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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

On Certiorari to the Court of Common Pleas
Appeal from Berkeley County
Honorable R. Kirk Griffin, Post-Conviction Relief Judge

Appellate Case No. 2024-001521

EMORY W. ROBERTS, #373393,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

SUPPLEMENTAL APPENDIX

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Pages 1-500

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF BERKELEY	)	DOCKET NO. 2016-GS-47-02
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	)	
STATE OF SOUTH CAROLINA	)	
	)	
	)	
vs.	)	
	)	
	)	
EMORY WARREN ROBERTS	)	
	)	
Defendant	)	
	)	
	)	
	)	
_____	)	TRANSCRIPT OF RECORD

July 19, 2017
Moncks Corner, S. Carolina

B E F O R E:

THE HONORABLE DEADRA JEFFERSON, JUDGE

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PROCEEDINGS

THE COURT: Yes sir Mr. Griffith, have you had sufficient time to talk with Emory Roberts?

MR. GRIFFITH: I had time to speak with him, Your Honor.

THE COURT: Okay.

MR. GRIFFITH: If it please the court, Your Honor?

THE COURT: Yes, sir.

MR. GRIFFITH: Mr. Roberts does not wish for me to represent him.

THE COURT: Okay. What does he want to do? He wants to represent himself?

MR. GRIFFITH: We would like the court to address that by allowing him to let the court know. But he wants to have another attorney appointed ---

THE COURT: --- no ---

MR. GRIFFITH: --- he says his family may be able to get him an attorney ---

THE COURT: --- well they need to hire whoever they're hiring today and the person needs to know the trial is going forward on Monday. There will be no delay. I need him to be clear about that. The charge has been pending a long time and he had a long time to do what he was going to do.

MR. GRIFFITH: Well, Your Honor, it was ---

THE COURT: --- I'm not delaying it. This is the only Grand Jury term. It was set a year ago and that's that. When was he indicted?

MR. UNDERWOOD: April 13, 2015, Your Honor.

THE COURT: Yes, it's been past a year. He had many attempts to make decisions. I can't entertain when you're the architect of your own dilemma.

MS. JOHNS: Your Honor?

THE COURT: Yes, ma'am? We're going to deal with your motions in just a moment. And I've issued a bench warrant for your client's arrest.

MS. JOHNS: Okay. Can we approach the bench?

THE COURT: Sure.

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

MR. ROBERTS: Excuse me, Your Honor?

THE COURT: Yes, sir. I'll be with you in just a moment, sir. Now, Doctor -- first, let's deal with Mr. Griffith. Mr. Griffith, you had some concerns about your client's competency, is that correct?

MR. GRIFFITH: Yes, Your Honor.

THE COURT: And what was that based upon?

MR. GRIFFITH: Your Honor, based upon speaking with Mr. Roberts I was unable to gain his cooperation and I felt perhaps for his benefit and to protect his rights

that I should have an evaluation ordered by the court. Doctor Maddox went to the detention center and spoke somewhat with Mr. Roberts and has spoken with him again. I would like the court to hear her ---

THE COURT: --- I'm going to deal with that. I'm going to do this step by step. So originally you had some concerns because he was non-communicative with you and you had concerns about being able to mount a defense for him. Is that it in a nutshell?

MR. GRIFFITH: Yes, Your Honor. I was unable to gain his cooperation in his own defense.

THE COURT: Okay. Now in your subsequent conversations with him do you have any concerns about his competency? In other words does he know where he is, does he know what's going on or is his non-communication simply a deliberate act on his part?

MR. GRIFFITH: Your Honor, I'm not a psychiatrist or ---

THE COURT: --- yes, but we're lawyers and we have to make certain determinations about whether people can understand us or not. I used to do probate work and I always had to make a decision about whether somebody knew where they were, whether they were clear about time and place before I had them execute a will or a power of attorney. I think common sense dictates some of that.

I'm not asking as a professional; I've got a doctor here for that.

MR. GRIFFITH: Yes, Your Honor. I have concerns about his capability to understand really what's going on and I would like the court to address those in the evaluation.

THE COURT: Okay. Now, originally a doctor was -- there was an order to have Mr. Roberts evaluated at the Medical University of South Carolina. But due to his behavioral issues that had to be cancelled due to an assault that was perpetrated on a correctional detention officer.

Subsequent to that I issued an additional order to have him evaluated by Doctor Maddox and I arranged for that to take place at the Berkeley County Detention Center. Doctor Maddox, can you tell me what happened on that date that you came to evaluate Mr. Roberts?

DOCTOR MADDOX: Yes, ma'am. Mr. Roberts, he did not know I was coming on that day or ---

THE COURT: --- yes, they wouldn't have notified him for security purposes.

MR. GRIFFITH: If it please the court, Your Honor?

THE COURT: Yes, sir.

MR. GRIFFITH: I had informed him that she would be coming at some point but not exactly when.

