

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

Paul M Burch, Circuit Court Judge

RECEIVED

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S C Supreme Court

ANTWAN WADE,

PETITIONER,

V

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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INDEX

INDEX	1
TRIAL TRANSCRIPT	1
AMENDED FINAL BRIEF OF APPELLANT	300
FINAL BRIEF OF RESPONDENT	314
COURT OF APPEALS OPINION	330
APPLICATION FOR POST CONVICTION RELIEF	332
RETURN	339
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	344
POST-CONVICTION RELIEF HEARING TRANSCRIPT	362
ORDER OF DISMISSAL	385
CLERK OF COURT RECORDS	401

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 ANTWAN MARCUS WADE,) 2007-GS-46-3940
7 Defendant) JANUARY 9, 2008
) York, South Carolina

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9 (VOLUME I)

10
11 B E F O R E
12 THE HONORABLE LEE S ALFORD, JUDGE , and a jury

13
14 A P P E A R A N C E S
15
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22
23
24
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INDEX

(JANUARY 9, 2008)

WITNESSES

PAGE

JURY VOIR DIRE -- PAGE 34

JURY SWORN -- PAGE 53

OPENING STATEMENT BY MS JOYNER -- PAGE 64

OPENING STATEMENT BY MR DELANEY -- PAGE 67

OFFICER BRIAN SCHETTLER (SW)

DIRECT EXAMINATION BY MS JOYNER 75

CROSS EXAMINATION BY MR DELANEY 93

REDIRECT EXAMINATION BY MS JOYNER 122

RECROSS EXAMINATION BY MR DELANEY 125

INDEX

(JANUARY 10, 2008)

WITNESSES PAGE

ROBERT DAVID MONTGOMERY (SW)

DIRECT EXAMINATION BY MS JOYNER 140

CROSS EXAMINATION BY MR DELANEY 153

REDIRECT EXAMINATION BY MS JOYNER 169

RE CROSS EXAMINATION BY MR DELANEY 179

KELLY NICOLE ELLIS (SW)

DIRECT EXAMINATION BY MS JOYNER 181

CROSS EXAMINATION BY MR DELANEY 185

OFFICER TINA TRUESDALE (SW)

DIRECT EXAMINATION BY MS JOYNER 186

CROSS EXAMINATION BY MR DELANEY 191

REDIRECT EXAMINATION BY MS JOYNER 198

RE CROSS EXAMINATION BY MR DELANEY 200

OFFICER JOSH WELCH (SW)

DIRECT EXAMINATION BY MS JOYNER 201

CROSS EXAMINATION BY MR DELANEY 204

REDIRECT EXAMINATION BY MS JOYNER 209

RE CROSS EXAMINATION BY MR DELANEY 210

OFFICER MIKE LIGON (SW)

DIRECT EXAMINATION BY MS JOYNER 211

CROSS EXAMINATION BY MR DELANEY 219

REDIRECT EXAMINATION BY MS JOYNER 230

1	INDEX	
2	(JANUARY 10, 2008)	
3	WITNESSES	PAGE
4	BARBARA TRAYLOR (SW)	
5	DIRECT EXAMINATION BY MS JOYNER	236
6	CROSS EXAMINATION BY MR DELANEY	239
7	CYNTHIA MITCHUM (SW)	
8	DIRECT EXAMINATION BY MS JOYNER	240
9	CROSS EXAMINATION BY MR DELANEY	246
10		
11	STATE RESTS -- PAGE 246	
12	DEFENSE RESTS -- PAGE 253	
13	CLOSING ARGUMENT BY MS JOYNER -- PAGE 253	
14	FINAL ARGUMENT BY MR DELANEY -- PAGE 260	
15	JURY INSTRUCTIONS -- PAGE 272	
16	SENTENCING -- PAGE 298	
17	REPORTER'S CERTIFICATE -- PAGE 299	
18		
19		
20		
21		
22		
23		
24		
25		

1	EXHIBITS			
2	NO	DESCRIPTION	ID	EV
3	S-1	DRUGS		245
4	S-2	DRUG REPORT		245
5				
6	CT-1	JURY NOTE	289	
7	CT-2	JURY NOTE	292	
8	CT-3	INDICTMENT NO 99-GS-46-2408	292	
9	CT-4	INDICTMENT NO 04-GS-46-0280	292	
10	CT-5	INDICTMENT NO 05-GS-46-1871	292	
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 (PROCEEDINGS, January 8, 2008)

2 THE COURT Counsel ready to proceed

3 MS JOYNER Your Honor, we are

4 This is State versus Antwan Wade

5 He is charged today under Indictment

6 2007-GS-46-3940 with distribution of cocaine base or crack
7 cocaine, third offense

8 He's indicated that he wishes to have a trial and
9 the State is ready to proceed

10 THE COURT All right Is defense ready for
11 trial?

12 MR DELANEY Defense is ready for trial, Your
13 Honor

14 THE COURT All right I understand the jury will
15 be in a little later, but we can go ahead and do our
16 pretrial motions at this time

17 Any motions in limine that you wish to make at
18 this time, I will be glad to hear those

19 MR DELANEY Thank you, Your Honor May it
20 please the court

21 I'll just go through the list that I have here
22 We will start at the beginning

23 The first motion that we have in limine is a
24 motion to reveal the deal of the State's witnesses,
25 specifically including Robert Montgomery, Jr This would

1 encompass, but not limited to, any former or current
2 criminal charges or any other consideration given by any law
3 enforcement agency or any solicitors or prosecutors office

4 My contention is I believe the State has turned
5 over all that to us at this point in time

6 MS JOYNER We have, Your Honor

7 Just to place it on the record, Mr Montgomery has
8 an unserved warrant for possession with intent to distribute
9 marijuana He worked for the drug unit in hopes of
10 obtaining consideration and then the hopes that that warrant
11 would not be served, and I don't believe there is any other
12 part of the deal Officer Schettler?

13 OFFICER SCHETTLER No, not at this point

14 MS JOYNER Thank you, Your Honor

15 MR DELANEY Motion in limine marked number two,
16 Your Honor, is a motion to suppress any evidence acquired as
17 a result of the search warrant executed at the ADDRESS
18 Road and any testimony regarding the search This motion
19 was specifically exclude two cigar tubes containing crack
20 cocaine residue allegedly seized from the defendant's
21 bedroom The cigar tubes, it's our contention, as well as
22 other evidence seized as a result of this search warrant
23 relates to the separate and wholly unconnected set of
24 criminal charges where the defendant is not being
25 prosecuted, and in that regard are irrelevant and more

1 prejudicial than probative. Additionally, this motion would
2 seek to determine the existence and admissibility of any
3 evidence of prior or subsequent bad acts from the defendant
4 the State would intend to introduce pursuant to State v
5 Lyle

6 And, Your Honor, if I could start the argument
7 here, we feel -- and to give Your Honor a little bit of
8 background, I think you are going to need a little bit of
9 background about the situation here, Antwan Wade allegedly
10 made this drug transaction on March the 8th, 2007

11 On March the 15th, 2007, is when these cigar tubes
12 were found in his residence as a result of the search
13 warrant

14 Now, there is numerous reasons we feel these cigar
15 tubes should not be introduced here today, first being that
16 any probative value that they would have would be extremely
17 outweighed by the prejudicial effect they would have on the
18 jury

19 Now, this alleged distribution was committed and
20 allegedly completed on March the 8th. They have all the
21 evidence there. They have the CI, who I assume is going to
22 take the stand here today, testify to that alleged
23 transaction. They have numerous DEU officers who are going
24 to come in and testify to that activities of that day

25 There was at one point a recording, that my

1 understanding that the tape is now missing, but this was a
2 recorded transaction, is my understanding And so going to
3 that, 403 analysis, Your Honor, we would argue vehemently
4 that these cigar tubes do not come in, and there is nothing
5 but corroborative evidence at this point

6 Now, the other argument that the State may try to
7 make or an argument that the State may try to make in this
8 type of case or in this type of situation is that it's some
9 type of Lyle evidence Your Honor, we would contend that
10 under Lyle, this does not come in And if Your Honor does
11 go into that analysis, we believe we have the appropriate
12 case law at that time to support that this is not used for
13 his identity This is not used to show a common scheme or
14 plan, and at the appropriate time we would present case law
15 regarding that

16 Now, there is one case that I would like to
17 present Your Honor, and that is State v Gilliam, a 2007
18 case that the Supreme Court decided And factually the
19 different situation in terms of the defendant in that case
20 was charged with murder The State attempted to introduce
21 burglary charges against him Ultimately the Supreme Court
22 decided that the res gestae of murder, the State had that,
23 and there was no need to bring up these prior burglaries,
24 and the effect of that would just be so overly prejudicial
25 to the defendant And we would argue that would be the same

1 situation in this case

2 MS JOYNER Your Honor, if I could interrupt,
3 just for the purposes of making the case as clean as
4 possible, we will -- the State will go ahead and concede we
5 would not introduce evidence of cigar tube, unless the door
6 is opened in some way by the defense, but we do intend to
7 offer various limited testimony about the service of the
8 arrest warrant, which was made on the date of the execution
9 of the search warrant But we are not going to discuss the
10 search warrant and any other finding, unless it's brought up
11 by the defense

12 MR DELANEY The defense would have no problem,
13 obviously, with them introducing testimony regarding when
14 the arrest warrant was served, or anything like that

15 THE COURT All right Well, the -- of course,
16 they have agreed not to introduce any evidence concerning
17 these cigar tubes and any residue of crack cocaine that
18 might be in those, with the exception, obviously, if the
19 defense were to open the door somehow that would make that
20 relevant to the case, then they reserve the right then to
21 bring it up, if the door is open for that testimony
22 Otherwise, they wouldn't do it

23 Is that correct?

24 MS JOYNER Right

25 MR DELANEY Okay The third motion that the

1 defense has is a motion to exclude any testimony by members
2 of the drug enforcement unit regarding any contents of the
3 audio surveillance recording and the substance of any
4 conversations that may have taken place between the
5 confidential informant and the defendant

6 Your Honor, our contention that this is a textbook
7 hearsay issue Essentially, an individual -- individuals
8 are listening to a recorded conversation The CI -- my
9 understanding is the CI is here The CI is going to testify
10 as to potentially what's on that tape

11 Now, the tape is missing Our contention would be
12 that it doesn't make a difference Obviously the DEU
13 officers can testify to any of their activities that day,
14 interactions with the CI, things of that nature, but in
15 terms of the officers getting up and testifying that what
16 they heard on that tape we would argue would be hearsay and
17 they have the CI for that

18 THE COURT Is this a conversation between the
19 defendant and a confidential informant?

20 MR DELANEY Yes, Your Honor

21 THE COURT Counsel wish to be heard?

22 MS JOYNER Yes, sir, Your Honor

23 I would argue that it would actually not be
24 hearsay These are statements by the defendant They are
25 statements against defense interests They are admissions

1 by party opponents But, Your Honor, the officer's
2 testimony in regards to what they heard on the audio wire
3 would not be offered for the truth of the matter asserted
4 We do have the confidential informant here prepared to
5 testify about everything that happened

6 The officers -- the officer that I would
7 anticipate, his testimony going into it all would be heard
8 on the recordings would be Officer Mike Ligon He was one
9 of the officers closest to the house, best able to hear the
10 audio feed And I would anticipate that he would testify
11 regarding the contents or -- well, what would have been the
12 contents of the audio tape, to explain why he took
13 particular actions on that day, to explain why he believed
14 he had heard a transaction He was also the officer,
15 because he was closest to the audio feed, he could hear it
16 best, was instructing other officers in other unmarked cars
17 where to proceed and where to go That would be the reason
18 why he would testify to what was -- to what he heard on the
19 audio

20 MR DELANEY The only thing I would counter, Your
21 Honor, would be in terms of the State's assertion that this
22 is an exception to the hearsay rule in terms of a declarant
23 or a defendant making a statement against interests

24 My understanding, there is no way or there has
25 been nothing that I have seen or presented to me in

1 discovery that these officers -- you know, they have never
2 heard Antwan Wade's voice before They had no idea, you
3 know, other than the CI's -- obviously we understand the
4 CI's, the CI in the case, but in terms of being Antwan Wade
5 on the tape, there has been no indication to me that they
6 are familiar with his voice or anything of that nature For
7 that reason we would ask it would be hearsay

8 Now, in terms of setting up a scene that night, in
9 terms of that, we don't have any problems with that But in
10 terms of an officer getting up there and testifying to "I
11 heard this and this is what I heard," that is what we would
12 say would be textbook hearsay in this case

13 THE COURT All right Let me ask you whether,
14 solicitor, the officer can testify that he was listening in
15 through some video mechanism as to the transaction to a
16 transaction between the confidential informant and someone,
17 and that, you know, based on certain things that were
18 happening with regard to that transaction that what he was
19 hearing that he directed this, that, and the other to happen
20 without actually mentioning the defendant as being the
21 person on that tape, or exactly what was said on that tape?

22 MS JOYNER Yes, sir

23 THE COURT I mean, would that be a problem?

24 MS JOYNER It wouldn't be a problem for the
25 State, Your Honor

1 THE COURT Okay We do it in that fashion, then
2 I think that eliminates it being offered for the truth of
3 the matter asserted, to simply show why the police
4 officer -- number one, that he was -- he could testify as to
5 where the transaction took place, I think, and that -- in
6 setting up the transaction and where it took place and where
7 he was positioned and what he did in response to and that he
8 was overhearing the conversations between the confidential
9 informant and a person, without identifying who the person
10 is, and not saying exactly what the conversation was, and
11 why he did certain things in response to what he was hearing
12 on the video And that way -- does that satisfy both sides?
13 That might be a good way to handle it?

14 MS JOYNER Yes, Your Honor

15 MR DELANEY Yes, Your Honor

16 THE COURT Anything else?

17 MR DELANEY The fourth motion that we have is a
18 motion to exclude any testimony by the confidential
19 informant's common law spouse Kelly, who was not noted in
20 any discovery materials, but may be offered as a witness by
21 the prosecution To date, the defendant has not been
22 provided the witness' full name, only general references to
23 her potential last name As a result, the defendant has
24 been denied the opportunity and right to explore her
25 credibility and to investigate the existence of any

1 impeachment material

2 Now, I'll preface this by saying, Your Honor, Mr
3 Joyner, in no way I'm trying to say she's been trying to
4 hide this from me I think -- but I do want the court --
5 and my concern is here this wife of the CI was never
6 mentioned in any discovery material that I have

7 Now, the first that we heard of her, and I
8 think -- I believe the first that Ms Joyner heard of her
9 was last week, Wednesday, and Ms Joyner let me know that
10 day At that point we were told that she was someone who
11 drove the CI to allegedly Antwan Wade's residence, and that
12 was her role

13 Now, a day or so later it was changed to no, she
14 didn't just drive him there, she actually went into the
15 residence

16 Now, I have been informed she did not actually --
17 she is not going to testify that she witnessed anything, but
18 that her -- obviously her involvement there grew

19 This case has been technically in trial posture
20 for some time now And essentially our contention is we are
21 learning of this witness at the eve of trial I know there
22 is some confusion I think with the State in terms of was her
23 last name Montgomery or is it Ellis, and Ms Joyner -- Ms
24 Joyner has been very good She called me a couple times
25 recently giving me updates on different things She said

1 that she's confirmed with me that it was Kelly Ellis I'm
2 not trying to say she hasn't, but I know there has been
3 different conversations whether it's Montgomery or Ellis,
4 let me check on this We haven't been provided any other
5 information about her, other than this is Kelly Montgomery
6 or Kelly Ellis No contact information, address, phone
7 numbers, or anything like that We would ask that her
8 testimony be excluded in this case

9 MS JOYNER Your Honor, it is true that Ms Ellis
10 is not mentioned in the summary or in any of the discovery
11 materials I became aware of her involvement when I met
12 with the officers regarding Mr Montgomery and they
13 mentioned that he did not have a driver's license They
14 told me about Ms Kelly She goes by Nicole Ellis, and that
15 they called -- they termed her as his wife So that was my
16 assumption that her last name was Montgomery, and that she
17 had driven him to the house, that she had had a possession
18 of marijuana first ticket, she had been served that ticket
19 the same time he had been -- well, originally my
20 understanding was that she had not been served the
21 possession of marijuana first ticket, but that she had
22 gotten in trouble in the same time period, the same night as
23 Mr Montgomery

24 The first -- I did send Mr Delaney an E-mail
25 indicating that initially that her name was Kelly

1 Montgomery, that she has been served with a warrant for
2 possession of marijuana that occurred the same night as her
3 husband's PWID marijuana She was his driver that night and
4 she actually went inside the residence with her husband
5 Initially she did not go inside When the confidential
6 informant went to the car to retrieve his cell phone, she
7 came back inside with him According to the officer, she
8 has no record, and I'll provide you with the NCIC showing
9 that

10 And then on Friday, the 4th, I met with my
11 confidential informant, Mr Montgomery, and with Nicole,
12 Kelly Nicole Additional information came forward about my
13 confusion regarding the ticket was cleared up Ms Nicole
14 had had the warrant served on her and that it had been taken
15 care of, and that she had been working defendant as well
16 However, on this night her role was strictly supposed to be
17 the driver She was supposed to remain outside

18 I called Mr Delaney That was last Friday night
19 I called him and we had a conversation On Sunday, 2 27
20 p m , I sent him a lengthy E-mail about some other things
21 that we discussed, put it all into writing and corrected my
22 understanding that her warrant had not been served, and I
23 put an E-mail that it had been taken care of, that she had
24 had gone inside the house with Mr Montgomery He come to
25 his car to get his cell phone At the instruction of the

1 defendant in this case, he would not -- he was requested
2 that Mr Montgomery smoke the marijuana -- or smoke crack
3 cocaine inside the house Mr Montgomery quickly
4 constructed a story that he was picking up the crack cocaine
5 for someone else, and at Ms Wade's direction he was
6 supposed to call them on his cell phone The cell phone I
7 believe was in the car He went out to the car to get it
8 He brought Nicole back into the house with him She was
9 present when he made the phone call on a speaker phone to a
10 third party He luckily was able to play along, not knowing
11 what the phone call was really about She sat in the living
12 room Mr Montgomery bought the drugs in another room

13 She does not have a criminal history I think
14 there was some confusion about whether her name was Ellis or
15 Montgomery I thought we had cleared that up, but I do
16 believe that this was strictly a miscommunication She has
17 no criminal history, no impeachable offenses She would not
18 be a witness to the transaction, but simply be a driver, a
19 witness to the phone call made to a third party on speaker
20 phone

21 I don't see where there is any prejudice that has
22 gone to the defendant and the confusion regarding her last
23 name or learning that she had gone inside the residence, and
24 she's not offering any direct evidence of this transaction

25 THE COURT Well, counsel, I think her testimony

1 may be necessary to complete presentation of the State's
2 case, or the res gestae, for want of a better word, the
3 whole case and certainly could create a hole in there if she
4 were not to be a witness or couldn't be mentioned with
5 regard to by another witness, at least as to what her role
6 in this was, so I think the State would be entitled to call
7 her as a witness

8 Now, having said that, if the defense can show
9 prejudice by the lateness of the information provided to
10 you, then, you know, I guess we can consider a motion to
11 continue to allow you to further investigate regarding her,
12 if you are not able to get the information you need with
13 regard to her and haven't been able to get it since -- when,
14 the 4th? You say January 4th?

15 MS JOYNER That --

16 THE COURT The last information that you gave?

17 MS JOYNER The 4th, yes, sir

18 THE COURT 3rd or 4th

19 So, I mean, I -- I think this could create a
20 problem in their case if they are not able to complete it,
21 because questions come up about how he got there and what
22 this, that and the other would happen And so because of
23 that I think they are entitled to present their whole case
24 and complete it and not leave any holes in it that they
25 could possibly attack And for that reason I would allow

1 them to call her

2 Now, if you can show me some prejudice or what you
3 might hopefully gain by a delay, you might could continue
4 it, but that would be the only consideration

5 MR DELANEY Your Honor, it's not the defendant's
6 wishes or contention to have the thing continued We are
7 prepared

8 THE COURT Well, let me say to you that, you
9 know, I have allowed a witness to be called and the trial to
10 go forward finding it out the same day, if the State only
11 found it out the same day, provided that they made the
12 witness available, you know, to be talked to before the
13 trial or -- and provided help with regard to NCIC report or
14 whatever needed to be done I have done it on the same day,
15 if the State only found out that day that this would be a
16 witness that could contribute to the case

17 In this case you have had since -- you have known
18 she would be a witness since when? The first day you gave
19 him that information?

20 MS JOYNER I believe it was Thursday Thursday,
21 January 3rd

22 THE COURT 3rd

23 And then I guess on the 4th you received an E-mail
24 telling you that her testimony would be more than just being
25 a driver So you have known at least since that time,

1 correct?

2 MR DELANEY Yes

3 THE COURT And I assume that you were able to get
4 the NCIC report

5 MS JOYNER I didn't actually print it out I
6 did tell Mr Delaney that there was nothing there under
7 either Montgomery or Ellis I can provide that printed copy
8 showing no record

9 THE COURT Do you want a copy of that?

10 MR DELANEY I think -- yeah, I think we would
11 just ask for it

12 THE COURT Would you do that, please?

13 MS JOYNER Yes, Your Honor

14 THE COURT All right

15 MR DELANEY Okay, judge Moving on Number
16 five, a motion to determine if the State has complied with
17 Rule Five and Brady

18 My understanding this case we feel that they have
19 Now There is one document that we have not specifically
20 asked the solicitor for, but we request to have the contract
21 or the agreement that is signed between the CI and drug
22 enforcement unit We are just asking them to provide that
23 to us before trial

24 MS JOYNER Your Honor, I did have Officer Ligon
25 go downstairs and pull the confidential informant agreement

1 It's been quite some time since anybody has asked me for
2 this I know the court is aware of what that agreement
3 looks like I would leave it in the court's discretion If
4 you are now requiring to us produce those to the defense, I
5 will do so We will tell the court it is a standard form

6 THE COURT I'm very familiar with the form, but I
7 think if they are requiring it to be produced -- and this
8 would be not between the solicitor's office, because police
9 officers don't -- police agencies do not have the authority
10 to make deals, other than agreeing to make recommendations
11 or consider, you know, that -- whatever consideration to
12 give, as I understand it But there is -- I have seen the
13 agreement in the past, it's been produced in the past, and
14 it says whatever it says But I think you should produce
15 it, if it's available, if they requested it

16 MS JOYNER Your Honor, I'm handing this, my only
17 copy, to Mr Delaney

18 I would like to make the court aware, while we are
19 talking about the agreement, and also addressing motion
20 number five at the same time, on Friday night I talked to
21 Mr Delaney about something that had come to my attention
22 during my meeting with Mr Montgomery It is a violation of
23 the confidential informant agreement I believe I stated
24 that to him It is not something that the State intends to
25 produce evidence of during trial

1 Mr Montgomery, the night prior to this buy -- the
2 transaction occurred on the 8th This would have been on
3 March 7th, went to Mr Wade's house, purchased crack cocaine
4 from him on his own, not at the direction of law enforcement
5 officers, and smoked crack cocaine in Mr Wade's home I
6 made Mr Delaney aware of that because that is a violation
7 of the law, which would constitute a violation of our
8 confidential informant agreement We do not intend to offer
9 that into evidence, as we believe that would be more
10 prejudicial to his client than to our witness However,
11 just to place it on the record that it was provided -- that
12 information was provided to him, and also the State's
13 position would be, although it is a violation of his
14 confidential informant agreement, if he's questioned on
15 that, we feel like that would open the door to discussing
16 what would be more prejudicial to Mr Wade

17 MR DELANEY The only response I would have, in
18 terms of opening the door, a general question in terms of
19 drug use while working as an informant, not getting into any
20 specifics - when, where, that type of thing - but just a
21 question of, you know, have you used drugs while being a
22 criminal informant I do not feel that opens up the door

23 I feel Your Honor may state otherwise, and we
24 would have to weigh our options at that point, but we are
25 not intending to go into -- I guess what I'm trying to say

1 is we are not intending to go into the specifics of what's
2 been revealed to me

3 Now, the CI -- his response maybe amenable and
4 specific, but, you know, we would attempt to keep that very
5 general in materials of drug use

6 THE COURT You know, I'm trying to think it
7 through, because I hadn't had this problem come up before
8 My thinking is if he was using drugs on other occasions
9 while he's under this agreement, that probably maybe could
10 be gone into without getting into this particular incident,
11 but if this is the only incident that we are talking about
12 that he used drugs during the agreement, then I think that
13 would open the door, because you can't have it both ways
14 You know, you can't ask him about it, attack his credibility
15 in that way, as far as the agreement is concerned, and not
16 let the State get into the details of that, which would, of
17 course, be extremely prejudicial to your client for him to
18 do that So, you know, my thinking is if there are other
19 incidences possibly if he used drugs on other occasions
20 while he was under the agreement, maybe that would be --
21 maybe not opening the door to this, but if this is the only
22 occasion that he used it, then it might very well open the
23 door to it to allow them to fully explore it

24 MS JOYNER I did not question him about the
25 entire time that he was working I did talk to him quite a

1 bit that night He did volunteer the information to me that
2 he had done that I talked to him at length about the facts
3 of that I did not talk to him about other drug use I'm
4 not aware of any other drug use And I just disclosed that
5 to put it in because that's the only one that I was
6 specifically aware of

7 MR DELANEY Okay I think the defense is aware
8 of, you know, ramifications of going into that

9 THE COURT Yeah, I think you just have to weigh
10 the value to your -- as opposed to the prejudice that might
11 result from it You know, as I say, I think that other
12 incidences you could -- if there are other incidences when
13 he's using drugs, which are a violation of the agreement,
14 then, you know, I think you could probably get into that
15 without getting into opening the door to this particular
16 one But if this is the only incident he's going to refer
17 to, then I think you probably would open the door, because I
18 think the State has got a right to, once the door is open,
19 to walk through it

20 MR DELANEY I guess my inquiry to the court
21 would be if the door is open, would we then have a Lyle
22 issue with a prior bad act, you know -- but I understand I'm
23 opening that door up, you know We are just going --

24 THE COURT My point is that if you were to ask
25 him "this agreement provides that you are not to use any

1 drugs during the time that you are under the agreement, have
2 you violated that agreement?" Now, if he violated the
3 agreement on this occasion that we are talking about, and he
4 says "yes, I did," then I don't think I could prevent then
5 the State from asking him, you know, "when did you do that
6 and where was it?" You know, in opening the door to it,
7 because, you know, I think that's a classic case of opening
8 the door and allow them to walk into it

9 MR DELANEY Yes

10 THE COURT So I don't think it really gets into a
11 question of prior a bad act, other than opening the door by
12 asking the question that allows them to go into it
13 themselves

14 MR DELANEY All right

15 THE COURT That would be the concern that I have

16 MR DELANEY I understand

17 A couple more Motion to determine the prior
18 record of the defendant that the State would intend to
19 introduce, should he choose to testify and motion to
20 determine prior offenses which the State plans to use for
21 enhancement at any potential sentencing and motion to
22 restrict questioning regarding the nature of the defendant's
23 prior convictions Ms Joyner and I have had conversations
24 about that and I think we are in agreement what would be
25 potential impeachable if Mr Wade testifies

1 THE COURT Do you want to put that on the record
2 then?

3 MS JOYNER Yes, sir, Your Honor

4 Mr Wade has several assault and batteries and
5 simple possession of marijuana we agree we cannot use to
6 impeach him with

7 He was convicted of distribution of marijuana back
8 in I believe it was 1999 We agree that we would be able to
9 ask him whether he was convicted of a felony in 1999

10 He was also convicted in 2000 -- I believe it was
11 2005, of possession of crack He was originally charged
12 with PWID crack cocaine He pled to possession of crack
13 cocaine And on that conviction in 2005, we would ask him
14 whether he has been convicted of a crime that carries more
15 than one year He pled to a misdemeanor

16 THE COURT I think that would be a good way to
17 handle it without getting into the fact that it was a drug
18 charge

19 MR DELANEY Motion to determine the prior record
20 of any of the State's witnesses I have been provided a rap
21 sheet for the CI and I believe we have determined that he
22 has a shoplifting offense from 2006, which would obviously
23 could use, and I think that is correct?

24 MS JOYNER That's the agreement He has two
25 other misdemeanors I don't believe involve dishonesty

1 MR DELANEY When we get to his wife also, we are
2 going to be provided with that NCIC report, but we have been
3 told she does not have a prior record

4 THE COURT Okay

5 MR DELANEY I don't believe we need to go into
6 anything regarding Jackson v Denno I don't think there is
7 any statement

8 MS JOYNER There are no statements

9 MR DELANEY Okay

10 MS JOYNER Well, with the exception -- I don't
11 believe it falls under Jackson v Denno, with the exception
12 of when he was arrested, the acknowledgement of his address,
13 but I don't believe that falls under that

14 THE COURT All right

15 MR DELANEY And we have been given a copy of the
16 State's witness list

17 And our last motion, Your Honor, would be it's a
18 motion to sequester the witnesses for both the State and the
19 defense in this case, with the understanding, obviously,
20 Officer Schettler is the case agent I'm assuming he would
21 be allowed to stay in the courtroom throughout the trial

22 MS JOYNER Yes, sir, Your Honor

23 THE COURT No objection to that?

24 MS JOYNER Okay

25 THE COURT Then the witnesses would be

1 sequestered and couldn't appear until after their testimony
2 in court

3 All right Of course, it also means not
4 discussing their testimony with anyone after they have
5 testified, if they have not testified Okay

6 All right Anything else?

7 MR DELANEY That's it from the defense, Your
8 Honor

9 THE COURT Anything from the State?

10 MS JOYNER Nothing, Your Honor

11 THE COURT Then it looks like to me the -- of
12 course, the strikes in the case would be five and five, and
13 we will go ahead and draw the one alternate and the strikes
14 would be two for the defense and one for the State as to the
15 alternate

16 Counsel, approach just a minute

17 (Whereupon, the lawyers approached the bench for
18 an off-the-record discussion)

19 THE COURT All right The jury is coming at two,
20 so we will be prepared to go at two And we will try to be
21 back in the courtroom around two It will probably be a few
22 minutes after two until they roll call and make sure they
23 are all down there and we will be able to bring them up at
24 that point

25 MR DELANEY Thank you, judge

1 MS JOYNER Thank you, Your Honor

2 THE COURT We will see you then

3 MR DELANEY Judge, we contacted Mr Wade's
4 bondsman Our understanding is that they are not going to
5 provide a letter to the court That's their policy Now,
6 in terms of can he stay out now? We understand that if this
7 is held over, there is a chance he's going to have to stay
8 here tonight without a letter or his bondsman appearing, but
9 for right now --

10 THE COURT I don't see a problem with that We
11 hadn't actually gotten started with the case He did appear
12 when the case was called, so we'll let him stay out
13 Tonight would be a different matter, if we go over tonight

14 MR DELANEY Thank you

15 THE COURT He can stay out until two He just
16 needs to be here at two

17 I guess I need to advise him Mr Wade, your case
18 has been called for trial We will start at two o'clock
19 If you are not here, we will proceed in your absence Your
20 attorney would be here to represent you, but if you are not
21 here, we would go forward with your trial in your absence
22 Do you understand that?

23 THE DEFENDANT Yes

24 THE COURT All right Thank you

25 (Whereupon, proceedings were recessed)

1 (Whereupon, proceedings were reconvened)

2 THE COURT I believe we are ready now

3 MR DELANEY Judge, may I just address an issue
4 very quickly It's an issue that's not related to trial
5 There was some events that occurred where some family
6 members of my client, they were in the courtroom, and one of
7 the members said some inappropriate things to the DEU
8 officer, and I contend -- it was inappropriate He has been
9 asked to leave the courthouse for the day

10 Now, my client's brother was also in here, and I
11 don't think -- I have had discussions with him I don't
12 think he was the one in any way that said anything to
13 Officer Schettler I have had discussions with him and I
14 would ask -- I don't think there would be any problems out
15 of him He's been asked to leave also But if he hasn't
16 left yet, we would ask that he be allowed in, his brother be
17 allowed to stay in the courtroom I don't think Officer
18 Schettler has any problems

19 OFFICER SCHETTLER As long as he behaves

20 THE COURT Well, we will let the brother stay
21 He needs to understand that he can't say anything to anybody
22 inappropriate

23 MR DELANEY I have instructed him of that, Your
24 Honor He may have already left But if he does come back,
25 he just be allowed in

1 THE COURT If you want to let him come in, that's
2 okay Just remind him he can't say anything inappropriate
3 to anybody Just the brother now

4 MR DELANEY Okay All right

5 THE COURT I think we are ready then We will
6 bring the jury up, please, ma'am

7 MS JOYNER Your Honor, for the record His
8 brother Donald Wade My only concern just -- Officer
9 Schettler just advised me the missing tape in this case --
10 the confusion regarding the tape is that a control purchase
11 for crack cocaine was made from Donald Wade the next day,
12 and that was how the tape -- they inadvertently lost made by
13 the west side I don't know this Mr Donald Wade -- and I
14 didn't discuss the specifics of how the tape was lost with
15 Mr Delaney, so that wouldn't have been knowledge that he
16 would have had I don't know that if he was -- if that
17 would in any way impact him coming back into the courtroom
18 I just want to make the court aware

19 THE COURT I'm still -- I'm not sure I understand
20 what your concern is

21 MS JOYNER There would be testimony regarding
22 the lost tape in this case and how the tape came to be lost
23 This transaction was made on the 8th The DEU did a similar
24 transaction on Antwan Wade's brother Donald Wade the next
25 day And so the lost tape explanation relates to -- or the

1 testimony would be that because of the close proximity in
2 time, the same last names, one of the tapes was
3 inadvertently destroyed, and I just wanted to make the court
4 aware that that would be the tape regarding the brother
5 that's coming back into the courtroom So I don't know if
6 he would in any way become a witness in Mr Delaney's mind,
7 so I just wanted to make the court aware before he comes
8 back in

9 THE COURT Do you plan to call him as a witness?

10 MR DELANEY No, judge

11 THE COURT Do you have a copy of the indictment
12 in this case, solicitor, for the court?

13 MS JOYNER Yes

14 (On the record)

15 (Back on the record)

16 THE COURT When the jury comes in, he is not
17 going to be able to sit right there He is going to need to
18 go all the way to the very back until after the jury is
19 drawn, because the jury will fill up all of those seats

20 You need this copy back, solicitor?

21 MS JOYNER No, sir, Your Honor

22 THE COURT I just want to get the information off
23 of it, so we can do the verdict form

24 (Off the record)

25 (Back on the record)

1 THE COURT Solicitor, you are proceeding on
2 distribution charges in this case?

3 MS JOYNER Yes, sir, Your Honor

4 (Off the record)

5 (Back on the record)

6 (Whereupon, the lawyers approached the bench for
7 an off-the-record discussion)

8 (Whereupon, the jury venire panel entered the
9 courtroom)

10 THE COURT Good afternoon, ladies and gentlemen
11 of the jury panel If you would please give me your
12 attention

13 We are about to go into a trial in the matter of
14 the State of South Carolina versus Antwan, spelled,
15 A-N-T-W-A-N, Marcus Wade The State charges Mr Wade with
16 the offense of distribution of crack cocaine To this
17 charge the defendant has pled not guilty and we are entering
18 into the trial of the case

19 Now, the State is represented in this case by
20 assistant solicitor Erin Joyner

21 Ms Joyner, would you please stand and face the
22 jury?

23 Thank you You may be seated

24 Is anyone on the jury panel related by blood or
25 marriage, friends with, or have any other type social,

1 business or professional relationship with Erin Joyner? If
2 so, please stand

3 (No response)

4 THE COURT Is anyone on the jury panel related by
5 blood or marriage, friends with, or have any other type
6 social, business or professional relationship with anyone
7 who works in the 16th Circuit Solicitor's Office? If so,
8 please stand

9 (No response)

10 THE COURT The defendant in this case, Antwan
11 Marcus Wade, is represented by Mr Eric D Delaney and
12 Jonathan Sullivan

13 Counsel, would you please stand, and also ask Mr
14 Wade to stand and face the jury, so they can see who he is

15 Thank you You may be seated

16 Is anyone on the jury panel related by blood or
17 marriage with, friends with, or have any other type social,
18 business or professional relationship with Antwan Marcus
19 Wade? If so, please stand

20 (No response)

21 THE COURT Is anyone on the jury panel related by
22 blood or marriage, friends with, or have any other type
23 social, business or professional relationship with either
24 Eric D Delaney or Jonathan Sullivan? If so, please stand

25 (No response)

1 THE COURT Ladies and gentlemen of the jury
2 panel, I'm going to go through a list of potential witnesses
3 in this case All of these witnesses may not be called, but
4 they may be called What I'm going to do is ask that when I
5 call their names of the potential witnesses, if you are
6 related by blood or marriage, friends with, or have any
7 other type social, business or professional relationship
8 with any of these named persons, when I call their names, I
9 would ask that you please stand

10 Robert David Montgomery

11 Kelly Nicole Ellis

12 Officer Brian Schettler with the drug enforcement
13 unit

14 Officer Mike Ligon with the drug enforcement unit
15 Officer Tina Truesdale, who is also with that
16 unit

17 Officer Josh Welch, spelled W-E-L-C-H, who is also
18 with that unit

19 Officer Rayford Ervin, spelled E-R-V-I-N, who is
20 also with that unit

21 Barbie Traylor, spelled T-R-A-Y-L-O-R, who is with
22 York County sheriff's office

23 Cynthia Mitchum, who is with the York County
24 sheriff's office, who is a chemist with that department

25 (No response)

1 THE COURT Is any member of the jury panel, or a
2 member of your family, or a close friend employed by any
3 local, state or federal law enforcement agency or
4 prosecutor's office either at the present time or in the
5 past? If so, please stand

6 I'm going to begin up front and go back

7 Yes, ma'am, please give us your name and number,
8 ma'am

9 JUROR NUMBER 157 Patricia Mullinax, juror 157

10 My deceased husband was -- worked for the City of
11 York police department for five years He worked from
12 Winthrop University public safety for 15

13 THE COURT Ma'am, is there anything about that
14 relationship that would interfere in any way with your
15 ability to give both the State and the defendant a fair and
16 impartial trial in this case?

17 JUROR NUMBER 157 No, sir

18 THE COURT Thank you, ma'am You may be seated

19 Yes, sir

20 JUROR NUMBER 194 My name is Charles Schmidt,
21 juror 194

22 My son-in-law is employed by the York County
23 police

24 THE COURT All right Your son-in-law

25 JUROR NUMBER 194 Yes, sir, Your Honor

1 THE COURT Have you discussed this case with him,
2 sir?

3 JUROR NUMBER 194 No, I haven't, Your Honor

4 THE COURT Is there anything about that
5 relationship, sir, that would interfere in any way with your
6 ability to give both the State and the defendant a fair and
7 impartial trial in this case?

8 JUROR NUMBER 194 No, Your Honor

9 THE COURT Thank you, sir
10 You may be seated
11 Anyone else?

12 (No response)

13 THE COURT Is any member of the jury panel a
14 member of Mothers Against Drunk Driving, Students Against
15 Drunk Driving, or any other organization that lobbies on
16 behalf of victims rights or for tougher penalties for
17 criminal offenders? If so, please stand

18 (No response)

19 THE COURT Is any member of the jury panel a
20 member of or contribute money to the South Carolina Law
21 Enforcement Officers Association, the South Carolina
22 Troopers Association, the Fraternal Order of Police, or any
23 other law enforcement support organization? If so, please
24 stand

25 Sir, I'll begin with you in the front Give us

1 your name and number, please?

2 JUROR NUMBER 167 Richard Pierce, juror number
3 167

4 THE COURT Yes, sir

5 JUROR NUMBER 167 I'm just a supporter of them

6 THE COURT All right Sir, is there anything
7 about your support of those organizations that would
8 interfere in any way with your ability to give both the
9 State and the defendant a fair and impartial trial in this
10 case?

11 JUROR NUMBER 167 No, sir

12 THE COURT Thank you, sir you may be seated
13 Yes, sir?

14 JUROR NUMBER 17 Michael Bradham, juror 17
15 I donate to the South Carolina State Troopers
16 Association, as well as the New Mexico State Troopers
17 Association

18 THE COURT Sir, is there anything about your
19 support of those organizations that would interfere in any
20 way with your ability to give both sides a fair and
21 impartial trial in this case?

22 JUROR NUMBER 17 No, sir

23 THE COURT Thank you, sir You may be seated
24 Yes, ma'am

25 JUROR NUMBER 74 Maryanne Genus, juror number 74

1 I donate to the South Carolina Troopers
2 Association

3 THE COURT Ma'am, is there anything about your
4 support of that organization that would interfere in any way
5 with your ability to give both sides a fair and impartial
6 trial in this case?

7 JUROR NUMBER 74 No

8 THE COURT Thank you, ma'am You may be seated
9 Anyone else?

10 (No response)

11 THE COURT All right, ladies and gentlemen of the
12 jury panel, I'm going to go through several questions now
13 What I'm going to ask you to do is listen carefully to these
14 questions If you think one, or more, of these questions
15 apply to you, or you need to respond to one, or more, of
16 these questions, I will ask you to wait until I have gone
17 through all of the questions, and then I'll give you an
18 opportunity to come forward and respond to the questions at
19 the appropriate time

20 Now, the responses to some of these questions may
21 be rather personal And for that reason, I'm not going to
22 require you to stand up in open assembly and respond to the
23 questions We do have to get your responses, however,
24 recorded, but we can do that with a little more privacy down
25 front next to the court reporter

1 So, again, I'm going to go through several
2 questions Listen carefully to them If you think one, or
3 more, of them may apply to you, or you need to respond to
4 one, or more, of them, I'll ask you to come forward at the
5 appropriate time

6 Here are the questions

7 Does any member of the jury panel have such a
8 moral religious opposition to illegal drugs as to prevent
9 you from being fair or impartial in this case?

10 Has any member of the jury panel ever had a close
11 friend, or a family member, who had a problem with drugs?

12 Has any member of the jury panel, or a member of
13 your immediate family, ever had a substance abuse problem?

14 Have you, or a member of your immediate family,
15 ever been arrested for a drug offense?

16 Have you, or a member of your immediate family,
17 ever been convicted of a drug related offense?

18 Do you believe that the use of any illegal drug
19 should be legalized?

20 Do you have any beliefs, religious or otherwise --

21 Sir, please be seated I will have you come
22 forward all at and time

23 Do you have any beliefs, religious or otherwise,
24 that would prevent you from rendering judgment against
25 another person?

1 Now, what I'm going to ask you -- I have gone
2 through all the questions If you need to respond to one,
3 or more, of these questions, or one, or more of them, they
4 apply to you, please now come to the center aisle and I'll
5 have you come down front one at a time

6 Come right here please, ma'am

7 (Whereupon, the following were on-the-record bench
8 conferences in the presence of the jury voir dire panel, but
9 out of the hearing of the jury voir dire panel)

10 THE COURT Give us your name and number, please

11 JUROR NUMBER 39 Joyce Collins, number 39

12 THE COURT Yes, ma'am

13 JUROR NUMBER 39 I have two sons that's been on
14 drugs, and they still are I have a son here in jail now

15 THE COURT Let me ask you whether there is
16 anything about your experiences in that regard that would
17 interfere in any way with your ability to give both the
18 State and the defendant a fair and impartial trial in this
19 case?

20 JUROR NUMBER 39 No

21 THE COURT All right Thank you, ma'am You may
22 return to your seat

23 (Juror Number 39 returned to the jury panel)

24 THE COURT Come right here Give us your name
25 and number

1 JUROR NUMBER Stefanie Lewis, 125

2 THE COURT Yes, ma'am

3 JUROR NUMBER 125 My brother has an off and on
4 again

5 THE COURT Drugs?

6 JUROR NUMBER 125 Yes

7 THE COURT Let me ask you whether there is
8 anything about your experiences in regard to your brother
9 that would interfere in any way with your ability to give
10 both the State and the defendant a fair and impartial trial
11 in this case?

12 JUROR NUMBER 125 No

13 THE COURT Thank you, ma'am

14 (Juror Number 125 returned to the jury panel)

15 THE COURT Please give us your name and number
16 again for the record

17 JUROR NUMBER 17 Michael Bradham, juror number
18 17

19 THE COURT Yes, sir

20 JUROR NUMBER 17 My opinion has not changed since
21 yesterday, sir I have spite for drugs or narcotics I
22 have known too many people and I'm tainted

23 THE COURT Let me ask you whether -- I understand
24 that Let me ask you whether you could listen to the
25 testimony and evidence in the case and the law as instructed

1 by the court and reach a decision that would be fair and
2 impartial as to both the State and the defendant in this
3 case?

4 JUROR NUMBER 17 No, sir, I don't believe so

5 THE COURT All right, sir, I'm not going to
6 require you to sit on this case, but just stay with the jury
7 and follow instructions, please, sir

8 JUROR NUMBER 17 Yes, sir

9 (Juror Number 17 returned to the jury panel)

10 THE COURT Come up please, here, sir, and give us
11 your name and number for the record

12 JUROR NUMBER 43 Naurice Cousar

13 THE COURT Yes, sir, Mr Cousar

14 JUROR NUMBER 43 My brother

15 THE COURT Drugs?

16 JUROR NUMBER 43 Yes

17 THE COURT Let me ask you whether there is
18 anything about your experiences in that regard that would
19 interfere in any way with your ability to give both the
20 State and the defendant a fair and impartial trial in this
21 case?

22 JUROR NUMBER 43 No, sir

23 THE COURT Thank you, sir

24 JUROR NUMBER 43 Yes, sir

25 (Juror Number 43 returned to the jury panel)

1 THE COURT Give us your name and number, please,
2 for the record

3 JUROR NUMBER 210 Susan Steele, 210

4 THE COURT Yes, ma'am

5 JUROR NUMBER 210 My husband is in the PTI
6 program here for cocaine

7 THE COURT Let me ask you whether there is
8 anything about your experiences with regard to your husband
9 that would interfere in any way with your ability to give
10 both sides a fair and impartial trial in this case?

11 JUROR NUMBER 210 No, sir

12 THE COURT Thank you, ma'am

13 (Juror Number 210 returned to the jury panel)

14 THE COURT Come right here, please, ma'am
15 Give us your name and number for the record

16 JUROR 53 Sara Dowless, number 53

17 THE COURT Yes, ma'am

18 JUROR NUMBER 53 My husband is a recovering
19 alcoholic, and a very good friend of mine was killed by a
20 drunk driver

21 THE COURT Let me ask you whether there is
22 anything about your feelings in that regard that would
23 interfere in any way with your ability to give both the
24 State and the defendant a fair and impartial trial in this
25 case?

1 JUROR NUMBER 53 I don't think so, no

2 THE COURT Okay Thank you, ma'am

3 (Juror Number 53 returned to the jury panel)

4 THE COURT Here please, sir Give us your name
5 and number for the record

6 JUROR NUMBER 194 Charles Schmidt

7 THE COURT Yes, sir

8 JUROR NUMBER 194 194

9 THE COURT Yes, sir, Mr Schmidt

10 JUROR NUMBER 194 I have known two people in the
11 past that have faced pretty heavy drug charges and I have
12 family alcohol abuse

13 THE COURT Let me ask you whether there is
14 anything about your experiences in that regard or your
15 relationships that would interfere in any way with your
16 ability to give both the State and the defendant a fair and
17 impartial trial in this case?

18 JUROR NUMBER 194 No, sir

19 THE COURT Thank you, sir You may return to
20 your seat

21 JUROR NUMBER 194 Thank you

22 (Juror Number 194 returned to the jury panel)

23 THE COURT Give us your name and number for the
24 record

25 JUROR NUMBER 2 Monique Morrison, two

1 THE COURT Yes, ma'am

2 JUROR NUMBER 2 My husband is incarcerated for
3 drugs

4 THE COURT Let me ask you then, given the nature
5 of the charges in this case, is there anything about that
6 experience that would interfere in any way with your ability
7 to give both the State and the defendant a fair and
8 impartial trial in this case?

9 JUROR NUMBER 2 (Shaking head no)

10 THE COURT You have to speak He's recording
11 what you say

12 JUROR NUMBER 2 No

13 THE COURT All right Thank you, ma'am You may
14 return to your seat

15 (Juror Number 2 returned to the jury panel)

16 THE COURT Come right here, please, sir Give
17 your name and number for the record

18 JUROR NUMBER 148 Michael Miles, Jr , 148

19 THE COURT Yes, sir

20 JUROR NUMBER 148 My uncle is serving time for a
21 crack cocaine case, but it wouldn't affect my judgment on
22 this case

23 THE COURT Do you think that you could --
24 anything about those experiences that would interfere in any
25 way with your ability to give both the State and the

1 defendant a fair and impartial trial in this case?

2 JUROR NUMBER 148 No, it wouldn't have an effect

3 THE COURT Thank you, sir You may return to
4 your seat

5 (Juror Number 148 returned to the jury panel)

6 THE COURT Come right here, please, sir Give us
7 your name and number for the record

8 JUROR NUMBER 167 Richard Pierce, 167

9 THE COURT Yes, sir

10 JUROR NUMBER 167 I have got a nephew who has
11 been convicted several times of drug abuse

12 THE COURT Let me ask you, sir, whether there is
13 anything about your experiences in that regard that would
14 interfere in any way with your ability to give both the
15 State and the defendant a fair and impartial trial in this
16 case?

17 JUROR NUMBER 167 No

18 THE COURT Thank you, sir You may return to
19 your seat

20 (Juror Number 167 returned to the jury panel)

21 THE COURT Right here, sir Give us your name
22 and number for the record

23 JUROR NUMBER 47 Antonio Davis, juror 47

24 THE COURT Yes, sir, Mr Davis

25 JUROR NUMBER 47 I have a family member that's

1 been involved in drugs

2 THE COURT Let me ask you, sir, whether there is
3 anything about your experiences in that regard that would
4 interfere in any way with your ability to give both the
5 State and the defendant a fair and impartial trial in this
6 case?

