (Whereupon, the jury goes to the jury room at
25 approximately 4:27 p.m.)

1 THE COURT: All right. We have the jury out. The
2 question was, I believe: You sold cocaine to Antonio Jones?

3 MR. MCGUIRE: Santonio Jones.

4 THE COURT: Beg your pardon?

5 MR. MCGUIRE: Santonio Jones. Santonio.

6 THE COURT: Stantonio?

7 MR. MCGUIRE: It's Santonio.

8 THE COURT: Okay. Rather than Antonio or Stantonio.

9 MR. MCGUIRE: Yes, sir.

10 THE COURT: All right. So why did you think you can
11 ask her about that?

12 MR. MCGUIRE: I believe she opened the door when she
13 said "I've never sold cocaine for money. I've never done it
14 before in my life."

15 THE COURT: Well, but that's -- I don't know about
16 opening the door, but any other -- it won't open the door if
17 she denies it. I mean, are you going to prove that she sold
18 it to Antonio -- Santonio Jones?

19 MR. MCGUIRE: He's on my witness list, Your Honor, and
20 he's available.

21 THE COURT: And you're saying he can testify that she
22 sold it to him?

23 MR. MCGUIRE: Yes, sir.

24 THE COURT: And I guess it would also be -- let's see.
25 I'm trying to look at how you can bring in other bad acts.

1 Again, you asked her first of all, "Have you ever sold
2 cocaine?" Is that what you asked her?

3 We've got the court reporter. Read it back. Go back.
4 Let's see exactly what it was you asked her.

5 (The last four questions and answers were read back by
6 the court reporter.)

7 THE COURT: And that's where he objected?

8 THE COURT REPORTER: Yes, sir.

9 THE COURT: All right. Now, why is it you think you
10 can ask those questions and get answers?

11 MR. MCGUIRE: Well, one thing, in the opening
12 statement the prosecutor tried to portray this young lady as
13 a single mom who was a one-time participant in a drug
14 transaction, not very good at it, no prior record. He said
15 she's got many good qualities about her, threw her character
16 in evidence. And now, I believe, I can go after her
17 character. And since she says she's never sold drugs before,
18 I think I should be able to prove it, to prove that she's not
19 telling the truth. And her credibility is the linchpin in
20 this case.

21 MR. BOSNAK: Your Honor, if I may. Mr. McGuire, as
22 usual, kind of expands things. She does not have a criminal
23 record. And my statement about her not being very good about
24 the drug business is very obvious by her selling to this
25 Matt Wallace who she never met and didn't know and letting

1 this gentleman that she didn't know even into her apartment.
2 None of that's very smart for a single woman.

3 THE COURT: Let's speak to the situation we've got;
4 that is, he asked her about selling drugs for money.

5 And she said no. "I never sold it for money, not that
6 night" and so forth. "I never sold drugs for money."

7 And then he asked her: "You never sold drugs -- you
8 didn't sell drugs to Santonio Jones?"

9 And that's when the objection came.

10 MR. BOSNAK: All right. First, let me object as to
11 relevance.

12 THE COURT: All right. Anything else?

13 MR. BOSNAK: Also, if not that, Your Honor, 608(B),
14 specific incidents of conduct.

15 THE COURT: Wait a minute. I'll look at that.

16 MR. BOSNAK: To me, this is extrinsic evidence,
17 Your Honor.

18 THE COURT: All right. I appreciate the position, but
19 I overrule the objection at this point to that question.

20 Bring the jury back in.

21 (Whereupon, the jury returns to the courtroom at
22 approximately 4:34 p.m.)

23 THE COURT: You may continue to cross-examine the
24 witness..

25 MR. MCGUIRE: Thank you, Your Honor.

1 BY MR. MCGUIRE:

2 Q. You've also sold drugs to Richard Anderson?

3 A. No.

4 Q. No?

5 A. I don't even acknowledge these -- the names that
6 you're giving me.

7 Q. But you sold drugs that night at about midnight with
8 your daughter in your house. Is that right?

9 A. Yeah.

10 Q. Shawn, I asked Eddie this, and I want to ask you this:
11 Would you lie to save your life?

12 MR. BOSNAK: Your Honor, objection to this. There is
13 no relevance to that question.

14 THE COURT: I'm going to allow the question.

15 THE WITNESS: Would I lie to save my life?

16 BY MR. MCGUIRE:

17 Q. Yes.

18 A. (Pause) No.

19 MR. MCGUIRE: That's all I have for you.

20 THE COURT: All right. Anything on redirect?

21 MR. BOSNAK: Yes, sir.

22 REDIRECT EXAMINATION

23 BY MR. BOSNAK:

24 Q. When was the first time you met me, Shawn?

25 A. Last week. Thursday or Friday? Last week, Thursday

1 or Friday.

2 Q. How many times do you think we've talked?

3 A. Probably like two or three times.

4 THE COURT: Speak up, now.

5 THE WITNESS: Two or three times.

6 BY MR. BOSNAK:

7 Q. Was your attorney with you?

8 A. Yes.

9 Q. Did I promise you anything?

10 A. No. You did not.

11 Q. Have I ever promised you anything?

12 A. No.

13 Q. Has anybody from the Solicitor's office ever promised
14 you anything?

15 A. No.

16 Q. To the best of your knowledge, have we promised
17 Mr. Smiley anything?

18 A. No.

19 Q. Okay. Let's go back a minute to that night of the
20 drug deal. What did Earnest promise you out of that drug
21 deal? What did he promise you he was going to give you?

22 A. The money.

23 Q. The money?

24 A. (The witness nods head up and down.)

25 Q. How much money?

1 A. About a thousand, maybe more.

2 Q. A thousand dollars. And also, do you remember this
3 letter he wrote to you in jail? What did he promise you in
4 this letter?

5 A. He promised that -- that if I tell -- if -- if I tell
6 the story exactly how he tells me to tell, then everything
7 will be all right and I probably will just get probation or
8 something.

9 Q. Probation?

10 A. (The witness nods head up and down.)

11 Q. Okay. And there was also in there something about
12 promising to do something?

13 A. Promising?

14 MR. BOSNAK: That's all. I withdraw that question,
15 Your Honor. That's all I have for her.

16 THE COURT: Thank you very much. You can step down.

17 (The witness is excused from the witness stand and
18 leaves the courtroom.)

19 THE COURT: Call your next witness.

20 MR. BOSNAK: The next witness is Al Kuechler.

21 (Mr. Kuechler enters the courtroom.)

22 AL KUECHLER,

23 being first duly sworn by the Clerk, was examined and
24 testified as follows:

25 THE CLERK: Please be seated. Please give your full

ALFRED KUECHLER, JR. - DIRECT EXAM. BY MR. BOURDON

302

1 name for the record and spell your last.

2 THE WITNESS: Alfred Kuechler, Jr. K-U-E-C-H-L-E-R.

3 THE COURT: K-U what?

4 THE WITNESS: K-U-E-C-H-L-E-R.

5 DIRECT EXAMINATION

6 BY MR. BOURDON:

7 Q. Officer Kuechler, how long have you been with the
8 North Charleston Police Department?

9 A. Almost five years.

10 Q. Can you tell us what kind of training you've had to
11 become a police officer?

12 A. I went to the police academy in Columbia, basic police
13 academy. I've had several level-one, level-two narcotic
14 schools. I also went to car school, several ---

15 Q. What's car school?

16 A. Car school is for a tactical narcotic unit.

17 Q. And how long have you been with the narcotics unit?

18 A. Three years.

19 Q. Now, let's talk a little bit about your involvement
20 with the narcotics unit. Were you with them in July of 1999?

21 A. Yes, I was.

22 Q. And tell us what kind of duties you performed.

23 A. On that night I was outside perimeter with
24 Sergeant Hux. I was riding in his vehicle, passenger.

25 Q. All right. Well, let's back up. You were the case

1 agent in this whole incident ---

2 A. That's correct.

3 Q. --- that we've been hearing about all day. Is that
4 correct?

5 A. Correct.

6 Q. And tell us how the operation began as far as when you
7 first came up with a plan to target LaShawn who was just on
8 the witness stand.

9 A. I had received information from the detective division
10 of North Charleston for Matt Wallace that he was willing to
11 help, that he had known -- knew someone that sold large
12 quantities of cocaine. At that time I brought him into the
13 office, documented him out as a confidential informant. The
14 he had ---

15 Q. Tell us what that means. What do you mean,
16 "documented"?

17 A. Well, when I'm saying "documented": Take his picture
18 read him his rights for being a confidential informant,
19 stating that he could not make his involvement with the
20 police -- showing that he is freely helping the police, I
21 haven't promised him nothing, taking his picture, taking his
22 fingerprints, and then turn it in to a file that's kept.

23 Q. And when did you do that with this Matt Wallace guy?

24 A. That had to be on the 14th of July.

25 Q. And tell us how you use confidential informants. As

LASER BOND FORM B • PENGAD • 1-800-851-9989

ALFRED KUECHLER, JR. - DIRECT EXAM. BY MR. BOURDON

304

1 narcotics agent, what's the basis for using them?

2 A. Well, what -- what the basis is for me using one: If
3 a person is on charges or he either wants to help himself,
4 freely, for money, or for help on his charges, for a lesser
5 charge, they'll come. I don't -- you know, it's -- they'll
6 want to ask us for help if that's what they want. And that's
7 what -- you know, we'll help them out as much as we can.
8 It's not a promise to them. And he, in turn, will help us
9 get a person.

10 Q. And when you decide to use a confidential informant,
11 how do you come about selecting one? Do they come to you
12 voluntarily?

13 A. Right. It's usually they'll come to us. Like I say,
14 if we're out and let's say that's them asking us for help, I
15 don't have to help them.

16 Q. Now, what's the purpose of using confidential
17 informants as a narcotics agent?

18 A. What was it?

19 Q. What's the purpose of using an informant or a
20 confidential informant as a narcotics agent?

21 A. To gain larger suppliers.

22 Q. And why can't you just dress up as a drug buyer and go
23 by yourself as a police officer?

24 A. Because I'm known. I am known to a lot of citizens,
25 people, drug dealers in the community.

1 Q. And how is that that you're known?

2 A. I grew up in the community. I've arrested several
3 people in the community.

4 Q. Is it fair to say that most of the officers in your
5 narcotics unit started off as patrolmen on the street?

6 A. That's true.

7 Q. And in uniform you'd be visible to everyone in the
8 North Charleston area?

9 A. That's correct.

10 Q. So you bring in informants so that they aren't known
11 to people that are selling drugs?

12 A. Correct.

13 Q. Now, did you have a chance to use this Matt Wallace in
14 an operation in July of 1999?

15 A. Yes.

16 Q. And what was the operation that he was used in?

17 A. He was -- he was used in a operation for a buy-bust on
18 Reddin Road.

19 Q. And Reddin Road is located in North Charleston?

20 A. In North Charleston, the City of North Charleston.
21 It's located off of Saint Johns.

22 Q. And for a reference point to our jury -- I know we've
23 been talking about this all day and we've seen a map of it.
24 Can you give us an idea of where we're talking about this
25 Reddin Road and Saint Johns Street is?

ALFRED KUECHLER, JR. - DIRECT EXAM. BY MR. BOURDON

306

1 A. If you come off of Spruill Avenue off McMillan, if you
2 know where the Navy Base is, if you're on the McMillan side
3 of the Navy Base, you'll turn left from Spruill Avenue.

4 That's Saint Johns. There will be a small club called The
5 K.D. Lounge (phonetic). You'll go up a block, and Reddin
6 Road circles around in a half circle. That's Reddin Road.

7 Q. And about how far is that from our courthouse right
8 here today?

9 A. Maybe three, four miles.

10 Q. Just up Rivers Avenue?

11 A. Right. If you leave out of the courthouse, if you
12 leave out of the courthouse you'll make a right onto Rivers
13 Avenue. Go up to McMillan Avenue. At the corner, at the red
14 light, you'll turn left. Past Navy Hospital, go straight
15 across Spruill Avenue. Make another left. That's Saint
16 Johns. Directly off Saint Johns, your first left will be
17 Reddin Road.

18 Q. And that Reddin Road is across from where the old Navy
19 Base was, where the officer housing was. Correct?

20 A. That's correct.

21 Q. Now, what was your plan of operation, you being the
22 case agent on this arrest?

23 A. Our original plan was to order up, using Matt Wallace
24 -- he had the connection -- and order up nine ounces of
25 cocaine.

1 Q. Matt Wallace's connection provided you with the name
2 of Ms. LaShawn?

3 A. That's correct.

4 Q. And then how did you attempt to make contact with
5 Ms. LaShawn?

6 A. We went to a pay phone located on the Navy Base --
7 that's where our office is located -- and paged her, at which
8 time she called back. And the conversation that I could hear
9 over the phone led into talking about what she could get and
10 how much she could get of cocaine.

11 Q. And were you monitoring these phone calls in any way?

12 A. Yes. With micro-cassette.

13 MR. BOURDON: A juror's phone went off, Your Honor. I
14 just want to make sure that was taken care of.

15 THE COURT: I'm sorry. You all are not supposed to
16 have those.

17 A JUROR: I thought I had it off.

18 THE COURT: Okay. Go ahead.

19 BY MR. BOURDON:

20 Q. So you had Mr. Wallace in your office making phone
21 calls to LaShawn?

22 A. I had him on the Navy Base at a pay phone making phone
23 calls.

24 Q. And how were you recording those phone calls?

25 A. A micro-cassette recorder with a suction cup that is

1 stuck on the outside of the pay phone, and I'm standing next
2 to him while he's talking on the phone.

3 Q. Okay. Is Mr. Wallace aware that there is a wiretap,
4 basically, on that phone?

5 A. Yeah. He's -- he's holding -- as he's making the
6 phone call, he's holding the suction cup to the outside of
7 the pay phone -- of the receiver.

8 Q. And please continue with your initial contact with
9 LaShawn. When was that made?

10 A. The 14th.

11 Q. Okay. That's the day before this incident?

12 A. The day before the actual incident.

13 Q. Okay.

14 A. We called her from the pay phone, paged her. She
15 called back a few minutes afterwards. Talked to her about
16 what she could get, as in cocaine, how much cocaine she could
17 get. We first ordered up nine ounces. When I say "ordered
18 up," we asked for nine ounces.

19 Q. Whose idea was it to ask for that much?

20 A. It was ours.

21 Q. Okay. And how much money are we talking for nine
22 ounces of cocaine?

23 A. Close to ten. Ten thousand.

24 Q. Please continue with your first initial conversation
25 with LaShawn.

1 A. When we talked to -- when we talked to her the first
2 time, she stated that she was unable at that time to get nine
3 ounces. So we -- when I say "we," I'm talking as in me and
4 Matt Wallace standing at the phone. He rallied her on the
5 phone back and forth about how much the price would be. She
6 said she could not get nine ounces.

7 He said, "Okay. Can we get seven?"

8 At that time she says, "We'll see if we can work with
9 seven."

10 This is him talking on the phone with her.

11 She came up with a price after doing some adding and
12 talking back. We said we'd call her back. We needed time -
13 which in our time, when I say "our time," in a narcotics
14 agent's time it's a moment's notice.

15 He could say, "I'm pulling up and" -- you know, "I'm
16 pulling up. I've got the dope now. That's how much it is."
17 Or he could say, "It will be two hours from now."

18 So it was a constant call back. "I'll call you back.

19 And then she came up with the price. We then -- that
20 was later on in the evening. That night it was raining,
21 pouring down raining outside. Me and Matt was on the
22 telephone. He was actually speaking on the phone. I was
23 standing next to him. And she said she could get four
24 ounces, four and a half.

25 Q. Had you had any contact with LaShawn prior to this?

1 A. No.

2 Q. So you're just hearing the phone call between Matt and
3 LaShawn?

4 A. That's correct.

5 Q. And then what happened after that phone call?

6 A. After that? After that -- that was the night of the
7 14th. It poured rain.

8 She said, "Are y'all on y'all's way?"

9 We told her, "Yes. We were on our way then."

10 It was pouring down rain. She said she couldn't get
11 nothing that time. We told her we'd ride around the block
12 and see where she lived. She told us where she lived, off
13 Reddin Road.

14 The next day -- we never actually went to the
15 residence. Never rode by. We told her because she asked us,
16 "What are y'all riding in?" She said -- we told her that
17 we'd be in a white BMW. We never went to the residence. We
18 went back, and the call was just -- there was no more calls
19 that night.

20 The next day, which would be the 15th, we called her
21 up that morning. She was upset because she said that we were
22 going to come by there that night and we didn't. It was just
23 like -- it was pouring down raining, and we told her we were
24 going to come by there. We didn't. She was upset the next
25 day.

1 We talked to her. A little while of time went by.
2 Talked to her again, asked her can she still get the four and
3 a half ounces. She said, yes, give her a call back in a
4 little while.

5 Q. And this phone call that was made the next day, where
6 were you at this point?

7 A. At a pay phone at the Navy Base, the same pay phone or
8 the Navy Base.

9 Q. And then did you receive anymore contact that day from
10 LaShawn?

11 A. Yes. That was the 15th. We had spoken to her several
12 times during the day, making sure everything was set up and
13 -- four and a half. And after the last phone conversation
14 that I had with Matt next to me, it was set up and ready to
15 go.

16 Q. And your understanding of the deal was what?

17 A. That it was for four and a half ounces for 47, close
18 to \$5,000 that we were going to have to pay out.

19 Q. And where was that money going to come from in your
20 buy operation?

21 A. It'd come from the North Charleston Police Department
22 our narcotics buy unit.

23 Q. Where did you obtain that money from? Did you
24 actually get the cash for this deal?

25 A. I didn't personally. Detective Gould, he ended up

1 signing the money out, and he ended up photocopying the
2 money.

3 Q. And the money is kept in the evidence compound at
4 North Charleston? Where are those funds actually derived
5 from?

6 A. You mean ---

7 Q. The cash.

8 A. --- where is it? It's -- yeah. It's through North
9 Charleston City. It's kept in a vault. It does, yeah.

10 Q. You signed it out for the purpose of this drug deal?

11 A. Gould signed it out.

12 Q. Correct. And you as the case agent also ---

13 A. Correct. Correct.

14 Q. Okay. I'm just trying to bring the jurors up to
15 where ---

16 A. Right.

17 Q. --- to get us back to Reddin Road. Okay. So now
18 you've got the money. What's done with the money?

19 A. The money is then photocopied on a copier. All 47 or
20 close to \$5,000 is copied. And then it's secured with the
21 undercover, which is Detective Vanootegham.

22 Q. And the reason the money is photocopied is for what
23 purpose?

24 A. Well, it's for the purpose of -- for security purpose,
25 for one. And also if the deal goes, then that money is found

1 on the person and also we know it's our money if it was mixed
2 in if he had or she had more money. On any subject, anytime
3 we do a buy, either a buy-bust or just a controlled purchase,
4 we copy the money because usually with drug dealers they have
5 large amounts of cash and our money is going to be mixed in
6 there.

7 Q. Now, what was Vanootegham's role going to be in this
8 operation?

9 A. She was -- she was the undercover driving the Yellow
10 Cab. We have a yellow cab that's an old "Crown Vic" that's
11 painted like a Yellow Cab. She was to drive to the location
12 and be observant with the C.I., with Matt Wallace.

13 Q. And why wouldn't you let Wallace just go there by
14 himself and make the purchase and just tell you what had
15 happened?

16 A. Because being an undercover police officer there, we
17 used that taxicab for that reason, so that we could have a
18 police officer there.

19 Q. It's important for you to have an officer present at
20 all times when you have an informant. Isn't that correct?

21 A. Correct.

22 Q. Why do you do that?

23 A. For safety. For safety if something would go wrong.
24 If I can -- say, if we were to get robbed, there's a police
25 officer on the scene; or if the informant is by himself and

1 all of a sudden he gets a gun or any weapon stuck to his
2 face, stuck to him, then automatically it's going to
3 take -- but you've got a police officer also that's going to
4 be there.

5 Q. And for evidentiary purposes, isn't it also important
6 to have a police officer with the informant?

7 A. Right. Especially that amount of cash. That's why it
8 never left Vanootegham's person. It was shown in the
9 vehicle, but it never left.

10 Q. And tell us what you did after you received the money
11 from the North Charleston vault and logged it in and copied
12 it.

13 A. At that time it was turned to Detective Vanootegham
14 when she placed it in a paper bag. At that time they were
15 getting in the vehicle and leaving.

16 Q. And where were they to be going?

17 A. To 1855-B Reddin Road.

18 Q. And did you know any parameters of what was going to
19 occur on Reddin Road?

20 A. That ---

21 Q. Did you know what was going to happen once they got
22 there, what was the game plan?

23 A. Yeah. The initial game plan was to go to Reddin Road,
24 that we were going to get -- when I say "we," the police
25 department narcotics unit. We were going to get four and a

1 half ounces of cocaine for the allotted amount of money that
2 we had that day agreed on.

3 Q. And during your monitoring of these phone calls
4 between LaShawn and Wallace, where were the drugs to be
5 coming from?

6 A. From her uncle.

7 Q. Did she have the drugs?

8 A. No. She -- she stated "from her uncle."

9 Q. Were you able to determine who her uncle was at that
10 point?

11 A. No.

12 Q. Did she have any drugs in her possession that you were
13 aware from the phone calls that were being made during the
14 day and the day before?

15 A. No.

16 Q. Okay. And then tell us what happened once Vanootegha
17 got in the cab with the C.I. That's Mr. Wallace.

18 A. They left out of our office parking lot, which is on
19 the Navy base, traveled out on Hobson to Bainbridge --
20 actually from Bainbridge to Hobson. Left out the McMillan
21 gate, and then left, and went and turned onto Saint Johns,
22 pulled up into the parking lot. And I don't know what
23 happened after that point as far as...

24 Q. And what time of day was this that she pulled up in
25 the cab or left in the cab with Wallace, with Matt Wallace?

ALFRED KUECHLER, JR. - DIRECT EXAM. BY MR. BOURDON

316

1 A. Probably 10:00-ish.

2 Q. At nighttime?

3 A. Yes.

4 Q. Okay. And then what happened after she left in the
5 cab with the informant Matt Wallace? Do you know where she
6 went?

7 A. I know she went to -- from via -- from the radio, the
8 police radio, that she was going to Reddin Road. That's
9 where she was instructed to go.

10 Q. And how were you monitoring this whole operation at
11 this point?

12 A. Through the radio.

13 Q. How were you doing that? Can you explain that to us?

14 A. Detective Vanootegham also had a police radio with her
15 in the cab. She pulled up. When she had the moment whenever
16 LaShawn was not at the vehicle, she would radio back to us
17 and let us know what was going on.

18 Q. And what were you aware of that was going on from what
19 was being broadcast on the police radio?

20 A. We had to wait. The first time they went up, had to
21 go to the store, because she said that her uncle hadn't got
22 there yet.

23 Q. And then did you see Vanootegham and the taxicab leave
24 Reddin Road after that phone call or that transmission was
25 made?

1 A. No.

2 Q. So were they at Reddin Road the whole time, or did
3 they leave and come back?

4 A. Yeah, they left and came back. They left Reddin Road.
5 And I heard a statement on the radio that the dope wasn't
6 there, that they were going to come back. They were going to
7 the store, and they'd come back.

8 Q. Did you see where they went when she said they were
9 leaving?

10 A. No.

11 Q. Whereabouts are you at this point of the operation,
12 physically?

13 A. I'm with -- in Sergeant Hux's vehicle. It's an
14 undercover vehicle, not marked, no "police," nothing like
15 that. We're roaming the area and in the area of McMillan,
16 Spruill, and Saint Johns.

17 Q. Your purpose of doing so is for what reason? In
18 roaming that area, what are you doing?

19 A. I wasn't part of the initial takedown. I wasn't part
20 of the takedown. It was roaming, being in the area until the
21 deal went.

22 Q. And then after Vanootegham went to the store, they
23 began to return to Reddin Road?

24 A. Correct.

25 Q. How are you aware of that?

ALFRED KUECHLER, JR. -- DIRECT EXAM. BY MR. BOURDON

318

1 A. From her stating on the radio that they were. Paged
2 LaShawn again and that they were in route back over to the
3 residence.

4 Q. Had the drugs arrived at the residence at this point,
5 to your knowledge?

6 A. They went to the store and came back and that's --
7 exactly. When Vanooteigham called her, made the call with
8 Matt Wallace while they were at the store, she stated Shawn
9 said on the phone that her uncle was near, that he'd be there
10 in a matter of minutes. So that's when Vanooteigham and
11 Matt Wallace went back to the house.

12 Q. And were you aware of what type of vehicle the uncle
13 would be driving?

14 A. I don't recall who said it on the radio, but someone
15 did come across the radio and stated an older model Cadillac.

16 Q. Do you know what color the Cadillac is that you were
17 expecting to be arriving?

18 A. An older model blue Cadillac.

19 Q. Did there come a point in time when you saw an older
20 blue Cadillac in that area?

21 A. Yes.

22 Q. Okay. When was that?

23 A. When me and Sergeant Hux turned off of McMillan onto
24 Spruill, made a left, going toward Cosgrove, we seen an older
25 model blue Cadillac. Couldn't tell if two people was in the

1 car. I mean, of course, there was a driver. Someone was in
2 the driver's seat. It was leaving off Cosgrove, coming onto
3 Spruill.

4 At that time me and Hux stated to each other, "That's
5 the old model blue Cadillac." We turned around, come back
6 down Spruill, and at that time we got stuck at the light.

7 And as he was coming down, he turned off McMillan.
8 Saint Johns and McMillan, if you look, you can come off -- a
9 soon as you cross the railroad tracks, you can see down Sain
10 Johns.

11 As we turned onto Saint Johns, there was a car sittin
12 on the side of the road next to the hedges. As we ride by
13 it, that looks -- we stated to each other, "That looks just
14 like the car that just passed us." Couldn't tell if no one
15 was in it at the time. We passed by it and went on further
16 down.

17 Q. When you first passed the car on McMillan, could you
18 see who was driving or the occupants? Any description
19 whatsoever?

20 A. No.

21 Q. Okay. What, if anything, was unusual about that blue
22 Cadillac being parked where it was on Saint Johns Street?

23 A. The Cadillac pulled up. No one was around the
24 Cadillac at all. It was parked next to the hedges, off the
25 side of the road. It wasn't in a driveway. It was just

ALFRED KUECHLER, JR. - DIRECT EXAM. BY MR. BOURDON

320

1 parked off the side of the road next to the hedges.

2 Q. Does that appear to be a valid parking spot or a
3 parking spot that would be used commonly by people there?

4 A. No.

5 Q. Why is that?

6 A. Well, there was not a driveway there. There was no
7 ruts to it. The ground did not look to appear to be where
8 cars were coming in and out.

9 Q. And if people were going to visit someone, say on
10 Reddin Road, would there be ample parking space on Reddin
11 Road to go visit someone and park your car?

12 A. To the houses there, yes.

13 Q. And so what caught your attention about this blue
14 Cadillac being parked in the grass near the bushes?

15 A. There's no other cars parked around it. This Cadillac
16 pulled up. We had a description of a Cadillac, older model
17 Cadillac. This car pulls up. We do not see it stop. By the
18 time we're turning off McMillan, it's already stopped and
19 sitting on the side of the road.

20 Q. And then tell us what happened as you go by the
21 vehicle.

22 A. As we go by on Saint Johns -- I was with Sergeant Hux.
23 He's driving. We just drive completely by it. Couldn't tell
24 if no one was in the car at the time. Didn't want to slow
25 down because everybody -- well, not everybody -- lots of

1 people know our vehicles. We rode on past it, come back
2 around, and sat a few blocks away -- or, I mean, a few
3 seconds.

4 Q. A few seconds away?

5 A. Right.

6 Q. And why were you parked that close to that vehicle in
7 that area?

8 A. To make sure if anybody had come back to the vehicle
9 we'd see it, we'd observe them, or if anybody was still going
10 to get out of the vehicle.

11 Q. Where was the drug deal to occur in relation to where
12 that car was parked?

13 A. It would be to the left-hand side. If you're on Saint
14 Johns, driving away from McMillan Avenue, the cut was right
15 here.

16 Q. And can you describe this cut for us? We've heard
17 that quite a bit. What is the cut that they're talking
18 about?

19 A. The cut, it's a opening in the bushes, the hedges, the
20 bush. It's alongside of this road here where the house is,
21 the abandoned house, and it's an opening where you can walk
22 through the hedges without being stopped.

23 Q. Okay. And then what happened after you passed the
24 vehicle and set up your surveillance? Did you have any othe
25 transmissions on the radio?

1 A. At that time Vanootegham gave the signal for the --
2 basically, the dope is there, that the arrest had to be made.
3 Myself and Sergeant Hux then -- he drove up to the front of
4 the Cadillac where it was parked... He got out and started
5 walking away. I stayed with the vehicle. And no one else
6 came back to the vehicle.

7 Detective Morris also pulled up. He went to the back.
8 And at that time I heard commotion on the other side of the
9 road -- on the same side of the road but further down.

10 When I say "commotion," "police." People yelling
11 "police."

12 Q. And then did you ever get out to go where the suspects
13 were arrested?

14 A. No.

15 Q. Did you have any other contact with Mr. Battle that
16 day?

17 A. No.

18 Q. Or that evening?

19 A. No.

20 Q. Were you able to determine whose vehicle that was that
21 we're talking about? The Cadillac?

22 A. Yes.

23 Q. And who owned the vehicle, through your investigation?

24 A. Evelyn or Earnest Battle.

25 Q. Okay. And did you come back with an address to where

1 that car was registered to?

2 A. 37-A Radcliffe Circle.

3 Q. Where is that? Is there a city that's given?

4 A. Charleston.

5 Q. And were you able to confirm that that was
6 Mr. Battle's residence on Radcliffe?

7 A. Through the run of the tag, that's where I confirmed
8 the address on there. He did give another address on the
9 booking.

10 Q. Okay. And then what other involvement did you have
11 with this case in terms of this investigation? Did there
12 come a point in time when you had custody of the drugs that
13 were found that evening?

14 A. Yes.

15 Q. I want to hand you what's been marked as State's
16 exhibit number 13. Can you take a look at this, please?

17 A. (The witness reviews exhibit.)

18 Q. Do you recognize that exhibit?

19 A. Yes, I do.

20 Q. How do you recognize it?

21 A. Through the BEST kit.

22 Q. Okay. Please explain that to the jury.

23 A. The BEST kit which was -- is a container bag that
24 cocaine or any other controlled substance has to be placed
25 and sent to Columbia to SLED. That night Detective Campbell

ALFRED KUECHLER, JR. - DIRECT EXAM. BY MR. BOURDON

324

1 sealed the bag, had the cocaine to begin with. And I, being
2 the case agent, dropped the cocaine, the BEST kit, off at
3 North Charleston City Hall evidence room.

4 Q. Okay. And when did you do that? Do you remember when
5 you dropped that off at the evidence compound in North
6 Charleston?

7 A. It was the day -- it was after twelve o'clock; so
8 being the 16th, later on in the morning. And I'd say, you
9 know, three o'clock, later on after all of our paperwork was
10 done.

11 Q. Was anyone there when you dropped it off at the drop
12 box?

13 A. No.

14 Q. Was Mr. Hardin there at the time?

15 A. No, he wasn't.

16 Q. Is that posted in during ---

17 A. During usually business hours, 8:00 to 5:00.

18 Q. You're sure you put that into the evidence drop box.
19 Is that correct?

20 A. Right. The drop box that's located in the door, metal
21 door, not the mailbox. Because you have to drop drugs and
22 guns in the top drawer.

23 Q. Why do you have to drop them in the top drawer?

24 A. That's just policy of North Charleston Police
25 Department.

1 Q. Are you familiar with that being a secure facility?

2 A. Yes.

3 Q. That drop box?

4 A. That's correct.

5 Q. And have you had a chance to examine those drugs today
6 or to look at that package?

7 A. Yes.

8 Q. Does it appear to be in the same condition as when you
9 submitted it to Mr. Hardin's office?

10 A. Other than it not being in a -- an envelope. That's
11 the way I dropped it.

12 Q. What kind of envelope did you have it in?

13 A. It's a -- like a manila -- well, that's not really the
14 color. It's a standard clasp envelope. That's where it goes
15 into. And as far as -- I didn't open it. I dropped it
16 straight into the door. And this is usually -- through my
17 experience, this is always placed inside that envelope, and
18 dropped it inside the door.