THE COURT: Okay.

DOCTOR MADDOX: Yes, ma'am. I was escorted to his cell. He was very pleasant. He was very polite. He refused a formal evaluation and was very consistent about that. But he was very pleasant. He took a lot of time to make sure that I got this and I want to quote this for him. He stated that he has the UCC-1308 code is the reason for his refusal.

And what he continuously stated to me, and I hope I have this correct, I reserve my right not to be compelled to perform under any compact or commercial agreement that I do not enter knowingly, voluntarily, or intentionally. I do not accept the liability of any compelled benefit or any unrevealed contract or commercial agreement for UCC-1308.

And what he told me is that there were no warrants against him. He absolutely -- I'm not able to render opinions, Your Honor because we weren't able to proceed. All ---

THE COURT: --- absolutely ---

DOCTOR MADDOX: --- I could do was get observations. I witnessed directly today he cannot work with his attorney. And I don't think that is all volitional on his part. He clearly does not trust his attorney. He, and Mr. Roberts I apologize; I'm going to

put it on the record if it's okay, he believes his attorney has threatened him and used racial epitaphs against him at an earlier hearing which I was not ---

THE COURT: --- what hearing would that have been because we've never had a hearing with him.

MR. ROBERTS: It was at the jail ---

DOCTOR MADDOX: --- oh, excuse me I'm sorry, Your Honor.

MR. ROBERTS: Second visit, Your Honor.

THE COURT: Huh?

MR. ROBERTS: The second visit that he came to the jail.

THE COURT: So it was not in court? It was at the jail?

MR. ROBERTS: Yes.

THE COURT: Okay.

DOCTOR MADDOX: And I watched him today. Mr. Griffith tried to engage him and tried to talk about and even offered today to put him on the stand. He has some things that he would like to address with the court and Mr. Griffith even offered to put him on the stand to let him. And he refuses to even do that. He does not trust him. He did tell me that he's got other people that are trying to arrange for him to have an attorney. He has a basic mistrust, Your Honor I think of the judicial system

right now. He has -- his concern is, and I'm no lawyer, but he stated that the Grand Jury met after he was arrested. He's not really sure how that happened. He feels many of his rights have been violated. He's cooperative with me as much as he can. He's exercising his rights but he's pleasant. I'm able to diffuse him. He's able to work with me at some level. So I don't know how much is volitional.

But I do not think he has the capacity to work with Mr. Griffith right now. His attorney is trying and it's not going to happen. I don't think all of it is volitional. He got very agitated, not with me, but certainly whenever he is dealing with his attorney he gets quite agitated and feels threatened. He also felt he was tricked into going to this hearing today. He said it was a special appearance and he thought ---

THE COURT: --- we don't ever tell people when they are going to court. It's for security reasons. We can't run the risk that you might try to arrange -- not you, but I've had people try to arrange people to come try and break them out and things. Even when you're in Columbia and you're in their custody they don't tell you when you're going anywhere. They just come and pick you up and take you. That's the way the system works. It's not a big conspiracy; it's a matter of policy. It's about

security. You are in our custody. You're at our disposal. You don't really have -- you have nothing else planned for that day other than what is at the jail and any hearings are for your benefit. And that's why it is important that you communicate with your lawyer.

But no secured facility that I'm aware of in this state or any other state ever tells you when you're going somewhere. It's just a matter of their policy. So it's not some conspiracy not to let you know where you're going. They do it deliberately so that you can't really tell anybody where you're going to be.

And that's why it's important that you communicate with your lawyer because then your lawyer can call your loved ones and tell them if they need them there. Usually you only need a loved one there for or a support system when you're having a trial or a sentencing.

Other than that we're not too peculiar about having folk here because it's not a good situation. It creates volatility that we are not designed to handle. And people tend to get themselves in very precarious situations and that's why it's done that way. So I just wanted to explain that to you so that you don't think it's some conspiracy about why you're not told ---

MR. ROBERTS: --- I was just ---

THE COURT: --- I'm going to give you a chance to

address the court. I just need -- everything in our process -- there is a process. It's done step by step. And I tend to be a bit methodical, and I do it that way for a reason. I do that so that I won't skip any steps and I won't abridge your rights in any way, okay. So just let me do this step by step as we need to do it. Doctor Maddox is there anything else you would like to share -- do you think he would comply with an evaluation today?

DOCTOR MADDOX: No, Your Honor.

THE COURT: Okay.

DOCTOR MADDOX: And I'll stand corrected if ---

THE COURT: --- and why do you think that?

DOCTOR MADDOX: Again, he doesn't believe that the court has any jurisdiction. He does not believe that these charges are genuine. And any cooperation on his part will constitute consent and he will not do that.

THE COURT: And you've explained to him that this is in his best interest?