7 JUROR NUMBER 47 No, sir

8 THE COURT Thank you, sir You may return to
9 your seat

10 (Juror Number 47 returned to the jury panel)

11 THE COURT Give us your name and number, please

12 JUROR NUMBER 159 Timothy Newport, 159

13 THE COURT Yes, sir

14 JUROR NUMBER 159 I was arrested for simple
15 possession of marijuana in '94

16 THE COURT You were?

17 JUROR NUMBER 159 Yes, sir

18 THE COURT And is there anything about your
19 experiences in that regard that would interfere in any way
20 with your ability to give both the State and the defendant a
21 fair and impartial trial in this case?

22 JUROR NUMBER 159 Absolutely not

23 THE COURT Thank you, sir

24 JUROR NUMBER 159 All right

25 (Juror Number 159 returned to the jury panel)

1 THE COURT Come right here Give us your name
2 and number for the record, please

3 JUROR NUMBER 156 Darlan Moss, 156

4 THE COURT Yes, sir

5 THE WITNESS I have dealt with a lot of -- I
6 guess it was crack in helping friends get over let them,
7 come and live in my home, and they have all recovered,
8 fortunately And also I believe that some drugs should be
9 legalized

10 THE COURT Which drugs do you think should be
11 legalized?

12 JUROR NUMBER 156 Marijuana And I haven't come
13 to the conclusion on the rest yet

14 THE COURT Okay Let me ask you this, given the
15 nature of the allegations in this case, is there anything
16 about your beliefs in that regard or any experiences that
17 you might have that would interfere in any way with your
18 ability to give both the State and the defendant a fair and
19 impartial trial in this case?

20 JUROR NUMBER 156 To my knowledge, at this point,
21 no

22 THE COURT Well, you are qualifying it to some
23 extent Why are you qualifying that?

24 JUROR NUMBER 156 I just -- I -- I don't think it
25 would affect it I just have never been in a trial

1 involving something like that

2 THE COURT Let me ask you more specifically
3 then --

4 JUROR NUMBER 156 Yes, sir

5 THE COURT -- whether you could listen to the
6 testimony and evidence in the case and instructions by the
7 court on the law that applies to the issue in this case and
8 render a decision which would be fair and impartial as to
9 both the State and the defendant? Could you do that?

10 JUROR NUMBER 156 Yes, sir, I can be objective on
11 the facts, yes, sir

12 THE COURT You may take your seat

13 JUROR NUMBER 156 Yes, sir

14 (Juror Number 156 returned to the jury panel)

15 (Whereupon, the bench conferences were concluded)

16 THE COURT All right Ladies and gentlemen, just
17 a few more questions

18 Has any member of the jury panel had any prior
19 knowledge about this case from any source before coming here
20 to court today? If so, please stand

21 (No response)

22 THE COURT Has any member of the jury panel
23 formed or expressed an opinion as to the guilt or innocence
24 of the defendant Antwan Marcus Wade? If so, please stand

25 (No response)

1 THE COURT Is any member of the jury panel
2 conscious of any interest, bias or prejudice for or against
3 the defendant Antwan Marcus Wade? If so, please stand

4 (No response)

5 THE COURT Can each member of the jury panel give
6 both the State and the defendant, Antwan Marcus Wade, a fair
7 and impartial trial in this case? If not, please stand

8 (No response)

9 THE COURT Does any member of the jury panel know
10 of any reason whatsoever why he or she should not serve as a
11 juror in this particular case? If so, please stand

12 (No response)

13 THE COURT Any additional questions requested of
14 the jury panel from the State?

15 MS JOYNER No, sir, Your Honor

16 THE COURT From the defense?

17 MR DELANEY None from the defense, Your Honor

18 THE COURT Madam Clerk, please give us a jury
19 We will draw one alternate

20 (Whereupon, the jury panel was impanelled)

21 THE COURT Any questions concerning the selection
22 process, from the State?

23 MS JOYNER Not from the State, Your Honor

24 THE COURT From the defense?

25 MR DELANEY None from the defense, Your Honor

1 THE COURT Ladies and gentlemen of the jury panel
2 who were not selected for this particular case, I'm going to
3 excuse us at this time and ask that you call into your
4 voicemail number tonight anytime after seven o'clock

5 Thank you for your patience, ladies and gentlemen
6 You are free to go for the balance of the day and please
7 call in after seven

8 (Whereupon, the jury venire panel left the
9 courtroom)

10 THE COURT Madam Clerk, will you please swear the
11 jury panel

12 THE CLERK Ladies and gentlemen of the jury,
13 please stand and raise your right hand

14 You shall well and truly try and in true
15 deliverance make between the State of South Carolina and the
16 defendant at the bar, whom you shall have in charge, and a
17 true verdict give according to the evidence and the law, so
18 help you God Please acknowledge by saying I will

19 JURY PANEL (Collectively said I will)

20 THE CLERK Let the record show that all affirmed

21 THE COURT Please be seated, ladies and
22 gentlemen Thank you

23 Ladies and gentlemen of the jury panel, I'm going
24 to give you what I call a preliminary instruction before we
25 get started Let me ask you first, though, how many of you

1 have served on -- including this week, how many of you have
2 served on a jury in General Sessions or criminal court
3 before in Circuit Court? Raise your right hand

4 It looks like most of you have, so maybe I will
5 give you a very brief instruction then, rather than going
6 into a lot of details about the trial, since most of you
7 have already experienced that

8 Let me begin by explaining the role of the
9 alternate Ms Steele, you are the alternate in this case
10 Your role is the same as the first twelve jurors chosen
11 That is to listen carefully to the testimony and evidence in
12 the case, because if for any reason an emergency should
13 develop with regard to one of the first twelve jurors chosen
14 and we had to excuse that juror, you would automatically
15 fill in for the missing juror You could not do that if you
16 hadn't listened carefully to the testimony and evidence and
17 were in a position to help deliberate and reach a verdict in
18 this case

19 Now, I'm going to ask juror number 236, James W
20 Wellons Sir, I'm going to ask you if you will serve as
21 foreperson of the jury And I'll explain the role of the
22 foreperson The foreperson is asked to serve as
23 spokesperson for the jury back to the court So if there is
24 a matter that needs to come to the attention of the court
25 from the jury, we would ask you to write that down on a

1 tablet provided for you back in the jury room You give
2 that to the bailiff The bailiff will bring it to me and
3 I'll probably correspond in like manner, or I will bring you
4 back out in the courtroom and respond, as the case need be

5 We also ask that the foreperson serve as moderator
6 once we reach the deliberative stage of the trial, to
7 maintain some order in those deliberations, to make sure
8 everyone is allowed to participate and be heard

9 And then finally once a unanimous verdict is
10 reached by the jury, to record that verdict on the verdict
11 form, which would be provided to you and explained to you at
12 the appropriate time at the conclusion of the trial

13 The primary role of the foreperson is the same as
14 every other juror and that's to listen carefully to the
15 testimony and evidence, so that you will be in a position to
16 deliberate and help reach a verdict in this case

17 Now, we ask that the alternate keep the same seat
18 where you are, ma'am, through the trial We ask that the
19 foreperson -- you need not change now, but change be made
20 when we take a break, but I would ask the foreperson sit in
21 the first seat on the front row in front of the alternate
22 And we ask those two persons keep the same seat throughout
23 the trial

24 All of the other seats are interchangeable, so it
25 really does not matter where you sit, but we like to keep

1 those two persons in the same seat

2 Now, the first thing that will happen after I have
3 completed this instruction to you is that the attorney for
4 the State, who is an assistant solicitor, will make an
5 opening statement to you And then the attorney for the
6 defendant will have the same opportunity to address you in
7 opening statement These opening statements by the
8 attorneys are not evidence, but you should pay close
9 attention, because they are, in essence, going to identify
10 to you what they perceive or say the issues in the case are

11 After they have made their opening statements to
12 you, then the State will proceed by presenting the testimony
13 and evidence they want you to consider The reason the
14 State goes first is that the State has the burden of proof
15 in this case There is no burden of proof upon the
16 defendant to prove his innocence The burden of proof is
17 upon the State of South Carolina to prove the charge against
18 this defendant by evidence that satisfies you, the jury,
19 beyond a reasonable doubt before you can return a verdict of
20 guilty If the State fails to meet that burden of proof,
21 then your verdict must be not guilty

22 Now, after the assistant solicitor has presented
23 to you the evidence they want you to consider on behalf of
24 the State, then the same opportunity will be afforded to the
25 defense The defendant may, but is not required to, present

1 any testimony or evidence, because the State has the burden
2 of proving the defendant guilty beyond a reasonable doubt
3 The defendant does not have to prove he is innocent He is
4 presumed innocent, and that presumption stays with him
5 throughout the trial and may only be removed if the State
6 meets its burden of proving the guilt of the defendant
7 beyond a reasonable doubt

8 Now, what is evidence in the case? Evidence is
9 the sworn testimony that you will hear from the witness
10 stand to my right, exhibits admitted into the record for
11 your consideration by me, the presiding judge, and any
12 stipulation of fact by counsel Exhibits may take many
13 forms, such as documents, pictures, video tapes, maps,
14 diagrams, and so forth

15 Stipulations are agreements of facts by the
16 attorneys If the attorneys enter into a stipulation of
17 fact, that would be made known to you and you would consider
18 that stipulation of fact, along with all of the other
19 testimony and evidence and give it such weight as you deem
20 appropriate once you begin your deliberations

21 Sworn testimony, exhibits, and stipulations are
22 the only evidence that you may consider in your
23 deliberations of the innocence or guilt of the defendant
24 You may not consider anything you heard from any other
25 source about this case in making your decision, because that

1 is not evidence

2 After you have heard all evidence, then the
3 attorneys for the State and the defendant will once again
4 appear before you and make what we call closing arguments
5 And we call them arguments because the attorneys are allowed
6 at that time to argue their positions, will attempt to
7 persuade you as to their view or position as to the facts

8 When you have heard final arguments from counsel,
9 I will then charge you, which simply means to instruct you
10 as to the law that applies to the issues in this case

11 You will then retire to the jury room to
12 deliberate and reach your verdict

13 Now, as the trial judge I have three functions to
14 perform during the trial I am the presiding officer, and,
15 therefore, see that the trial is run in an orderly manner
16 I decide, based on rules of civil and criminal procedure,
17 whether testimony and exhibits are admissible into evidence
18 for your consideration And at the conclusion of the trial
19 I instruct you as to the law you must apply to the facts in
20 this case in reaching your verdict

21 You, ladies and gentlemen, are also judges in this
22 case You are the judges of the facts In other words, you
23 determine the truth of the facts in this case Under our
24 Constitution I am not permitted as the judge of the law to
25 have an opinion about the facts, so I do not get into

1 whether I believe a witness or not That is not my
2 function I'm not even permitted to express an opinion, if
3 I had one, as to the facts in this case So you, the
4 jurors, determine what is the truth of the facts

5 Now, I do not permit jurors to take notes during
6 the trial, because it is my experience that while writing
7 notes you may miss something very important for you to hear
8 and you may fail to observe a witness when testifying It
9 is important that you pay careful attention to all testimony
10 and introduction of evidence, since you must judge the
11 credibility or believability of the witnesses and the weight
12 to give all evidence introduced in this case in determining
13 the truth of the facts

14 Now, during the trial the attorneys may object to
15 the admissibility of certain testimony or other evidence I
16 will either sustain the objection, which means I agree, and
17 the testimony or evidence may not be made part of the record
18 for your consideration; or, I will overrule the objection,
19 which means as the judge of the law I have determined that
20 it is admissible as part of the record for your
21 consideration The mere fact that I have admitted it does
22 not mean that you must believe it or disbelieve it I have
23 simply determined that it is admissible under our rules, and
24 it is up to you then to believe it or disbelieve it and to
25 assign such weight to it as you determine to be appropriate

1 At the conclusion of the trial when we send you to
2 the jury room, every exhibit that is admitted into evidence
3 will be sent to the jury room for you to examine further and
4 to consider

5 I remind you that one of the most important
6 aspects of your duty as a jury lies essentially in the oath
7 that you have just taken, to well and truly try this case
8 and to determine the truth of the facts in this case That
9 oath, once again, in a very essential way says that you are
10 the sole judges of the facts in this case

11 As jurors in this case, it will be your exclusive
12 duty to determine the facts in this matter through your
13 evaluation of the evidence that was received during the
14 course of this trial, and to give such evidence whatever
15 value, weight, or effect as you deem appropriate, with the
16 goal of reaching the truth in this matter In doing so, you
17 will have fulfilled your obligations as jurors, and, that
18 is, to give both the State and the defendant a fair and
19 impartial trial in this matter

20 Mr Foreman, ladies and gentlemen, whatever your
21 verdict in this case, it must be your unanimous verdict
22 All twelve jurors must agree on the verdict, which the
23 foreperson would be authorized to write on behalf of the
24 jury

25 Mr Foreman, ladies and gentlemen, you are not to

1 discuss this case at any time during the trial until I tell
2 you, and that will not occur until you have received all of
3 the evidence and I have instructed you upon the law Do not
4 discuss the case among yourselves, and you should not
5 discuss it with your family, friends, or anyone else you
6 might see on recess from court And you might say, well,
7 what's wrong with our discussing the case as we go along, or
8 what's wrong with discussing it with family, friends, or
9 someone else finds out I'm on the jury and they want to know
10 something about the case that I'm serving on? The problem
11 with discussing the case is once you begin discussing the
12 case, you start forming opinions And you wouldn't be fair
13 to both sides of this case if you didn't wait until you have
14 heard all the testimony and evidence and I have instructed
15 you upon the law that applies before you start forming
16 opinions Until then you should keep an open mind, wait
17 until you have all the information that you need before you
18 start forming opinions

19 Now, if anyone should deliberately try to discuss
20 the case with you, you should not discuss it with them, but
21 leave and report that attempt to me through the bailiff or
22 the clerk of court and I would deal appropriately with that
23 person No one should try to discuss the case with you If
24 they do, I certainly wish to be made aware of it

25 Now, if there should be any media coverage of this

1 trial, please do not read, listen to, or watch any media
2 account of the trial until after the trial is over with I
3 do not know of any media coverage and there may very well
4 not be any media coverage of the trial But if there should
5 be, please do not read, listen to, or watch any media
6 account of the trial Once the trial is over, and there
7 should be any media coverage, the trial is over and someone
8 wants to save it for you until after the trial, then you are
9 welcome to read, listen to, or watch any media account after
10 the trial is over But in the meantime please do not read,
11 listen to, or watch any media account of this trial It's
12 very important that you get your information solely on the
13 sworn testimony and evidence that comes in through the
14 course of this trial and not from any other source There
15 is no way we can guarantee the accuracy of any other account
16 of this trial And you need to base your decision on what
17 you hear from the sworn testimony and evidence in the case
18 and not from anything else

19 Now, I'm concerned about your comfort and your
20 ability to see and hear the testimony and evidence so you
21 can properly do your job I will try to take a break about
22 every hour and a half If you need a break before the time
23 a break is taken, please raise your right hand and let me
24 know and I will take a break as quickly after that as I can

25 If you cannot see or hear something you need to

1 hear or see during the course of the trial, please do not
2 hesitate to raise your right hand and let me know, and I
3 will make sure that you able to hear or see so you can
4 properly do your job I try to anticipate that, but some of
5 you are much further away from the witness stand perhaps
6 where the attorneys would be standing than I So if you
7 cannot hear or see, please let me know just by raising your
8 right hand

9 If you wish to communicate with the court, other
10 than needing a break or the inability to see and hear,
11 please write the message down on the tablet provided for you
12 back in the jury room and give that to the bailiff The
13 bailiff will bring it to me and again I'll correspond
14 appropriately Thank you for your kind attention, ladies
15 and gentlemen I'll remind you -- I'm not sure where you
16 are going to be in the jury room There is a trial going in
17 the other court I know they will be using a jury room
18 And so -- and we have got a jury still deliberating in the
19 trial that we finished earlier today That jury is still
20 deliberating in jury room here You may be in the library
21 But, at any rate, if you have anything to drink there in the
22 jury room, you are welcome to bring that back into the
23 courtroom with you I'll allow jurors to come in and sip on
24 water, Coke, coffee, whatever, if you have any

25 All right Thank you for your kind attention,

1 ladies and gentlemen We are actually now getting ready to
2 get started with the trial We are to that part of the
3 trial where counsel will make their opening statements to
4 you Please listen attentively now as counsel address you
5 in opening statement

6 MS JOYNER Thank you, Your Honor
7 May it please the court?

8 THE COURT Solicitor

9 MS JOYNER On March 8th of 2007, Robert David
10 Montgomery made a phone call, and he made a phone call to
11 the defendant in this case, Mr Antwan Wade And what
12 Antwan Wade did not know when he took the phone call, what
13 Antwan Wade did not know when he agreed to Mr Montgomery's
14 request to come over and purchase crack cocaine, what Mr
15 Wade did not know when he allowed Mr Montgomery into his
16 home at ADDRESS Road, and what he did not know what he
17 sold Mr Montgomery a rock of crack cocaine was that Robert
18 David Montgomery on that date was working for the York
19 County multi-jurisdictional drug enforcement unit as a
20 confidential informant Confidential informants are private
21 citizens that, for whatever reason, decide to assist law
22 enforcement And in Mr Montgomery's case it was because he
23 had got himself into a little bit of trouble himself and was
24 trying to help the police in hopes that it might help him
25 one day

1 What Robert David Montgomery -- what Antwan Wade
2 also did not know on March 8th of 2007, was that Robert
3 David Montgomery had come to his house, surveilled the whole
4 way by three unmarked police cars And then when he left
5 that house with that crack cocaine in his hand, he was going
6 to drive back to Moss Justice Center, again followed the
7 whole way by undercover unmarked police cars

8 And Mr Wade didn't know on March 8th, after he
9 had sold the crack cocaine, that eight days later he would
10 be arrested in his home at ADDRESS Road, the location
11 of the drug deal, and that he would be charged with the
12 distribution of crack cocaine, and that's the charge that
13 brings him here to court today

14 Now, the defendant stands trial for the
15 distribution of crack cocaine In order for you to find him
16 guilty, you must find that the State has proven to you
17 beyond a reasonable doubt that Antwan Wade did distribute,
18 dispense, or deliver, that's one element, of crack cocaine

19 Distribute, dispense, or deliver, a lot of words
20 for a concept that you understand It is putting crack in
21 someone else's hand, giving crack to another person, selling
22 crack to another person, facilitating a drug deal by which
23 you get crack through another person, even if you are a
24 third person All of those things qualifies distribute,
25 dispense or deliver

1 And in this case you are going to hear the
2 testimony of officers Brian Schettler, Mike Ligon, Tina
3 Truesdale, Josh Welch, all of the York County
4 multi-jurisdictional drug enforcement unit, and they will
5 testify for you about their investigation into Mr Antwan
6 Wade, about meeting with Robert David Montgomery, the
7 confidential informant, and meeting with Kelly Nicole Ellis,
8 who is going to be driving Mr Montgomery that night They
9 will testify for you about how they conduct an investigation
10 like this, how they searched the individuals They searched
11 Mr Montgomery and Ms Ellis They searched the vehicle
12 They wired them up They provided them money and they
13 followed them to and from ADDRESS Road, and ultimately had
14 to place the defendant under arrest eight days later

15 You are going to hear in this case from Cynthia
16 Mitchum, who is a chemical analyst who took the crack
17 cocaine that was sold to Robert David Montgomery, tested it
18 and confirmed that it was, in fact, crack cocaine

19 And you are going to hear in this case from Robert
20 David Montgomery, the man who stood face to face with Antwan
21 Wade and bought crack cocaine from him

22 Once you have heard all of this evidence, I am
23 going to stand back before you and I'm going to ask you to
24 fulfill the oath that you made as jurors, the oath that
25 Judge Alford just spoke with you about, the oath to well and

1 truly try this case and reach the verdict that speaks the
2 truth and find the defendant guilty

3 MR DELANEY May it please the court, Your Honor?

4 THE COURT Counsel

5 MR DELANEY Ladies and gentlemen, during my
6 first semester in law school I was required to take a
7 criminal law class, and the professor in that class, his
8 name was Norman Fell Professor Fell had this saying about
9 jury duty that stuck with me throughout the years regarding
10 the importance of jury duty And what Professor Fell said
11 was other than serving your country in a time of war, there
12 is not a greater service you can provide than answering the
13 call to serve on a jury Your role in this courtroom here
14 today is an extremely important role In fact, there is not
15 a role that is more important than yours - not the defense
16 attorneys, not the solicitors Not even the role of the
17 judge is more important than yours, ladies and gentlemen,
18 because, quite frankly, without you, this process doesn't
19 work And this process we have, this legal system that we
20 have, is the best in world Is it always perfect in? No
21 But when everyone fulfills their roles to the upmost of
22 their capabilities, it's not even close It's the greatest
23 legal system in the world

24 Your job, your duty, as jurors here today, are to
25 be the fact finders in this case It is your job to

1 determine the facts It is not your job to determine what
2 might have happened, what could have happened, or even what
3 may have happened, but rather it is your job to determine
4 the facts

5 You may ask yourself, well, how are we going to
6 determine the facts? It's going to be two main ways you are
7 going to determine the facts in this case

8 First is through testimony Individuals are going
9 to sit in this chair and going to answer questions They
10 are going to testify to y'all And what I want you to do is
11 pay very close attention to this testimony Listen very
12 closely to what is testified to I also want you to pay
13 very close attention to what is not testified to and what
14 cannot be testified to I want you to pay very close
15 attention to the individuals who are sitting in that chair
16 and whether or not they have any bias, whether or not there
17 is a reason they are saying what they are saying up there
18 I want you to examine this testimony, the credibility of
19 individuals who are giving testimony, I want you to pay very
20 close attention to that

21 The other way that you will determine the facts is
22 through evidence, evidence that's either -- and you will
23 hear at the close of the case from Judge Alford, direct
24 evidence versus circumstantial evidence And he will
25 explain the difference to you between the types of evidence

1 I want you to examine very closely that same evidence that's
2 presented to you throughout this trial I also want you to
3 pay very close attention to what evidence is not presented
4 to you throughout this trial

5 Now, I want to briefly go over -- and I don't mean
6 to be here to be repetitive, but Judge Alford talked about
7 some of these things, but they are important, the rules of
8 law, the Constitutional Rights that you will take, meaning
9 the rules of law that you will take that you apply to the
10 facts at the end of this case Judge Alford at the close of
11 this case will instruct you as to the law that you are to
12 use and to apply to the facts as you determine them And at
13 that point you will have everything that you need to render
14 a verdict in this case

15 Presumption of innocence A defendant in any
16 criminal trial is presumed innocent Antwan Wade is
17 presumed innocent He sits there shrouded in a veil of
18 innocence And that veil will stay with him throughout this
19 trial and throughout your deliberations, unless y'all say
20 otherwise

21 A defendant in any criminal trial has a state and
22 Constitutional Right not to testify That will be Antwan
23 Wade's decision If he chooses not to testify in this case,
24 you in no way can use that against him That cannot come
25 into any part of the decision making process in this case

1 He has a right not to testify

2 And you may be asking yourselves why are
3 defendants given these rights? Well, that's because the
4 State -- the State has the burden of proof in this case
5 They must prove beyond a reasonable doubt -- and that's what
6 the burden is in this case, ladies and gentlemen, beyond a
7 reasonable doubt The State must prove beyond a reasonable
8 doubt that Antwan Wade is guilty of distribution of crack
9 cocaine

10 What is reasonable doubt? Reasonable doubt is the
11 kind of doubt that would cause a reasonable person to
12 hesitate to act Reasonable doubt is the kind of doubt
13 where you would be not firmly convinced

14 Ladies and gentlemen, at the close of this case,
15 when you have been instructed as to the law and you are back
16 in the jury deliberation room and you are hesitant, you are
17 hesitant to act, you are not firmly convinced, if that is
18 the case, ladies and gentlemen, you must find this man not
19 guilty

20 Some of y'all may have been involved either as a
21 juror or a plaintiff or a defendant in a civil case The
22 standard of proof in a civil action or a civil trial is
23 much, much different than it is in a criminal trial, in the
24 criminal court In a civil case it is called the mere
25 preponderance of the evidence or what is more likely than

1 not That is the standard, and that is a much lower
2 standard than the standard that we have here today, beyond a
3 reasonable doubt

4 An illustration I want to give to you is that some
5 of y'all may have children, or if you can remember when you
6 were younger attending or going to a fair, or a carnival,
7 and there is this game there that you had this oversized
8 big, looked like a sledge hammer And you had this
9 contraption down at the bottom and it went all the way up to
10 the top And what you did was you took a hammer and you
11 swung that hammer, that big hammer, as hard as you could
12 swing it and you hit that contraption down at the bottom and
13 there would be a ball-shaped object Depending upon how
14 hard you hit that contraption it would go up And the
15 ultimate goal to win the prize would be you would have to
16 hit it hard enough for that object to go all the way to the
17 top, the bells to start sounding, lights flashing, you get
18 some big stuffed animal

19 In a civil case, if you would apply this example
20 in a civil case, that ball, that object would have to go
21 ever so slightly above halfway up It wouldn't need to go
22 all the way to the top Just a little bit over halfway
23 And in a civil case that's all the burden is

24 Now, in this case, ladies and gentlemen, that ball
25 needs to go to the top The bells need to sound Lights

1 need to flash

2 And I contend, ladies and gentlemen, and I'm going
3 to repeat this, I'm going to get a chance to talk with you
4 at the end of this case again, if you are in that jury
5 deliberation room and you are not firmly convinced of that
6 man's guilt, and I contend after being presented the facts
7 in this case, you won't be And if you are hesitant to act,
8 you must find this man not guilty Thank you

9 THE COURT We will take a short break, I think
10 We have been at it for awhile

11 Mr Foreman, ladies and gentlemen of the jury, we
12 will take a short recess at this time You may refresh
13 yourselves during the break Please, of course, do not
14 begin discussing the case We are not ready to do that

15 I'm assuming you are probably going to have to
16 take them to the library, Madam Clerk, I believe So, in
17 any event, let's do that We will take a short break about
18 Ten minutes

19 (The following takes place outside the presence of
20 the jury panel)

21 THE COURT All right Any matter we need to take
22 up at this point from either side?

23 MS JOYNER Not from the State, Your Honor

24 MR DELANEY I don't believe so, Your Honor, no

25 THE COURT Let's take a short break and we will

1 come back

2 (Whereupon, proceedings were recessed)

3 (Whereupon, proceedings were reconvened)

4 THE COURT Yes, sir

5 MR DELANEY Your Honor, there is an issue I was
6 going to address briefly is right before we picked the jury,
7 we had that situation, some people having to leave There
8 was mention of testimony going to be offered in terms of an
9 explanation of what happened to this tape Some things I
10 heard concerned me in terms of this explanation Obviously
11 there is no problem with him testifying that the tape was
12 taped over, but in terms of bringing up my client's brother
13 and that there is a -- just -- you know, there was an
14 alleged distribution the next day, I just find that -- I
15 would say that that's very irrelevant in this case, and, you
16 know, it's more of a guilt by association type of a
17 situation could develop there

18 MS JOYNER Your Honor, I would agree I didn't
19 mean to imply that there would be testimony that it was his
20 brother It was -- the way that the explanation was going
21 to be presented to the jury was that it was a person with
22 the same last name Wade I brought up the brother because
23 he was present in the courtroom It was my understanding,
24 actually, that he was in prison, so I didn't even know that
25 he was out and didn't anticipate him being here I just

1 wanted to make the court aware and Mr Delaney aware that
2 that was the tape in question

3 THE COURT All right So the position of the
4 State would be that your intention is to say that there was
5 another tape, or --

6 MS JOYNER Yes, sir, that -- because -- what the
7 officers believed is the reason that this type was
8 inadvertently lost or destroyed was that there were two
9 distributions made to the person with the same last name in
10 close proximity and that created confusion The tape
11 number -- the tape number identified in this incident report
12 890-W, which is actually the tape that corresponds to the
13 Donald Wade case made the next day And so from there we
14 have -- the officers have surmised that that was part of the
15 confusion which led to this tape being lost

16 THE COURT They would not say it was a brother of
17 the defendant in this case There was simply another case
18 made against another person with the same last name, not the
19 defendant, but a person with the same last name, and that's
20 where they think the confusion occurred, but not that it was
21 any relative of him or him

22 MR DELANEY Okay

23 THE COURT Or any relatives of his

24 MR DELANEY Sounds good Thank you

25 THE COURT That will take care of it

1 Anything else before we bring the jury back?

2 MS JOYNER Not from the State, Your Honor

3 MR DELANEY Nothing from the defense

4 THE COURT If you could bring the jury from the
5 library

6 (The following takes place in the presence of the
7 jury panel)

8 THE COURT All right, counsel, ready to proceed

9 MS JOYNER We are, Your Honor

10 THE COURT Please call your first witness

11 MS JOYNER Your Honor, the State calls Officer
12 Brian Schettler

13 OFFICER BRIAN SCHETTTLER, having been first duly
14 sworn, testified as follows

15 (Drugs marked as State's Exhibit No 1 for
16 identification)

17 DIRECT EXAMINATION BY MS JOYNER

18 Q Officer Schettler, can you please state your full name
19 for the record?

20 A Brian Edward Schettler

21 Q What is your occupation?

22 A I am employed by York County sheriff's office

23 Q And in what capacity are you employed by the sheriff's
24 office?

25 A As a deputy, currently attached to the York County

1 multi-jurisdictional drug task force

2 Q Okay The multi-jurisdictional task force, does it go
3 by any sort of abbreviation for short?

4 A Yes, ma'am, the DEU

5 Q How long have you been with the DEU?

6 A A little bit over a year and a half now

7 Q If you could, can you please explain to the jury what
8 the DEU is?

9 A Sure It's all the agencies in York County The
10 police agencies in York County have gotten together They
11 placed other officers together with us We all work out of
12 the different offices There is an eastside office and a
13 west side office And through that the cooperation gives
14 everyone the same jurisdiction in the entire county, and
15 together we go ahead and investigate drugs, gambling, vice,
16 prostitution

17 Q And the eastside office is located where?

18 A In Rock Hill

19 Q In the west side office is located?

20 A Here in York

21 Q And where is your actual physical office?

22 A I work here in York out of the Moss Justice Center

23 Q Downstairs?

24 A Yes, ma'am

25 Q What types of narcotics investigations does the DEU

1 conduct?

2 A We deal with everything from simple possession of
3 marijuana, distributions of crack, cocaine, trafficking of
4 drugs Pretty much anything that encompasses drugs we deal
5 with

6 Q And in what ways are you able to investigate the people
7 who are committing these crimes?

8 Well, let me ask you this question Are there
9 different ways that you go about investigating these?

10 A There are We have anything from concerned citizen
11 calls of a complaint, which we start an investigation and
12 investigate ourselves

13 We have people that will come and willing to assist us
14 in that, by either giving us information, going out and
15 making buys for us

16 We even work in the capacity of undercover Buy drugs
17 ourselves Pretty much

18 Q Okay Now, one of those things was you said that you
19 have people come in and go out and make buys?

20 A Yes, ma'am

21 Q Is that called a controlled buy?

22 A That would be a controlled buy, yes

23 Q What types of people come in to make controlled buys
24 for the DEU?

25 A There is a couple different types Someone that is --

1 that we pay If they are willing to come in and assist us,
2 we will pay them for their time and their effort

3 There might be someone that has charges that are
4 pending that come and try and assist us to help themselves
5 out of trouble

6 Investigations that we do on our own and start on our
7 own

8 Q Now, the individuals that come in and work with the
9 DEU, do you have a name for them?

10 A Yes, they are what is considered a confidential
11 informant or a CI

12 Q When a person gets in trouble and they come in and work
13 for the DEU, what type of arrangement is made with that
14 person in regards to their work?

15 A The State of South Carolina prohibits us from making
16 them any promises or guarantees We work directly with the
17 solicitor's office We can make recommendations, but that's
18 about it

19 Q How many -- how long have you been with the DEU?

20 A A little over a year and a half

21 Q And prior to that, how long were you with the sheriff's
22 office?

23 A I have been employed with the sheriff's office since
24 May of '04

25 Q And working with the DEU, how many drug transaction

1 investigations would you say that you have been involved
2 with?

3 A If I had to guess, I would estimate over a hundred

4 Q And how many -- could you estimate how many of those
5 involved crack cocaine?

6 A I would say the majority of them that we deal with is
7 crack cocaine, so I would say on the lower end a hundred
8 crack cocaine investigations alone

9 Q And in your training and experience -- you say over a
10 hundred investigations?

11 A Yes

12 Q What ways are drug sales typically conducted?

13 A A couple different ways that they are conducted We
14 have a street level Somebody is standing on the street
15 corner selling drugs from the street corner

16 You have got someone where they are selling out of
17 their house And by that way we can either go undercover,
18 send an undercover office in to purchase drugs We can send
19 a confidential informant in to purchase drugs

20 Sometimes people sell them out of the their cars Meet
21 with them in the parking lot they sell cars

22 Got different levels of drug dealers that you are going
23 to deal with all the way from the street level to the people
24 that are actually trafficking drugs in and out of the
25 county

1 Q When you use a confidential informant to go into a
2 house and make a drug deal, do you have certain standard
3 procedures that you follow in these cases to ensure the
4 integrity of your investigation?

5 A Yes, we do We meet with the confidential informant
6 We have them sign up an agreement Once they go ahead and
7 sign an agreement, we arrange for them to do a buy for us
8 They will come in that day They will be searched When
9 I'm talking searched, searched from head to toe Pockets
10 turned inside out Shoes and socks taken off to ensure that
11 they don't have any illegal drugs on themselves or any
12 contraband of any type Their vehicles are searched front
13 to back, including the trunk, passenger compartment, outside
14 of the vehicle

15 At that point, once we are satisfied that there is no
16 contraband, no drugs, nothing that is going to affect the
17 integrity, we will go ahead and wire up the CI And by that
18 I mean we will put a listening device on them And that's
19 for their protection so we can monitor their protection and
20 monitor the drug transaction that's taking place We will
21 go ahead and follow them to and from the location, making
22 sure that we can keep contact with them so that they don't
23 go out of our sight, other than, of course, when they go in
24 the house

25 Q And once a confidential informant has gone into a house

1 and made a drug purchase, what steps do you take then after
2 the transaction to ensure the integrity of the
3 investigation?

4 A Once they come out of the house, we will go ahead and
5 follow them back to a predetermined location Once they
6 come back to that predetermined location, we recover the
7 drugs from them that they would purchase with governmental
8 funds that we have provided them

9 Once we go ahead and recover the drugs, they will be
10 searched again to ensure that they don't have anything else
11 on them The vehicle would be searched again We will take
12 a written statement from them

13 Q If at any point during one of these types of
14 investigations you locate a contraband on a confidential
15 informant, or in their vehicle, what would happen?

16 A For example, say we find drugs on themselves At that
17 point we will go ahead and recover the drugs from them We
18 would place them under arrest for that drug charge that they
19 found All deals would be off As far as them coming in
20 and working with us anymore, there would be no more of that
21 Then they would have to face what charges, you know, they
22 came in for and the current charges that we found from that
23 day

24 Q Would you carry forward and continue the investigation
25 with them of the other suspect?

1 A No, if they are -- dealings with them would be done at
2 that point They are compromised

3 Q Were you working with the drug unit on March 8th of
4 last year?

5 A Yes, I was

6 Q On that date did you become involved in an
7 investigation of Antwan Wade?

8 A Yes, I did

9 Q Please tell the jury how you became involved in that
10 investigation

11 A I had a confidential informant, Robert Montgomery, who
12 came in and met with me When my informants come in and
13 meet with me, I sit down and have an interview with them and
14 discuss what their -- who they know, what they know, what
15 they can possibly do Through that interview he had stated
16 that he could buy crack cocaine from Antwan Wade

17 Q On March 8th, when he came in to meet with you were
18 there other officers involved in the investigation?

19 A Yes, there were

20 Q Did Mr Montgomery come in alone?

21 A No, he came in with his wife, Kelly Nicole Ellis

22 Q Okay I'll talk with you a minute about Robert David
23 Montgomery and Kelly Nicole Ellis

24 A Yes, ma'am

25 Q What type -- you may have already said this What type

1 of confidential informant was Mr Montgomery?

2 A Mr Montgomery was a confidential informant He had
3 gotten in trouble by us He was found to be in possession
4 of some drugs, as long as with Kelly as well She had got
5 herself in a little bit of trouble as well

6 Q Was Mr Montgomery charged in that incident?

7 A Yes, he was

8 Q Was that warrant served upon him?

9 A No, it was not

10 Q Was Kelly Nicole Ellis served with a warrant in her
11 case?

12 A Yes, she was issued a ticket for possession of
13 marijuana

14 Q Now, when they came in -- and what is the reason,
15 Officer Schettler, that they came in together?

16 A One of the main reasons was is Robert himself didn't
17 have a driver's license and Kelly had a driver's license
18 Robert needed someone to be able to drive him around
19 Since -- like I stated, Kelly had some trouble as well She
20 was willing to come in and help him out of his trouble, as
21 well as her own

22 Q When they came to the police department, did they come
23 here to Moss Justice Center?

24 A On the 8th?

25 Q Yes

1 A Yes, ma'am

2 Q Okay And what happened when they got here?

3 A Once they got here, they were met by Officer Mike Ligon
4 and Officer Mike Clark, who brought them down into our
5 office, at which point Officer Mike Ligon searched Robert
6 Officer Tina Truesdale searched Kelly And once they were
7 searched, Officer Josh Welch, with the presence of Officer
8 Ligon, searched the vehicle

9 Q Now, who searched the vehicle, I'm sorry?

10 A I believe it was Officer Welch and officer -- with the
11 presence of Officer Ligon

12 Q Was there any contraband located on either person or in
13 the vehicle?

14 A No, there was no contraband located in the vehicle or
15 on either Robert or Kelly

16 Q And after they were searched and no contraband was
17 located, what was then done?

18 A Once that was taken care of, Robert was then wired up
19 He was placed with an electronic listening device on him
20 He was provided governmental funds to go purchase the drugs
21 in question

22 At that point we went ahead and placed a phone call to
23 Mr Wade, where Mr Wade said that he was --

24 Q Well, don't say what anybody said, but based on that
25 phone call, what did you do?

1 A Based on that phone call, we went ahead and put Kelly
2 and Robert in their vehicle. Myself, along with two other
3 unmarked police cars, followed them up to ADDRESS Road and
4 observed Robert and Kelly pull into the driveway.

5 Q Okay. If you could describe ADDRESS Road, that area
6 to the jury, so they could just get it in their mind?

7 A Sure. If you come up through Sharon, you come up and
8 you come through the stop sign there in Sharon. Make a left
9 on 49. Take 49 down and you are going to make a right onto
10 Wilson Chappel and left onto ADDRESS. Mr. Wade's house is
11 the yellow one. There is not many houses on that road, so
12 it kind of sticks out.

13 Q Okay. Would it be fair to call it a rural area?

14 A It's a very rural area. There is not -- like I said,
15 there is not many houses in the area.

16 Q Now, you just testified that there were three unmarked
17 vehicles?

18 A Yes, there were.

19 Q Who -- do you recall who was in which vehicle?

20 A I do. Officer Ligon and Officer Clark were in one
21 vehicle. Officer Ervin and Officer Truesdale were in
22 another, and myself and Officer Welch were in a vehicle.

23 Q Okay. And where was -- specifically where was your
24 vehicle in relation to -- what was the defendant's address?

25 A ADDRESS Road.

1 Q Okay In relation to ADDRESS

2 A There is a dirt road that wraps around back behind Mr
3 Wade's house Myself and Officer Welch were on that dirt
4 road

5 Officer Ligon and Officer Clark were almost -- they
6 were in a driveway in the relative close proximity where
7 they could see Mr Wade's driveway

8 Officer Truesdale and Ervin were a little bit down from
9 them

10 Q You testified a moment ago about electronic monitor
11 or --

12 A Yes

13 Q -- wire?

14 A Yes, ma'am

15 Q From your location were you able to clearly hear what
16 was going on --

17 A I wasn't

18 Q -- on the wire?

19 A Our wires work off of radio transmission Everybody
20 knows that you have got an FM radio in your car Well, most
21 people do anymore Got some satellite radios, but the FM
22 radio, like you are going down the road and you lose your
23 radio channel comes in and out The same thing happens when
24 you are using a wire It's the same kind of concept So
25 from where our location was, we were kind of down behind a

1 house and trees and stuff in our way We couldn't exactly
2 copy the radio transmission It kept breaking in and out

3 Q Were there any officers in a better location that were
4 able to better monitor the wire?

5 A Due to the close proximity of Officer Ligon and Officer
6 Clark, they were able to monitor and hear it clearly

7 Q And were they conveying that information to you and the
8 other officers?

9 A Yeah As I stated, we -- we couldn't really monitor
10 what was going on with the transaction at that point, so
11 through the use of cell phones and our in-car radios we
12 could transmit it back and forth to the other officers that
13 couldn't hear what was going on, what was actually taking
14 place So I had to relay -- rely on my information from
15 Officer Ligon, who was in close proximity and heard
16 everything

17 Q And at some point after Mr Montgomery's vehicle pulled
18 into the driveway at ADDRESS Road, did you receive
19 information from Officer Ligon that a transaction -- that he
20 believes a transaction had occurred?

21 A The deal took awhile It took a little bit longer than
22 it normally does And we had talked back and forth about
23 why the deal was taking so long And then at one point Mike
24 finally said -- Officer Ligon finally said the transaction
25 had taken place and that they were pulling out of the

1 driveway

2 Q And what did you understand that to mean for you?

3 A That Robert had purchased crack from Antwan

4 Q But what did you do, based on that information?

5 A Based on that information, we got in the position where
6 we could see Robert come down ADDRESS Road, which we picked
7 him up And myself and Officer Welch were in one vehicle
8 Officer Truesdale and Officer Ervin were in another vehicle
9 One in front of the car and one behind the car and we
10 escorted them back to the predetermined location

11 Q At any point, other than the point at which you were
12 behind -- you were on the dirt road behind the residence, at
13 any point did you lose visual surveillance of the vehicle
14 that the confidential informant was in?

15 A Other than when I was behind the house, no, ma'am

16 Q The ride there from Moss Justice to ADDRESS Road, what
17 was the -- well, was that vehicle continuously under
18 surveillance then?

19 A Yes, it was There was an unmarked vehicle in front of
20 theirs and an unmarked vehicle behind theirs

21 Q Once you arrived back at Moss Justice Center, what
22 happened then?

23 A Once we arrived back at the Moss Justice Center, I
24 recovered the crack cocaine from Robert He placed it in my
25 hand I took it from him We took him back downstairs

1 The vehicle was again searched and Robert again was searched
2 and Kelly was again searched

3 Q I'm showing you what has been marked for exhibit
4 purposes as State's Exhibit 1 Do you recognize that
5 exhibit?

6 A Yes, this is the evidence bag in which I placed the
7 crack cocaine that I recovered from Robert

8 Q On March 8th?

9 A On March 8th, yes, ma'am

10 Q And how were you able to identify that as the crack
11 cocaine that you recovered from the confidential informant?

12 A On the front of the evidence bag I filled out here with
13 my name, my badge number and my call number On the back of
14 the envelope here I seal it, put my initials and the date

15 Q Now, is that -- once -- well, take us through step by
16 step

17 Where -- where were you when you recovered the crack
18 cocaine from the confidential informant?

19 A Back here at the Moss Justice Center

20 Q And where did you put that crack cocaine once you
21 recovered it from the informant?

22 A When I brought it downstairs, I weighed it up and I
23 placed it in this little plastic evidence bag

24 Q At some point did you drop that into an evidence
25 locker?

1 A Yes, once I sealed it up, filled out the proper -- the
2 appropriate paperwork, we have an evidence drop box that's
3 locked It's only accessed through the evidence people
4 They are the only ones that can get into it I just dropped
5 it into that secure location and didn't see it again until I
6 picked it up today

7 Q Okay Is it in the same condition that it was when you
8 dropped it?

9 A No, it's been -- it's been opened here at the bottom
10 and then it's in a different bag

11 Q Okay What's your understanding of why it's in a
12 different bag?

13 A It went to the chemist The chemist has to test it
14 And once she tests it, she has to open the bag obviously to
15 get the drugs out And then she puts it in another outside
16 plastic bag and she seals and dates it as well

17 Q From the time that you recovered the crack cocaine from
18 the confidential informant to the time that you dropped it
19 into the evidence locker, did it remain in your sole care,
20 custody and control?

21 A That is correct, it stayed with me until I placed it
22 myself into the evidence drop

23 Q Do you recall what time that you recovered the crack
24 cocaine?

25 A Recovery of the crack was at 9 50 p m

1 Q And what time did you drop that into the evidence
2 locker?

3 A I dropped it into the evidence locker at 10 30 p m

4 Q Okay Officer Schettler, the jury has heard a lot of
5 testimony about the audio wire in this case Typically in
6 this type of investigation would a tape be produced from
7 those audio -- the audio wire?

8 A Yes, typically once we place a listening device on
9 there, we try and recover as much of the conversation as we
10 can place it onto an audio cassette

11 Q Was that done in this case?

12 A It was

13 Q Okay What has happened -- what happened to that tape
14 in this case?

15 A The tape is no longer present The best explanation
16 for that is is we had two investigations going on, one day,
17 and the following day right after this transaction we had
18 another drug purchase They both had the same last name of
19 Wade We have one of the tapes for the Wade individuals,
20 one of the tapes for the other Wade individual Antwan is
21 missing I would love to have that tape, but unfortunately
22 something has happened to it We deal with over a hundred
23 and some tapes in our office Sometimes human error happens
24 and things get misplaced

25 Q The location of the transaction in this case,

1 ADDRESS Road --

2 A Yes

3 Q -- is that within York County?

4 A Yes, that is within York County

5 Q You testified a little bit ago about Officer Clark
6 being in the vehicle with Officer Ligon?

7 A Yes, ma'am

8 Q Was it officer Michael Clark?

9 A Yes, it is

10 Q And is officer -- where is Officer Clark?

11 A Officer Clark is currently in Baghdad, Iraq He's
12 overseas right now

13 Q Do you recall any part -- specifically part of the
14 investigation that was conducted by Officer Clark?

15 A Nothing per say He was -- all of us work together,
16 but he actually didn't have hands on in this case

17 MS JOYNER Beg the court's indulgence just one
18 moment

19 (Off the record)

20 (Back on the record)

21 BY MS JOYNER

22 Q Officer Schettler, I'm showing you a surveillance
23 report, just to refresh your recollection on this case

24 Does that report indicate anything that Officer Clark did in
25 this investigation?

1 A Yes, it does

2 Q And what is that?

3 A At 8 31 -- at approximately 8 31 the confidential
4 informant's vehicle was searched by Officer Clark

5 Q Is that before the transaction or after?

6 A That's before the transaction

7 Q Okay Just to ask you again, had -- was that done in
8 the presence of any other officer?

9 A Yes, I believe it was done in the presence of Officer
10 Ligon or Officer Welch I know both of them were out there
11 I'm not sure exactly which one

12 Q And had Officer Clark uncovered any contraband in that
13 vehicle, what would have happened?

14 A Officer Clark would have recovered the contraband from
15 the vehicle, brought it downstairs, at which time we
16 discussed what would have happened

17 Q Thank you very much, Officer Schettler Please answer
18 any questions that Mr Delaney has

19 MR DELANEY Court's indulgence just one minute?

20 THE COURT Yes

21 MR DELANEY I'm just going to grab the podium

22 CROSS EXAMINATION BY MR DELANEY

23 Q Officer Schettler, you were the case agent in this
24 investigation, correct?

25 A That is correct

1 Q And as the case agent, you prepared this General
2 Sessions case file summary, is that correct?

3 A Yes, I did

4 Q And I can -- do you happen to have a copy of that?

5 A I do not

6 Q And I'm going to --

7 MR DELANEY May I approach, Your Honor?

8 THE COURT Yes, sir

9 BY MR DELANEY

10 Q Officer Schettler, I have included -- there is some
11 other copies of other incident reports that are prepared --

12 A Okay

13 Q -- in this case

14 And you testified that you were the officer that
15 prepared the case file summary, correct?

16 A Yes, sir

17 Q Okay And as the case agent, even if you do not
18 prepare a particular report, as the case agent you oversee
19 or you are at least familiar with the other reports that's
20 been prepared in this case, is that correct?

21 A What are you referring to?

22 Q I guess the other incident reports that would have been
23 prepared by other DEU officers --

24 A Yeah, the incident report --

25 Q -- as case agent? You would be overseeing that,

1 correct?

2 A Correct

3 Q And I just want to take a couple of minutes and go
4 through with you just to kind of confirm and to let me know
5 who prepared these particular reports, okay?

6 A Uh-huh

7 Q And if I could direct your attention to the -- I
8 believe it's the next one after the General Sessions case
9 file It's the York County sheriff's office incident
10 report, dated March the 8th of 2007 Do you have that
11 report?

12 A Report number 7373?

13 Q Yes, sir

14 A Okay

15 Q This incident report appears to have been prepared or
16 written by Officer Truesdale, is that correct?

17 A That's correct

18 Q Okay And it looks like down at the bottom, the
19 approving officer on this report was Commander Marvin Brown,
20 right?

21 A That's correct

22 Q Okay And Commander Brown is the head of the York
23 County multi-jurisdictional drug enforcement unit, correct?

24 A Correct

25 Q Okay Now, I believe the next report that we have is

1 the York County sheriff's office supplemental incident
2 report, 7373?

3 A Right

4 Q This report was prepared by yourself, is that correct?

5 A That's correct

6 Q And it appears that Officer Lovelace, she was the --

7 A Lieutenant Lovelace

8 Q Lieutenant Lovelace was the approving officer, is that
9 correct?

10 A That's correct

11 Q Now, I think you should have it in your stuff

12 The arrest warrant in this case -- and in your -- as

13 your role as the case agent, you were the officer who swore
14 out warrant it looks like J-180474, is that correct?

15 A That's correct

16 Q Okay And you appeared in front of, I believe, a
17 magistrate judge on March the 16th, 2007, to take this
18 warrant out, is that correct?