19 Q. Now, did you observe Detective Campbell placing that
20 into the BEST kit, or did he give it to you in the BEST kit?

21 A. Yes.

22 Q. And by doing so, was the bag sealed as he gave it to
23 you?

24 A. He placed it -- he placed it in the -- in the
25 envelope. It was sealed. We did our -- when I say "work,"

ALFRED KUECHLER, JR. -- DIRECT EXAM. BY MR. BOURDON

326

1 the paperwork and everything at the table and he was dealing
2 with the cocaine.

3 Q. And who was present during the field testing of it?
4 Did you observe the field testing?

5 A. No, I didn't.

6 Q. Okay. When you received the BEST kit from
7 Officer Campbell, describe the conditions. The cocaine
8 that's in there, was it in the BEST kit?

9 A. Correct.

10 Q. In a blue clear bag?

11 A. Correct.

12 Q. And that blue clear bag was placed in a manila folder?

13 A. It was placed in a brown or tan clasp envelope.

14 Q. And that was similar to the one that Agent Miller had
15 in his possession on the witness stand earlier today?

16 A. That's correct.

17 Q. Did you fill out any evidence forms in relation to the
18 documents or to the drugs that were placed into evidence?

19 A. Yes. The -- yes. The chain of custody, showing that
20 I had dropped it off.

21 Q. And that would be this? Okay.

22 MR. BOURDON: I guess I should have that marked.

23 (State's Exhibit No. 17 was marked for
24 identification.)

25 Q. Would you take a look at that, please?

1 A. (The witness reviews exhibit.)

2 Q. Is that part of the evidence tag that you submitted in
3 that case?

4 A. Yes, it is.

5 Q. Okay. Is that something you're required to be placed
6 into evidence?

7 A. Yes. This is required to be placed in with evidence
8 that is placed into the box.

9 Q. The drugs were actually recovered at what time? Was
10 it on the 15th?

11 A. Looks like the 15th.

12 Q. Okay. And some of the paperwork was not completed
13 until ---

14 A. Till after twelve o'clock.

15 Q. After midnight?

16 A. Correct.

17 Q. And when were the drugs found? Before midnight?

18 A. Correct.

19 Q. Okay. And did you have any contact with the defendant
20 at any point in this investigation?

21 A. No, sir.

22 Q. How about with LaShawn?

23 A. No.

24 Q. Or Mr. Nelson?

25 A. No.

ALFRED KUECHLER, JR. - CROSS-EXAM. BY MR. MCGUIRE

328

1 Q. Is there anything else that you wish to add in
2 reference -- well, I'll strike that question.

3 MR. BOURDON: Nothing further at this time.

4 THE COURT: Cross-examination.

5 CROSS-EXAMINATION

6 BY MR. MCGUIRE:

7 Q. You never saw Mr. Battle with any drugs, did you?

8 A. No.

9 Q. In fact, the only person who could testify to that
10 would be Eddie Nelson and Shawn Floyd. Is that correct?

11 A. To my knowledge.

12 Q. You indicated in those telephone conversations that
13 Shawn was actually negotiating prices, wasn't she?

14 A. Yes.

15 Q. And she was in control of naming the price, wasn't
16 she?

17 A. She would call back. When we called her the first
18 time, she would call, figure out a price, and then call us
19 back.

20 Q. Right. You said after doing some adding she came up
21 with a price for you?

22 A. Well, yeah.

23 Q. And you heard over the wire that when she counted the
24 money she told the undercover officer, Jennifer, that they
25 were short?

1 A. No.

2 Q. You didn't hear that over the wire?

3 A. No.

4 MR. MCGUIRE: That's all I have for you.. Thank you..

5 THE COURT: Thank you. Let me make sure I understand.

6 You said you put the evidence kit -- the BEST evidence kit,

7 you put that in the drop box at the evidence room of the

8 North Charleston Police Department on the night this

9 happened?

10 THE WITNESS: Yes, sir.

11 THE COURT: All right. Thank you very much. You can

12 step down.

13 (The witness is excused from the witness stand and

14 leaves the courtroom.)

15 THE COURT: Do you have another witness?

16 MR. BOURDON: Your Honor, we have another witness.

17 She'll be called at 09 tomorrow, another witness at 9:00 in

18 the morning.

19 THE COURT: Are you through for the day?

20 MR. BOURDON: Yes, Your Honor. This would be a good

21 place to stop.

22 THE COURT: All right. Members of the jury panel,

23 we'll stop then for the evening recess. I'll let you go

24 home.

25 Again I tell you not to discuss the case with your

1 family, friends, or anyone else. If they want to know what
2 you're doing, you tell them that you're on the trial, you're
3 on the trial jury of a case, and the case is going on, and
4 the judge -- blame it on me -- the judge specifically told
5 you not to discuss it with them. You can tell them all about
6 it once it's over; but until it is over, you cannot discuss
7 the case with anyone.

8 If anybody contacts you, calls you on the telephone,
9 stops you on the street, wants to talk to you about this
10 case, you find out who that person is if you can. Get a good
11 look at them so you can describe them to me, that person to
12 me, and let me know about it, and I'll deal with them after
13 that.

14 But no one should influence you, your decision in this
15 case, except through the testimony and the evidence that's
16 given to you here in the courtroom.

17 So if you would give your notepads to the bailiff here
18 as you leave, we'll keep them here. They're locked up
19 overnight. They'll be given back to you tomorrow morning.

20 Have a nice evening.

21 Excuse me. Nine o'clock. Nine o'clock tomorrow
22 morning. Thank you. Nine o'clock tomorrow morning.

23 (Whereupon, the jury leaves the courtroom at
24 approximately 5:15 p.m.)

25 THE COURT: How many more witnesses have you got?

1 MR. BOURDON: Just one, Your Honor.

2 THE COURT: Just one? And who is that?

3 MR. BOURDON: In light of our testimony this morning,
4 that would be Ms. Merritt from the SLED lab in Columbia.

5 THE COURT: I wasn't real worried about her. But
6 anyway, okay. You realize you haven't put 13 in. It's not
7 been accepted into evidence yet.

8 MR. BOURDON: Your Honor, in light of the Court's
9 concern this morning, I thought a complete chain would be
10 advisable ---

11 THE COURT: Well, okay, but I really -- but anyway,
12 that's fine. That's fine. If you've got her coming, good.
13 That's good.

14 But anyway, I want to ask the court reporter about
15 this. Because I wrote down in my notes, and I could have
16 been wrong, but I wrote down in my notes that Mr. Hardin said
17 -- well, I guess that's right -- that he got it out of the
18 box on July the 20th is what I wrote down.

19 MR. BOURDON: It was sitting in there from the 16th to
20 the 20th. That's when he did his paperwork on it.

21 THE COURT: Okay. All right. I just wanted to make
22 sure that I was getting it right. I wrote it down that he
23 got it out on the 20th. But, apparently, you know, the
24 contention is that it was in there from the 15th or the 16th
25 to the 20th when he got it out. I would have thought they

1 would have got it out every day. Okay. All right.

2 MR. BOURDON: In light of that, I would move for
3 admission of State's 13.

4 THE COURT: Well, we'll do that in front of the jury.

5 MR. BOURDON: Yes, sir. But, I mean, legally
6 speaking, I think the State has proved its chain of custody,
7 given Mr. Hardin was present while ---

8 THE COURT: Anything you want to say about that?

9 MR. MCGUIRE: Well, I don't think I need to be heard,
10 but I would maintain a chain objection.

11 THE COURT: Well, I think the chain has been
12 sufficiently proven.

13 But, now, I'm not telling you. If you want to bring
14 that person from Columbia, you can.

15 But in my opinion, the chain has been sufficiently
16 proven that it was in the custody and control and the lack of
17 any opportunity for tampering with it or anything of that
18 sort.

19 So based on the record as it now stands, if you move
20 tomorrow morning -- unless I change my mind, but I don't
21 think I will. But anyway, I would admit it into evidence in
22 front of the jury.

23 MR. BOURDON: Yes, Your Honor. But for purposes of
24 our evidentiary hearing, Ms. Merritt would have to drive two
25 hours from Columbia in the morning.

1 THE COURT: Like I say, I'm satisfied at this point
2 that the chain has been established to let it in.

3 MR BOURDON: Yes, sir. And I would move for its
4 admission at this point.

5 THE COURT: Okay. Well, all right. But you have to
6 do that in front of the jury, you know, tomorrow morning.
7 The evidence has to be admitted in front of the jury. So,
8 you know, unless something changes between now and then, I
9 would admit it into evidence tomorrow morning in front of the
10 jury. Okay?

11 MR. BOURDON: Yes, sir.

12 THE COURT: All right.

13 MR. BOURDON: Thank you.

14 THE COURT: All right. Anything else?

15 MR. BOURDON: No, Your Honor.

16 THE COURT: All right. Now, Mr. Battle.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: I think it best for you to stay with us
19 overnight. So I'm going to put you in the custody of the
20 sheriff's department, and they will have you in custody until
21 tomorrow morning nine o'clock.

22 Of course, either of you, you'll have access to him
23 over the evening recess.

24 And anytime they want to talk to him or have anything
25 to do with him, y'all make sure that he's available for them.

1 MR. MCGUIRE: Your Honor, I'm not sure if you would
 2 consider this, but I do have a consent order from the
 3 bondsman in which he does agree to stay on the bond till the
 4 end of the case.

5 THE COURT: I'm not worried about the bond. I just
 6 think that at this point in the trial it's best for him to
 7 stay in custody.

8 Thank you very much.

9 MR. MCGUIRE: Thank you, Your Honor.

10 (Whereupon, the hearing was recessed to the following
 11 day, Friday, June 8, 2001, at 9:00 a.m.)

12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 (On Friday, June 8, 2001, at approximately
 2 9:00 a.m., the defendant being present with counsel,
 3 the hearing reconvened, and the following proceedings were
 4 had:)

5 THE COURT: All right. Are you ready?

6 MR. MCGUIRE: Yes, sir.

7 THE COURT: Bring the jury in.

8 (Whereupon, the jury returns to the courtroom at
 9 approximately 9:20 a.m.)

10 THE COURT: We have the jury with us now in the
 11 jury-box. Mr. Battle is present, along with his attorney.

12 I hope you had a pleasant evening. We'll continue now
 13 with the trial.

14 Let's see. Do you have another witness?

15 MR. BOURDON: Yes, sir. Your Honor, the State would
 16 call Denise Merritt.

17 THE COURT: All right.

18 (Ms. Merritt enters the courtroom.)

19 DENISE MERRITT,
 20 being first duly sworn by the Clerk, was examined and
 21 testified as follows:

22 THE CLERK: Please be seated. Watch your step.
 23 Please state your full name for the record and spell your
 24 last.

25 THE WITNESS: Denise Merritt,

1 M-E-R-R-I-T-T.

2 DIRECT EXAMINATION

3 BY MR. BOURDON:

4 Q. Ms. Merritt, where are you employed?

5 A. South Carolina Law Enforcement Division.

6 Q. And whereabouts is that building located?

7 A. On Broad River Road in Columbia, South Carolina.

8 Q. And what is your job title at SLED?

9 A. Evidence Technician.

10 Q. And can you explain briefly what an evidence
11 technician is?

12 A. Officers throughout the State come in and bring all
13 the evidence for the lab. And my job is to log it in, to
14 separate it to the different departments that it goes into.
15 And if I have to, take custody of it. If not, the officer
16 places it into a sealed box; such as, we have a drug box, a
17 tox box, and a trace, and...

18 Q. So in your department it's broken up into blood
19 evidence that would be analyzed or trace evidence and
20 fingerprints that would be analyzed and then
21 narcotics?

22 A. Yes, sir.

23 Q. And how do you handle a narcotics case when it comes
24 into your office?

25 A. Narcotics cases are in a BEST evidence kit which is in

1 an envelope when they bring it in. And then we have to open
2 the envelope up, which in that case is a sealed --
3 heat-sealed pouch. And that's where the evidence is
4 contained, in that sealed pouch.

5 Q. Okay. And how long have you worked at SLED?

6 A. Nineteen years.

7 Q. And how many pieces of evidence have you processed
8 during that time, in a ballpark?

9 A. I've been in the evidence department for five years.
10 And, I mean, it's just -- I don't know. Thousands.

11 Q. And is it a set procedure no matter what type of
12 evidence; or depending on what kind of case it is, is there a
13 set procedure that you go by?

14 A. Yes, sir.

15 Q. Tell us what happens when an evidence technician would
16 bring evidence to you at your place in Columbia.

17 A. The first thing we'd do is we would take the evidence
18 out of the -- well, we would take the heat-sealed pouch out
19 of the envelope. I would get the evidence sheet that has all
20 the information on it and type that into the computer. And
21 then it also has a form that we have to notarize, if it
22 hasn't already been, saying the chain of custody, saying
23 where that evidence has been.

24 Q. And did you have an occasion to examine the drug
25 evidence or receive the drug evidence that was submitted in

1 the case in court here today?

2 A. The only thing I do is log the evidence in.

3 Q. And did you have a chance to review your records to
4 see if, in fact, you had logged this evidence in our case
5 today?

6 A. Yes, sir.

7 Q. Ms. Merritt, I hand you what's been marked as State's
8 exhibit 13. If you will look at that, please.

9 A. (The witness reviews exhibit.)

10 Q. Do you recognize that as the narcotics evidence that
11 was submitted in this case?

12 A. Yes, sir.

13 Q. And when did you receive that evidence?

14 A. It was received on July the 28th of 1999.

15 Q. And who gave you that piece of evidence?

16 A. Mr. Hardin with North Charleston PD.

17 Q. Are you familiar with Mr. Hardin?

18 A. Yes, sir.

19 Q. And how often do you deal with Mr. Hardin?

20 A. He usually comes in about every other week.

21 Q. On this date Mr. Hardin came in with that piece of
22 evidence?

23 A. Yes, sir.

24 Q. And tell the jury what you did when Mr. Hardin
25 presented that to you.

1 A. It's a standard procedure. What we do is, we'll --
2 I'll get out the log-in sheet; make sure that the heat-sealed
3 pouch that is in here, this red tape, is sealed; and I'll log
4 it in and notarize the chain of custody. And then he drops
5 it into our sealed drop box which is like a mailbox but it
6 has a lock on it and no one can get in -- into that except
7 our -- except the supervisor of the drug lab or our captain.

8 Q. Okay. And in this case you had custody of the BEST
9 kit itself while you were logging in the information?

10 A. Yes, sir.

11 Q. And where do you log it into? Is it a computer
12 system ---

13 A. Yes, sir.

14 Q. --- or how is it logged in?

15 A. It's logged in a computer.

16 Q. And where is Mr. Hardin while you're processing this
17 piece of evidence to put it in the computer?

18 A. He's in front of my desk.

19 Q. And then who put the drugs back into this evidence
20 drop box?

21 A. Mr. Hardin.

22 Q. Did you observe him do that?

23 A. Yes, sir.

24 Q. Okay. And then, as you stated, the only people that
25 have access to the drop box are who?

DENISE MERRITT - DIRECT EXAM. BY MR. BOURDON

340

1 A. It is the drug supervisor and our captain and -- and
2 our administrative lieutenant.

3 Q. And then it stays in the drop box until what point?

4 A. Until they -- until Michael Miller, in this case,
5 comes down to pick it up.

6 Q. And after that ---

7 A. Until the drug analyst comes down to...

8 Q. Yes, ma'am. And after that do you have any further
9 contact with this piece of evidence?

10 A. No, sir.

11 MR. BOURDON: Your Honor, at this point I would move
12 for admission of exhibit 13.

13 THE COURT: Any objection?

14 MR. MCGUIRE: I would still maintain my Rule 6
15 objection, Your Honor.

16 THE COURT: All right. I appreciate your position. I
17 overrule your objection. Number 13 will be admitted into
18 evidence.

19 (State's Exhibit No. 13, previously marked for
20 identification, was received in evidence.)

21 MR. BOURDON: Your Honor, I have no further questions
22 of this witness.

23 THE COURT: Any cross-examination?

24 MR. MCGUIRE: No questions. Thank you.

25 THE COURT: Thank you very much. You can step down.

1 Appreciate your coming. If you don't mind telling me, where
2 did it go; where did exhibit 13 go?

3 THE WITNESS: Right here.

4 THE COURT: Good, okay. That's good. Don't want you
5 to walk out with it.

6 THE WITNESS: Oh, no.

7 (Laughter.)

8 (The witness is excused from the witness stand and
9 leaves the courtroom.)

10 THE COURT: Any other evidence from the State?

11 MR. BOSNAK: No, sir, Your Honor. At this time the
12 State rests.

13 THE COURT: All right. Members of the jury, I need
14 you to go to the jury room for a few minutes if you would,
15 please.

16 (Whereupon, the jury goes to the jury room at
17 approximately 9:27 a.m.)

18 THE COURT: All right. Any motions?

19 MR. MCGUIRE: Your Honor, I'm not sure if my motion
20 would be premature since, as I understand it, I'm going to be
21 allowed to continue to cross-examine Shawn Floyd regarding
22 the tape and the transcript that we've prepared. I'm fine
23 making it now if you want me to.

24 THE COURT: All right.

25 MR. MCGUIRE: I would make a Rule 22 motion for a

1 directed verdict.

2 THE COURT: Oh, I'm sorry. I see. Well, is your
3 position that you did not get -- that that's part of the
4 State's case, so to speak?

5 MR. MCGUIRE: Yes, sir.

6 THE COURT: Well, I guess we need to do that then.
7 We're premature then. Is she available? Bring her back in.

8 MR. BOSNAK: Yes, sir. But the State's never put
9 those tapes into evidence, Your Honor.

10 THE COURT: I understand that, but he can
11 cross-examine her on the basis of that tape. He didn't get
12 the opportunity to do that yesterday.

13 MR. BOSNAK: Two things, Your Honor, we'd like to
14 bring up. We don't feel like the proper foundation has been
15 laid for those tapes.

16 THE COURT: What foundation is that? He got the tapes
17 from you, I presume, pursuant to the discovery. Right?

18 MR. BOSNAK: Yes, sir. But no chain of custody has
19 been established for the tapes either.

20 THE COURT: I don't think that that's necessary for
21 that. All right. Anything else?

22 MR. BOSNAK: And the other thing would be under
23 Rule 106, under the Rule of Completeness. Mr. McGuire wanted
24 to leave certain parts of those tapes out. The State's
25 position is: If he plays any of that, then we get to bring

1 that other information in.

2 THE COURT: Well, what part is left out? The part
3 that's inaudible?

4 MR. BOSNAK: The part that Mr. McGuire was complaining
5 about earlier on because it's the part with Mr. Battle
6 speaking in there. And he had said that, you know, that
7 should not be listened to, that type of thing, because it was
8 his understanding that, you know, the tapes were just
9 concerning LaShawn and the confidential informant
10 Mr. Wallace.

11 THE COURT: Okay. Well, I appreciate what you're
12 saying, but I should now let you play those tapes -- that
13 tape that I have suppressed? Is that what you're saying?

14 MR. BOSNAK: Yes, sir. I'm saying that we should be
15 able ---

16 THE COURT: I appreciate your position. I deny your
17 motion. Anything else?

18 MR. BOSNAK: No, sir. That's all.

19 THE COURT: All right. Bring her back in then.

20 MR. BOSNAK: Bailiff, please bring LaShawn Floyd in.

21 MR. MCGUIRE: Your Honor, may I have Mr. Douglas pass
22 these out to the jury?

23 THE COURT: I'll let you do it, or do you want him to

24 MR. MCGUIRE: I'd rather do it.

25 THE COURT: Okay. I'll let you do it.

1 MR. MCGUIRE: I'll do it.

2 MR. BOSNAK: Well, Your Honor, are we going to play
3 the whole tape, or are we just going to play portions of it,
4 or what?

5 THE COURT: Whatever he wants to play, to start with.

6 MR. BOSNAK: Well, it hasn't been entered into
7 evidence. I don't know why we need to hand out the whole
8 transcript to the jury, Your Honor.

9 THE COURT: You're going to play everything that's
10 shown on that transcript. Right?

11 MR. MCGUIRE: Yes, sir.

12 (Ms. Floyd enters the courtroom.)

13 THE COURT: All right. Bring the jury back in.

14 (Whereupon, the jury returns to the courtroom at
15 approximately 9:31 a.m.)

16 THE COURT: All right. Well, let's see. Does the
17 State wish to call any more witnesses? You're through,
18 right?

19 MR. BOSNAK: Yes, sir.

20 THE COURT: All right.

21 But, now, you were cross-examining the young lady
22 LaShawn -- I forgot what her last name is.

23 MR. MCGUIRE: Floyd.

24 THE COURT: Floyd. And you didn't get to finish that
25 yesterday because we were having a problem regarding the

1 tape. We're going to get back to that now.

2 So, Ms. Floyd, if you would come back up, please.

3 You're still under oath.

4 LASHAWN FLOYD,

5 previously duly sworn by the Clerk, resumed the witness stand
6 and was examined and testified further as follows:

7 THE COURT: Members of the jury panel, the reason that
8 I did not allow the playing of the tape yesterday was that I
9 couldn't understand, couldn't hear or understand, practically
10 anything really of what was being said on the tape, and I
11 thought that would just be confusing to you. It certainly
12 was confusing to me. You know, it didn't give me any
13 information about anything as far as this case is concerned.
14 And I requested that Mr. McGuire, the attorney for
15 Mr. Battle, attempt to have someone transcribe that tape.
16 And over the evening recess, he has done that, and he's
17 prepared these papers.

18 And I'll let you pass out a copy to each one of the
19 jurors. Go ahead, Mr. McGuire.

20 MR. MCGUIRE: Thank you very much, Your Honor.

21 THE COURT: And what I'm going to tell you is: Nobody
22 is vouching for the accuracy of this in terms of that this is
23 exactly accurate. It's for you to decide what, if anything,
24 is said on that tape. Now, in an attempt to assist you in
25 that, Mr. McGuire has had someone in his office prepare this

1 document, these papers that are being handed out to you, and
2 you can follow along. Everybody got one? Are you missing
3 one?

4 THE FOREMAN: Yes, sir.

5 MR. MCGUIRE: I've got another one.

6 THE COURT: Everybody has one. All right.

7 Now, again, I'm telling you that what's on this paper
8 is not necessarily -- nobody is vouching for the accuracy of
9 it. You have to listen to the tape. You can use it perhaps
10 to assist you in trying to understand what's being said on
11 the tape, but in the final analysis it's up to you to decide
12 what, if anything, was said on that tape.

13 Anybody else want me to say anything about that?

14 MR. MCGUIRE: No, Your Honor.

15 THE COURT: All right. Go ahead.

16 CROSS-EXAMINATION (CONTINUED)

17 BY MR. MCGUIRE:

18 Q. Shawn, you do remember setting up this drug deal ---

19 THE COURT: One question I have before -- at the end
20 where it says ---

21 MR. MCGUIRE: Its ends there, Your Honor.

22 THE COURT: On the very last page there's a sentence
23 that says: "Conversation ends briefly and resumes."

24 MR. MCGUIRE: Oh. I spoke to the paralegal who typed
25 this late last night. The conversation does end.

1 THE COURT: It ends?

2 MR. MCGUIRE: Yes, sir.

3 THE COURT: That "briefly and resumes" is not accurate
4 as far as you're concerned?

5 MR. MCGUIRE: That's correct.

6 THE COURT: All right. Go ahead.

7 BY MR. MCGUIRE:

8 Q. And, Shawn, you're still under oath. You do remember
9 setting up this drug deal with Matt Wallace?

10 A. Yes.

11 Q. And that was on the telephone. Right?

12 A. Yes.

13 Q. Okay. You tell me -- well, let me let you listen to
14 this, and then we'll talk about it.

15 (A portion of the tape is played.)

16 THE COURT: Stop it right there. Hold it just a
17 second.

18 (The tape is stopped.)

19 THE COURT: Are you going to play it all the way
20 through?

21 MR. MCGUIRE: Yes, sir.

22 THE COURT: Come on down here and get as close to thi
23 as you can.

24 THE CLERK: I've got the mike on it, sir.

25 THE COURT: Can you all hear over there okay?

LASHAWN FLOYD - CROSS-EXAM. BY MR. MCGUIRE (CONT'D)

348

1 (Members of the jury respond in the affirmative.)

2 THE COURT: Okay. Go ahead.

3 MR. MCGUIRE: Thank you, Your Honor.

4 (A portion of the tape is played, then stopped.)

5 MR. BOURDON: Your Honor, is there going to -- I hate
6 to object at this point, but is there a question coming from
7 this tape, or are we just going to let it play and then ---

8 THE COURT: I assume he's going to ask her some
9 questions about that.

10 MR. MCGUIRE: I'm going to ask her a lot of questions
11 about that.

12 THE COURT: Okay.

13 MR. BOSNAK: Well, why don't we play a little bit and
14 let him ask a question and play a little bit more?

15 THE COURT: I appreciate your suggestion. He's going
16 to play it throughout. Somebody start it back.

17 MR. MCGUIRE: Thank you, Your Honor.

18 BY MR. MCGUIRE:

19 Q. That is you on the tape?

20 A. Yes, that is.

21 (A portion of the tape is played, then stopped.)

22 Q. Shawn, let me ask you some questions about that part.
23 Basically right there on the phone you're telling the
24 informant that you sold drugs the night before, aren't you?

25 A. No, I did not.

1 Q. No?

2 A. No.

3 Q. You didn't say on page -- do you have a transcript of
4 this?

5 A. No, I don't.

6 Q. (Counsel tenders document to the witness.) On page
7 five did you say, "Okay. I ended up meeting this dude. Dud
8 had wanted four." Right? Did you say that?

9 A. Yes.

10 Q. And "four" means four ounces of cocaine, doesn't it?

11 A. Yeah.

12 Q. Yeah. So you met a dude the night before and he
13 wanted four ounces of cocaine. Right?

14 A. Yes.

15 Q. And a little bit farther down you say, "So I handled
16 that because I already had this." Right?

17 A. That's not what I meant, talking to him on the phone.

18 Q. Well, let me ask you this. All right. Down the page
19 you said that "he had wanted three right after that." Right?

20 A. Where?

21 Q. Towards the bottom it says: "All right. Somebody
22 else put me -- said they had want three right after that."
23 Right? Right here.

24 A. Uh-huh.

25 Q. Okay. And then the informant says, "Right." And you

LASHAWN FLOYD - CROSS-EXAM. BY MR. MCGUIRE (CONT'D)

350

1 say, "So that's what I had did." Right? That's not you
2 talking about a drug deal?

3 A. I'm saying it, but I did not sell any drugs.

4 Q. These are your words, but you didn't sell any drugs?

5 A. No, I did not.

6 Q. But these words seem to indicate a drug deal. You
7 don't disagree with that; do you?

8 A. I agreed to set it up. That's what me and him talked
9 about.

10 Q. Oh. So you're just setting up ---

11 A. That's right.

12 Q. --- other drug deals?

13 A. I -- I never sold any drug. I talked about it on the
14 phone.

15 MR. MCGUIRE: Okay. Well, let's keep going.

16 (A portion of the tape is played, then stopped.)

17 Q. Now, Shawn, was that you talking about your child in
18 the house?

19 A. Yes.

20 Q. While you're setting up this drug deal?

21 A. Yes.

22 MR. MCGUIRE: Okay. Okay, Shawn. We're on the bottom
23 of page six.

24 (A portion of the tape is played, then stopped.)

25 Q. Shawn, let me ask you about that. When you say, "Oh,

1 I am going to kill this little fucking girl. My house is so
2 fucked-up," who are you talking about?

3 A. My daughter.

4 Q. Okay. Now, yesterday you seemed to be ---

5 MR. BOURDON: I'm going to object to the relevance on
6 that part of the questioning. It doesn't have anything to do
7 with this drug case.

8 THE COURT: Ask another question.

9 MR. MCGUIRE: Thank you, Your Honor.

10 BY MR. MCGUIRE:

11 Q. Shawn, yesterday you seemed to be very reluctant to
12 say any curse word whatsoever. But you've cursed before,
13 haven't you?

14 A. Yes.

15 Q. But this is how you really talk. Right?

16 A. I talk how ever.

17 Q. How ever is on that tape. Right?

18 A. I talk how ever I want to talk.

19 Q. How do you want to talk when you're setting up drug
20 deals? Like this?

21 A. I talked like that. You hear me on the tape. I
22 talked like -- I talked like that at that time.

23 Q. But now you're a completely changed woman and don't
24 talk like that anymore?

25 A. I don't need to be a changed woman and don't talk like

1 that. If I'm going to curse and use profanity, I can do
2 that. But I was not -- pertaining to that night, I cursed
3 and I talked. I had a conversation on the phone with him
4 about setting up a drug deal.

5 Q. All right.

6 A. I didn't deny that.

7 Q. Well, now, be honest, Shawn. Yesterday your
8 performance about not wanting to curse, that was just an act
9 to impress the jury, now, wasn't it?

10 A. That I didn't want to curse?

11 Q. Right. That was for the jury's benefit. Right?

12 A. No. I just figured -- it was on the paper. I didn't
13 even know that maybe I can curse or whatever in the
14 courtroom.

15 Q. Okay.

16 A. That's why.

17 Q. You're just more comfortable cursing when you're
18 setting up drug deals?

19 A. I curse when I feel that's what I want to do, curse.

20 MR. MCGUIRE: Okay. Shawn, I think we're about
21 halfway down page 13.

22 (A portion of the tape is played, then stopped.)

23 Q. Shawn, that was you setting up the drug deal. Right?

24 A. Yes.

25 Q. And that was also you talking about drug deals from

1 the night before, right, or "setting them up" as you say?

2 A. Yes.

3 Q. Okay. Not a one-time event for you, was it?

4 A. Yes, it was.

5 Q. So you were setting up other drug deals, but this is
6 the only time you've ever set up a drug deal? I don't
7 understand.

8 A. No. That night was the first time and the last time
9 set up any drug deal.

10 Q. Okay. And we have to take your word for that. Right?

11 A. Well, it's the truth.

12 Q. Okay. Now, Shawn, what really happened is you called
13 your uncle, Eddie, to bring you dope?

14 A. No, I did not. I called Earnest Battle to bring me
15 dope. I don't even have Eddie's phone number. He doesn't
16 even have a cell phone. I visit his home once with Earnest
17 before me and him took a trip somewhere. At that time I just
18 wasn't even sure if he had a phone at his house. He just had
19 moved there.

20 Q. Let me ask you this: You say that you went outside
21 with the police and said, "This is Earnest Battle and this is
22 Eddie"?

23 A. No. I said I was inside. They were downstairs. I
24 looked through a window, from a window, and they flashed the
25 light on the both of them.

1 Q. And you said, "Earnest Battle and Eddie"?

2 A. Yes.

3 Q. But none of the police ever remember hearing the word
4 "Eddie." You never did that, did you?

5 A. Yes, I did.

6 Q. In your statement, Shawn, you say that "E" is your
7 supplier. Is that right? Do you remember your statement?
8 Have you read your statement recently?

9 A. No.

10 Q. Shawn, I hand you that. Do you recognize it?

11 A. (The witness reviews document.) My handwriting.

12 Q. No. Do you recognize this statement as your
13 statement?

14 A. I recognize most of the things that I just said when
15 they were asking the questions.

16 Q. Shawn, is this your statement? Yes or no?

17 THE COURT: Read through it and see.

18 (The witness further reviews document.)

19 THE WITNESS: Would you repeat the question?

20 BY MR. MCGUIRE:

21 Q. Is that your statement?

22 A. Most of it I did say it when they asked me questions.
23 Like, some of this don't really make a lot of sense.

24 Q. Let me ask you this, Shawn: Do you see at the bottom
25 where it says: "I have read the foregoing statement or have

1 had it read to me, and it is true and correct to the best of
2 my knowledge. I have given this statement freely and
3 voluntarily and have been provided with a copy of my
4 statement"? And you signed underneath that line, didn't you

5 A. Okay. Can I say something?

6 Q. All I'm asking you: Is that your statement?

7 THE WITNESS: Can I answer that?

8 THE COURT: Yes. Go ahead.

9 THE WITNESS: Thank you. Pertaining to when that
10 night occurred, when the statement was supposedly -- when
11 they asked me questions, I answered the questions. I was
12 very upset, scared, crying. I didn't read none of this.