DOCTOR MADDOX: Oh, yes ma'am, when I went to the jail I told him the court was concerned enough to send me there. And he was very polite about it but very politely refused. And he was friendly. And as today, Your Honor, you see he pays attention. He does have understanding of some legal proceedings. And I think one of the reasons

he is upset about not being notified he carries his legal work with him and he was not able to have that with him today. So I think his concerns have been ---

THE COURT: --- yes, and just so he understands there is no hybrid representation. Either you have a lawyer or you don't. So it really doesn't matter that you have any legal documents with you because you would not have the ability to address the court.

And again that's for your benefit because anything you say can be used against you. So it's best for you to let the person who is equipped with knowledge of the rules to talk for you. And it's best for you to be silent. That's why we don't have hybrid representation.

Now if you want to represent yourself you can talk all you want to. But you have to do it with your eyes wide open knowing that everything you say can be used against your best interest. This is an adversarial system. And that's why it's always better -- I'm a lawyer and if I need help I hire somebody to represent me. I cannot be objective about my life. I'm too emotionally attached.

So even if I have -- somebody rear ended me last year. I hired a lawyer. Even though I am more than equipped to negotiate a settlement damaging my car and negotiating depreciation I hired somebody because I can't

be objective about that. It's just the nature of human emotion. So, it's always best to take advantage of legal counsel because they can see your blind side. They're not emotionally attached. They can be very objective about what's going on in your situation and that's important. So that's why we do it the way that it's done. Now tell me; you said that you believe he has some knowledge of the legal system? It sounds like he does.

DOCTOR MADDOX: Yes, ma'am. And he's certainly cognitively he's able to represent himself or stand trial. He follows, he listens, he engages ---

MR. ROBERTS: --- I'm not that understanding of it. I really don't understand what's going on now.

THE COURT: Well, I'll give you an opportunity to address the court. Yes ma'am, continue.

DOCTOR MADDOX: He's got the cognitive capacity to pay attention and assist. But, Your Honor I suspect and again, he's not cooperated but there is a paranoid flavor between he and his attorney's relationship. And I'm not sure if that's a pathological one or if it is functional given some of his views. I'm sorry; I wish I could ---

THE COURT: --- no, you don't have to apologize.

DOCTOR MADDOX: All I can tell you in my interactions with him he relates to me, he has good eye contact; he's trying to get his point across. We are

able to communicate and I understand. It's my understanding he does not like his attorney, he does not trust him and he feels threatened by him. And that his words to me were that he had people that were trying to get him an attorney and he does not believe he has been properly -- these warrants are not genuine. I think he can better say some of them because ---

THE COURT: --- well, he wrote to the court and he should be disabused of that knowledge because we totally, I had my secretary and my law clerk totally research the records and send him copies of his indictments and give him a chronological breakdown of what has happened since he was arrested. So I don't think he should have any vague idea as to what happened or didn't happen.

What he made inquiry of was the Department of Public Safety, which is the highway department which they sent him a note back and said he has no record, which he doesn't apparently have any tickets or otherwise. But I don't believe for a moment that he doesn't know that he was arrested on that date, processed, and served with a warrant from the Grand -- yes I just -- yes.

DOCTOR MADDOX: The only recommendation, Your Honor is ---

THE COURT: --- out of an abundance of caution we sent him everything and that was over a month ago. It

might be longer than that; I can't remember. Mr. Griffith I sent you a copy I'm sure. I just don't remember when it was.

MR. GRIFFITH: If it please the court, Your Honor. I have also provided him with all of the discovery sent to us from the Attorney General's office.

THE COURT: That was my next -- let me -- Doctor Maddox, is there anything else you want to share with me?

DOCTOR MADDOX: If the court wanted to issue I think maybe something to consider at some point would be to have a guardian ad litem appointed to represent him to interface if he continues with the same attorney. That may be something that maybe ---

THE COURT: --- I'm hoping after talking with him today that he will be compliant and be willing to cooperate because it's in his best interest. But again, if you could just indulge me by staying I'll cross that bridge when I get to it.

DOCTOR MADDOX: Absolutely.

THE COURT: How many times have you met with your client, Mr. Griffith?

MR. GRIFFITH: Your Honor, I've come down here I believe it would be three times or four times and this would be the fifth. I've communicated with him and he's sent me some letters. But when I come down it's been

difficult to communicate with him in that he would not speak with me. After the first time I visited him he told me that he did not want me to represent him and that his family would be getting the lawyer. I then called his family who said that they would not be getting that lawyer. I continued to try to work with him and speak with him but he refused to speak with me at all generally after that first time.

THE COURT: Okay. Now you said you've given him all the discovery, is that correct?

MR. GRIFFITH: Yes, Your Honor.

THE COURT: Thank you, sir. Now sir, stand for me please and tell me your name for the record?

[Whereupon, the defendant stands]

THE COURT: What is your name, sir?

MR. ROBERTS: Excuse me?

THE COURT: What is your name?

MR. ROBERTS: They call me W.