19 A That's correct

20 Q Okay Now, one other document I want to ask you about
21 is this surveillance report It looks like it's marked
22 confidential This was prepared by Officer Ligon?

23 A Officer Ligon, yes

24 Q Okay And, again, as the case agent, even if you are
25 not the officer who puts their name or prepares a particular

1 report, you are knowledgeable about all these reports, is
2 that correct?

3 A That's correct

4 Q Okay Now, Mr Schettler, I just want to ask you a few
5 questions about writing these reports and preparing,
6 writing, assisting and preparing an incident report as the
7 General Sessions case file summary, or the York County
8 sheriff's office incident report, or a supplemental report
9 That is all a very important part of an investigation, would
10 you agree?

11 A I would

12 Q Okay And an officer who is preparing an incident
13 report, they are going to include anything in these reports
14 that they feel is important to the investigation, correct?

15 A That's correct

16 Q Okay In addition, it is extremely important to be as
17 accurate regarding details in these reports, correct?

18 A I believe it's important to be truthful and to put what
19 happened in there, yes, sir

20 Q Now, I guess my question more specifically in terms of
21 you want to make sure you get the details right in these
22 reports, correct?

23 A The facts correct, yes

24 Q Officers -- and you are not trained -- in drug
25 enforcement officers, any law enforcement, you are not

1 trained to write these reports in a hurry or in a haste, is
2 that correct?

3 A I -- you are asking me if we rushed through our
4 documents, I guess the answer would be no

5 Q You are going to take your time and make sure you get
6 it right, correct?

7 A Correct

8 Q Okay And that is important -- and that is because the
9 importance that's placed on these reports, correct?

10 A That the facts are correct, yes

11 Q And that is -- and that is because you want to make
12 sure that y'all get it right, correct?

13 A Correct

14 Q And that's going to be beneficial to the officers in
15 terms of testifying here at trial to an alleged event that
16 occurred many months prior, correct?

17 A Correct

18 Q Okay And it also assists the State or the solicitor
19 on a case to help them evaluate their case in that regard,
20 is that correct?

21 A I don't know how the solicitor prepares I know that
22 we turn these in and they go off of them

23 Q Okay Therefore, you would agree it's extremely
24 important to be as specific and accurate as possible when
25 preparing an incident report, correct?

1 A I stated, yes, it's important to make sure that the
2 facts and truth is in there

3 Q Okay Now, per the General Sessions case file summary
4 that you prepared, the criminal informant in this case comes
5 to you or officers of the DEU and indicates he could buy
6 some crack, correct?

7 A The confidential informant

8 Q Yes

9 So confidential informant comes in, and that's correct?

10 A Yes, confidential informant

11 Q Okay Now, this CI or confidential informant is not
12 coming in off the street in this case out of the kindness of
13 his heart, or trying to rid this community of drugs, or
14 anything of that nature, is that correct?

15 A In this case, he had some previous dealings that he was
16 looking for assistance in

17 Q He has agreed to go to work for the drug enforcement
18 unit because of some trouble he's gotten into, is that
19 right?

20 A That's correct

21 Q More specifically, he was arrested on a felony drug
22 charge, correct?

23 A A warrant was taken out for him for possession with the
24 intent to distribute marijuana, that's correct

25 Q That charge was possession with intent to distribute

1 marijuana, correct?

2 A Correct

3 Q He was arrested on this charge But as you have
4 testified to, his arrest warrant has been unserved, right?

5 A He was not arrested on this charge, that is correct

6 Q Okay And that is because he is now working for the
7 drug enforcement unit, correct?

8 A That's correct

9 Q Okay And when an individual goes to work for the drug
10 enforcement unit, y'all have him or her sign a particular
11 contract or agreement, is that correct?

12 A We have a confidential informant agreement that they
13 must sign, yes

14 Q And does this here look like that agreement?

15 A Yes, that's it

16 Q Okay And in this case Robert Montgomery signed this
17 agreement, correct?

18 A Yes, he did

19 Q And essentially Robert Montgomery, the CI in this case,
20 he signed a contract with y'all stating that while working
21 as an informant He would be -- he would abide by certain
22 guidelines and rules, correct?

23 A While he was working with us, yes

24 Q Okay Obviously one of the most important parts of
25 this contract is that a criminal confidential informant is

1 in no way to sell or use drugs while working for the drug
2 enforcement unit Correct?

3 A That's correct While they are working with us

4 Q And if yourself or another drug enforcement unit
5 officer would find out about an informant using or selling
6 drugs, that would destroy their reliability and their
7 credibility in the eyes of the drug enforcement unit,
8 correct?

9 A It would be a violation of our agreement We would not
10 use them anymore

11 Q I guess my question more specifically is to you, if you
12 find out an informant is using or selling drugs, would that
13 then destroy their credibility and reliability to you?

14 A I guess I'm having trouble with the question,
15 because --

16 Q I can repeat it

17 A Let me explain I mean --

18 Q I'll repeat the question

19 A Okay

20 Q I'll try to clean it up

21 In here, this confidential informant agreement, part
22 one, and you see here, could you read -- I guess -- I guess
23 it -- it states here "I understand that I am forbidden to
24 possess, sell or deliver any controlled substance to anyone,
25 except at the direction of an agent or supervisor for the

1 York County multi-jurisdictional drug enforcement unit "

2 If you find out an informant is using or selling drugs,
3 to you, would that affect their reliability and credibility,
4 in your eyes?

5 A If they are in possession or delivering without my --
6 like it says --

7 Q If they are using drugs while they were working for
8 you

9 A While they are working with me, they are not allowed to
10 use drugs

11 Q In they are -- if you find out an informant is using
12 drugs, will that affect how you view their reliability and
13 credibility?

14 A It will terminate our agreement with him

15 Q I understand that

16 What I'm asking you, to you, will that affect the way
17 that you view their reliability and credibility?

18 A The people we deal with, Mr Delaney, aren't the most
19 clean-cut people

20 Q. Okay So --

21 A In order for us to get somebody with information,
22 obviously they have committed, used, sold drugs in the past,
23 so, therefore, their knowledge of drugs is going to make
24 them credible to us So that's why I said, I don't
25 understand your question We have knowledge that they have,

1 when we arrested them, either used, bought, sold, had
2 something to do with drugs, and that's what information they
3 are providing us with Yeah, I take that as credible
4 information

5 Q So if you find out an informant is using drugs, selling
6 drugs, that's not going to affect how you view their
7 reliability, credibility?

8 A In what sense?

9 Like I said, I'm having trouble understanding
10 They're credible to us because they obviously have
11 first-hand knowledge of drugs Whether they have used
12 drugs, whether they were bought drugs, that -- their
13 information they are giving us is because they are tied up
14 in the drug trade somehow So that information they are
15 providing us is credible So, yes, at some point in the one
16 time or another they have either used, sold, or distributed
17 drugs, which makes them credible to us

18 Q You have testified specifically if a criminal informant
19 is found in possession of drugs, you are going to arrest
20 them right there and they are going terminated?

21 A That's correct

22 Q There is going to be put against them, all deals are
23 off, is that correct?

24 A Yes

25 Q Would you agree to this then If a criminal informant

1 is selling or using drugs while working for y'all as an
2 informant, that can contaminate, seriously contaminate, any
3 investigation or buy that they are involved in, correct?

4 A That's correct If we find out that they are doing
5 something on the outside that's not under our direction,
6 then all deals are off We no longer will work them any
7 more

8 Q And that is because when you find that out and because,
9 as you said, this will contaminate an investigation, that is
10 because their reliability and their credibility in the eyes
11 of the drug enforcement unit is destroyed, correct?

12 A I don't know if it's so much their credibility as our
13 ability not to control or have them come in or out and be
14 able to put them in a situation where we can go ahead and
15 get what we are asking for

16 Q Okay Now, you have testified already that before an
17 informant goes out and makes a buy, there is protocol or
18 procedure that are followed by DEU officers, correct?

19 A That's correct

20 Q And, in particular, in this case it looks like Officer
21 Ligon searched the criminal informant, right?

22 A That's correct

23 Q Officer Clark searched the vehicle the criminal
24 informant was going to be riding in, right?

25 A Confidential informant, yes

1 Q Yes

2 Officer Ligon it looks like then placed an electronic
3 listening device on the CI so the officers could maintain
4 control of the criminal informant and monitor the drug
5 transaction, is that correct?

6 A That's correct

7 Q In addition, it looks like Officer Ligon issued \$40 in
8 governmental funds to the criminal informant to purchase
9 crack cocaine, right?

10 A Officer Ligon issued \$40 to the confidential informant,
11 yes

12 Q And this governmental funds, this means that the money
13 was marked so that it could be identified, correct?

14 A It was recorded

15 Q When you say recorded, there is some type of a marking?

16 A There is a procedure that we go through to monitor the
17 money, yes

18 Q So if you recovered that money, you can identify it?

19 A That's correct

20 Q Okay Now, in your experience as a drug enforcement
21 unit officer, would you agree that \$40 would normally
22 purchase around 4 grams of crack?

23 A Typically what is known as a rock of cocaine is a tenth
24 of a gram Typically that's \$20 In this case we purchased
25 \$40, which would be two-tenths of a gram

1 Q I'm sure that you aware of the term dub, is that
2 correct?

3 A That's correct

4 Q And a dub usually refers to \$20 worth of crack, is that
5 correct?

6 A That's correct

7 Q Okay And that is normally around point two-tenths of
8 a gram, correct?

9 A A \$20 rock?

10 Q Yeah, 2 grams of crack is normally a dub?

11 A Typically it's a tenth

12 Q A tenth is normally a dub?

13 A Uh-huh

14 Q Okay And that usually sells for?

15 A \$20

16 Q \$20 Okay

17 Now, getting back to this General Sessions case file
18 summary, and after filing y'all's protocol and procedure
19 with the criminal informant, Officer Ligon, Welch, Ervin,
20 Truesdale and yourself then followed the CI --

21 A Yes

22 Q -- close by to buy some crack?

23 A That's correct

24 Q And then the CI then made his way to ADDRESS
25 Road, correct?

1 A That's correct

2 Q And at that point you testified that y'all were parked
3 in some different locations You were on a road behind the
4 house, is that correct?

5 A That's correct

6 Q You testified that some of the officers were down the
7 road a little bit, down the main road of ADDRESS a little
8 bit?

9 A Within close proximity to the house, yes

10 Q And then -- okay There was not any officers obviously
11 inside the house with the CI, correct?

12 A Correct

13 Q And according to all these reports, incident reports,
14 or all these documents that have been prepared in this case
15 by the drug enforcement unit, the CI was the only individual
16 who went into the residence, is that correct?

17 A There was two CI's that went into the residence

18 Q My question is, though, in any document that was
19 prepared in this case, the CI was the only one to go in,
20 correct?

21 A When we refer to CI, we do it for a couple of reasons
22 One, it doesn't show either him or her It doesn't say
23 there is multiple CI's for any of the charging documents,
24 and that's the protect the confidential informants in case
25 we are going to use them for further investigations

1 In this case we were going to use the confidential
2 informants for further investigations with other deals

3 Q And I understand your rationale when you are saying
4 charging documents, but we have got a confidential document
5 here, correct?

6 A That's stamped confidential, yes

7 Q And this document states that the CI, not pleural?

8 A If you look at 8 31, CI's is pleural 8 31 p m

9 Q When it says CI's vehicle?

10 A Is plural

11 Q Well --

12 A Like I said, we keep things --

13 Q Why would --

14 A -- as simple as we can in order to protect the
15 confidentiality of all of our -- like I said, you have got
16 that document right there, so it's not that confidential
17 anymore, is it?

18 Q Officer Schettler, I'm just going to go back to what
19 you testified to You said that we have a difference of
20 opinion here in terms of CI's I mean, this 8 31 that you
21 are talking about, it's CI's vehicle, correct?

22 A Correct

23 Q So if the apostrophe is there and the S is there
24 because it's the CI's vehicle, they are not talking about
25 multiple CI's, are they?

1 A Yeah, we were We had two CI's involved in this deal

2 Q Okay On the evening of March 8th, 2007, you have no
3 idea who or how many individuals were inside ADDRESS
4 Road, correct?

5 A I have my confidential informant that went in -- two
6 confidential informants that went in the house advised me of
7 who was in the residence I also heard my confidential
8 informant go in the house, come out of the house, take
9 another confidential informant with him in the house I
10 heard her in the house

11 Q Officer, do you have any idea --

12 A If you are asking if I was personally in the house, I
13 was not personally in the house

14 Q I'm not asking that I'm asking you do you have any
15 idea who or how many individuals were in that house that
16 evening?

17 A Yes, I do

18 Q You know specifically how many people -- how many
19 people were in the house that night?

20 A I would have to go and look I would have to ask my
21 confidential informant

22 Q Okay

23 A I know that Antwan Wade was in there I know his
24 girlfriend was in there

25 Q But there could have been ten people in there, correct?

1 A There could have been

2 Q Could have been eight people in there, correct?

3 A That's correct

4 Q Could have been five people in there, correct?

5 A That's correct

6 Q So to me that means you have no idea of how many people
7 were inside the residence that night, correct?

8 A If that fact -- like I said, if that fact was that
9 pertinent of how many people were in there, I would have
10 noted I can ask my confidential informant how many people
11 were in there and he can tell me who was in there

12 Q Officer Schettler, I'm not trying to be difficult here,
13 and at the same time it's -- I'm not asking you what you
14 feel is pertinent What I'm asking is you have no idea how
15 many people were inside the residence that night, correct?

16 A I can answer you that I did not physically go in the
17 residence and see who was in there I know who I heard on
18 the wire I know who that my confidential informant told me
19 was in the house

20 Q Okay Now, in your report it states the CI took a \$40
21 piece of crack and left the residence, correct?

22 A That's correct

23 Q Officers then followed the CI back to Moss Justice
24 Center where the CI handed you some crack?

25 A That's correct

1 Q The crack was then weighed And it weighed
2 approximately 4 grams, correct?

3 A That's correct

4 Q Now, I would like to take and talk a few minutes about
5 the arrest warrant, okay, and that's J-180474, where you
6 were the affiant, is that correct?

7 A That's correct

8 Q And on March the 16th, 2007, you appeared in front of
9 the magistrate judge to get this warrant, correct?

10 A That's correct

11 Q And this warrant was delivered to Antwan Wade on March
12 the 16th, 2007, correct?

13 A That's correct

14 Q You stated in the arrest warrant that Antwan Wade
15 violated South Carolina drug laws by distributing two crack
16 rocks with a total weight of approximately 4 grams,
17 correct?

18 A Correct

19 Q In this arrest warrant Antwan Wade is described as a
20 black male, 5'8" tall, with a birth date of October the 2nd,
21 1976, correct?

22 A That's what's on the warrant, yes

23 Q Okay Now, if I could refer your attention to the
24 supplemental incident report you prepared?

25 A Okay

1 Q Now, in this York County sheriff's office supplemental
2 incident report you prepared, you have Antwan described as a
3 30 year old black male, five feet tall, is that correct?

4 A If that's what's on the report, yes

5 Q And Officer Schettler, you wrote in this supplemental
6 report that officers of the York County multi-jurisdictional
7 drug enforcement, unit upon further investigation, obtained
8 warrant J-180474 for distribution of crack on Antwan Wade,
9 correct?

10 A Say that again

11 Q You wrote in this supplemental report that officers of
12 the DEU, upon further investigation, obtained warrant for
13 J-180474 for distribution of crack cocaine on Antwan Wade,
14 correct?

15 A Distribution of crack, fourth, on Antwan Wade, yes

16 MR DELANEY Your Honor, may approach for a
17 second?

18 THE COURT Yes, sir

19 THE COURT Counsel

20 (Whereupon, the lawyers approached the bench for
21 an off-the-record discussion)

22 BY MR DELANEY

23 Q Now, getting back to where we were at, Officer
24 Schettler

25 A We still on the supplemental report, sir?

1 Q Yes, sir

2 Could you tell the jury what the date is on this
3 supplemental incident report?

4 A 4-11 of '07

5 Q That would be April the 11th of 2007?

6 A That's correct

7 Q And you testified that the arrest warrant was obtained
8 March the 16th of 2007?

9 A That's correct

10 Q Okay. Thank you

11 Now, Officer Schettler, I want to go back to the March
12 8th incident report that Officer Truesdale prepared, that
13 you testified as case agent you observed and you were aware
14 of, correct?

15 A Correct

16 Q Okay Could you tell the jury how old Antwan Wade is
17 in this report?

18 A 31

19 Q Could you tell the jury what his date of birth is in
20 this report?

21 A 01-02 of '76

22 Q And that would be January the 7th of 1976, correct?

23 A The 2nd, is that what you said?

24 Q January the 2nd of 1976?

25 A Yeah

1 Q And in this report it states officers from the York
2 County multi-jurisdictional drug enforcement unit utilized a
3 confidential informant to purchase approximately 4 grams of
4 crack from Wade while at ADDRESS Road Right?

5 A Correct

6 Q Now, Officer Schettler, if you could please read to the
7 jury what the last sentence of this report states?

8 A "No charges will be made "

9 MR DELANEY Court's indulgence for just one more
10 second

11 (Off the record)

12 (Back on the record)

13 MR DELANEY I have no further questions for
14 Officer Schettler at this time

15 MS JOYNER Your Honor, just redirect.

16 If we could briefly approach?

17 THE COURT Yes, ma'am

18 (Whereupon, the lawyers approached the bench for
19 an off-the-record discussion)

20 THE COURT Mr Foreman, ladies and gentlemen of
21 the jury, there is a matter I need to take up with counsel
22 briefly out of your presence and so I'm going to ask you, if
23 you will, to retire to the jury room for a brief time It
24 will not be a lengthy time If you need to refresh
25 yourselves during the break, you can do that, but do so as

1 quickly as possible I don't think that we will be very
2 long at all Thank you

3 (The following takes place outside the presence of
4 the jury panel)

5 THE COURT All right, solicitor

6 MS JOYNER Thank you, Your Honor

7 Just for Officer Schettler on the record, in
8 response to the question of no charges will be made, I
9 intend to redirect on that issue Without addressing the
10 search warrant that was actually executed, we believe the
11 resolution to opening the door on the search warrant would
12 be the response why did it obtain no charges would be made
13 is because our policy is -- it's our policy to --

14 THE COURT To not make a -- not to make an issue
15 an arrest warrant at that time, but to wait to determine
16 whether a search warrant would be issued for the premises,
17 and charges would be made after that, if charges are not
18 made pursuant to any search warrant I mean, it has to be
19 some way to clear it up for the reason they put it on there
20 Otherwise it kind of opens the door to say they have got a
21 search warrant, went in to search Didn't anything else, I
22 guess, and then they -- I mean, you could do it that way as
23 well, I guess, but they did get something That's the
24 problem

25 MS JOYNER They got a simple possession

1 quantity It was residue inside this cigar tubes

2 THE COURT You don't want that in, correct

3 MR DELANEY No, judge

4 THE COURT I think to some extent the door is
5 opened, because they have to be able to explain that And
6 so I think that would be the way to handle it, simply be
7 able to ask what the procedure is, why that was entered into
8 and why no arrest warrant was issued at that time And he
9 could simply say it's our policy to wait to determine people
10 going to issue a search warrant for the residence and wait
11 until after that search And then if that's not done, no
12 charges made incident to any search warrant, then we issue
13 the warrant

14 MS JOYNER Officer Schettler, do you understand
15 that answer?

16 THE COURT It's kind of difficult to understand
17 The importance is --

18 THE WITNESS I understand what you are saying,
19 Your Honor, and basically my response to that answer is is
20 the reason we put that on the report is because we were
21 going to obtain a search warrant upon -- and to protect the
22 confidential informant, went ahead and served the search
23 warrant and didn't recover any evidence at that point and we
24 went ahead and decided to go forward with the distribution
25 charges

1 MS JOYNER I think that's a little off because
2 we did recover evidence

3 THE WITNESS Right, I know that's what you don't
4 want in

5 THE COURT Right

6 THE WITNESS That's why I was trying to --

7 MS JOYNER So the correct answer I think would
8 be we did not want to obtain charges pending the --
9 determining whether we were going to obtain a search warrant
10 or bring any charges, based on a search warrant Ultimately
11 we made the decision to charge

12 THE COURT I guess what could you say is --

13 MR DELANEY That's sounds fine

14 THE COURT You could say the policy is to wait to
15 make a charge to protect the identity of the confidential
16 informant, we delay issuing the warrant And secondly, we
17 wait to see if we are going to issue a search warrant and
18 make any other charges, pursuant to the search warrant And
19 then when that's not done, then we issue this warrant, or
20 something like that Okay

21 MS JOYNER Okay

22 Do you understand?

23 THE WITNESS I think so

24 THE COURT Okay I know We are just trying
25 to -- the door has been opened I think since he asked that

1 question, you have to be able to explain it We don't want
2 to get into prejudicial stuff against the defendant

3 MR DELANEY Only briefly, judge, I know at one
4 point I said no further questions I don't particularly
5 know how Your Honor views this I would like to ask
6 probably 15 seconds worth of questions There is couple
7 more questions to ask the officer I don't know if I have
8 gave that up yet or not, but I would like to, if the court
9 would let me, but I'll leave that --

10 THE COURT I think -- have you already gotten in
11 your questions?

12 MS JOYNER No, not yet

13 THE COURT We will let you finish

14 MR DELANEY Very briefly

15 THE COURT Then she can do that And I want
16 to -- I think we need to address, though, on the record the
17 earlier objection about the officer's statement I think we
18 need to address that And when he was being asked about the
19 incident report -- was it the incident report?

20 MR DELANEY Yes, sir

21 MS JOYNER Yes, sir

22 THE COURT And you asked him if he made this
23 statement on the incident report He was following along
24 with -- I guess it was the incident report And he was
25 reading along there and it had crack cocaine, fourth

1 offense And I guess your idea was to stop him and not go
2 into the fourth offense

3 MR DELANEY Yes, Your Honor

4 THE COURT And he said distribution of crack
5 cocaine, fourth He didn't say offense

6 MR DELANEY Correct

7 THE COURT And you stopped at that -- you stopped
8 him at that point and made your objection to the court, or
9 wanted to approach the court, so we discussed that Frankly
10 I didn't catch that, but we pulled it back up and he did say
11 that I didn't catch it, but in any event, the question was
12 how to deal with it I could give the jury an instruction
13 to disregard the statement I'm not sure that they
14 understood what he was saying when he said distribution --

15 MR DELANEY I would agree, Your Honor

16 THE COURT -- fourth, and so I don't think they
17 understood that I'm willing to give a curative instruction
18 about that for the defendant, so defense strategy is not to
19 emphasize it or bring it back up

20 MR DELANEY We are not requesting a curative
21 instruction at this point We would just ask that --

22 THE COURT Well, I understand that that would
23 simply raise it That would simply raise it to the
24 conscious juror, raise it to them, whereas they may
25 certainly not have understood what he was talking about

1 there, because he didn't say anything about -- he didn't say
2 fourth offense He just said distribution of crack cocaine,
3 fourth And then there were a lot of questions about fourth
4 month and something else about fourth In any event, I just
5 thought we needed to address that on the record

6 MR DELANEY Thank you

7 MS JOYNER Thank you, Your Honor And I will
8 instruct all the other officers to be very careful of that
9 during --

10 THE COURT It's absolutely -- it's extremely
11 important we not do anything other than this particular
12 offense It doesn't matter what number of offense it is
13 We can't go into any numbers We just go into this offense

14 THE WITNESS Yes, sir

15 THE COURT That's very important

16 THE WITNESS Okay

17 THE COURT Even if the questions are asked about
18 a fourth, don't say anything other than just talk about this
19 offense

20 Okay All right I think we have addressed it
21 We will bring the jury back in and let you finish

22 MR DELANEY Very briefly

23 THE COURT Please bring them back in, sir

24 (The following takes place in the presence of the
25 jury panel)

1 THE COURT Yes, sir

2 BY MR DELANEY

3 Q Officer Schettler, the last thing I want to ask you
4 about for now is the electronic listening device that was
5 put on the criminal informant, okay?

6 A Yes, sir

7 Q This is done you testified to maintain control of the
8 criminal informant and to monitor the alleged drug
9 transaction, correct?

10 A Yes, sir

11 Q And you have testified the drug enforcement unit does
12 not have this tape, correct?

13 A From that evening, no, sir

14 Q And do you not think that the jury should have been
15 able to hear what and who was on that tape?

16 A I would love for the jury to be able to hear it

17 Q Or what and who was not on that tape?

18 A I would love for the jury to be able to hear the tape
19 that took place that night, yes

20 Q Don't you think that the jury deserves to have that
21 tape?

22 MS JOYNER Your Honor, that's argumentative I
23 object

24 THE COURT Well, I think it is argumentative,
25 certainly That's something that you can take position with

1 the jury, but I think he's answered the question

2 MR DELANEY Thank you, Officer Schettler

3 REDIRECT EXAMINATION BY MS JOYNER

4 Q Just a few brief questions, Officer Schettler

5 Do you still have the papers that Mr Delaney handed to
6 you?

7 A Yes, ma'am

8 Q Specifically with reference to the incident report
9 produced on March 8th of 2007, the "no charges will be
10 made"?

11 A Yes, ma'am

12 Q Can you please explain to the jury why the incident
13 report issued on the day of the distribution contains that
14 sentence?

15 A Typically it's policy that when we try and obtain a
16 search warrant from the judge, we don't make any charges
17 until the outcome

18 Q The outcome?

19 A Of the search warrant, ma'am

20 Q And I want to just make sure I have the correct
21 terminology What does the term CI stand for?

22 A Confidential informant

23 Q And why are they called confidential informants?

24 A We do everything in our power above and beyond to keep
25 them confidential so no one knows who they are, A, to

1 protect them and to make sure that, you know, if somebody
2 finds out that they are trying to assist us, obviously they
3 are not going to deal with them So we go above and beyond
4 all means to try and keep them confidential so no one knows
5 who they are

6 Q Okay Mr Delaney cross-examined you regarding the
7 number of -- the number of non-law enforcement individuals
8 involved in the investigation

9 A Yes, ma'am

10 Q How many were there?

11 A In the investigation was Antwan Wade

12 Q No, how many non-law enforcement --

13 A Oh, I'm sorry

14 Q -- confidential informants?

15 A There was two confidential informants There was Ms
16 Ellis and Mr Montgomery

17 Q To be fair to Mr Delaney, does the General Sessions
18 case file summary indicate that Ms Ellis drove Mr
19 Montgomery, or does it indicate how Mr Montgomery made it
20 to ADDRESS Road?

21 A It doesn't state how he got there, no, ma'am

22 Q But does it indicate that Ms Ellis was involved? Does
23 it indicate a second person, or that a second person went
24 inside the residence?

25 A No, it does not

1 Q Okay Why does it not indicate Ms Ellis' presence at
2 the scene?

3 A Mr Montgomery was the primary confidential informant
4 we were using that night All Ms Ellis was to do was to
5 drive him to the location Originally she wasn't even
6 supposed to enter the residence Trying to keep her out of
7 it as much for future dealings

8 Q Officer Schettler, Mr Delaney cross-examined you about
9 the size of the typical dose unit of crack cocaine?

10 A Yes, ma'am

11 Q What -- is there -- what's the standard weight of the
12 typical \$20 rock?

13 A A tenth of a gram

14 Q Okay Are they always a tenth of a gram?

15 A No, ma'am They fluctuate in weight, as far as up or
16 down, depending upon who is buying it

17 Q Okay And in State's Exhibit 1, it's not entered into
18 evidence, but how many rocks of crack cocaine are in that
19 bag?

20 A Two

21 Q So, from your experience, Officer Schettler -- well,
22 what is the difference between a certified scale and an
23 uncertified scale?

24 A A certified scale and uncertified, we use uncertified
25 scales, means that we don't have someone come in and certify

1 it and say that each thing that you weigh on there is that
2 specific weight A certified scale has been -- it's like --

3 Q Is it calibrated?

4 A Calibrated Just like everything comes and gets
5 certified Just --

6 MR DELANEY Your Honor, I don't know At this
7 time we are getting outside the scope of redirect

8 MS JOYNER Mr Delaney asked a lot about the
9 weight that mentioned in the incident report, Your Honor

10 THE COURT Okay I'll allow you to follow up

11 MS JOYNER Thank you

12 BY MS JOYNER

13 Q Is the scale in the drug unit certified?

14 A No, it's an uncertified scale

15 Q And does that mean it's an approximation?

16 A It's an approximate weight, yes

17 MS JOYNER Thank you very much, Officer
18 Schettler

19 MR DELANEY I would like to recross

20 THE COURT Yes, sir

21 RECROSS EXAMINATION BY MR DELANEY

22 Q Officer Schettler, I heard the explanation that you
23 gave to Ms Joyner regarding the incident report that was
24 prepared by Officer Truesdale, but in that incident report
25 it states no charges would be filed, correct?

1 A It states that no charges would be filed

2 Q Thank you

3 THE COURT All right Thank you, sir You may
4 stand down, sir

5 I think it's probably a good time to adjourn for
6 the day It's a little after 5 30, about 5 35

7 Mr Foreman, ladies and gentlemen of the jury, we
8 are going to go ahead and recess for the day

9 I'm going to ask you please to be back in the
10 morning When you come in, I'm not sure Hopefully we will
11 have the regular jury room available in the morning when you
12 come in, but I ask you to be here at 9 30 We will try to
13 get started promptly at 9 30

14 On the overnight recess please do not discuss the
15 case among yourselves or with anyone else you might see on
16 the break from court

17 Please have a pleasant night tonight and be back
18 in the jury room in the morning at 9 30 Thank you

19 The bailiff will show you where to come

20 (The following takes place outside the presence of
21 the jury panel)

22 THE COURT All right Anything we need to take
23 up out of the presence of the jury at this time?

24 MS JOYNER None from the State, Your Honor

25 THE COURT From the defense?

1 MR DELANEY Nothing from the defense, Your
2 Honor

3 THE COURT All right We will resume then in the
4 morning at 9 30 I'll be here a little bit before then if
5 you need me We will try to start promptly at 9 30

6 MR DELANEY I guess before -- we do have a
7 bailiff here We do not have a letter, like we said,
8 before, or obviously Mr Wade's bondsman was not here It's
9 your policy --

10 THE COURT Well, of course, if the case is called
11 for trial, the bond is relieved at that point, if we don't
12 have somebody's agreeable that they are going to stay on the
13 bond Of course, he will have to remain through the trial

14 MR DELANEY Okay

15 THE COURT Thank you

16 THE COURT See you in the morning

17 (Off the record)

18 (Back on the record)

19 (Whereupon, the lawyers approached the bench for
20 an off-the-record discussion)

21 THE COURT Juror number 193 is indicating that we
22 agreed during qualifications we would protect her for
23 Thursday and Friday I didn't write anything about by her
24 name

25 MR DELANEY All I can say is we don't have that

1 in ours either Jonathan was pretty accurate in doing that
2 all in them, but I'm not saying --

3 THE COURT You don't have it?

4 MR DELANEY We don't have that either written
5 down

6 THE COURT I think she started back to classes
7 I'm going to tell you what to do Let me bring
8 her in and see

9 JUDGE'S LAW CLERK I have got full-time student
10 Classes start Thursday Okay Monday to Wednesday

11 THE COURT So she was protected They made a
12 mistake in putting her on the panel downstairs They made
13 that mistake She was protected Thursday and Friday She
14 is starting classes tomorrow And so let me -- let me tell
15 you I'll get everybody to get seated

16 We will bring her in and let me ask her if,
17 nevertheless, even though we protected her for Thursday and
18 Friday, it would be a hardship for her And if it is,
19 what's your preference? What do you want to do? I mean,
20 what do you want to do if she says you promised to protect
21 me I mean, we have an alternate

22 MR DELANEY I will leave it to Your Honor's
23 discretion

24 THE COURT Well, I need to hear from y'all on
25 that

1 MR DELANEY I guess -- I would assume we are
2 going to finish fairly early tomorrow I mean, I think -- I
3 don't want to --

4 THE COURT I don't think it would be too early
5 tomorrow, because you have got -- we have got several
6 witnesses here, and then you have got arguments and charge
7 So it's probably going to take --

8 MR DELANEY I guess tomorrow would be -- I don't
9 see this case going into Friday

10 THE COURT I think we will probably finish it
11 tomorrow

12 MR DELANEY I think tomorrow would be, so she
13 would be missing one day of class

14 THE COURT All right Let me ask you what
15 everybody's position is before I talk to her, because if you
16 leave it -- if you are leaving it to the discretion of the
17 court what to do, then I'll decide after I talk with her and
18 see if she's willing to come But if you are telling me you
19 are objecting to my excusing her, then I'll still bring her
20 in and see if she can agree to stay, or whatever, and try to
21 work it out

22 MS JOYNER Your Honor, the State's position
23 would be we would leave it in the court's discretion

24 MR DELANEY Juror Number 193 is a juror, from
25 the defense's perspective at this point, we would like to

1 remain on the -- remain cited at this point But obviously
2 if it is such a hardship But I would contend missing the
3 first day of class, not a lot is happening that day

4 THE COURT I wish she would have told me before
5 we selected her It sure would have been a lot easier

6 MR DELANEY Yes

7 THE COURT Please, ma'am, bring her in

8 (Whereupon, Juror Number 193 was brought into the
9 courtroom)

10 THE COURT Ma'am, you can stand right there, if
11 you will

12 As it turned out, we have got your information
13 that we had agreed to protect you for Thursday and Friday
14 In fact, we did agree to do that We checked our notes
15 And what's happened, apparently downstairs the lady, who not
16 only takes care of the jury, she was out Monday sick and she
17 was back Tuesday, but somehow in the translation she didn't
18 get it down that you were protected for Thursday and Friday
19 And so what I'm -- and I apologize for that And I -- I
20 really wish you would have called it to my attention when
21 you came up so I could have dealt with it at that point
22 before we drew the jury

23 My question to you is now whether you would be
24 willing to go ahead and serve, now that you are on the jury
25 and participated up to this point, if you would be willing

1 to go ahead and finish out in the trial? We expect to
2 finish it tomorrow Would that be possible for you?

3 JUROR NUMBER 193 I will be willing to do that,
4 but, I mean, it's my professor, she would not be happy about
5 it, though If I could get something in writing or a
6 telephone call or something

7 THE COURT Why don't I do this? I'll write
8 something personal for you on my stationary

9 JUROR NUMBER 193 Yes

10 THE COURT What's her name? Professor's name is?

11 JUROR NUMBER 193 Carol Begley And then there
12 is Arlene Warner

13 THE COURT Spell Begley for me, if you can

14 JUROR NUMBER 193 B-E-G-L-E-Y

15 THE COURT And the other one is?

16 JUROR NUMBER 193 Arlene Warner

17 THE COURT Okay And they are both professors
18 there?

19 JUROR NUMBER 193 Yes

20 THE COURT And where are they, ma'am?

21 JUROR NUMBER 193 At Central Piedmont community
22 College in the physical therapy program

23 THE COURT What I can do is I'll give you a
24 letter for each of them on my stationary

25 JUROR NUMBER 193 Okay

1 THE COURT And prepare it for you and to have it
2 for you when you get ready to leave

3 JUROR NUMBER 193 Okay

4 THE COURT If you want to hand deliver it there,
5 or if you prefer I sent it to them?

6 JUROR NUMBER 193 I'll hand deliver I'll call
7 them and let them know

8 THE COURT Yeah, just call them and let them know
9 that it was our error, that the clerk who handles the jury
10 was out sick and somehow got confused I had agreed to
11 protect you for Thursday and Friday

12 JUROR NUMBER 193 Okay

13 THE COURT I'll put that in my letter as well

14 JUROR NUMBER 193 Okay

15 THE COURT At any rate, I appreciate your
16 willingness to do that

17 JUROR NUMBER 193 Okay

18 THE COURT I could have easily dealt with it
19 before we got you on the jury But now that you are on
20 there, it's much more difficult to deal with I'm sure that
21 you understand that

22 JUROR NUMBER 193 I understand

23 THE COURT Okay Thank you, ma'am I appreciate
24 it

25 JUROR NUMBER 193 Thank you

1 THE COURT I'll get you these letters

2 JUROR NUMBER 193 Okay

3 THE COURT Thank you

4 (Whereupon, juror number 193 left the courtroom)

5 THE COURT All right Make sure you get this
6 case finished tomorrow or we are going to be in trouble with
7 her

8 MS JOYNER Yes, sir

9 THE COURT See you at 9 30

10 (Whereupon, proceedings were adjourned to January
11 10, 2008)

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 ANTWAN MARCUS WADE,) 2007-GS-45-3940
7 Defendant) JANUARY 10, 2008
8 York, South Carolina

9 (VOLUME II)

10 B E F O R E

11 THE HONORABLE LEE S ALFORD, JUDGE , and a jury

12
13
14 A P P E A R A N C E S

15 ERIN JOYNER, ASSISTANT SOLICITOR
16 Attorney for the State

17 ERIK DELANEY, ASSISTANT PUBLIC DEFENDER
18 Attorney for the Defendant

19 Michael R Watts
20 Circuit Court Reporter
21
22
23
24
25

INDEX

(JANUARY 9, 2008)

WITNESSES

PAGE

JURY VOIR DIRE -- PAGE 34

JURY SWORN -- PAGE 53

OPENING STATEMENT BY MS JOYNER -- PAGE 64

OPENING STATEMENT BY MR DELANEY -- PAGE 67

OFFICER BRIAN SCHETTLER (SW)

DIRECT EXAMINATION BY MS JOYNER 75

CROSS EXAMINATION BY MR DELANEY 93

REDIRECT EXAMINATION BY MS JOYNER 122

REXCROSS EXAMINATION BY MR DELANEY 125

INDEX

(JANUARY 10, 2008)

	WITNESSES	PAGE
	ROBERT DAVID MONTGOMERY (SW)	
	DIRECT EXAMINATION BY MS JOYNER	140
	CROSS EXAMINATION BY MR DELANEY	153
	REDIRECT EXAMINATION BY MS JOYNER	169
	RE CROSS EXAMINATION BY MR DELANEY	179
	KELLY NICOLE ELLIS (SW)	
	DIRECT EXAMINATION BY MS JOYNER	181
	CROSS EXAMINATION BY MR DELANEY	185
	OFFICER TINA TRUESDALE (SW)	
	DIRECT EXAMINATION BY MS JOYNER	186
	CROSS EXAMINATION BY MR DELANEY	191
	REDIRECT EXAMINATION BY MS JOYNER	198
	RE CROSS EXAMINATION BY MR DELANEY	200
	OFFICER JOSH WELCH (SW)	
	DIRECT EXAMINATION BY MS JOYNER	201
	CROSS EXAMINATION BY MR DELANEY	204
	REDIRECT EXAMINATION BY MS JOYNER	209
	RE CROSS EXAMINATION BY MR DELANEY	210
	OFFICER MIKE LIGON (SW)	
	DIRECT EXAMINATION BY MS JOYNER	211
	CROSS EXAMINATION BY MR DELANEY	219
	REDIRECT EXAMINATION BY MS JOYNER	230

INDEX

(JANUARY 10, 2008)

WITNESSES	PAGE
BARBARA TRAYLOR (SW)	
DIRECT EXAMINATION BY MS JOYNER	236
CROSS EXAMINATION BY MR DELANEY	239
CYNTHIA MITCHUM (SW)	
DIRECT EXAMINATION BY MS JOYNER	240
CROSS EXAMINATION BY MR DELANEY	246
STATE RESTS --	PAGE 246
DEFENSE RESTS --	PAGE 253
CLOSING ARGUMENT BY MS JOYNER --	PAGE 253
FINAL ARGUMENT BY MR DELANEY --	PAGE 260
JURY INSTRUCTIONS --	PAGE 272
SENTENCING --	PAGE 298
REPORTER'S CERTIFICATE --	PAGE 299

1	EXHIBITS			
2	NO	DESCRIPTION	ID	EV
3	S-1	DRUGS		245
4	S-2	DRUG REPORT		245
5				
6	CT-1	JURY NOTE	289	
7	CT-2	JURY NOTE	292	
8	CT-3	INDICTMENT NO	99-GS-46-2408	292
9	CT-4	INDICTMENT NO	04-GS-46-0280	292
10	CT-5	INDICTMENT NO	05-GS-46-1871	292
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 (PROCEEDINGS, January 10, 2008)

2 THE COURT Counsel, anything else we need to take
3 up before we bring the jury in?

4 MS JOYNER Not from the State, Your Honor

5 THE COURT All right

6 MR DELANEY Your Honor, nothing from the
7 defense

8 THE COURT The first thing I'll do is give a
9 curative instruction, an explanatory instruction.

10 Please bring the jury in

11 (The following takes place in the presence of the
12 jury panel)

13 THE COURT Good morning, Mr Foreman, ladies and
14 gentlemen of the jury I apologize for the delay in getting
15 started this morning Actually there was a matter that came
16 up that I had to take up with counsel out of your presence
17 and it took us a little bit to resolve that That's the
18 reason for the delay

19 I want to give you an instruction There is some
20 confusion, based on the officer's testimony yesterday from
21 the stand that might -- there could be some confusion as to
22 what the charge against Mr Wade is in this case I would
23 tell you that he is charged with distribution of crack
24 cocaine, first offense This is -- you know, there was some
25 confusion as to whether he had any other charges pending

1 against him or made by the drug enforcement unit, or whether
2 he had any prior charges, and I tell you that's not the
3 case He doesn't -- he does not have any other prior
4 charges, and this is a distribution of crack cocaine, first
5 offense That's the only charge against him That's the
6 only thing that you would consider in this case, and that he
7 does not have any other charges pending and none in the
8 past I want to be sure that you understand that, if you
9 were confused by anything that the officer may have said
10 about their investigation and what have you

11 All right Thank you

12 With that instruction, let's proceed, counsel

13 MS JOYNER Thank you, Your Honor

14 The State's next witness is Robert Montgomery

15 ROBERT DAVID MONTGOMERY, III, having been first
16 duly sworn, testified as follows

17 THE CLERK You may have a seat

18 DIRECT EXAMINATION BY MS JOYNER

19 Q Can you please state your full name for the record?

20 A Robert David Montgomery, III

21 Q And Mr Montgomery, how old are you?

22 A 24

23 Q Are you originally from York County?

24 A Yes, ma'am

25 Q You lived here your whole life?

1 A Yes, ma'am

2 Q What's your occupation?

3 A I deal with stainless steel Applicator

4 Q Are you married, Mr Montgomery?

5 A Yes, ma'am

6 THE COURT Mr Montgomery, excuse me, I'm going
7 to get you to speak up just little bit, if you will If you
8 can talk more towards the mike Everybody in the room has
9 to hear what you have to say?

10 A Yes, ma'am, I'm married

11 BY MS JOYNER

12 Q And what is your wife's name?

13 A Kelly

14 Q Kelly?

15 A Yes

16 Q Now, are you legally married or common law married?

17 A Common law married We ain't said the I do's yet

18 Q Okay And what is Kelly's last name?

19 A Ellis

20 Q What do you call Kelly?

21 A Nicole

22 Q Now, Mr Montgomery, back on March 8th of last year did
23 you become involved in an investigation of Antwan Wade?

24 A Yes, ma'am

25 Q Okay Make sure you keep your voice loud so everybody

1 can hear you

2 A Okay

3 Q How is it that you became involved in an investigation
4 of Mr Wade?

5 A I got caught up in some stuff with the narcotics and
6 they asked me to do some work

7 Q And when they gave you the opportunity to do work, did
8 you have a point person, like one particular officer in the
9 drug unit, that you would talk to mainly?

10 A Yes, ma'am, Brian

11 Q You indicating Officer Schettler?

12 A Yes, ma'am

13 Q In your conversations with Officer Schettler about
14 doing work, did Officer Schettler ever make you any promises
15 about what would happen with your trouble?

16 A No, ma'am, he didn't

17 Q Did you hope for a certain result?

18 A Yes, ma'am, I was hoping, you know, to help me out a
19 little bit or be wiped

20 Q Wiped, you mean?

21 A Clean, yes, ma'am

22 Q You are referring to your unserved warrant?

23 A Uh-huh

24 Q Prior to March 8th of 2007, were you acquainted with
25 the defendant Mr Wade?

1 A Yes, ma'am, I was

2 Q And without going into specifics of your whole
3 relationship with Mr Wade, how long had you known him or
4 been acquainted with him?

5 A I have known Mr Wade probably five to six years,
6 something like that

7 Q And when you became involved in the investigation of
8 Mr Wade, when you started to talk to the drug unit about
9 doing work, who brought up Mr Wade's name?

10 A I did

11 Q Okay And on March 8th of 2007, what was the specific
12 investigation that you were going to assist in as regards to
13 the defendant?

14 A Come in, got wired up, went and made a buy

15 Q Made a buy of what?

16 A Crack cocaine

17 Q Okay Before we get too far into the specifics of what
18 happened that night, I have to ask you a question Do you
19 know how to buy crack cocaine?

20 A Yes, ma'am

21 Q How is it that you know how to buy crack cocaine?

22 A I have been around it before in the past and I have
23 seen it done

24 Q When you went to Moss Justice on March 8th of 2007, to
25 go make a buy from Mr Wade, on that day were you under the

1 influence of crack cocaine?

2 A No, ma'am, I wasn't

3 Q Now, I want you to go back to March 8th of 2007

4 Tell me how the investigation started

5 A Well, I drove to the Moss Justice Center, came in

6 They searched me, searched the vehicle, searched my wife

7 Wired me up Went out and made a phone call He told me to

8 come on Then I come back in We all got ready They

9 followed me to Sharon, South Carolina, on ADDRESS Road I

10 went in, made a buy, and come back and they followed me back

11 and searched me when I got back and the drugs were found

12 Q You had your wife with you?

13 A Yes, ma'am

14 Q Is that Kelly?

15 A Yes, ma'am, she was driving

16 Q Why was she driving?

17 A Because I don't have a license

18 Q Okay Whose vehicle were you using that night?

19 A It was mine

20 Q Do you recall who searched you?

21 A I'm thinking it was officer -- I'm pretty sure it was

22 Mike I don't know his last name Ligon, I think

23 Q Do you recall who searched Nicole, or Kelly?

24 A No, ma'am, I don't I don't recall it

25 Q Where were you and your wife when you were searched?

1 A We was at the Moss

2 Q Were you together when you were searched?

3 A They took me in one room and searched me and took her
4 in another and searched her

5 Q Did you see your vehicle being searched?

6 A No, ma'am

7 Q Do you recall who wired you up?

8 A I'm pretty sure it was Brian

9 Q Okay And how much money in government funds were you
10 provided?

11 A \$40

12 Q Where exactly is it that you went that night followed
13 by the drug unit?

14 A It was Sharon, South Carolina, off ADDRESS Road

15 Q Okay If you could describe for the jury what does
16 ADDRESS Road look like?

17 A It's an old back road You go through Sharon You
18 turn off on Wilson Chapel and you take a left on ADDRESS
19 Road You go down past the tractor shed You take a sharp
20 curve and it's right there to the left is his house

21 Q And --

22 A It's all back road

23 Q Are there a lot of houses on ADDRESS Road?

24 A Not a lot, no, ma'am

25 Q Okay When you drove out to ADDRESS Road, were you --

1 were you aware of whether you were under surveillance or
2 not, as Kelly drove you out to ADDRESS Road?
3 A Oh, yes, ma'am, I knew I was under surveillance
4 Q How did you know that?
5 A Because they followed me there --
6 Q Okay
7 A -- and I was wired
8 Q Did you stop at any point from the time you left Moss
9 Justice until you arrived at ADDRESS Road?
10 A No, ma'am
11 Q Now, I want to talk to you about what happened when you
12 got to ADDRESS Road Okay Did you go into the house?
13 A Yes, ma'am, I did
14 Q And tell me how you went into the house
15 A I walked up to the door, knocked They told me to come
16 on in I walked in and told him I wanted to get a 40 He
17 asked me was I going to smoke it there I told him no, I
18 couldn't, it was for someone else
19 Q Okay
20 A They said --
21 Q Let me stop you right there You have to be careful of
22 pronouns They said to come on in Who was they?
23 A I honestly don't know It was somebody in the house
24 There was three or four people in there They told me to
25 come on in

1 Q Somebody told you to come on in?

2 A Yes, ma'am

3 Q And when you came on in, what room do you enter in
4 through that front door?

5 A The living room

6 Q And who was in the living room?

7 A When I walked in, there was a lady, Cindy, sitting
8 there on the left

9 Mallory and Deon was sitting right there in the chair
10 as you come in the door

11 I think Antwan was in the back bedroom and then he come
12 out and greeted me

13 Q And once Antwan -- and by Antwan, are you referring to
14 the defendant?

15 A Yes, ma'am

16 Q Okay Once he greeted you, what happened?

17 A I told him I was wanting to purchase \$40 worth of
18 crack He asked me was I going to smoke it there I told
19 him I couldn't, it was for someone else He then gave me my
20 \$40 back He said he wasn't going to do the deal I said
21 it's for someone else He said, "well, call them " So I
22 made a phone call A man answered the phone I told him
23 "they wanted me to do it there " He said "no, can't do
24 that " I said, "well, I will be on my way "

25 Q Let me stop you really quick

1 Did you have your cell phone on you when you went into
2 the house?

3 A No, ma'am, I went back out and got the cell phone and
4 came back in My phone wouldn't get no signal We used his
5 phone

6 Q So you had to go back out in your car to get your cell
7 phone?

8 A Yes, ma'am

9 Q At what point did you discover that you had no signal?

10 A When I went back in The bars was -- you know, didn't
11 have no signal on it

12 Q Did you go back in alone?

13 A My wife came back in with me when I went back in

14 Q And you said you called someone?

15 A Yes, ma'am

16 Q Was that someone, that person, had you planned to call
17 them?

18 A No, it was -- no, I hadn't planned to call them, no,
19 ma'am They didn't even know nothing about what was going
20 on or anything When I told him they wanted me to do it
21 there, they would say something, I cut them short and said
22 "I would be on my way "

23 Q So the person that you called was not a part of the
24 investigation?

25 A No, ma'am Somebody that did not know nothing

1 Q And when you called them, whose phone did you use?

2 A I used Antwan's phone

3 Q Okay And was Antwan able to hear what that person was
4 saying?

5 A Yes, ma'am, it was on a speaker phone

6 Q And where were you in the house when you made the phone
7 call?

8 A Right there in the living room

9 Q Okay. And who else was present when that phone call
10 was made?

11 A Me, my wife, Antwan, a girl Mallory, Cindy, and Deon
12 was all there in the same room when the call was made

13 Q Was that phone call satisfy to Mr Wade?

14 A Evidently it was, because he took me in the back
15 bedroom and then poured dope in my hand and told me to pick
16 one

17 Q Who -- you said in the back bedroom?

18 A Yes, ma'am

19 Q So who walked into the back bedroom with you?

20 A Me and Antwan walked in the back bedroom and there was
21 someone already sitting in there that I don't know I can't
22 identify them I don't know who that person was, but he was
23 sitting there as a transaction went on

24 Q And how did the transaction occur?

25 A I gave him \$40 in the living room We went back to the

1 back bedroom He poured crack cocaine out of a cigar tube
2 into my hand told me to pick one I picked one and then
3 told him I would see him later, I may be back shortly, and I
4 left

5 Q Was the rock that he poured into your hand, was it a
6 loose rock or was it packaged?

7 A It was in a baggy All of them was in a baggy

8 Q What happened after you picked one, you picked the
9 baggy?

10 A I picked one, I put it in my packet, and I turned and
11 told him I would see him later, I might be back shortly I
12 left the house, was followed back to the Moss Justice Center
13 by narcotics

14 Q Did you stop anywhere from ADDRESS Road on the way
15 back to Moss Justice?

16 A No, ma'am, I had one car in front of me, one car behind
17 me, following me straight back

18 Q Once you got back to Moss Justice Center what happened?

19 A They brought me back in I gave the crack that I
20 purchased to Brian, and --

21 Q To Officer Schettler?

22 A To Officer Schettler

23 They searched me Nothing was found They searched my
24 wife Nothing was found They searched my vehicle

25 Q Okay Anything found in your vehicle?

ROBERT DAVID MONTGOMERY, III - DIRECT BY MS JOYNER

151

1 A No, ma'am

2 Q At any point in this investigation, other than the
3 crack cocaine that you provided to Officer Schettler, was
4 any other drug located on your person?