13 The only thing, I said I did read -- because they
14 didn't read me my rights yet. What I read was -- they wanted
15 to search my house. I volunteered. I let them search my
16 house.

17 Really, all of this, it doesn't really make sense.
18 Like I'm coming up here, I did not sit down and just spoke
19 out and say, "Well, this happened and this happened." They
20 asked me questions. Some of them I gave answers to. I was
21 very scared. I was crying. I did not read none of this.
22 When they showed me that -- this right here, I didn't even
23 remember saying a sentence over here. "Then finally it was
24 lowered to four ounces," I said that. But "tall and
25 slender," I didn't say that I did not know what his name was.

LASHAWN FLOYD - CROSS-EXAM. BY MR. MCGUIRE (CONT'D)

356

1 Q. Well, let me ask you that. In your statement, Shawn,
2 it says that "E" -- the letter "E" -- "is a black male, tall
3 and slender. He is a distant cousin, but I don't know his
4 name." Did you say that?

5 A. When we were talking on the phone, he advised me since
6 he does not know the guy to call him back.

7 When they were there and they asked me who was the
8 person and I looked out the window, before any of this, I
9 told them who that person was. His name was Earnest Battle
10 and Eddie. Like I said, Eddie ---

11 Q. Let me ask you this, Shawn. You go from saying at the
12 window "that's Earnest Battle out there" to giving a
13 statement where an officer takes it down: "He's a distant
14 cousin, and I don't know his name."

15 A. Eddie ---

16 Q. Did it happen like that? Did it, Shawn?

17 A. Eddie --- I just told you what happened. They did not
18 take the statement right then. After, after they arrest me,
19 they carried me in the house. I was crying. I was very
20 upset. They told me if I do not identify the two guys that's
21 downstairs, they were going to take my child; they're calling
22 DSS right now.

23 At the time my mother was trying to get in to get my
24 daughter, and they said they was not letting no -- anyone
25 upstairs to talk to me. He said, "If you tell me who exactly

1 these guys are and tell me their names, I'll let your mother
2 come in here and get your daughter."

3 And that's what happened. After that, we sit there
4 for probably 45 minutes before I even know they were going to
5 bring -- they bring a computer and everything in my house.
6 And as like I said, some of this does not really make sense.
7 I was just answering questions, and they mixed it up.
8 Because, like, some of this right here, I say "he was a
9 distant cousin." No. Eddie was a distant cousin.

10 I don't really even remember -- I don't even know his
11 last name for sure until after we got arrested and then --
12 then I found out that his name later was James Nelson. I
13 always knew his name by "Eddie" since I was little.

14 Q. You tell Matt, the informant, the person who's going
15 to buy cocaine from you, that your supplier is "E."

16 A. Which is Earnest Battle.

17 Q. Which is Eddie Nelson; isn't that right?

18 A. No. Which is Earnie.

19 Q. "He is a black male, tall and slender. He is a
20 distant cousin, but I don't know his name." You said that,
21 didn't you?

22 A. No.

23 Q. "E" is for Eddie, isn't it, Shawn?

24 A. What?

25 Q. "E" is for Eddie?

LASHAWN FLOYD - CROSS-EXAM. BY MR. MCGUIRE (CONT'D)

358

1 MR. BOSNAK: Objection, Your Honor.

2 THE WITNESS: No. "E" is for Earnest Battle.

3 MR. BOSNAK: Asked and answered two or three times.

4 THE COURT: I'll allow it. Go ahead.

5 THE WITNESS: "E" is for Earnest.

6 BY MR. MCGUIRE:

7 Q. Shawn, just a second ago you told the jury the only
8 way that you could help your kids, save your kid, was to give
9 up a name. Is that right?

10 A. I gave up both names.

11 Q. And you had to do that to save your kids?

12 A. They told me to identify the "guys," not the "guy."
13 They said "guys" that were downstairs. And that's what I
14 did.

15 Q. And you had to do that to save your kids ---

16 A. My daughter.

17 Q. --- your child, right ---

18 A. Yes.

19 Q. --- who was in the house with you. Right?

20 A. Yes.

21 Q. And the only way to get your mom in there to help your
22 child was to give up some names. Right?

23 A. The people that were there, those are the names that I
24 gave up.

25 Q. Okay.

1 A. The two guys that were downstairs who they arrested
2 along with myself.

3 Q. Shawn, after being arrested and taken down to the
4 Charleston County Detention Center, you told Earnest Battle
5 that you gave the police his name, didn't you?

6 A. I told the police his name when we were at the house.
7 I did not told Earnest Battle that I gave him -- them his
8 name.

9 We talked about -- he said, "Remember, just don't say
10 anything. Don't say anything. Everything going to be all
11 right. Don't cry. Everything going to be all right."

12 And he also said, "Do not -- make sure you do not let
13 them know about our out-of-town trip. Don't let them know
14 about that information. Don't let them know about the guys.

15 And I -- I agree. I say, "Okay." And we talked.

16 Q. Actually, Shawn, isn't it true that at the Charleston
17 County Detention Center when you and Eddie and Earnest Battl
18 were together, what you said was: "Earnie, I gave your name
19 to the police. I had to tell them somebody. I promise I
20 will make it up to you and write a statement telling the
21 truth"?

22 A. No, that's not true. That is not true. I never told
23 him that I had to give someone -- I had to give them his name
24 because I had to give up a name. Uh-uh. I never told him
25 that.

1 When we were standing there, we only talked about that
2 situation pertaining that where he got the drugs from and
3 where we took the trip. That's what we talked about.

4 All he did is told me when I was crying, he said,
5 "Everything was going to be all right. Don't go crying.
6 Everything going to be all right."

7 Q. Shawn, let's talk a little bit about what you do know.
8 Shawn, after getting out of jail, you went to your lawyer and
9 said, "Look, these are my charges. This is what I'm faced
10 with. What am I looking at? How much time does this carry."
11 Didn't you?

12 A. No. I did not went to my lawyer and ask him. He --
13 my lawyer told me that just tell the truth and everything
14 will be all right.

15 Q. Yeah, you keep saying that. I'm asking you this: Do
16 you know the penalty of the charges that you're facing?

17 A. You told me yesterday.

18 Q. Yeah, but that's the first time you've heard that?

19 A. No. Like I said, I don't know the total. He did
20 mention it to me. I told you yesterday that I did not know
21 the exact total about what a trafficking charge carry or
22 conspiracy and the half a mile of a school zone. That's what
23 I told you.

24 Q. Your lawyer told you, Shawn. And by the way ---

25 A. I didn't say that he didn't.

1 Q. Let me ask you this: You did throw down that bag of
2 cocaine, didn't you?

3 A. No.

4 Q. You didn't throw down that bag of cocaine right in
5 front of Glen Campbell?

6 A. No.

7 Q. As you ran up the steps into your apartment and to run
8 away from the police, you didn't throw down a bag of cocaine

9 A. No. I did not even run from the police. If I had run
10 from the police, I would have been in my house with my door
11 shut way before they could even get up the stairs. I did not
12 run from the police.

13 MR. MCGUIRE: Okay. So the police were wrong. That's
14 all I have for you, Shawn.

15 REDIRECT EXAMINATION (CONTINUED)

16 BY MR. BOSNAK:

17 Q. LaShawn, when this incident happened, how old were
18 you?

19 MR. MCGUIRE: I object. Beyond the scope.

20 THE COURT: I'm going to allow it. Go ahead.

21 THE WITNESS: I was 19.

22 BY MR. BOSNAK:

23 Q. Nineteen, okay. And you talked with Matt, I think, on
24 the 14th. Isn't that correct? The first tape we listened
25 to, wasn't that on the 14th, the night before the drug deal?

LASHAWN FLOYD - REDIRECT EXAM. BY MR. BOSNAK (CONT'D)

362

1 A. Well, I don't remember the exact date. But pretty
2 much, yes.

3 Q. Okay. Or the night before you made the drug deal.
4 Would that be correct?

5 A. Uh-huh.

6 Q. And he wanted to buy drugs from you right then, didn't
7 he?

8 A. Uh-huh.

9 Q. Did you have any drugs to sell him?

10 A. No, I did not.

11 MR. MCGUIRE: Your Honor, I renew my objection at this
12 time. It's beyond the scope of redirect. We've heard all
13 this on direct.

14 THE COURT: I appreciate that. I'm going to allow it.

15 MR. BOSNAK: Now, Mr McGuire, I don't know if you have
16 a copy of this.

17 BY MR. BOSNAK:

18 Q. But on page ten the statement says: "I am now waiting
19 on my partner to come over here right now." That was the
20 next time you were talking to him, the next day. Who were
21 you talking about, your "partner"?

22 A. Earnest Battle.

23 Q. Okay. Earnest Battle. Now, how is he your partner?

24 A. Well, I only did not look at Earnest as being just --
25 he been just -- we've been just real close. And he told me,

1 he came to me and he told me, "Well, do you want to make some
2 extra money?"

3 And, you know, I say, "Yeah, of course." I wanted
4 something very bad. So I told him that if he needed some
5 help with anything, then I would help him out.

6 And, like, two weeks later -- he must have mentioned
7 it to my mother because she asked me about it. And she told
8 me, "Don't try something," so forth or whatever. And then I
9 didn't listen anyway because he told me everything would be
10 fine.

11 And from a long time ago, even when I was younger, I
12 always looked at him just like being my favorite uncle.
13 Well, at that time I really thought he was my uncle. Until
14 got older, I learned then that he was a cousin. But I always
15 still call him "uncle," from me calling him uncle when I was
16 little. And he always -- I could ---

17 Q. Excuse me. Go ahead. I'm sorry.

18 A. I could always call him when I was younger. And if I
19 needed anything, and my mother, just anybody needed anything
20 he always will provide it. It didn't matter what it was.

21 Q. Now, why were you saying that you were waiting on him
22 that night?

23 A. Because I talked to him and I told him about the guy
24 wanted to get some cocaine. And he told me to -- you know,
25 he wanted to talk. He didn't want to talk about it over the

LASHAWN FLOYD - REDIRECT EXAM. BY MR. BOSNAK (CONT'D)

364

1 phone.

2 MR. MCGUIRE: Your Honor, I renew my objection. I
3 think we're getting a little direct again.

4 THE COURT: Well, I appreciate that. I overrule the
5 objection.

6 THE WITNESS: And continue?

7 BY MR. BOSNAK:

8 Q. Yes, please.

9 A. And I told him -- when we did meet, I told him about
10 -- and he asked me did I really know the guy and -- you know,
11 and so forth. I did, in fact, lie about that. I told him
12 yes. But I did not know the guy.

13 I went about -- I went about it the wrong way.
14 Someone who knew me told me that the guy used to deal with
15 them, and buying cocaine and this, you know, so forth and so
16 forth, and he wanted me -- the guy wanted -- the guy who told
17 him about me asked me, wanted me to introduce him to Earnie
18 -- Earnest.

19 Q. Okay. All right. Now, did you have any drugs to sell
20 at that time?

21 A. No, I did not.

22 Q. Okay. I want to go back a minute to your statement.
23 There's some confusion on it. So you say in there: "E is a
24 black male, tall and slender." Now, James Nelson is your
25 cousin. Is he tall and slender?

1 A. No, he's not.

2 Q. Okay. And then you get to it. "He is a distant
3 cousin, but I don't know his name." Were they talking about
4 James Nelson then? A different person? Because there were
5 two people arrested outside. Right?

6 A. Yes. And I told them that I know my uncle, you know,
7 which is Eddie. I told them that his name was Eddie. And,
8 you know, that's the only name I could give there for him.
9 But I told them "Earnest Battle."

10 Q. Okay. So let's go back and try to clarify this. Thi
11 is kind of a summary of what you told the police, this
12 statement. Correct?

13 A. Uh-huh.

14 Q. Sort of a summary?

15 A. Yes.

16 Q. And they asked you to identify the two people outside
17 Right?

18 A. Yes.

19 Q. And "E" is a "black male, tall and slender." Who wer
20 you talking about?

21 A. Earnest Battle.

22 Q. Okay. And "He is a distant cousin, but I don't know
23 his name." Who were you talking about then?

24 A. James Nelson.

25 Q. Okay. So they're asking you to -- and you gave the

1 description there?

2 A. Uh-huh.

3 Q. Okay. So be straight again just one more time: Who
4 is "E"?

5 A. Earnest Battle.

6 Q. Okay. And where did you get the drugs from?

7 A. Earnest Battle.

8 MR. BOSNAK: That's all. Thank you.

9 THE COURT: Thank you very much. You can step down.

10 (The witness is excused from the witness stand and
11 leaves the courtroom.)

12 THE COURT: All right. We'll take those transcripts
13 up, those pages up, from the jury now.

14 Do you want to rewind the tape up here while we're
15 doing that, Mr. McGuire? Somebody, rewind it. Do you want
16 to move it into evidence?

17 MR. MCGUIRE: No, sir.

18 (The State rests.)

19 THE COURT: That was really the conclusion of the
20 State's case. I need you to go to the jury room for a few
21 minutes, please. Members of the jury, go to the jury room,
22 please.

23 (Whereupon, the jury goes to the jury room at
24 approximately 10:16 a.m.)

25 THE COURT: All right. That's the conclusion of the

1 State's case. Now, any motions?

2 MR. MCGUIRE: Your Honor, for the record, I'd make a
3 motion for a directed verdict.

4 THE COURT: All right. I appreciate your position.
5 deny your motion. Are you ready to go forward?

6 MR. MCGUIRE: Yes, sir.

7 THE COURT: Are you going to call any witnesses on
8 behalf of your client?

9 MR. MCGUIRE: We're not going to put up any evidence,
10 Your Honor.

11 THE COURT: All right. Is that right, Mr. Battle?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Have you discussed this thoroughly with
14 your attorneys? You can stay seated. Have you discussed
15 this thoroughly with your attorneys?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You know you have the right to call any
18 witnesses, anyone, anybody else that you want to come in here
19 and testify?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You know you have the right to testify to
22 the jury if you want to?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: You don't have to, but you have the right
25 to testify if you want to. Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you want to testify?

3 THE DEFENDANT: No, sir.

4 THE COURT: All right.

5 So we'll let you rest in front of the jury then. And
6 are you ready to argue then at that stage?

7 MR. MCGUIRE: I'm ready.

8 MR. BOSNAK: Your Honor, I'm ready.

9 THE COURT: All right. So let's see then. The order
10 of argument then?

11 MR. MCGUIRE: I'm not going to require the prosecutor
12 to open on the law.

13 THE COURT: All right. Well, but I mean, I can't
14 remember exactly how the rule is worded or how the -- about
15 whether you have put up or you have not put up or -- have you
16 put up any evidence?

17 MR. MCGUIRE: My position would be that I have not put
18 up any evidence and I would be able to argue last.

19 THE COURT: Do you all agree with that?

20 MR. BOSNAK: Well, Your Honor, we never introduced
21 those tapes.

22 THE COURT: I know that. But I'm not sure whether
23 playing those tapes and introducing that during the State's
24 case -- I think there's a case that speaks to that, but I
25 don't remember what it -- I'm not positive of what it says.

1 MR. MCGUIRE: Your Honor, my position would be I was
2 just impeaching her own statement.

3 THE COURT: Oh, I understand that. I understand your
4 position. And actually you haven't offered it into evidence
5 yet, so...

6 MR. BOSNAK: Would you give us a minute? I'll go find
7 the case, Your Honor.

8 THE COURT: Well, you can go find it. We can take a
9 break if you want to, if you want to look for it. I'm pretty
10 sure there's a case that speaks to that. But actually the
11 tape has not been put in evidence.

12 (Mr. Bosnak leaves the courtroom.)

13 THE COURT: One other housekeeping matter. If it
14 becomes necessary for the court reporter to do a transcript,
15 I think I'm going to direct that what she do is she take
16 what's been provided to her, what Mr. McGuire produced, and
17 attach that to any transcript and say that that's what was
18 given, that was what was produced and given. Okay?

19 MR. MCGUIRE: Yes, sir.

20 THE COURT: Because she didn't try to take it down,
21 you know. We're going to attach that as an exhibit to the
22 an attachment to the transcript if necessary. Okay. You all
23 let me know when he comes back.

24 MR. BOURDON: Your Honor, do you want to go over the
25 charges?

1 THE COURT: Would you like to make a specific request?

2 MR. MCGUIRE: Your Honor, I've submitted ---

3 THE COURT: I've got one about mere presence. I'm
4 going to charge mere presence. I don't know exactly the
5 language here.

6 MR. BOURDON: Your Honor, I'd ask that you use the
7 standard one from Irving's, the appropriate ones.

8 THE COURT: Yes, sir. That's what I'm going to
9 generally do. I'm going to charge mere presence, presence is
10 not a crime. Anything else?

11 MR. MCGUIRE: Your Honor, I would respectfully request
12 that the language of my charge be given. It's right out of
13 Hubbard's request to charge.

14 THE COURT: Let me read over it. (The Court reviews
15 document.) All right. I'll charge that.

16 MR. MCGUIRE: Thank you, Your Honor.

17 (A brief recess was taken.)

18 (After said recess, the defendant being present with
19 Counsel, the following proceedings were had:)

20 THE BAILIFF: Order in the court.

21 THE COURT: All right. My recollection is that if the
22 defendant either introduces any testimony, of course, which
23 is what he says he's not going to do, or if he introduced an
24 exhibit during the State's case, then he would not be
25 entitled to the last argument. I don't believe the tape has

1 been introduced into evidence, and I don't know of anything
2 that requires him to introduce the tape into evidence. I
3 think the rules allow him to use it to cross-examine without
4 introducing it into evidence. So I think he's entitled to
5 the last argument.

6 MR. BOURDON: Your Honor, the State wishes to be heard
7 briefly.

8 THE COURT: All right.

9 MR. BOURDON: Looking at the case of State versus this
10 same defendant Earnest Battle, it's cited at
11 403 S.E.2d 331, 1991.

12 THE COURT: What does it say? Do you want to hand me
13 a copy?

14 MR. BOURDON: Yes, Your Honor.

15 (Mr. Bourdon tenders document to the Court.)

16 MR. BOURDON: The defendant introduced an exhibit
17 through the State's case.

18 THE COURT: I agree if he does that there's no
19 question that he's entitled to -- I mean, that he's not. I
20 agree.

21 MR. BOURDON: But, Your Honor, in this case the State
22 would analyze it as the same even though it wasn't formally
23 introduced here as an exhibit. I mean, he put it in. It was
24 strictly his exhibit to put in. He cross-examined the
25 witness on his exhibit. So, in fact, the State believes that

1 it is introduced for purposes of something that he brought in
2 extrinsic to the State's case, and it isn't an exhibit the
3 State was using at all.

4 THE COURT: I appreciate that.

5 MR. BOURDON: It's circumvented, saying "I didn't
6 introduce it; I just played it and let the jury hear it and
7 gave them copies of the transcript of it." It sort of
8 circumvents the spirit of the law, which I don't think is
9 appropriate.

10 THE COURT: I appreciate the position. But out of an
11 abundance of caution and all, I'm going to rule that the
12 defendant is entitled to the last argument, has not
13 introduced any evidence during the State's case ----

14 MR. BOURDON: Yes, sir. Thank you, Your Honor.

15 THE COURT: --- an exhibit or testimony during the
16 State's case.

17 So you will argue first. Who is going to argue?

18 MR. BOSNAK: I will.

19 THE COURT: All right. And then Mr. McGuire.

20 Are you all ready? Bring the jury in.

21 Of course, I'll let you rest in front of the jury.

22 MR. MCGUIRE: Yes, sir.

23 MR. BOURDON: Your Honor, if we may, just a second
24 before the jury comes out?

25 THE COURT: Wait a minute. Take them back. I thought

1 we were ready.

2 MR. BOURDON: Sorry. I just want to make this kind of
3 go smoothly. Is there any other instructions that the
4 Court's going to introduce? The State would just like to
5 know what instructions the Court is going to give the jury.

6 THE COURT: Well, the general instructions in a
7 criminal case.

8 MR. BOURDON: So you're going to do direct and
9 circumstantial and define what a conspiracy is?

10 THE COURT: Right. Right.

11 MR. BOURDON: And the elements of the trafficking and
12 proximity?

13 THE COURT: Right.

14 MR. BOURDON: And then aiding and abetting or an
15 accomplice?

16 THE COURT: I'll try to cover everything that you
17 think that's necessary.

18 MR. BOURDON: Yes, sir. I just wanted to -- you know,
19 so that Mr. Bosnak's argument flows with what the Court is
20 going to instruct the jury on.

21 THE COURT: Okay.

22 MR. BOURDON: And so that we can flow right from the
23 closing to the instructions.

24 THE COURT: All right. Everything you mentioned seems
25 like things I should talk about.

1 MR. BOURDON: Yes, sir. Thank you, Your Honor.

2 THE COURT: Okay. All right. Anything else?

3 (There was no response.)

4 THE COURT: Bring the jury in.

5 (Whereupon, the jury returns to the courtroom at
6 approximately 10:41 p.m.)

7 THE COURT: All right. We have the jury back with us.
8 The defendant is present, along with his attorney.

9 As I told you, that finishes all the testimony and the
10 evidence that the State wishes you to consider. Now we
11 switch and Mr. Battle can present any testimony or evidence.

12 Mr. McGuire, do you wish to call any witnesses on
13 behalf of your client?

14 MR. MCGUIRE: Your Honor, the Defense would rest.

15 (The Defense rests.)

16 THE COURT: All right. We're ready to go forward with
17 arguments then. The way we'll go about hearing from them is,
18 first of all, the solicitor will argue fully to you. Then
19 we'll switch to Mr. McGuire who will have the opportunity to
20 argue fully to you. After that, I'll discuss more fully what
21 your duties and responsibilities are as a jury in this case
22 and the law that applies. And then you go to the jury room
23 and you'll deliberate and you'll give us your decision, your
24 verdict in this case. So I ask you to give your attention
25 now to the attorneys as they summarize and argue to you.

1 Mr. Bosnak.

2 MR. BOSNAK: Yes, sir. If you'll give me just a few
3 minutes to get set up, Your Honor.

4 (Counsel uses overhead projector.)

5 CLOSING ARGUMENT

6 BY MR. BOSNAK:

7 Ladies and gentlemen, while I set this up I'm just
8 going to go ahead and get started.

9 I think you can remember a lot of what we said in
10 opening statement. In my opening statement I told you that
11 was going to tell you the truth, the truth, the best that we
12 knew the truth, and you listened to three or four different
13 people who actually know. But I gave you everything that I
14 knew. I didn't try to hide anything about anybody.

15 I told Mr. Battle -- I mean, I told Mr. Nelson on the
16 stand -- might not have been a smart thing for a lawyer to do
17 -- but I told him to tell you everything that he had been
18 convicted of. I didn't want him to hide it. I wanted you to
19 know where he was coming from, where you can assess his
20 credibility. And I want you to also know that LaShawn Floyd
21 too -- I want you to know where she's coming from and what
22 she's done in her life, where you can assess her credibility
23 Because that's really how you're going to make your decision
24 You're going to have to listen to what the witnesses said,
25 because none of us were there.

1 So as I go through this, I'm going to first start on
2 the law. Then I'm going to go through what happened, and I'm
3 going to go piece by piece what piece of evidence has been
4 brought in.

5 The first thing, as we said when I started opening,
6 that we had Mr. Earnest Battle charged with trafficking.
7 Now, I told you that this was the most serious of the drug
8 charges, and the reason being is because it's a large
9 quantity of drugs. This, 72 -- a little over 72 grams of
10 cocaine is a large amount of drugs.

11 And this statute says you only need ten grams or more
12 of cocaine or a mixture to be guilty of the felony known as
13 trafficking. Seven times as much.

14 If you look at it real close, it says: "Any person
15 who knowingly sells." Well, we don't know if he sold it ---
16 really, he sold it. He told LaShawn to sell it for him and
17 bring him the money. He's just using I guess what we'd call
18 a "middle man" if we were talking about a store or something
19 like that. LaShawn was a middle man. He brought LaShawn the
20 dope and told her to sell it.

21 And, believe me, if the deal would have been gone
22 down, if Jason Wallace -- or Matt Wallace was a legitimate
23 drug buyer, Mr. Battle was hanging around to collect his
24 money, believe me. That's what he was doing up there on the
25 corner. He knew the Yellow Cab was down there where he could

1 see where it was. He was waiting around for that Yellow Cab
2 to pull away and he's going to go get his money. That's
3 exactly why. People don't go around and give people \$5,000
4 worth of dope for nothing.

5 But he doesn't even have to the sell it. "Delivers."
6 Delivers. He had to get the dope from somewhere.

7 It didn't make any sense -- now, I can understand when
8 people deal drugs or do any kind of illegal-type thing they
9 might want to know who they're dealing with. So they might
10 want to have a meeting. "Let's meet one time. Let me see
11 you." She didn't know him. She met him. I can understand
12 getting together again. Because \$4700, that's a lot of
13 money. It's a lot of money to me, and I imagine it is a lot
14 of money to you all. "Let's see if you got the money."

15 Because you heard both sides. You heard Jennifer
16 Vanootegham. And, I'm sorry, I probably butchered her name
17 this whole week. But Jennifer Vanootegham, she was worried
18 about getting ripped off. You heard the police tell you
19 that's why they had them wired. For the C.I.'s safety, for
20 their safety. So people won't rip them off. You heard
21 LaShawn talk about it, too. When you're dealing in the drug
22 business, you've always got to be worried about people
23 stealing from you. So that's what that was all about. So
24 that's why. The \$4700 is a lot of money. He wanted his
25 money.

1 All right. The next one.

2 So I think we've proven that, that he brought this
3 over there. He delivered it to her for the intention to sell
4 it and then receiving the money.

5 The second charge is distribution of a controlled
6 substance within a proximity of a school. Now, I don't know
7 if you remember Sergeant Hux. Sergeant Hux had on a gray
8 suit, double-breasted, mustache, a little older gentleman.
9 He told you that where this drug deal went down was
10 one-eighth of a mile from Saint Johns Catholic School.
11 One-eighth of a mile. He measured it. And that's all we
12 need. If you find Mr. Battle guilty of trafficking, either
13 he delivered the drugs or he sold the drugs to LaShawn -- you
14 pick either one you want. We know that the drugs are over
15 ten grams -- I mean, ten ounces -- ten grams. Excuse me. We
16 know it's 72 -- then you've got to find him guilty of that,
17 too.

18 The next one is conspiracy. Now, this is "any person
19 who attempts or conspires to commit an offense made unlawful
20 by the provision of" -- well, anyway, what we're talking
21 about is: The crime really doesn't have to be committed.
22 Myself and another person or more, we get together with a
23 common plan or scheme. It means we get together and we
24 decide we're going to do something illegal. We don't even
25 have to accomplish it. We just have to get together and say,

1 hey, we're going to do something illegal. And that's all we
2 have to do.

3 Now, let's go through this. Mr. McGuire -- first of
4 all, I want to say something before I start on the evidence.
5 LaShawn Floyd was 19 years old at that time, 19, a single
6 mother. It's pretty scary not to really have an education,
7 not to have any money. What she did was wrong. She was
8 trying to set up drug deals for people, for Eddie -- for
9 Earnest Battle is who she was trying to set them up for. It
10 is wrong. But she's 19 years old. A lot of us make
11 mistakes. But she is going to pay for those mistakes,
12 believe me. I'm not cutting her any deal or promising her
13 any deal, and we certainly haven't threatened her. She said
14 that on the stand.

15 But for a man Earnest Battle's age that pretends to b
16 her uncle and he wants to set her up and get her in trouble,
17 you didn't see him -- I'll tell you who the real drug dealer
18 is. It isn't LaShawn Floyd, because any kind of drug dealer
19 -- if you listened to the tape Mr. McGuire played and made a
20 big to-do over, Lord o' mercy, they talked and talked and
21 talked. They didn't talk about drugs but one or two
22 sentences. But they had ten pages, over two days' worth of
23 conversation. Did that sound like a drug dealer trying to d
24 something illegal? I mean, most drug dealers have some kind
25 of code. They don't talk about ounces. They say, "Yeah, I

1 can get you four" or something. They have some code, real
2 drug dealers.

3 This little girl is not any kind of sophisticated drug
4 dealer. She gave him the address to her house. A strange
5 man that she had never met, she gave him the address to her
6 house and told him to come over. "You can come by and see
7 me." You know, "Just come by and see me. Let's chat."
8 Sound like a drug dealer?

9 Earnest Battle, he didn't want his hands on the drugs.
10 He didn't want his hands on the drugs. He told her, he said,
11 "Look, I'll get you the drugs, but I don't want anybody to
12 see -- I don't want anybody to see me whatsoever." And
13 that's a drug dealer. That's a drug dealer that deals in
14 this kind of large garbage, poison.

15 Poison, that's what this is. This stuff causes more
16 crime in this country than anything else. It does more to
17 destroy families. More violent crime in this country is
18 caused by this stuff right here in this pouch that Mr. Battle
19 is putting out on our streets.

20 Matter of fact, somebody who's like a niece to him, a
21 19-year-old girl, he's got her out selling it and he wants
22 her to take the fall. And I'm going to get into that letter
23 in a minute, wanting her to get off.

24 Mr. McGuire made a big, big deal: "You'll get 50
25 years." I mean, I'm the solicitor. We wouldn't give a

1 19-year-old girl, even if she was convicted, all that 50
2 years, believe me. He made a big deal of that.

3 What did Earnest Battle promise her? He said, "I
4 talked with Judge Guedalia. We'll put up \$500 and guarantee
5 you probation." That's on that letter. We'll get into that
6 in a minute.

7 But let's show -- this is the first picture right
8 here. This is this cut-through. Mr. Battle's car was parke
9 right there. You heard Sergeant Hux talk about that he saw
10 Mr. Battle's car. If you'll look at this street, this is
11 Johns Street. The only way to get onto Reddin Drive over
12 here, Reddin Road back over here, which we'll show you in a
13 minute, is to go up Johns Street. I'll show it to you on th
14 map. It looks like a horseshoe. So you've either got to
15 come down Johns Street this way or come down Johns Street
16 that way. That will take you back out to the intersection -
17 I mean, to the interstate right here, I-26.

18 LaShawn told the undercover person, Wallace,
19 Matt Wallace, that "He's on 26. He's on his way." I think
20 you'll remember that. So the police were looking for anybod
21 that was coming that way because that's the way they figured
22 that he'd be coming down here.

23 They saw the blue Cadillac. Sergeant Hux said,
24 "That's this" -- for some reason he thought something about
25 blue car. That's what he saw. He came back, saw the car

1 parked there, came back and turned around. Nobody was in the
2 car. Now, do you remember me asking him specifically, "Well,
3 did you see anybody walking up and down the road?" This is
4 on -- he went by, turned around, and came back.

5 Now, if they would have come the other way, Detective
6 Campbell and those would have seen that because they were at
7 the Saint Johns school on the other end, but they didn't see
8 anybody.

9 So they thought this was the car. Parked right here.
10 Nobody's in the car. He parked, I think, behind the car or
11 in the front. Another officer parked here. In other words,
12 they had him blocked in. Nobody around.

13 Go ahead and give them the next picture. This is what
14 we talked about. Here's the cut where people cut through.
15 And, ladies and gentlemen, I don't think people on that
16 street cut through. There's not any reason. I think the
17 people that live back in this house back here -- there's
18 nobody living in this front house, but there's a two-story
19 house back here. There's an apartment on the bottom and an
20 apartment on the top. I think what these people do is cut
21 through here to go down to the store, and I don't think
22 there's a lot of traffic through there except for that. I
23 could be wrong. But I'm just saying, because it's not much
24 of a cut-through, perhaps a little dog path or something.
25 This is where Earnest Battle went through.

1 Next picture. This is what he saw. This is where
2 LaShawn was, right up here. And you'll get a better picture
3 of that in a minute.