THE COURT: I need to know your legal name, your government name as the guys would say.

MR. ROBERTS: This court doesn't have jurisdiction over me, Your Honor. I don't want to give the court jurisdiction. I don't ---

THE COURT: --- sir, we already have jurisdiction over you; you've been indicted. So what I need to know

is your full name Emory Warren Roberts?

MR. ROBERTS: That is what is located on the charging instrument.

THE COURT: Is that on your birth certification?

MR. ROBERTS: That's a legal fiction. That's an article of commerce, Your Honor.

THE COURT: Sir, I hate to -- it sounds like you've been talking to some folks that have giving you some false ideas. And they are very good at convincing people that these concepts are applicable. They're not; they are not recognized. These are what we call commercial concepts that deal with bulk transfers and commercial goods.

They don't deal with people. In a commercial goods situation like say if you owned a car dealership or if you owned some bulk transfer company like you owned a company that dealt with the port or otherwise that was transporting goods some of these things would be applicable. But they would only be applicable to something that is inanimate; goods, things we buy and sell.

We don't buy and sell people. People are human beings. They are flesh and blood. And so these concepts -- I'm trying to break this down as much as I can for you because I need for you to be clear so that you can act in

your best interest because right now you're not acting in your best interest. And the system believe it or not is designed to help you. The system's only job is to seek the truth. We have no interest in convicting people who did not commit crimes.

It costs us 40,000 dollars a year to take care of somebody in the system. The State doesn't want to spend that kind of money on somebody who is not convicted and who is not guilty. And in addition to that our system thrives on the fact that people who are innocent -- well, not innocent because that is a legal fiction, who are not guilty are found not guilty and it happens all the time.

And people who are found guilty where it is a legitimate conviction are found guilty. The State has no interest in what you would call an illegitimate conviction. It clogs up the system. It expends resources and frankly we have no -- and I say we meaning the State has no interest in having innocent folk in jail. It just makes no sense.

But you have to help yourself because everybody in this room has a purpose. The State's purpose is to prosecute the case but Mr. Underwood takes an oath. If he comes across some evidence during the course of this trial that exculpates you, in other words says you're not guilty of this crime he is under an ethical obligation to

make the court aware of that and say Your Honor, we're going to dismiss these charges because I've come across this information. I've shared it with counsel, I've shared it with the defendant and it proves that he didn't do this so we are going to dismiss the charges. He has an ethical responsibility.

And I can assure you Mr. Underwood is not going to lose his license over one person; worked too hard for it. So then the other part of the system is for you to help defend yourself. Your lawyer cannot ask appropriate questions. He cannot exercise your right of confrontation by questioning witnesses. He can't even mount a defense for you if you don't talk to him.

For example, if you weren't where they said you were that's an alibi. You need to tell him because the rules require him to file an appropriate notice to put the State on notice that you have a legitimate alibi. And you know why they do that under the rules? So that the State has enough time to investigate it so that in the event you have witnesses that say you were someplace else so they can drop the charges against you. They are not interested in an unwarranted prosecution.

So you have to -- if you don't talk to your lawyer and you don't fully advise him of everything he can't do what needs to be done because he has a function.

MR. ROBERTS: That's not my lawyer, Your Honor.

THE COURT: And then the clerks -- well, he is your lawyer because that's who we have appointed unless you plan to hire somebody else or unless you plan to represent yourself ---

MR. ROBERTS: --- that's what I wanted to make note of if I had a chance ---

THE COURT: --- well, you're going to have to hire him by Monday because that's when this trial is going to start. And I'm not delaying starting this trial because you've had since April 13th of 2016 to hire somebody. And Mr. Griffith says he had talked to your family and they say they have no intention of hiring a lawyer.

MR. ROBERTS: He's talked to his mother and my sister. That does not consist of my whole family.

THE COURT: Well, they should have done something by now shouldn't they? They've had a year and almost a half.

MR. ROBERTS: It's kind of hard you know. Money don't grow on trees, Your Honor.

THE COURT: It doesn't but when it's important to me I find it. We all make sacrifices. There are lots of things I go without to do what is important.

MR. ROBERTS: I don't consent to any of this. That's not my name. That's an article -- that's a straw

man, a legal fiction and he can't represent me unless it's for a whole settlement and closure in a transaction. And I don't consent to prosecution or my incarceration.

THE COURT: Sir, how old are you?

MR. ROBERTS: That's immaterial, Your Honor.

THE COURT: How old are you? It is material. It goes to your competency and whether you understand what is going on and whether your age and discretion to understand where you are and what you are doing. How old are you?

MR. ROBERTS: The court is lacking jurisdiction, Your Honor. It's immaterial ---

THE COURT: --- have you had a job in the past, Mr. Roberts?

MR. ROBERTS: That's immaterial, Your Honor.

THE COURT: How far did you go in school?

MR. ROBERTS: That's immaterial, Your Honor.