5 A No, ma'am

6 Q Okay When you returned back to the Moss Justice
7 Center, were you in possession of the \$40 in government
8 funds that was provided to you prior?

9 A No, he had the \$40

10 Q He, being?

11 A Antwan

12 Q And when you were searched before you left and when you
13 returned, how was that search conducted?

14 A He checked all my pockets, patted me down, made me take
15 my shoes off Shake my boxers, make sure nothing falls out,
16 just like they do if you get booked, same search

17 Q Mr Montgomery, do you see the person who sold you --
18 in this courtroom that sold you crack cocaine on March 8th
19 of 2007?

20 A Yes, ma'am, sitting right there in the white

21 MS JOYNER Your Honor, let the record reflect
22 the witness has identified the defendant

23 BY MS JOYNER

24 Q And tell me again how many other people were in the
25 house that night?

1 A It was -- when I went in, it was Antwan, Cindy, Mallory
2 and Deon and some other fellow that I don't know

3 Q Okay And Deon -- do you know who Deon is to the
4 defendant?

5 A If I'm not mistaken, that's Antwan's brother

6 Q Okay When you returned back to the Moss Justice
7 Center, or during the course of being searched and your
8 vehicle being searched, did you give a statement to Officer
9 Schettler?

10 A Yes, ma'am

11 Q In that statement did you include anything regarding
12 your wife going into the residence?

13 A No, ma'am I -- there was nothing in the statement
14 said about that for the reason I didn't want her brought
15 into this

16 Q Say that again

17 A There was nothing said in that statement about her
18 going into the house with me, because I didn't really want
19 her brought into it

20 Q And why is it that you didn't want her brought into
21 this?

22 A Just because really it wasn't -- her safety I guess

23 Q When word gets out on the street that you worked with
24 the drug unit and that you testified in court today, does
25 that cause you problems?

ROBERT DAVID MONTGOMERY, III - CROSS BY MR DELANEY

153

1 A Oh, yeah, it's going to cause me a lot of problems
2 I'm well known in York

3 Q Will that cause you -- in your opinion, will that cause
4 Nicole problems or Kelly problems?

5 A Yes, ma'am, it probably will

6 MS JOYNER Beg the court's indulgence

7 (Off the record)

8 (Back on the record)

9 BY MS JOYNER

10 Q Thank you very much, Mr Montgomery Please answer any
11 questions that Mr Delaney has

12 CROSS EXAMINATION BY MR DELANEY

13 Q Mr Montgomery, you testified just a few minutes ago
14 that you had known Antwan Wade for five to six years, is
15 that correct?

16 A Yes, sir

17 Q Why did you tell officers that you known him for four
18 years?

19 A Well, it's four to five years I have known him since
20 I was like 17, 18 years old

21 Q The difference, though, between knowing someone for
22 four years as compared to five to six years, correct?

23 A Correct

24 Q Okay You are a working defendant for the drug
25 enforcement unit, is that correct?

1 A Yes, sir

2 Q You testified a few minutes ago that you got caught up
3 in some stuff and for that you went to work, correct?

4 A Yes, sir

5 Q You were arrested on a felony drug charge, correct?

6 A Yes, sir

7 Q And because of that arrest on the felony drug charge,
8 you went to work for the drug enforcement unit?

9 A Yes, sir

10 Q And that charge was possession with intent to
11 distribute marijuana, correct?

12 A Yes, sir

13 Q What that means is you went to work making buys for the
14 drug enforcement unit, is that correct?

15 A Uh-huh

16 Q And in return for you making these buys for the DEU,
17 your arrest warrant for possession with intent to distribute
18 marijuana has remained unserved, is that correct?

19 A Yes, sir

20 Q And as long as you continue to make buys for the drug
21 enforcement unit, is it your understanding that warrant will
22 remain unserved?

23 A To the best of my understanding, yes, sir

24 Q Would you agree you had a pretty good deal worked out?

25 A Excuse me? Say that again

1 Q Would you agree that you had a pretty good deal worked
2 out, given the situation you were in when you were arrested
3 on a felony drug charge?

4 A Yes, sir

5 Q And would you agree that each successful buy you make
6 gets you closer to what you testified to, this being all
7 wiped away, correct?

8 A Yes, sir

9 Q Okay How long ago did you go to work for the drug
10 enforcement unit?

11 A It was -- March 8th of last year was the last time that
12 I have done anything

13 Q When did you -- when did you start working for them?

14 A It was like a week before that

15 Q And is this a contract that they had you sign?

16 A Yes, sir

17 Q And could you tell the jury what the date is on that
18 contract?

19 A 3-2-07

20 Q And that would be March the 2nd --

21 A Yeah

22 Q -- 2007

23 And was that right after you were arrested for
24 possession with intent to distribute marijuana?

25 A Yeah, it was like a few days -- four to five days prior

1 to that when I was arrested

2 Q And when you were arrested for possession with intent
3 to distribute marijuana, were you selling drugs or were you
4 using drugs?

5 A I was using drugs

6 Q You have testified that you were given \$40 to purchase
7 \$40 worth of crack, correct?

8 A Yes, sir

9 Q And you testified just a few minutes ago that you were
10 given a single rock of crack cocaine, is that correct?

11 A Uh-huh

12 Q It wasn't two rocks, it was a single rock?

13 A It was a single rock in a baggy

14 Q And you have testified that at one point you left this
15 residence, correct?

16 A Uh-huh

17 Q Went to your car, is that right?

18 A Uh-huh

19 COURT REPORTER Yes, sir?

20 A Yes, sir

21 BY MR DELANEY

22 Q Okay And then went back into the residence, correct?

23 A Yes, sir

24 Q And when you went back into the residence, you didn't
25 go alone, correct?

1 A That's right Yes, sir

2 Q And Kelly Ellis went with you? Is that what you
3 testified to?

4 A Yes, sir

5 Q And you testified that you did not put that in your
6 statement, because you didn't want to drag her into this, is
7 that correct?

8 A That's right

9 Q Well, you had her drive you to this place, correct?

10 A Yes, sir

11 Q Okay But you put no mention of her at all in here,
12 correct?

13 A Uh-uh

14 Q And you testified that at one point that evening you
15 used Antwan Wade's cell phone to make a call?

16 A Yes, sir, I did

17 Q And you testified earlier that you made a different
18 call, is that correct?

19 A I made a different call from the Moss before

20 Q Whose phone did you use?

21 A I used my phone from the Moss

22 Q Your cell phone?

23 A Yes, sir

24 Q And you supposedly called Antwan Wade?

25 A Yes, sir

1 Q Now, I want to change gears for a couple of minutes and
2 go back to when you initially began to work for the drug
3 enforcement unit Okay?

4 A Uh-huh

5 Q And I want to start talking about this contract that
6 you signed with them Okay?

7 A (Shaking head yes)

8 Q And do you have a -- you don't have this copy with you
9 up there?

10 A I don't have it with me, no, sir

11 MR DELANEY Do you have a copy of the contract?

12 BY MR DELANEY

13 Q There you go

14 And you have testified already that is the contract
15 that you signed on March the 2nd of 2007, isn't that
16 correct?

17 A Yes, sir

18 Q Now, it looks like under this contract that you agreed
19 to, number one, it states "I understand that I am forbidden
20 to possess, sell, or deliver any controlled substance to
21 anyone " Is that correct?

22 A Yes, sir

23 Q And would you agree that an extremely important part of
24 this agreement that you had with the DEU, an extremely
25 important part of this contract that you signed is that you

1 were not to use or sell drugs while you are a CI, is that
2 correct?

3 A That's right

4 Q Okay Mr Montgomery, since you began working in the
5 drug enforcement unit have you used drugs?

6 A No, sir

7 MS JOYNER Your Honor, may we approach for a
8 moment?

9 THE COURT Yes, ma'am

10 (Whereupon, the lawyers approached the bench for
11 an off-the-record discussion)

12 BY MR DELANEY

13 Q Now, let me get this straight You have just testified
14 under oath to this jury that you have not used drugs while
15 you have been a confidential informant Is that what you
16 are testifying to?

17 A I have not used drugs while I was working for the drug
18 unit, no, sir Not while I was working for them, no, sir, I
19 have not

20 Q So from March the 2nd, 2007, through today, you have
21 not used drugs, correct?

22 A I have -- I ain't going to say that I haven't used
23 marijuana, but crack cocaine, no, sir I have not

24 Q You have not used crack cocaine?

25 A No, sir I'll take a drug test right now to prove it

1 MR DELANEY Judge, may we approach for a minute?

2 (Whereupon, the lawyers approached the bench for
3 an off-the-record discussion)

4 THE COURT Mr Foreman, ladies and gentlemen of
5 the jury, there is a matter I need to take up briefly with
6 counsel out of your presence Please retire briefly to the
7 jury room briefly It will only be a couple of minutes

8 (The following takes place outside the presence of
9 the jury panel)

10 MR DELANEY Your Honor, the issue I guess that I
11 feel we are coming to at this point is, and what has been
12 disclosed to me in this case, is that this past Friday I got
13 a call from Ms Joyner telling me that there was a violation
14 of this contract, that this man specifically told her he
15 smoked crack cocaine a day before this alleged buy Now,
16 one of my questions would be did anyone else meet with this
17 CI that day, because I think potentially that's a witness to
18 what he said

19 MS JOYNER And, Your Honor, just to place the
20 conversation that we had on the record, I was so adamant
21 with Mr Montgomery that I did not believe that evidence
22 would be admissible, as it reflects Lyle evidence against
23 the defendant, that I instructed him to not discuss smoking
24 crack at Mr Wade's house the prior night And I think that
25 the confusion has come in is that he was instructed by me,

1 because I believed the evidence was inadmissible, and I
2 think that that's the source of confusion in this case I
3 don't believe that Mr Montgomery is now going to say that
4 that is not what he told me or that is not what happened
5 And so I think that it's just -- that he was concerned that
6 he would cause a mistrial, because that's what I explained
7 to him could happen if that evidence was brought out

8 THE COURT All right Well, I think
9 that obviously then -- where do you want to go from here?
10 If you want to ask it, he can answer your question then

11 MR DELANEY Yes, just continue

12 THE COURT He can answer your question "yeah, I
13 smoked crack cocaine at Mr Wade's house" on whatever date
14 it was, in violation of the agreement

15 MR DELANEY Okay

16 THE COURT If that's where you want to go with
17 that

18 MR DELANEY Yes

19 THE COURT Do you understand that you can testify
20 with regard to his question?

21 THE WITNESS What happened before?

22 THE COURT He will ask you again if you -- he
23 will ask you again if you used drugs in violation of that
24 agreement, and then you can say yes, on whatever occasion
25 that you smoked crack cocaine at Mr Wade's house

1 THE WITNESS All right

2 THE COURT That you have been instructed by your
3 counsel not to discuss that Okay?

4 MS JOYNER Thank you, Your Honor

5 THE COURT I think that's the way to clear it up
6 All right

7 Anything else, counsel?

8 MR DELANEY No, sir, Your Honor

9 THE COURT Please bring the jury back, sir

10 (The following takes place in the presence of the
11 jury panel)

12 THE COURT Yes, sir

13 BY MR DELANEY

14 Q Mr Montgomery, let's get back to where we left off, in
15 terms of your testimony, and I just want to try to clear a
16 few things up, get a few things straight

17 You did testify just a couple minutes ago that you used
18 marijuana while working as a confidential informant?

19 A Not while I was working Now, I -- I'm saying I have
20 used and over the year -- last year, you know, I have been
21 at a party or so, yeah, there has been some passed around,
22 but it was not while I was working for the drug unit, no

23 Q So from March 2nd -- going back to March the 2nd, 2007,
24 up until today, which is I guess approximately ten months,
25 or so, later, within the past ten months, since you have

1 been working for the DEU have you smoked weed?

2 A Yes, sir, I have smoked But what I'm saying when I
3 consider working is when I'm with them working When I'm at
4 home and I'm on my free time, this and that, I don't
5 consider that as working

6 Q Do you understand that that's in direct violation of
7 this contract you signed with the drug enforcement unit?

8 A No, sir, I didn't

9 Q You don't understand that?

10 A Well, I -- I didn't understand it as that, no, sir

11 Q You didn't understand that -- and you signed this form,
12 correct?

13 A Yes, sir

14 Q Okay "I understand that I am forbidden to possess,
15 sell, or deliver any controlled substances to anyone,"
16 correct?

17 A Yes, sir

18 Q And you have testified under oath repeatedly that you
19 have never used crack cocaine since you have been a
20 confidential informant with the drug enforcement unit,
21 correct?

22 A I used it a couple of nights before I made the buy It
23 was a night or two before I made a buy I went to Antwan
24 Wade's and he sat there and he watched me smoke it in front
25 of him, yes, sir

1 Q So what you were telling the jury five minutes ago was
2 a lie?

3 A It was not a lie We misunderstood each other on that

4 Q You misunderstood my question of whether or not you
5 smoked crack cocaine in the last ten months?

6 A When you said working for the drug unit, I thought it
7 meant when I was working for them When they was with me,
8 had me wired up, that's what I thought you meant by saying
9 working for the drug unit

10 I didn't mean -- I didn't think you meant by like if I
11 go to my regular job and I use, I'm not working for the drug
12 unit That's what I took it as

13 Q Mr Montgomery, you smoked crack cocaine on March the
14 7th, 2007, correct?

15 A Not March the 7th, no, sir It was the night or two
16 before that March the 7th seven is when I went and made
17 the buy

18 Q March the 7th is the day that you made the buy?

19 A Yes, sir

20 Q Are you sure it wasn't March the 8th that you made the
21 buy?

22 A It was March the 7th, March the 8th, or something like
23 that It's been almost a year ago, man

24 Q Mr Montgomery, is it not true that on -- is it not
25 true that the day before you say that you made this alleged

1 buy -- the night before you made this alleged buy you smoked
2 crack cocaine --

3 A Yes, sir --

4 Q -- correct?

5 A -- I went to Antwan Wade's and, yeah, I did smoke right
6 in front of him in his house

7 Q Now, I'm saying you got that crack cocaine from Antwan
8 Wade also? That's what you are saying?

9 A Yeah, it come from him, yes, sir

10 Q That's some new information, isn't it?

11 A Well --

12 Q Did you ever tell Officer Schettler about that?

13 A Yes, sir

14 Q You told Officer Schettler --

15 A I told him I went over there --

16 Q -- that you smoked crack cocaine --

17 THE COURT Wait a minute Only one at a time
18 Let him answer your question and you can ask him another
19 one, go ahead

20 A I told him I had went over there a few days prior to
21 that before that and had purchased crack cocaine to ease the
22 thing over when I went and made my buy with the wire on

23 BY MR DELANEY

24 Q You told Officer Schettler that?

25 A Yes, sir

1 Q Did you tell anybody else that?

2 A No, sir, nobody else needed to know

3 Q Did you tell Officer Schettler that you had smoked this
4 crack cocaine?

5 A I didn't tell him I smoked it I told him I went over
6 there to ease things over for the buy that I needed to make

7 Q When did you tell Officer Schettler this?

8 A It was like the day that I went and made the buy or the
9 day before I can't remember exact

10 Q The day before you say -- is that the day that you
11 smoked crack cocaine?

12 A It was the day before or two days before I think we
13 done the buy on a Friday night I went over there on
14 Wednesday night, if I'm not mistaken

15 I don't have no reason to lie, man

16 Q Well, wouldn't you agree that you have already lied
17 repeatedly on the witness stand?

18 A No, sir We misunderstood each other on your
19 questions I have not lied about nothing Everything that
20 I have told is the truth

21 Q You haven't lied to this jury?

22 A I have not lied to the jury, no

23 Q And so the only time -- from March the 2nd, 2007, up
24 until today, the only time that you have smoked crack
25 cocaine was the night before you supposedly bought crack

1 cocaine from Antwan Wade, is that correct?

2 A Yes, sir

3 Q That's what you are asking the jury to believe?

4 A Yeah, I have not smoked no crack

5 Q And you just so happened -- the one time that you
6 smoked crack cocaine the night before, you just so happened
7 to get that from Antwan Wade, correct?

8 A Yeah

9 Q And you say that you told that to the drug enforcement
10 unit?

11 A Yes, sir

12 Q Why would that be not anywhere in anything that we have
13 prepared in this case?

14 A I can't answer that question for you

15 MS JOYNER Your Honor, he can't answer that
16 question He didn't prepare the incident report

17 MR DELANEY Court's indulgence for just one
18 minute, Your Honor

19 THE COURT Yes

20 (Off the record)

21 (Back on the record)

22 BY MR DELANEY

23 Q One last question I want to ask you, Mr Montgomery

24 In 2006, you were convicted of stealing property that
25 did not belong to you, is that correct?

1 A Yes, sir Talking about shoplifting?

2 Q Yes

3 A Yes, sir

4 Q Yes, sir

5 Did you tell any other drug enforcement unit officers

6 of your drug use?

7 A Of my drug use? They knew of my drug use

8 Q Specifically, did you tell any other DEU officers,

9 other than Officer Schettler, that you smoked crack the

10 night before you made this supposed buy from Mr Wade?

11 A No, sir

12 Q Just Officer Schettler?

13 A I think Officer Schettler was the only one present at

14 the time, yes, sir

15 Q And, again, it was your testimony that you told this to

16 Officer Schettler before you supposedly went back over to

17 Antwan's house, correct?

18 A I -- yes, sir Yeah

19 Q Are you sure?

20 A Yeah, I'm sure

21 Q If you want to correct it, we can do it now

22 A Well, I don't know exactly if I told him that I smoked

23 I told him that I went over there with a friend and made a

24 buy, to make things -- because we tried to deal with him a

25 week before that and he wouldn't mess with me So I took a

1 friend that I knew that had dealt with him all the time He
2 took me down there and we done it in his house right in
3 front of him That's the reason why the night that I went
4 back and made the buy he wanted me to do it in the house and
5 I told him I couldn't He took the money back and then I
6 made the phone call That's when he did do the deal and I
7 left the house

8 Q So essentially you now may have told Officer Schettler?

9 A I did tell Officer Schettler, yes, sir I did tell him
10 that I went down there to ease things over before buying
11 this buy

12 Q But didn't tell him about smoking crack?

13 A I -- I don't think so, no, sir

14 Q Okay

15 MR DELANEY I have no further questions of this
16 witness

17 REDIRECT EXAMINATION BY MS JOYNER

18 Q Mr Montgomery, you did tell me about it?

19 A I did tell you Friday Yes, ma'am, I did

20 Q I want to follow up on some things that were brought up
21 on cross

22 This agreement that you signed, confidential informant
23 agreement, it has a lot of different provisions, doesn't it?

24 A Yes, ma'am

25 Q If you could read provision number three

1 A "That the information I provide may be used in a
2 criminal proceeding and I may be called upon to testify to
3 such information in a court of law And although the York
4 County multi-jurisdictional drug enforcement unit will use
5 all lawful means to protect my confidence, this cannot be
6 guaranteed "

7 Q Okay Now, that provision number one that Mr Delaney
8 was asking you so much about --

9 A Uh-huh

10 Q -- now that you have had that discussion with him, do
11 you agree or disagree that smoking marijuana while during
12 the time that you were working was a violation of that
13 agreement?

14 A I -- it says here that it is, but I didn't take it as
15 that I thought that this meant as I was working for the
16 drug unit, when I done what I had to do, that I could be
17 under the influence of alcohol or no other drugs, and that's
18 what I took it as

19 Q Okay Mr Montgomery, when was the first time that you
20 and I met?

21 A Friday of last week

22 Q And Friday of last week when you told me about buying
23 and smoking crack at Antwan Wade's house, did you and I have
24 a discussion about whether you were to testify to that in
25 court?

1 A Yes, ma'am, I was

2 Q What was your understanding of what I explained to you
3 about whether that information would be admissible in court?

4 A You told me not to mention it, not unless it was
5 mentioned --

6 Q Okay

7 A -- pretty much

8 Q And when we discussed the fact that you had disclosed
9 to me that you had smoked crack with Mr Wade prior to the
10 deal, did we discuss whether that information would need to
11 be disclosed to the defense attorney?

12 A Yes, ma'am, we did

13 Q And do you recall what that discussion was?

14 A You said not -- not to mention it, not unless, like I
15 said, not unless it was brought up

16 Q Okay But was it your understanding at that time that
17 Mr Delaney would be made aware of that information?

18 A Yes, ma'am, you said that he was aware of it, but he
19 probably wouldn't bring it up, because he watched me smoke
20 it in front of him

21 Q I'll take you back to what the information that you
22 provided to Officer Schettler about going to Mr Wade's
23 house prior to the deal on March 8th Please tell me the
24 words, if you can recall them, what you explained to Officer
25 Schettler back then about what had happened at Mr Wade's

1 house

2 A I -- I probably can't tell you word for word, but to
3 sum it all up You see, me and Mr Schettler tried to make
4 a buy the week before, or a few days before Antwan
5 wouldn't -- he answered my call, found out it was me and
6 hung up He wouldn't deal with me So I got a buddy of
7 mine that he goes down there all the time that smokes You
8 know, goes down there and hangs out all the time I got him
9 to take me down there We went down there I purchased
10 some crack, done it right there in front of Antwan so he
11 would know I was straight I come back a day or two later
12 and made the buy with the wire on That's exactly what
13 happened

14 Q But you didn't, in fact, tell Officer Schettler that
15 you smoked the crack, did you?

16 A I don't recall I don't know if I told him if I did or
17 if I didn't I don't really recall

18 Q When you went on -- now, if the -- we had some
19 confusion about the date Whatever the date of the
20 transaction was, when was it that you went over to Mr
21 Wade's house prior to that?

22 A It was either the day or -- the day before or two days
23 before I can't sum it up exactly That's been almost a
24 year ago, man

25 Q And when you went the day or the day before, exactly

1 what happened at Mr Wade's house?

2 A I went in --

3 MR DELANEY Your Honor, I believe this has been
4 asked and answered already

5 A -- purchased

6 THE COURT Overruled You opened the door She
7 can -- she can ask him

8 MR DELANEY I understand that, Your Honor, but I
9 believe this question has already been asked of the
10 defendant

11 THE COURT Well, I don't know where she's going
12 with it I'll listen to your question Go ahead

13 MR DELANEY Okay

14 A I went over there, went in with a friend of mine --
15 BY MS JOYNER

16 Q Let me stop you right there Did you call prior to
17 going on that day?

18 A Yeah, I think my friend did, yes, ma'am

19 Q And did you call his cell phone or a house phone? Do
20 you recall what number it was?

21 A I recall it was Antwan's cell phone we called I used
22 the pay phone to call him

23 Q Okay I'm sorry, I cut you off So when you got
24 there, how did you gain entry into the house?

25 A Well, when we first got there, his brother Deon come

1 out and said we was going to have to go down the road and do
2 it, to make the transaction A friend of mine is like
3 "well, we want to do it here Can we go in and do it?' We
4 went in --

5 MR DELANEY Hearsay issue?

6 THE COURT Okay I sustain the objection as to
7 hearsay what anybody else might have said Let's stay away
8 from that

9 A Okay

10 THE COURT Strike that from the record

11 MS JOYNER Thank you, Your Honor

12 A We then went into the house I talked with Antwan,
13 told him I wanted to buy something He sold me something
14 We went into his kitchen right there and did it

15 Come back out I said -- I mentioned something about a
16 dog that I had had He wanted to look at the dog So I
17 went to my house, got the dog, come back and bought some
18 more crack Done it and we left, and that was the night

19 BY MS JOYNER

20 Q Who was there that night? Other than the friend that
21 you brought with you, who else was in the house?

22 A It was me, my wife, Deon, and Mallory

23 Q And Deon is?

24 A That's -- I'm thinking that's his brother I'm pretty
25 sure

1 Q And Mallory was?

2 A His girlfriend at the time

3 Q And you said that you did -- that you smoked the crack
4 in the kitchen?

5 A Yes, ma'am

6 Q Can you describe what the inside of the house looks
7 like?

8 A When you walk through the door, you are in the living
9 room You take a right, you go through a little hallway and
10 it's right back to the left

11 Q The kitchen is right back --

12 A The kitchen is right there It's a small kitchen

13 Q Was there anybody else in the kitchen when you smoked
14 the crack?

15 A It was me, my friend, and Deon that was in the kitchen

16 Q Okay Where was the Antwan at this point?

17 A I'm pretty sure him and Mallory was on the couch
18 watching TV, watching movies

19 Q Where were you when you actually purchased that crack
20 cocaine from --

21 A Right there in the living room I got it in the living
22 room and then we went to the kitchen and done it

23 Q How much -- how big a rock was that?

24 A I think I bought a 20

25 Q You bought a 20?

1 A Yes, ma'am

2 Q And when you bought that 20, how was it packaged, or
3 was it packaged?

4 A Yeah, it was in a baggy?

5 Q In a baggy?

6 A Uh-huh.

7 Q Now, I know that you can't identify this exhibit, but
8 I'm showing you State's Exhibit 1

9 MR DELANEY Judge, I have to object at this
10 point They are using the drugs that were allegedly sold in
11 this case and trying to talk about some -- comparing it to
12 some drugs that were supposedly bought at another time I
13 just don't see the relevance of --

14 THE COURT Well, I'm not sure where --

15 MR DELANEY -- anything the State is doing here

16 THE COURT Well, I'm not sure what her question
17 is You are assuming that's what she's going to ask

18 Where are you going, solicitor?

19 MS JOYNER Regarding the packaging of this crack
20 cocaine rock Just for demonstrative purposes, to explain
21 to the jury what he meant by that

22 THE COURT Packaging?

23 MS JOYNER Yes

24 THE COURT I'll allow the question

25 MS JOYNER Thank you, Your Honor

1 BY MS JOYNER

2 Q Now, this is State's Exhibit 1, and I know you can't
3 identify this, but can you see the crack cocaine inside that
4 smaller baggy?

5 A Yes, ma'am

6 Q Is the baggy that you are discussing, is it like that
7 baggy right there?

8 A Yeah, something like that They are all bagged up the
9 same way

10 Q Okay Now, on the 7th, or whatever day that was prior
11 to the purchase, when you purchased crack cocaine, who
12 exactly again -- I'm sorry, you may have testified to this
13 and I'm not trying to be redundant Who was actually
14 present in the living room when you purchased that crack?

15 MR DELANEY I believe this has been asked and
16 answered, Your Honor, who was present in the house on
17 whatever day she's talking about

18 THE COURT I think the question was asked and
19 answered about who was present when he was smoking the crack
20 cocaine in the kitchen, I think, but I'm not sure about the
21 living room At any rate I allow you to ask it

22 MS JOYNER Thank you, Your Honor

23 BY MS JOYNER

24 Q Mr Montgomery, please answer that

25 A When I was in the living room, it was me, my friend, my

1 wife, when I purchased it, Antwan, Mallory, and Deon
2 Everybody was sitting right there in the same room when I
3 purchased the crack

4 MS JOYNER Beg the court's indulgence for a
5 minute

6 (Off the record)

7 (Back on the record)

8 BY MS JOYNER

9 Q And just to clarify, are you still a working defendant?

10 A No, ma'am, uh-uh

11 Q Okay How long has it been since you have done any
12 work for the DEU?

13 A That was my last buy I did was that one right there

14 Q Mr Montgomery, Mr Delaney asked you about credit for
15 making buys When you met with Officer Schettler and when
16 you were dealing with Officer Schettler, what was your
17 understanding of what would happen if you attempted in good
18 faith to make a buy, but did not successfully complete a
19 buy?

20 A Which meant if I tried to make the buy and it didn't go
21 forward, there -- I really don't recall what was discussed
22 on that He said he would help me in any way that he could
23 if I -- if I, you know, done what I could do

24 Q Thank you very much, Mr Montgomery

25 MR DELANEY May I recross briefly, Your Honor?

1 THE COURT Yes, sir

2 RE CROSS EXAMINATION BY MR DELANEY

3 Q Mr Montgomery, we have rambled on for about 15 minutes
4 now in terms of this prior time that you bought crack from
5 Antwan And so everything that you just said to Ms Joyner,
6 is that what you told Officer Schettler? Did you tell
7 Officer Schettler all those details that you just testified
8 to?

9 A I --

10 MS JOYNER Your Honor, I think that was asked
11 and answered

12 THE COURT Well, I'm going allow him to ask and
13 answer the question

14 Go ahead

15 A I don't recall if I told him exactly everything But
16 when I talked with the Miss here Friday, I told her
17 everything that I just spoke -- that I just testified to

18 MR DELANEY No further questions

19 THE COURT Thank you, sir You may stand down,
20 sir

21 MS JOYNER Your Honor, Mr Montgomery is under
22 subpoena We would ask that he be excused at this time

23 THE COURT Any objection?

24 MR DELANEY No objection

25 THE COURT All right Thank you for coming, sir

1 You may be excused at this time

2 We have been at it close to an hour and a half I
3 think we will go ahead and take a recess before we get the
4 next witness

5 Mr Foreman, ladies and gentlemen of the jury, we
6 will take a short recess at this time Take about a ten
7 minute recess You may refresh yourselves during the break
8 If you have something to drink with you back in the jury
9 room and you want to bring it back to the jury box, you are
10 welcome to do that Thank you Please retire to the jury
11 room

12 (The following takes place outside the presence of
13 the jury panel)

14 THE COURT Let's take about ten

15 (Whereupon, proceedings were recessed)

16 (Whereupon, proceedings were reconvened)

17 THE COURT All right Please, ma'am, if we can
18 have the jury

19 (The following takes place in the presence of the
20 jury panel)

21 THE COURT All right, counsel, ready to proceed

22 MS JOYNER Your Honor, the State's next witness
23 is Kelly Nicole Ellis

24 KELLY NICOLE ELLIS, having been first duly sworn,
25 testified as follows

KELLY NICOLE ELLIS - DIRECT BY MS JOYNER

181

1 THE CLERK Thank you You may have a seat

2 DIRECT EXAMINATION BY MS JOYNER

3 Q Can you please state your name for the record?

4 A Kelly Ellis

5 Q And Ms Ellis, do you go by Kelly?

6 A I go by Nicole

7 Q That's your middle name?

8 A Uh-huh

9 Q How old are you, Ms Ellis?

10 A 23

11 Q You have to make sure you speak loud, okay?

12 And are you from York County originally?

13 A Yes

14 Q Have you lived here your whole life?

15 A Yeah

16 Q And what is your occupation?

17 A I'm a stay-at-home mom

18 Q How old are your children?

19 A I have a six year old and a one and a half year old

20 Q Ms Ellis, do you know Robert Montgomery?

21 A Yes

22 Q And what do you call him?

23 A He's my fianca

24 Q He's your fiance

25 What name do you call him?

1 A David

2 Q David Is that's his middle name?

3 A Uh-huh

4 Q And do you and -- David is your fiance Do you live
5 together?

6 A Yes

7 Q. And back on March 8th of 2007, did you become involved
8 in an investigation of Antwan Wade?

9 A Yes

10 Q You have to speak loud

11 A Yes

12 Q Okay And how is it that you became involved in that
13 investigation?

14 A I was the driver -- well, I had got caught for some
15 stuff and I drove him to --

16 Q I'm going to ask you to elaborate a little bit on that
17 Try to tell me a little bit more Did you get -- did you
18 get served a ticket?

19 A Yeah

20 Q And what was your ticket for?

21 A For simple possession

22 Q Okay And was that the same time or a different time
23 that your fiance got in trouble?

24 A It was at the same time

25 Q And on March 8th, what exactly was it that you were

1 supposed to be doing in this investigation?

2 A I was to drive David to go make a buy

3 Q Do you recall -- tell the jury, if you remember, how it
4 is that the whole investigation started What happened when
5 you got to Moss Justice Center?

6 A Okay We come to Moss Justice Center David made a
7 call and -- to Antwan And he told us -- told him to
8 come -- to come on So they took him in and searched him
9 and they put a wire on him And they also searched me,
10 searched our vehicle And we left, following them, and they
11 was following us We went to the house and --

12 Q I'm going to stop you right there When you originally
13 met with the police, were you supposed -- was it your
14 understanding that you were supposed to go inside the house
15 with your fiance?

16 A Not at first, no

17 Q When you pulled into the driveway, did you go inside
18 with your fiance?

19 A Not at first, I did not

20 Q When at what point were you brought inside the house
21 and why?

22 A He wasn't going to sell him nothing, so he come --
23 David come out to make a phone call and his phone was dead,
24 so -- and he just told me to come in with him

25 Q And when you went inside the house, did you know the

1 people that were inside?

2 A I have seen a lady that was in there I didn't know
3 them well

4 Q Okay Were there other people inside?

5 A Yes

6 Q Did you see the defendant inside?

7 A Yes

8 Q Did you know him prior to this well?

9 A No, I didn't know him well

10 Q Okay Now, once you got inside, were you present when
11 the phone call was made?

12 A Yes

13 Q And after the phone call was made, what happened?

14 A David went in the back room with him and got the drugs
15 and come out and we left

16 Q So where were you when he was in the back room?

17 A I was in the living room

18 Q What happened after you left?

19 A We got in the car and we pulled out of the driveway and
20 left and we followed them to the -- back to the Moss Justice
21 Center David gave them the drugs They searched our car
22 They searched me and David, and they took a statement and we
23 left We went home

24 Q Took a statement from who?

25 A From David

KELLY NICOLE ELLIS - CROSS BY MR DELANEY

185

1 Q When -- do you recall who searched you?

2 A Officer Truesdale

3 Q And did she search you both times, before and after?

4 A Yes

5 Q Okay And did she locate anything on your person?

6 A No

7 Q When you left, originally left, Moss Justice Center and
8 went out to ADDRESS Road, did you stop anywhere in between?

9 A No

10 Q When you left ADDRESS Road and went back to Moss
11 Justice Center, did you stop anywhere in between?

12 A No

13 Q What has happened with the ticket that Officer
14 Schettler -- was it Officer Schettler that served you the
15 ticket?

16 A Yes

17 Q What has happened to that ticket?

18 A It has been dropped

19 Q Thank you very much, Ms Ellis Please answer any
20 questions that Mr Delaney has

21 A Okay

22 CROSS EXAMINATION BY MR DELANEY

23 Q Ms Ellis, you testified that it was simply your job to
24 drive your husband to this location, is that correct?

25 A Yes

1 Q And why did you have to drive him there?

2 A Because he had no license

3 Q And you have testified that you did not give any
4 statements in this case to any drug enforcement unit
5 officer, is that correct?

6 A Correct

7 Q And you have also testified that you did not witness
8 any type of drug transaction, is that correct?

9 A Correct

10 Q Okay

11 MR DELANEY I have no further questions Thank
12 you, Ms Ellis

13 MS JOYNER Your Honor, we would ask that Ms
14 Ellis be excused at this time

15 MR DELANEY That's fine with the defense, Your
16 Honor

17 THE COURT Thank you for coming, ma'am You may
18 be excused at this time

19 MS JOYNER Your Honor, the State calls it's next
20 witness I would like to call Officer Tina Truesdale

21 OFFICER TINA TRUESDALE, having been first duly
22 sworn, testified as follows

23 DIRECT EXAMINATION BY MS JOYNER

24 Q Can you please state your name for the record?

25 A My name is Tina Truesdale

OFFICER TINA TRUESDALE - DIRECT BY MS JOYNER

187

1 Q Ms Truesdale, how are you employed?

2 A I am employed with the Tega Cay police department

3 Q And what is your current job assignment?

4 A I'm with the York County multi-jurisdictional drug
5 enforcement unit

6 Q How long have you been with the DEU?

7 A A little over two years

8 Q How long total have you been in law enforcement?

9 A Nine years

10 Q And in your two years on the drug unit, what types of
11 cases have you been involved with?

12 A I have been involved with purchasing narcotics being an
13 undercover officer I have been involved in search
14 warrants, deals on the streets, things of that nature

15 Q And does the drug unit specialize in any particular
16 drugs, or does it do all drugs?

17 A All drugs

18 Q And officer, how many -- in the two years, how many
19 investigations would you say that you have been a part of
20 that involved crack cocaine? Estimate?

21 A It's hard to estimate? It's I would say probably 50,
22 or more

23 Q You are familiar -- in your training and experience in
24 being a part of these more than 50 investigations, do you
25 have some familiarity with the typical dose unit of crack

1 cocaine?

2 A Yes, it varies

3 Q And what would be the weight, in your training and
4 experience, of a typical \$20 piece of crack?

5 A Approximately 1 gram

6 Q Is there any fluctuation or variation in that?

7 A Yes

8 Q Back on March 8th of this year, were you working with
9 the drug unit?

10 A Yes, I was

11 Q And on that date did you become involved in the
12 investigation of Antwan Wade?

13 A Yes, I did

14 Q And if you could tell the jury what part that you took
15 in the investigation of Mr Wade?

16 A I-searched Ms Ellis, who was the partial confidential
17 informant I also followed the confidential informants to
18 ADDRESS Road

19 Q Do you recall who you were in the vehicle with -- or
20 were you in a vehicle with somebody, first?

21 A I was I was in a vehicle with Officer Rayford Ervin

22 Q And were -- can you describe the area of ADDRESS Road?
23 What does ADDRESS Road look like?

24 A ADDRESS Road is a country road It's a paved road
25 It's pretty much out in the middle of nowhere

OFFICER TINA TRUESDALE - DIRECT BY MS JOYNER

189

1 Q When you -- did you follow the confidential informants
2 vehicle the entire way to the driveway of ADDRESS Road?

3 A Not to the driveway We stopped short

4 Q And where was -- where did you stop short?

5 A We were probably about -- I would say about 50 yards up
6 from the residence, backed into a little cut-through, kind
7 of like farmland

8 Q You testified just a moment ago you searched Ms Ellis?

9 A Yes

10 Q Before this transaction?

11 A Before and after the transaction

12 Q In either of those searches did you discover any
13 contraband on her person?

14 A No

15 Q When you followed the -- other than the point in time
16 in which you stopped short on ADDRESS Road, did the
17 confidential informants vehicle remain -- were you able to
18 visually see that vehicle during the entire time from Moss
19 Justice to ADDRESS Road?

20 A Yes

21 Q Did you -- after the transaction had been made, what
22 part in the investigation -- what part in the investigation
23 did you take?

24 A We followed them back to the Moss Justice Center

25 Q How many vehicles followed them back to Moss Justice?

1 A I believe there were two There were three in all
2 Two of us followed them back

3 Q And from the time that they left ADDRESS Road and
4 connected up with your vehicle, did you ever lose visual on
5 that vehicle on the entire ride back to Moss Justice Center?

6 A No

7 Q Officer Truesdale, were you present when Mr Wade was
8 placed under arrest on this charge of distribution?

9 A Yes

10 Q And where did that actual physical arrest take place?

11 A The physical arrest occurred on ADDRESS Road, at the
12 residence

13 Q And do you recall what that address was?

14 A I know it's the 3000 block I believe it was 3917, if
15 I'm not mistaken

16 Q I'm showing you the warrant that was issued in this
17 case And without reading the entire warrant, does that
18 warrant indicate -- or can you tell from looking at that
19 warrant to refresh your recollection to what the address was
20 where the defendant was placed under arrest?

21 A ADD Road

22 Q Was that the location as well of the transaction that
23 occurred in this case?

24 A Yes

25 Q And during the course of the defendant being placed

OFFICER TINA TRUESDALE - CROSS BY MR DELANEY

191

1 under arrest, did he ever acknowledge to you that
2 ADDRESS Road was, in fact, his address?

3 A Yes, he did

4 Q And Officer Truesdale, one final question Did all
5 these events occur within York County, South Carolina?

6 A Yes, they did

7 Q Thank you very much Please answer any questions Mr
8 Delaney has

9 CROSS EXAMINATION BY MR DELANEY

10 Q Officer Truesdale, you just testified that you were the
11 officer who searched the CI's wife, is that correct?

12 A That is correct

13 Q However, there is not one document or incident report
14 that's been prepared by the drug enforcement unit in this
15 case that anywhere mentions that, is that correct?

16 A From what I understand, that's correct

17 Q And Officer Truesdale, you prepared the York County
18 sheriff's office incident report, dated March 8th, 2007, is
19 that correct?

20 MR DELANEY And if I may approach, Your Honor?

21 THE COURT Yes, sir

22 BY MR DELANEY

23 Q If you could tell me, did you prepare this report here?

24 A I did

25 Q Okay And it appears on this report that Commander

1 Brown was the approving officer on this incident report,
2 correct?

3 A That is correct

4 Q And Commander Brown, he's the head of the drug
5 enforcement unit, correct?

6 A Yes, he is

7 Q And in preparing the incident report, such as this, in
8 a case, it's important, is that correct?

9 A It is

10 Q Okay And it's important, because as an officer, you
11 want to put what you feel is important in the investigation
12 in the report, correct?

13 A Somewhat

14 Q Okay It is also extremely important to be very
15 accurate and specific as possible in these reports, correct?

16 A Our main reports are somewhat vague We don't include
17 confidential informants in our reports, as far as their
18 names We pretty much put in that we utilized a
19 confidential informant, the suspect's name, and what we
20 found at the residence

21 Q So obviously you want to protect the identity of the
22 confidential informant

23 Now, in terms of other things that were in the incident
24 report, in terms of details, description, stuff of that
25 nature, that's very important, would you agree?

1 A Sure

2 Q Okay And yourself or other DEU officers, or any law
3 enforcement officer, in general, you don't -- you are not
4 trained to write these reports in haste or in a hurry, is
5 that correct?

6 A That is correct

7 Q You are going to take your time and you are going to
8 get it right, is that correct?

9 A That is correct

10 Q And that is because you place a great deal of
11 importance on these reports, correct?

12 A That's correct

13 Q Now, Officer Truesdale, in the incident report that you
14 prepared, Antwan Wade is listed as a black male, correct?

15 A Correct

16 Q And it looks like 31 years old, correct?

17 A Correct

18 Q With a birth date of January the 2nd, 1976 --

19 A Correct

20 Q -- is that correct Okay

21 It looks like you also have Antwan listed as being six
22 feet in height?

23 A Correct

24 Q Okay In this report you state that, in your
25 narrative, "that while conducting a narcotics investigation,

1 officers from the DEU unit utilized a confidential informant
2 to purchase approximately 4 grams of crack from Wade while
3 at ADDRESS Road " Is that accurate?

4 A Uh-huh

5 Q Okay Now -- and I want to follow up with it with a
6 couple of questions, perhaps The last sentence that you
7 wrote in your incident report states "no charges will be
8 filed," is that correct?

9 A Uh-huh

10 Q Now, regarding that sentence -- and I listened to
11 Officer Schettler testify yesterday, and it's my
12 understanding that, you know, just because a drug
13 transaction happens on a certain day, that individual isn't
14 always arrested on that day, is that correct?

15 A That is correct

16 Q Charges can be pending for a number of different
17 reasons, one, I guess, being going to get a search warrant,
18 is that correct?

19 A Correct

20 Q Okay Or for whatever reason, an arrest can come at a
21 later date, correct?

22 A Correct

23 Q In this case Antwan Wade was not arrested on March the
24 8th, correct?

25 A That is correct

OFFICER TINA TRUESDALE - CROSS BY MR. DELANEY

195

1 Q He was arrested on I believe it was March the 16th, is
2 that --

3 A I'm not really sure of the approximate date

4 Q Okay But he wasn't arrested on March the 8th?

5 A That's right

6 Q Now, in this report you did not put no charges will be
7 made pending an execution of a search warrant, or anything
8 like that, is that correct?

9 A That's correct

10 Q You simply put "no charges will be made"?

11 A Correct

12 Q And if you will look down to the bottom of this section
13 of the report here --

14 A Uh-huh

15 Q -- it has the amount seized, and that was 4 grams, is
16 that correct?

17 A Correct

18 Q Okay And if you look down even one down from that,
19 the third box from the left, there is a box marked there,
20 and I guess -- I'm a little confused What does that box
21 indicate?

22 A Are you talking about in the center?

23 Q Yeah, the center?

24 A Where it says active, administrative, closed

25 Q Yeah

1 A And I put administrative closed

2 Q And that's what that box says there, administrative
3 closed?

4 A That's correct

5 Q Okay But, again, you know, just because he's not
6 arrested that day, it could be other things going on, search
7 warrants, or all that correct?

8 A Correct

9 Q Okay And when -- now, I just want to kind of change
10 topics a little bit and ask you a couple of questions
11 about -- you are aware, obviously, when CI's come to work
12 for the drug enforcement unit, it's your routine that they
13 sign a contract, is that correct?

14 A That is correct

15 Q Okay And are you aware that Robert Montgomery signed
16 a contract in this case?

17 A Yes

18 Q And would you agree that one of the major -- the major
19 emphasis of this contract, and it's essentially in the first
20 part here, is that a CI, while working for the drug
21 enforcement unit, is not in any way to possess, sell, or to
22 use drugs, is that correct?

23 A That's correct

24 Q Okay And if a CI is selling or using drugs while
25 working for y'all, that can seriously contaminate or

1 compromise any investigation they are involved with,
2 correct?

3 A I didn't understand your question

4 Q If -- and one of the reasons that you have that -- and
5 I guess I'll try to clarify this for you

6 One of the reasons that you put this number one in the
7 contract is if you have a confidential informant using
8 drugs, selling drugs, making purchases on their own, that
9 can very seriously compromise any investigation they are
10 involved with, correct?

11 A It could

12 Q Okay And that is because if you discover a
13 confidential informant is using drugs, they are selling
14 drugs, if they are going out on their own and trying to set
15 up buys, the reason that investigation is compromised is
16 because in the eyes of the drug enforcement unit officer
17 their credibility, their reliability, is destroyed, correct?

18 A That's correct

19 Q Okay

20 MR DELANEY Court's indulgence for just one
21 minute

22 THE COURT Yes

23 (Off the record)

24 (Back on the record)

25 BY MR DELANEY

1 Q A couple of questions that I have got, Ms Truesdale,
2 and just so I can get an idea

3 When you were on ADDRESS Road on March the 8th, where
4 were you positioned? I guess -- whose car were you in?

5 A I was in my car

6 Q And was there anybody in the car with you?

7 A Officer Ervin was in the car with me

8 Q And where were y'all positioned?

9 A We were, like I said, approximately 50 yards back from
10 the residence, parked on the opposite side of the road,
11 backed in And I believe, if I'm not mistaken, it's
12 farmland with a farm gate that we were parked at

13 Q Thank you, Officer Truesdale

14 A Thank you

15 THE COURT I think he's finished

16 MR DELANEY Yeah I'm sorry

17 MS JOYNER Just a few questions on redirect,

18 Officer Truesdale

19 REDIRECT EXAMINATION BY MS JOYNER

20 Q In your experience on the drug unit of two years, what
21 types of people tend to be confidential informants?

22 A Drug users

23 Q The incident report that you have up there that Mr

24 Delaney was asking you about, in the same box with

25 administrative close, what are the other boxes that could

1 potentially be checked?

2 A There is active and unfounded

3 Q And what would the box active being checked indicate?

4 A Active means that there is an investigation still
5 going

6 Q What would be the box unfounded indicate?

7 A Unfounded means that there is no evidence to, you know,
8 pursue it any further

9 Q In terms of the identifying information of Mr Wade's
10 date of birth and height and weight and so forth, do you
11 recall where you got the information that is placed in that
12 form?

13 A If I'm not mistaken, I got it from the AS-400 that the
14 York County sheriff's office uses

15 Q Is that a computer system?

16 A Yes, it is

17 Q So you do not -- you did not input that information
18 yourself?

19 A I did, but I got it from information from the AS-400,
20 the computer gives us

21 Q Thank you very much, Officer Truesdale

22 A Thank you

23 MR DELANEY Recross?

24 THE COURT Yes, sir

25

1 RECROSS EXAMINATION BY MR DELANEY

2 Q Officer Truesdale, you just answered Solicitor Joyner's
3 question regarding when you are working as a DEU officer and
4 you are dealing with confidential informants, you are
5 dealing with individuals who a lot of time have drug issues,
6 drug problems, correct?