4 And she told Earnest, "Come on. Come on." They were
5 talking on the phone. "Come on."

6 Go to the next picture. That's how he would be
7 walking. This is where the transaction took place, right
8 here behind this old oil drum where nobody could see them.
9 Because Earnest didn't want anybody to see him.

10 He wanted LaShawn to take the fall, as we will see in
11 that letter. "Promise me you'll take the fall for me." A
12 19-year-old girl.

13 Next. This is where LaShawn was standing. This is
14 the little porch walkway outside her home right there, and
15 that's where she was standing and waiting on Earnest Battle
16 to come bring her those drugs.

17 This would have been the view that Matt Wallace,
18 confidential informant, and Jennifer Vanootegham would have
19 had from the cab. This is what they saw. This was the
20 distance. Now, this fence was not there at the time,
21 according to the police officer, because I just took these
22 pictures the other day.

23 But this is what they would have seen, where they wer
24 parked. There is the road. This is the house that's
25 abandoned. The picture that you just saw, it was taken from

1 right there in the driveway.

2 Okay. Now, we'll stop here a minute. You heard
3 James Nelson talk about he got out of the car and he walked
4 around and went back here, and you heard
5 Detective Vanootegham talk about that. You heard her tell
6 that. Now, let me tell you why that's important and why she
7 recognized him. Remember, again, this is about eleven
8 o'clock at night. She was worried about getting robbed.
9 Police safety. They didn't know if this was real or not.
10 The reason she parked that car in there long-ways is where
11 she could see in front of her and behind her and nobody could
12 block them. They could get out. So she was very aware of
13 anybody walking around her car, to make sure. That is why
14 she saw James Nelson. He walked from that car all the way
15 around here and back around here and then back where he met
16 Earnest Battle right there.

17 Now, ladies and gentlemen, that's a pretty good walk.
18 And remember I asked him, "Was there any way he could have
19 made the drug swap?" Because LaShawn was back there getting
20 the drugs at the time and came back and was getting ready to
21 make the deal with Matt. And James Nelson was still out
22 here. He was still -- how could he do it? He couldn't. He
23 couldn't.

24 Now, what they want to make a big deal of,
25 Mr. McGuire, he's got two philosophies here, two theories:

1 It was all James Nelson, all James Nelson; or either somebody
 2 hid the drugs, preferably James Nelson, back around here, and
 3 LaShawn just decided to make all this up and go get it at the
 4 same time that James Nelson and Earnest Battle were here.
 5 That's what they want you to believe, that they were here.

6 Well, let me tell me you something, ladies and
 7 gentlemen. Drug dealers don't usually leave around almost
 8 \$5,000 worth of crack cocaine out on the ground, hidden in
 9 some gopher hole or whatever else is out there or behind some
 10 old oil drum or something. This stuff's too valuable. And
 11 it's not in this plastic bag like SLED puts it in. So if it
 12 decided to rain or something like that could get to it, they
 13 don't do it. They hand that dope off, and they want their
 14 money, or they want to know somebody's got this stuff.
 15 Because, I tell you, this stuff is precious to them.

16 The only person that we don't know about is where in
 17 the world is Earnest Battle during all this? The cops don't
 18 see him walking up and down the road. He's certainly not
 19 with James Nelson. Where is he? He's back here. He's back
 20 in here, giving LaShawn the drugs and trying to hang around
 21 so he can go get his money. That's where he was. Nobody
 22 else has seen him. The police are all up and down here.
 23 They've got his car blocked in. Nobody's in the car. He's
 24 not walking up and down this street. He's not walking down
 25 that street or we'd find him. Where is he?

LASER BOND FORM B PENGAD • 1-800-531-5889

1 And then this would have been Jennifer's view, parked
2 right here, of everything that went on. Right there.

3 Now, let's go ahead and go to this map. If you'll
4 notice, this is Johns Street right here. Like I said, Reddin
5 Road is right here, this horseshoe. You'll have this back
6 there with you. There's that horseshoe. There's the school
7 where Detective Campbell and Officer Gould were parked. They
8 were secured. They had to be that far away. Now, if
9 Earnest Battle would have come that way, Detective Campbell
10 and those would have picked it up.

11 Sergeant Hux was in this area, and then Pat Morrison
12 was right near the lounge. So there are two police officers
13 here. Two different police officer cars here, and one police
14 officer car here with two officers in it. The only way in,
15 you've got to come down that road to get there.

16 Now, put that circle up. Let's look at this. I've
17 been talking about this some. All the evidence points to
18 Earnest Battle, every bit of it.

19 The drugs: We know LaShawn didn't have the drugs.
20 Because if she would, she'd have made that deal probably a
21 day before or she would have made it -- she wouldn't have had
22 him come over there three times. She didn't have the drugs.

23 James's testimony: He was with him the whole day. He
24 was with him. He told us where the drugs were at.

25 Now, let's look at James right here. They made a big

1 deal about him being in trouble. He hasn't been in trouble
2 in 11 years. When he was in trouble, he was in trouble in
3 his mid-twenties and early thirties. Marijuana and a
4 breaking and entering, but marijuana mainly. Well, I mean,
5 there are a lot of people addicted to marijuana and other
6 things -- no cocaine, though -- addicted to things like that
7 and get in trouble and decide to turn their lives around.

8 Here's a man that works as a stevedore. He loads and
9 unloads ships for a living. Does that sound like a drug
10 dealer? He doesn't even have a car. His car -- Mr. McGuire
11 asked him. His car's got a blown head gasket. He's walking
12 and catches the bus, and that's where he sees Earnest Battle
13 Does that sound -- a man that doesn't have a car and works
14 everyday? Is a stevedore? Does that sound like a man that'
15 got \$5,000 worth of cocaine? Is out making his living
16 selling not grams of cocaine but ounces of cocaine? Does
17 that sound like it?

18 He goes out, and he meets Earnest, and they run around
19 all day. And James knows what he's doing. James knows what
20 drugs are. When he went to his house and saw him get it out
21 of that stuffed animal and cut it, he knew what he was going
22 to do. He talked about going to go make a sale. He knew
23 that. That's why he's in trouble. He knew what was going
24 on. I don't know if he knew he was going to sell it. He
25 didn't have any part of it. I don't think he was making any

1 money out of it, but he went along. He went along with it.
2 He was riding along with him. That's James's testimony, and
3 you listened to him, and he told the truth.

4 The only thing that Mr. McGuire could try to get the
5 poor man on was what I call a sucker question. A sucker
6 question is: There's no right answer. And it's like, "Well,
7 if somebody put a gun to your head, would you lie?" Well,
8 certainly, I hope everybody would lie. If somebody put a gun
9 to y'all's head, believe me, y'all have the permission to lie
10 to them. And I promise you the solicitor's office will do
11 nothing, because it's under duress. If he lies, "Yes, I'd
12 lie," Mr. McGuire would say, "You are a liar." If he'd say
13 "no," Mr. McGuire would say he's a liar. So it's a sucker
14 question. That's all he could even talk to Mr. Nelson about
15 right here.

16 Next, LaShawn's testimony. LaShawn has not denied a
17 thing. She's told you this went down. She's told you about
18 the meeting. She's told you every bit of it. And I don't
19 need to go into that because you heard her talk about it
20 three or four times. And we had to listen to those tapes
21 that you couldn't make hide nor hair of, and I think we've
22 just kind of beat that horse into the ground. But that's
23 just -- she had no reason to lie. She's told the truth about
24 that. Matt Wallace was going to buy the drugs from her. She
25 was trying to make a few bucks. She was going to get the

1 people together, hand it over, and hand the money over. She
2 hasn't lied about it at all.

3 The police testimony right here goes along with
4 everything that these people say. Everything. It's all the
5 same thing. The police testimony and their testimony is
6 almost exactly the same thing. The only thing that the
7 police don't have is an eyewitness to Earnest Battle handing
8 LaShawn Floyd the drugs. And any smart drug dealer is not
9 going to do that -- he wouldn't be here today -- if we had a
10 eyewitness on that.

11 Now, we talked about the drugs. Let's go to this
12 letter because this tells you who is guilty, right here. Yo
13 all got a copy of this letter, but I'm going to go through
14 the important things.

15 The first part of the letter was he wrote: The only
16 person who can save you -- "the only person can save us is
17 you." A 19-year-old girl, no record, no prior record, never
18 been in trouble with the law, had no police record, he knew
19 that she wouldn't get in any trouble or a little bit of
20 trouble. So he wanted her to take the fall for his drug
21 dealing enterprise.

22 "I told him that you were willing" -- "him," that's
23 Mr. Battle's attorney. "I told him that you are willing to
24 give a statement to the facts that me and Eddie had nothing
25 to do with what happened at your apartment that night." If

1 he didn't have nothing to do with it, why would he need her
2 to say that?

3 Next one. "That you and I never had any physical
4 contact with each other or attempted in any way to conspire
5 to or deliver any drugs to anyone." That's sounds like
6 something a lawyer would tell him to say. Now, why would he
7 need to put that in there? What he's doing is trying to
8 coach her testimony, trying to help her write a statement.
9 That's what that's about. And why would he put in there
10 about a conspiracy? I'm sure he didn't know a whole lot
11 about a conspiracy. Listen to it: "That you and I never had
12 any physical contact with each other or attempted in any way
13 to conspire to or deliver any drugs to anyone."

14 "That me and Eddie was just happened to be walking
15 through the cut going to your mother's house." Now, ladies
16 and gentlemen, I want you all to think about that. I showed
17 you that cut, and I showed you a picture of the house.
18 LaShawn's mother lived about two to three houses on down
19 Reddin Road, over on the left. Why would you park out on the
20 side of the road in a Cadillac, leave your Cadillac parked on
21 the side of the road and walk a block, a block and a half, to
22 somebody's house? Do you normally do that? I mean, I guess
23 you would if you were going to a party or something and
24 there's nowhere to park. But you've got plenty of places to
25 park. Why would you park your car a block and a half away?

1 Why wouldn't you just pull up to the house and get out and go
2 in? You know, just pull up to the house, get out of your
3 car, and go in the house? That's just a question that you
4 need to ask yourself about this case.

5 "Shawn, do what I ask you to do and what you promised
6 to do so that I can help all of us out of this messed up
7 situation." And she told you. They're trying to bribe her.
8 "You promised me that you'd do this. Help us out of this
9 thing. You can help us out of it if you'll take the rap for
10 us." That's what that was.

11 "Once I get out, I can get you and Eddie out." See,
12 Eddie really didn't play any part in this. I don't blame
13 Eddie for what he did. I mean, Eddie; James Nelson. His
14 family calls him that. I don't blame him for that. He can't
15 go to jail 25 to 50 years when you don't have anything to do
16 with it. I mean, you know that the stuff is going on, but
17 you weren't making any money off it. It wasn't your stuff.
18 The man didn't have any option except to come forward and
19 tell the truth. But he's trying to get Eddie, too, to keep
20 Eddie quiet.

21 "Me and my attorney already done discussed your
22 situation." He's trying to make plans now. Now, here's his
23 bribe here. He and Mr. McGuire need to get together on this
24 and decide on a sentence. "Once I get you out on bond, you
25 will sign up for Judge Guedalia's drug class which is \$500.

1 I'll pay for it, and you will be guaranteed probation. And
2 your statement will cut me and Eddie loose. Okay. I am
3 going to call for reinforcements. You know what I mean.
4 Don't say anything to anybody. Do say -- and let me handle
5 this. Okay." What he's talking about is he's going to get
6 more drugs so they can make more money. That's what LaShawn
7 said.

8 Now, page four, I'll go through that briefly, and you
9 all can read that when you get in there. That's just a total
10 lie. He tries to tell LaShawn for LaShawn to tell the story
11 that she went to some Big Boy club and picked up some man,
12 and the man wanted to go to bed with her and was going to
13 give her \$50 and she said, "No, that's not enough." Now,
14 isn't it something you want a person that's related to me to
15 tell this kind story?

16 "And you said no. And he said, 'Well, I've got some
17 drugs.' And she said, 'Well, give me -- and I'll give you
18 these drugs'" -- I guess to infer that she'd go to bed with
19 him for some drugs. I mean, you all get to read it and kind
20 of make out what you all think about the story.

21 "And then you decided to sell the drugs, and this
22 friend of yours called you from Mt. Pleasant, and you didn't
23 want him to know you had any drugs because you were afraid
24 he'd come over and take them from you. So you made it sound
25 like that your supplier was me, that you were getting the

1 drugs from me, but actually you had those drugs all along."

2 Now, that's what the fourth page -- basically, what it
3 says. And you all will have it back there with you. You can
4 read it.

5 Sounds like an innocent man, doesn't it? Isn't that
6 an innocent man who tries to get a 19-year-old girl to lie
7 for him and writes her a letter here and tells her what to
8 say and promises all kind of things? I think that shows
9 guilt as much as anything else.

10 Ladies and gentlemen, you all had to listen to a lot,
11 probably a lot of stuff I did, but you've had to listen to a
12 lot. It's hard being a jury because all we do is talk at
13 you. You all don't get to say anything. You all just have
14 to listen to us, and sometimes maybe we get a little
15 contentious. I'm sorry if we've done that. It's not on
16 purpose. We try to be civil, myself and Mr. McGuire and the
17 defense team. We do try to be courteous to each other, and
18 we are civil with each other. Sometimes if we act like we
19 are mad with each other we're really not. Heat of the battle
20 type-thing.

21 But, ladies and gentlemen, we have to do something
22 about this. I said in my opening that this wasn't a kid
23 selling a little gram of drugs, something about like my
24 fingertip, to make a little extra money or a drug addict that
25 had to sell a little bit of drugs where they'd have the money

1 to support their habit, their addiction. That's not what
2 this is about. I feel sorry for those people. And I know
3 that's breaking the law. I wish we had some way to deal with
4 them other than jail. I really do, as a solicitor. Our
5 courts are full of them. We've got a lot of people in jail.

6 But the real devil in all of this are people like
7 Earnest Battle, the gentleman sitting right there, the one
8 "E," "E the tall, slender male" that LaShawn identified for
9 the police when this happened. He's the real devil in this.
10 He's the real bad guy that would let a 19-year-old girl sell
11 these kinds of drugs because she can't make ends meet,
12 because she doesn't have a job and she's got a small child
13 and she's trying to support that child, living out on her
14 own.

15 He's the real devil. He's the one that his buddy --
16 when he gets in trouble, he's going to blame it on his buddy.
17 "Oh, it was James Nelson." James Nelson. The man is a
18 stevedore, the man that doesn't even have a car, going to
19 blame it on him. He's going to blame it on anybody but
20 himself.

21 We've got to do something about this, especially in
22 this quantity. That's what makes this case so, so important.
23 It's a 1999 case. It was old. I inherited it when I came to
24 work. I had to do something with it. It's too much drugs
25 involved. I couldn't plead it. I couldn't let it go,

1 because we really in society have to be concerned about
2 people that sell this much drugs.

3 When you look at the evidence ---

4 MR. MCGUIRE: Your Honor, I would object in that I ask
5 you to admonish the prosecutor for using that kind of
6 argument. That's against the rules.

7 THE COURT: I agree with you. It's not a matter of
8 battling drugs. It's a matter of this case.

9 MR. BOSNAK: I'm sorry.

10 THE COURT: Go ahead.

11 MR. BOSNAK: I'm sorry. I apologize.

12 BY MR. BOSNAK:

13 But when you when look at the facts, when you look at
14 everything, there's only one person that could have been
15 involved in this.

16 Thank you for your time. Thank you.

17 THE COURT: Mr. McGuire, we'll wait and let him get
18 that straight and everything, put the screen up.

19 All right. Mr. McGuire.

20 MR. MCGUIRE: Mr. Bosnak. Your Honor.

21 CLOSING STATEMENTS

22 BY MR. MCGUIRE:

23 I'm mad. I really am. I'm mad that I couldn't get
24 LaShawn Floyd to tell you the truth. But she did slip in the
25 end. She got a little flustered and a little mad. She did

1 say, "Eddie is my uncle." I heard that as soon as she said
2 it. I couldn't believe it. I couldn't believe it, that she
3 got away from her lie. In a moment of not being cool and
4 collected, she said the truth.

5 It's on this court reporter's taped recording. If you
6 have any doubt about what I'm saying, Mr. Foreman, the first
7 question to ask is: Can we hear LaShawn Floyd's testimony?
8 After I questioned her and then Mr. Bosnak got back up to ask
9 her some more questions, she slipped and she said, "Yeah.
10 Eddie is my uncle." I almost missed it, but it's there.
11 It's hard to keep it together when you lie, but she stubbed
12 her toe and just for a brief second a little truth shone down
13 into this world.

14 We know what happened. Shawn Floyd is a drug dealer.
15 Looks like a good, single mother with plenty of fine
16 qualities, just trying to get along. She is a drug dealer.
17 Her name is on the street, where people know they can call
18 her and get \$10,000 of cocaine. Who believes that this is a
19 one-time event that she was talked into by anybody? People
20 on the street are coming to her because she does it all the
21 time. And she lied about that.

22 She's on that tape, talking to Matt Wallace about a
23 drug deal, actually two drug deals, that she did the night
24 before. I hope you all -- the tape's bad. The tape's bad.
25 I wish it were better. And if the prosecutor says he's

1 trying to bring you the truth and not hide anything, why did
2 I have to bring a tape? Because I want you to see the truth.
3 Because it puts the true face on Shawn Floyd.

4 The face that you all saw on the witness stand, how
5 she was feigning how uncomfortable it was to say a
6 four-letter word? That's her act. That is her performance.
7 We know what she really sounds like, and you all heard it. I
8 heard more four-letter words listening to that tape than I
9 have in a long time. That's who she is. And she tried to
10 fool you by pretending to have difficulty cursing.

11 I brought you the tape. I played the tape for you.
12 I'll let you see the truth. She's on the tape discussing
13 drug deals. "Yeah, I had met that dude. That dude wanted
14 four and I handled that, and then another person right after
15 wanted three and I handled that." That's basically what she
16 said. And she lied to you about selling drugs. Her name is
17 on the street. She moves \$10,000 of cocaine at the phone
18 call; and she's talking about selling drugs the night before.
19 Three or four ounces, that's almost \$10,000 the night before.
20 And now she's setting up \$10,000 the next day. That's who
21 she is.

22 And then she said -- I wanted her to be honest. I
23 said, "Shawn, do you sell drugs for money?" And she said,
24 "Oh, no, I do not. I just accommodate people. I put them
25 together." She's like a matchmaker in the drug world.

1 "I don't do it for money." Do you all believe that for a
2 second?

3 And then finally in the end, she actually said
4 something close to the truth probably when she said, "Well, I
5 wanted something real bad. That's why I did it." I wrote
6 that down as soon as she said it. "I wanted something real
7 bad. And that's the only time I did this, this one time."
8 And what is it? What does she want? A car? Clothes? A trip?
9 The money? I don't know. But it comes from money. It comes
10 from drug money.

11 Mr. Bosnak called this poison, and yet he embraces
12 those who buy it. I am mad that a fraud is being presented
13 for you. It angers me when I hear that Shawn Floyd is just a
14 good single mother just trying to get along, she's got some
15 good qualities about her, a 19-year-old under the influence
16 of other people, because that's not the truth. And I am mad
17 that I can't get her to be honest with you.

18 Shawn Floyd calls her uncle "Eddie" -- please don't
19 think I'm mad at you all. I am mad, but not at this jury.
20 You're like me. You're tired, because you had to pay
21 attention to everything.

22 But you do recall that she said she calls her uncle
23 "Eddie." She calls her uncle "Eddie," who recently -- his
24 1988 Toyota Cressida, which is a nice car, had just blown an
25 engine. So he's hoofing it around.

1 And he said it on the stand, "I asked Earnie for a
2 ride." After getting a call from Shawn Floyd, he goes to
3 Earnie and says, "Earnie, I need a ride." He didn't say he
4 ran into Earnie. What does he do? "Come along with me.
5 Let's run an errand"? No. He said he got a hold of Earnie
6 for a ride.

7 He told Earnie where to park, and then he gets out of
8 the car. He goes into that cut behind the bushes, disappears
9 into the shadows of the summer of 1999, and he gets that dope
10 to LaShawn Floyd.

11 Now, I don't know how they did it. I don't know if it
12 was there when he pulled up. I don't know. I don't know if
13 that water tank or bird feeder or any other thing behind that
14 abandoned house is maybe where they keep their stash.

15 Officer Gould was instructed to go and search that
16 area for a stash, because that's not uncommon. He said on
17 the stand, "Yeah. We make arrests where people have a
18 stash."

19 I don't know if Eddie Nelson just shows up when deals
20 happen. I don't know if he brings the cocaine there. I
21 don't know. I don't know if he shows up and he has some sort
22 of pre-arranged location with Shawn and he puts it someplace
23 and then he walks around the corner to surveil the car.

24 Why would he do that? Why would he do that? Why
25 would he -- I mean, if he knows nothing about nothing and he

1 just happens to be there, why this incredibly suspicious walk
2 down the street, checking out the cab?

3 As Jennifer Vanootegham said, "Yeah, he was walking
4 down the street."

5 And I said, "Just checking you all out?"

6 And she said, "Yeah."

7 And he drops his dope. And Eddie walks down the
8 street. He surveils the cab.

9 Jennifer Vanootegham is worried about getting ripped
10 off, the danger. Eddie, too. Eddie is, too. Eddie is
11 watching his dope, and he's watching Shawn, and he's watching
12 the cab.

13 That's the plan. That's how they do it, I guess, and
14 everything that you know happened points exactly to that.
15 Exactly to that.

16 Shawn Floyd is doing business. She gets in the car.
17 She counts the money. She's so adept at what she was doing,
18 she says, "Hey, y'all are short." It's a lot of money.

19 They gave the signal for everybody to move in. And I
20 think the officer, especially Glen Campbell, who is right
21 behind Shawn, said Shawn takes the bag and throws it down.
22 Of course, Shawn lied about that. She said, "Nope. I did
23 not do that."

24 Do you have any reason to distrust Glen Campbell, the
25 officer who's on the spot, responds to the scene, goes after

1 Shawn? And without any doubt in his mind, "Yes. She threw
2 down the bag of cocaine." Shawn lied to you about that, too

3 They go in and they've got Shawn red-handed. You
4 might have heard the phrase "they caught her dead to right."
5 There's no wiggle room. Do you think she has ever
6 contemplated maintaining her innocence and letting the good
7 jury determine her fate? Never.

8 She's over a barrel. She's caught dead to right. Ar
9 she said in so many words to you, "The only way I could get
10 -- I could get my kids safe, my child" -- actually, she has
11 single daughter who's in the house at midnight when she's
12 drug dealing. Because she says, "I'm going to fucking kill
13 that kid. Her house is all fucked-up." What it is, is
14 interfering with her drug dealing. That's the single mom.

15 She knows the only way she can save her child is to
16 give a statement. And in her statement it says, "E is a
17 distant cousin, and I don't know his full name."

18 "Tall and slender." Neither one of those guys are
19 tall and slender. Both little fellows. No doubt about that
20 But she can't stick to a lie that doesn't make sense. How
21 can she go to the window and say, "That's Earnest Battle."
22 But they know the drug dealer is "E," and she says, "E, I
23 don't know his full name"?

24 It just didn't happen the way she tries to make you
25 think it did. What she did was, she tried to give a

1 statement protecting Eddie. Essentially, it was put to her,
2 "Which one brought the dope?" And she had to choose. Eddie
3 who really is the only figure that lie has protected, and
4 Earnest who is the more distant cousin was offered up. It
5 didn't make sense.

6 Who's "E"? Earnest? Remember all the police officers
7 said, "Eddie? No, we don't know anything about Eddie. No
8 one ever told us that he went by 'Eddie.'" Shawn said she
9 told them that. Maybe she lied about that, too. Nobody ever
10 told the police that James Nelson was Eddie. They all told
11 you that. They confirmed that Shawn continues to lie.

12 At the bond hearing at Charleston County Detention
13 Center, all cuffed-up together, Earnest Battle finds out.
14 "Oh, my God." LaShawn tells him, "I gave them your name."
15 Imagine. They're all facing 50 years. And Earnie thinks,
16 "Oh, my God. I was merely present. I was just there. I
17 gave Eddie a ride and look what I'm in."

18 And he writes a letter. What would you do? You know
19 she won't give up Eddie, the real uncle. He wrote that
20 letter in an inarticulate and desperate attempt to provide
21 Shawn Floyd with a viable statement that she can write so she
22 could save Eddie who you know she's got to keep an eye on.
23 And Earnie -- Earnie couldn't say, "Tell the truth and tell
24 them Eddie did it." That wasn't going to happen. That was
25 going to fall on deaf ears. That was not an option.

1 The only option was for Earnie to try to save his
2 life. So he writes a letter. And it wasn't the smartest
3 thing to do. To be honest with you, it looks bad, and I am
4 afraid that the letter will actually prevent you from seeing
5 the truth. Don't lose sight of what the truth is and where
6 to find it and where to get it from. Yeah, Earnie tried to
7 save his life by writing that letter. How many of us
8 wouldn't do the same thing?

9 She promised at the bond hearing, "Look, I'm giving
10 your name, but I'll write a statement to clear this whole
11 thing up."

12 How do we know that Eddie is telling the truth? If
13 you are to believe Eddie, as the prosecutor apparently does,
14 why are his charges still pending? I asked him that on the
15 stand. He said, "Yes. They were still pending." His lawyer
16 was in the courtroom with him. How about that?

17 Y'all remember Mr. Bosnak saying, "Now, Shawn, did
18 James Nelson have anything to do with this drug deal?" And
19 she said "no." Well, he either suborned perjury, or he's
20 proceeding against a man that he believes is innocent. Which
21 one of those options is good? I'm mad. And I am mad about
22 that, too.

23 I am mad that the prosecutor has pending charges
24 against Eddie Nelson and yet presents evidence to you that he
25 was completely uninvolved. That bothers me. And you know

1 why they do it? So when Eddie takes the stand and when he
2 looks at the prosecutor, there's basically a big hammer at
3 the table that says "50 years" on it.

4 If he believed his own witness, why haven't they
5 dropped the charges? Do you think he's trying to get the
6 truth or just the right story? That bothers me, and I'm mad.

7 The only thing that you have heard in the way of
8 documentation regarding Eddie's past is his prior record.
9 Didn't see the paycheck stubs from the stevedore company, did
10 you? No.

11 1980, conspiracy, five years' probation, 26 years old
12 at the time. Mr. Bosnak wanted to play this off as youthful
13 indiscretion. Eddie kept going. 1980 again, distribution
14 marijuana, three years in prison. 1984, marijuana, for
15 distribution. 1986, burglary second degree, three years in
16 prison. Grand larceny, same act, three years in prison.
17 1989, possession of marijuana, for distribution, five years'
18 prison. That's the only documentation we have about Eddie.
19 That's who he is.

20 He is, as he called himself, the honest drug dealer,
21 who also pleads guilty to stealing TVs and VCRs. But
22 according to him, he didn't do that. He pled guilty to it,
23 but he didn't do it. That's who Eddie is. Eddie got bigger
24 and better.

25 I was almost shocked to see Eddie's appearance on the

1 stand. I almost think he actually kind of laughed and
2 giggled a couple of times. I remember he kind of chuckled a
3 little bit and said, "My life's not on the line." He's darn
4 right it's not. Darn right. You gave a statement to a
5 prosecutor in jail, and they let you out the same day.

6 Do you think he has a very clear understanding of what
7 team he's playing on if he needs help? Do you have any doubt
8 about that at all? Do you doubt that he knows what plea
9 bargaining is and getting a lawyer to negotiate for you even
10 though he's gone to prison several times? He knows how the
11 system works: Get your lawyer to negotiate on your behalf
12 and cut you the best deal. They even bring the prosecutor to
13 the jail so you can talk to them, and then they let you out.

14 Eddie's playing on this team. He has to. He faces 50
15 years. That would be the end of his life if he went to
16 prison for that long. Yeah. Eddie laughed. Eddie chuckled
17 on the stand a little bit. He's laughing all the way to the
18 bank, is what he's doing. Laughing all the way to the bank.

19 Stick to your story? Oh, come on. He was in jail for
20 ten months before he said it. If he knew nothing about
21 nothing and was just an innocent bystander, why didn't he
22 tell that to the police the night he got arrested? He stood
23 silent until after his arrest. And he stayed silent until
24 ten months later, ten months later when he knows full well
25 what LaShawn is saying and what her story is.

1 When the prosecution goes up to him and says, "Hey,
 2 this is what Shawn's saying; is this what happened," a
 3 light bulb goes off. "Yeah, if I roll with that story, stick
 4 to it, they're going to get me out of jail. I'll be on their
 5 team, helping them." That's Eddie.

6 Shawn is a liar. You know you can't believe her.

7 Let me say something right now. I got this case in
 8 October of 1999, and I want you all to have a very clear
 9 understanding that I am not the attorney mentioned in that
 10 letter. I work for the public defender's office. And he had
 11 another lawyer for a little while named Joe Condon, and
 12 that's the one he's talking about in the letter. I don't
 13 want you to be confused about that at all. That's not me.

14 If Shawn was testifying against her uncle, her
 15 lifelong confidant who always provided for her, who always
 16 was the shoulder that she came to, the person who dispensed
 17 advice about life's troubling issues, what would she have
 18 really looked like? She'd cry? Would she have broke down in
 19 tears and say, "I am sorry. I do not want to say this"? Or
 20 would she have stood up, almost with no emotion, and said,
 21 "E is Earnest Battle"?

22 The only real emotion I saw from her on the stand is
 23 hostility, and that was directed at me because I'm the only
 24 person in the courtroom that can make her performance look
 25 bad. And her performance is what's going to get her through

LASER BOND FORM B PENGAD • 1-800-631-9399

1 here. "I'll testify against my uncle, a father -- a family
2 member." If I were the hands pushing him into the shadow of
3 the penitentiary, I would be upset. Was she? No. I'm mad
4 about that, too. She couldn't have a good relationship with
5 somebody and basically lie to you.

6 In South Carolina we have a rule of court that if I
7 don't present any evidence I get to talk to you last. I
8 chose to do that, not present any evidence, so I could talk
9 to you last. This is the kind of case that's complicated.
10 And that's important to me. I don't have much for you except
11 to tell you that I am scared in that I am scared that you
12 might not see the truth.

13 If you heard for a brief second, a brief second, that
14 LaShawn said, "Yeah, Eddie's my uncle," please, if you have
15 any doubt about that, play that back.

16 My client stands in the shadows of the penitentiary.
17 The testimony: Eddie Nelson, a convicted habitual drug
18 dealer and a lying, drug dealing Shawn Floyd trying to push
19 him in that direction. And when you go to write a verdict,
20 do not become the hands of those lying co-defendants. Do not
21 be the hands of Shawn Floyd and Eddie Nelson. Do not be the
22 hands that push Earnie Battle into the penitentiary,
23 especially from people facing 50 years who have every reason
24 to lie so that they can bask in the sunshine of freedom for
25 the rest of their lives.

1 I told you at the very beginning of this trial the
2 only way you could even consider writing a guilty verdict
3 would be if you can visualize yourself getting out of your
4 chair, walking across this courtroom to that witness stand,
5 and embracing Shawn Floyd and Eddie Nelson, and saying, "Yes.
6 I believe you all beyond any reasonable doubt."

7 It's a lie. Mr. Bosnak started out looking for truth,
8 but you won't find it there. What you have found, what I
9 believe I've proven to you, are lies. Don't believe a case
10 of lies.

11 THE COURT: All right. Members of the jury, I need
12 you to go to the jury room for a moment, please. Don't start
13 your deliberations yet. I still need to discuss some matters
14 with you. But I do need you to go to the jury room for just
15 a few minutes, please.

16 (Whereupon, the jury goes to the jury room at
17 approximately 11:43 a.m.)

18 THE COURT: I'll be right back. Don't go anywhere.

19 MR. MCGUIRE: Yes, sir.

20 (The Court leaves the bench briefly and returns.)

21 THE BAILIFF: Order in the court.

22 THE COURT: Now, come up here a second.

23 (A bench conference was held on the record by the
24 Court and Counsel as follows:)

25 THE COURT: That is a copy of the conspiracy

1 indictment. I want to discuss something with you. What I'm
2 talking about is: The indictment for conspiracy, as I read
3 it, charges the defendant with conspiring with another to
4 purchase cocaine. Do you think there's any proof that he
5 conspired with another to purchase cocaine?