THE COURT: Okay. Sir, is there anything else that you would like to share with the court in advance of trial which is set to begin on Monday?

MR. ROBERTS: I mean if I am allowed to speak.

THE COURT: I asked you a question. It assumes an answer would be forthcoming.

MR. ROBERTS: I would just like to state I'm locked up without a warrant. They say it ---

THE COURT: --- sir, did you not receive the warrants and the indictments that we sent you? We sent you copies of everything.

MR. ROBERTS: I have a writ of habeas corpus. They sent me a copy of a Dorchester County warrant that is not signed ---

THE COURT: --- no, sir. My secretary sent you all of the State Grand Jury indictments and warrants with a letter and copied your lawyer on it and copied the State.

MR. ROBERTS: Your Honor, those indictments are not even certified. According to the State Grand Jury act they are supposed to be certified.

[Whereupon, the court confers with the Clerk]

THE COURT: That's all that is required, sir that they be filed. There is no certification that goes on those things. You only certify orders which has a judge's official signature on it. And you only certify them when they are going out of state usually for another state to recognize them. You rarely get certified documents for any purpose ---

MR. ROBERTS: --- I still don't understand what is going on and I don't consent.

THE COURT: All right. Anything further you want to tell me.

MR. ROBERTS: No.

THE COURT: All right. I do not perceive that he is incompetent. I think he has a more than adequate understanding of the system. As a matter of fact he probably has a better grasp of it than others. I perceive he is being dilatory hoping that this will in some way delay these proceedings. These proceedings have been pending since April 13th of 2016. It has been over a year. If he had planned to hire counsel he could have done so and he has not. I've already explained to him how the uniform commercial code works and that it is inapplicable to these proceedings.

And I have no reason to believe that Mr. Roberts is anyone other than whom his birth certificate reflects which is Emory Warren Roberts. And out of an abundance of caution when he wrote -- I believe he wrote Judge Hughston or Judge Young, I can't remember. But he attached a copy of a document from the highway department or the Department of Public Safety ---

MR. ROBERTS: --- may I say something ---

THE COURT: --- indicating -- not while I'm talking, sir -- indicating that he did not have any traffic tickets, which probably was accurate. But out of an abundance of caution I had my staff research his entire situation, send him copies of his warrants as well as his indictments so that he would be clear of what was,

in fact, pending against him. His lawyer has indicated that he likewise provided him with that information as well as all of the available discovery in this case. And there is a difference between being incompetent which is the inability to understand the proceedings and assist in the adversarial process versus a -- let me state that another way.

I do not perceive that he has some cognitive deficits that prevent him from doing what he needs to do. I do not perceive that he is below average I.Q. In fact, I think he is probably average standard if not slightly above average I.Q. Although we don't have any tests I've been doing this 20 years; I can tell when somebody understands the proceedings and doesn't. And I've dealt with people enough to have enough discernment to know.

Now whether he may have some other issue that may require -- again I'm not a medical professional so I'm not even going to delve into any other facets of this. But he is no different than anyone else who has convinced themselves that the uniform commercial code is applicable in a criminal situation when it is not, hoping that that will somehow salvage or delay the proceedings and prevent the court from proceeding. This court clearly has the authority and jurisdiction to preside over his matter and will preside over the matter and continue. It is up to

him as to whether he wants to communicate with his lawyer or not. He has a very competent lawyer who has been appointed to represent him and the court is not going to appoint someone else. This is the second appointment in his case and I perceive that the next person will be unsuitable as well as the next person and the next person and I'm not going to indulge in that folly.

Now sir, you have an option. You can allow Mr. Griffith to represent you. You can take advantage of what he has to offer you because there are motions and other things that other defendants in this case have filed which you probably need to file in your own behalf as well regarding sufficiency of certain documents and to gain information about other information within the context of the rules.

And if you want to avail yourself of that, that's fine. If you don't, that's fine. As long as you're comfortable, I'm comfortable whatever you feel is acting in your best interest. I've explained to you how the system works and that we all -- the only goal we have is to make sure everybody has a fair trial.

So what you need to let me know is whether you plan to hire somebody by Monday and whether they are going to -- well, really you need to hire them this week so they can get up to speed and whether they are going to file a

notice of appearance relieving Mr. Griffith, whether you plan to cooperate with Mr. Griffith and talk to Doctor Maddox or whether you plan to represent yourself. Either way I'm fine. Whatever decision you make is on you. You just need to let me know what you want to do.

MR. ROBERTS: I don't know. I mean I don't understand.

THE COURT: Do you want Mr. Griffith you represent you?

MR. ROBERTS: I'm only here for full settlement and the court ---

THE COURT: --- sir, I've told you that that does not apply here. It is not a concept that is recognized by this court.

MR. ROBERTS: He can't -- how can he represent me?

THE COURT: If you tell him what's going on he can represent you. He can explain the process to you and mount a defense on your behalf.