7 A That's correct

8 Q And don't you think it's even more important in that
9 type of situation that they remain clean and they not
10 contaminate any type of investigation, is that correct?

11 A Not necessarily Most of the drug users, in order to
12 get the drug dealers, mainly have to stay in the game

13 Q You just testified a little earlier, though, that in
14 your mind and in the mind of the drug enforcement unit, if a
15 individual is selling, using, or possessing drugs, or making
16 purchases on their own, their credibility is destroyed,
17 correct?

18 A Their credibility, yes, could be destroyed

19 Q And you testified to that not five minutes ago,
20 correct?

21 A But what we are dealing with is drug users

22 Q Okay Thank you

23 THE COURT Thank you, ma'am

24 THE WITNESS Thank you

25 MS JOYNER Thank you, Your Honor

OFFICER JOSH WELCH - DIRECT BY MS JOYNER

201

1 May we approach?

2 THE COURT Yes, sir

3 MS JOYNER As far as scheduling?

4 THE COURT Yes, ma'am

5 (Whereupon, the lawyers approached the bench for
6 an off-the-record discussion)

7 MS JOYNER Your Honor, the State next calls
8 Officer Josh Welch

9 OFFICER JOSH WELCH, having been first duly sworn,
10 testified as follows

11 DIRECT EXAMINATION BY MS JOYNER

12 Q Could you please state your name for the record?

13 A My name is Josh Welch

14 Q What's your occupation?

15 A I'm a police officer

16 Q With what law enforcement agency?

17 A I work for Rock Hill police department

18 Q And what's your current job designation?

19 A My current assignment is assigned to the York County
20 multi-jurisdictional drug enforcement unit

21 Q How long have you been with the DEU?

22 A Three years

23 Q Were you working with the DEU back on March 8th of
24 2007?

25 A Yes, I was

1 Q And were you on that date involved in the investigation
2 of Antwan Wade?

3 A Yes, I was

4 Q Please tell the jury what part you took in the
5 investigation of Mr Wade

6 A The part of the investigation that I took was -- we
7 always search the informants vehicle before and after the
8 operation to make sure there is no kind of illegal
9 contraband in the vehicle before we go do it and to make
10 sure there is no illegal contraband behind, such as drugs,
11 guns, things of that nature

12 My part in that was before we did the transaction, or
13 made the transaction, that I was there and observed Officer
14 Clark search the vehicle before the transaction And then
15 after the transaction I searched the vehicle

16 Q What is DEU's policy procedure on how you conduct a
17 search of the vehicle?

18 A Search everything inside the vehicle, you know,
19 including the glove box, underneath the seats, the floor
20 mats, all the way to the trunk I mean you search
21 everything

22 Q Inside the trunk, how do you search inside the trunk?

23 A You take a key, open the drunk, looked under the spare
24 tire, or whatever compartments are back there

25 Q Do you recall what the condition of the confidential

OFFICER JOSH WELCH - DIRECT BY MS JOYNER

203

1 informants car was in this case? Was it clean or dirty?

2 A I mean, everything was normal car I mean, you have
3 cups and drink bottles and stuff, but as far as --

4 Q And were those cup and drinks bottles searched? Is
5 that part of the DEU's procedure?

6 A Yes, everything is searched in the car

7 Q And when you observed Officer Clark conduct the initial
8 search of the vehicle, did he follow and adhere to the DEU
9 policies and procedures?

10 A Yes, he did

11 Q Did he locate any contraband in that car?

12 A No, he did not

13 Q And when you searched the vehicle after the transaction
14 had occurred, did you follow the policies and procedures on
15 searching the vehicle?

16 A Yes, I did

17 Q Did you locate any contraband?

18 A No, ma'am, I didn't

19 Q Other than being involved in the search of the vehicle,
20 did you take any other role in the investigation?

21 A Yes, I was on the surveillance crew, I guess, team,
22 surveillance team Myself and Officer Schettler were riding
23 together in my vehicle

24 Q Okay Do you recall how many cars in this surveillance
25 team accompanied the CI's vehicle to ADDRESS Road?

1 A There was three cars involved

2 Q And during the entire transit from Moss Justice to
3 ADDRESS Road, did the DEU ever lose visual surveillance of
4 the informants car?

5 A No, ma'am

6 Q Were you part of the team that followed the vehicle
7 back to Moss Justice?

8 A Yes, I was

9 Q Did you ever lose visual surveillance of the car on the
10 way back?

11 A No

12 Q Were you involved in the arrest of Mr Wade on this
13 distribution warrant?

14 A Yes, ma'am, I was

15 Q Do you recall the location of his arrest?

16 A He was arrested at his house on ADDRESS Road, I
17 think ADDRESS Road

18 Q Thank you very much, Officer Welch Please answer any
19 questions that Mr Delaney has

20 A Okay

21 CROSS EXAMINATION BY MR DELANEY

22 Q Officer Welch, you were not inside the residence March
23 8th, correct?

24 A March 8th?

25 Q Yeah

OFFICER JOSH WELCH - CROSS BY MR DELANEY

205

1 A On the day the buy took place?

2 Q Date of the alleged buy, yes

3 A No, sir, I was not inside the house

4 Q And you have no idea who was inside that house, do you?

5 A I have not a clue who was inside that house

6 Q Or how many people were inside that house, correct?

7 A No, sir

8 Q Now -- and I have asked other drug enforcement officers
9 these same set of questions when they testified, and I want
10 to ask you the same, in terms of you are familiar with the
11 contract the CI signs, correct, when they go to work for the
12 DEU?

13 A Yes, sir

14 Q An extremely important part of this contract agreement
15 is that they are not to possess, sell, purchase drugs,
16 correct?

17 A As far as -- I'm sorry? Can you rephrase the question?

18 Q While a confidential informant is working for the drug
19 enforcement unit --

20 A Okay

21 Q -- it is totally against policy in this contract --

22 A Right

23 Q -- that they possess drugs, correct?

24 A That they possess drugs, that's correct

25 Q That they use drugs, correct?

1 A If involved -- can I read the agreement and tell you
2 exactly?

3 Q Yeah, no problem

4 A I mean, it's --

5 Q If you want to refer to -- I guess what I'm talking
6 about is the first one here, number one

7 A Yes

8 Q You can have this, if you want to --

9 A Yes

10 Q -- refresh

11 Now, number one in that contract basically forbids a CI
12 to possess, sell, or purchase drugs, correct?

13 A That's correct, yes, sir

14 Q Okay And in addition, in no way is a CI supposed to
15 go out and try to make deals on their own or purchase on
16 their own without y'all knowing it?

17 A Exactly right, that's right

18 Q That's a big no-no, correct?

19 A That's exactly right, yes, sir

20 Q And if that happened, or if someone is using drugs or
21 selling drugs, that can very seriously contaminate or
22 compromise any investigation that you have ongoing, correct?

23 A If we know about it, yes, sir, if we are aware of it

24 Q Okay Are you aware that Robert Montgomery testified
25 that he smoked crack the night before this alleged buy?

OFFICER JOSH WELCH - CROSS BY MR DELANEY

207

- 1 A No, sir, because I have been sequestered I wasn't in
2 the courtroom for his testimony
- 3 Q Would that affect the way now that you view his
4 reliability and credibility?
- 5 A Reliability and credibility, as far as what?
- 6 Q Being a reliable confidential informant, is he
7 believable after hearing that, that he's got up on that
8 stand and testified he smoked crack the night before this
9 alleged buy
- 10 A Just because he smoked crack wouldn't -- I wouldn't say
11 that would -- I mean, just because he smoked crack doesn't
12 mean that his word isn't good I don't know what you are
13 trying to get at here
- 14 Q He never told you --
- 15 A What's the question is what I'm asking?
- 16 Q Well, my question is --
- 17 A Okay
- 18 Q -- Robert Montgomery took this stand --
- 19 A Yes, sir
- 20 Q -- and told these individuals -- it took awhile, but he
21 told them he smoked crack the night before this alleged buy
- 22 A Okay
- 23 Q Okay And my question to you is after hearing that --
- 24 A Uh-huh
- 25 Q -- his reliability, his credibility as a CI is

1 destroyed, correct?

2 A Forever -- I mean, working for us? I don't understand

3 Q Officer, I don't think that's -- is that question

4 confusing? I don't think that's a confusing question

5 A I mean, I feel like it's confusing to me, because you

6 are asking --

7 Q I'll stop and I'll try to clean it up

8 A Okay

9 Q Because you had just testified three to four minutes

10 ago -- and correct me if I'm wrong, but you had just

11 testified three to four minutes ago that if you find out

12 someone is out there making purchases on their own, if

13 someone is out there selling drugs, using drugs, that's

14 going to contaminate or compromise any investigation

15 A We would not use them anymore, that's right We

16 wouldn't use them as an informant anymore

17 Q And that's because their credibility, their reliability

18 in the eyes of the DEU --

19 A With us, yes, sir If -- if that's the question you

20 are asking, with us, yes, sir, that would jeopardize their

21 credibility with us

22 Q So then we will go back to the question

23 A Okay

24 Q After hearing Robert Montgomery testify that he smoked

25 crack the night before this alleged buy, to you does that

OFFICER JOSH WELCH - REDIRECT BY MS JOYNER

209

1 affect -- does that destroy his credibility and reliability
2 to you?

3 A For working for me, yes, sir

4 MS JOYNER Your Honor

5 MR DELANEY Okay Thank you I have no further
6 questions

7 MS JOYNER A few brief questions on redirect,
8 Your Honor

9 REDIRECT EXAMINATION BY MS JOYNER

10 Q I want to follow up on one of the questions that Mr
11 Delaney asked you He asked you about affecting credibility
12 and you responded just because a person does drugs doesn't
13 mean you can't take their word?

14 A Right

15 Q Something along those lines?

16 A Yes

17 Q Can you please explain what you mean by that?

18 A I mean, just because a person has smoked crack, or used
19 drugs, or even sells drugs, doesn't mean that they don't
20 tell the truth I mean, we -- if I can, we have arrested
21 people before in the past that come in and say "yeah, I have
22 sold drugs, I sell drugs and I'll continue to sell drugs "
23 I mean, they are honest, but -- and it doesn't affect their
24 credibility, as far as being honest about what they tell
25 you, but it would affect their credibility as far as working

1 for us, because we can't -- you know, they are doing things
2 that in the agreement we have told them not to do
3 Therefore, we don't use them anymore

4 Q Had you been aware, or anybody in the DEU been aware,
5 prior to March 8th about Mr Montgomery's activity, what
6 would have been the DEU's policy and procedure as far as how
7 to proceed with him?

8 A We would have terminated using him at all We wouldn't
9 have used him

10 Q But you -- were you aware, prior to preparing for this
11 trial, that Mr Montgomery had smoked crack at Antwan Wade's
12 house the night before this transaction?

13 A I had no idea

14 Q Thank you, Officer Welch

15 MR DELANEY Recross, Your Honor?

16 THE COURT Yes, sir

17 RECROSS EXAMINATION BY MR DELANEY

18 Q Therefore, Robert Montgomery has been untruthful with
19 the drug enforcement unit, correct?

20 A I don't know about untruthful

21 Q You never heard anything about this, did you?

22 A He never volunteered the information to us, no, sir

23 MR DELANEY No further questions

24 THE COURT Thank you, sir You may stand down,

25 sir

OFFICER MIKE LIGON - DIRECT BY MS JOYNER

211

1 THE WITNESS Thank you

2 MS JOYNER Your Honor, we would ask that Officer
3 Welch be released and allowed to remain in the courtroom

4 MR DELANEY No problem

5 MS JOYNER And I neglected to ask that Officer
6 Truesdale be allowed to come back in the courtroom

7 THE COURT Yes Of course, sequestration ends
8 after their testimony They are allowed to come back in
9 after their testimony

10 MS JOYNER Thank you, judge

11 Your Honor, the State calls Officer Mike Ligon

12 OFFICER MIKE LIGON, having been first duly sworn,
13 testified as follows

14 DIRECT EXAMINATION BY MS JOYNER

15 Q Officer, can you please state your name for the record?

16 A James M Ligon

17 Q And Officer Ligon, how are you employed?

18 A Currently work with the York County sheriff's office

19 Q In what capacity?

20 A I'm assigned -- I'm an investigator with the York
21 County multi-jurisdictional drug enforcement unit

22 Q How long have you been on the DEU?

23 A Six and a half years

24 Q And prior to being assigned to the DEU, how long did
25 you work for the sheriff's office?

1 A I have been in law enforcement now 12 years

2 Q In your six and a half years on the drug enforcement
3 unit, tell the jury what types of different investigations
4 that you have been a part of

5 A We have been investigations all the way ranging from
6 murder investigations to locating fugitives, and -- but we
7 more work narcotics investigations

8 Q And by narcotics investigations, what types of
9 narcotics do you investigate?

10 A Basically we will get -- sometimes it's only a name
11 We will get a name of a subject or a general location or
12 area We will go and we will conduct surveillance in that
13 area and potentially arrest subjects for selling drugs in
14 those areas

15 We also do investigations to where we have what we
16 consider confidential informants come in and purchase drugs
17 for us Investigations of that nature

18 Q Confidential informant, what type of people tend to
19 agree to work with law enforcement and be confidential
20 informant?

21 A You have concerned citizens where they may have a
22 problem, say as yourselves that are -- or people who are in
23 the courtroom that would have, say, a problem with someone
24 in their neighborhood that they may say is selling drugs or
25 they feel like they are selling drugs and they have a

OFFICER MIKE LIGON - DIRECT BY MS JOYNER

213

1 specific knowledge of that crime and may even possibly be
2 close to these people and are able to get us in with these
3 people in order to purchase drugs from them

4 You have paid informants, which are those informants
5 who do know people who sell drugs and they want to come in
6 and make money by buying drugs for the drug unit.

7 And then you also have confidential informants who are
8 subjects that we have arrested on drug offenses and come in
9 and choose to try and help themselves with their charges or
10 work off their charges

11 Q In that last category, sometimes we call them working
12 defendants, is that right?

13 A Yes, ma'am.

14 Q Working defendants, when a person comes in and they are
15 going to be a working defendant, does the drug unit make
16 them any promises about what is going to happen in their
17 pending criminal case?

18 A No, ma'am, by state law we are prohibited to make them
19 any promises whatsoever, as far as to what possibly could be
20 done with their charges

21 Q What typically is their expectation or hope when they
22 start working?

23 A People who come in and work for the drug unit, they
24 hope for possibly reduction in their sentence, or possibly
25 their charges being dismissed, or possibly probation

1 Q When they are out there in -- when a confidential
2 informant is out there and they are doing work or trying to
3 do work, how is it that -- we will say, for instance, a
4 person went and tried to make a buy, but was unable to make
5 a buy Would the DEU consider that person to have done work
6 for them?

7 A No Basically what we -- what we consider someone
8 doing work is a person who comes in and actually does
9 purchase the drugs They can come in and try as much as
10 they want, but there is no consideration given in those
11 types of -- in those areas where they are not successful in
12 buying or purchasing drugs

13 Q Okay If a person purchases drugs, though, and makes a
14 purchase of drugs, but, for instance, would be unable to
15 identify the subject to whom they -- from whom they bought
16 it, would that be a situation where they would have been
17 considered to have done work?

18 A Yes

19 Q If they went to a location to make a buy from one
20 person, but ultimately made a buy from another person, would
21 they have been considered to have done work?

22 A Yes

23 Q Were you involved, Officer Ligon, in the investigation
24 of Antwan Wade on March 8th of 2007?

25 A Yes, ma'am, I was

OFFICER MIKE LIGON - DIRECT BY MS JOYNER

215

1 Q And do you recall the location of that investigation or
2 that investigation was to take place?

3 A Yes, ma'am, I believe it was ADDRESS Road

4 Q Please tell the jury how it is that you became involved
5 in the investigation of Mr Wade

6 A Basically there was a confidential informant that
7 was -- that come into the office and met with myself and
8 Officer Clark, who is not present today Met with us and
9 advised us that they could purchase a quantity of crack
10 cocaine from Mr Wade located at that residence there on
11 ADDRESS Road

12 Q And what happened in that initial meeting with the
13 confidential informant?

14 A Basically we got -- we had the confidential informant
15 come in He told us what he could do, at which time he was
16 then -- I then searched the confidential informant and
17 fitted the confidential informant with an electronic
18 listening device

19 Q Who provided the confidential informant, do you recall,
20 with the government funds?

21 A I did It was \$40

22 Q Okay Now, after that happened, what part of the
23 investigation or what part did you play in the continuing
24 investigation?

25 A From that point, once the confidential informant was

1 searched and wired and no contraband was located on his
2 person, we then followed him to the location of
3 ADDRESS Road, which is located in Sharon, South Carolina

4 Q Who -- were you driving one of the vehicles?

5 A Yes, ma'am, I was

6 Q Who was in the car with you?

7 A Officer Clark was in the vehicle with me

8 Q Where -- you have been sequestered, but the jury has
9 been hearing testimony about where cars were located in
10 terms -- in relation to ADDRESS Road Where was your
11 vehicle located?

12 A Approximately three hundred -- two hundred to three
13 hundred yards up from the residence on the right-hand side
14 of the road

15 We followed the vehicle in We observed the vehicle
16 turn into the driveway of the residence at ADDRESS
17 Road We then pulled off to the right-hand side to a
18 driveway, just sitting on the right-hand side of the road
19 above the residence

20 Q When you say above the residence, do you mean before
21 the residence?

22 A Yes, ma'am

23 Q Okay And were you able to maintain from your location
24 visual surveillance of the entrance of the driveway to
25 ADDRESS Road?

OFFICER MIKE LIGON - DIRECT BY MS JOYNER

217

1 A Yes, ma'am, I was

2 Q Other than the confidential informants vehicle pulling
3 in, did you see any other vehicles pull in?

4 A No, ma'am, I didn't

5 Q Did you see any other vehicles pull out?

6 A No, ma'am, I did not

7 Q Were you, from the location where you were, able to
8 monitor the audio wire that was on the informant?

9 A Yes, ma'am, I was

10 Q Without saying what was -- what particular individuals
11 were saying on the wire, did you have -- were you able to
12 understand or have a good understanding of what was going on
13 inside the residence?

14 A Yes, ma'am

15 Q Okay Were you able to hear the confidential informant
16 making entry into the house?

17 A Yes, ma'am, I was

18 Q Were you able to hear the confidential informant going
19 back outside and getting his wife?

20 A Yes, ma'am, I was

21 Q Was that part of the plan?

22 A No, ma'am, it wasn't

23 Q Were you able to hear the confidential informant make a
24 phone called to an undisclosed or unknown individual?

25 A Yes, ma'am, I was

1 Q And were you able to hear what sounded to you to be a
2 transaction?

3 A Yes, ma'am, I did

4 Q Were the other officers that were in other unmarked
5 cars able to hear the audio feed, as well you?

6 A No, ma'am, actually some of the officers during -- in
7 those rural areas like that, these electronic listening
8 devices are only good, their reception, for a certain
9 distance And some of the officers were really having to
10 park kind of far out of the area due to the fact that most
11 people know our vehicles And if they see our vehicles in
12 the area if they are selling drugs, they are not going to
13 sell them to individuals that come in the area at that given
14 time, if they feel like we are in the area So we were the
15 only vehicle that was really able to get close enough in
16 order to monitor the electronic listening device

17 Q Were you relaying information to the other officers?

18 A Yes, ma'am, we were

19 Q Were you doing that -- how were you relaying that
20 information?

21 A By our radios that are in our vehicles

22 Q At some point did you see the confidential informants
23 vehicle pull out of the driveway?

24 A Yes, ma'am, I did

25 Q What did you do at that point?

OFFICER MIKE LIGON - CROSS BY MR DELANEY

219

1 A At that point in time, once the confidential informants
2 vehicle left, we actually stayed in the area to ensure that
3 the confidential informant was not followed out of the area
4 by any vehicles from that residence or any persons from that
5 residence

6 Q How long did you remain behind after the confidential
7 informant had left?

8 A Anywhere from 15 to 20 minutes, roughly

9 Q And after waiting the 15 to 20 minutes, what did you
10 do?

11 A We went ahead and we left the area

12 Q And Officer Ligon, did all these events occur inside of
13 York County, South Carolina?

14 A Yes, ma'am, they did

15 Q Thank you very much, officer

16 A Yes, ma'am

17 CROSS EXAMINATION BY MR DELANEY

18 Q Officer Ligon, is that correct?

19 A Yes, sir, it is

20 Q Officer Ligon, before a CI or confidential informant
21 goes out to make any type of a buy, there are certain
22 protocol or procedure that's done, correct?

23 A Yes, sir

24 Q And one of the main things is that the search is done,
25 is that correct?

OFFICER MIKE LIGON - CROSS BY MR DELANEY

220

- 1 A Yes, sir
- 2 Q Persons, vehicles?
- 3 A Yes, sir
- 4 Q And in this particular case you searched the CI before?
- 5 A Yes, sir, I did
- 6 Q You were also the officer -- you testified that you
- 7 were also the officer who issued the \$40 in government
- 8 funds, is that correct?
- 9 A Yes, sir
- 10 Q Government funds, meaning money was marked?
- 11 A Actually we don't put any marks on the money We
- 12 actually photocopy the money
- 13 Q Okay
- 14 A And we save that copy or that photocopy of that money
- 15 Q So you can match the numbers up?
- 16 A Yes, sir If there is any large sums of money later
- 17 on, if we were to do search warrants or things of that
- 18 nature, if there is any large sums of money, we will then
- 19 take that piece of paper with those photocopies of the money
- 20 and then match it against the money that is located
- 21 Q Obviously in an investigation, you know, if the money,
- 22 the marked money, isn't found on somebody, or, you know,
- 23 that just made a sale, that's obviously some decent
- 24 evidence, is that correct?
- 25 A Yes, sir, it is

1 Q Now, in your experience as a drug enforcement unit
2 officer, \$40, will that normally get you around 4 grams of
3 crack?

4 A Yes, sir, that's actually right on the money

5 Q Okay

6 A Usually you only get around three-tenths of a gram, but
7 if you get four-tenths of a gram, then you have gotten your
8 money's worth, per say

9 Q I know that you have heard of the term dub, is that
10 correct?

11 A Yes, sir, that would be a 20, or a tenth of a gram

12 Q And approximately would that be normally around 2
13 grams?

14 A A tenth of a gram, depending

15 Q Tenth of a gram?

16 A Depending

17 Q Get your money's worth, it could be --

18 A A true dub would be two-tenths of a gram, yes, sir

19 Q And you were the officer who prepared the surveillance
20 report, is that correct?

21 A Actually I did not prepare the surveillance report
22 itself Those were how it was viewed Officer Clark did
23 approve -- did prepare it, but I was there in his presence
24 He actually prepared the notes that were taken that night

25 Q So you are familiar with everything that's in here?

1 A Yes, sir

2 Q Could I give you a copy of that?

3 A Yes, sir

4 Q Ask you just a couple of questions

5 A Thank you, sir

6 Q Now, in this surveillance report that's marked

7 confidential, there is a mention that there is a phone call

8 made around 8 25 p.m , is that correct?

9 A Yes, sir

10 Q Okay And you had testified on direct that you were

11 able at some point to determine that the criminal informant,

12 confidential informant, left the residence, went to his car

13 and then went back into the residence, is that correct?

14 A Yes, sir

15 Q That is nowhere in this surveillance report, is that

16 correct?

17 A No, sir, it isn't

18 Q And that's -- would you agree that that's a fairly

19 significant movement going on?

20 A Basically what we do when we do these reports here, as

21 far as -- as far as the surveillance report, what we note is

22 their time of arrival

23 Q Uh-huh

24 A And then we note the time that they actually make the

25 drug transactions itself

1 Q Uh-huh

2 A And that's what's noted there, as far as -- as far as
3 this goes

4 As far as any other movements where they go out to the
5 vehicle and things of that nature, we note the time of
6 arrival, the time they make the deal, and the time they
7 leave the residence

8 Q And nowhere in this surveillance report is there any
9 mention of another individual going into the residence with
10 the confidential informant, correct?

11 A Yes, sir

12 Q And I wanted to just clear one thing up There was a
13 little confusion yesterday with Officer Schettler regarding
14 the surveillance report Did you see where at 8 31 p m
15 and it says CI's vehicle?

16 A Yes, sir

17 Q That's CI apostrophe S, is that correct?

18 A Yes, sir

19 Q That's referring to a singular confidential informant,
20 is that correct?

21 A Yes, sir

22 Q And obviously there is no mention of this other
23 individual? Specifically then there is no mention of her
24 ever being searched, is that correct, in this report?

25 A No, sir, it is not

1 Q Okay The last question I want to ask you about this
2 report is the section that deals with the weather and
3 visibility

4 A Right

5 Q That is, the weather or visibility is described here as
6 clear and sunny, correct?

7 A Yes, sir

8 Q It wasn't clear and sunny, is that right?

9 A It was clear and dark It was sunny that day, earlier
10 that day, I would assume, but, once again, I can't -- I
11 can't answer that question, because I'm not the one who
12 typed it up

13 Q Okay But all the times that you were at this
14 location, it wasn't clear and sunny? It was nighttime? It
15 was dark out, correct?

16 A Yes, sir

17 Q Now, you were the officer who equipped the confidential
18 informant with the electronic listening device, correct?

19 A Yes, sir, I am

20 Q And that is done because you want to control the
21 transaction, correct?

22 A It is there to monitor the transaction between the
23 confidential informant and whoever they purchase drugs from,
24 and it is to also be able to monitor and be able to make
25 sure their safety is paramount, as far as those things

1 concerned If something goes bad, we'll be able to hear it
2 on the electronic listening device and be able to come in
3 and hopefully rescue them in whatever situation they may get
4 themselves into

5 Q And would you agree with me also that you used these
6 tapes or this audio equipment to control the confidential
7 informant, correct?

8 A Yes, sir

9 Q And there has been some testimony that -- y'all aren't
10 dealing with sometimes most upstanding members of the
11 community, correct?

12 A Correct

13 Q So you want to be able to know what they are doing and
14 what's going on, correct?

15 A Yes, sir

16 Q Because you weren't in that house that night?

17 A No, sir, I was not

18 Q And there wasn't any other DEU officer in that house
19 that night, correct?

20 A Correct

21 Q Now, there is no longer a tape, correct?

22 A Correct

23 Q Are you familiar with the contract that's signed
24 between the DEU and informant when they go to work?

25 A Yes, sir, I am

1 Q And would you agree that the first part of this
2 contract specifically deals with a confidential informant
3 using drugs, selling drugs, purchasing drugs, correct?

4 A Yes, sir

5 Q Okay And that obviously is strictly forbidden by the
6 DEU unit, correct?

7 A Yes, sir

8 Q Okay In addition, it is forbidden and these
9 individuals are specifically told they are in no way to go
10 out and try to make buys or deals on their own, correct?

11 A Yes, sir

12 Q If you have an informant doing that, that can very
13 seriously compromise any investigation, correct?

14 A Yes, sir, it could

15 Q And the same thing can be said for drug use, drug
16 possession, selling dope, things of that nature, correct?

17 A Yes, sir, it could

18 Q Did Robert Montgomery -- do you have any knowledge that
19 Robert Montgomery used crack, smoked crack cocaine, the
20 night before this alleged buy?

21 A No, sir, I don't

22 Q If you were to learn that, would that seriously -- or
23 would that destroy his credibility, his reliability, in your
24 eyes?

25 MS JOYNER Your Honor, I believe the credibility

1 is a question for the jury, unless he is asking whether his
2 credibility as a future confidential informant

3 THE COURT All right Well, you might rephrase
4 Credibility with regard to this officer then
5 BY MR DELANEY

6 Q As an officer of the drug enforcement unit, if you have
7 a CI that is working for you, okay?

8 A Right

9 Q And you learn along the way that this CI is smoking
10 crack, smoking weed, whatever When you learn that, to you,
11 credibility, the reliability of that informant, is going to
12 be destroyed, correct?

13 A It's not going to be destroyed in the sense to where --
14 you have to deal with demons to get to the devil, per say --

15 Q I understand that But --

16 A -- as far as that goes

17 Now, is it going to be a situation where --

18 Let me ask you this I mean, if you don't have a -- if
19 there is no issues here Are you saying if I knew about
20 this before he went and did the buy, or after he did the
21 buy?

22 Q Again, it's just a general question, you know, in terms
23 of a confidential informant who is working for the DEU If
24 it's found out they are using, if it's found out they are
25 going out and making purchases on their own, and you have

1 already testified that that seriously compromises any
2 investigation

3 A Yes, sir If it's -- if they are doing it during the
4 current investigation, yes, it is

5 Q My question to you then is that is because to the DEU
6 officer, to you, their credibility would be shot?

7 A I can't -- I can't say that it would totally be shot
8 No, sir, I can't say that, due to the individuals that we
9 deal with on a daily basis

10 Q If you had a --

11 Let me ask this question then A confidential
12 informant that was working for you, if you he or she is out
13 there making purchases or making buys without you knowing
14 about it, wouldn't that seriously affect their credibility,
15 their reliability to you?

16 A If I don't know about it, then I can't say whether it's
17 going to affect their credibility with me or not

18 If they do it and I find out about it, will I continue
19 to use them? No, sir

20 Q You get rid of them immediately?

21 A Yes, sir

22 Q Correct?

23 A I would

24 Q All agreements off the table?

25 A Yes, sir

1 Q Their charges right back up there?

2 A They would get credit for whatever work that they have
3 done

4 MR DELANEY Court's indulgence for one minute

5 THE COURT Yes

6 (Off the record)

7 (Back on the record)

8 BY MR DELANEY

9 Q Are you aware Robert Montgomery took the stand earlier
10 today and admitted to this jury that he smoked crack cocaine
11 the night before this alleged buy?

12 A No, sir, I am not

13 Q Would that surprise you a little bit?

14 A Yes and no

15 Q Okay Are you aware Robert Montgomery sat in that same
16 chair and told these individuals that he was out totally
17 making deals, making buys on his own?

18 MS JOYNER Your Honor, I object That's a
19 misstatement of his testimony and officer --

20 THE COURT I agree that it would be a
21 misstatement Rephrase, counsel

22 BY MR DELANEY

23 Q After hearing that Robert Montgomery smoked crack the
24 night before this alleged buy, would you agree that his
25 credibility is pretty shot?

OFFICER MIKE LIGON - REDIRECT BY MS JOYNER

230

1 MS JOYNER Your Honor, asked and answered I
2 object

3 A No

4 MR DELANEY No more questions

5 REDIRECT EXAMINATION BY MS JOYNER

6 Q Officer Ligon, a few questions to follow up

7 You made a statement to Mr Delaney that to get to the
8 devil -- you have to use demons to get to the devil?

9 A Yes, ma'am

10 Q Could you please explain to the jury what you mean by
11 that?

12 A Well, it's like this If -- if you get someone, as
13 yourself You have never messed with drugs, never done
14 drugs, do you honestly think that you are going to be able
15 to go into an area where drugs are being sold and possibly
16 purchase those drugs? You wouldn't fit the part You --
17 you would have no success rate whatsoever, because, number
18 one, you probably don't know the lingo

19 Number two, you don't know the persons that are
20 involved that are selling the drugs

21 You would more or less need someone who has been in
22 that environment and dealt with these people on a daily
23 basis, or, you know, two or three times a week purchasing
24 drugs from these people to take you into that environment,
25 and then, more or less, say "hey, I can vouch for this

1 person, sell them the drugs," and that's probably pretty
2 much the only way that you are going to possibly get into
3 that environment and possibly be able to even sell -- buy
4 any drugs, or even sell drugs, for that matter

5 Q And the types of -- so the types of people that are
6 able to be successful confidential informants are, I guess,
7 the demons?

8 A Or, per say, been there, done that

9 Q What steps -- are steps taken to protect integrity of
10 investigations involving confidential informants?

11 A Yes, ma'am, there are steps that are taken I mean,
12 you know, you have the confidential informant agreement
13 They read it They sign it They know what -- they know
14 what's there, but you can't be with somebody 24/7 to ensure
15 that they are doing what they are supposed to be doing

16 It's just like if you have a two year old at the house,
17 or if any of you have kids, you tell them "no, I don't want
18 you doing that," and then five minutes after you walk out of
19 the room, they turn around and do it You weren't there to
20 stop them from doing it, so, you know, it happens Things
21 happen

22 Q And when you go into an investigation with a
23 confidential informant, other than that agreement, are there
24 other things that you do to protect the integrity?

25 A Once again, we keep -- you know, we do our best to keep

1 check on them We make telephone calls to ensure that they
2 are where they are at, where they need to be doing You
3 know, they come in and check in with us You know,
4 different things of that nature, I mean, but outside of that
5 nothing

6 Q In stepping away, though, from each individual
7 confidential informant, are there policies and procedures in
8 place on how you conduct every investigation?

9 A Yes, ma'am

10 Q And, just briefly, what types of procedures do you take
11 to ensure the integrity of your investigation?

12 A Once again, with the phone calls, the confidential
13 informant agreement, taking pictures, running criminal
14 histories on these subjects to see what kind of background
15 they do have, and just being sure you know -- trying to keep
16 up with -- it's more or less like having a kid You are
17 trying to keep up with them and know where they are at at
18 all times

19 (Off the record)

20 (Back on the record)

21 MS JOYNER Thank you very much, officer

22 THE COURT Any other questions?

23 MR DELANEY Nothing further, judge

24 THE COURT Thank you, sir You may stand down,

25 sir

1 THE WITNESS Yes, sir Thank you

2 THE COURT All right It's a good time to get
3 lunch, I think It's about one o'clock

4 Mr Foreman, ladies and gentlemen of the jury, we
5 are going to recess for lunch at this time I'm going to
6 ask you to be back in the jury room ready to go at 2 15
7 That should give everybody plenty of time to get lunch and
8 get back to the jury room

9 On the break from court, please do not discuss the
10 case with anyone, among yourselves, or with anyone else you
11 might see during the break

12 Please enjoy your lunch and be back at 2 15

13 Thank you

14 (The following takes place in the presence of the
15 jury panel)

16 - THE COURT Let me ask you, Mr Delaney, if Mr
17 Wade has decided whether he's going to testify or not? Do
18 you need a little more time to make that decision?

19 MR DELANEY He has decided he's not going to
20 testify, Your Honor

21 THE COURT Why don't I go ahead and question him
22 under oath at this time then

23 ANTWAN MARCUS WADE, having been first duly sworn,
24 testified as follows

25 THE COURT Sir, you can put your hand down

1 For the record you are Antwan Marcus Wade, is that
2 correct?

3 THE DEFENDANT Yes

4 THE COURT Please put your hands down

5 THE DEFENDANT Yes, sir

6 THE COURT Mr Wade, we have reached the stage of
7 the trial where you may present your defense You have the
8 right to testify in your own behalf However, no one can
9 make you testify

10 In the event that you have any record for any
11 conviction involving dishonesty or false statement or for a
12 crime punishable by imprisonment for more than one year and
13 this court determines that the probative value of admitting
14 this evidence outweighs its prejudicial effect to you, the
15 solicitor would be able to introduce this record for
16 impeachment purposes to attack your credibility

17 If you elect not to take the stand, I would charge
18 the jury that they are not to give the fact that you did not
19 testify any consideration whatsoever and there is to be
20 absolutely no prejudice to you because you did not testify

21 It is left entirely up to you whether or not you
22 testify You may talk with your attorney, your family,
23 friends, or anyone else, but the ultimate decision will be
24 left entirely up to you

25 Do you understand that it is your decision as to

1 whether you will or will not testify in your case?

2 THE DEFENDANT Yes, sir

3 THE COURT Have you discussed the advantages and
4 disadvantages of testifying with your attorney?

5 THE DEFENDANT Yes, sir

6 THE COURT And do you wish to testify in your
7 case?

8 THE DEFENDANT No, sir

9 THE COURT Is that your decision?

10 THE DEFENDANT Yes, sir

11 THE COURT Thank you, sir You may return to
12 your seat

13 THE DEFENDANT Thank you

14 THE COURT All right We will go ahead and
15 recess for lunch then and start back at 2 15 Thank you

16 (Whereupon, proceedings were recessed)

17 (Whereupon, proceedings were reconvened)

18 THE COURT Counsel, ready to proceed?

19 MS JOYNER The State is ready, Your Honor

20 MR DELANEY Defense is ready, Your Honor

21 THE COURT All right Please bring the jury in

22 MS JOYNER As long as they are coming in, I'm
23 going to go ahead and bring Ms Traylor in

24 THE COURT That's fine

25 (The following takes place in the presence of the

BARBARA TRAYLOR - DIRECT BY MS JOYNER

236

1 jury panel)

2 THE COURT Good afternoon, Mr Foreman, ladies
3 and gentlemen of the jury We are ready to resume with the
4 trial

5 Counsel, ready to proceed

6 MS JOYNER We are, Your Honor

7 The State calls Barbie Traylor.

8 BARBARA D TRAYLOR, having been first duly sworn,
9 testified as follows

10 DIRECT EXAMINATION BY MS JOYNER

11 Q Ms Traylor, can you please state your full name for
12 the record?

13 A It's Barbara D Traylor

14 Q And Ms Traylor, where are you employed?

15 A With the York County sheriff's office in the evidence
16 department

17 Q How long have you been in the evidence department?

18 A Six years

19 Q And what is your official job title?

20 A I'm the -- one of the evidence clerks

21 Q Okay And what are the duties of an evidence clerk?

22 A We take in evidence We store it, until it either go
23 to the lab for testing or until it's time to go to court

24 Q Okay Is there an evidence locker here at Moss Justice
25 Center?

1 A There is

2 Q Please explain to the jury what the evidence locker
3 looks like

4 A It looks like a metal post office box with a handle
5 that you drop down into It has a lock on the bottom that
6 only we have the key to

7 Q It's a drop box?

8 A Uh-huh

9 Q Once something is dropped, can somebody go back in and
10 get it out?

11 A No

12 Q I'm showing you what's been marked for identification
13 purposes as State Exhibit No 1 Do you recognize that
14 exhibit?

15 A I do

16 Q How do you recognize that exhibit, Ms Traylor?

17 A It has my signature on the bottom of it

18 Q Okay And what does it indicate? Where did you
19 receive that exhibit from?

20 A I received it from the evidence drop here at the Moss
21 Justice Center

22 Q And does it indicate what time of day that you received
23 it?

24 A It does

25 Q What time did you receive it?

1 A 10 03 in the morning

2 Q And on what day?

3 A March the 9th of 2007

4 Q What did you do with that exhibit, once you received
5 it?

6 A Once we receive it in, we log it into the computer, put
7 a bar code on it, and then we place it into our storage

8 Q And who had access to your storage?

9 A Just the evidence personnel

10 Q Okay What condition was that exhibit in when you
11 first received it?

12 A The inner bag is how I received it It was not in this
13 outside bag, but it was inside this sealed inner bag

14 Q Okay And how does that exhibit look different today
15 than when you first received it on the 9th of March?

16 A The inner bag has been cut open It went to our
17 chemist and she tested it, and then she placed it in this
18 sealed bag to send back to us

19 Q Okay On what date did you give that to the chemist?

20 A It was September the 11th, 2007

21 Q And how are you able to tell those dates and times?

22 A They are recorded on the front of the package

23 Q And does the front of the package give you identifying
24 information as to which case this relates to?

25 A It does It has the case number at the top

1 Q Does it have the defendant's name as well?

2 A It does

3 Q Okay And what is the name of the suspect involved in
4 this particular exhibit?

5 A The first name is Antwan and the last name is Wade

6 Q And what date, again, I'm sorry, did you say that you
7 gave this to the chemist?

8 A It was September the 11th of 2007

9 Q Okay And after the chemist was done with the analysis
10 and it came back to you as a new bag, do you know when you
11 received it back from the chemist?

12 A It was received back into evidence on October the 12th
13 of 2007

14 Q And where is that exhibit then sent after you received
15 it back from the chemist?

16 A It's been in our locked evidence room

17 Q When did Officer Schettler pick it up?

18 A It was picked up January the 9th of this year

19 Q Please answer any questions Mr Delaney has

20 CROSS EXAMINATION BY MR DELANEY

21 Q You were not involved with any part of the
22 investigation, is that right?

23 A No, sir, I wasn't

24 Q Thank you

25 THE COURT Thank you, ma'am You may stand down,

1 ma'am

2 CYNTHIA MITCHUM, having been first duly sworn,
3 testified as follows

4 DIRECT EXAMINATION BY MS JOYNER

5 Q Can you please state your full name for the record?

6 A Cynthia Mitchum

7 Q Ms Mitchum, how are you employed?

8 A I'm employed with the York County sheriff's office in
9 the drug analysis laboratory

10 Q How long have you been employed by the York County
11 sheriff's office?

12 A About seven and a half years

13 Q And in what capacity are you employed there?

14 A As a drug chemist

15 Q Prior to coming to York County sheriff's department,
16 did you have any prior experience in the area of chemical
17 analysis?

18 A Yes

19 Q What was that?

20 A I worked at the South Carolina Law Enforcement
21 Division, commonly known as SLED, in Columbia, South
22 Carolina, also in their drug analysis laboratory, and I was
23 there for just a little over seven and a half years

24 Q What type of training do you have to have in order to
25 be a chemical analyst?

1 A I have a Bachelors of Science Degree in chemistry,
2 which I received from Winthrop University in 1990

3 And then I have various classes that I have attended
4 for instrumentation and training at South Carolina Law
5 Enforcement Division

6 Q And what are your duties as an analyst here at the York
7 County sheriff's office?

8 A I receive in evidence and then I'll test that evidence
9 for controlled and non-controlled substances

10 Q And in your -- you said seven and a half years?

11 A Yes

12 Q As an analyst here in York county how -- can you even
13 estimate how many times that you have been called upon to
14 analyze substances to determine whether they were crack
15 cocaine?

16 A In court, or do you mean just on routine?

17 Q In routine, as part of your job

18 A It's been in excess of at least four, five thousand
19 times

20 Q Do you analyze other substances other than crack
21 cocaine?

22 A Yes

23 Q And is that part of your regular job duties?

24 A Yes, it is

25 Q Have you ever been qualified as an expert in the area

1 of chemical analysis?

2 A Yes

3 Q Do you know how many times?

4 A In excess of two hundred times

5 MS JOYNER Your Honor, at this time I would move
6 to declare this witness to be an expert in the area of
7 chemistry and analysis of narcotics

8 THE COURT Any questions?

9 MR DELANEY That's without objection, Your
10 Honor

11 THE COURT Okay Counsel, I find she is
12 qualified as an expert in the field of chemical analysis

13 Let me give the jury an explanatory instruction
14 with regard to expert witnesses, please

15 Mr Foreman, ladies and gentlemen of the jury, I
16 charge you that although lay witnesses are limited to
17 testifying about facts within their knowledge, are not
18 allowed to give opinions, certain witnesses who, by
19 training, education or experience considered as experts in a
20 particular field may give opinions in that field, based upon
21 the facts of a matter and their conclusions And these
22 opinions constitute evidence to be considered by you in
23 connection with all of the other evidence and testimony in
24 the case It is for you, the jury, to give it such weight
25 as you in your experience and discretion may determine By

1 this I mean that you must weigh such evidence and accept or
2 reject it in the same manner as you treat all other evidence
3 in the case

4 The value of expert testimony does not depend upon
5 the skill or knowledge professed by experts, but upon the
6 skill and knowledge they actually possess Expert testimony
7 is given for the purpose of enlightening you and not for the
8 purpose of controlling your judgment

9 Please proceed

10 BY MS JOYNER

11 Q Ms Mitchum, I'm showing you what's been previously
12 marked as State's Exhibit 1 Do you recognize that exhibit?

13 A Yes, I do

14 Q And how are you able to recognize that exhibit?

15 A I can recognize it through my initials on the evidence
16 and my signature in the chain of custody

17 Q And are you able to tell when you initially received
18 this exhibit?

19 A Yes, I received it on 9-11 of 2007

20 Q Okay And who did you receive it from?

21 A Barbie Traylor

22 Q Where did you receive this?

23 A Down at the evidence room at the sheriff's office

24 Q What condition was that exhibit in when you received
25 it?

CYNTHIA MITCHUM - DIRECT BY MS JOYNER

244

1 A When I received it, I received this blue filler bag
2 inside of this outer bag This bag was sealed and I notice
3 I have okay, the date and my initials on that, and I check
4 all my evidence to make sure it's sealed when I receive it

5 Q And the date that you received it, did it appear in any
6 way to have been tampered with?

7 A No

8 Q What did you do with it when you received it?

9 A Once I receive the evidence, then it goes into the
10 laboratory and into a locked drug locker that I have the
11 only keys to

12 Q Did you ultimately conduct an analysis --

13 A Yes

14 Q -- on that substance?

15 A Yes

16 Q Once you were done with that analysis, what did you do
17 with the exhibit?

18 A Once I'm done with the analysis, I'll seal everything
19 up on the outer bag, which I have in the laboratory, and
20 then I put my initials and the date that I seal it down here
21 in heat seal That's still intact today

22 Q Okay From the time that you picked it up to the time
23 that you returned it back into evidence, was this exhibit
24 continuously within your sole care, custody and control?