6 MR. BOURDON: No, not for purposes of this trial.

7 THE COURT: Okay. Mr. McGuire, do you have any motion
8 at this stage then?

9 MR. MCGUIRE: I would move that that indictment not be
10 presented to the jury.

11 THE COURT: Do you move for a directed verdict on that
12 charge?

13 MR. MCGUIRE: I would.

14 THE COURT: Anything you all want to say?

15 MR. BOURDON: At this point I don't know if there is
16 much to say, Your Honor, to be honest with you.

17 MR. BOSNAK: The only thing, Your Honor, that I have
18 -- you know, I understand it's wrong. It's got my name on
19 the back. I should have checked it -- would be the
20 prejudicial portion of that by dismissing it at this time.

21 THE COURT: Well, nobody focused on that during their
22 argument or anything. You know, I don't think you're
23 prejudiced in terms of the other two charges that I am going
24 to submit to the jury.

25 MR. BOSNAK: But I would think that you would -- if

1 you could find him guilty of trafficking, you can definitely
2 find him guilty of conspiracy because the act does not have
3 to be done.

4 THE COURT: But, I mean, the conspiracy charge is that
5 he did conspire with another person to purchase cocaine.

6 MR. BOSNAK: Well, as long as the jury understood that
7 it was an error in the indictment.

8 THE COURT: But that's what the word says. That's
9 what he was charged with.

10 MR. BOURDON: Here's what the State's position would
11 be, Your Honor: We move to amend the indictment to "the
12 distribution," vice "purchasing" as a scribner's error.

13 THE COURT: What is your offered amendment?

14 MR. BOURDON: To change the word from "purchasing" to
15 "trafficking" or "distributing."

16 THE COURT: Mr. Bourdon, you've got to tell me exactly
17 what you want to offer as an amendment without changing the
18 elements of the offense that was charged.

19 MR. BOURDON: Your Honor, the charge itself is
20 conspiracy to violate the narcotic laws.

21 THE COURT: Well, no. The charge is what it says in
22 the indictment.

23 MR. BOURDON: I understand. So the State's position
24 would be: To conspire with another to traffick in an illegal
25 narcotic ---

1 THE COURT: Tell me exactly how the indictment would
2 read after your amendment.

3 MR. BOURDON: According to the evidence that's been
4 presented, Your Honor, the State would argue that the
5 indictment ---

6 THE COURT: Well, you kept -- you sit down -- you sit
7 down right there, use exactly the words -- you write in the
8 words that you want to offer as an amendment at this stage.

9 (The Solicitor complies.)

10 THE COURT: Bring it up.

11 MR. BOURDON: Your Honor, the best I can craft at this
12 juncture would be to substitute the word "traffick" for the
13 word "purchase." And that could be either "trafficking,"
14 Your Honor, or looking at it again, you could either strike
15 the word "purchase" out and put "distribute."

16 THE COURT: I know. That's the -- okay. "Traffick,"
17 now that ---

18 MR. BOURDON: Yes, Your Honor. I would put that --
19 you know, looking at this at this late hour, would be to
20 amend the word ---

21 THE COURT: I mean, it's either "distribute" or
22 "sell."

23 MR. BOURDON: --- would be to distribute ---

24 THE COURT: You know, and that's a different -- that's
25 different from what was charged.

1 MR. BOURDON: Yes, Your Honor.

2 THE COURT: That's the problem.

3 MR. BOURDON: Well, your Honor, certainly from the
4 discovery that was provided and from the other indictments,
5 it's clear that this "purchase" was a scribner's error.

6 THE COURT: Well, I understand that. I don't know.
7 But I understand that. But the Appellate Courts in recent
8 years, looking at that, look at the situation and say if by
9 an amendment you change substantially what was presented to
10 the Grand Jury and what he was indicted on ---

11 MR. BOURDON: Yes, sir

12 THE COURT: --- you can't do that. And if the
13 evidence was presented to the Grand Jury, saying that he
14 conspired with somebody to purchase cocaine, to now change
15 that to "sell cocaine," I think is a real big difference. It
16 hasn't been considered by the Grand Jury.

17 So I appreciate your position.

18 MR. BOURDON: Yes, sir.

19 THE COURT: But I think, looking at this, I cannot
20 allow that amendment because it would change substantially
21 what he was indicted for ---

22 MR. BOURDON: Yes, Your Honor.

23 THE COURT: --- which was to purchase -- to conspire
24 with somebody to purchase cocaine. And now change it to a
--- conspiracy to sell cocaine, that wasn't presented to the

1 Grand Jury. That's the way I see it.

2 MR. BOURDON: Yes, sir. Your Honor, the gravamen of
3 the offense is obviously the trafficking in the proximity.
4 The State would just ask if you are going to dismiss that o
5 indictment that they not draw any adverse inference.

6 THE COURT: I agree. I'm just not going to say
7 anything about it all.

8 MR. BOURDON: Yes, sir. So that their consideration
9 would just be the two indictments rather than trying to rea
10 into why the conspiracy one is not here.

11 THE COURT: I agree.

12 MR. BOURDON: Thank you, Your Honor.

13 (Court's Exhibits No. 1 and 2 were marked for
14 identification.)

15 (Said bench conference being concluded, the following
16 proceedings were had:)

17 THE COURT: Bring the jury out.

18 (Whereupon, the jury returns to the courtroom at
19 approximately 12:01 p.m.)

20 THE COURT: All right. We have the jury with us now
21 Mr. Battle is present, along with his attorney.

22 The parties have presented everything that they wish
23 you to consider, and you've heard the summations and
24 arguments from the lawyers. Now, under the Constitution and
25 code of laws of this State, it's now my duty and

1 responsibility to discuss with you what your duties and
 2 responsibilities as a jury in this case are and the law that
 3 applies in the case, and then you go to the jury room and
 4 you'll deliberate and you'll give us your verdict.

5 As you know by now, this is a case in which the State
 6 of South Carolina has accused, claims, that
 7 Mr. Earnest Battle, the gentleman I introduced to you
 8 earlier, violated some of the laws of this State. There are
 9 two charges, really, now that the State makes against
 10 Mr. Battle. One is called trafficking in cocaine, and the
 11 other is called possession with intent to distribute cocaine
 12 within a half mile of Saint John's Catholic School.

13 Now, as I told you at the outset, Mr. Battle has said,
 14 "I'm not guilty of either one of those charges," and that
 15 places the burden of proving him guilty on the State. A
 16 person who is charged is never required to prove himself or
 17 herself innocent. The burden of proof is on the State
 18 throughout the trial to convince you the jury of his guilt
 19 beyond a reasonable doubt.

20 A person who is charged is presumed innocent from the
 21 moment of his arrest, throughout any arraignment, throughout
 22 the trial itself, until you the jury have reached a
 23 conclusion in the jury room that the State has proven him
 24 guilty by the evidence presented here in court beyond a
 reasonable doubt. If the State doesn't do that, then he's

LASER BOND FORM B • PENNAD • 1-800-631-9999

1 entitled to a verdict of not guilty.

2 Now, what do we mean when we say that the State must
3 prove someone guilty beyond a reasonable doubt? What do
4 those words mean? The term "reasonable doubt" may be best
5 understood by giving it its plain and ordinary meaning. A
6 reasonable doubt is the kind of doubt that would cause a
7 reasonable person to hesitate to act. If after considering
8 all the evidence in this case you hesitate to convict
9 Mr. Battle on the basis of that evidence, then he's entitled
10 to a verdict of not guilty.

11 A reasonable doubt may arise from the evidence that's
12 been presented in this case or from the lack of evidence in
13 the case. You alone, you are the sole judges of the facts of
14 this case. You alone must make the decision as to whether or
15 not the State has proven him guilty of the charge beyond a
16 reasonable doubt.

17 Now, Mr. Foreman and members of the jury, under the
18 Constitution and code of laws, as I said, you are the sole
19 judges of the facts of this case. I don't have anything to
20 do with the facts. If I have said or done anything during
21 the course of the trial that you've interpreted in any way as
22 an opinion that I might have about the facts, please
23 disregard it for I've intended to be fair and impartial to
24 both sides in this case.

25 Now, in determining the facts, it's necessary for you

1 to evaluate the credibility or the believability of the
2 witnesses who have testified. You have to decide: Do I
3 believe what that person tells? Do I believe what that
4 person has told me in this case? How much trust, how much
5 faith do I put in what that person has told me?

6 I would suggest that you go about deciding those
7 issues in much the same way you decide that in your everyday
8 life. You and I have to decide every day whether to believe
9 what someone tells us. It's so much a part of everyday life
10 that we oftentimes don't think about any mental process that
11 we may go through in deciding whether to believe someone; but
12 you do it every day whether at home, on your job, on the
13 street, wherever.

14 When someone comes up to you and makes a factual
15 statement to you, when someone says something like
16 "such-and-such just happened" or "such-and-such is about to
17 happen" or "you should do this because" or "you should do
18 that because," when a person makes that type of statement to
19 you, you have to decide: Do I believe what that person tells
20 me? How much trust, how much faith do I put in what that
21 person tells me? As I said, I would suggest that you go
22 about deciding who and what to believe in regard to the
23 testimony and the evidence that's been presented to you in
24 this case in much the same way you decide that issue in your
25 everyday life.

1 Some of the things that you may want to consider in
2 deciding who and what to believe, in deciding how much weight
3 to assign to a witness's testimony, and this is by no means
4 an exhaustive list, but some of the things that you may want
5 to consider are such things as: The demeanor or manner of
6 the witness who testified, whether the witness had reason to
7 be biased or prejudiced in some way or the other, whether a
8 witness's testimony was contradicted on the one hand or
9 supported and corroborated on the other hand.

10 You certainly do not determine truth or credibility
11 believability merely by counting the number of witnesses who
12 may have testified for one side or the other or who may have
13 testified concerning some particular point or fact that may
14 be involved in the trial of this case. You may believe a
15 small portion of a witness's testimony and disregard the
16 larger portion or vice versa. You certainly do not determine
17 truth or credibility or believability merely by counting the
18 number of witnesses, as I said, who may have testified for
19 one side or the other or concerning some particular point or
20 fact that may be involved in the trial of this case.

21 The fact that Mr. Battle himself has not testified in
22 this case may in no way weigh in your decision. The fact
23 that he did not testify, did not present any evidence, is
24 perfectly consistent with what I told you at the outset; and
25 that is, the burden of proof is on the State to convince you

1 of his guilt beyond a reasonable doubt. There's no burden on
2 him to explain or to do anything. The burden of proof is on
3 the State to produce the evidence here in court to convince
4 you of his guilt beyond a reasonable doubt.

5 If you let the fact that he has not testified or that
6 he has not presented any witnesses or evidence in any way
7 enter into your discussions or decision in this case, then
8 you would have violated your oath as jurors because your oath
9 was to decide this case based on what is presented to you
10 from the witness stand.

11 Now, there are two types of evidence, what the lawyers
12 refer to and judges refer to as two types of evidence that
13 are presented to jurors. One is what we refer to as direct
14 evidence. The other is what we refer to as circumstantial
15 evidence.

16 Direct evidence is evidence which a witness testifies
17 to on the basis of his or her physical senses, such as "I saw
18 something" or "I heard something" or "I felt something," "I
19 smelled something." That's direct evidence where a witness
20 testifies to something based on his or her physical senses.

21 There is another type of evidence that we refer to as
22 indirect or circumstantial evidence. That is evidence which
23 may prove a particular fact to be proved, not by evidence
24 based upon the physical senses of a testifying witness but
25 rather on the basis of the proof of other facts which infer

1 the proof of a particular fact as a necessary consequence.

2 The commission of a crime may be proved by
3 circumstantial or indirect evidence as by direct evidence of
4 an eyewitness. Circumstantial evidence is permissible
5 provided it meets the legal test. To the extent that the
6 State relies on circumstantial evidence, it must prove all
7 the circumstances relied on beyond a reasonable doubt. These
8 circumstances must in every way perfectly be consistent with
9 one another; and they must point conclusively, that is, to a
10 moral certainty, to the guilt of the accused to the exclusion
11 of every other reasonable hypothesis or explanation. In
12 other words, the circumstances must be absolutely
13 inconsistent with any other reasonable hypothesis or
14 explanation than the guilt of the accused.

15 Now, the charges, the specific charges for you to
16 consider in this case, are two:

17 One is called trafficking in cocaine. The State
18 claims that Mr. Battle did on July 15th, on or about July
19 15th, 1999, while at [REDACTED] in North Charleston
20 knowingly sell, manufacture, deliver, purchase, or bring into
21 the State or that he provided financial assistance or
22 otherwise aided, abetted, attempted, or conspired to sell,
23 manufacture, deliver, purchase, or bring into this State or
24 that he was knowingly in actual constructive possession of
25 excess of 28 grams of cocaine and that that was in violation

1 of the code of laws of this State.

2 That's the formal charge that the State makes against
3 Mr. Battle; essentially, that is, that on July 15, 1999,
4 while at that location in North Charleston that he knowingly
5 sold or possessed in excess of 28 grams of cocaine. That's
6 what the State charges in this case; that Mr. Battle did, as
7 I said, on that date at that location knowingly -- it means
8 he knew it -- sell or attempt to sell or have in his
9 possession 28 grams -- more than 28 grams of cocaine.

10 That's how the General Assembly has defined
11 "trafficking in cocaine." It's having in your possession
12 more than 28 grams of cocaine. And the State here claims
13 that -- also included in that charge is that he did have in
14 his possession knowingly and with an intent to sell that
15 cocaine and that that was in excess of 28 grams of cocaine.
16 That's how it's defined, and that's what the State charges in
17 this case. That's one of the charges.

18 And you'll have this indictment, this piece of paper,
19 with you in which the formal charge is written out. I would
20 ask that you, of course, consider that. You read the charges
21 that the State has made in the indictment, and you see
22 exactly what the State has charged as far as that particular
23 charge of trafficking in cocaine.

24 As I said, "trafficking" is defined under the law.
25 That's an unusual word, so to speak, but it's defined by

LASER BOND FORM B PENGAD • 1-800-451-6888

1 saying that it involves more than 28 grams of cocaine. And
2 that's the charge in this case, coupled with the other
3 elements charged in the indictment.

4 Now, the State claims as part of that that he could
5 have been an aider or an abettor, what we refer to as an
6 aider or as an abettor, not the principal in that but rather
7 acting as an aider or an abettor. Now, in order to be guilty
8 as an aider or abettor, Mr. Battle must be charged with
9 knowledge of the principal's criminal conduct.

10 Mere presence at the scene is not sufficient to
11 establish guilt as an aider or an abettor. All persons who
12 are present aiding, abetting, encouraging, or inciting
13 another to commit a criminal act are equally guilty with the
14 one who does the act.

15 Aiding and abetting encompasses all assistance
16 rendered by acts or words of encouragement, incitement, or
17 support which preconcert with the intention of rendering
18 assistance if necessary. All persons present aiding and
19 abetting a felony are regarded as principals and equally
20 guilty. The actual perpetrator is regarded as the agent or
21 instrument by which the crime is perpetrated, not as the
22 chief criminal or more guilty -- not as the chief criminal
23 more guilty than his associates. When two or more persons
24 aid, encourage, and abet each other in the commission of a
25 crime, all being present, all are principals. One present

1 aiding and abetting the commission of a felony is not an
2 accessory but is a principal in the crime committed.

3 However, if you find from all the evidence that
4 Mr. Battle was merely present at or near the scene of a
5 crime, you are instructed that such presence at or near the
6 scene of a crime would not support a finding of guilty. Mere
7 presence can only create a suspicion, and you cannot find
8 Mr. Battle guilty because of suspicion.

9 Mere presence at or near the scene of a crime does not
10 in and of itself permit an inference to be drawn by you that
11 he has knowledge of any criminal plan which might have been
12 formed, nor does mere presence support an inference of intent
13 to engage in or to aid criminal conduct. Suspicious
14 circumstances, like mere presence, are not sufficient for a
15 finding of guilt against Mr. Battle. So, of course, mere
16 presence, as I said, is not enough to convict someone of a
17 crime.

18 The other charge the State makes is possession with an
19 intent to distribute cocaine within a half mile of a school,
20 and that is a crime as defined by the General Assembly of
21 this State. It is a separate criminal offense for a person
22 to unlawfully distribute or possess with intent to
23 distribute, which is what the State charges here, possess
24 with intent to distribute, cocaine while in or on or within a
25 radius of one-half mile of the grounds of a public or private

1 elementary, middle, or secondary school. A person is guilty
2 of this offense if he is found in possession of cocaine
3 within this area and you also find that he intended to
4 distribute the cocaine within this area beyond a reasonable
5 doubt.

6 Now, Mr. Foreman and members of the jury, you were
7 selected in this case both by the State and by the defendant
8 as fair and impartial jurors. You took an oath whereby you
9 swore you would decide this case based on the testimony and
10 the evidence that's given to you from the witness stand and
11 my instructions to you on the law. When you do that, when
12 you comply with your oath, no one will have a right to
13 criticize your verdict regardless of what that verdict may
14 be. You have no friends to reward or enemies to punish.
15 Your job is to do what you said you would do: Decide this
16 case based on your evaluation of the testimony and the
17 evidence, apply that under the law, reach your verdict in
18 this case, your decision in this case.

19 Your verdict must be unanimous. All twelve of you
20 must agree on what the verdict is before you can come back
21 into the courtroom and tell us if you've reached a verdict in
22 regard to these charges made against Mr Battle. All twelve
23 of you must agree.

24 Mr. Foreman, you'll have with you in the jury room the
25 physical evidence that's been introduced. You'll also have

1 with you these two pieces of paper that I hold here in my
2 hand. We call these "indictments." This is the formal way
3 that we require the State to notify someone of the charge
4 that's being made against him. It's never proof of the
5 charges contained therein. The only proof comes from the
6 witness stand, but we do require the State to notify someone
7 in writing of the charges that he faces, and that's what
8 these two pieces of paper are.

9 And as I said, the elements, if you have a question
10 about what the State has actually charged, the elements of
11 the offense are contained on the inside of the indictment.
12 And I read that to you a little earlier, the charge of
13 trafficking in cocaine. And, again, if you have any
14 question, you should read that during your deliberations.
15 The same thing goes with the charge of possession with intent
16 to distribute cocaine within proximity of a school. The
17 charges, the elements, are contained in the indictment.

18 Now, we also use these to make -- to ask you to use
19 these to let us know what your verdict is in each case.
20 You'll find on the back of the indictment, down here in this
21 left-hand corner, the printed word "verdict." There are some
22 blank lines there, and then below the last line "Foreperson
23 of the petit jury." I would ask that you write your verdict,
24 Mr. Foreman, when the jury reaches a unanimous decision about
25 each charge, write that verdict on the back of the indictment

1 and sign your name below it.

2 Of course, there are two possible verdicts in regard
3 to each charge. If under the facts as you find them to be
4 and under the law as I have instructed you the law to be, you
5 find that the State has not met its burden of proof of
6 proving Mr. Battle guilty of one or both of the charges, you
7 would write the words "not guilty" on the back of the
8 indictment; that is, in regard to each charge, if you find
9 that the State had not met its burden of proof, you would
10 write the words "not guilty" on the back of the indictment
11 for that charge.

12 On the other hand, if under the facts as you find them
13 to be and under the law as I have instructed you the law to
14 be, you find that the State has met its burden of proof in
15 regard to a charge, on that indictment you would write the
16 word "guilty," sign your name, and return it, and we'd know
17 that's your verdict in this case.

18 Now, we've already ordered you lunch. I don't know
19 how long it will take for it to get here. When it does get
20 here and they bring it to you in the jury room, I would ask,
21 of course, that you stop your deliberations. Don't try to
22 eat lunch and deliberate at the same time. All twelve of you
23 have to focus on the deliberations. Somebody might be
24 distracted by their hamburger or their chicken or whatever it
25 is that you're getting. So once the food gets here, stop the

1 deliberations. Eat your lunch. When everybody's through,
2 then you can start your deliberations again. If you want us
3 to bring the leftovers or trash out of the jury room, let us
4 know that. The bailiffs will take it out and everything
5 after you've finished your lunch. Of course, you can
6 deliberate from now until you get your lunch; but once you do
7 get your lunch, stop your deliberations, then start after you
8 finish your lunch.

9 I need you to go to the jury room for a moment. Don't
10 start your deliberations yet. I need to look over my notes
11 to make sure I've told you everything I need to tell you. If
12 I have, I'll send the physical evidence along with the
13 indictments to the jury room, and you'll know at that time
14 that you can begin your deliberations. If I've overlooked
15 something, I'll bring you back out and tell you what I've
16 overlooked before you start your deliberations.

17 (Whereupon, the jury goes to the jury room at
18 approximately 12:24 p.m.)

19 (Whereupon, the alternate is excused.)

20 THE COURT: Any exception from the State?

21 MR. BOURDON: No, sir. The only thing I noted was
22 with the defense's request on the mere presence charge.
23 Since you've already given it but if it's asked again, I
24 would note that the last sentence in that is somewhat suspect
25 in that it kind of changes the gist of mere presence.

1 THE COURT: All right.

2 MR. BOURDON: It says: "Suspicious circumstances,
3 like mere presence, are not sufficient."

4 THE COURT: All right. Okay. Anything else?

5 MR. MCGUIRE: No, Your Honor.

6 THE COURT: No exceptions from the defendant. All
7 right. Now, let's get the physical evidence. I want to m
8 sure we've got everything we're supposed to have and nothi
9 else.

10 (The hearing is recessed, awaiting the verdict.)

11 (Whereupon, a note is received from the jury.)

12 THE COURT: Bring the jury in.

13 (Whereupon, the jury returns to the courtroom at
14 approximately 1:55 p.m.)

15 THE COURT: All right. We have the jury with us in
16 the jury-box. Mr. Battle is present, along with his
17 attorneys.

18 The Bailiff has brought me a note. It says: "Can
19 please have a copy or a transcript of your instructions to
20 the jury at the end of the trial?" The answer to that is
21 I cannot give you a copy or a transcript of what I said, b
22 if there's something -- if there's something that you can
23 direct my attention to, some part of it, I'll be glad to go
24 over that with you again here in court.

25 Of course, I was referring to some notes that I have

1 in a notebook that I use in instructing juries at the
 2 conclusion of a trial, and I can refer to my notes, or I know
 3 most of it pretty much without having to refer to notes. But
 4 if there is some particular portion of what I discussed with
 5 you that you would like for me to go over again, I'll be glad
 6 to do that. Can you narrow that down any, as to any
 7 particular portion or anything?

8 THE FOREMAN: There was a portion about a reasonable
 9 person. Could there be another scenario possible: Would a
 10 reasonable person consider that something else happened
 11 instead of what's claimed by the prosecution?

12 THE COURT: Okay. I'm not sure if what you're asking
 13 about was what I discussed or I mentioned when I was talking
 14 about two types of evidence, the two ways that we classify
 15 evidence.

16 I saw at least one or two jurors indicating by shaking
 17 their heads "yes" that that was what you were asking about.

18 As I said, there are two types of evidence from which
 19 a jury may properly find the truth as to the facts of a case.
 20 One is direct evidence, such as testimony of a witness. The
 21 other is indirect or circumstantial evidence, the proof of a
 22 chain of circumstances pointing to the existence or
 23 nonexistence of certain facts; that's what we're talking
 24 about when we talk about circumstantial evidence.

25 No one may have testified that "I saw somebody shoot

LASER BOND FORM B PENGAD • 1-800-631-9969

1 the gun" that supposedly killed someone, but you can have
2 circumstantial evidence that points to the fact that that
3 person was the person that fired the gun that killed someone.
4 It's not necessary for the State in a case -- and I'm giving
5 this as an example, of course, because this is not involved
6 in this case in any way. But as an example and just for
7 example only, I'm just saying that in order to convict
8 someone of murder it's not necessary that the State have an
9 eye witness that says "I saw the defendant shoot the
10 deceased." You can have proof of circumstances that lead to
11 that conclusion beyond a reasonable doubt, as I've defined
12 that for you.

13 So that's what I'm talking about when I'm talking
14 about circumstantial evidence. But the circumstances proved
15 by the State must be complete. They must lead to that
16 conclusion beyond a reasonable doubt.

17 And in the evaluation of circumstantial evidence, you
18 must search for, consider, any other reasonable hypothesis or
19 explanation than that which the State advances and the claim
20 made by the State. You have to examine every other
21 reasonable hypothesis or explanation other than the guilt of
22 the accused when considering circumstantial evidence.

23 That's the essence, I think, of my instructions to you
24 on circumstantial evidence. It's not necessary to prove
25 every fact that the State has to prove in order to be

1 entitled to a verdict of guilty by direct evidence. They can
 2 prove it by circumstantial evidence, but it must be a
 3 complete chain; that is, all the circumstances that the State
 4 relies on, other than direct testimony, all the circumstances
 5 that the State relies on to establish an element, some part
 6 that's necessary to prove the defendant guilty, some part of
 7 the crime that he is accused of committing, they must
 8 establish all those circumstances, as I said, beyond a
 9 reasonable doubt.

10 And in consideration of that, it's your duty to
 11 examine any other reasonable hypothesis or explanation than
 12 the guilt of the accused. And if there is another reasonable
 13 explanation for the circumstance, then you cannot rely on
 14 that circumstance in finding the defendant guilty.

15 Does that explain? Is that what you wanted to hear?

16 THE FOREMAN: Yes, sir.

17 THE COURT: Okay. With that explanation to you then,
 18 I'll ask you to return to the jury room and continue to
 19 deliberate.

20 (Whereupon, the jury returns to the jury room at
 21 approximately 2:01 p.m.)

22 THE COURT: All right. Any exception to that from the
 23 State?

24 MR. BOURDON: Your Honor, your explanation was as to
 circumstantial evidence. There is also direct evidence in

LASER BOND FORM B PERIOD • 1-800-531-8888

1 this case that you've instructed them on.

2 THE COURT: Okay.

3 MR. BOURDON: No exception, Your Honor.

4 THE COURT: Okay. Did you say "no exception"?

5 MR. BOURDON: Yes, sir.

6 THE COURT: Okay.

7 MR. BOURDON: I just wanted to clarify that.

8 THE COURT: All right. Okay. Anything from you?

9 MR. MCGUIRE: Your Honor, I would ask for a King
10 charge if you're inclined to do that. Just as they have --

11 THE COURT: A King charge as I understand it -- I'm
12 not the best at shorthand things. I thought the King charge
13 relates to if you have a doubt as to whether he's guilty of
14 this or a lesser offense you find him guilty of the lesser
15 offense.

16 MR. MCGUIRE: I think that there's also language in
17 there: As you consider each and every piece of evidence, if
18 you have a doubt, you resolve it in favor of the defendant.

19 THE COURT: Okay. I appreciate your position. I
20 don't think I need to go into anything further along those
21 lines with them. All right.

22 All right. You all can be at ease.

23 (The hearing is recessed, awaiting the verdict of the
24 jury, and other matters are heard before the Court.)

25 (After said recess, the defendant being present with

1 Counsel, the following proceedings were had:)

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

3 (Whereupon, the jury returns to the courtroom at
4 approximately 2:17 p.m.)

5 THE COURT: All right. You can give those to the
6 Bailiff there. Give me the verdict. Give the documents
7 to -- give them to the Clerk. All right.

8 (Documents tendered to the Court.)

9 THE COURT: The jury has returned a verdict of guilty
10 in regard to each of the charges contained in the two
11 indictments.

12 Anything prior to discharge of the jury? From the
13 State?

14 MR. BOURDON: No, Your Honor.

15 THE COURT: From the defendant?

16 MR. MCGUIRE: I'd request polling, Your Honor.

17 THE COURT: All right. Members of the jury panel,
18 under the law, once a verdict is returned in open court there
19 is a procedure for what is called "the polling of the jury."
20 What that means is, I'm going to call each one of your names.
21 The questions that I am posing to you, that I am putting to
22 you, are this:

23 Was the verdict as it has been reported here in open
24 court, that is, guilty to each of the charges -- was that
-- verdict when you last voted in the jury room, and is it

1 still your verdict here in open court?

2 If it was your verdict when you voted in the jury ro
3 and it's still your verdict here in open court, answer "yes
4 If it either was not your verdict in the jury room or it is
5 not your verdict here in open court, tell me "no."

6 So I'm going to call each one of your names. Raise
7 your hand, if you would, when I call your name so that I ca
8 see who is responding to that name, and that's the question
9 that I'm going to be posing to you.

10 David Fender, was that your verdict when you last
11 voted in the jury room, and is it still your verdict here i
12 open court?

13 MR. FENDER: Yes, sir.

14 THE COURT: Teresa Davis Puckett, was that your
15 verdict when you last voted in the jury room, and is it sti
16 your verdict here in open court?

17 MS. PUCKETT: Yes, sir.

18 THE COURT: Jane Aldrich, was that your verdict when
19 you last voted in the jury room, and is it still your verdi
20 here in open court?

21 MS. ALDRICH: Yes, sir.

22 THE COURT: Patricia McLoughlin, was that your verdi
23 when you last voted in the jury room, and is it still your
24 verdict here in open court?

25 MS. MCLOUGHLIN: Yes.

1 THE COURT: Eunjoo Yun, was that your verdict when you
2 last voted in the jury room, and is it still your verdict
3 here in open court?

4 MS. YUN: Yes.

5 THE COURT: Lana Nelson, was that your verdict when
6 you last voted in the jury room, and is it still your verdict
7 here in open court?

8 MS. NELSON: Yes, Your Honor.

9 THE COURT: Elaine Wilson, was that your verdict in
10 the jury room when you last voted, and is it still your
11 verdict here in open court?

12 MS. WILSON: Yes, sir.

13 THE COURT: Jennifer Godwin, was that your verdict
14 when you last voted in the jury room, and is it still your
15 verdict here in open court?

16 MS. GODWIN: Yes, sir.

17 THE COURT: Joshua Robinson, Jr., was that your
18 verdict when you last voted in the jury room, and is it still
19 your verdict here in open court?

20 MR. ROBINSON: Yes.

21 THE COURT: Kathleen Brooks, was that your verdict
22 when you last voted in the jury room, and is it still your
23 verdict here in open court?

24 MS. BROOKS: Yes.

THE COURT: Melinda Turner, was that your verdict whe

1 you last voted in the jury room, and is it still your verdi
2 here in open court?

3 MS. TURNER: Yes.

4 THE COURT: Willia Mae Smalls, was that your verdict
5 when you last voted in the jury room, and is it still your
6 verdict here in open court?

7 MS. SMALLS: Yes, sir.

8 THE COURT: All right. I believe that completes the
9 polling of the jury. Anyone on the jury panel whose name I
10 did not call, if you would, please raise your hand. I
11 believe I called everybody's name on the jury.

12 (There was no response.)

13 THE COURT: All right. That completes the polling of
14 the jury. Anything else prior to discharge of the jury?

15 MR. MCGUIRE: No, Your Honor.

16 THE COURT: All right. Members of the jury panel, I
17 want to thank you very much for your service in this case.

18 I'm really not that much interested in what a jury's
19 verdict is in a case as I am in the way that you went about
20 arriving at your verdict. And by that, I mean that you paid
21 attention during the presentation of the testimony and the
22 evidence during the trial, you paid attention when the
23 attorneys were summarizing and arguing to you, and you paid
24 attention while I was discussing your role in this case with
25 you. And to my observation, you did all three of those

1 things. So I want to thank you very much for your service on
2 the jury.

3 If you have not already done so, before you leave I
4 would ask you to tear out any notes you may have made in your
5 notebooks. Take them with you, tear them up, whatever you
6 want to do with those.

7 You're free to discuss the case with anyone at this
8 point. I've been telling you that you cannot discuss the
9 case; but now that it's over, you can discuss the case with
10 anyone that wants to talk to you about it or ask you about
11 it.

12 You're under no obligation to discuss it with anyone.
13 If anyone asks you or wants to talk to you about it and you
14 don't want to talk with them about it, you just tell them "I
15 do not wish to discuss it with you" or whatever. Let them
16 know that you don't want to talk about it.