MR. ROBERTS: I don't understand, Your Honor. This is ---

THE COURT: --- sir, I don't believe that. Now you can answer my questions or not answer them. Do you want Mr. Griffith to represent you?

MR. ROBERTS: I don't understand, Your Honor.

THE COURT: Do you want to hire a lawyer to

represent you?

MR. ROBERTS: Your Honor, I don't understand --

THE COURT: I'm sorry, I can't hear you.

MR. ROBERTS: I don't understand.

THE COURT: Do you want to cooperate and have Doctor Maddox evaluate you today?

MR. ROBERTS: For what purpose? I don't understand.

THE COURT: To make sure that you don't need some medication, to make sure you don't need some counseling or assistance, to make sure that you're not grappling with something that needs attention; to help you. She's not -- she doesn't -- she's not affiliated with any of us. She's completely independent; she's a doctor. She has an oath that she has to abide by as well which is to act in your best interest and in the interest of what medically is helpful to you.

MR. GRIFFITH: If it please the court, Your Honor?

THE COURT: Yes, sir.

MR. GRIFFITH: Mr. Roberts and I had spoken some and he has given me the impression that he believes that I work with the Attorney General's office in opposition to him. I have tried to explain to him that I don't even work for the State. Although I was appointed I am a private ---

THE COURT: --- you are just an involuntary servitude that we enforce upon you to meet your requirements of being a member of the bar.

MR. GRIFFITH: Well, no I actually volunteered to do it ---

THE COURT: --- wow ---

MR. GRIFFITH: --- I'm on a contract and I like helping other people ---

THE COURT: --- I'm impressed ---

MR. GRIFFITH: --- and that's why I became a lawyer.

THE COURT: I'm impressed because most people come kicking and screaming so I appreciate that.

MR. GRIFFITH: But Your Honor I've tried to impress upon him that I would be very happy to protect his rights and I want to protect his rights and that if I can get his cooperation I certainly have information that I believe would help him. And I would ask the court merely to express to him that to their knowledge I do not work with or for the Attorney General's office.

THE COURT: That's why I was trying to explain everybody's role in the process. Mr. Underwood, could you please -- do you have any affiliation with Mr. Griffith?

MR. UNDERWOOD: I do not, Your Honor.

THE COURT: Do y'all work together at all? Have y'all ever met before?

MR. UNDERWOOD: Not prior to this case.

THE COURT: There is another question I wanted to ask. In terms of culpability where does Mr. Roberts fall?

MR. UNDERWOOD: Extremely culpable, Your Honor.

THE COURT: Okay. I needed -- I haven't seen any of the discovery regarding him so I wouldn't know. Okay. Now sir, I'll ask again do you want Mr. Griffith to represent you. He's already indicated if you cooperate with him he believes he can mount a viable defense that is in your best interest?

MR. ROBERTS: I don't understand what's going on, Your Honor.

THE COURT: Okay. Do you want to hire an attorney as you've indicated? You said your mom and sister are not your family. So who is it that was going to hire a lawyer for you ---

MR. ROBERTS: --- family, Your Honor.

THE COURT: Pardon me?

MR. ROBERTS: I didn't say they wasn't my family.

THE COURT: Okay, so who is it -- well, that's what you said to you. You said they aren't your only family.

MR. ROBERTS: I don't understand what you're saying

Your Honor. I don't consent and I don't understand.

THE COURT: Do you want to have Doctor Maddox to evaluate you?

MR. ROBERTS: I don't understand, Your Honor.

THE COURT: All right. The court finds that all of those answers are disingenuous, that they are not accurate and that they are designed to try to delay these proceedings. I will mark them for the record but we will be proceeding. Now Mr. Griffith, what do you want to do? Do you want to sit as shadow counsel and help him out best you can or what do you want to do?

MR. GRIFFITH: Your Honor, if he would communicate with me I would not mind in any fashion or form either representing him or helping him in his own defense. And in that capacity, Your Honor I have some motions that I would like to prepare for court that I've presented to him and he told me ---

THE COURT: --- you can file them. I think you can file them.

MR. GRIFFITH: He told me that he would not like me to but I would ---

THE COURT: --- I don't think it's his decision. The case law is very clear ---

MR. GRIFFITH: --- absolutely ---

THE COURT: --- that you can discuss strategy with

a client. They don't have to agree with it. You are bound to do what is in their best interest. So if you have some motions you want to file ---

MR. ROBERTS: --- he threatened, Your Honor. How can he represent me?

THE COURT: Because he's doing what's in your best interest. What motions are they, Mr. Griffith?

MR. GRIFFITH: Your Honor, I have looked at some of the motions presented and also would like to ask for a motion that any deal made with Mr. Thomas Sekula be revealed.

THE COURT: Who is that? Spell his last name for me.

MR. GRIFFITH: S-E-K-U-L-A, I believe Your Honor.