25 A Yes, it was

1 Q And is that bag in the same condition as it was when
2 you returned it to the evidence locker?

3 A Yes, it's still sealed here at the bottom

4 Q In conducting an analysis of that exhibit, were you
5 able to make a determination about what that substance is?

6 A Yes, I did

7 Q And what its weight is?

8 A Yes

9 Q And what did you determine the substance and weight to
10 be?

11 A State's Exhibit No 1, which is item number one in this
12 case, was found to be cocaine base, also known as crack, in
13 the amount of 0 19 grams, or 2 93 grains, Controlled II
14 substance

15 (Drug Report marked as State's Exhibit No 2 for
16 identification)

17 BY MS JOYNER

18 Q I'm showing you what's been marked for exhibit purposes
19 as State's Exhibit 2 What is that?

20 A This is the report that I issued concerning this case

21 Q And the results that you just read to the jury?

22 A That is correct

23 MS JOYNER Your Honor, at this time I would
24 offer State's Exhibit No 1 and 2 into evidence

25 MR DELANEY Without objection, Your Honor

1 THE COURT Admitted without objection

2 BY MS JOYNER

3 Q Thank you very much, Ms Mitchum

4 Please answer any questions that Mr Delaney has

5 CROSS EXAMINATION BY MR DELANEY

6 Q Ms Mitchum, you were not involved actively in this
7 investigation, is that correct?

8 A That's correct

9 Q Okay And did you testify as to the amount that you
10 weighed?

11 A Yes

12 Q And what was that?

13 A 0 19 grams, or 2 93 grains

14 Q Thank you

15 MR DELANEY No further questions

16 THE COURT Thank you, ma'am You may stand down

17 MS JOYNER Your Honor, at this time the State
18 rests

19 THE COURT All right Mr Foreman, ladies and
20 gentlemen of the jury, there is a matter I need to take up
21 with counsel now at this time out of your presence I'm
22 going to ask you to retire to the jury room briefly while I
23 take up that matter We will take about -- we'll take about
24 ten minutes or so You may refresh yourselves during the
25 break, if you need to Thank you

1 (The following takes place outside the presence of
2 the jury panel)

3 THE COURT All right I'll hear you with regard
4 to any motions either side wishes to make at this time

5 MR DELANEY Your Honor, at this time the defense
6 would make a motion Taking into light the facts most
7 favorable to the State, we would make a directed motion at
8 this time

9 THE COURT Looking at a motion for directed
10 verdict, I'm required to look at the evidence in the light
11 most favorable to the party against whom the motion is made
12 In this case, looking at the evidence in the light most
13 favorable to the State, I find there is substantial evidence
14 from which the jury could infer that the State had proven
15 the elements of this offense beyond a reasonable doubt I,
16 therefore, would deny your motion for a directed verdict

17 Anything else?

18 MR DELANEY The only other thing, Your Honor, we
19 would just renew any objections that we have made throughout
20 this trial at this time

21 At this point we do not intend to present a case
22 and the defense would rest at this time

23 THE COURT Okay What I'll get you to do is when
24 the jury comes back in, I'll ask you to go ahead and rest in
25 front of them and at that time we can go straight into

1 arguments

2 I'm trying to remember Did somebody -- did you
3 leave a request to charge back there? I left it back there
4 on my desk But, at any rate, I'll get it and look at it

5 Did you have a chance to look at it

6 MS JOYNER I received it just before we started
7 back

8 MR DELANEY I have that

9 THE COURT I can get it back there

10 Does the State wish to be heard on these?

11 MS JOYNER Your Honor, the defendant's request
12 number two, I think that there is arguably inconsistent
13 testimony

14 As to defendant's requested instruction number
15 three, I don't believe that that is an instruction, that at
16 least way it's written really addresses the allegations in
17 this case, and I think it might confuse the jury "Mere
18 presence of the person in the area where an object is found
19 is not enough in and of itself to give rise to a necessary
20 inference of possession " I mean, this is a distribution
21 case and we are alleging a distribution occurred out of a
22 residence, but I think that this request is geared towards a
23 situation where the charge is based on the actual possession
24 of a substance, constructive possession, I think that it
25 would confuse the jury

1 As request number one, I'm still trying to -- it's
2 a lengthy instruction I'm still trying to read through it
3 all

4 THE COURT Let me take up, three I agree with
5 you I don't think it's an appropriate charge in this case
6 This is not a question of actual or constructive possession,
7 and particularly not constructive possession, where two
8 people -- or where a crime is committed and it's a question
9 whether the defendant committed the crime or not in a
10 particular location This is not that kind of case It's
11 not a possession case

12 What I will charge the jury, if you wish me to do
13 so, is that mere presence is not enough They have got to
14 prove -- the State has got to prove that this defendant took
15 part in a criminal activity, but it's a short --

16 MR DELANEY And that's all we would be asking
17 for I understand that it's not anywhere close to the
18 fact -- just with the -- you know, with Mr Wade, he resides
19 at ADDRESS Lane, we would just have a very general --

20 THE COURT I think the fact that it's more than
21 one person in the house at the time in and of itself, you
22 would be entitled to a charge of mere presence, and I'll
23 charge them This is a very short charge

24 MR DELANEY No problem

25 THE COURT But I would charge it

1 The prior inconsistent statement, I would charge
2 that

3 Eyewitness identification I don't really see
4 this as an eyewitness identification problem here Usually
5 we have eyewitness identification charge when you are
6 entitled to that is where somebody really doesn't know
7 somebody and they identify them as the person that committed
8 the crime, and they might be questioned about whether they
9 got a good look at them in the lighting, or whether there
10 was -- they got the information maybe from the newspaper
11 picture, or something like that

12 When you have got a situation where an eyewitness
13 is identifying somebody who really doesn't know who that
14 person, didn't know them before this occurred, then you get
15 that charge with regard to how the things to consider in
16 determining whether it's a proper identification or not

17 That's not the situation here, because the
18 confidential informant has testified he's known the
19 defendant several years There wasn't any question about
20 his identifying him or knowing who he was And so -- and
21 it's a situation where he testified he actually went in the
22 home and bought the drugs in the home There is lighting
23 and close proximity and all that sort of thing, so I don't
24 think that you get into eyewitness identification It's not
25 one of those situations where the eyewitness really doesn't

1 know the person that they are identifying as the person that
2 committed the crime Rather -- at any rate that's not the
3 situation here So I don't think that's an appropriate
4 charge in this form

5 You read the very wording of it, it tells you "are
6 you satisfied the identification made by the witness after
7 the defense was the product of his own recollection " You
8 know -- in other words, did somebody else make that
9 suggestion to him, or did they get it from some other
10 source, or something like that, and we don't have any
11 information like that in this case No factual evidence of
12 that

13 Consider the length of time elapsed between the
14 current and opportunity the witness had to see the
15 defendant All these are referring to situations where an
16 eyewitness identification may be faulty, because they didn't
17 know that person and they are seeing them, identifying them
18 maybe from a brief episode, etcetera So I don't really
19 think that applies in this case in this form

20 All right Anything else in the way of requests
21 to charge?

22 MS JOYNER Not from the State, Your Honor

23 THE COURT Anything else from the defense?

24 MR DELANEY Not from the defense, Your Honor

25 THE COURT All right Okay Well, I'll include

1 mere presence and I'll include prior inconsistent statement
2 I will charge those as requested All right

3 All right Well, I think you are pretty familiar
4 with my charges on these cases You know what I charge I
5 certainly would charge the jury that the fact the
6 defendant -- about the defendant not testifying, not
7 considering that I have a lengthy charge on that, about
8 them not considering that against him in any way, so I would
9 charge that

10 If you want to come up just a minute

11 (Whereupon, the lawyers approached the bench for
12 an off-the-record discussion)

13 THE COURT Let's go ahead and take about ten
14 minutes and we will come back

15 Now, let's see, the State will go first and the
16 defense will have the final argument, since they didn't put
17 up any evidence

18 And what I will get you to do is when the jury
19 comes back in and we get started, I will ask the defense to
20 go ahead and rest, and then I'll instruct them that this
21 concludes the taking of testimony and evidence and we are to
22 the final arguments and then call on you and I'll get you to
23 present your final arguments

24 Okay Let's take about ten minutes

25 (Whereupon, proceedings were recessed)

1 (Whereupon, proceedings were reconvened)

2 THE COURT All right Please bring the jury in

3 (The following takes place in the presence of the
4 jury panel)

5 THE COURT All right, counsel, ready to proceed

6 MR DELANEY At this time, Your Honor, the
7 defense rests

8 THE COURT All right, Mr Foreman, ladies and
9 gentlemen of the jury, this concludes the taking of
10 testimony and evidence in this case We have yet remaining
11 the final arguments of counsel and my instruction to you
12 with regard to the law that applies to the issues in the
13 case I would ask that you listen attentively now as
14 counsel address you in final argument

15 MS JOYNER Thank you, Your Honor

16 May it please the court?

17 THE COURT Solicitor

18 MS JOYNER Ladies and gentlemen, on March 8th,
19 of 2007, Robert David Montgomery bought crack cocaine He
20 bought the crack cocaine from ADDRESS Road, and he
21 bought crack cocaine from Mr Antwan Wade

22 Ladies and gentlemen, a distribution of crack
23 cocaine occurred that night The evidence points
24 conclusively to only one conclusion Robert David
25 Montgomery came to the Moss Justice Center with his wife

1 Kelly Nicole Ellis, or his fiance, and they were searched
2 and their car was searched and there were no drugs in the
3 car There were no drugs on their person

4 Three unmarked police cars, six law enforcement
5 officers followed them from Moss Justice Center to ADDRESS
6 Road No stops in between Nowhere to get the crack
7 cocaine

8 They go into ADDRESS Road They go into the
9 defendant's house Robert David Montgomery comes out with a
10 rock of crack cocaine in his pocket And then two unmarked
11 police cars follow him back to Moss Justice Center No
12 stops in between And when he gets back to Moss Justice
13 Center he has this He doesn't have the \$40 the police gave
14 him

15 And you heard from Cynthia Mitchum in this case
16 An expert in the area of chemical analysis She tested four
17 or five thousand samples to determine if they are crack
18 cocaine What he got was crack cocaine

19 And so, ladies and gentlemen, really today when
20 you go back into that jury room, the only question that you
21 really need to ask who sold Robert Montgomery the crack
22 cocaine Who did it? He sat right there on that witness
23 stand and he told you who did it

24 Mr Delaney spent much of this trial on his
25 cross-examination talking to officers about -- let me go

1 back to my notes Were different heights and weights listed
2 in different places for Mr Antwan Wade? Did an incident
3 report say something like no charges would be filed when it
4 was explained by Officer Schettler And all of that little
5 picking doesn't change any of the facts The fact is six
6 law enforcement officers saw a man drive up to a residence
7 And when he left, he had crack cocaine, and he didn't have
8 it when he went in And now you are left with the question
9 of who did it

10 And when Mr Delaney had Mr Montgomery on the
11 stand, he spent a lot of that time cross-examining him about
12 something that happened the day before, about going to Mr
13 Wade's house, going to his client's house and buying and
14 smoking crack cocaine Ladies and gentlemen, that is
15 absolutely a violation of the agreement he signed with the
16 York County multi-jurisdictional drug enforcement unit
17 Absolutely

18 Did the officers know that he had done that when
19 they went and made that case on the 8th of March? Every
20 single officer testified for you that had they known that an
21 informant had violated an agreement, they would have stopped
22 using him They didn't know, ladies and gentlemen And Mr
23 Delaney cross-examined these officers and he kept asking
24 them about their opinion on whether it affected Mr
25 Montgomery's credibility Well, ladies and gentlemen, you,

1 that is the sole province of the jury You are the finders
2 of credibility You determine the credibility of every
3 person that gets on that witness stand

4 What Mr Delaney wanted those officers to say was
5 that Robert Montgomery said didn't mean one single thing,
6 because a crack head went out and made a mistake He wanted
7 everything that the officers saw, every single fact that
8 they could corroborate to mean nothing, because he violated
9 an agreement He wanted to take it all away Well, he was
10 trying to ask the officers and what the officers were trying
11 to answer, it was confusing It was confusing, because his
12 credibility as a confidential informant, whether he is
13 useable, whether he would have been used is a different
14 question than whether he was telling the truth on the stand

15 Now, he was reluctant initially to tell you about
16 the crack cocaine and he explained to you why Because he
17 was instructed to not give evidence such as that, because it
18 would be prejudicial to Mr Wade, but yet he came clean He
19 told you about what happened He came clean The State of
20 South Carolina, the State of South Carolina came clean to
21 Mr Delaney Nobody was hiding anything from anybody in
22 this case about the night before that buy

23 Officer Ligon said something, and I think that he
24 explained it really, really well Sometimes you have to use
25 the demons to get to the devil Officer Welch told you just

1 because somebody uses drugs doesn't mean they are not
2 telling you the truth And, ladies and gentlemen, when you
3 are deciding the credibility of Mr Montgomery, and that is
4 your job, and your job only, you decide his credibility the
5 way that you would decide the credibility of any person that
6 you were dealing with or talking to in your life You
7 decide credibility every single day without even realizing
8 it Use those factors Use your common sense And the
9 judge is going to tell you that when you are deciding
10 credibility of any witness, you can believe all of what they
11 say, none of what they say, some of what they say Mr
12 Delaney wants you to believe none of what the confidential
13 informant said

14 The factors that you can look at, and you should
15 look at, whether what the informant said is corroborated
16 That means do other witnesses and do other evidence back up
17 what that person says You can look at what their biases,
18 what their motive, what is their reason to lie Everything
19 that Mr Montgomery testified to, with the exception of who
20 sold him the crack cocaine, is corroborated by all the other
21 evidence in this case Mr Delaney wants you to wipe away
22 all that corroboration and not believe, not believe the most
23 important thing that he told you on that stand, and it was
24 that Antwan Wade sold him the drugs

25 All of that cross-examination, all of that

1 picking, all of Mr Montgomery being confused by Mr
2 Delaney's questions, all of that cross and all that time you
3 spent listening and did Mr Delaney at any point during that
4 cross-examination, did he ever uncover one reason why Robert
5 David Montgomery would falsely accuse this man? Yeah, he
6 was a working defendant Yeah, he wanted to go out and he
7 wanted to do good Officer Mike Ligon explained to you how
8 working works He had no reason, no reason to lie and say
9 it was Antwan Wade

10 First off, ladies and gentlemen, remember this
11 The police said to Robert David Montgomery "who do you know?
12 What can you do?" They didn't come to him and say "help us
13 get Antwan Wade " He said "I can buy from Antwan Wade "

14 Officer Ligon also explained to you that had he
15 gone to that house that night and he made a buy from
16 somebody other than Antwan Wade, if a person goes in and
17 makes a buy, but they can't identify who it was, or it
18 wasn't the original target, they are still considered to
19 have done work Ladies and gentlemen, Montgomery knew
20 everybody in that house He knew Deon He knew Mallory
21 He knew Cindy Why? Why of all the people in the house
22 would he say it's Mr Wade? There is no reason for him to
23 lie And Mr Delaney and all the time spent crossing him
24 and confusing him didn't give one reason why He was
25 wanting to do anything but tell the truth when he identified

1 Antwan Wade as the person who sold him crack cocaine

2 Now, ladies and gentlemen, the State is required
3 to prove to you the allegations in the indictment beyond a
4 reasonable doubt, that on March 8th Antwan Wade distributed
5 crack cocaine and that this occurred within York County

6 When you go back into that jury deliberation room,
7 you are to deliberate You are to talk about everything
8 that you have seen and heard in this courtroom and you must
9 decide that we have proven our case beyond a reasonable
10 doubt

11 The judge I believe is going to explain reasonable
12 doubt is the type of doubt that would cause a reasonable
13 person to hesitate to act Do not confuse hesitation with
14 deliberation They put chairs back there because they want
15 you to sit there and talk That's your job Deliberating
16 does not mean that you are hesitating to act You are
17 supposed to come together When you go back in that room,
18 come together as twelve people and make a decision together

19 When you go back there and you are trying to
20 decide whether the State has proven its case beyond a
21 reasonable doubt, I want you to throw around all the what
22 if's, the maybe's, the could be's, all the typographical
23 errors on height and weight, all the confusion, according to
24 Mr Delaney, things written in the incident report Throw
25 around all of those things And if at the end you believe

1 in your heart, in your mind, that Antwan Marcus Wade sold
2 crack cocaine to Robert David Montgomery, the State has met
3 its burden, and then you must reach the verdict that
4 reflects that You must reach the verdict that speaks the
5 truth and you must find him guilty

6 MR DELANEY May it please the court?

7 THE COURT Counsel

8 MR DELANEY Ladies and gentlemen, where do I
9 begin? I normally do not stand up here during closing
10 argument and carry around a note pad, but as you heard
11 throughout this trial, there are so many inconsistencies
12 There are so many things that do not add up I use this
13 note pad to try to at least keep some of these things
14 straight

15 I am going to say this now, and I'm going to say
16 this a few times before I'm finished Something is not
17 right here, ladies and gentlemen And you know what? This
18 man deserves better

19 At the beginning of the case you heard me say that
20 I believe this is the greatest system, the greatest legal
21 system in the world, and I believe that One of the reasons
22 that I believe that is because of cases like these

23 The case that the State of South Carolina has
24 presented against Antwan Wade is full of enormous holes
25 Every single aspect of the State's case has serious

1 problems, ladies and gentlemen

2 You heard these experienced drug enforcement unit
3 officers sit up here in that chair and testify to y'all of
4 the importance that is placed on these incident reports, the
5 importance of getting details right Now, Solicitor Joyner
6 a few minutes ago, it appears she doesn't think that's too
7 big of a deal, but then she also says one thing you need to
8 do when you go back in the jury deliberation room, you need
9 to determine who sold the crack That's the one thing that
10 you need to determine

11 Well, wouldn't physical description of the
12 individual who allegedly sold the crack, wouldn't that be
13 relevant in this case, ladies and gentlemen? And what did
14 we hear? We heard Officer Schettler's testimony And in
15 the arrest warrant where he was the affiant, Antwan Wade is
16 listed as 5'8" tall In another incident -- in an incident
17 or supplemental incident report that Officer Schettler also
18 prepared, he has Antwan Wade listed as five foot tall You
19 then heard Officer Truesdale take the stand And what did
20 she say she had Antwan Wade described as in her incident
21 report? He was six foot tall These discrepancies are not
22 minor, ladies and gentlemen This is not me up here
23 nitpicking Six feet, 5'8", five foot These discrepancies
24 span a whole foot

25 Officer Schettler testified that in his

1 supplemental incident report that he prepared that Antwan
2 Wade's date of birth was October the 2nd, 1976, and he was
3 30 years old Officer Truesdale took this stand and
4 testified that in the report she prepared the day of this
5 alleged buy, Antwan Wade's date of birth is January the 2nd,
6 1976, and he's 31 years old

7 And then we have this supplemental incident report
8 that I referred to a couple of times already that Officer
9 Schettler prepared And if you remember, we took some time
10 to go through it, it stated that officers of the York County
11 multi-jurisdictional drug enforcement unit upon further
12 investigation obtained a warrant for distribution of crack
13 cocaine on Antwan Wade Okay? And you remember the date
14 that Officer Schettler testified was on that supplemental
15 report? April 11th, 2007 Yet only minutes before that you
16 heard Officer Schettler testify that on March the 16th,
17 2007, almost a month earlier he had appeared already in
18 front of a magistrate judge as a affiant to get an arrest
19 warrant on Antwan Wade And, in fact, Antwan Wade was
20 arrested on March the 16th, 2007 Ladies and gentlemen,
21 something is not right here

22 Let's talks about Officer Truesdale's report that
23 she prepared, dated March the 8th, 2007 And you heard this
24 explanation from the officers that, you know, just because
25 of an alleged buy occurs a specific date, you know, that

1 Wade's phone was used that day to make the call to back up
2 or was said? No We heard nothing about any type of phone
3 records, ladies and gentlemen

4 Why was there no mention in any document prepared
5 by the drug enforcement unit of the confidential informant's
6 wife? And specifically there was no mention in there
7 There is plenty of mention of all the things that were done
8 with the CI in terms of him being searched all these times
9 multiple times, his car being searched, yet she was never
10 mentioned once, and obviously was never mentioned that she
11 was searched There was no documentation in the
12 surveillance logs that had her at any point going into the
13 house

14 And you have heard these officers testify, I
15 believe Officer Ligon Officer Schettler eventually
16 testified that they have no idea how many people were in the
17 house that night and who was in the house that night The
18 only person was the confidential informant, Robert
19 Montgomery, and we are going to talk about him a little
20 later

21 There is -- there was nothing, as you heard, in
22 the surveillance report that had the confidential informant
23 leaving the residence, going to his car and then coming back
24 in the residence To me, ladies and gentlemen, those are
25 some pretty important movements that are going on Yet

1 nothing said about it

2 There is an addition in this confidential
3 surveillance report that we heard about There was no
4 mention in there about Officer Truesdale searching the
5 confidential informant's wife

6 Now, let's talk a minute about the crack that
7 was -- that we have in this case that's at issue You heard
8 testimony that -- and I would contend all the testimony that
9 you heard in this trial dealt with one rock of crack
10 cocaine One \$40 rock of crack cocaine Yet you remember
11 when Officer Schettler was sitting up there and I asked him,
12 "Officer Schettler, what did you put in the narrative part
13 of your warrant?" Officer Schettler stated "Antwan Wade
14 distributed two crack rocks "

15 You heard testimony that it was 4 grams that was
16 seized And you heard some testimony from the officer that
17 their scales aren't official There can be some errors
18 made, and I understand that You heard Officer Ligon
19 testify, and he said "if you are getting your money's worth,
20 \$40 would get you right about 4 grams of crack " Now, if
21 you listened closely to when the chemist sat here and
22 testified how much crack she said came back? 19 grams I
23 wasn't very good in math, ladies and gentlemen, and you
24 heard Officer Ligon testify that if you are getting your
25 money's worth, \$20 would get you a dub, would get you near

1 2 grams The amount of crack that's in evidence today was
2 right around \$20 worth of crack Where is the other \$20?
3 Something is not right here

4 You heard testimony that the confidential
5 informant was given \$40 in marked governmental funds Did
6 you hear any testimony throughout this trial or be presented
7 with any evidence throughout this trial linking Antwan Wade
8 with that \$40 in any way? Absolutely not

9 Ladies and gentlemen, I could sit down right now
10 and I believe you are going back in that jury room and only
11 deliberate, only consider what we have just talked about,
12 that no way you could be firmly convinced and no way could
13 you be without hesitation and in no way could you find this
14 man guilty beyond a reasonable doubt But you know what? I
15 can't sit down yet There is much more, ladies and
16 gentlemen, and at this point it only gets better

17 You heard testimony from numerous officers about
18 this procedure and protocol that's used in ways of, you
19 know, always going to search the CI before they send them
20 out and go do a buy They are always going to search the
21 CI's car They are going to equip the CI with these
22 electronic monitoring device You know why all that is
23 done, ladies and gentlemen? They don't trust the CI They
24 want that tape They need that tape of the transaction, to
25 obviously monitor the drug transaction, but to also control

1 the CI, because again, ladies and gentlemen, they don't
2 trust him And guess what? We don't have a tape in this
3 case There is no tape So essentially the officers who
4 this CI works for, they don't trust him enough to send him
5 out without a tape, but now here we are today without a
6 tape, and they have the audacity -- the State, the
7 solicitor, has now the audacity to ask y'all to now believe
8 and trust the CI, when their officers who he is working for
9 don't trust him This system, ladies and gentlemen, demands
10 more It's better than that

11 And you know what? You, ladies and gentlemen, you
12 deserve to have that tape in this case But you know what?
13 We don't have it And what that means is without that tape,
14 what are we left with? Without that tape, and you heard
15 testimony from a couple of officers, Schettler and another
16 officer, were in a dirt road behind the residence Officer
17 Ligon and another officer were, I think he testified, two to
18 three hundred yards away And Truesdale was somewhere in
19 the vicinity of 50 to 60 yards, something like that And
20 you have testimony there was no officers inside the
21 residence that night It was the CI The CI So what we
22 are left with without a tape, we are left with the word of
23 that man Okay

24 And let's talk about the State's star witness
25 What do we know about him? Well, I tell you what I think

1 about him

2 MS JOYNER Objection Personal opinion about --

3 MR DELANEY I'm sorry

4 THE COURT No personal reference, sir

5 MR DELANEY From Robert Montgomery taking that
6 stand today, and we all had the opportunity, y'all had the
7 opportunity to watch him, to listen to him, to watch his
8 actions, to listen to his responses from questions, and what
9 did we discover? He's a liar He is a liar He sat up
10 here He came into court and he put his hand on this Bible
11 and he swore to tell the whole truth in this case But what
12 did he do not two minutes after I started talking to him?
13 He lied to y'all and he lied to this court And now the
14 State, the State is wanting you to use that man's word to
15 convict this man of distribution of crack cocaine He
16 deserved better

17 Drug enforcement unit officers all got up here and
18 testified that if a confidential informant is using drugs,
19 if a confidential informant is out there making buys without
20 their knowledge, those are all things that each one of them,
21 each one of them testified that that is something that will
22 compromise, that will contaminate the investigation They
23 said it That come out of their mouth And what do we have
24 here? We have a man who ultimately, after lying numerous
25 times, ultimately stated that he smoked crack cocaine the

1 night before this alleged buy You know, isn't it
2 convenient that, yeah, he got that crack cocaine also from
3 Antwan Wade? You can't believe a word this man says He's
4 a liar That's what he is, ladies and gentlemen

5 You saw some of these drug enforcement unit
6 officers testify when I'm asking these type of questions
7 You saw Officer Schettler take the stand here. When I asked
8 him questions about if a CI is using drugs while they are
9 working for you, if he is selling drugs and they are working
10 for you, would that destroy their credibility in your mind?
11 And when I first asked Officer Schettler that question, I
12 think we had probably near a 15 second pause with no
13 response And then I had to repeat that question I don't
14 know how many times I know I'm probably not the most well
15 spoken attorney around this area Well, I don't think it
16 was that confusing, ladies and gentlemen Did we ever get
17 an answer from him? No Total evasiveness And I contend
18 from that, in that evasiveness, from his actions on the
19 stand, we know the answer to that But yet Officer
20 Truesdale, the next DEU officer who came and testified, she
21 sat right up there The first time I asked her, she wasn't
22 confused I asked her Officer Truesdale, "if a criminal
23 informant is using, selling, possessing drugs while they are
24 working for you, will that destroy their credibility and
25 reliability in your mind?" She answered that question "yes"

1 like that Not that confusing Yet Officer Schettler
2 struggled with that question for close to ten minutes

3 And you saw some of these other officers that took
4 the stand later, Officer Ligon, Officer Welch, and the
5 surprise on their faces when they learned their CI was
6 smoking crack the night before this alleged transaction
7 They each testified that if that occurred, in their mind any
8 investigation is contaminated and extremely compromised

9 Yet, and we are going to go back to this, the
10 State wants you to take this man's word They want you to
11 use this man's word to convict Antwan Wade Yet when their
12 own officers who he's working for are telling you they
13 believe he has no credibility --

14 MS JOYNER I object, Your Honor That's
15 mischaracterizing the testimony

16 THE COURT Counsel, it's argument, but I would
17 ask you to stay within the record, please

18 MR DELANEY I'll try to clean that up, Your
19 Honor

20 Officer Truesdale testified that in a situation
21 where someone is using drugs who are working as a CI, in her
22 mind that destroys their credibility and reliability Yet,
23 and that's the situation we have here We have the
24 individual that was out there just running wild, using crack
25 smoking crack the night before, making his purchases, or

1 whatever he is doing, without the knowledge of the DEU And
2 he got up here and testified that he informed Officer
3 Schettler of that Do you think he really did that? Was
4 that another thing that he's lying about I contend he was
5 lying

6 At the beginning of this case, ladies and
7 gentlemen, I talked to you a little bit about the burden and
8 what the State has to prove, and I use this example of, you
9 know, when -- you remember when you want to a fair or a
10 carnival when you are younger, if you took a child there,
11 and there is that game you play with the big hammer and you
12 hit it and you try to get that object to come up as far as
13 you can and win that prize And do you remember we talked
14 about in a civil case that ball would only have to go only
15 halfway up for the plaintiffs to meet their burden in a
16 civil case? The State has not met their burden in a civil
17 case, I contend, ladies and gentlemen That ball has not
18 even went halfway up Yet alone here in a criminal case,
19 beyond a reasonable doubt, they have come nowhere close to
20 proving the burden in this case, ladies and gentlemen
21 There is no way I contend that you can go back in that jury
22 room and not have doubts in this case They are serious
23 doubts

24 I contend, ladies and gentlemen, there is no way
25 you can go back in that jury room and be firmly convinced,

1 and that's what you need to be For you to come back in
2 here after deliberation and render a verdict of guilty, you
3 would have to be firmly convinced of Antwan Wade's guilty
4 And I contend, ladies and gentlemen, there is no way that
5 can be, after you have heard the facts in this case

6 Something is not right Something is not right
7 here And as I said earlier, this man deserves better and
8 this system demands better Thank you

9 (Whereupon, at 3 45 p m, the jury panel was
10 instructed by the court)

11 THE COURT Mr Foreman, ladies and gentlemen, you
12 have heard final arguments from counsel It's now time for
13 me to charge you, that is to instruct you, with regard to
14 the law that applies to the issues in this case

15 In this case the State charges the defendant,
16 Antwan Marcus Wade, with the offense of distribution of
17 crack cocaine To this charge the defendant has pled not
18 guilty, which then places upon the State the burden of
19 proving the defendant guilty

20 A person charged with committing a criminal
21 offense in South Carolina is never required to prove himself
22 innocent I charge you that it is a vital important rule of
23 law that a defendant in a criminal trial must always be
24 presumed innocent until his guilt has been proved beyond a
25 reasonable doubt This presumption of innocence remains

1 with the defendant at all times throughout the trial and is
2 only removed when and if the State has proved guilt beyond a
3 reasonable doubt For it's your solemn duty, ladies and
4 gentlemen, if not clearly convinced of guilt beyond every
5 reasonable doubt to the contrary to find the defendant not
6 guilty

7 Mr Foreman, ladies and gentlemen of the jury, I
8 instruct you with regard to the fact that the defendant did
9 not testify I instruct you and emphasize to you that the
10 fact that a defendant does not testify in his own behalf in
11 a criminal trial is not a factor to be considered by you in
12 any way in your deliberation You must not consider the
13 fact that the defendant has chosen not to testify when you
14 determine the guilt or innocence of the defendant It must
15 not be considered by you in any manner whatsoever, either
16 against or for the defendant A defendant has the
17 Constitutional Right to remain silent The assertion of
18 that Constitutional Right cannot and must not be considered
19 by you in your deliberations

20 Now, under your oath then you are to reach no
21 inference and draw no conclusion whatsoever from the fact
22 that the defendant did not testify The fact that the
23 defendant did not testify should not even be discussed in
24 your jury room The burden of proof, as I have stated to
25 you, is upon the State It is not the burden of the accused

1 to prove his innocence The burden of proof remains upon
2 the State to prove guilt beyond every reasonable doubt And
3 I emphasize to you again that the fact that the defendant
4 did not testify is not a factor to be considered by you in
5 determining the guilt or innocence of the defendant or any
6 aspect of your deliberations

7 So the State has the burden of proving the
8 defendant guilty beyond a reasonable doubt What is a
9 reasonable doubt? Some of you may have served as jurors in
10 civil cases where you were told it is only necessary to
11 prove the fact is more likely true than not, such as by the
12 greater weight or preponderance of the evidence However,
13 in criminal cases the State's proof must be more powerful
14 than that It must be beyond a reasonable doubt

15 Now, ladies and gentlemen, proof beyond a
16 reasonable doubt is proof that leaves you firmly convinced
17 of the defendant's guilt There are very few things in this
18 world that we know with absolute certainty, and in criminal
19 cases the law does not require proof that overcomes every
20 possible doubt

21 A reasonable doubt may also be described as the
22 kind of doubt that would cause a reasonable person to
23 hesitate to act

24 If you have such a doubt as to the guilt of the
25 defendant, then he would be entitled to a verdict of not

1 guilty

2 Reasonable doubt may arise from evidence which is
3 in the case, or from the absence or lack of evidence in the
4 case

5 If, based on your consideration of the evidence,
6 you are firmly convinced that the defendant is guilty of the
7 crime charged, you must find him guilty

8 If, on the other hand, you think there is a real
9 possibility that he is not guilty, you must give him the
10 benefit of the doubt and find him not guilty

11 You alone must make the determination of whether
12 or not reasonable doubt exists as to the guilt of the
13 defendant

14 Mr Foreman, ladies and gentlemen of the jury,
15 there are two types of evidence which are generally
16 presented during the trial Direct evidence and
17 circumstantial evidence

18 Direct evidence is the testimony of a person who
19 asserts or claims to have actual knowledge of a fact, such
20 as an eyewitness

21 Circumstantial evidence is proof of a chain of
22 facts and circumstances indicating the existence of a fact

23 The law makes absolutely no distinction between
24 the weight or value to be given to either direct or
25 circumstantial evidence, nor is a greater degree of

1 certainty required of circumstantial evidence than of direct
2 evidence

3 You should weigh all the evidence in the case
4 After weighing all of the evidence, if you are not convinced
5 of the guilt of the defendant beyond a reasonable doubt, you
6 must find the defendant not guilty

7 Mr Foreman, ladies and gentlemen of the jury,
8 under the Constitution of South Carolina you are the finders
9 of facts in this case I do not have the right to pass upon
10 the facts, or even to express any opinion I might have as to
11 the facts, nor may I suggests in any way what I may think
12 about the guilt or innocence of the defendant You should
13 form no opinion in that regard from anything that I may have
14 said or any ruling that I have made during the course of the
15 trial

16 Now, you have heard the testimony of a witness who
17 has special knowledge, skill, experience, training, or
18 education in a particular field who has given opinions as to
19 matters in which she is skilled In determining the weight
20 to be given such opinions, you should consider the
21 qualifications and credibility of the expert witness and the
22 reasons given for her opinions You are not bound by such
23 opinions Give to them the weight, if any, you deem them
24 entitled

25 Mr Foreman, ladies and gentlemen of the jury, I

1 charge you with regard to prior inconsistent statement The
2 testimony of a witness may be discredited or impeached by
3 showing that he previously made statements which are
4 inconsistent with his present testimony, but earlier
5 contradicted statements are also admissible to establish the
6 truth of these statements It is the providence of the jury
7 to determine the credibility, if any, to be given the
8 earlier statements and be given to testimony of a witness
9 who has been impeached

10 If a witness has shown knowingly to have testified
11 falsely concerning any material matter, you may consider
12 this in determining whether to trust such witness' testimony
13 in other particulars You may reject all the testimony of a
14 witness, or give all or part of such testimony the
15 credibility that you think it deserves

16 Mr Foreman, ladies and gentlemen of the jury, as
17 the sole judges of the facts in this case, you are also
18 necessarily the sole judges of the credibility or
19 believability of each of the witnesses that have testified
20 during the course of the trial

21 Now, there are a number of factors which you may
22 consider in arriving at your assessment as to a particular
23 witness' credibility or believability Some factors I'm
24 going to list for you And should you think of other
25 factors that you believe also ought to be considered when

1 you go back into your jury room on the question of
2 credibility, then you should consider those factors as well,
3 but you may consider the demeanor of the witness from the
4 witness stand What was that witness' manner of appearance?
5 Was the witness straightforward in answering questions or
6 hesitant in responding to questions Simply put, do you
7 believe that the witness was telling the truth or not
8 telling the truth

9 Do you believe that the witness knew of what that
10 witness testified, or did not know of what that witness
11 testified

12 You may consider whether or not the testimony of a
13 witness is consistent or inconsistent with that witness' own
14 testify or with other testimony or evidence presented during
15 the course of the trial

16 You may also consider how the witness came to know
17 the facts to which he or she testified

18 You may consider the opportunity that a witness
19 had to observe or hear, that is, to perceive the existence
20 of a fact by means of their senses

21 You may also consider whether or not a witness is
22 biased or prejudiced That simply means do you find that a
23 particular witness has some reason to come into court and
24 testify one way or another to help or hurt one side or the
25 other

1 You may also consider whether or not the testimony
2 of a witness was strengthened or weakened by other testimony
3 or other evidence presented during the course of the trial

4 Now, you as the finders of the facts in this case
5 and you as the judges of the credibility or believability of
6 each of the witnesses that have testified may believe as
7 much or as little of what a witness testifies to as you deem
8 appropriate You may believe all of what a witness says,
9 you may believe none of what a witness says, or you may
10 believe only part of what a witness says

11 Mr Foreman, ladies and gentlemen of the jury, the
12 same Constitution that makes you the finders of the facts
13 makes me the sole and only instructor in the law You must
14 accept as correct the law that I charge and apply to the law
15 the evidence as you find it and reach your verdict Put
16 aside any conceptions you may have had as to the law before
17 coming here today and accept the law as I instruct it to be
18 You, for purposes of your duty as jurors today, should not
19 be concerned about what the law ought to be, but what I
20 charge you the law is now in this state

21 Mr Foreman, ladies and gentlemen of the jury, I
22 charge you with regard to criminal intent Criminal intent
23 is a necessary element of each crime that must be proved by
24 the State beyond a reasonable doubt Criminal intent is
25 always a matter that must be determined by the jury from the

1 circumstances surrounding the situation There is no way to
2 prove intent to a mathematical certainty There is no way
3 medical science can dissect a person's brain and determine
4 what he had in mind, so the law says that criminal intent
5 may be inferred from the circumstances shown to have
6 existed This is how the jury makes a determination of
7 whether or not the element requiring intent is present

8 Criminal intent is a state of mind, which operated
9 jointly with an act is the commission of a crime Criminal
10 intent is a mental state, a conscious wrongdoing So it is
11 up to you, the jury, to determine what the defendant
12 intended to do, based on the circumstances shown to have
13 existed

14 I tell you that the State must prove criminal
15 intent beyond a reasonable doubt, just as the State must
16 prove every element beyond a reasonable doubt

17 It is not necessary to establish intent by direct
18 and positive evidence, but intent may be established by
19 inference, in the same way as any other fact, by taking into
20 consideration the acts of the parties and all of the facts
21 and circumstances of the case

22 While the State may prove motive, it is
23 unnecessary that the state do so However, the State must
24 prove intent

25 Mr Foreman, ladies and gentlemen of the jury, I

1 charge you now specifically with the law that applies to the
2 charge in this case I would tell you that you are not
3 going to have these charges written down for you back in the
4 jury room, so you are going to have to call on your
5 collective memories as to what I instruct you the law is
6 However, once you begin your deliberations, if you are still
7 not sure about some, or all, or part of the law that I
8 instruct you on, upon your request I will bring you back out
9 and re-instruct you on any part of it, or all of it for that
10 matter, that you wish to be heard But what I would ask you
11 to do at this time is listen now attentively as I go through
12 the elements of the offense for which the defendant is
13 charged in this case

14 The defendant is charged with distribution of
15 crack cocaine pursuant to Section 44-53-375, subsection B,
16 South Carolina Code of Laws, 1976, as amended

17 Crack cocaine has been defined as a controlled
18 substance under Sections 44-53-110 through 210 of the South
19 Carolina Code of Laws, 1976, as amended

20 It is unlawful for any person to distribute,
21 dispense, deliver, or otherwise aid, abet, attempt, or
22 conspire to distribute, dispense, or deliver crack cocaine

23 Distribution is the passing into another the item
24 that is unlawful or illegal The passing of the item from
25 one who has possession of it to another individual would be

1 distribution

2 Should you find from the evidence that the
3 defendant did pass this unlawful or illegal item to another,
4 and this was proven to you beyond a reasonable doubt, then
5 distribution will have been proved

6 Therefore, in order to find the defendant guilty
7 of distribution of crack cocaine, you must find that the
8 State has proven the following elements of the offense each
9 beyond a reasonable doubt

10 The State must prove beyond a reasonable doubt
11 that the defendant, Antwan Marcus Wade, did willfully,
12 knowingly, and unlawfully distribute crack cocaine in York
13 County on or about March the 8th, 2007

14 Now, distribute means to deliver other than by
15 administering or dispensing a controlled substance
16 authorized by law

17 Deliver means to actually or constructively
18 transfer a controlled substance

19 A transfer can involve an exchange for money, a
20 barter, a gift, and need not involve any consideration at
21 all

22 An act done knowingly and willfully is one that is
23 done with knowledge, consciously and not accidentally

24 Mr Foreman, ladies and gentlemen of the jury, I
25 charge you that mere presence is not enough The defendant

1 cannot be found guilty on any charge solely because he was
2 merely present at the scene of the crime

3 To be found guilty, a person must personally
4 commit the crime or be present at the scene and
5 intentionally take a role in the commission of the crime

6 Mr Foreman, ladies and gentlemen of the jury,
7 nothing that I may have said or done during the course of
8 this trial has been in any way intended to express or
9 suggest a view of the case or an opinion as to the facts,
10 the weight of the evidence, or the credibility of the
11 witnesses If any of my actions or words have seemed to so
12 indicate, you will disregard such and form your own opinion
13 as to these matters

14 You have been selected as fair and impartial
15 jurors, sworn to impartially try and determine the facts of
16 this case And when you comply with your oath to do so,
17 then no one will have a right to criticize your verdict and
18 you will have fully discharged your duty as jurors

19 You are to decide this case according to the
20 testimony that you have heard from the lips of sworn
21 witnesses, along with other evidence introduced during the
22 course of the trial

23 I charge you that as jurors you must decide the
24 issues in this proceeding without bias and without prejudice
25 to any party You cannot allow yourself to be governed by

1 sympathy, by prejudice, by passion, by public opinion, or
2 any other arbitrary factor

3 Both the State and the defendant have the right to
4 expect that each of you will carefully and impartially
5 consider all of the evidence in the case and that you will
6 follow the law as I have explained it to you

7 Mr Foreman, ladies and gentlemen of the jury,
8 whatever your verdict in this case, it must be your
9 unanimous verdict All twelve jurors must agree on the
10 verdict which the foreperson is authorized to write on
11 behalf of the jury

12 Mr Foreman, I charge you that once you begin your
13 deliberations, that you maintain some order in those
14 deliberations All who wish to participate and to be heard
15 in the deliberations be allowed to do so If for any
16 reasons any members of the jury panel take a break from
17 deliberations, all should take a break By that I mean all
18 twelve jurors should be present and deliberate when
19 deliberations are going on

20 Now, I have prepared for your use in the jury room
21 a verdict form On this verdict form there are two possible
22 verdicts which appear on the verdict form

23 The first possible verdict is we, the jury, find
24 the defendant guilty of distribution of crack cocaine

25 The second possible verdict that appears on the

1 verdict form is we, the jury, find the defendant not guilty

2 Now, Mr Foreman, ladies and gentlemen of the
3 jury, in preparing the verdict form I have to put the
4 possible verdicts on the form in some order I do it the
5 same way every time The order in which the possible
6 verdicts appear on the verdict form means nothing and you
7 should infer nothing from it

8 What you should do, Mr Foreman, is to deliberate
9 Once the jury has reached a unanimous verdict, you will then
10 go to the verdict form, find the verdict on the verdict form
11 which corresponds to the unanimous verdict reached Put a
12 check mark in the blank beside that particular verdict and
13 sign your name on the line above the word foreperson's
14 signature and date it Once you have done that, just knock
15 on the door and let the bailiff know that you have reached a
16 verdict The bailiff will let me know and I will bring you
17 back out in the courtroom to receive that verdict

18 Now, I'm going to ask you, if you will, to retire
19 to the jury room, but do not yet begin your deliberations
20 I have to give counsel an opportunity to request additional
21 instructions on the law

22 If additional instructions are necessary, I will
23 bring you back out and give you those additional
24 instructions

25 If no additional instructions are necessary, I

1 will send to you by means of the bailiff the verdict form,
2 all exhibits which have been admitted into evidence and
3 instructions to be begin deliberating Please do not begin
4 deliberating until you get that instruction Thank you

5 Please retire to the jury room, all except the
6 alternate Ma'am, I'll ask you at this time not to go into
7 the jury room, but wait just outside the courtroom door for
8 further instructions

9 (Whereupon, at 4 02 p m , the jury panel retired
10 to the jury room, awaiting instructions to begin
11 deliberations)

12 THE COURT Exceptions or additional requests to
13 charge from the State?

14 MS JOYNER Not from the State

15 THE COURT From the defense?

16 MR DELANEY None from the defense

17 THE COURT All right If you will check the
18 exhibits There weren't many, were there?

19 MS JOYNER No, sir

20 THE COURT Make sure that only those that were
21 admitted go back to the jury

22 (Off the record)

23 (Back on the record)

24 THE COURT All right, sir, if you will take it
25 back and tell them they can begin deliberating And after

1 you have done that, ask the alternate to come in, please

2 (Whereupon, at 4 05 p m , the jury panel was
3 instructed to begin deliberations)

4 (Whereupon, the alternate juror was brought into
5 the courtroom)

6 THE COURT Ms Steele, you can stand right there,
7 if you will

8 As it turns out we made it through the trial
9 without an emergency developing with regard to one of the
10 first twelve jurors chosen It will not be necessary for
11 you to participate in deliberations

12 I'm pleased to tell you this will conclude your
13 service on this case and also for the week We have a lot
14 of other work to do this afternoon and tomorrow, so it does
15 not require the jury to be present, so I'm going to excuse
16 you at this time with our thanks We want to thank you for
17 your sacrifices you have made this week to help make our
18 justice system work We appreciate it and don't take that
19 for granted Thank you very much

20 You are free to go at this time Just turn your
21 badge in and the bailiff will show you how to get out
22 Thank you, ma'am

23 (Whereupon, the alternate jury was discharged)

24 (Whereupon, at 4 07 p m , proceedings were
25 recessed, pending the verdict of the jury panel)

1 (Whereupon, at 4 55 p m , proceedings were
2 reconvened)

3 THE COURT You can bring the jury in

4 (Whereupon, at 4 57 p m , the jury panel returned
5 to the courtroom)

6 THE COURT All right, Mr Foreman, ladies and
7 gentlemen of the jury, I have your note asking for a
8 clarification on the point I think I'm going to recharge
9 you on one thing I charged you before If that's not
10 sufficient, let me know and I'll address any other concerns
11 that you have got

12 As you know, the defendant, Mr Wade, in this case
13 is charged with distribution of crack cocaine

14 I charge you with regard to mere presence at the
15 scene of a crime Mere presence is not enough A defendant
16 cannot be found guilty on any charge solely because he was
17 merely present at the scene of a crime

18 To be found guilty, a person must personally
19 commit the crime or be present at the scene and
20 intentionally take a role in the commission of the crime

21 That's what I previously charged you

22 Does that answer your question?

23 JURY FOREMAN Yes

24 THE COURT All right, sir If you will then
25 retire back to the jury room

1 If you have any other question about the law,
2 please let me know Thank you Please resume your
3 deliberations

4 (Whereupon, at 4 58 p m , the jury panel returned
5 to the jury room to continue deliberations)

6 THE COURT Any exception to the charge?

7 MS JOYNER None from the State

8 MR DELANEY None from the defense, Your Honor

9 (Jury Note marked as Court Exhibit No 1 for
10 identification)

11 (Whereupon, at 4 59 p m , proceedings were
12 recessed, pending the verdict of the jury panel)

13 (Whereupon, at 6 05 p m , proceedings were
14 reconvened)

15 THE COURT Please bring the jury in

16 (Whereupon, at 6 10 p m the jury panel returned
17 to the courtroom)

18 THE COURT Mr Foreman, ladies and gentlemen of
19 the jury, I have got your note and I think we understand
20 what it is that you would like to have replayed or read back
21 to you We are going to do that now And if that -- if you
22 need more than what we read back to you, please let me know
23 and we will try to address that as well

24 So the court reporter is at this time going to
25 read back to you what we think the information is that you

1 are -- or the testimony that you wanted to hear over And
2 if it's not all you wanted to hear, let us know and we will
3 give you what you need

4 (Whereupon, the court reporter re-read the
5 requested testimony to the jury panel)

6 THE COURT Is that what you wanted to hear, or
7 was there more that you wanted to hear, Mr Foreman?

8 JURY FOREMAN I think that's probably all

9 THE COURT All right Then we'll -- if you think
10 you need anymore, let me know and we can find it

11 JURY FOREMAN Can I ask a question now, or do we
12 need to write that out again for a different question to
13 hear the charge again?

14 THE COURT Oh, you want some additional charge on
15 the law?

16 JURY FOREMAN No, on the charges

17 THE COURT What do you want? What do you need
18 recharged on?

19 JURY FOREMAN Could you repeat the first
20 question -- the first --

21 THE COURT The charge that I recharged on?

22 JURY FOREMAN Yes

23 THE COURT Oh, yes, sir

24 JURY FOREMAN One more time, please

25 THE COURT Now, as I instructed you earlier, in

1 this case Antwan Marcus Wade is charged with distribution of
2 crack cocaine

3 And I charged you that mere presence is not
4 enough A defendant cannot be found guilty on any charge
5 solely because he was merely present at the scene of a
6 crime

7 To be found guilty, a person must personally
8 commit the crime or be present at the scene and
9 intentionally take a role in the commission of the crime
10 Okay?

11 JURY FOREMAN All right

12 THE COURT Anything else?

13 JURY FOREMAN No, sir

14 THE COURT Okay Let me ask you while you are
15 sitting here, if we were to order supper for you, it would
16 take probably about 45 minutes to get it Would you like
17 for us to order supper, or would you like for us to hold off
18 on that?

19 Go ahead and talk about it, if you want to back
20 there, and just let the bailiff know

21 JURY FOREMAN Okay

22 (Whereupon, at 6 12 p m , the jury panel returned
23 to the jury room to continue deliberations)

24 THE COURT All right Any exceptions to --

25 MS JOYNER No, sir, Your Honor

1 MR DELANEY No, judge

2 THE COURT All right We will see what they say

3 (Jury Note marked as Court's Exhibit No 2 for
4 identification)

5 (Whereupon, at 6 13 p m , proceedings were
6 recessed, pending the verdict of the jury panel)

7 (Whereupon, at 6 22 p m , proceedings were
8 reconvened)

9 THE COURT Please, ma'am, if you would bring the
10 jury in

11 (Whereupon, at 6 23 p m , the jury panel returned
12 to the courtroom to render its verdict)

13 THE COURT Mr Foreman, have you and the jury
14 reached a unanimous verdict in this case?

15 JURY FOREMAN Yes, we have

16 THE COURT If would you please hand the verdict
17 form up to the bailiff

18 The clerk will please publish the verdict

19 THE CLERK Indictment Number 2007-GS-46-3940, the
20 State of South Carolina versus Antwan Marcus Wade, we, the
21 jury, find the defendant guilty of distribution of crack
22 cocaine

23 Signed by the foreperson, dated January the 10th,
24 2008

25 Ladies and gentlemen of the jury, if this be your

1 verdict, please say so by raising your right hand

2 Let the record reflect all jurors so concurred

3 THE COURT Any questions of the jury from the
4 State?

5 MS JOYNER Not from the State, Your Honor

6 THE COURT From the defense?

7 MR DELANEY None from the defense, Your Honor

8 THE COURT Okay Mr Foreman, ladies and
9 gentlemen of the jury, this will conclude your service on
10 this case It will also conclude your service for the week
11 We have plenty of work to keep us busy tomorrow As a
12 matter of fact, while you have been deliberating, we have
13 been working very hard in here, but we have got plenty to do
14 tomorrow, but it will not require the jury to be present, so
15 this will conclude your service for the week

16 I would like to take this opportunity to thank you
17 for your service this week and the sacrifices that you have
18 made this week to help make our justice system work We
19 certainly understand your being here required sacrifices on
20 your part and we do not take that sacrifice for granted We
21 deeply appreciate it

22 You are free to go at this time with our thanks
23 Now, the clerk's office will put a check in the mail for
24 your service this week in short order

25 If anybody -- does anybody need anything to take

1 to your employer showing that you are required to be here?

2 You do, sir Is there anyone else?

3 Madam clerk, if we could get something for him

4 THE CLERK I didn't -- we will have to get it

5 THE COURT Can he just wait until you do that?

6 THE CLERK Yes

7 THE COURT Sir, if you will wait When the jury
8 starts out, if you will just wait right here, they will go
9 down and get something and bring it back to you to take to
10 your employer Again, thank you very much for your service

11 Now, we have got some ladies on the jury Maybe
12 if we can get somebody that will go out with them Let's
13 see, can you accompany them out please, sir?

14 POLICE OFFICER Yes, sir

15 THE COURT See that they get in their cars
16 outside because it's dark outside

17 You are free to go One of the officers will go
18 out and just stand by in the parking lot while the ladies
19 get in their car and are able to leave, because it's dark
20 out there All of you are free to leave at this time,
21 except the foreperson

22 Sir, if you would come up and sign the indictment
23 for us We need you to sign the back of the indictment
24 Thank you Come on up and do that The rest of you are
25 free to go

1 (Whereupon, at 6 25 p m , the jury panel was
2 discharged)

3 THE COURT All right Have you got the
4 sentencing sheet? You are working on it?

5 MS JOYNER Yes, sir, Your Honor

6 MR DELANEY At this time the defense will make a
7 motion for a new trial in this case and a motion to set
8 aside the verdict

9 THE COURT All right, sir Your motions are
10 noted for the record

11 I would say to you that I don't know of any
12 grounds for a new trial Certainly there was substantial
13 evidence to support the jury's verdict I'm not surprised
14 by the jury's verdict, and so -- and I don't think finding
15 any grounds for a new trial Your motions are noted for the
16 record and ruled and they are denied

17 (Indictment No 1999-GS-46-2408 was marked as
18 Court's Exhibit No 3 for identification)

19 (Indictment No 2004-GS-46-0280 was marked as
20 Court's Exhibit No 4 for identification)

21 (Indictment No 2005-GS-46-1871 was marked as
22 Court's Exhibit No 5 for identification)

23 THE COURT Thank you Yes, ma'am

24 MS JOYNER Your Honor, for sentencing purposes I
25 have had marked certified convictions for three prior drug

1 offenses

2 Court's Exhibit 3 is a conviction for a
3 distribution of marijuana

4 Your Honor, Court's Exhibit 4 is simple possession
5 of marijuana in 2004

6 And finally a possession for simple possession of
7 crack cocaine That was in 2005, and that is marked Court's
8 Exhibit 5

9 I'll pass those forward to the court

10 The defendant's other prior record, Your Honor, is
11 a 1995 conviction for assault and battery, and a 2006
12 conviction for assault and battery

13 THE COURT All right, are you treating this as a
14 third, though, or a fourth?

15 MS JOYNER Well, a third, or greater

16 THE COURT Same thing, same penalty

17 All right, counsel?

18 MR DELANEY Thank you, Your Honor

19 Obviously we are disappointed I respect this
20 process and obviously the jury has made their decision in
21 this case, and it doesn't really matter at this point if we
22 disagree with that or not I do want to say some things on
23 behalf of Antwan

24 This case is -- he's been my client for sometime/
25 this case has been pending for sometime, so I have got to

1 know him quite well The Antwan Wade that I know is a very
2 soft spoken, polite young man He's 31 years old He's
3 single Born and raised in this area His brother, his
4 cousin is in the courtroom They have been also very good
5 to me, very polite to me

6 He is in a difficult spot He knows the
7 sentencing range he's in We are asking for mercy We are
8 asking that you consider the low end, 15 or 16 years This
9 is not a guy that I believe is any type of big player We
10 are talking about one rock, and we ask you to take that into
11 consideration Thank you

12 THE COURT Mr Wade, anything that you wish to
13 say to the court?

14 THE DEFENDANT Disappointed I feel like I was
15 innocent

16 THE COURT All right, sir Does the State wish
17 to be heard on sentencing?

18 MS JOYNER No, sir, Your Honor

19 MR DELANEY Your Honor, if I may, the only other
20 thing I would say, just to put on the record, in terms of
21 his prior drug offenses, I know there is a prior for
22 distribution of marijuana But in terms of crack and
23 cocaine, they were for possession There is no priors for
24 distribution

25 THE COURT Okay

1 MR DELANEY I'll just let the court know that

2 THE COURT All right Of course, I will take
3 that into consideration Also the fact that this is a --
4 it's no parole Am I right about that, solicitor?