17 If they persist, if they insist on trying to talk to
18 you about it, ask you questions or whatever about it, you
19 find out who that person is, report it to me, and I'll deal
20 with them after that. But no one should bother you in any
21 way about this case, harass you, or anything of that sort.
22 So, again, you're free to discuss it, but you don't have to
23 if you don't want to.

24 Of course, this is the last case we're trying this
week so your service on the jury is complete for the week.

1 I want to thank you for that.

2 You do get paid for serving on the jury. The Clerk
3 will be mailing those checks to you today or Monday of next
4 week. If you do not get your paycheck in the mail, get in
5 touch with the Clerk's office and tell them about that, and
6 we'll find out what's happened to your check or get another
7 check to you or whatever.

8 If you want to stay, you're free to stay. I'm going
9 to sentence Mr. Battle now. But you don't have to. You're
10 free to go.

11 (Whereupon, the jury is excused at approximately
12 2:23 p.m.)

13 THE COURT: All right. Mr. McGuire, do you want to
14 present your client for sentencing?

15 MR. MCGUIRE: Yes, sir, Your Honor.

16 THE COURT: All right. I need two sentencing sheets.

17 MR. BOURDON: Your Honor, that may take a few minutes
18 to prepare.

19 THE COURT: All right. Do you want the indictments,
20 or do you need any numbers off of this? While somebody's
21 fixing that, if one person is fixing that, you can give me
22 Mr. Battle's prior record.

23 MR. BOURDON: Thank you, Your Honor. May it please
24 the Court.

25 THE COURT: Yes, sir.

1 MR. BOURDON: Mr. Battle's record starts in 1979. He
2 was convicted of unlawful possession of marijuana. He
3 received a youthful offender sentence. That would make the
4 first drug conviction. He also has a conviction in 1979 for
5 possession of marijuana which is from a different date in
6 March of 1979.

7 THE COURT: So it's two convictions of simple
8 possession of marijuana in '79?

9 MR. BOURDON: Correct, Your Honor.

10 THE COURT: All right.

11 MR. BOURDON: One from April of '79, and one from date
12 of arrest in August of '79. A simple possession of marijuana
13 in 1985. That was a magistrate level offense. Another ---

14 THE COURT: That's the third simple possession of
15 marijuana?

16 MR. BOURDON: Correct, Your Honor.

17 THE COURT: And the next one?

18 MR. BOURDON: November of '85, another possession of
19 marijuana offense.

20 1986, simple possession of marijuana, and that was
21 from January the 7th. On January 23rd of the same year of
22 '86, possession of marijuana. In June of 1986, simple
23 possession of marijuana.

24 In February of 1987, he was also found guilty of

 marijuana and domestic violence -- or excuse m

1 -- possession of marijuana again in 1987, June of '87.

2 Your Honor, his most significant conviction occurred
3 from an arrest on December the 9th of 1988 where he was found
4 guilty at trial of possession of cocaine with intent to
5 distribute and trafficking in cocaine. He received a 20-year
6 sentence from Judge Howard on the trafficking and ten years
7 on the proximity of a school.

8 Your Honor, the State's position, under the law, he
9 was notified in this case within the ten-day time limit that
10 this was a life without parole case based on trafficking
11 cocaine which is a serious offense and the proximity of a
12 school charge which is also a serious offense.

13 They appear to arise from the same date; but under our
14 law, they're separate and distinct incidents, so that he has
15 two prior serious convictions. He was notified that this
16 would be a life without parole case. And given that fact at
17 the conviction, Your Honor, the State would ask that the life
18 without parole case be imposed.

19 THE COURT: All right. Now, let's see now. I need to
20 look at the statute involved.

21 MR. BOURDON: Yes, sir. That's 17 -- Your Honor, I
22 have to step down for a minute and get that.

23 THE COURT: All right. Anything else from the State
24 though, as far as anything else you want me to know?

25 MR. BOURDON: No, Your Honor.

1 THE COURT: I'm going to look at that statute to make
2 sure I understand the computations, whatever, and everything.
3 We'll switch now to the other side, Mr. McGuire.

4 MR. MCGUIRE: Thank you, Your Honor. Your Honor ---

5 MR. BOURDON: If I can reach for the statute, I think
6 it's right here.

7 MR. MCGUIRE: Your Honor, first off, while there was a
8 life notice issued to me, I can tell you that before this
9 trial started I asked Mr. Bosnak if he was proceeding with
10 life without parole. He said no. And I can tell you that
11 I've had conversations with Rodney Davis whether this was a
12 life without parole case. And the two priors that they rely
13 on is a trafficking and a proximity from the same event,
14 which counts as one for the purposes of the recidivist
15 statute. So he would not qualify.

16 THE COURT: Well, I'm going to have to look at the
17 statute and see.

18 MR. MCGUIRE: And, Your Honor ---

19 THE COURT: But this bothers me about what you're
20 saying about Mr. Bosnak telling you that it was not
21 proceeding as a life without parole case.

22 MR. MCGUIRE: That's true.

23 MR. BOURDON: Your Honor, I'll have to check with
24 Mr. Bosnak on what he proffered ---

1 MR. BOURDON: --- to the defendant, because that
2 obviously would change it.

3 THE COURT: Because at some point, that was the
4 information that was given to me in chambers at some point,
5 either before the trial started or shortly after the trial
6 started, you know, was that he had been noticed for the li:
7 without parole provision, and that was what I understood.
8 mean, I took that to mean that that's what the State -- th
9 the State was proceeding along those lines.

10 MR. MCGUIRE: I think they were just sort of
11 buttressing their argument as to why there should be -- if
12 there was any kind of plea, that it would involve substant:
13 jail time. I think they were buttressing their argument,
14 saying if there was going to be any kind of plea agreement
15 they wanted a substantial amount of jail time.

16 THE COURT: All right.

17 MR. BOURDON: Your Honor, the alternative, given th
18 fact that this is a third or subsequent offense, under the
19 Title 44-53-370, it's a minimum of 25 years and not more th
20 30 years and no part of which may be suspended or probatio
21 granted.

22 THE COURT: Tell me that again.

23 MR. BOURDON: It's a minimum of 25 years and not mo:
24 than 30 years, no part of which may be suspended nor
25 probation granted, and a fine of \$50,000.

1 Given his prior convictions, which I have certified
2 copies of, Your Honor, that would certainly make this a third
3 offense under the statutes. Because it's a serious offense,
4 Your Honor, that's a discretionary. Two serious are
5 discretionary.

6 The notification of the solicitor, from what
7 Mr. Bosnak has related, I was under the impression that this
8 was life without parole. I thought he was going to talk
9 about it in chambers prior to the start of this trial when
10 there was negotiations entered into.

11 THE COURT: I've got to be certain in regard to the
12 law in this area. I haven't faced this particular situation
13 before, so I'm going to postpone the sentencing and give both
14 sides the opportunity to compile the facts and to give me
15 briefs or whatever on what you think the range of sentences
16 are that I have in this case.

17 So Mr. Battle will be in the custody of the sheriff
18 until such time as we schedule a sentencing hearing.

19 And in the meantime, I would ask each side to analyze
20 the law and present to me what you think the alternatives are
21 if I have any.

22 MR. BOURDON: Yes, sir. And that may be done before
23 we leave today? I think we can resolve it before then.

24 THE COURT: All right. If you want to, that will be

1 MR. MCGUIRE: I'd rather not do it today, Your Honor

2 THE COURT: Okay.

3 MR. MCGUIRE: I also do have a restitution hearing in
4 front of you.

5 THE COURT: Okay. Yes, we've got him involved in
6 something else this afternoon.

7 All right. Well, let's just try to reschedule it.
8 Let's try to schedule it sometime next week, with your -- I
9 think I'm doing civil next week. But with your permission,
10 Mr. McGuire ---

11 MR. MCGUIRE: Yes, sir.

12 THE COURT: --- I'll retain jurisdiction of this case
13 until such time as we can have a sentencing hearing.

14 MR. MCGUIRE: Yes, sir.

15 THE COURT: All right.

16 MR. BOURDON: Thank you, Your Honor.

17 MR. MCGUIRE: Thank you, Your Honor. Your Honor, if
18 could, while we're on the record, I would make my motion for
19 a new trial to preserve any appellate issue.

20 THE COURT: All right. I appreciate your position.
21 deny your motion.

22 (Whereupon, at approximately 2:33 p.m., the hearing
23 concluded.)

24

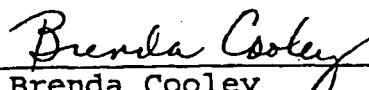
25

CERTIFICATE OF THE REPORTER

I, the undersigned, Brenda Cooley, Court Reporter for The Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true and accurate transcript of record of the proceedings had and the evidence introduced in the hearing of the captioned case, Volumes I and II, Pages 3 through 443, inclusive, relative to appeal, in The Court of General Sessions for Charleston County, South Carolina, on the 4th, 6th, 7th and 8th days of June 2001.

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

December 20, 2001


Brenda Cooley
Circuit Court Reporter

BATSON LIST

COUNTY: CHARLESTON DATE: JUNE 4, 6, 7, 8, 200

CASE NOS.: 99-GS-10-7109, JUDGE:
99-GS-10-7110,
99-GS-10-7111 THE HON. TOMMY L. HUGHSTON

STATE: STATE OF SOUTH CAROLINA STATE'S ATTORNEY:
M. BOSNAK, ESQ.
M. BOURDON, ESQ.
J. CROUT, ESQ.

DEFENDANT: EARNEST BATTLE DEFENSE ATTORNEY:
W. MCGUIRE, ESQ.
L. SARJI, ESQ.

COURT REPORTER:
BRENDA COOLEY

<u>JUROR NO.</u>	<u>NAME</u>	<u>STRIKES</u>			
		<u>SEX</u>	<u>RACE</u>	<u>PLAINTIFF</u>	<u>DEFENSE ACC</u>
1.	DAVID FENDER	M	W		
2.	TERESA PUCKETT	F	W		
3.	JANE ALDRICH	F	W		
4.	TERRY NEWBERRY	M	W	X	
5.	JOYCE DIMARTINO	F	W		X
6.	RANDALL HUTCHINSON	M	W	X	
7.	PATRICIA MCLOUGHLIN	F	W		
8.	EUNJOO YUN	F	A		
9.	LANA NELSON	F	B		
10.	ELAINE WILSON	F	B		
11.	JENNIFER (MARSHALL) GODWIN	F	W		
12.	JOSHUA ROBINSON, JR.	M	B		
13.	KATHLEEN BROOKS	F	B		
14.	ELIZABETH DETTREY	F	W		X
15.	GLORIA SMALLS	F	B		X

BATSON LIST (CONTINUED)

446

COUNTY: CHARLESTON

DATE: JUNE 4, 6, 7, 8, 2001

CASE NOS.: 99-GS-10-7109,
99-GS-10-7110,
99-GS-10-7111

JUDGE:
THE HON. TOMMY L. HUGHSTON

STATE: STATE OF SOUTH CAROLINA

STATE'S ATTORNEY:
M. BOSNAK, ESQ.
M. BOURDON, ESQ.
J. CROUT, ESQ.

DEFENDANT: EARNEST BATTLE

DEFENSE ATTORNEY:
W. MCGUIRE, ESQ.
L. SARJI, ESQ.

COURT REPORTER:
BRENDA COOLEY

STRIKES

JUROR NO. NAME SEX RACE PLAINTIFF DEFENSE ACCEPT

16.	MELINDA TURNER	F	W			X
17.	JOSEPH AMUNDSEN	M	W		X	
18.	LOUISE HUDSON	F	W		X	
19.	KARAN WALKER	M	B	X		
20.	WILLIA MAE SMALLS	F	B			X

ALTERNATE:

21.	NANCY LEVI	F	W		X	
22.	KAHRON NATHANIEL	M	B	X		
23.	VIVIAN HUGULEY	F	W		X	
24.	NICHOLAU SUDANO	M	W			X

STATE V. EARNEST BATTLE
SURVEILLANCE TAPE
CITY OF CHARLESTON POLICE DEPARTMENT

OFFICER: THIS IS DETECTIVE (INAUDIBLE) WITH THE CHARLESTON POLICE DRUG ENFORCEMENT UNIT. THE DAY IS JULY 15. THE TIME IS 6:18 IN THE AFTERNOON. WE WILL ATTEMPT TO MAKE A PHONE CALL TO A FEMALE NAMED SHAWN THROUGH A CONFIDENTIAL INFORMANT.

INFORMANT: HELLO.

FEMALE: (INAUDIBLE)

INFORMANT: YO.

FEMALE: YOU WHAT'S UP? WHATCHA DOING?

INFORMANT: ALRIGHT.

FEMALE: HEY UM YOU KNOW I HAVE BEEN MAD WITH YOU. (INAUDIBLE) YOU KNOW WHAT I AM SAYING BECAUSE I WAS GOING TO GET IN THIS TRUCK AND THEY WERE FUCKING (INAUDIBLE) GIVING ME THE RUN AROUND AND SHIT. ANYWAY WHAT'S UP?

INFORMANT: NOT MUCH MAN.

FEMALE: (INAUDIBLE)

INFORMANT: (INAUDIBLE)

FEMALE: WHY YOU AIN'T CALLED ME YESTERDAY MAN?

INFORMANT: HUH?

FEMALE: YOU AIN'T COME OUT HERE.

INFORMANT: HUH. YEAH WE ROAD PAST (INAUDIBLE).

FEMALE: (INAUDIBLE) WHAT KIND OF CAR YOU WAS DRIVING?

INFORMANT: A WHITE ONE (INAUDIBLE).

450

FEMALE: YOU WANT WHAT?

INFORMANT: I SAID I WANT TO GET MY SHIT AND RIDE OUT THAT'S ALL. I WANT..

FEMALE: ALRIGHT WHAT YOU WANT?

INFORMANT: I WANT SEVEN (INAUDIBLE).

FEMALE: SEVEN.

INFORMANT: YEAH AND YOU TO.

FEMALE: WHAT?

INFORMANT: AND YOU.

FEMALE: AND ME?

INFORMANT: YEAH.

FEMALE: AND YOU DON'T EVEN KNOW HOW I LOOK. WHAT YOU TALKING ABOUT?

INFORMANT: COME ON MAN.

FEMALE: AND ME?

INFORMANT: YEAH.

FEMALE: YOU KNOW IT AIN'T GOOD TO UM...VISUALIZE ABOUT THINGS YOU KNOW.

INFORMANT: YEAH. SOUNDS GOOD TO ME THOUGH.

FEMALE: HUH?

INFORMANT: I SAID IT SOUNDS GOOD TO ME.

FEMALE: YOU AIN'T NEVER SEEN ME BEFORE.

FEMALE: HUH.

INFORMANT: I WANT TO SEE YOU THOUGH.

FEMALE: YOU WANT TO SEE ME?

INFORMANT: YEAH..I AM GOING TO SEE YOU.

FEMALE: TRUE I HEAR THAT.....BUT LOOK HERE. I GOT...I WENT TO MEET SOMEBODY ELSE LAST NIGHT LIKE I TELL YOU.

INFORMANT: YEAH.

FEMALE: OK I ENDED UP MEETING DUDE. DUDE HAD WANT FOUR RIGHT.

INFORMANT: (INAUDIBLE).

FEMALE: NO NO NO. LISTEN. HE HAD WANT FOUR RIGHT?

INFORMANT: YEAH.

FEMALE: SO I HANDLED THAT BECAUSE I ALREADY HAD THIS (INAUDIBLE)

INFORMANT: OH.

FEMALE: I THOUGHT YOU WERE COMING AND I AIN'T SEEN YOU AND YOU AIN'T NEVER CALLED ME. I HANDLED THAT WITH THE FOUR. HE HAD WANT FOUR AND THEN WHEN I HAD ALREADY (INAUDIBLE).

INFORMANT: YEAH.

FEMALE: ALRIGHT SOMEBODY ELSE PUT ME.....SAID THEY HAD WANT THREE RIGHT AFTER THAT.

INFROMANT: RIGHT.

FEMALE: SO THAT'S WHAT I HAD DID.

INFORMANT: OH OK.

FEMALE: SO LIKE RIGHT NOW WHAT I CAN DO RIGHT NOW IS PROBABLY ABOUT THREE OR FOUR.

452

INFORMANT: (INAUDIBLE).

FEMALE: YOU KNOW...HE IS KIND OF LIKE GOING ON AND EVERYTHING.

INFORMANT: HOW MUCH YOU GOING TO CHARGE ME FOR FOUR?

FEMALE: HUH?

INFORMANT: HOW MUCH YOUHELLO?

FEMALE: MAN WHO THE FUCK IS THIS CLICKING MY LINE. HOLD ON ALRIGHT?

INFORMANT: YEAH.

FEMALE: DON'T HANG UP. HELLO. SORRY ABOUT THAT.

INFORMANT: SO HOW MUCH YOU GOING TO CHARGE ME FOR THE FOUR?

FEMALE: FOR FOUR?

INFORMANT: YEAH.

FEMALE: I DON'T KNOW. (INAUDIBLE). (INAUDIBLE) COME HERE. WHERE IS THAT STUFF I HAD TELLED YOU TO TAKE (INAUDIBLE) WHERE DID YOU PUT THAT AT? WHERE YOU AT NOW?

INFORMANT: MT. PLEASANT.

FEMALE: HUH?

INFORMANT: MT. PLEASANT.

FEMALE: YOU IN MT. PLEASANT?

INFORMANT: YEAH THAT'S WHERE I STAY AT.

FEMALE: THAT'S WHERE YOU STAY AT?

INFORMANT: YEAH.

INFORMANT: SO HOW I'M GOING TO SEE YOU (INAUDIBLE)

INFORMANT: I'LL COME THERE.

FEMALE: WHEN YOU COMING?

INFORMANT: WHEN EVER YOU TELL ME TO COME.

FEMALE: WELL I CAN DO THE FOUR ..YOU KNOW WHAT I'M SAYING OR THE THREE.

INFORMANT: YEAH.

FEMALE: YOU STILL WANT TO COME OVER TO THIS SIDE.

INFORMANT: YEAH.

FEMALE: I FIGURE YOU WOULD WANT TO COME EARLIER THAN COME LATE RIGHT?

INFORMANT: YEAH.

FEMALE: YOU KNOW YOU CAN SEE MORE THINGS GOING ON AROUND YOU.

INFORMANT: TRUE. I MEAN I AIN'T WANTING NOBODY LOOKING AT ME (INAUDIBLE).

FEMALE: No no no(INAUDIBLE) I MEAN YOU COMING TO MEET ME ...NOBODY..YOU KNOW...NOBODY'S HOUSE SO....AND ALL THAT...

INFORMANT: YEAH.

FEMALE: UH YOU COMING TO MY HOUSE OK.

INFORMANT: TRUE.

FEMALE: TO MY HOUSE.

INFORMANT: I LIKE THAT.

FEMALE: AND YOUR (INAUDIBLE) KNOW YOU GO TO COME OUT AND I TELL YOU OK (INAUDIBLE) AND I SAID I CAME AND PICK YOU UP AND BRING YOU HERE. THAT IS WHAT I WAS TRYING TO TELL YOU.

454

INFORMANT: HOW EVER YOU WANT TO DO IT?

FEMALE: HUH?

INFORMANT: HOW EVER YOU WANT TO DO IT? I CAN RIDE OR DRIVE OR YOU CAN COME GET ME. YOU KNOW WHAT I AM SAYING.

FEMALE: WELL. I MEAN YOU GOT (INAUDIBLE). HE AIN'T ACTIVATED IT?

INFORMANT: NO IT AIN'T THAT. IT AIN'T GOOD TO BE TALKING ON THIS SHIT

FEMALE: I KNOW IT AIN'T GOOD FOR A BUNCH OF SHIT. IT IS GOOD FOR WHEN YOU NEED IT AND ON THE ROAD. (INAUDIBLE)

INFORMANT: YEAH.

FEMALE: FEMALE ME LIKE MYSELF.

INFORMANT: RIGHT.

FEMALE: YOU KNOW IT IS GOOD FOR ME. SO HOW OLD YOU IS?

INFORMANT: 26.

FEMALE: HUH YOU SAY 19?

INFORMANT: 26.

FEMALE: OH 26.

INFORMANT: YEAH.

FEMALE: 26 OH WELL THAT'S UP MY ALLEY.

INFORMANT: YEAH.

FEMALE: I LIKE EM BOUT THAT AGE.

INFORMANT: WELL THAT'S GOOD THEN.

YEAH (INAUDIBLE) RIGHT UP ON ME.

INFORMANT: BUT UM HOW YOU WANT TO WORK IT?

FEMALE: HUH?

INFORMANT: HOW EVER YOU WANT TO DO IT..I'M A DO IT LIKE THAT YOU KNOW.

FEMALE: HOW YOU MEAN?

INFORMANT: I SAID HOW EVER YOU WANT TO DO IT, THAT'S HOW I AM GOING TO DO IT.

FEMALE: OH HOW EVER HUH?

INFORMANT: WHICH EVER WAY YOU WANT TO DO IT?

FEMALE: (INAUDIBLE) LAST MONTH.

INFORMANT: DON'T BE TEMPTING ME LIKE THAT. DON'T TEMP ME.

FEMALE: I WAS JUST SAYING. HEY (INAUDIBLE).

INFORMANT: UH HUH.

FEMALE: (INAUDIBLE)

INFORMANT: (INAUDIBLE)

FEMALE: ALRIGHT.

INFORMANT: I'M GONNA GET YOU TOO.

FEMALE: YOU GOING TO GET ME?

INFORMANT: YEAH.

FEMALE: HOW YOU GOING TO GET ME?

INFORMANT: I'LL TALK TO YOU ABOUT THAT.

FEMALE: PLEASE TALK TO ME.

456

INFORMANT: LIKE I SAID I'LL TALK TO YOU ABOUT IT.

FEMALE: OH REALLY.

INFORMANT: NO I'LL TALK TO YOU ABOUT THAT LATER.

FEMALE: OH REALLY.

INFORMANT: HUH.

FEMALE: (INAUDIBLE) WANT TO GET ME.

INFROMANT: YEAH.

FEMALE: YOU DO?

INFORMANT: HEY WELL TELL ME SOMETHING MAN SO I CAN FIGURE OUT WHAT I AM GOING TO DO?

FEMALE: ALRIGHT UM NOW I AM WAITING ON MY PARTNER TO COME OVER HERE NOW RIGHT.

INFORMANT: YEAH.

FEMALE: CAUSE SEE...(INAUDIBLE) I AIN'T SAYING HE WOULD'NT YOU KNOW...THINGS IS (INAUDIBLE). I GOT A DAUGHTER AND SHIT AND YOU CAN'T HAVE THEM AROUND STUFF LIKE THAT.

INFORMANT: YEAH SO YOU GONNA BE THERE BY YOURSELF. (INAUDIBLE)

FEMALE: YEAH SEE I LIVE BY MYSELF WITH MY DAUGHTER.

INFORMANT: TRUE.

FEMALE: (INAUDIBLE) STAYING RIGHT HERE UM. HE IS ON HIS WAY COMING UP HERE TO SEE WHAT IT IS. YOU KNOW WE DON'T LIKE...YOU KNOW...THIS IS WHAT I AM SAYING..YOU KNOW...WE ALL LIKE TO TRY...YOU GET SHIT YOU KNOW...THAT IS WHY I LIKE TOS EE YOU COME HERE. YOU GET HERE AND WE SEE EVERYTHING...THEN ALRIGHT. WE CAN DO THAT. YOU KNOW WHAT I AM SAYING. THAT AIN'T GOOD JUST RIDING AROUND WITH SHIT AND THEN YOU DON'T SHOW UP AND SHIT AND THEN MAN YOU GOT TO RIDE AROUND

INFORMANT: NO I AIN'T...YOU KNOW WHAT I AM SAYING..I CAN COME UP THERE.

FEMALE: THAT IS WHY I WAS SO SKEPTICAL LAST NIGHT CAUSE THE POLICE WAS EVERYWHERE.

INFORMANT: YOU GOT TO LOOK AT MY SITUATION..I AIN'T TRYING TO BE SEEN AT ALL. YOU KNOW.

FEMALE: (INAUDIBLE)

INFORMANT: NO.

FEMALE: WHY?

INFORMANT: CAUSE MAN...SHIT YOU KNOW WHAT I AM SAYING RIGHT?

FEMALE: RIGHT.

INFORMANT: RIGHT SO YOU KNOW IF THE POLICE SEE ME ON THAT SIDE OF TOWN, THEY GOING TO GET ME ANYWAY.

FEMALE: WHY?

INFORMANT: MAN SHIT.

FEMALE: I THINK THEY JUST TRY TO GET YOU BY BEING BLACK.

INFORMANT: (INAUDIBLE)

FEMALE: I MEAN SHIT THIS IS A FREE WORLD. (INAUDIBLE)

INFORMANT: THEY AIN'T GOING TO LOOK AT IT LIKE THAT.

FEMALE: BUT I AM SAYING...IT IS A FREE WORLD YOU KNOW WHAT I AM SAYING.

INFORMANT: YEAH.

FEMALE: YOU COME HERE...WHAT THEY GOING TO SAY....THEY GOING TO TRY TO KICK MY DOOR DOWN BECAUSE THEY SEE A WHITE (INAUDIBLE).

458

INFORMANT: I CAN TELL IT IS NOT EASY.

FEMALE: I KNOW YOU (INAUDIBLE).

INFORMANT: THAT AIN'T NOTHING.

FEMALE: (INAUDIBLE).

INFORMANT: NO CHECK THIS OUT YOU MAKE IT MORE DIFFICULT TO ME TO PROVE LIKE THAT. YOU KNOW.

FEMALE: YOU STILL A MAN RIGHT.

INFORMANT: YES SIR.

FEMALE: ALRIGHT THERE YOU GO...THAT'S EXACTLY WHAT I WANT TO HEAR. AS LONG AS YOU STILL A MAN. IT DON'T MATTER.

INFORMANT: ALRIGHT.

FEMALE: BUT UM...I AM HERE..YOU GOING TO COME NOW?

INFORMANT: YEAH...YOU GOT TO GIVE ME A LITTLE TIME TO GET OVER THERE NOW.

FEMALE: HOW LONG?

INFORMANT: IT WILL TAKE ME ABOUT AN HOUR MAN. (INAUDIBLE) I WILL JUST PAGE YOU AND LET ME KNOW I AM COMING AND YOU DON'T HAVE TO CALL ME BACK. I WILL JUST PAGE YOU AND THEN I WILL BE THERE.

FEMALE: YOU GOT A PAGER?

INFORMANT: I AM JUST SAYING THAT I AM GONNA PAGE YOU AND THEN I...

FEMALE: I KNOW BUT DO YOU HAVE A PAGER?

INFORMANT: YEAH BUT I AIN'T GOING TO BRING IT WITH ME. (INAUDIBLE) LIKE I AM DOING SOMETHING WRONG. YOU GOT TO DIG IT LIKE THIS.

459

FEMALE: YOU JUST HOLD ON A MINUTE OK. DON'T HANG UP. (INAUDIBLE)

INFORMANT: ALRIGHT.

FEMALE: HELLO.

INFORMANT: YO.

FEMALE: OH I AM GONNA KILL THIS LITTLE FUCKING GIRL. MY HOUSE IS SO
FUCKED UP...(INAUDIBLE) HELLO?

INFORMANT: YO.

FEMALE: NOW YOU SAY IN ABOUT AN HOUR.

INFORMANT: YEAH LIKE I SAID BEFORE..WHEN I AM ON MY WAY...I WILL
JUST PAGE YOU AND LET YOU KNOW I AM COMING..YOU KNOW
WHAT I MEAN.

FEMALE: YEAH.

INFORMANT: (INAUDIBLE) I WILL COME DOWN THERE AND WE CAN TALK
ABOUT THAT SHIT AND I JUST DON'T WANT A WHOLE BUNCH
OF MOTHER FUCKERS OVER THERE.

FEMALE: YOU THINK IT'S LIKE THAT. THERE AIN'T NO MOTHER FUCKERS
OVER HERE.

INFORMANT: ALRIGHT.

FEMALE: THIS AIN'T NO (INAUDIBLE) HOUSE.

INFORMANT: ALRIGHT.

FEMALE: AH-HELL NO.

INFORMANT: OK.

FEMALE: (INAUDIBLE) FEMALE. JUST ME.

INFORMANT: ALRIGHT.

460

FEMALE: I GOT A LITTLE SISTER..ANOTHER LITTLE SISTER AND A DAUGHTER AND THEY THE ONLY PEOPLE YOU EVER GONNA SEE IN THIS HOUSE HERE.

INFORMANT: YEAH.

FEMALE: CAUSE AIN'T NOTHING LIKE THAT.

INFORMANT: OK.

FEMALE: (INAUDIBLE).

INFORMANT: YOU AIN'T GOT TO GET LIKE THAT.

FEMALE: (INAUDIBLE) AIN'T NO NIGGERS DOWN THE STREET. CALL ME WHEN YOU ON YOUR WAY ALRIGHT.

INFORMANT: ALRIGHT WELL TELL ME HOW TO GET THERE I MEAN..SO WHEN I DO COME I KNOW HOW TO GET THERE.

FEMALE: ALRIGHT. UM WHEN YOU COME ON ST. JOHNS YOU KNOW...YOU GO STRAIGHT.

INFORMANT: OK.

FEMALE: YOU MAKE THAT FIRST LEFT ON (INAUDIBLE) NOT THE SECOND LEFT. MAKE THE FIRST ONE. BY THE TIME YOU COME TO THE CURVE (INAUDIBLE) YOU WILL SEE THE LIGHT ON. THEN YOU MAKE THAT LEFT, YOU WILL PASS...I WILL BE ON YOUR LEFT. SOON AS YOU TAKE THAT LEFT LOOK FOR THE TWO STORY HOUSE BACK IN THE (INAUDIBLE).

INFORMANT: OK.

FEMALE: IT GONNA BE BETWEEN THE BRICK HOUSE AND THE WHITE HOUSE. GO RIGHT TO THE CURVE AND SEE TREES AND ALL THAT. YOU WILL SEE A TWO STORY HOUSE WITH THE LIGHT ON. I WILL SEE YOU. (INAUDIBLE).

INFORMANT: ALRIGHT.

FEMALE: ALRIGHT. PAGE ME AND LET ME KNOW WHEN YOU ON YOUR WAY SO I CAN GET EVERYTHING TOGETHER.

VOLUME 2 OF 2

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Thomas L. Hughston, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

EARNEST BATTLE,

APPELLANT

RECORD ON APPEAL

DANIEL T. STACEY
Chief Attorney

CHARLES M. CONDON
Attorney General

SOUTH CAROLINA OFFICE
OF APPELLATE DEFENSE
1122 Lady Street, Suite 940
Columbia, SC 29201
(803) 734-1330

JOHN W. MCINTOSH
Chief Deputy Attorney General

CHARLES H. RICHARDSON
Assistant Deputy Attorney General

Attorney for Appellant

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

RALPH E. HOISINGTON
Solicitor, Ninth Judicial Circuit
Post Office Box 70100
N. Charleston, SC 29415-0100
(843) 740-5850

Attorneys for Respondent

462

FEMALE: WE'LL SEE WHEN YOU GET HERE.

INFORMANT: ALRIGHT.

FEMALE: YOU SAY YOU GOT (INAUDIBLE).

INFORMANT: YOU CAN GET THAT?

FEMALE: YEAH...I THINK I CAN PROBABLY DO SEVEN ALMOST. JUST HOLLAR AT ME WHEN YOU GET HERE BECAUSE I AIN'T LIKE TO TALK ON THE PHONE YOU KNOW.

INFORMANT: ALRIGHT.

FEMALE: ALRIGHT.

Conversation ends briefly and resumes.

Transcribed by Sara A. Wilson (June 7, 2001) JW

INDEX

INDEX.....i

TRIAL TRANSCRIPT.....1

SENTENCING TRANSCRIPT.....463

INDICTMENTS.....476

LETTER TO JUDGE FROM APPELLANT POST-TRIAL.....482

EXHIBITS.....483

CERTIFICATE OF APPELLANT.....514

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS

STATE)
)
 V.)
 ERNEST BATTLE)
)
 DEFENDANT.)