THE COURT: Is that the C-I?

MR. GRIFFITH: That's the C-I.

THE COURT: You weren't in here when we were talking about that and I apologize. The State has a redacted copy of that document and they are going to provide it to Ms. Johns and likewise I'll have them provide it to you.

MR. GRIFFITH: Thank you, Your Honor.

THE COURT: You're welcome.

MR. GRIFFITH: I would also move requesting the record of all lay witnesses. I did hear you address ---

THE COURT: --- I'm sorry, and we'll do the same as we're doing for Ms. Johns.

MR. GRIFFITH: Also, Your Honor, I would of course move to suppress any warrants issued during the investigation and or proceedings against which ---

THE COURT: --- do you want to just join in with Ms. Johns' motion?

MR. GRIFFITH: I would join with her and add his name to her motion, Your Honor.

THE COURT: Okay. That will work.

MR. GRIFFITH: I would also join in asking that witnesses be sequestered.

THE COURT: And we've granted that except the case agent will be present and of course your client will be present.

MR. GRIFFITH: As far as Mr. Emory Roberts' record is concerned, Your Honor I would just want to have -- certainly want a clear ---

THE COURT: --- what is his record Mr. Underwood? What does Mr. Roberts reflect as a record?

MR. UNDERWOOD: He has a conviction from 1996 for menacing second degree with a weapon which was in the state of New York.

THE COURT: I was about to say -- is that like the same as pointing and presenting?

MR. UNDERWOOD: I believe so, Your Honor.
THE COURT: I think it's comparable.
MR. UNDERWOOD: There are a number of arrests and the way that the state of New York records them it's a bit convoluted so I'm trying to sort them out just ---
THE COURT: --- do you have a -- what does your record reflect?
MR. GRIFFITH: If it pleases the court, Your Honor that would be why I was asking for ---
THE COURT: --- when you have NCIC's from out of state sometimes they are very difficult. Ours can be difficult as well but sometimes theirs are very difficult to sort of weed through where there are actual convictions.
MR. UNDERWOOD: And Your Honor?
THE COURT: Why don't you ---
MR. UNDERWOOD: --- if Mr. Griffith doesn't already have a copy we can get a copy to him if he doesn't already have one.
THE COURT: Do you have a copy of his record?
MR. GRIFFITH: I believe I do, Your Honor.
THE COURT: I'll tell you what. In the interest of time Mr. Underwood you can take some time to go through that and then you and Mr. Griffith can reconcile what his actual record is and come to a conclusion about that

prior to us beginning on Monday. Does that work?

MR. UNDERWOOD: Yes, Your Honor.

THE COURT: And other than ---

MR. GRIFFITH: --- thank you, Your Honor ---

THE COURT: you're welcome. Were there any statements alleged to have been made by Mr. Roberts that we need a Jackson v Denno?

MR. UNDERWOOD: I do not believe so, Your Honor.

THE COURT: And I assume for either one of them there are no Biggers issues, is that correct?

MR. GRIFFITH: There is no what, Your Honor?

THE COURT: Biggers. Neil v Biggers; I.D.?

MR. GRIFFITH: No, Your Honor.

MR. UNDERWOOD: And Your Honor, if I may I do believe that there was at least one photographic lineup used during the investigation. I don't know if it is being challenged pursuant to Neil v Biggers. But I want the court to be aware that there was at least one photo lineup done.

THE COURT: Who was it that identified anyone from a lineup? I know that might have been not as clear as I intended for it to be. In what way was the lineup utilized? That's a better way to put it.

MR. UNDERWOOD: There was a six person photographic lineup, Your Honor.

THE COURT: I mean who used it for what purpose?

MR. UNDERWOOD: If I may consult with my case agent for just one moment, Your Honor?

THE COURT: Yes.

[Whereupon, Mr. Underwood confers with case agent]

THE COURT: Because if you're not introducing it at trial I don't know that it...

MR. UNDERWOOD: Your Honor, the individual who -- the witness who was shown the photographic lineup was the co-defendant William Brown who identified his co-defendants.

THE COURT: But he knew them, didn't he?

MR. UNDERWOOD: Yes, Your Honor.

THE COURT: So are you really going to utilize the lineup?

MR. UNDERWOOD: I don't know that it will be necessary but I just wanted the court to be aware that in the event that we did intent to introduce those lineups as well as any in court identifications. If there were a Neil v Biggers hearing I would ---

THE COURT: --- we can do that at trial if you plan to introduce it. Are y'all challenging the validity of any of the lineups that were utilized with William Brown?

MS. JOHNS: No, Your Honor. I believe that Mr. Hunter is known to Mr. Brown and known to the C-I Thomas

Sekula.

MR. GRIFFITH: I have no challenge, Your Honor.

THE COURT: Okay, that works. So that just leaves the suppression, the Jackson v Denno for Mr. Hunter and the suppression for Hunter and Roberts, is that correct?