5 MS JOYNER Yes, sir, Your Honor

6 THE COURT No-parole offense I'll take that
7 into consideration also

8 Case number 2007-GS-46-3940, Antwan Wade, having
9 been found guilty by a jury of distribution of crack
10 cocaine, third or subsequent drug offense, the sentence of
11 the court is that he be committed to the State Department of
12 Corrections for a determinate term of 17 years

13 Pay a fine of \$50,000

14 Be given credit for any jail time he has served

15 MR DELANEY Thank you, judge

16 MS JOYNER Thank you, Your Honor

17 (END OF REQUESTED TRANSCRIPT OF RECORD)

18

19

20

21

22

23

24

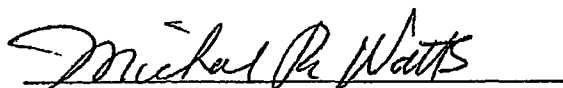
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CERTIFICATE

I, the undersigned, Michael R Watts, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for YORK County, South Carolina, on the 9TH AND 10TH days of January, 2008

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

JULY 8, 2008



Michael R Watts
Circuit Court Reporter

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

Lee S Alford, Circuit Court Judge

THE STATE,

RESPONDENT,

V

ANTWAN WADE,

APPELLANT

AMENDED FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES	2
STATEMENT OF ISSUES ON APPEAL	3
STATEMENT OF THE CASE	4
ARGUMENT	5
CONCLUSION	11
CERTIFICATE OF COUNSEL	12

TABLE OF AUTHORITIES**Cases**

<u>State v Kelly</u> , 343 S C 350, 540 S E 2d 851 (2001)	8
<u>United States v Walker</u> 155 F 3d 180 (3d Cir 1998)	9

STATEMENT OF ISSUES ON APPEAL

Did the solicitor improperly bolster the testimony of the confidential informant when she attempted to rehabilitate his inaccurate testimony?

STATEMENT OF THE CASE

Antwan Marcus Wade was indicted by the York County Grand Jury on November 8, 2007 of Distribution of Cocaine (2007 GS 46-3940) He was tried before the Honorable Lee S. Alford and a jury on January 9th and 10th, 2008 He was represented by Erik Delaney, Esquire He was convicted, and sentenced to seventeen (17) years in prison

This appeal timely follows

ARGUMENT

The solicitor improperly bolstered the testimony of the confidential informant when she attempted to rehabilitate his inaccurate testimony

Wade was set up by a confidential informant ("C I") who was attempting to work off his own charges (ROA page 48, lines 3-6) The confidential informant and his wife had both been recently arrested They agreed to work for the York County Multi-jurisdictional Task Force in hopes that they would have their charges "wiped "(ROA page 48, lines 18-19) As a condition of his agreement with the task force, the C I had to promise that he would refrain from using illicit drugs (ROA page 64, lines 13-22) Incapable of doing so, the C I testified that he smoked crack in front of Wade on an earlier occasion, as he was attempting to ingratiate himself to Wade so that he could then subsequently set him up for arrest (ROA page 73, line 22 to page 74, line 7) The officers involved testified that, had they known of his continued drug use, they would certainly have ceased working with him (ROA page 115, lines 4-9, ROA page 133, lines 11-25) The C I's drug use was unknown to the solicitor until just before trial (ROA page 74, lines 18-19)

The issue of his drug use while "working" came up during the trial, and the C I denied it

Q Okay Mr Montgomery, since you began working in the drug enforcement unit have you used drugs?

A No, sir

(ROA page 65, lines 4-6)

The C I was quite adamant

Q Now, let me get this straight You have just testified under oath to this jury that you have not used drugs while you have been a confidential informant Is that what you are testifying to?

A I have not used drugs while I was working for the drug unit, no sir Not while I was working for them, no, sir, I have not

Q So from March the 2nd, 2007, through today, you have not used drugs, correct?

A I have—I ain't going to say that I haven't used marijuana, but crack cocaine, no, sir I have not

Q You have not used crack cocaine?

A No sir I'll take a drug test right now to prove it

(ROA page 65, lines 13-25)

The solicitor informed the court that she had instructed the C I not to discuss smoking crack at Wade's house prior to the night of the controlled buy (ROA page 66, lines 23-24)

The C I was then given an opportunity to correct his statements before the jury

Q You did testify just a couple of minutes ago that you used marijuana while working as a confidential informant?

A Not while I was working Now, I—I'm saying I have used and over the year—last year, you know, I have been at a party or so, yeah, there has been some passed around, but it was not while I was working for the drug unit, no

(ROA page 67, lines 19-22)

Then,

A Yes, sir I have smoked But what I'm saying when I consider working is when I'm with them working When I m

at home and I'm on my free time, this and that, I don't consider that as working

I used it a couple of nights before I made the buy. It was a night or two before I made the buy. I went to Antwan Wade's and he sat there and he watched me smoke it in front of him, yes, sir

(ROA page 68, lines 2-25)

Following this exchange, Wade's attorney then extensively cross-examined the C I regarding whether he disclosed his drug use to the officers with whom he was working since, if he had, consistent with the testimony of the officers, they would not have continued using him (ROA page 72, line 9 to page 74, line 16)

The solicitor then attempted to rehabilitate the C I's testimony, even though he finally came clean with truthful testimony. This constituted improper bolstering of the C I's testimony

Q Mr. Montgomery, did you tell me about it?

A I did tell you Friday. Yes, ma'am, I did

(ROA page 74, lines 18-19)

Then,

Q Okay. Mr. Montgomery, when was the first time that you and I met?

A Friday of last week

Q And Friday of last week when you told me about buying and smoking crack at Antwan Wade's house, did you and I have a discussion about whether you were to testify to that in court?

A Yes, ma'am. I was

Q What was your understanding of what I explained to you about whether the information would be admissible in court?

A You told me not to mention it, not unless it was mentioned—

Q Okay

A Pretty much

Q And when we discussed the fact that you had disclosed to me that you had smoked crack with Mr Wade prior to the deal, did we discuss whether that information would need to be disclosed to the defense attorney?

A Yes ma'am, we did

Q And do you recall what that discussion was?

A You said not—not to mention it, not unless, like I said, not unless it was brought up

Q Okay But was it your understanding at that time that Mr Delaney would be made aware of the information?

A Yes, ma'am, you said that he was aware of it, but he probably wouldn't bring it up, because he watched me smoke it in front of him

(ROA page 75, line 19 to page 76, line 20)

This entire exchange was inappropriate, and improperly bolstered the C I s credibility before the jury

The South Carolina Supreme Court defines the concept of vouching in State v. Kelly, 343 S C 350, 540 S E 2d 851 (2001), *reversed on other grounds*, Kelly v. State, 534 U S 246, 122 S Ct 726, 151 L Ed 2d 670 (2002)

Vouching constitutes an assurance by the prosecuting attorney of the credibility of a Government witness through personal knowledge or by other information outside of the

testimony before the jury. A prosecutor's vouching for the credibility of a government witness raises two concerns (1) such comments can convey the impression that evidence is not presented to the jury but known to the prosecutor, supports the charges against the defendant and can thus jeopardize the defendant's right to be tried solely on the basis of the evidence presented to the jury, and (2) the prosecutor's opinion carries with it the imprimatur of the Government and may induce the jury to trust the Government's judgment rather than its own view of the evidence.

Id. at 368-69 (quoting United States v. Walker, 155 F.3d 180 (3d Cir. 1998))

Both of those dangers were present in this case. First, the solicitor's testimony indicated that she had had a lengthy discussion about what the C I was to testify to in court. She apparently discussed strategy with him, and it is clear from this exchange that there were strategic reasons to either place or not place certain information before the jury. She elicited from the C I what the *defense's* trial strategy might be. Every juror must have been left with the impression that they were merely witnessing a shadow version of what had really happened in this case. From this exchange, it is clear that the solicitor discussed (1) exactly what information the C I would testify to, (2) whether certain information would be legally admissible, (3) whether there was an obligation to disclose that information to the defense attorney (and the C I appears to have been under the impression that they did not have to disclose it unless "it came up"), and (4) that the defense probably would not use that information because it would not be in Wade's favor. Any rational juror must have considered what additional, perhaps "inadmissible," information was kept from them.

This exchange also carried with it the State's imprimatur of credibility as the solicitor placed herself as a witness to the events described. No juror could have entertained any doubt about the veracity of this exchange without concluding that the solicitor, herself,

was a liar. The solicitor interwove her credibility with that of the C I when she made herself a witness to these events, and that usurped the traditional and historic role of the jury who is *solely* authorized to gauge witness credibility in a jury trial.

The prejudice cannot be understated. The C I was the only witness to the alleged distribution. If the jury did not believe the C I, they simply would not have been able to convict Wade. Wade is entitled to a new trial. Because the solicitor improperly bolstered the testimony of the C I, respectfully Wade asks this Court to reverse his conviction.

CONCLUSION

For the foregoing reason, Wade respectfully asks this Court to reverse his conviction

Respectfully submitted,


Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of April, 2009

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Amended Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings "

April 23, 2009


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STATE OF SOUTH CAROLINA
 IN THE COURT OF APPEALS

Appeal from York County

Lee S. Alford, Circuit Court Judge

THE STATE,

RESPONDENT,

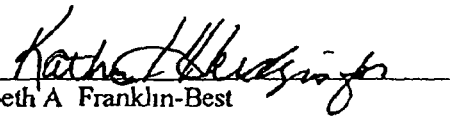
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ANTWAN WADE,

APPELLANT

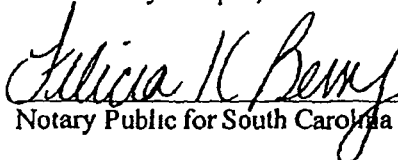
AMENDED CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Amended Final Brief of Appellant in the above referenced case has been served upon Norman Mark Rapoport, Esquire at Rembert Dennis Building Room 519, 1000 Assembly Street, Columbia, SC 29201, this 23rd day of April, 2009


 Elizabeth A. Franklin-Best
 Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
 this 23rd day of April, 2009

 (L S)
 Notary Public for South Carolina

My Commission Expires August 15, 2010

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Lee S Alford, Circuit Court Judge

The State of South Carolina,

Respondent,

vs

ANTWAN WADE,

Appellant

FINAL BRIEF OF RESPONDENT

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TABLE OF AUTHORITIES

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<u>State v. Byram</u> , 326 S C 107, 485 S E 2d 360 (1997)	8
<u>State v. Dunbar</u> , 356 S C 138, 587 S E 2d 691 (2003)	9
<u>State v. Dunlap</u> , 353 S C 539, 579 S E 2d 318 (2003)	11
<u>State v. Hoffman</u> , 312 S C 386, 440 S E 2d 869 (1994)	8
<u>State v. Johnson</u> , 324 S C 38, 476 S E 2d 681 (1996)	8
<u>State v. Lynn</u> , 277 S C 222, 284 S E 2d 786 (1981)	10
<u>State v. Nichols</u> , 325 S C 111, 481 S E 2d 118 (1997)	9
<u>State v. Prioleau</u> , 345 S C 404, 548 S E 2d 213 (2001)	9
<u>State v. Robinson</u> , 305 S C 469, 409 S E 2d 404 (1991)	10
<u>State v. Stroman</u> , 281 S C 508, 316 S E 2d 395 (1984)	10, 11
<u>State v. Sullivan</u> , 277 S C 35, 282 S E 2d 838 (1981)	10
<u>State v. Taylor</u> , 333 S C 159, 508 S E 2d 870 (1998)	11
<u>State v. Tyner</u> , 273 S C 646, 258 S E 2d 559 (1979)	9
<u>State v. White</u> , 353 S C 566, 578 S E 2d 728 (Ct App 2003)	9
<u>State v. White</u> 361 S C 407, 605 S E 2d 540 (2004)	9, 11

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Rule 608(a)(2), SCRE	10
Rule 801(d)(1), SCRE	10

STATEMENT OF ISSUES ON APPEAL

I

Is Wade's Issue available for appellate review?

II

Did the assistant solicitor's redirect examination of Montgomery constitute impermissible bolstering?

STATEMENT OF THE CASE

Appellant Antwan Wade was indicted in York County for distribution of crack cocaine. His case came to trial on January 9-10, 2008, before the Honorable Lee S. Alford, and a jury. Wade was convicted as charged and sentenced to seventeen years imprisonment. A Notice of Appeal was filed and served.

STATEMENT OF FACTS

On the evening of March 8, 2007, the York County Multi-Jurisdictional Drug Task Force (DEU) set up a controlled-buy of crack cocaine from Wade using Robert Montgomery, a confidential informant. They also used Montgomery's wife, Kelly Ellis, because Montgomery was unable to drive (R 1-9)

After Montgomery placed a telephone call to Wade, the police followed Montgomery and Ellis to Wade's house (R 10-11, 93-94, 108-109). Before the meeting with Wade, Montgomery and Ellis were searched. The police also searched their car. They equipped Montgomery with an electronic listening device.¹ He was given \$40 for the buy (R 9-10, 94, 106-08, 120-21)

After the transaction took place, the police followed Montgomery and Wade to a predetermined location and received the crack cocaine purchased from Wade.² (R 13-14, 109, 121-24). Montgomery and Ellis, and their car, were again searched (R 814-15, 94-95, 108)

Montgomery testified he was arrested for possession of marijuana with intent to distribute and then agreed to work with the police (R 47-49, 60-61). Montgomery said he knew Wade for years (R 49, 59). He then drove with his wife to Wade's house and told Wade that he wanted a "40." Montgomery said there were three or four other people inside the house at the time. Montgomery testified Wade initially refused to sell him the crack

¹The police were able to monitor the transaction through the listening device and relay information to each other (R 122-23). The DEU no longer had the tape at the time of trial, however (R 41)

²Wade sold Montgomery 4 grams of crack (R 100, 126)

unless he smoked it there. Montgomery told Wade the crack was for somebody else, and he then telephoned another person to placate Wade. Montgomery said Wade took him into the back bedroom and sold him the crack for \$40 (R 51-56, 58, 63-64). Montgomery testified he then left Wade's house and turned the crack over to the police (R 56-57).

Ellis testified that she also agreed to help the police because of a pending marijuana charge against her (R 87). She went with Montgomery to Wade's house, but stayed in the car (R 88). She then went inside the house with Montgomery after he made the telephone call (R 88-89). Ellis said she was in the living room when Montgomery went into the back room with Wade (R 89). Ellis testified that after the purchase, she and Montgomery left Wade's house and turned the crack over to the police (R 89-90).

Wade was arrested later (R 37-38, 95-96, 99-100).

ARGUMENT

Wade's Issue is not available for appellate review. The assistant solicitor's redirect examination of Montgomery did not constitute impermissible bolstering. (Wade's Issue, Respondent's Issues I & II)

As previously noted, Montgomery was arrested on a drug offense and agreed to work for the police. Montgomery thereafter purchased crack cocaine from Wade.

On cross-examination, Officer Brian Schettler explained that informants are required to sign a contract with the DEU. As a condition of their agreement, the informant must promise he or she will neither sell nor use drugs. Schettler said a violation of the agreement would terminate the agreement and "all deals are off." Despite repeated prodding by defense counsel, Schettler refused to acknowledge that a violation of the agreement affected the reliability or credibility of the informant. He stated, "[t]he people we deal with aren't the most clean-cut people. I don't know if it's so much their credibility as our ability to control or have them come in or out and be able to put them in a situation where we can go ahead and get what we are asking for." (R. 26-30)

During Montgomery's cross-examination, he admitted he smoked marijuana before he was arrested. (R. 61-62) Defense counsel then asked Montgomery if he had used drugs since working for the police. Montgomery insisted that he discontinued his drug use after he "worked" for the police. (R. 65) Defense counsel asked, "[s]o from March the 2nd, 2007, through today, you have not used drugs, correct?" (R. 65) Montgomery said, "I ain't going to say that I haven't used marijuana, but crack cocaine, no, sir I have not. I'll take a drug test right now to prove it." (R. 65)

Immediately outside the presence of the jury, defense counsel admitted he was told the week before trial that Montgomery smoked crack before the controlled-buy (R 66) The assistant solicitor claimed Montgomery was simply confused about how to answer defense counsel's question The assistant solicitor explained she earlier instructed Montgomery not to discuss his smoking crack at Wade's house prior to the controlled-buy, because it introduced prior bad acts against Wade and she wanted to avoid a mistrial (R 66-67) The trial judge then ruled defense counsel could ask Montgomery about his prior use of crack He further instructed Montgomery that he could testify about the incident (Suppl R 1)

On continued cross-examination, Montgomery said he continued to smoke marijuana after he started to work for the DEU, because "when I'm at home and I'm on my free time

I don't consider that as working" (R 67-68) Montgomery then further admitted he smoked crack in front of Wade a day or two before the controlled-buy Montgomery said he told Schettler about it before the controlled-buy, but admitted he did not tell him (R 67-73) Montgomery explained he attempted to ingratiate himself to Wade so he could later make the controlled-buy from him for the police (R 73-75)

On redirect examination, Montgomery testified he told the prosecutor about his crack use the week before trial (R 74) The following colloquy then occurred

[ASSISTANT SOLICITOR] Okay, Mr Montgomery, when was the first time that you and I met?

[MONTGOMERY] Friday of last week

[ASSISTANT SOLICITOR] And Friday of last week when you told me about buying and smoking crack at Antwan Wade's house, did you and I have a discussion about whether you were to testify to that in court?

[MONTGOMERY] Yes, ma'am, I was

[ASSISTANT SOLICITOR] What was your understanding of what I explained to you about whether the information would be admissible in court?

[MONTGOMERY] You told me not to mention it, not unless it was mentioned - -

[ASSISTANT SOLICITOR] Okay

[MONTGOMERY] Pretty much

[ASSISTANT SOLICITOR] And when we discussed that fact that you had disclosed to me that you had smoked crack with Mr Wade prior to the deal, did we discuss whether that information would need to be disclosed to the defense attorney?

[MONTGOMERY] Yes, ma'am, we did

[ASSISTANT SOLICITOR] And do you recall what that discussion was?

[MONTGOMERY] You said not - - not to mention it, not unless, like I said, not unless it was brought up

[ASSISTANT SOLICITOR] Okay But was it your understanding at that time that [defense counsel] would be made aware of the information?

[MONTGOMERY] Yes, ma'am, you said that he was aware of it, but he probably wouldn't bring it up, because he watched me smoke it in front of him

(R 75-76)

Officer Josh Welch next testified on cross-examination about the terms of DEU agreements with informants (R 110-11) He said if an informant continued to use drugs, he or she would not be used (R 111) Welch was unaware of Montgomery's drug use just before the controlled-buy, yet he refused to state his drug use affected Montgomery's

reliability or credibility Welch testified “ I mean, just because he smoked crack doesn’t mean that his word isn’t good [or] that they don’t tell the truth it doesn’t affect their credibility, as far as being honest about what they tell you, but it would affect their credibility as far as working for us “ (R 112-15)

Officer Mike Ligon also testified he was unaware of Montgomery’s drug use prior to the controlled-buy (R 131, 134) He, too, denied Montgomery’s credibility was affected by it He stated “[i]t’s not going to be destroyed in the sense to where - - you have to deal with demons to get to the devil ” Ligon said he would simply not use an informant who violated an agreement (R 131-35)

On appeal Wade argues he is entitled to a new trial, because the assistant solicitor improperly bolstered Montgomery when she attempted to rehabilitate him during the redirect examination

A Error preservation

The record demonstrates Wade failed to object to Montgomery’s redirect examination (indicated above) on this ground at any time during trial His assignment of error asserted for the first time on appeal is thus not preserved for appellate review State v Hoffman, 312 S C 386, 440 S E 2d 869, 873 (1994)[a contemporaneous objection is required to properly preserve an error for appellate review], State v Byram, 326 S C 107, 485 S E 2d 360 (1997)[to be preserved for appeal, an issue must be raised to and ruled on by the trial judge], State v Johnson, 324 S C 38, 476 S E 2d 681, 682 (1996)[noting that “appellant made no contemporaneous objection at trial and did not raise this issue at any point during trial Consequently, this issue is not preserved for review”], see also State v Prioleau, 345 S C

404, 548 S E 2d 213, 216-17 (2001)[holding where a defendant did not argue before a trial judge that victim's in court photographic identification of him improperly bolstered identifications of other two victims, but where defendant instead argued that procedure was unduly suggestive, Court of Appeals erred by relying on improper bolstering as a basis for reversing conviction], State v. White, 353 S C 566, 578 S E 2d 728, 733 (Ct App 2003)[holding for purposes of appellate review, defendant failed to preserve claim that testimony of State's expert witness that she believed the victim's account of events improperly bolstered the victim's testimony, because the defendant failed to object when the testimony was elicited during trial], *aff'd as modified*, State v. White, 361 S C 407, 605 S E 2d 540 (2004)

Wade's Issue, therefore, must be dismissed State v. Dunbar, 356 S C 138, 587 S E 2d 691 (2003)[an appellate court cannot reverse a conviction on a ground not presented to the trial judge], Pringle, 548 S E 2d at 216-17 [same]

B Montgomery's redirect examination was proper

In the event this Court decides to consider Wade's Issue, the record demonstrates the assistant solicitor's redirect examination of Montgomery did not constitute impermissible bolstering

The scope of Montgomery's redirect examination rested sound in the discretion of the trial judge State v. Nichols, 325 S C 111, 481 S E 2d 118 (1997), State v. Tyner, 273 S C 646, 258 S E 2d 559 (1979)

The believability of Montgomery's testimony was the crucial factor in the success of the State's case. Here, the assistant solicitor's redirect examination was directly related to

defense counsel's attempt to impeach his credibility with his prior crack use, and Montgomery's failure to admit it earlier on cross-examination. Defense counsel was clearly aware of Montgomery's drug use the week before trial, but Montgomery was instructed not to mention it. Montgomery was obviously confused about what to say on the stand when he was questioned about his crack use. Clearly, the State had the right to rehabilitate Montgomery's credibility on that issue after it was attacked, and Montgomery could then attempt to explain his failure to be straightforward about his previous use of crack. In this context, the redirect examination was permissible. Rule 608(a)(2), SCRE, see also State v. Lynn, 277 S C 222, 284 S E 2d 786 (1981) [noting at common law, a witness' character or credibility could be bolstered after it has been attacked], cf Rule 801(d)(1), SCRE [a statement is not hearsay when offered as a prior statement of the witness and "is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive . . ."]

The State further submits that defense counsel "opened the door" to Montgomery's redirect testimony, because he first cross-examined him about the failure to reveal the prior use of crack to the jury. He cannot now complain on appeal about the admission of Montgomery's testimony on redirect examination to explain his reluctance to talk about it. See, e.g., State v. Robinson, 305 S C 469, 409 S E 2d 404 (1991), State v. Stroman, 281 S C 508, 316 S E 2d 395 (1984), State v. Sullivan, 277 S C 35, 282 S E 2d 838 (1981) "[W]hen a party introduces evidence about a particular matter, the other party is entitled to explain it or rebut it, even if the latter evidence would have been incompetent or irrelevant had it been offered initially." Stroman, 316 S E 2d at 399, State v. Beam, 336 S C 45, 518

S E 2d 297, 301 (Ct App 1999), see also State v White, 361 S C 407, 605 S E 2d 540, 544 (2004)[ruling an expert could testify that she believed the victim in this case, because the defendant opened the door by cross-examining the expert about other cases in which she did not believe a victim], State v. Dunlap, 353 S C 539, 579 S E 2d 318, 319 (2003)[holding defense counsel's opening statement "opened the door to the introduction of evidence rebutting the contention that [defendant] was merely an addict"], State v. Taylor, 333 S C 159, 508 S E 2d 870, 878 (1998)[“Because appellant opened the door about his relationship with his wife, the solicitor was entitled to cross-examine him regarding the relationship, even if the responses brought out appellant's prior criminal domestic violence conviction”]

Wade's Issue is without merit

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court should be affirmed

Respectfully submitted,

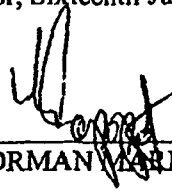
HENRY DARGAN McMASTER
Attorney General

JOHN W McINTOSH
Chief Deputy Attorney General

SALLEY W ELLIOTT
Assistant Deputy Attorney General

NORMAN MARK RAPOPORT
Senior Assistant Attorney General

KEVIN S BRACKETT
Solicitor, Sixteenth Judicial Circuit

BY 
NORMAN MARK RAPOPORT

Office of the Attorney General
Post Office Box 11549
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(803) 734-3727

ATTORNEYS FOR RESPONDENT

March 23, 2009

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From York County
Lee S. Alford, Circuit Court Judge

THE STATE,

Respondent,

vs

ANTWAN WADE,

Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings"

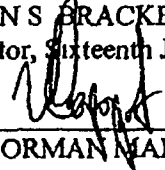
HENRY DARGAN McMASTER
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JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

NORMAN MARK RAPOPORT
Senior Assistant Attorney General

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit

By 
NORMAN MARK RAPOPORT

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ATTORNEYS FOR RESPONDENT

March 23, 2009

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From York County
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THE STATE,

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vs

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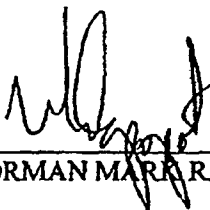
Appellant

PROOF OF SERVICE

I certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Elizabeth A. Franklin-Best, Esquire, Appellate Defender, South Carolina Commission on Indigent Defense, Division of Appellate Defense, P O Box 11589, Columbia, SC 29211-1589

I further certify that all parties required by Rule to be served have been served

This 23rd day of March, 2009



NORMAN MARK RAPOPORT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

**THIS OPINION HAS NO PRECEDENTIAL VALUE IT SHOULD
NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY
PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v

Antwan Wade, Appellant

Appeal from York County
Lee S Alford, Circuit Court Judge

Unpublished Opinion No 2010-UP-041
Submitted January 4, 2010 – Filed January 26, 2010

APPEAL DISMISSED

Appellant Defender Elizabeth A Franklin-Best,
South Carolina Commission on Indigent Defense, of
Columbia, for Appellant

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W McIntosh,
Assistant Deputy Attorney General Salley W Elliott,

Senior Assistant Attorney General Norman Mark
Rapoport, all of Columbia, and Solicitor Kevin
Brackett, of York, for Respondent

PER CURIAM Antwan Wade appeals his conviction for cocaine distribution, arguing that the prosecution improperly bolstered the testimony of one of the State's witnesses during redirect examination. We affirm pursuant to Rule 220(b), SCACR, and the following authorities: State v. Goodwin, 384 S C 588, 603, 683 S E 2d 500, 508 (Ct App 2009) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial court"), State v. Hoffman, 312 S C 386, 393, 440 S E 2d 869, 873 (1994) ("A contemporaneous objection is required to properly preserve an error for appellate review"), State v. Dunbar, 356 S C 138, 142, 587 S E 2d 691, 694 (2003) ("An issue that was not preserved for review should not be addressed by the Court of Appeals"), State v. Stroman, 281 S C 508, 513, 316 S E 2d 395, 399 (1984) ("Where one party introduces evidence as to a particular fact or transaction, the other party is entitled to introduce evidence in explanation or rebuttal thereof, even though [the] latter evidence would be incompetent or irrelevant had it been offered initially"), State v. White, 361 S C 407, 415-16, 605 S E 2d 540, 544 (2004) (holding that a party who opens the door to evidence cannot complain of its admission)¹

AFFIRMED

HUFF, A C J , GEATHERS, J , and CURETON, A J , concur

¹ We decide this case without oral argument pursuant to Rule 215, SCACR

2010CP4600688

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of York)Lincoln Marcus Wade)

Full name and prison number if any of applicant)

262442)

v)

The State of South Carolina)

Name of Respondent)

APPLICATION FOR

POST CONVICTION RELIEF

2010 FEB 17 PM 3 04
CLERK OF COURT
YORK COUNTY SCINSTRUCTIONS READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

- 1 Place of detention McCormick Correctional Institution
386 Redemption Way McCormick SC 29849
- 2 Name and location of Court which imposed sentence Court of General Sessions of York County
- 3 The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed
(a) 2007-GS-46-03940, Distribution of (Crack) Cocaine
(b) _____
(c) _____
- 4 The date upon which sentence was imposed and the terms of the sentence
(a) January 10, 2008, 17 years
(b) _____
(c) _____

2010 FEB 13 AM 11 02
CLERK OF COURT
YORK COUNTY SC

- 5 Check whether a finding of guilty was made
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty Not Guilty
- (c) after a plea of nolo contendere N/A
- 6 Did you appeal from the judgment of conviction or the imposition of sentence? Yes
- 7 If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed
- I South Carolina Court of Appeals
- II _____
- III _____
- (b) the result in each such Court to which you appealed
- I Dismissed
- II _____
- III _____
- (c) the date of each such result
- I January 26, 2010
- II _____
- III _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results
- I NO. 2010-UP-041
- II _____
- III _____
- 8 If you answered "no" to (6), state your reasons for not so appealing
- (a) N/A
- (b) _____
- (c) _____
- 9 State concisely the grounds on which you base your allegation that you are being held in custody unlawfully
- (a) Ineffective Counsel for failure to prepare.
- (b) Ineffective Assistant Counsel before and during trial.
- (c) _____

10 State concisely and in the same order the facts which support each of the grounds set out in (9)
 (a) Ineffective Assistance of Counsel. Attorney Monitor w
Client

(b) _____

(c) _____

11 Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

N/A

(b) any petitions in State or Federal Courts for habeas corpus or post conviction relief?

N/A

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) N/A

(d) any other petitions, motions or applications in this or any other Court?

N/A

12 If you answered "yes" to any part of (11), list with respect to each petition, motion or application

(a) the specific nature thereof

I

N/A

II

N/A

III

N/A

IV

N/A

(b) the name and location of the Court in which each was filed

I

N/A

II

N/A

III

N/A

IV

N/A

(c) the disposition thereof

I

N/A

II

N/A

III

N/A

IV

N/A

(d) the date of each such disposition

- I N/A
 II N/A
 III N/A
 IV N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition

- I N/A
 II N/A
 III N/A
 IV N/A

13 Has any ground set forth in (9) been previously presented to this or any other Court State or Federal, in any petition, motion or application which you have filed? NO

14 If you answered "yes" to (13), identify

(a) which grounds have been presented

- I N/A
 II N/A
 III N/A

(b) the proceedings in which each ground was raised

- I N/A
 II N/A
 III N/A

15 If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented

(a) Not proper Forum

(b) _____

(c) _____

16 Were you represented by an attorney at any time during the course of

(a) your arraignment and plea? N/A

(b) your trial, if any? Yes

(c) your sentencing? same as trial Counsel

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence?

Yes

(e) preparation presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? NO

17 If you answered "yes" to one or more parts of (16), list

(a) the name and address of each attorney who represented you

i

ii

iii

(b) the proceedings at which each such attorney represented you

i

ii

iii

18 State clearly the relief you seek in filing this application

Vacate Sentence and Conviction

19 Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)
COUNTY OF York)

VERIFICATION

I, Antuan Marcus Wade, 262442 being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application, that I know the contents thereof that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application and that the matters and allegations therein set forth are true

Antuan Wade

Sworn to and subscribed before me

This 11 day of Feb, 2010

Jay L Young L.S.
Notary Public for South Carolina

My Commission Expires 8 28 2011

APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Antuan Marcus Wade 262442, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor In support of my application I declare under penalty of perjury that the following facts are true

- (1) I am the applicant in this action and I believe I am entitled to redress
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor

Antuan Wade
Applicant

Sworn to and subscribed before me

This 11 day of Feb, 2010

Jay L Young L.S.
Notary Public for South Carolina

My Commission Expires 8 28 2011

Antwain Wade #24442
McCormick Correctional Institution
381 Redemption Vly
McCormick SC 29899 2/11/10

RE: POST Conviction RELIEF

Dear Clerk,

Please Stamp Clock and File
This application and serve a copy
back to me for my file.

Thank you,
Antwain Wade



HENRY McMASTER
ATTORNEY GENERAL

July 8, 2010

The Honorable David Hamilton
York County Clerk of Court
P O Box 649
York, SC 29745

FILED-RECEIVED
2010 JUL -9 PM 1 13
DAVID HAMILTON
CCC P & GS
YORK COUNTY, SC

Re Antwan M Wade, #262442 v State of South Carolina
2010-CP-46-0688

Dear Mr Hamilton

Enclosed please find the original **Return** of the Respondent, in the above-captioned case, for filing in your office

Sincerely,

Jennifer A Kinzeler
Assistant Attorney General

JAK/nb

Enclosure

York County Clerks Records
SCDC Records
PCR Application
Appellate Court Records
Trial Transcript

cc Richard Chad Smith, Esquire

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Antwan M. Wade, # 262442,

Applicant,

v

State of South Carolina,

Respondent

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
Case No 2010-CP-46-0688

RETURN

DAVID HAMILTON
C C P & G S
YORK COUNTY SC

FILED-RECEIVED
2010 JUL -9 PM 1:13

Respondent, making its Return to the application for post-conviction relief (PCR) filed February 17, 2010, would respectfully show this Court.

I

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the November 2007 term of the York County Grand Jury for Distribution of Cocaine Base (Crack Cocaine) - 3rd or subsequent offense (2007-GS-46-3940) Erik D Delaney, Esquire, represented him. On January 9-10, 2008, Applicant proceeded to trial pursuant to which he was found guilty as indicted. The Honorable Lee S Alford sentenced him to confinement for a period of seventeen (17) years. A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence State v Wade, Op No 2010 UP-041 (S C Ct App filed January 26, 2010). The Remittitur was issued on February 17, 2010.

Attached herewith are the records of the York County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the appellate court records including the trial transcript.

II

In his current application, Applicant alleges that he is being held in custody unlawfully for the following reasons

1 Ineffective Assistance of Counsel.

III

In a PCR proceeding, the applicant bears the burden of establishing that he is entitled to relief Caprood v. State, 338 S. C. 103, 109, 525 S.E.2d 514, 517 (2000). First, a PCR applicant must show that his counsel's performance was deficient such that it falls below an objective standard of reasonableness Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 693 (1984), Alexander v. State, 303 S. C. 539, 541, 402 S.E.2d 484, 485 (1991). Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry v. State, 300 S. C. 115 at 117, 386 S.E.2d 624 at 625 (1989), *attng Strickland*.

Second, an applicant must show there is a reasonable probability, but for counsel's unprofessional errors, the result of the proceeding would have been different. Strickland, 466 U.S. at 687, 104 S. Ct. at 2064, 80 L. Ed.2d at 693, Alexander, 303 S. C. at 541-42, 402 S.E.2d at 485. The Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, Id. Applicant must overcome this presumption in order to receive relief. Cherry, Id.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S. C. 264, 305 S.E.2d 247 (1983).

IV

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel

V

The Respondent denies each allegation that is not expressly admitted, qualified, or explained. Further, the Applicant must specify any additional or supporting claims he intends to raise at a PCR hearing should one be held. Any claims not *specifically* laid out in this PCR application or in subsequent amendments will be opposed by the State at an evidentiary hearing. See S.C. Code § 17-27-50, SCRCF Rule 71.1. All claims should be made well in advance of the PCR hearing. If the Applicant has an attorney appointed, the attorney, and not the Applicant, is the only authorized to file amendments. SCRCF Rule 11. *Pro se* filings from applicants represented by counsel will not be considered.

VII

WHEREFORE, having made its Return, the State requests that a hearing be held.

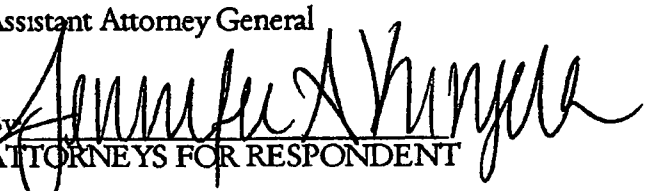
Respectfully submitted,

HENRY D. McMASTER
Attorney General

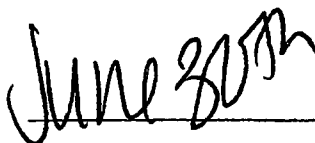
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

JENNIFER A. KINZELER
Assistant Attorney General

By 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone (803) 734-3737

, 2010

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

2010-CP-46-0688

ANTWAN M WADE, #262442

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent

AFFIDAVIT OF SERVICE BY MAIL

LED-RECEIVED
2010 JUL -9 PM 1 13
DAVID HAMILTON
J C C P & G S
YORK COUNTY SC

- 1 I am an employee of the Respondent in the above-captioned action
- 2 Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail
- 3 I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid

Richard Chad Smith, Esquire
P O Box 11808
Rock Hill, SC 29731

DATED this 8th day of July, 2010


Norma Bigbee, Legal Assistant

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
ANTWAN WADE)
Applicant)
DAVID HAMILTON)
C C C P & G S)
YORK COUNTY, SO)
))
))
STATE OF SOUTH CAROLINA)
Respondent,)
_____)

IN THE COMMON PLEAS COURT

DOCKET NO 2010-CP-46-0688

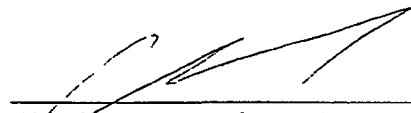
AMENDED APPLICATION FOR POST
CONVICTION RELIEF

The Applicant through undersigned Counsel states that his Application for Post Conviction Relief was filed on February 17, 2010, and wishes to Amend his application as follows

INEFFECTIVE ASSISTANCE OF COUNSEL

SEE ATTACHED

RESPECTFULLY SUBMITTED ON BEHALF OF
APPLICANT, ANTWAN WADE



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1st

Ineffective Assistance of Counsel - Groun
Continued

Applicant contends Counsel was Ineffective for failing to preserve for appeal the issue of Improper Bolstering the testimony of the Confidential Informant when she attempted to Rehabilitate his Inaccurate testimony. She Improperly Bolstered his testimony to the extent that she personally Vouched for his Credibility by stating she told him not to mention it unless it was mentioned. See trial transcript 169 - Lines 18-19, also pg. 170 Line 19 to page 171, Line 20. The entire exchange was inappropriate, and Improperly Bolstered the C.I.'s Credibility Before the jury. See State v. Kelly, 540 S.E.2d 851. This issue was raised on Direct Appeal But was not heard because it was not preserved for Appellate Review By Counsel not objecting at trial to the Improper Bolstering of the C.I.'s Credibility by the Solicitor. The Solicitor

Interwove her Credibility with that of the C.T. when she made herself a witness to these events, and that USurped the traditional role of the jury who is solely Authorized to Gauge witness Credibility in a jury trial. The prejudice cannot be understated. The C.T. was the only witness to the alleged Distribution. If the jury did not believe the C.T., they simply would not have been able to convict Applicant. Further, no other evidence was submitted.

II Failure to Suppress Chain of Custody Violations and Missing Evidence *Prody Violation*

Applicant contends that Counsel was Ineffective for Failing to Suppress the Evidence of the Crack Cocaine Allegedly purchased. There are contradictions as to how many rocks were purchased and the exact weight of the Narcotics

Purchased by the C.I. Counsel
Questioned Officer Brian Schettler
Concerning the Crack he allegedly
got from the C.I. Now Starting
on pg. 110 It States Specifically on
Line 20.

Q.) Okay Now, in your report it States
the C.I. took a \$40

21.) Piece of Crack and left the
residence, Correct?

22.) A.) That's Correct.

23.) Q.) Officer ~~AS~~ then followed the C.I.
Back to Mass Justice

24.) Center where the C.I. handed you
some Crack?

25.) A.) That's Correct.

pg. 111 Line 1:

Q.) The Crack was Weighed and It
Weighed approximately .4

2.) Grams, Correct.

3.) A.) That's Correct.

14.) Q.) You Stated in the Arrest Warrant
that Antwan WADE Violated South
Carolina Drug laws by Distributing
two Crack Rocks with a total weight

of Approximately .4 grams
 17.) Correct?

18.) A.) Correct.

This was the direct testimony of the Initial Arresting Officer who appeared before the Magistrate and obtained a warrant under this premise.

Now according to the Summary report made by this same officer it states "Antwan Wade Dumped Approximately 7 forty dollar pieces of Crack onto his hand from a Cigar tube" Antwan told the C.I. to pick one out. The C.I. took a \$40 dollar piece of Crack and left the residence.

Now according to the testimony of the C.I. Robert Montgomery he tell another version. pg. 149 Lines 24:
 Q.) And how did the transaction occur
 A.) I gave him \$40 in the living room we went back to the pg. 150 Line 1:
 back Bedroom. He poured Crack cocaine out of a Cigar tube

- 2) Into my hand told me to pick one. I picked one and then
- 3) Told him I would see him later. I maybe back Shortly, and I
- 4) Left.

pg. 245 Line 11-14 Starting at Line 9

9) Q.) And what did you determine the Substance and weight to be?

11) A.) State's Exhibit No. 1, which is the Item number one in this case, was found to be Cocaine Base; also known as Crack in the Amount of 0.19 grams, or 2.93 grams, Controller II Substance.

Drug report marked as States exhibit No. 2 for Identification.

Further on pg. 246 Lines 9-14 It is further stated by the States Witness, MS. Mitchum who did the drug Analysis the Exact Weight.

Line 9) Q.) Okay and did you testify as to the Amount that you weighed?

11) A.) Yes.

12) Q.) And what was that?

13) A.) 0.19 grams, or 2.93 Grains

14) Q.) Thank You.

Counsel was ineffective for failing to move for a mistrial for Tampering with evidence pursuant to rule 6, Chain of Custody and 73-80 handling of Control Substances. Further, applicant was Denied his right to see the Chain of Custody "Under Rule 36 Forms." Which States the use of these Forms is "Mandatory"

A-B-C-Forms Chain of Custody

1.) Certificate of proof of Chain of Physical Custody or Control. (Initial Custody).

2.) Certificate of proof of Chain of Physical Custody or Control. (Subsequent Custody)

3.) There must be a "Form A" Affidavit of Chemist or Chemical Analysis.

A complete Chain of Evidence, tracing the Initial Control or Chemical Analysis to its Final Analysis "Must Be Established"

Here Applicant was denied his right to suppress these forms and the drug to show that the evidence had been tampered with and the officer falsified testimony to obtain the warrant. This creates a due process violation upon the premise of falsified evidence. The Solicitors knowingly using the Contradictory

Statements of the Officer, the C.I. ³⁵¹ and the Chemist show that the evidence was knowingly false or was made to conform with the testimony. Applicant contends the State knowingly made false testimony and misplaced the tape of the transaction that could have shown exculpatory information. See U.S. v. Coronel-Quintana, 752, 12 1288 (8th Cir. 1985); U.S. v. Coleman, 631 F. 908, 915 D.C. Cir. 1980; Hines v. Enomoto 658 F.2d 908, 915 (D.C. Cir. 1980) Applicant contends the warrant was obtained illegally by false statements with reckless disregard for the truth. See Franks v. Delaware, 48 S.Ct. 2674 (1978). Counsel knew of the disparities in the amount of drugs and it raised an issue of admissibility. Insufficient evidence raises a constitutional issue. U.S. v. Bowley, 523 U.S. 614, 618 (1998). Also see State v. Legette, 330 S.E.2d 29 (S.C. 1985); Buggs v. U.S. F.3d 439 (7th Cir 1998). Further, Counsel should have moved for dismissal on grounds of prosecutorial misconduct by knowingly allowing false testimony which was changed from the original arrest warrant. Here, the Arrest warrant stated there was "TWO" Rocks obtained by the C.I. At trial he

Testified to this evidence. According to his summary report he was told by the C.I. he had one piece when he left the residence. Further, the drug Analyst stated it only weighed .19 grams upon her weighing it. The initial weight was .4 grams. This testimony is inconsistent with the original facts used to obtain the warrant. That the initial facts state "Two" rocks and at trial only "one" rock was produced as evidence and .21 gram were missing. Prosecutor may not knowingly present false testimony. Napue v. Illinois, 360 U.S. 264, 269 (1959); U.S. v. Young, 17 F.3d 1203-05, (9th Cir. 1994). Inconsistent testimony by a government witness is usually not reversible error, see U.S. v. Tavares, 93 F.3d 10, 14 (1st Cir., only if it is shown to amount to perjury, Cert. Denied 117 S.Ct. 373 (1996); also see U.S. v. Wallach, 9 F.2d 445, 451 (2nd Cir. 1991); also see U.S. v. Reverapadin, 861 F.2d 1522, 1529-30 (11th Cir. 1994).

Prosecutor's Failure to correct government witness statement known to be false is reversible error. Here a false statement was given to the magistrate to obtain the warrant and completely contradicts his summary or if the facts obtaining the warrant were correct and the C.I. lied then it is also perjury. These statements are

Perjured Testimony
Prosecutor

353
Show someone is lying and the missing drugs itself, Due Process was violated, applicant was Illegally arrested on False information. Applicant was further Denied his right to Counsel and was forced to appear at his preliminary hearing without the assistance of Counsel in Violation of his 6th Amendment rights. If Applicant would have had Counsel at his preliminary hearing he could have Suppressed this inconsistent testimony and the missing drugs. Counsel was ineffective for failing to suppress the alleged evidence and for not objecting or moving for dismissal or declaring a mistrial. Applicant was prejudiced by allowing the jury to evaluate falsified evidence. Counsel was ineffective for not preserving these issues. SEE Hoke v. Netherland, 92 F.3d 1350, 1359 (4th Cir. 1996)

Review not preserved when defendant failed to object to prosecution knowingly allowed witness to testify False. Further, the prosecution failed to prove beyond a reasonable doubt that Applicant distributed the drugs in question.

U.S. v. Jenkins, 90 F.3d 814, 820-21 (3rd Cir. 1996);

U.S. v. Sacerio, 952 F.2d 860, 866 (5th Cir. 1992);

U.S. v. Applewhite, 72 F.3d 140, 144 D.C. Cir. 1995.

Ineffective Assistance of Counsel - Failure to Suppress Officers Time Sheets and Records

failure to move Court to dismiss charges for destroying exculpatory evidence of the taped transaction that could have shown his innocence, failure to properly invest

Applicant contends Counsel was ineffective for failing to suppress all the deputies' sheets based on the fact the entire incident was falsified. Applicant contends that on the alleged date of the incident nobody came to his house on this date. Applicant contends the whole incident was made up and falsified. Applicant was denied his right to provide witness testimony that nobody came to his house and that if Counsel would have challenged the deputies whereabouts the it could be shown the information was falsified. Counsel should have requested a continuance to obtain this information. Applicant had several witnesses who would have testified in his behalf to contradict the State's witness. Counsel's failure to allow his witnesses to testify shows prejudice per se because it would have shown reasonable doubt as to the State's claims. Trial Counsel's failure to investigate the facts and prepare for trial amounted to ineffective assistance. See Harris by and Through Ramseyer v Wood, 64 F.3d 1432 (9th Cir. 1995); U.S. v. Fisher, 477 F.2d 300 (4th Cir. 1973). Counsel failed to

Subject prosecution to meaningful adversarial challenge based on insufficient preparation for trial. See Davis v. Alaska, 415 U.S. 308 (1974). Counsel allowed false evidence to be argued in front of the jury without objecting to the factual discrepancies of the amount of drugs allegedly confiscated. Brown v. Borg, 951 F.2d 1011 (9th Cir. 1991). ~~11/11/11~~

Counsel Failed to move for a dismissal on the grounds the missing Surveillance tape violated his Due process rights that the tape would show exculpatory evidence that he did not sell any drugs and the State's failure to preserve this evidence prejudiced Applicant's defense. The missing surveillance tape could corroborate applicant testimony that he did not sell drugs. In State v. Hutton, 595 S.E.2d 876, 882 (Ct. App. 2004) The Court wrote, "While we do not condone the destruction of any statements made by witnesses to the Authorities, we consider Dismissal of Criminal Charges a drastic

Remedy which should rarely be involved as a sanction for the State's failure to preserve evidence. Here Due Process requires dismissal. Applicant claimed he did not sell any drugs to the C.I. nobody came to his house on the alleged date of the incident. Applicant had several witnesses ready to testify in his behalf, his attorney refused, records of the detective whereabouts would have been of probative value to show that the incident did not occur. The only witnesses were the C.I. and the alleged tape recording the transaction. Pursuant to the Due Process Clause of the 14th amendment criminal prosecutions must comport with prevailing notions of fundamental fairness. California v. Trombetta, 104 S. Ct. 2528 (1984). While the State does not have an absolute duty to safeguard potentially useful evidence that might vindicate a defendant. Arizona v. Young Blood 109 S. Ct. 333 (1988); State v. Cheeseboro, 552^d 300, 307 (2001).