TRANSCRIPT OF RECORD
99-GS-10-7109, 7110

JUNE 15, 2001
CHARLESTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE THOMAS L. HUGHSTON, JR., JUDGE.

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

MIKE BOSNAK, ASSIST. SOLICITOR
ATTORNEY FOR THE STATE

BILL MCGUIRE, ASSIST. PUBLIC DEFENDER
ATTORNEY FOR THE DEFENDANT

ORIGINAL

STACY L. SHEPPARD
CIRCUIT COURT REPORTER

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

I N D E X

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
SENTENCING HEARING	3			
SENTENCE OF THE COURT	11			
CERTIFICATE OF REPORTER	13			

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
------------	--------------------	------------	-------------

(THERE WERE NO EXHIBITS.)

465

3

1 (THE FOLLOWING PROCEEDINGS WERE HELD ON JUNE
2 15, 2001.)

3 THE COURT: WE'RE HERE IN CONNECTION WITH THE
4 SENTENCING FOR ERNEST BATTLE WHO WAS BEFORE ME LAST
5 WEEK. MR. BATTLE IS PRESENT ALONG WITH HIS ATTORNEY
6 MR. MCGUIRE AND THE SOLICITOR IS PRESENT. SO IF Y'ALL
7 WOULD COME FORWARD.

8 ANYTHING ELSE BEFORE SENTENCING?

9 MR. BOSNAK: NOTHING, YOUR HONOR.

10 THE COURT: I ASKED Y'ALL TO LOOK AT THE
11 SITUATION REGARDING THE SENTENCING REINS THAT I HAD.
12 HAVE Y'ALL ARRIVED AT ANY CONCLUSIONS ABOUT THAT?

13 MR. BOSNAK: I THINK THE MINIMUM WAS 25 YEARS.

14 THE COURT: THE STATE'S POSITION IS A MINIMUM OF
15 25 YEARS, MAXIMUM OF 30 YEARS; IS THAT CORRECT?

16 MR. BOSNAK: THAT'S CORRECT, YOUR HONOR.

17 THE COURT: AND IS THERE A MANDATORY FINE? NOT
18 THAT IT MAKES ANY DIFFERENCE. DOES IT SAY?

19 MR. BOSNAK: YES, YOUR HONOR. I THINK IT'S
20 \$50,000.

21 THE COURT: SOMETIMES I TRY TO COMPLY WITH THAT
22 AND SOMETIMES I DON'T.

23 MR. MCGUIRE: YOUR HONOR, THERE'S A CASE; I
24 BELIEVE, THE NAME IS TAUB, T-A-U-B, WHICH INDICATES
25 THAT WHILE THERE IS A FINE, IT CAN BE SUSPENDED.

1 THE COURT: ALL RIGHT. WELL, I DON'T KNOW ABOUT
2 THAT, BUT.

3 MR. BOSNAK: YES, SIR. I THINK IT'S A 50,000
4 DOLLAR FINE.

5 THE COURT: NOW, ONE OTHER THING. MR. BATTLE,
6 YESTERDAY MORNING, I BELIEVE, IT WAS---

7 DEFENDANT BATTLE: YES, SIR.

8 THE COURT: --SOMEONE, I'M NOT SURE WHO IT WAS,
9 BROUGHT ME A LETTER FROM YOU, APPARENTLY, FROM YOU --
10 I DON'T KNOW WHETHER IT'S FROM YOU OR NOT AS A MATTER
11 OF FACT.

12 DEFENDANT BATTLE: YES, SIR, IT IS.

13 THE COURT: BUT ANYWAY, THEY BROUGHT ME A LETTER
14 WHICH I HAVE RECEIVED AND I'M GOING TO PUT IT IN YOUR
15 FILE. I'VE READ IT. ANYTHING ELSE YOU WANT TO SAY?

16 DEFENDANT BATTLE: YES, SIR.

17 MR. MCGUIRE: YOUR HONOR, I BELIEVE I CAN
18 ARTICULATE A REQUEST THAT MR. BATTLE HAS, WHICH IS HIS
19 REQUEST WOULD BE, RESPECTFULLY, IF YOU WOULD DEFER
20 SENTENCING AND APPOINT A LAWYER TO LOOK INTO ANY KIND
21 OF JUROR MISCONDUCT ISSUES OF NOT FOLLOWING THEIR OATH
22 WHILE THE MATTER IS FRESH ON THE TABLE AND TECHNICALLY
23 STILL BEFORE YOU. AND HE MAKES THAT REQUEST VERY
24 RESPECTFULLY. RATHER THAN GOING TO THE DEPARTMENT OF
25 CORRECTIONS AND THEN HAVING TO TAKE THE ROUTE OF

467

5

1 P.C.R. OR APPEAL, WHICH CAN TAKE A VERY, VERY LONG
2 TIME, HE WOULD ASK IF YOU WOULD CONSIDER APPOINTING
3 COUNSEL TO LOOK INTO THIS MATTER WHILE IT'S FRESH
4 IN--

5 THE COURT: IS THAT WHAT YOUR REQUEST IS,
6 MR. BATTLE?

7 DEFENDANT BATTLE: YES, SIR, YOUR HONOR.

8 THE COURT: ALL RIGHT. I APPRECIATE THAT. I
9 DENY THE REQUEST. ANYTHING ELSE?

10 MR. MCGUIRE: YOUR HONOR, BEFORE YOU SENTENCE,
11 HIS FAMILY IS HERE. HIS FIANCE, FELICIA SMALLS, HIS
12 MOTHER AND SOME OTHER FAMILY MEMBERS ARE HERE. THEY
13 WISH TO SPEAK ON HIS BEHALF.

14 THE COURT: ALL RIGHT. I'LL BE GLAD TO HEAR FROM
15 THEM.

16 MR. MCGUIRE: AND, YOUR HONOR, I CAN TELL YOU,
17 WHILE THEY'RE COMING ON UP, I CAN TELL YOU THAT MY
18 EXPERIENCE WITH MR. BATTLE IS THAT HE WAS NEVER A MAN
19 OF ANY REAL MEANS. HE HAD A PRIVATE LAWYER FOR A
20 SHORT PERIOD OF TIME, MR. JOE CONDON, BUT HE COULDN'T
21 AFFORD HIM.

22 THE CADILLAC AT ISSUE IN THE CASE WAS ERNIE'S
23 THAT HE BOUGHT BACK FROM THE INSURANCE COMPANY AFTER
24 IT WAS TOTALED AND BECAUSE HE WORKED AT A AUTO BODY
25 SHOP, WAS ABLE TO REPAIR IT. HE WAS DRIVING A VERY

1 EXPENSIVE FLASHY CAR. I WAS ABLE TO CALL THEM AT THE
2 BODY SHOP WHERE HE WAS WORKING. HIS RECORD, WHILE
3 THIS IS--

4 THE COURT: A BUNCH OF MARIJUANA POSSESSION
5 CHARGES, I DON'T REMEMBER HOW MANY EXACTLY, BUT FOUR
6 OR FIVE AT LEAST, AND THEN ONE POSSESSION WITH INTENT
7 TO DISTRIBUTE COCAINE CONVICTION, I BELIEVE.

8 MR. MCGUIRE: IT WAS ACTUALLY TRAFFICKING AND
9 PROXIMITY. AND WITH THE EXCEPTION OF THAT
10 CONVICTION--

11 MR. BOSNAK: AND PROXIMITY.

12 THE COURT: HOW MUCH TIME DID YOU SERVE ON THAT?

13 DEFENDANT BATTLE: I SERVED ABOUT NINE AND A HALF
14 YEARS, YOUR HONOR. I WAS INDICTED FOR TEN GRAMS,
15 POSSESSION OF TEN GRAMS.

16 MR. BOSNAK: MR. BATTLE IS STILL ON PAROLE, YOUR
17 HONOR, FOR THAT VIOLATION.

18 THE COURT: ALL RIGHT.

19 MR. MCGUIRE: AND ASIDE FROM THAT CONVICTION,
20 ADMITTEDLY SUBSTANTIAL, HIS RECORD'S FAIRLY MINOR
21 GOING PAST THAT.

22 THE COURT: ALL RIGHT. BE GLAD TO HEAR FROM
23 ANYBODY THAT WANTS TO SAY ANYTHING. THAT'S THE YOUNG
24 LADY THAT BROUGHT ME THE LETTER YESTERDAY. TELL ME
25 YOUR NAME.

469

7

1 MS. SMALLS: YES, SIR. FELICIA SMALLS. I'M THE
2 FIANCÉE OF MR. ERNEST BATTLE. I'VE KNOWN MR. BATTLE
3 FOR MORE THAN 20 YEARS. MR. BATTLE IS A GOOD, DECENT,
4 YOUNG MAN. HE'S TRYING SO HARD TO PUT HIS LIFE BACK
5 TOGETHER AND SOME BAD THINGS HAS HAPPENED TO HIM. AND
6 I'M JUST ASKING THAT YOU BE LENIENT PLEASE.

7 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.
8 ANYBODY ELSE?

9 MS. WILSON: MY NAME IS ELLEN WILSON. I'M ERNEST
10 BATTLE AUNT AND MOTHER ALL ROLLED INTO ONE BECAUSE THE
11 FACT HE'S MY DEAD SISTER'S SON. AFTER SHE PASSED, MY
12 FATHER GOT THEM. AFTER DADDY DIED, I GOT THEM.
13 ERNEST WAS A LITTLE BOY WHEN I GOT THEM BACK IN '71, I
14 THINK. HELP ERNEST THROUGH SCHOOL. IN FACT, THERE
15 WAS FOUR OF THEM. I HELP ALL OF THEM THROUGH SCHOOL.

16 AND ERNEST WAS THE TYPE OF FELLOW IF ERNEST GOT
17 AND YOU DIDN'T HAVE, ERNEST WOULD HELP YOU OUT. AND
18 ERNEST, HE IS A GOOD FELLOW. AND HE JUST -- I TALKED
19 TO HIM NOT TOO LONG AGO AND I WAS TELLING HIM -- IN
20 CHURCH, ERNEST SAID -- HE CALL ME MISSY. HE SAID,
21 MISSY, I HAVE DECIDED TO TURN MY LIFE AROUND. I'M
22 GOING TO GO STRAIGHT. I'M GOING TO CHURCH AND
23 EVERYTHING. I SAID, WELL, THAT'S GOOD. I SAID, THAT
24 WOULD MAKE ME HAPPY, THAT WOULD MAKE YOUR MOTHER
25 HAPPY, YOUR FATHER HAPPY.

1 BUT ERNEST IS A PRETTY DECENT FELLOW. HE'S
2 GOOD. AND JUST LIKE I SAY, AND IF ANYTHING THAT --
3 FOR EXAMPLE, IF YOU NEED SOMETHING, HE GOT A FEW
4 DOLLARS, HE WOULD GIVE IT TO YOU. AND THAT'S ALL I
5 GOT TO SAY FOR ERNEST.

6 THE COURT: I'M SURE OF THAT.

7 DO I KNOW HOW MUCH TIME HE SPENT IN JAIL? I
8 ALWAYS LIKE TO TRY TO CLEAR THAT UP. IF YOU KNOW HOW
9 MUCH TIME HE SPENT IN JAIL FROM HIS ARREST ON THIS TO
10 DATE THAT HE WAS ARRESTED AND THEN HE GOT OUT ON BOND;
11 DO YOU KNOW WHEN THAT WAS?

12 MR. MCGUIRE: YOUR HONOR, THERE'S ACTUALLY TWO
13 SEPARATE TIMES.

14 THE COURT: WELL, DO YOU KNOW HOW MUCH JAIL TIME
15 HE'S ENTITLED TO? IF WE CAN GET IT STRAIGHT, WE DON'T
16 HAVE TO, SOMEBODY WILL HAVE TO STRAIGHTEN IT OUT AT
17 SOME OTHER TIME, BUT IT'S BEST TO GET IT STRAIGHT NOW.

18 MR. MCGUIRE: IT'S APPROXIMATELY ONE YEAR.

19 THE COURT: I CAN'T GO WITH THAT. I NEED TO KNOW
20 THE EXACT AMOUNT OF TIME THAT HE SPENT IN JAIL.

21 MR. MCGUIRE: I'LL PULL THE JAIL RECORDS.

22 THE COURT: I'VE GOT IT -- I'VE MARKED ON HERE
23 THAT HE'LL GET CREDIT FOR JAIL TIME, BUT I CAN'T FILL
24 IN THE BLANK UNLESS I KNOW EXACTLY HOW MUCH IT IS.

25 MR. MCGUIRE: I'LL VERIFY THAT, YOUR HONOR.

471

9

1 THE COURT: SOMEBODY WILL HAVE TO GET THAT EITHER
2 FROM THE -- OR THE JAIL WILL HAVE TO SEND IT.

3 ANYTHING ELSE YOU WANT TO SAY, MR. BATTLE?

4 DEFENDANT BATTLE: YES, SIR. I ASK THAT -- YOU
5 SAID YOU WOULD HAVE A SPECIAL PROSECUTOR LOOK INTO THE
6 ISSUE OF THIS LETTER HERE. AND IF I CAUSED THE COURT
7 ANY INCONVENIENCE, I APOLOGIZE.

8 THE COURT: YOU DIDN'T CAUSE ME ANY
9 INCONVENIENCE.

10 DEFENDANT BATTLE: YES, SIR. I UNDERSTAND. BUT
11 I HAVE TURNED MY LIFE OVER TO GOD EVER SINCE THIS
12 INCIDENT AND I HAVE NOT ASSOCIATED WITH PEOPLE OF THAT
13 STATURE FROM THAT POINT FORWARD. I WAS TRYING TO SEE
14 IF I COULD BE ABLE TO LIVE MY LIFE AS A DECENT HUMAN
15 BEING AND NOT GET CAUGHT UP IN THE INDIFFERENCES AND
16 THE BAD THAT LIFE HAD TO OFFER. I TRY TO MAINTAIN AND
17 BE A LAW ABIDING CITIZEN AFTER I HAD TURNED MY LIFE
18 OVER TO CHRIST. AND ANY WAY THAT YOU COULD POSSIBLY
19 BE LENIENT ON ME, I WOULD THANK YOU, SIR, YOUR HONOR.

20 THE COURT: ALL RIGHT. I APPRECIATE THAT VERY
21 MUCH. IT'S ASHAMED THAT PEOPLE GET MESSED UP LIKE
22 THIS. ONE THING I DO WANT TO SAY ALSO IS THAT, IN MY
23 OPINION, MR. MCGUIRE AND -- I FORGOT THE YOUNG LADY'S
24 NAME.

25 MR. MCGUIRE: MS. SARJI.

1 THE COURT: MS. SARJI. DONE AN OUTSTANDING JOB,
2 IN MY OPINION, OF REPRESENTING YOU ON THE TRIAL OF
3 THESE CHARGES AGAINST YOU, MR. BATTLE. I KNOW THAT
4 YOU HAVE MADE A COMPLAINT IN YOUR LETTER ABOUT
5 SOMETHING THAT HE MAY HAVE SAID. I DON'T EVEN RECALL
6 WHAT HE SAID EXACTLY AS FAR AS WHAT HE SAID DURING THE
7 ARGUMENT TO THE JURY ABOUT THE LETTER. BUT IN MY
8 OPINION, HE DID AN OUTSTANDING JOB OF REPRESENTING YOU
9 IN THIS CASE. AND I JUST WANTED YOU TO KNOW THAT,
10 THAT I THINK HE DID A GOOD JOB OF REPRESENTING YOU.

11 IF YOU WANT TO -- OF COURSE, I'M SURE YOU'RE
12 GOING TO FILE AN APPEAL WHICH YOU HAVE A RIGHT TO DO
13 SO AND YOU NEED TO FOLLOW THROUGH ON THAT. AND IF YOU
14 WANT TO DO ANYTHING ELSE, AS FAR AS THE THINGS THAT
15 YOU MENTIONED IN YOUR LETTER, YOU'LL NEED TO HAVE
16 ANOTHER ATTORNEY, I PRESUME, APPOINTED TO REPRESENT
17 YOU IN THAT CONNECTION. AND I DON'T KNOW WHAT THE
18 PROCESS IS FOR THAT TO TELL YOU THE TRUTH. I NEVER
19 HAD THAT QUESTION COME UP.

20 MR. MCGUIRE, I'LL LEAVE THAT UP TO YOU TO
21 CONTINUE TO REPRESENT HIM UNTIL SOMEONE ELSE IS
22 APPOINTED TO REPRESENT HIM IN CONNECTION WITH THE
23 MATTERS THAT HE HAS STATED IN THE LETTER TO ME.

24 MR. MCGUIRE: I'M SURE IT WILL BE A P.C.R.
25 COLLATERAL ISSUE.

473

11

1 THE COURT: WELL, I DON'T KNOW, ANYWAY. BUT
2 ANYWAY, I'LL LEAVE THAT UP TO YOU TO SEE ABOUT GETTING
3 SOMEBODY ELSE APPOINTED TO REPRESENT HIM IF THERE WAS
4 ANY MOTION FOR A NEW TRIAL OR ANYTHING OF THAT SORT.

5 ALL RIGHT. IF THERE'S NOTHING FURTHER, THEN THE
6 SENTENCE ON THE DISTRIBUTION WITHIN PROXIMITY -- IS
7 THERE A MANDATORY FINE ON THAT OR NOT?

8 MR. MCGUIRE: THE PROXIMITY CHARGE?

9 THE COURT: YES.

10 MR. MCGUIRE: I DON'T BELIEVE A FINE IS
11 MANDATORY. I CAN TELL YOU WHAT IT IS.

12 MR. BOSNAK: TEN THOUSAND DOLLARS. MUST BE FINED
13 NOT LESS THAN \$10,000 AND IN PRISON NOT LESS THAN TEN
14 OR MORE THAN 15 YEARS.

15 MR. MCGUIRE: IT'S ACTUALLY ZERO TO TEN YEARS.

16 MR. BOSNAK: YEAH, ZERO TO TEN YEARS.

17 THE COURT: ALL RIGHT. SENTENCE ON THE PROXIMITY
18 CHARGE, THIS IS INDICTMENT 99, ETCETERA, 171 -- EXCUSE
19 ME -- 7110 IS THAT YOU BE CONFINED TO THE SOUTH
20 CAROLINA DEPARTMENT OF CORRECTIONS FOR A PERIOD OF TEN
21 YEARS AND PAY A FINE OF \$10,000.

22 SENTENCE ON THE TRAFFICKING AND COCAINE, 28 TO
23 100 GRAMS, SENTENCE IS THAT YOU BE CONFINED TO THE
24 SOUTH CAROLINA DEPARTMENT OF CORRECTIONS FOR A PERIOD
25 OF 25 YEARS AND PAY A FINE OF \$50,000.

1 THOSE SENTENCES ARE CONCURRENT, GETS CREDIT FOR
2 ANY JAIL TIME THAT HE'S ALREADY SERVED TOWARD THOSE
3 SENTENCES. GOOD LUCK TO YOU.

4 MR. MCGUIRE: AND, YOUR HONOR, WHILE WE'RE STILL
5 ON THE RECORD, TO PRESERVE ANY ISSUE THAT MR. BATTLE
6 MIGHT HAVE, I WOULD MOVE FOR A NEW TRIAL BASED ON THE
7 INFORMATION IN THE LETTER REGARDING A POSSIBLE JUROR
8 MISCONDUCT ISSUE REGARDING NOT FOLLOWING THE OATH.

9 THE COURT: WELL, I APPRECIATE YOUR POSITION. I
10 DENY THAT MOTION AT THIS TIME.

11 MR. MCGUIRE: I UNDERSTAND. AND, YOUR HONOR,
12 JUST SO IT'S CLEAR FROM WHERE WE GO FROM HERE, I DON'T
13 KNOW IF I AM RELIEVED OR ARE YOU APPOINTING ANOTHER
14 LAWYER?

15 THE COURT: I HAVEN'T RELIEVED YOU OF
16 REPRESENTING HIM AT THIS TIME, ALL RIGHT.

17 MR. MCGUIRE: THANK YOU, YOUR HONOR.

18 MR. BOSNAK: THANK YOU.

19

20

21

END OF PROCEEDINGS

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

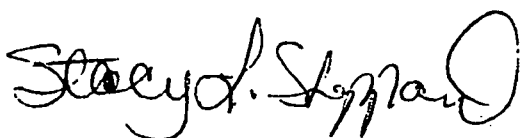
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I, THE UNDERSIGNED, STACY L. SHEPPARD, CIRCUIT COURT REPORTER FOR THE NINTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND THE EVIDENCE INTRODUCED IN THE SENTENCING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL IN THE CRIMINAL COURT FOR CHARLESTON COUNTY, SOUTH CAROLINA, ON THE 15TH OF JUNE, 2001.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

AUGUST 30, 2001



STACY L. SHEPPARD
CIRCUIT COURT REPORTER

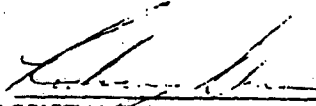
STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

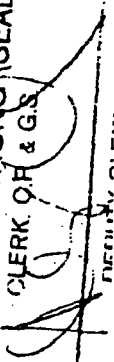
INDICTMENT FOR
TRAFFICKING COCAINE

At a Court of General Sessions, convened on November 1, 1999 the Grand Jurors of Charleston County present upon their oath:

That Earnest Battle did in Charleston County on or about July 15, 1999 while at 1855-B Reddin Road, North Charleston, South Carolina knowingly, sell, manufacture, deliver, purchase, or bring into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession in excess of twenty-eight (28) grams of Cocaine. This is in violation of Section 44-53-370 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK O.H. & G.S.
BY 
RECEIVED

WITNESSES

JOHN BURNETT AND/OR

KEITH HAIR

KEUCHLER, NCPD

99025582

ARREST WARRANT NUMBER

F980726

JULY 16, 1999

ACTION OF GRAND JURY

TRUE BILL

[Signature]

Foreperson of Grand Jury NOV 02 1999

VERDICT

GUILTY

[Signature]

Foreperson of Petit Jury

6/8/01

Date:

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

NOVEMBER TERM 1999

THE STATE

vs.

EARNEST BATTLE

Indictment for

TRAFFICKING COCAINE

ATTEST: A TRUE COPY
JULIE ARMSTRONG (SEAL)
CLERK CP/D G.S.

BY *[Signature]*
DEPUTY CLERK

0111 21-00-000

WITNESSES

JOHN BURNETT AND/OR

KEITH HAIR

KEUCHLER, NCPD

99025582

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS

NOVEMBER TERM 1999

THE STATE

vs.

EARNEST BATTLE

ARREST WARRANT NUMBER

F980727

JULY 16, 1999

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

VERDICT

GUILTY

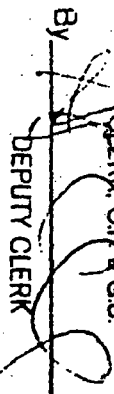
Foreperson of Petit Jury

Date:

6/8/01

Indictment for

**POSSESSION WITH INTENT TO
DISTRIBUTE COCAINE WITHIN
PROXIMITY OF A SCHOOL**

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.R. & G.S.
By 
DEPUTY CLERK

479

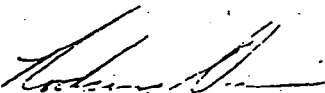
STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)


INDICTMENT FOR
POSSESSION WITH INTENT TO DISTRIBUTE
COCAINE WITHIN PROXIMITY OF A SCHOOL

At a Court of General Sessions, convened on November 1, 1999 the Grand Jurors of Charleston County present upon their oath:

That Earnest Battle did in Charleston County on or about July 15, 1999 while at 1855-D Reddin Road, North Charleston, South Carolina distribute, sell, purchase, manufacture, or have in his possession with intent to distribute a quantity of Cocaine, a controlled substance, said location being within a one-half mile proximity of St. John's Catholic School, 3921 St. John's Avenue, North Charleston, South Carolina, in violation of Section 44-53-445 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made provided.


ASSISTANT SOLICITOR

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P. & G.S.
By 

WITNESSES

JOHN BURNETT AND/OR

KEITH HAIR

KEUCHEER, NCPD

99025582

ARREST WARRANT NUMBER

F980728

JULY 16, 1999

ACTION OF GRAND JURY

TRUE BILL

True Bill

Foreperson of Grand Jury

NOV 02 1999

VERDICT

Grand Directed Verdict of Not Guilty

T. L. ...
President of Judge

Foreperson of Petit Jury Date:

6/8/01

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

NOVEMBER TERM 1999

THE STATE

vs.