The State does have an obligation to provide accurate information to the defense. This Standard requires Criminal defendants be afforded a meaningful opportunity to present a complete defense. I.D. "Whatever duty the Constitution imposes on the State to preserve evidence, that duty must be limited to evidence that might be expected to play a significant role in the suspect's defense." Trombetti 104 S.Ct. 2528 to establish a due process violation where the State fails to preserve evidence, a defendant must demonstrate 1) That the State destroyed the evidence in bad faith or 2.) That the evidence possessed an exculpatory value apparent before the evidence of comparable value by other means. Cheeseboro, 552 S.E.2 at 307. The State's failure to preserve the tape constitutes a due process violation and a Brady violation of Rule 5 Discovery. Counsel should have suppressed this tape for review when his client told him he did not commit the crime on pg. 74 Trial transcript. Lined 8-10.

The State claims it Inadvertently lost or destroyed the tape that there were two distributions made to the person with the same last name in close proximity. The officers have surmised that was part of the confusion which led to this tape being lost. Lines 14-15 pg. 74.

This is no excuse the State should have disclosed this tape pursuant to Rule 5 discovery long before it was lost. Further, if counsel would have suppressed it. It would have been preserved for review. Applicant is prejudiced and cannot prove conclusively without this tape that it was somebody else that sold to the C.I. Applicant was denied due process because he could not present a complete defense. Further the cumulative effect of these multiple errors requires reversal where the case is a close one and not overwhelming. See U.S. v. Fredrick, 78 F.3d 1370 (4th Cir. 1997). Counsel's actions of failing to preserve objections for review constitute ineffective

Assistance of Counsel. SEE State v. Johnson, 476 S.E.2d 681 (1996). SEE State v. Williams, 401 S.E.2d 168 (1991); an issue must be raised to and ruled on by the trial judge to preserve for appellate review. SEE U.S. v. Matos, 905 F.2d 30 (2nd Cir. 1990) Trial Counsel's willingness to accept the Government's version of facts and failed to file any motions, and not based on his own reasonable investigation calls Counsel's Representation in Serious Question of Inadequency.

III Counsel failed to impeach Government's witnesses with Inconsistent testimony and not properly Impeaching their prior Statements.

Applicant contends that Counsel failed to properly impeach the testimony of the government's witnesses and failed to make them explain the inconsistency of their testimony.

Trial transcript pg. 110, Lines 20-25, pg. 111, Lines 1-18, the Summary report, pg. 149 Lines 24-25, pg. 150 Line 1, pg. 245 Lines 9-14, pg. 246 Lines 9-14. Q

Witness maybe impeached with any kind of prior statement - oral or written, sworn or unsworn. Jenkins v. TDC management Corp., 21 F.3d 436, 442 (D.C. 1994). If the witness omits material of testimony that was previously gathered in prior statement, this may be corrupt product of selective memory. SEE U.S. v. Causey, 834 F.2d 1277, 1282-83 (6th Cir. 1987).

Counsel failed to properly reexamine this testimony and failed to ask the witness why the original report stated "Two" Rocks" then it became "One" Rock weighting .4 grams. Then it became .19 grams at trial. Counsel failed to object and preserve this issue for review. Further, this is prosecutorial misconduct for the prosecutors failure to correct the governments witness statement known

to be false. This is reversible error.
U.S. V. Rivera Pedin, 861 F.2d 1522, 1529-3
(11th Cir. 1988).

Jury Venire

Applicant contends he was denied EQUAL Protection of the law because his race was not fairly represented in the initial jury selection. Applicant challenges Venire on Equal protection grounds that it violated fundamental fairness under the due process clause.

Under the Sixth Amendment, Criminal defendants have a right to be tried by an impartial jury drawn from the state and district in which the crime allegedly occurred. Jury selection procedures implicate Sixth Amendment Equal protection and Due process principles. The Sixth Amendment forbids Racial Discrimination in the selection of jurors and requires that the jury venire from the petit jury selected represents fair-cross section of

State of South Carolina	)	In the Common Pleas
	)	Court of York
	)	
	)	Case No 2009-DR-46-0307
	)	
County of York	)	

Antwan Wade ,	)	
	)	
Plaintiff ,	)	
	)	
-vs-	)	Transcript of Hearing
	)	Post Conviction Relief
State of South Carolina ,	)	
	)	
Defendant	)	
	)	

February 1, 2011
York, South Carolina

B E F O R E

The Honorable Paul M Burch, Judge

A P P E A R A N C E S

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I-N-D-E-XWITNESSPAGE NO

ANTWAN WADE

BY MR BROOKS

P 4-9

BY MS ELLIOTT

P 9-10

ERIK DELANEY

BY MR BROOKS

P 11-15

P 22

BY MS ELLIOTT

P 15-21

REPORTER'S CERTIFICATE PAGE

P 23

REPORTER'S NOTE NO EXHIBITS WERE RECEIVED INTO EVIDENCE

1 (ON THE RECORD TUESDAY, FEBRUARY 1, 2011, AT 10 50
2 AM)

3 (APPLICANT ENTERING COURTROOM)

4 MS ELLIOTT May it please the Court

5 THE COURT Yes

6 MS ELLIOTT The matter before the court is Antwan
7 Wade versus State of South Carolina Mr Wade is being
8 represented by Charles Brooks Mr Wade was indicted and
9 tried for distribution of crack cocaine The trial took
10 place January 9th through 10th 2008, he was convicted and
11 sentenced to seventeen years imprisonment, Judge Alford
12 presided An appeal was taken and the sentence and
13 conviction were affirmed by the Court of Appeals He has
14 filed an application in which he's asserted ineffective
15 assistance of counsel for counsels failure to prepare and
16 for counsel's misinformation to him He's also filed an
17 amendment to that application asserting a number of
18 additional grounds of ineffective assistance of counsel as
19 well

20 THE COURT Mr Brooks

21 MR BROOKS Your Honor, we call Mr Wade to the
22 stand

23 THE COURT Come around and be sworn please

24 (WHEREUPON ANTWAN WADE,
25 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS)

ANTWAN WADE DIRECT BY MR BROOKS

4

1 MADAME COURT REPORTER Mr Wade

2 MR WADE Yes

3 MADAME COURT REPORTER Judge Burch has to hear
4 everything that you have to say Speak up to where he can
5 hear you, I can make an accurate record Thank you, sir

6 MR WADE All right

7 MR BROOKS Ready, Judge?

8 THE COURT Yes, sir

9 DIRECT EXAMINATION

10 ANTWAN WADE BY MR BROOKS

11 Q Mr Wade, you brought this application for a PCR, is
12 that correct?

13 A Yes, sir

14 Q And who was your lawyer in your trial?

15 A Erik Delaney

16 Q And he was a Public Defender?

17 A Yes, sir

18 Q Okay Do you remember how long he was on your case
19 before you went to trial?

20 A For about ten months

21 Q Do you remember how long you talked to him and every
22 time you talked to him to discuss your case?

23 A No But I talked to him a good bit of times

24 Q Okay Now I want to make sure you understand that
25 what we're here for today is Post Conviction Relief

1 Application, which means the only thing that the Judge can
2 give you is a new trial Do you understand that? You
3 cannot have your time cut, the only thing we can do is get
4 an entirely different new trial, which could have some risk
5 that go along with that We talked about that Do you
6 remember that?

7 A Yes, sir

8 Q And you still want your new trial, is that correct?

9 A Yes Can I ask a question though?

10 THE COURT You may step down You may step down and
11 talk to counsel

12 (WITNESS LEFT WITNESS STAND)

13 (WITNESS IN CONFERENCE WITH HIS COUNSEL OFF THE
14 RECORD)

15 (WITNESS RETURNS TO WITNESS STAND)

16 THE COURT You're still under oath

17 ANTWAN WADE BY MR BROOKS - CONTINUED

18 Q Now, let me go back a bit, Antwan

19 A Uh-huh

20 Q How much more time do you have to do?

21 A About ten years Ten more

22 Q And you do understand the risk that go along with this
23 if you get a new trial?

24 A Yes

25 Q That you could face more time?

ANTWAN WADE DIRECT BY MR BROOKS

6

1 A Yes

2 Q Okay Now one of the issues that you raised deals
3 with an allegation about you being sentenced under a wrong
4 statute, is that correct?

5 A Yes, sir

6 Q Can you go ahead and explain to the Judge what you
7 mean by that?

8 A Yes The applicant -- The applicant's trial counsel
9 was ineffective for these reasons The applicant was
10 sentenced under 44-53-375 (B), (3), when he should have been
11 sentenced under Statute 44-53-375 (A), because the
12 applicant - -

13 Q Antwan, you've got to talk up - - -

14 A Okay

15 Q - - - because the Court Reporter and the Judge are
16 having a difficult time hearing you Remember, we talked
17 about that

18 A Because the applicant distribution charge was for 4
19 grams of crack to an undercover operation worker under the
20 control of the YCM DEU The applicant's sentence and
21 conviction is illegal and places the applicant in false
22 imprisonment because the applicant was sentenced under the
23 wrong statute

24 Q Now, Antwan, are you saying that the other statute
25 that you should have been sentenced of was less severe, is

1 that correct?

2 A Yes

3 Q And it only had the maximum time of how long?

4 A No more than ten years

5 Q Okay And you're making the argument that because of
6 the weight or the lack of weight from the drugs in this
7 case, is that correct?

8 A Yes

9 Q And as a result of that you're saying that you should
10 have been sentenced under this statute which carried a
11 maximum time of no more than ten years?

12 A Yes, because it said for a third or subsequent offense
13 for distribution less than a gram, the defendant is guilty
14 of a felony and upon conviction must be imprisoned not no
15 more than ten years or a fine no more than Twelve Thousand,
16 Five Hundred Dollars or both

17 Q Okay And you feel that, that's something your lawyer
18 should have raised during the course of your trial, is that
19 correct?

20 A Yes, sir

21 Q Okay Now there is another issue that you wanted to
22 raise Can you tell the Court what that is?

23 A Yeah Counsel was ineffective for failing to object
24 to the Solicitor improper bolstering the testimony of the
25 CI's credibility She personally vouched for his

ANTWAN WADE DIRECT BY MR BROOKS

8

1 credibility by stating that she told him not to mention it
2 unless it was mentioned See transcript Page 169, Lines 1
3 through 18

4 Q So now what you're saying, Antwan, is that the
5 prosecutor in the course of their arguments, the State is,
6 of course, their argument improperly vouched for the
7 credibility of this particular witness, is that correct?

8 A Yes, sir, in front of the jury

9 Q In front of the jury And did your lawyer object to
10 that?

11 A No, sir

12 Q Okay And you feel that it's something that your
13 lawyer should have objected to and that it harmed you that
14 he did not, is that correct?

15 A Yes, sir

16 Q Okay And that our position, or our position in the
17 course of this case, this PCR, is that, that gave more
18 weight to the credibility of that witness?

19 A Yes, sir

20 Q Okay I know you're going to discuss two issues
21 Are there any other issues that you want to raise?

22 A No, sir

23 Q Are you sure?

24 A Yes, sir

25 Q We talked about some others but are you sure you don't

ANTWAN WADE DIRECT BY MR BROOKS
CROSS BY MS ELLIOTT

1 want to raise those issues?

2 | A No because I'm not fully prepared for

3 Q Okay Well, I mean, today is the day

4 A Yeah But I didn't talk to you like that, to just
5 discuss the issues

6 | Q Okay Anything else you want to tell the Court?

7	A	No

8	Q	All right	Answer any questions of the Attorney
9		General	

10 CROSS EXAMINATION

11 | ANTWAN WADE BY MS ELLIOTT

12 Q Now, Mr Wade, you agree you were charged with
13 distribution of crack Correct?

14	A	Yes

15	Q	No possession

16	A	Yes

17 Q Okay Is your argument about the bolstering is that,
18 that occurred during the questioning of the confidential
19 informant? When are you saying the bolstering occurred?

20	A	During trial

21 Q During -- But was it while witnesses were testifying
22 or during some other part of the trial?

23 (PAUSE)

24 Q You're not sure?

25 | A No I ain't

ANTWAN WADE CROSS BY MS ELLIOTT

10

1 Q Okay Did you have some page numbers that you had
2 listed that would reference that?

3 A Yeah

4 Q What page numbers did you have listed?

5 A 169, Lines 18 and 19

6 Q Okay 170, 171 Okay So that was during the
7 testimony of the confidential informant, is that correct?

8 A Yes

9 Q Okay Not at some other later part of the trial?

10 A No

11 Q All right But you met with Mr Delaney, is that
12 correct? You said you met with him several times?

13 A Yes

14 Q And you told him your version of the facts of what
15 happened?

16 A Yes

17 Q And you talked with him about a defense you would
18 have

19 A Yes

20 Q And you talked about what would happen during trial
21 and what evidence the State would present against you?

22 A Yes

23 Q Okay I think that's all I have Thank you

24 A All right

25 MR BROOKS No other questions, Judge

ERIK DELANEY DIRECT BY MR BROOKS

11

1 THE COURT You may step down Thank you

2 MR BROOKS We call Mr Delaney to the stand

3 (WHEREUPON ERIK DELANEY,

4 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS)

5 MR BROOKS Ready, Judge?

6 DIRECT EXAMINATION

7 ERIK DELANEY BY MR BROOKS

8 Q Mr Delaney, you were the Public Defender assigned to
9 this case?

10 A I was

11 Q Do you recall how long you met with Mr Wade in
12 preparing for trial?

13 A In the review of my file I was appointed a little late
14 on the case as far as I wasn't appointed when Antwan had
15 his initial appearance or preliminary hearing It looks
16 like June the 5th is when I was appointed I do recall
17 that Antwan and myself had a number of meetings at my
18 office I know some of his family members would come in
19 I think there was a few times we would meet one on one
20 Also I know at least on one occasion I met with Antwan at
21 his house and that was getting a little closer to trial but
22 we did meet at his house as well

23 Q Okay And was any deals offered in this case?

24 A There was There was an offer that was, the offer
25 that was on the table for the majority of the time was a

ERIK DELANEY DIRECT BY MR BROOKS

12

1 ten year offer, is what was on the table for Antwan

2 Q Can you summarize what the State's case was against
3 Antwan?

4 A Can you say that again

5 Q Can you summarize what the State's case was?

6 A Yeah, it was a fairly, I guess, typical distribution
7 type of allegations in terms of a CI was sent to Mr Wade's
8 house by the Drug Enforcement Unit They contacted DEU so
9 they could buy some cocaine from Antwan Allegations were
10 that the CI went there followed by the Drug Enforcement
11 Unit and a buy occurred inside the house

12 Q Was there any video and audio?

13 A The best I recall there was never any -- this was the
14 type of case where they put a video camera on the CI so
15 there was never any actual video They had -- We had been
16 informed from the beginning that there was audio, that the
17 CI was equipped with a audio listening device Now that's
18 something that was not turned over to us at the beginning
19 The State took the position that they're not turning that
20 over to us until ten days before trial Now at that point
21 when we got close to that ten day point we were informed,
22 we were getting very close to trial that there was no tape
23 The tape, I believe the explanation that was given was the
24 tape was taped over from a subsequent buy involving
25 somebody else and they had taped over the tape So they

1 had not tape, they had no video in the case

2 Q The only thing they had was the officer's testimony?

3 A They had the testimony of the DEU, you know, basically
4 saying they set up the deal and they had the word of the CI
5 saying this is what happened when I went into Antwan's
6 house

7 Q And did you raise any issue about whether or not Mr
8 Wade should be sentenced under this statute versus that
9 statute?

10 A I don't recall raising that issue, no

11 Q Did you raise any issue about the prosecutor
12 bolstering the testimony of the CI?

13 A I didn't I have reviewed the transcript in the case
14 It was a situation where the confidential informant had
15 told the CI or the confidential informant had met with the
16 prosecutor I think our trial started on a Monday or a
17 Tuesday, I got a call I remember from the prosecutor a
18 Friday night before trial saying, "Ha, I just met with the
19 confidential informant, he's telling me some things I want
20 to pass it on to you " He's telling me he actually used
21 crack, was smoking crack the day before he went out and
22 made this buy from Mr Wade And, in addition, he was
23 smoking this crack at Mr Wade's house This was crack
24 that was given to him or sold to him by Mr Wade, he smoked
25 crack there Obviously we never told you this, this isn't

ERIK DELANEY DIRECT BY MR BROOKS

14

1 in any reports but she felt that, that is something that
2 she needed to pass on to me So that's something that I
3 knew a few days before trial It was something that we
4 addressed pretrial and it was made known at that point if I
5 went into that, you know, I would be opening the door so to
6 speak to allow them to go into some things, to go into the
7 fact that the CI was there the night before and supposedly
8 purchased drugs from Mr Wade the night before

9 You know, there was no decision made at that point as
10 far as were we going to open that door But the decision
11 was made by me in trial to explore that, to open that door,
12 and to let the jury hear because he had been on the stand
13 during cross denying that he had ever used drugs while he
14 was working of the DEU So we did open that door, and the
15 prosecutor did redirect him after the cross, and she as far
16 as put herself into it, you know, she was putting herself
17 into it as far as saying the discussion that we had in
18 saying, you know I think it was Mr Montgomery that was the
19 CI Mr Montgomery, we talked about this, I told you not
20 to bring that up, that you used crack cocaine, is that
21 right? So I believe that's the issue that Antwan is
22 talking about

23 The Judge just prior to that on the record, you know,
24 the judge said, you know, that he was going to allow her to
25 go into that and ask those type of questions Now I didn't

ERIK DELANEY DIRECT BY MR BROOKS
CROSS BY MS ELLIOTT

15

1 object Should I have objected? You know, looking back
2 now I probably should have Would it have made a
3 difference, you know, as far as the judge on that day of
4 trial? No But I feel that, that is something I should
5 have objected to at the time

6 Q No other questions, Your Honor

7 CROSS EXAMINATION

8 ERIK DELANEY BY MS ELLIOTT

9 Q Mr Delaney, and you've testified partially to this, I
10 believe pretrial you and the prosecutor told the Judge what
11 had happened, that the prosecutor met with the confidential
12 informant and the confidential informant revealed to anyone
13 for the first time that he was at your client's home the
14 day before the actual buy during which time he purchased
15 crack cocaine from your client and smoked it at your
16 client's house?

17 A That's correct

18 Q And he explained that he did that, I think later he
19 explained that the did that because he had tried to contact
20 your client before to set something up and you client would
21 talk to him, so the confidential informant had someone your
22 client knew to take him out to your client's home and they
23 did this basically the CI said so that he could facilitate
24 the buy for the next day, is that correct?

25 A That is accurate, yes

ERIK DELANEY CROSS BY MS ELLIOTT

16

1 Q And it was also the information provided to the trial
2 judge and you at that time, that I think the Solicitor had
3 discussed it with the CI and told the CI not to volunteer
4 that information or go into it because it might be
5 prejudicial to your client?

6 A Yeah And there was obviously some Lyle issues with
7 that and whether or not that could ever come in and the
8 Solicitor did -- I do recall, yes, her saying that she did
9 inform the CI not to address that or not to bring that up
10 during his testimony

11 Q And the Court said that using and purchasing was a
12 violation of the agreement the confidential informant had
13 with the DEU, is that correct?

14 A That's correct

15 Q And you brought all that out at trial in cross
16 examination of everyone?

17 A That's correct

18 Q Okay And the judge ruled early on in pretrial that
19 the State would not, should not go into what happened the
20 day before the buy unless you opened the door, is that
21 correct?

22 A Unless I opened the door, that's correct

23 Q And you advised the Court that you understood the
24 ramifications of that, but you were just generally ask the
25 CI whether or not he had violated the agreement by using

1 during the period of time he was working for the DEU, is
2 that correct?

3 A That's correct

4 Q And then what happened during the testimony and during
5 the testimony of the CI you ask him that general question,
6 is that correct?

7 A That's correct

8 Q And the CI denied it, is that also correct?

9 A That's correct

10 Q And denied it a couple of times on your cross
11 examination

12 A That's right

13 Q And then out of the presence of the jury, the State
14 explained that she had cautioned the witness not to go into
15 that and he apparently was confused?

16 A That's correct

17 Q And at that point what was your strategy in your
18 treatment of this confidential informant, on cross
19 examination, your strategy for handling the case from that
20 point forward as far as the CI now having testified in
21 front of the jury to something that was false?

22 A Yeah And our sole strategy was just to continue to
23 attack the credibility of this confidential informant I
24 felt at the time he was continuing to lie and to be
25 dishonest on the stand, and I felt that the more that we

ERIK DELANEY CROSS BY MS ELLIOTT

18

1 could go into that and bring that up and to have actual
2 specifics, show the jury specific instances of him lying,
3 was the strategy at that point

4 Q Okay And I believe the court ruled that all his
5 testimony, that he ruled in camera, that all his testimony
6 that basically that was wide open now and all of it could
7 be delved into, is that correct?

8 A That's correct

9 Q And did you try to use that to your advantage in the
10 defense?

11 A We tried

12 Q And was your decision to do that based on the strategy
13 you developed for trial and what was happening during the
14 trial?

15 A Yes

16 Q And was that strategy based upon your investigation in
17 this case?

18 A It was

19 Q And was it developed based upon your discussions with
20 your client during your investigation?

21 A It was

22 Q And based upon your experience?

23 A Yes, ma'am

24 Q And what experience did you have at that point?

25 A At that time I had been at the Public Defender's

1 Office, I started at the Public Defender's Office here
2 September 2005, this trial was beginning of 2008, so
3 January of 2008 I had been at the Public Defender's Office
4 a little over three years I had been in private practice
5 for one year in Charleston before I came to work here

6 Q And had you tried, had you gone to trial or pled
7 clients charged with drug offenses prior to this?

8 A I had, had prior drug trials prior to Antwan's trial,
9 yes

10 Q And trials that involved confidential informants?

11 A Yes

12 Q Why did you elect not to object to the Solicitor's
13 questions regarding her discussion with the confidential
14 informant?

15 A At the time, you know, just, we had, out of the
16 presence of the jury we had a discussion, the judge was
17 pretty explicit in telling the Solicitor what she would be
18 allowed to go into regarding, because she inquired to the
19 court, you know, her concern was, Judge, I advised him, you
20 know, not to say anything about this This is why he, it
21 appears that he is misleading the jury Now I contended
22 otherwise but the Judge did at that point say she was free
23 to go into that Now like I said earlier, you know,
24 looking back now, I wish I would have objected I don't
25 know if it would have made a difference at the time but you

1 know

2 Q And the Solicitor's questions at that time were
3 directly related to your impeachment of the confidential
4 informant were they not?

5 A That's right

6 Q And in response to matters you elicited?

7 A That's right

8 Q Okay Were you fully prepared for trial?

9 A I feel that I was

10 Q Did you have sufficient time to confer with your
11 client?

12 A Yes

13 Q And were you able to follow any leads and any
14 investigation he suggested?

15 A I believe so, yes

16 Q And he was not charged with possession of crack
17 cocaine under sub part A of that statute was he?

18 A I don't recall

19 Q When you went to trial for distribution - -

20 A Yeah I don't believe, yeah because the possession they
21 did find a small, some residue He was originally charged
22 with possession of crack as a result of the search warrant
23 but it was never, that case was never called to trial

24 Q And you were successful in having all the information
25 about that suppressed, is that correct?

1 A Yes The best I can recollect is that they were not
2 allowed to go into that during the trial

3 Q So sub part B of that statute for distribution was the
4 correct sentencing statute Would you agree?

5 A My understanding is it is the correct statute

6 Q All right And what investigation did you conduct?

7 A A distribution case as far as me going out trying to
8 track down witnesses, those type of things, that wasn't
9 done in this case Now I did spend quite a bit of time
10 with Antwan Did go down to evidence look at what drugs
11 they had in evidence I did go out to Antwan's house to
12 see the lay out there, to drive the road where and to try
13 to find where the DEU was positioning themselves when this
14 buy was going on So that was basically the extent of as
15 far as going out and doing an investigation

16 Q Okay And would you agree that the case was based
17 largely on the credibility of the confidential informant?

18 A Yeah I think when it came down to it, yeah, it was
19 based solely on the word of the CI in my opinion

20 Q And did you think that your efforts to attack the
21 credibility of the CI were of a great importance to the
22 defense?

23 A Yeah

24 Q Is that why you made the decision to open that door?

25 A Yes, ma'am

ERIK DELANEY REDIRECT BY MR BROOKS

22

1 Q Okay I think that's all I have Thank you
2 THE COURT Mr Brooks

3 REDIRECT EXAMINATION

4 ERIK DELANEY BY MR BROOKS

5 Q Mr Delaney, you did say that you wished you had
6 objected to that, is that correct?

7 A Yes, sir

8 Q Okay No other questions, Judge

9 That's the Applicant's case

10 MS ELLIOTT And the State rest as well, Your Honor

11 THE COURT All right Any thing further?

12 MR BROOKS Judge, just briefly Be as it may, Mr
13 Wade respectfully ask the court to grant his post
14 conviction application and give him a new trial based on
15 the testimony you've heard here today

16 MS ELLIOTT And, Your Honor, the State would direct
17 the Court's attention to the respondent's brief on appeal
18 as to the bolstering issue and as to why that was not
19 deficient performance or and did not prejudice the
20 applicant And we would submit that counsel fully
21 investigated the case, developed a trial strategy and
22 properly represented the applicant

23 THE COURT All right, I'll take a look at that I
24 want to look at the transcript too and try to get a
25 decision out in a few weeks

1 MS ELLIOTT Thank you, Your Honor
2 THE COURT All right, let's take a brief recess
3 -- END OF TRANSCRIPT OF HEARING --
4 (COURT IN RECESS AT 11 18 AM)

CERTIFICATE OF REPORTER

State of South Carolina)

)

County of York)

I, Wanda Nelson, Official Court Reporter for the
Sixteenth Judicial Circuit for the State of South Carolina,
do hereby certify that the foregoing is a true, accurate
and complete Transcript of Record of the proceedings had
and evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of Common Pleas for York
County, South Carolina, on the 1st day of February 2011

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



Wanda Nelson, CVR

Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina

My Commission Expires 1/21/2011

DATE 11-13 / 2011

STATE OF SOUTH CAROLINA
 COUNTY OF YORK
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NO 2010CP4600688

Antwan Marcus Wade vs South Carolina State Of

CHECK ONE

- ☐ **JURY VERDICT** This action came before the court for a trial by jury The issues have been tried and a verdict rendered
- ☐ **DECISION BY THE COURT** This action came to trial or hearing before the court The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON)** ☐ Rule 12(b), SCRCP, ☐ Rule 41(a),
 SCRCP (Vol Nonsuit) ☐ Rule 43(k), SCRCP (Settled), ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON)** ☐ Rule 40(j) SCRCP, ☐ Bankruptcy
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award,
☐ Other _____

IT IS ORDERED AND ADJUDGED

☒ See attached order,

☐ Statement of Judgment by the Court

ORDER OF DISMISSAL

Dated at York, South Carolina, this 4th day of April, 2011

Court Reporter

s/ PAUL M BURCH

PRESIDING JUDGE - PAUL M BURCH

This judgment was entered on the 27th day of April, 2011, and a copy mailed first class this 27th day of April, 2011, to attorneys of record or to parties (when appearing pro se) as follows

**Charles Thomas Brooks Law Office of Charles
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ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

SCRCP APP-24/FORM 4

David Hamilton - Clerk of Court

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Antwan Wade, 262442,

Applicant,

v

State of South Carolina,

Respondent

COURT OF COMMON PLEAS

2010-CP-46-⁶⁸⁸~~1303~~

ORDER OF DISMISSAL

DAVID HAMILTON
C C C P & GS
YORK COUNTY, SC

2011 APR 27 PM 2:10

FILED-RECEIVED

This matter comes before this Court by way of an application for post-conviction relief filed February 17, 2010 and Amended Application containing eighteen (18) pages dated September 28, 2010. The State made return on June 30, 2010. An evidentiary hearing was convened on February 1, 2011 at the Moss Justice Center in York, South Carolina. The Applicant was present at the hearing and represented by Charles T. Brooks, III, Esquire. Assistant Deputy Attorney General Salley W. Elliott represented the Respondent.

Applicant and Erik D. Delaney, Esquire, testified at the hearing. This Court also had before it the application and amended application for post-conviction relief, the Respondent's return, records of the York County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate court documents referenced in the Respondent's return.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was

indicted at the November 2007 term of the York County Grand Jury for distribution of cocaine base (crack cocaine) – 3rd or subsequent offense (2007-GS-46-3940) Erik D Delaney, Esquire, represented him On January 9 – 10, 2008, Applicant underwent trial, pursuant to which he was found guilty as indicted The Honorable Lee S Alford sentenced him to confinement for a period of seventeen (17) years

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected The South Carolina Court of Appeals affirmed Applicant's conviction and sentence State v Wade, Op No 2010-UP-041 (S C Ct App filed January 26, 2010) The Remittitur was sent on February 17, 2010

ALLEGATIONS

In his applications, Applicant alleges that he is being held in custody unlawfully for the following reasons

- 1 Ineffective assistance of counsel in that trial counsel failed to preserve for appeal the issue of improper bolstering of the confidential informant's testimony,
- 2 Ineffective assistance of trial counsel for counsel's failure to "suppress the evidence of the crack cocaine" based upon contradictions as to the number and weight of the drugs and the improper chain of custody,
- 3 Ineffective assistance of trial counsel for counsel's failure to move to dismiss on the ground of prosecutorial misconduct relating to the arrest warrant,
- 4 Ineffective assistance of trial counsel in that Applicant was forced to appear at his preliminary hearing without counsel,
- 5 Ineffective assistance of trial counsel for counsel's failure to move to dismiss the charge based upon the destruction of exculpatory evidence,
- 6 Ineffective assistance of trial counsel for counsel's failure to properly investigate, call witnesses, and request a continuance,

- 7 Ineffective assistance of trial counsel for counsel's failure to impeach State's witnesses with prior statements
- 8 Denial of Equal Protection in that Applicant's race was not fairly represented by a fair cross-section of the community

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony presented at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S C Code Ann § 17-27-80 (2003)

INEFFECTIVE ASSISTANCE OF COUNSEL

At the evidentiary hearing the Applicant testified that he received ineffective assistance of trial counsel because his trial attorney failed to object when the prosecutor improperly bolstered the testimony of a State's witness and that he was sentenced under an incorrect statute which exposed him to a greater punishment. This Court finds Applicant's claims to be without merit.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v State, 286 S C 441, 334 S E 2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v Washington, 466 U S 668 (1984), Butler, 286 S C at 441, 334 S E 2d at 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, *citing Strickland*. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. For reasons set forth below, this Court finds that the Applicant's allegations respecting trial counsel are without merit.

This Court finds that the Applicant was represented by an experienced criminal practitioner who properly conferred with the Applicant. During conferences with the Applicant, counsel discussed the pending charge, the elements of the charge, the law applicable to the charge and issues relating to trial, the penalty, Applicant's constitutional rights, the evidence the State would have to present against Applicant at trial to establish guilt, Applicant's version of the facts, and possible defenses. This Court finds that Counsel also properly investigated the case in preparation for trial, including visits to the scene, and review of the State's file and all discovery material. Counsel made motions to reveal any

deals extended to the confidential informant, to exclude the testimony of a second confidential informant not timely disclosed, suppress evidence and testimony respecting two cigar tubes seized during the execution of a later search warrant and other bad act evidence and to exclude testimony of the law enforcement officer about the content of the missing audio tape. Counsel was aware of the evidence the State planned to present against Applicant at trial and engaged in a discussion with Applicant about the issues and law presented by the facts of the case. To the extent the Applicant contends counsel should have requested a continuance, this Court finds the issue to be without merit. Counsel was fully prepared for trial and had no reason to request a continuance. Moreover, the Applicant failed to show what other investigation or other matter could have been explored had a continuance been requested and granted. He also failed to present any evidence respecting defense witnesses that could have been offered to his benefit at trial. Accordingly, deficient performance and the requisite prejudice have not been established.

The Applicant elicited testimony from trial counsel respecting a missing audio tape, contending that counsel provided ineffective assistance for failing to move to dismiss the charge based upon the destruction of an audio tape of the drug transaction. This Court recognizes that due process requires that a criminal defendant be afforded a meaningful opportunity to present a complete defense, including the right to request and obtain from the prosecution evidence that is material to the guilt of the defendant or relevant to the punishment to be imposed. State v. Mabe, 306 S. C. 355, 358, 412 S. E. 2d 386, 388 (1991), citing California v. Trombetta, 467 U. S. 479 (1984), State v. Jackson, 302 S. C. 313, 314, 396 S. E. 2d 101, 101 (1990). However, the right is not absolute such that due process is violated any time evidence is destroyed or becomes unavailable before the defendant has an

opportunity to examine the evidence “The state does not possess an absolute duty to preserve potentially useful evidence which could be subjected to tests which might exonerate a defendant ” State v Mabe, 306 S C 355, 358, 412 S E 2d 386, 388 (1991), citing Arizona v Youngblood, 488 U S 51 (1988), see also State v Hutton, 358 S C 622, 595 S E 2d 876 (Ct App 2004), State v Cheeseboro, 346 S C 526, 552 S E 2d 300 (2001) “Furthermore, ‘[w]hatever duty the Constitution imposes on the States to preserve evidence, that duty must be limited to evidence that might be expected to play a significant role in the suspect’s defense ’” State v Hutton, 358 S C at 630, 595 S E 2d at 881, citing Trombetta, 467 U S at 488

“To establish a due process violation where the State failed to preserve evidence, a defendant must demonstrate (1) that the State destroyed the evidence in bad faith, or (2) that the evidence possessed an exculpatory value apparent before the evidence was destroyed and the defendant cannot obtain other evidence of comparable value by other means ” Id at 631, 595 S E 2d at 881, citing State v Cheeseboro, 346 S C 526, 538, 552 S E 2d 300, 307 (2001), see also Arizona v Youngblood, 488 U S 51 (1988) “[R]equiring a defendant to show bad faith on the part of the police” in order for the destruction of potentially useful evidence to constitute a denial of due process “both limits the extent of the police’s obligation to preserve evidence to reasonable bounds and confines it to that class of cases where the interests of justice most clearly require it, i e , those cases in which the police themselves by their conduct indicate that the evidence could form a basis for exonerating the defendant ” State v Jackson at 315, 396 S E 2d at 102, citing Arizona v Youngblood

This Court finds that the Applicant failed to establish a due process violation because the audio tape was unavailable to the defense and rejects the Applicant's claim that counsel's treatment of the issue constituted ineffective assistance of counsel. This Court finds that counsel was advised before trial that an audio tape of the drug transaction had been lost when it was reused in another drug enforcement matter involving a suspect with a similar name. Counsel investigated the circumstances surrounding the loss of the audio tape and determined the destruction of the audio tape was inadvertent and did not involve bad faith or intentional destruction on the part of law enforcement officials. Counsel testified that he did not discover any evidence to establish that the content of the audio tape was exculpatory. He also testified that, had the audiotape been available, it might have been detrimental to the Applicant's defense. However, because the audio tape was not available, counsel was able to use that fact to the Applicant's benefit at trial.

This Court finds the Applicant failed to present any evidence at the evidentiary hearing to establish animus on the part of the law enforcement officers toward the Applicant or of a conscious effort to destroy the audiotape as exculpatory evidence. See State v. Adams, 304 S.C. 302, 305, 403 S.E.2d 678, 680 (1991). Further, the Applicant failed in any way to demonstrate, in the alternative, that the audio tape had exculpatory value that was apparent before it was destroyed and that no other comparable evidence was available. The Applicant offers mere speculation. "Speculation about such things, our Supreme Court has held, will not do." State v. Adams, 304 S.C. 302, 305, 403 S.E.2d 678, 680 (1991) citing State v. Newton, 274 S.C. 287, 262 S.E.2d 960 (1980), see also State v. Hutton, at 632, 595 S.E.2d at 882 (defining exculpatory evidence as "evidence which creates a reasonable doubt about the defendant's guilt").

Moreover, trial counsel was able to use the fact that the audio tape was unavailable to the Applicant's advantage at trial

Because the Applicant failed to show bad faith on the part of law enforcement officers or, alternatively, that the missing evidence possessed exculpatory value apparent to officers before it was destroyed, the claim is without merit. There is no reasonable probability that a motion to dismiss based upon a due process violation would have been granted. The Applicant failed to establish that trial counsel's conduct in this regard was deficient or resulted in prejudice such that there is a reasonable probability the outcome of the trial would have been different. Therefore, the allegation must be denied and the application dismissed.

The Applicant also testified that he received ineffective assistance of counsel when trial counsel failed to preserve for appeal the issue of the prosecutor's alleged bolstering of the confidential informant's testimony. Improper bolstering occurs when a prosecutor places the prestige of the government behind a witness by making personal assurances of the veracity of the witness or where a prosecutor vouches for the veracity of a witness by indicating information not presented to the jury supports the testimony. State v Shuler, 344 S C 604, 545 S E 2d 805 (2001). However, when the defendant opens the door, the comment is not improper. Ellenburg v State, 367 S C 66, 625 S E 2d 224 (2006), see also Rules 608 (a)(2) and 801(d)(1), SCRE, State v Robinson, 305 S C 469, 409 S E 2d 404 (1991), State v Sullivan, 277 S C 35, 282 S E 2d 838 (1981). When a party introduces evidence about a matter, the opposing party is entitled to explain it. State v Stroman, 281 S C 508, 316 S E 2d 395 (1984), State v Beam, 336 S C 45, 518 S E 2d 297 (Ct App 1999), State v Taylor, 333 S C 159, 508 S E 2d 870 (1998).

Counsel for the Applicant testified at the hearing that he was advised by the prosecutor on the eve of trial that the confidential informant had only then revealed that he made an earlier drug purchase from the Applicant and used the drugs in the Applicant's presence without law enforcement involvement or knowledge and in violation of the informant's agreement with law enforcement officers. The trial transcript reflects and counsel acknowledged a discussion with the trial judge and the prosecutor on the issue of opening the door to all information relating to the prior purchase from the Applicant and consumption of crack cocaine in the Applicant's presence if counsel questioned the informant about this violation of the agreement. Specifically, the record reflects that the informant breached his agreement with officers by going to the Applicant's home the night before the controlled drug transaction where the informant purchased crack cocaine from the Applicant and smoked it at the Applicant's home. The State indicated it did not intend to offer evidence of this matter but would do so if counsel opened the door by questioning the informant about this violation of the informant's agreement with officers. The trial court indicated that counsel could not ask the informant about using drugs in violation of the agreement without opening the door to all of the facts surrounding the incident. The trial court also indicated that counsel must assess the benefits of impeaching the informant and opening the door to a full presentation of the facts about the prior drug purchase and use. Counsel affirmed his understanding of the ramifications of questioning the informant about the matter (Tr p 22 – 26)

Counsel testified at the evidentiary hearing that, based upon his experience, discussions with the Applicant, the results of his investigation and the demeanor and testimony of the confidential informant, a strategic decision was made to attack the

credibility of the informant through cross-examination about the informant's use of drugs in violation of the informant's agreement with law enforcement officers to reveal that the informant was acting as a rogue informant who failed to follow the directions and agreements with officers. During cross-examination of the confidential informant, counsel for the Applicant questioned the informant about use of drugs while working for law enforcement officers in violation of the agreement (Tr p 158 – 159). The informant denied the drug use. A discussion out of the jury's presence ensued during which the prosecutor explained that she cautioned the informant not to disclose the fact that he smoked crack at the Applicant's house the night before the controlled buy to avoid the inadvertent disclosure of improper evidence. The prosecutor explained that her conversation must have confused the informant. The trial court ruled the informant could answer the question about the prior incident and explain the reason for his initial answer denying the drug use. On cross-examination by counsel for the Applicant, the informant explained that he went to the Applicant's house, purchased crack cocaine, and smoked it in Applicant's presence a night or two before the incident resulting in the charge. Counsel cross-examined the informant extensively about the incident, the informant's failure to disclose the incident to officers, the informant's motive, and the informant's veracity.

On redirect examination, the prosecutor elicited testimony from the informant about her instructions concerning the prior purchase and use in the Applicant's home. The informant also explained that the reason for the earlier purchase was to enable him to gain the Applicant's trust for the later controlled buy that would involve law enforcement officers.

Counsel testified at the evidentiary hearing that the informant was greatly

discredited through counsel's cross-examination Counsel also testified that he could have objected when the prosecutor rehabilitated the informant by eliciting information about her instructions to him but that the objection would not have been successful because the trial judge had already ruled the rehabilitation proper (Tr 162) Counsel's action in engaging in cross-examination of the informant about the prior drug purchase and use in violation of the agreement and opening the door to the questions the Applicant now claims were objectionable was based upon reasonable trial strategy See Caprood v. State, 338 S C 103, 525 S E 2d 514 (2000)

This court finds that improper bolstering did not occur in this case because the Applicant opened the door to the rehabilitative testimony For that reason, there was no valid basis for objection and the issue would not have been meritorious on appeal Ellenburg v State, 367 S C 66, 625 S E 2d 224 (2006) The issue would not have been successful on appeal for the additional reason that a party who opens the door to admission of evidence cannot complain of its admission on appeal State v. White, 361 S C 407, 605 S E 2d 540 (2004)

This Court notes the Applicant raised the improper bolstering issue on appeal to the South Carolina Court of Appeals While the opinion dismissing the Applicant's appeal referenced the Court's inability to consider an issue not properly preserved for appellate review, it also recited State v Stroman, 281 S C 508, 316 S E 2d 395 (1984), for the proposition that a party is entitled to present evidence of explanation or rebuttal in response to an opposing party's evidence even where the explanation or rebuttal might otherwise have been incompetent had it been offered initially Clearly, the issue was not meritorious for appeal

This Court finds that counsel's failure to object for the purpose of preserving the bolstering issue for appeal did not constitute deficient performance and did not result in the requisite prejudice to the Applicant

The Applicant also complained that trial counsel provided ineffective assistance for failing to move to suppress the drug evidence on because of discrepancies in the number of rocks of crack cocaine and weight involved. Counsel testified that he investigated the facts surrounding the number of rocks and weight involved and discovered no ground for dismissal but used the discrepancy to the Applicant's advantage at trial. This Court agrees and finds trial counsel's treatment of the discrepancies to be a reasonable trial strategy based upon counsel's investigation, knowledge of the facts, and discussions with the Applicant

The Applicant further complained that he did not have counsel to assist at his preliminary hearing. Trial counsel testified that he was not appointed to represent the Applicant until after the preliminary hearing was held. The Court also finds that the Applicant failed to establish any prejudice resulting from his appearance without counsel and that the issue is without merit

The Applicant alleged in his application that counsel provided ineffective assistance when he failed to move to dismiss the charge on the ground of prosecutorial misconduct and when he failed to impeach State's witnesses. However, this Court finds the Applicant failed to establish that any prosecutorial misconduct occurred or what impeachment questions counsel should have asked in addition to those posed at trial. Accordingly, the issues are without merit

Lastly, the Applicant contended that he received ineffective assistance of counsel for counsel's failure to object when the trial court sentenced the Applicant using an incorrect statute. The Applicant asserted that his sentence was greater than permitted because he was sentenced pursuant to S C Code Ann Section 44-53-375 (B) rather than Section 44-53-375 (A). This Court finds the issue to be completely without merit. The Applicant was indicted for distribution of crack cocaine in violation of S C Code Ann Section 44-53-375. Specifically, the indictment charged that the Applicant "did distribute, dispense, deliver a quantity of crack cocaine." This charging language is consistent with the sentencing provisions of 44-53-375(B) pursuant to which the Applicant was actually sentenced. S C Code Ann Section 44-53-375 (B) proscribes the act of distribution and the statutory provision the Applicant claims should have been used for sentencing proscribes the act of possession. The Applicant was charged with and convicted of distribution of crack cocaine and not possession. The allegation is without merit.

DENIAL OF EQUAL PROTECTION

Lastly, Applicant asserts that he was denied Equal Protection because his jury did not represent a fair cross-section of the community. This Court finds the claim is a direct appeal issue that is procedurally barred from post-conviction relief by S C Code Ann §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S C 417, 215 S E 2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S C 436, 196 S E 2d 501 (1973). The Applicant could have raised this issue at trial or on appeal. Therefore, it is not cognizable for post-conviction relief and is denied and dismissed.

CONCLUSION

Based on the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this Application for Post-Conviction Relief must be denied and dismissed with prejudice.

This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. State v. Bray, 366 S. C. 137, 620 S. E. 2d 743 (2005). Also, pursuant to Austin v. State, 305 S. C. 453, 409 S. E. 2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71 1(g), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.

IT IS THEREFORE ORDERED

- 1 That the Application for Post-Conviction Relief must be denied and dismissed with prejudice, and
- 2 The Applicant must be remanded to the custody of the Respondent

AND IT IS SO ORDERED this 4th day of Apr. 1, 2011


Paul M Burch
Presiding Judge
Sixteenth Judicial Circuit

Pageland, South Carolina

ARREST WARRANT

J-180474

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

THE STATE

200700007373

against

Antwan Marcus Wade

Address ADDRESS RD

SHARON SC 29742-

Phone ex M Race B Height 5 8 Weight 165

DL State SC DL # 090407142

DOB 10/2/1976 Agency ORI # SC0460000

Prosecuting Agency York County Sheriff

Prosecuting Officer Schettler - S7052

Offense Drugs manufacture distribution etc of methamphetamine or cocaine base 3rd or sub

Offense Code 3039

Code/Ordinance Sec 44-53-0375 (B) (3)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

to be arrested and brought before me to be dealt with according to the law

(LS)

Signature of Judge

a e

RETURN

copy of this arrest warrant was delivered to

Defendant Antwan Marcus Wade

on 3-16-07

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO

York County General Sessions
1675 York Hwy
York SC 29745

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

Personally appeared before me the affiant Schettler who

being duly sworn deposes and says that defendant Antwan Marcus Wade

did within this county and state on or about 03/08/2007 violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of York)

in the following particulars.

DESCRIPTION OF OFFENSE Drugs manufacture distribution etc of methamphetamine or cocaine base, 3rd or sub offense

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts

The defendant did willfully and unlawfully violate the South Carolina Drug Laws by distributing 2 crack rocks with a total weight of approximately 4 grams to an undercover operative working under the control of the YCMDEU while at ADDRESS Road Sharon, York County South Carolina. Criminal records indicate that the defendant has three prior drug convictions Probable cause based on police investigation and recovery of evidence (4 grams of crack)

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

Affiant's Address 1675 York Hwy
York, SC 29730-000

Affiant's Telephone (803)628-3059

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 3/8/2007 defendant Antwan Marcus Wade

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of York) as set forth below

DESCRIPTION OF OFFENSE Drugs, manufacture, distribution, etc. of methamphetamine or cocaine base, 3rd or sub offense

Having found probable cause and the above affiant having sworn before me you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution or as soon thereafter as is practicable

Sworn to and subscribed before me

on 03/16/2007

Signature of Issuing Judge

David Stuart Wood

Judge Code 1014

Judge's Address 114 Springs Street

Fort Mill, SC 29715-1797

Judge's Telephone (803)547 5572

Issuing Court ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCA 510

AFFIDAVIT

FILED
2007 FEB 18 PM 1:31
CLERK OF COURT
YORK COUNTY SC

WITNESSES

DEU/Schettler

ARREST WARRANT NUMBER

180474

ACTION OF GRAND JURY

TRUE BILL

Representative of Grand Jury

118-07

VERDICT

GUILTY

Representative of Petit Jury

DATE JANUARY 10, 2008

DOCKET NO 2007-GS-46- 03940

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

November 8, Term 2007

THE STATE

VS

ANTWAN MARCUS WADE

Indictment for

DISTRIBUTION OF COCAINE BASE (CRACK COCAINE)

SC Code § 44-53 375
CDR Code 3039

After being fully advised as to my legal rights I hereby waive presentment to the Grand Jury

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness

CCC PLS AND GS

2007 DEC 18 PM 1 31
CLERK OF COURT
COUNTY SC

COLA IV OF York
STATE VS
Antwan Wade
AKA
Race B Sex M Age 18
DOB 10 02 1976 SS# 000 00 0000
Address ADDRESS 2316 FEB 18 PM 1 31

INDICTMENT/CASE# 2007GS4603940
A/W# J180474
Date of Offense 3/8/2007
S.C. Code § 44-53 0375 (B) (3)
CDR Code # 3039

SENTENCE SHEET

DL# - SID# 0444444444

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS TO Drugs manufacture distribution etc of methamphetamine or cocaine base 3rd offense

in violation of § 44 53 0375 (B) (3) of the S C Code of Laws, bearing CDR Code # 3039

☐ NON VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC §17 25 45 w/minor 1st or Lewd Act)

The charge is ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (Defendant initial)

The plea is ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST

E. J. Jones
Solicitor

Antwan Wade
Defendant

Carl Wade
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 12 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ 50,000.00 provided that upon the service of _____ days/months/years and/or payment of \$ _____, plus costs and assessments as applicable*, the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on _____

☒ The Defendant is to be given credit for time served pursuant to S C Code § 24-13 40 to be calculated and applied by the State Department of Corrections

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S C Code §17 25 135

SPECIAL CONDITIONS

☐ RESTITUTION ☐ Heard ☐ Waived ☐ Ordered

Total \$ _____ plus 20% fee \$ _____

Payment Terms _____

☐ set by SCDPPPS _____

Recipient _____

*Fine \$ 50,000.00

§ 14 1 206 (Assess ments 10%) \$ 5,375.00

§ 14 1 211(A)(1) (Conv Surcharge) \$100 \$ 100.00

§ 14 1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56 5 2995 (DUI Assessment) \$12 \$ _____

§ 35 13 (Public Def/Prob) \$500 \$ _____

§ 73 3 1B TP (Law Enforce Funding) \$25 \$ 25.00

§ 33 7 1B TP (Drug Court Surcharge) \$100 \$ 100.00

§ 50 21 114(BUI Breath Test Fee) \$50 \$ _____

§ 56 5 2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ 103,975.00

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab or Job Corp _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd in equal, consecutive weekly/monthly

pmts of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other _____

☐ Appointed PD or appointed other counsel §35 13 TP

Requires \$500 be paid to Clerk during probation

PRESIDING JUDGE Th. J. Jones

Judge Code _____

Sentence Date _____

Clerk of Court/ Deputy Clerk

Court Reporter _____