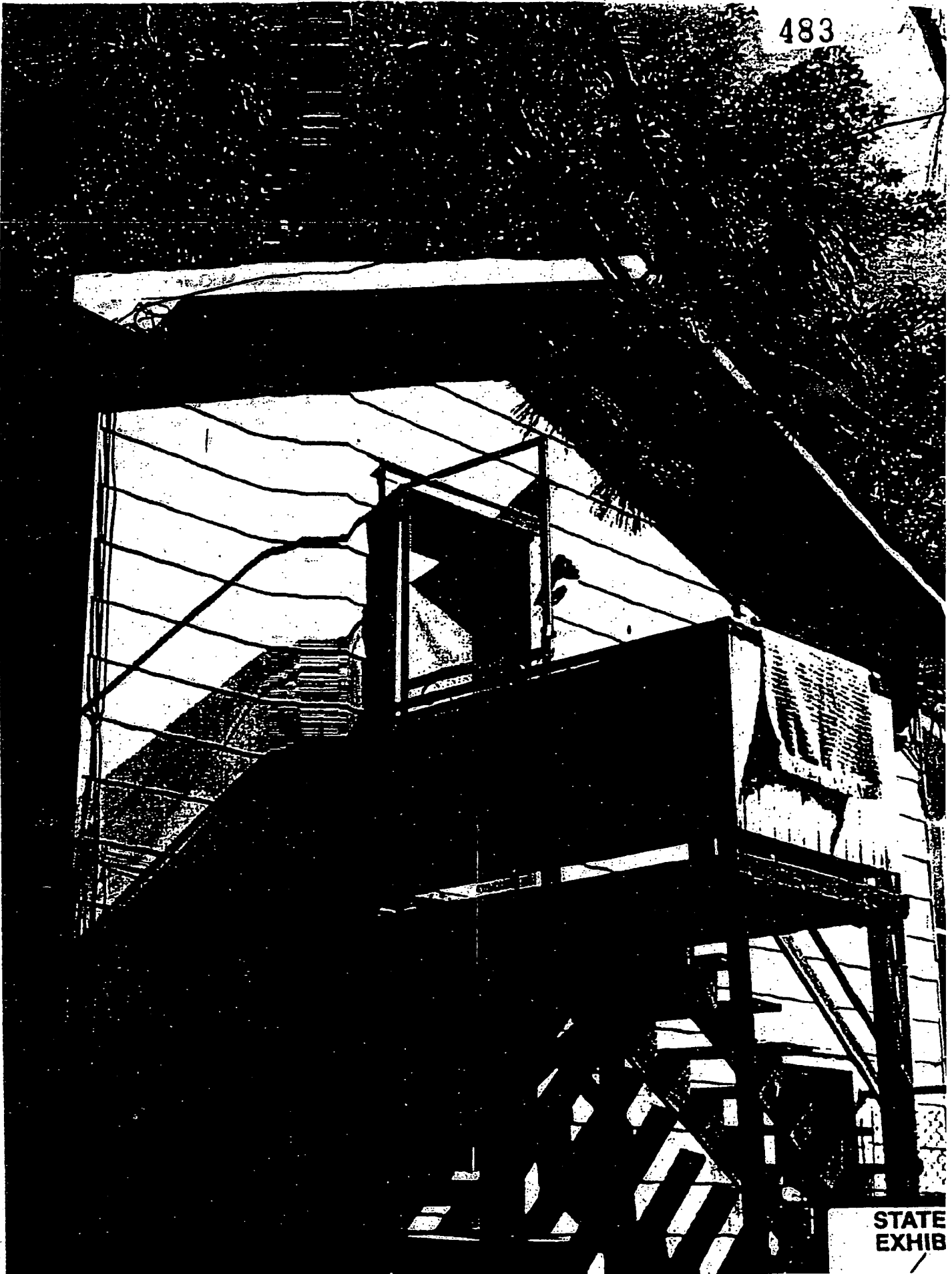
EARNEST BATTLE

Indictment for

CONSPIRACY TO VIOLATE SOUTH CAROLINA NARCOTICS LAWS

ATTEST: A TRUE COPY
JULIE A. ARMSTRONG (SEAL)
CLERK, C.P. & D.S.
By *[Signature]*
DEPUTY CLERK

483



STATE
EXHIB

484

1855

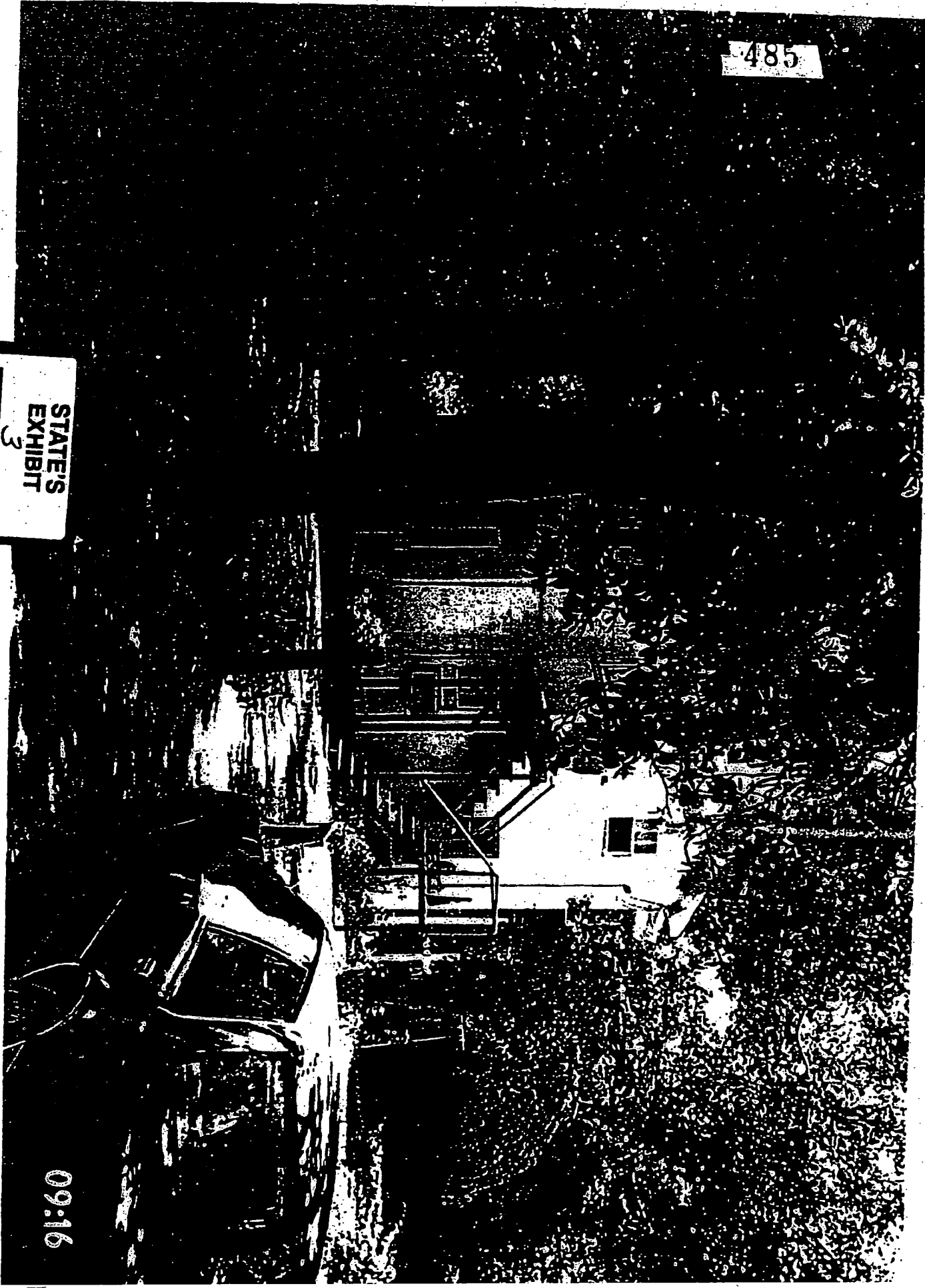
STATE'S
EXHIBIT

2

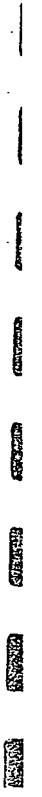
17-00-10

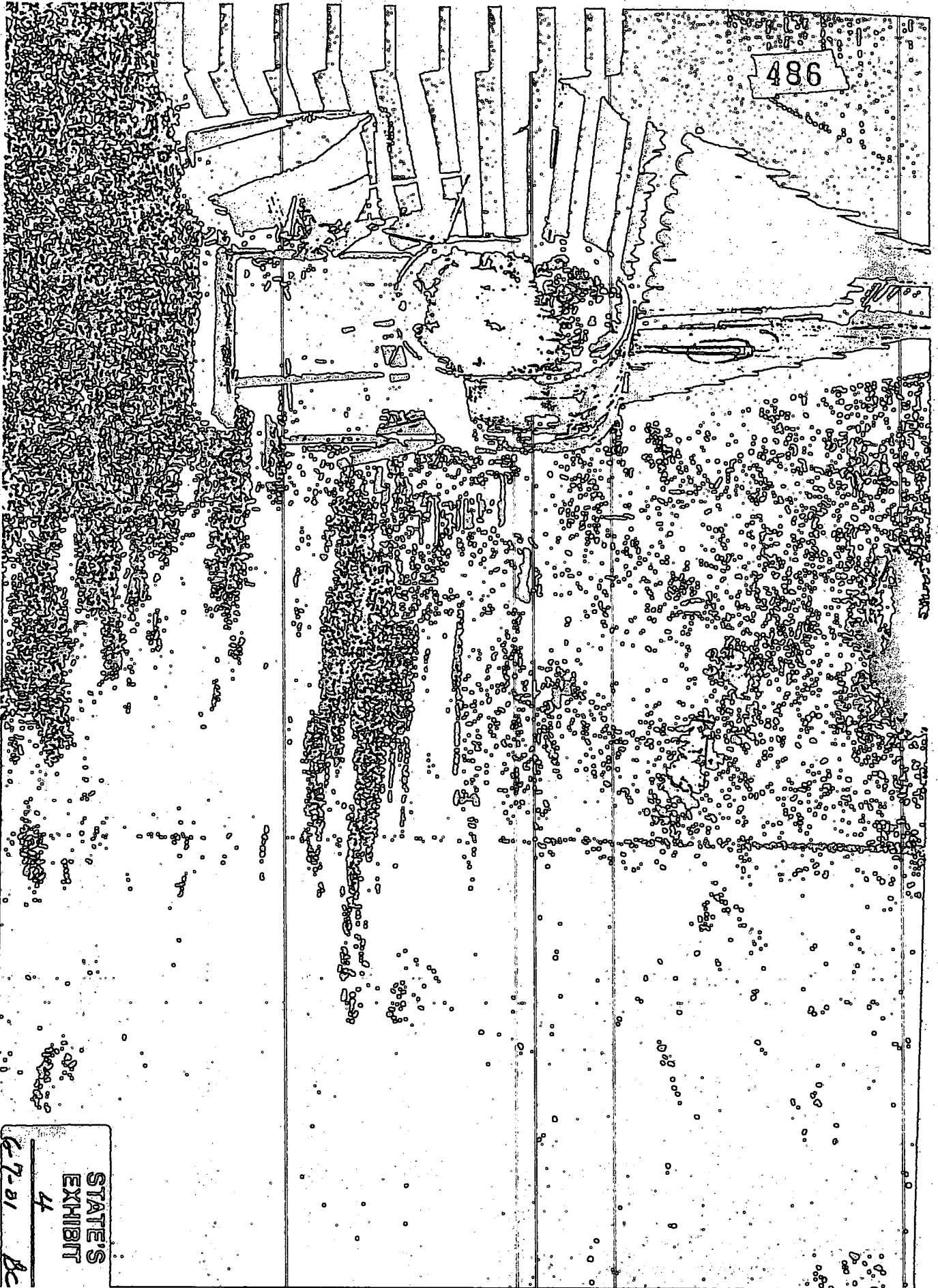
485

6-7-01
STATE'S
EXHIBIT
3
BC



09:16



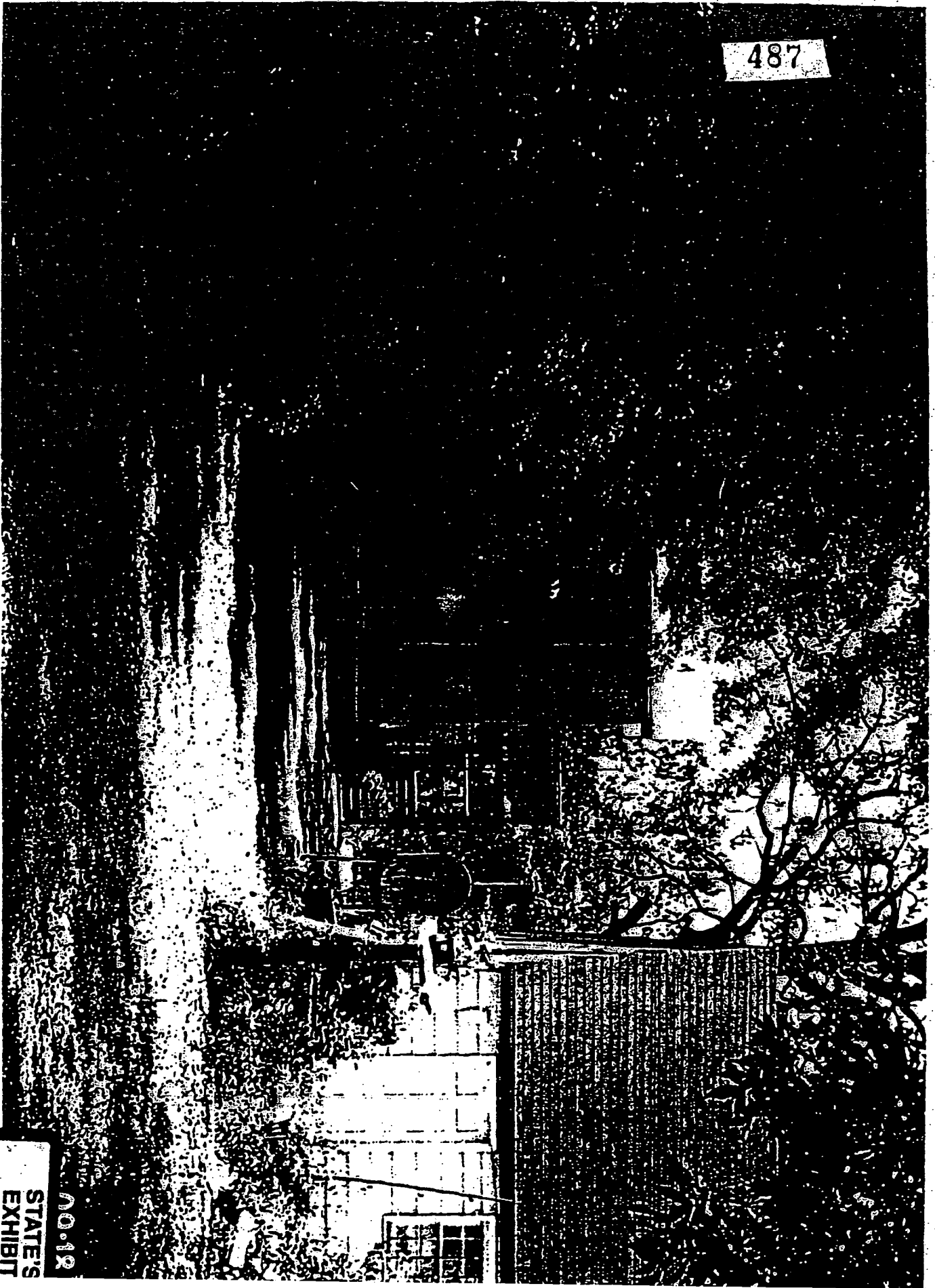


486

STATE'S
EXHIBIT
4
6-7-81
AC

487

STATE'S
EXHIBIT
5
NO. 12
6-2-01



488

09:21

STATES
EXHIBIT

6



489

STATE'S EXHIBIT 7 6-7-01 BC

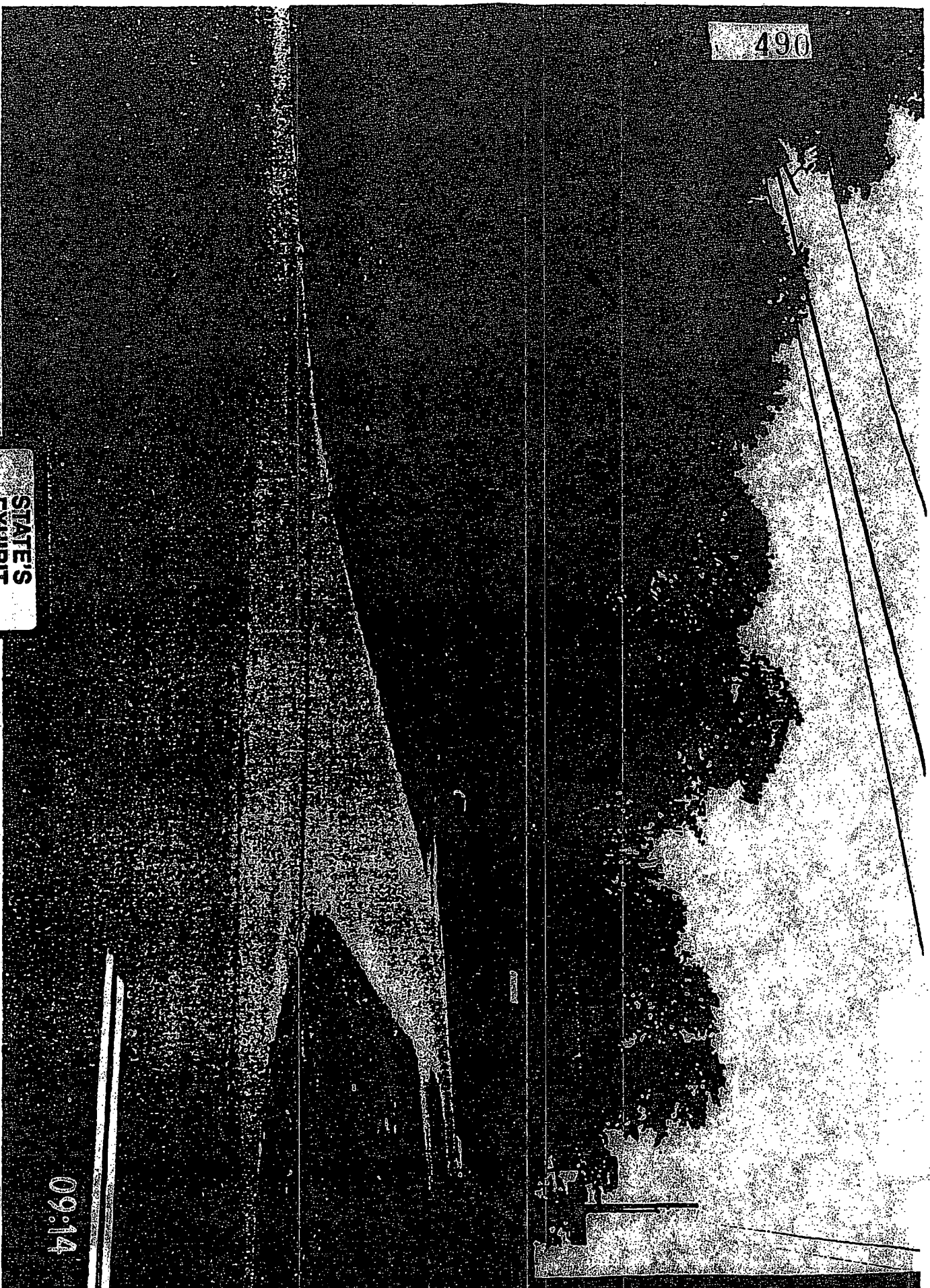
09:15



490

STATE'S
EXHIBIT
8

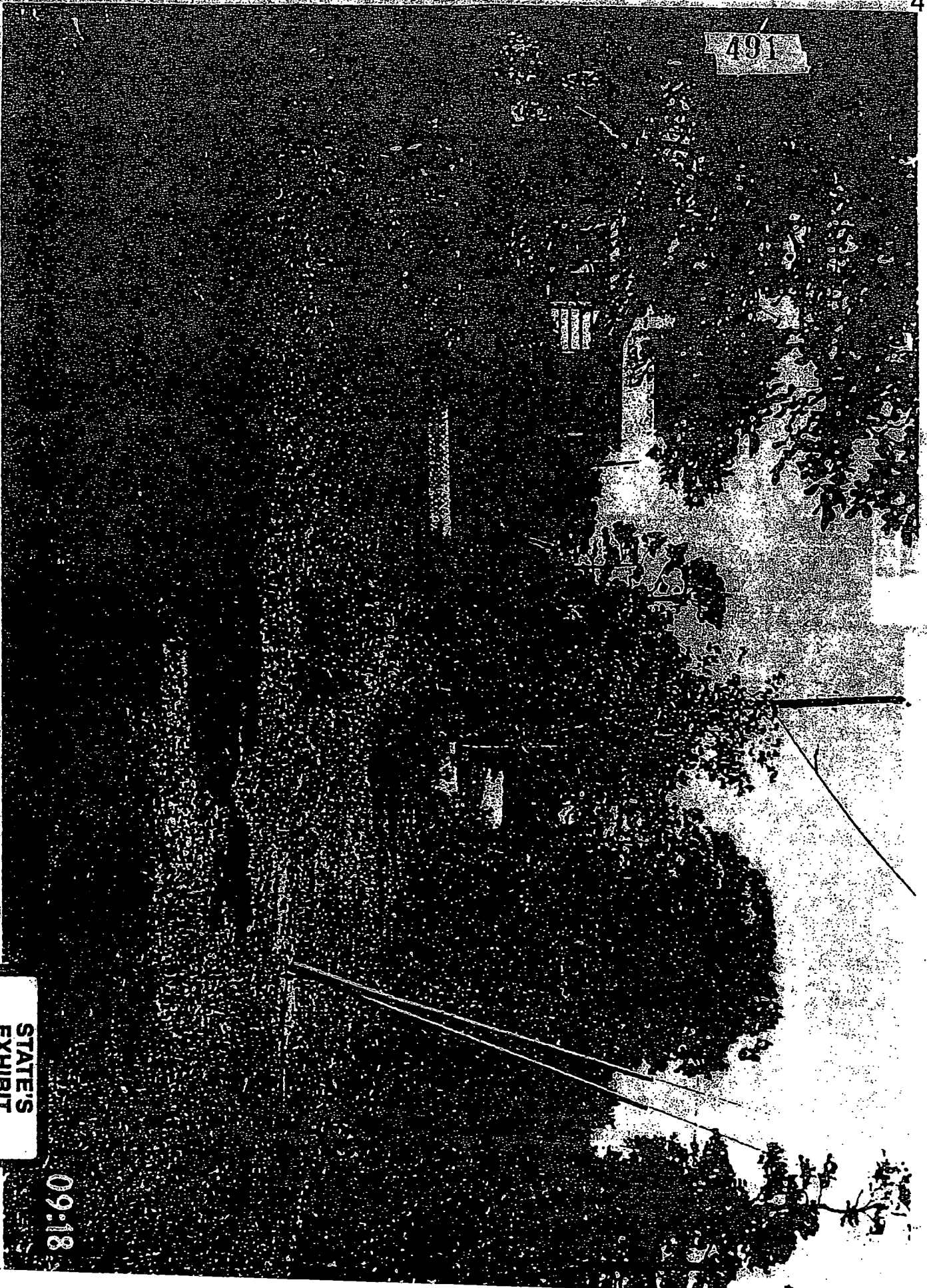
09:14



491

STATE'S
EXHIBIT
9
6-7-01
PC

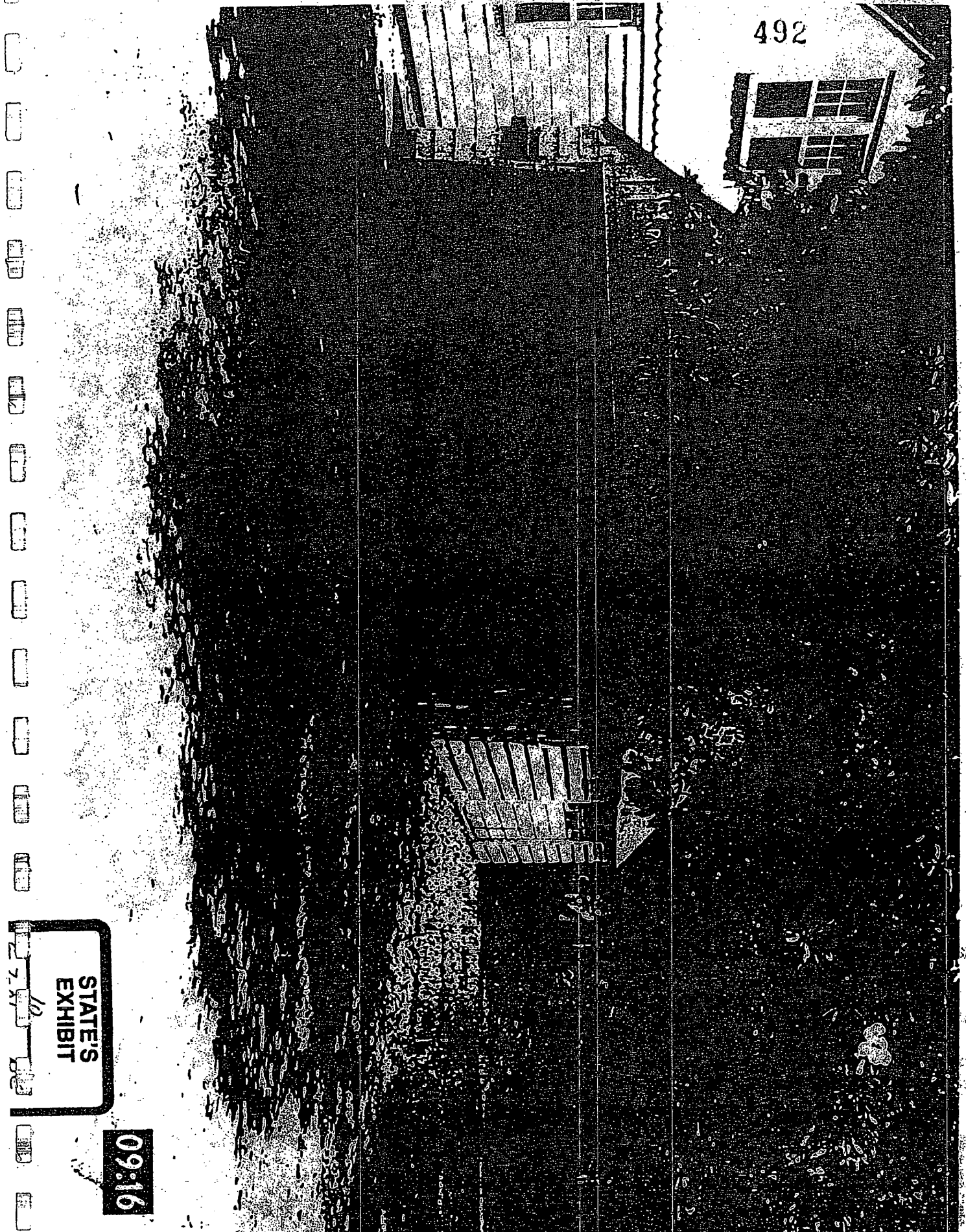
09:18



492

STATE'S
EXHIBIT

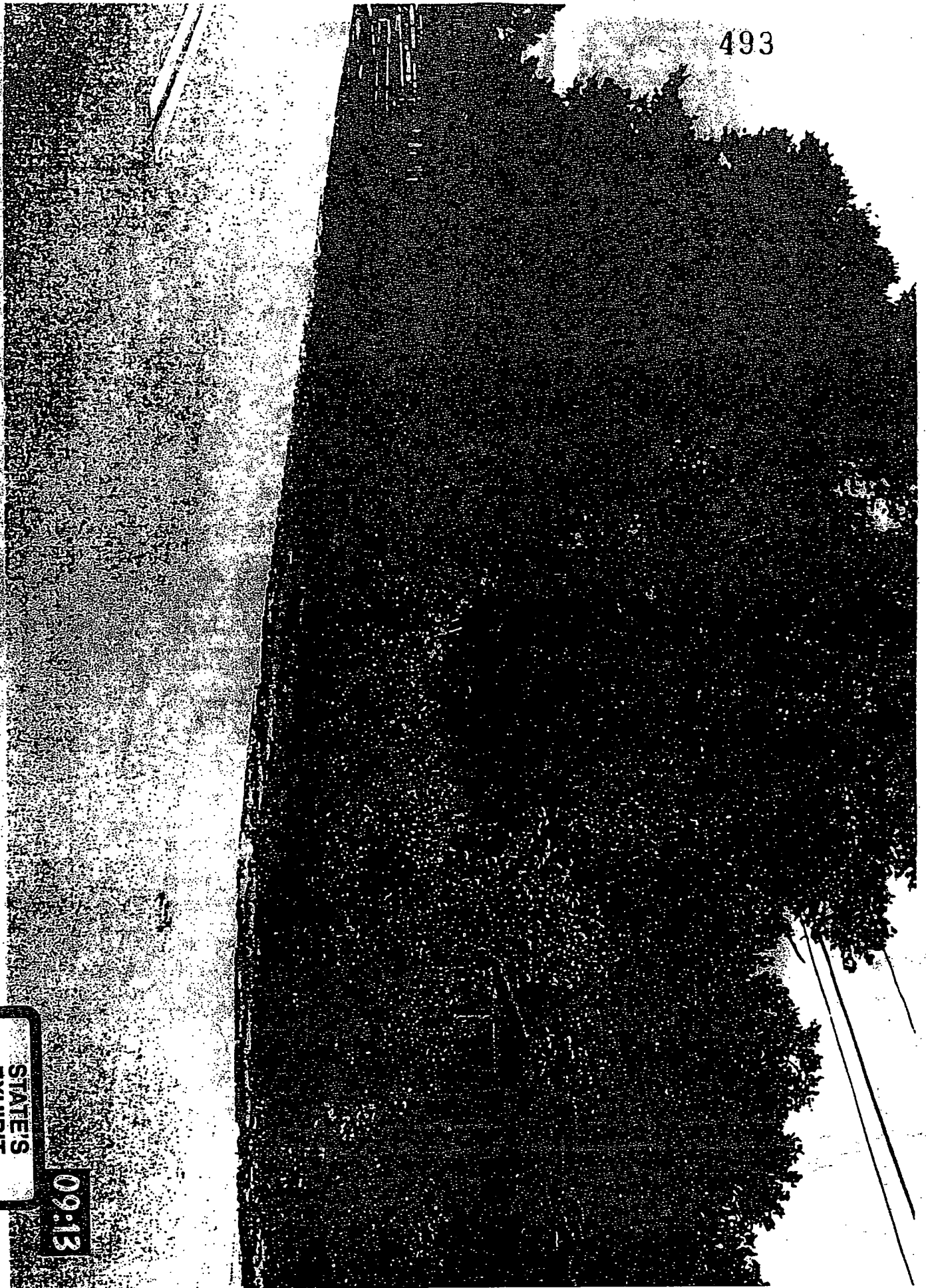
09:16



493

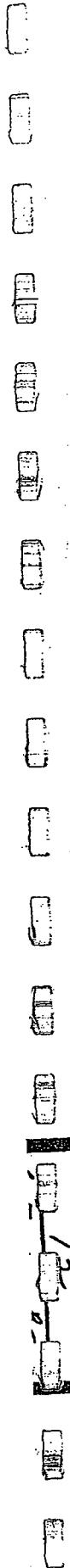
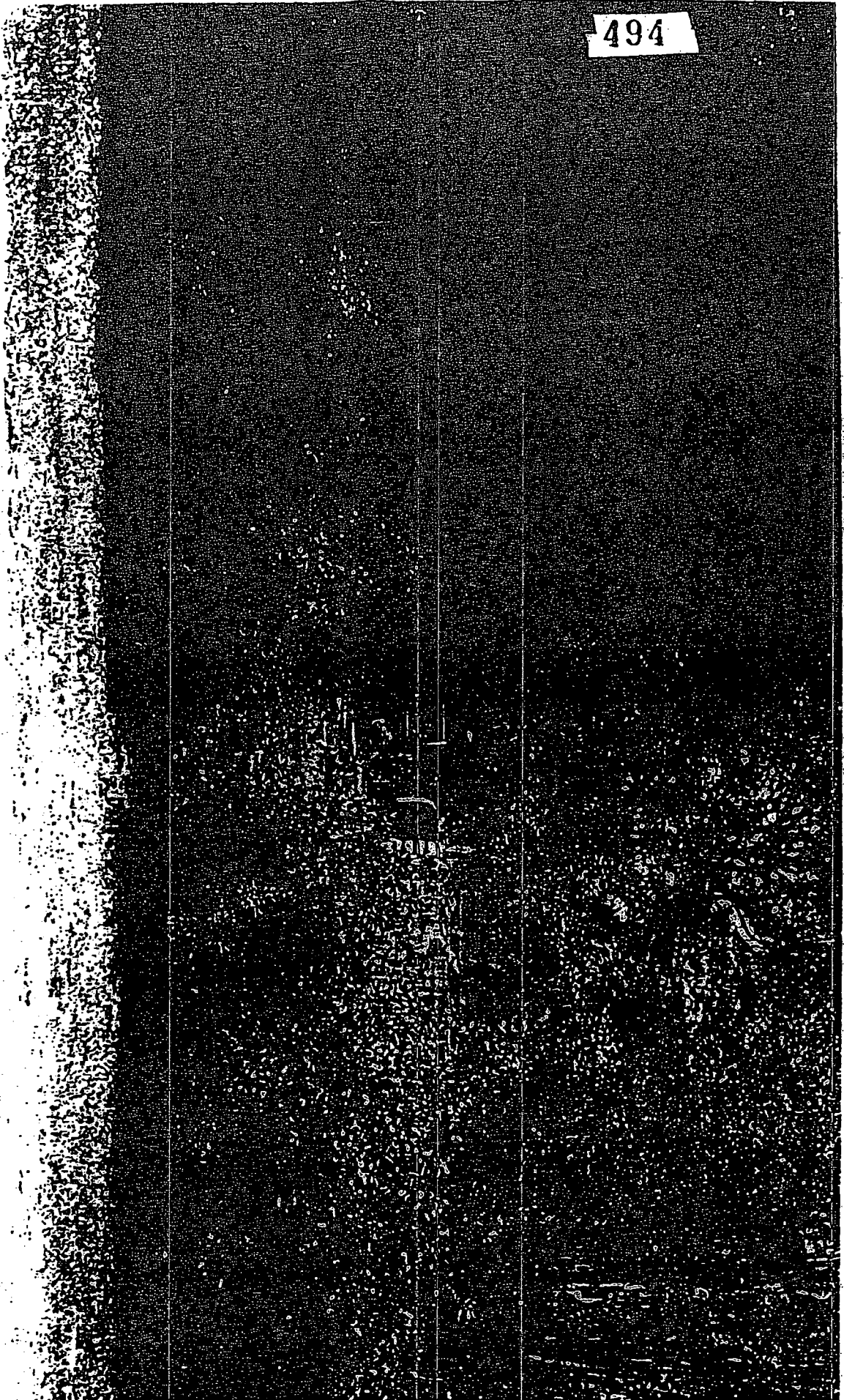
STATES
EXHIBIT
//

09:13



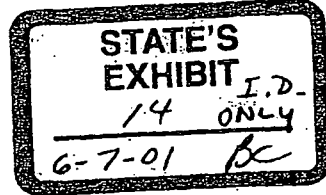
496

494



STATE'S
EXHIBIT

09:13



7-21-99

Dear Shawn,

I hope and Pray that you are hanging in there, This is a very Fucked-up position to be in. I'm not going into details about what happened. The main concern is where do we go from here. Well I will tell you. Although this thing happened it doesn't make me love you or care for you any less. Shawn this is a very serious situation you know me & Eddie is Facing Life. The only person can save us is you. My Attorney name is Joseph Condon, you may have already spoken with him. I told him that you was willing to give a statement to the fact that me and Eddie had nothing to do with what happened at your apartment that night. and that you and I never had any physical contact with each other. Or attempted in any way to conspire to sell or deliver any drugs to anyone. That me and Eddie was just happen to be walking through the cut going to your mother's house. Many people use this cut Day & Night 24-7. During this time of the incident as me & Eddie walked through your front gate, because that's where the cut leads to we were thrown to the ground.

continue
on
page

(4)

Showa you know everything they say in the
 Charge papers is a lie. They are saying
 that you met me & Eddie on the corner of
 St. John & Reddin Rd where we discussed
 MAKING this drug deal and I was suppose
 to have gave you this stuff. Then you took
 this Cocaine back to your Apartment and
 when you saw these detectives you threw the
 cocaine to the ground and ran upstairs.
 you know as well as I do, Shawn, this
 never happened we never met or
 discussed any drug transaction period.
 They dont have shit and is trying to put
 something together. Shawn Listen to me,
 trust me. I know how these mother fuckers is
 They try to make you turn on each other.
 I nor Eddie would ever turn on you. you are
 our Family. Shawn do what I ask you to
 and what you promised to do so that I
 can help all of us out this messed up situation.
 They also siezed my car although they did
 not find anything in it or on me or on Eddie.
 and is giving my sister & mom the run around.
 My Lawyer is suppose to handle that and he is
 also working on getting my bond down and the
 bond's man is on stand by. I know him for a long
 time. Me & him are good friends. Once I get
 out, I can get you & Eddie out. Then we can go
 from there. Me and my Attorney already done discussed
 this situation. Once I get you out of bond you will sign up a

③

And your statement will cost me & Eddie
 loose. do not listen to Police because
 the only thing they are going to do is lie
 to you and try to have you turn on
 me & Eddie. As I said earlier you
 are our family and we must stick
 together & be strong I promise
 you everything will be alright as
 long as you listen to me and do
 as I say O.K. we are all in this
 together. I don't know if Jim Smiley
 is working on your case or Eddie's case
 I was told by his secretary that his
 office was handling one of your cases
 that's a good thing because my lawyer
 Mr. Cordon & J. Smiley & the bonds man
 Waddy all work together. O.K. their
 office is across the street. if you
 haven't spoken to my Attorney Mr. Cordon
 yet call him collect and give him
 the statement his number is 554-1000
 His Cousin is the Attorney General for
 South Carolina. Charlie Cordon - ~~top~~ ~~bottom~~
 They own half of Charleston South Carolina.
 Do as I say and everything will be alright.
 we will be put back together sooner than you think.
 I am going to call for their statement.

(4)

to anybody, do as I say and let me handle this O.K. 498

7 Show if the Question comes up about where you got this stuff from, Tell Them you got it from this Guy you met in The Club Big Boy a Few days ago and he wanted to spend the night with you but he only had about 50 after he had bought you & him drinks, so you told him that won't do this when he offered you the stuff to make up the difference and you told him what was you suppose to do with that and he said Sell it and that you could have made about 3 or 4 thousand of it. Since you had started using cocaine about 3 months ago and your bills were Over due you decided to take it with the intentions of giving it to someone else to sell for you but after a Few days after you had it your friend from Mt. Pleasant called you asking about if you could get him some stuff. You already had some stuff hid outside your apartment but you did not want him your friend from Mt. Pleasant to know this because he may have took it from you so that's why you kept stalling him to make him think coming from someone or somewhere else was you. Ernie & Eddie don't have anything to do with what happens that night.

write this state ment down also
and give to Mr. Condon O.K. Along with