MS. JOHNS: Yes, Your Honor.

MR. GRIFFITH: Yes, Your Honor.

THE COURT: Okay. Is the State ready to proceed with the Jackson v Denno?

MR. UNDERWOOD: Yes, Your Honor.

MR. UNDERWOOD: The State calls Special Agent Justin Wingo.

THE COURT: Sir, if you would come to the stand to be sworn.

[Whereupon, Agent Wingo comes forward]

[Whereupon, the witness is duly sworn by the Clerk of Court]

CLERK OF COURT: Please state your name for the court reporter.

THE WITNESS: Justin Wingo.

THE COURT: Could you spell your last name for the court reporter, please?

THE WITNESS: W-I-N-G-O.

THE COURT: Thank you. You may proceed.

MR. UNDERWOOD: Thank you, Your Honor.

- - - - -

JUSTIN WINGO,

Having been first duly sworn,

Was examined and testified as follows:

DIRECT EXAMINATION

BY MR. UNDERWOOD:

Q. Agent Wingo, if you would please advise the court very briefly of your current occupation and position.

A. I am a Special Agent with the South Carolina Law Enforcement Division, SLED. I investigate large scale

multi-county drug organizations, narcotics.
Q. How long have you been working in law enforcement?
A. Almost three years.
Q. And have you been in the same capacity all three of those years?
A. Yes sir, I have.
Q. What is your connection to this investigation concerning Justin Hunter?
A. I'm the case agent.
Q. And what does that mean to be the case agent?
A. I make all major decisions in this case as well as testify in court, conduct controlled buys. I also act as the affiant for all warrants, search warrants.
Q. And during the course of this investigation into the alleged drug activities of Justin Hunter did you seek any search warrants for his residence?
A. Yes sir, I did.
Q. And where was that residence located?
A. I believe its 9698 Patriot Boulevard apartment 618.
Q. And were you successful in obtaining a search warrant for that residence?
A. Yes sir, I was.
Q. And were you present at the time that search warrant was going to be executed, the search to be executed pursuant to that warrant?

A. Yes, sir.
Q. When did that take place?
A. February 8, 2016.
THE COURT: I'm sorry; please repeat that date.
THE WITNESS: February 8th, 2016.
THE COURT: Thank you.
Q. [Mr. Underwood] What other law enforcement officers were present with you when you first arrived, directly with you?
A. Lieutenant Max Dorsey of SLED and I believe Sergeant or Corporal Daniel Lundenberg [phonetic] of the Dorchester County Sheriff's Office.
Q. When you arrived at the location to be searched did you have an opportunity to interact with the defendant in this case, Justin Hunter?
A. Yes sir, I did. He was getting out of his car as we arrived at that location.
Q. If you would please describe what you were doing as you arrived and encountered him.
A. We pulled up as Mr. Hunter was exiting his vehicle and walking across the parking lot. We exited the vehicle in full body armor with police and SLED on it. Mr. Hunter saw us and turned. We placed Mr. Hunter in investigative detention.
Q. Why was he placed in investigative detention?

A. He was being hostile towards law enforcement.
Q. Can you describe what he was doing that made you describe him as hostile?
A. It appeared he was probably about to run or fight us. Just his body language in general; he more or less squared up on us as we approached him.
Q. And this was at the beginning of the search warrant?
A. Yes, sir.
Q. When you first approached him and you placed him in investigative detention what exactly did you do?
A. After placing him in investigative detention meaning I put handcuffs on him I then advised him of his Miranda rights from the card that I always use to advise subjects of their Miranda rights.
Q. Where was he located at the time that you advised him of his Miranda rights?
A. He was placed into the front seat of either Corporal or Sergeant Lundenberg's [phonetic] truck and we took him to a parking lot in the same apartment complex.
Q. And he was handcuffed at the time?
A. Yes sir, he was.
Q. Was he under arrest at that time?
A. No sir, he was in investigative detention.
Q. What did you tell him his status was?
A. That he was in investigative detention.

Q. Did you explain to him what that meant?
A. Yes, sir.
Q. And what did you tell him that meant?
A. That he was being placed into investigative detention and that we would like to talk to him. This was after he was advised of his Miranda rights. He was advised he was in investigative detention; I Mirandized him and then told him that we would like to talk to him.
Q. And you mentioned that you Mirandized him and read him his rights. Did you recite those rights from memory?
A. No sir, I did not. I have a card in my credentials case that I always have on me.
Q. Do you carry that all the time?
A. Yes sir, I do.
Q. Do you have it on you today?
A. Yes sir, I do.
MR. UNDERWOOD: Your Honor, if I may have an exhibit marked?
THE COURT: Court's exhibit.
[Whereupon, court's exhibit number 1 is marked by the court reporter]
MR. ROBERTS: Your Honor, my -- jurisdiction is this action being taken against me?
THE COURT: Sir, I've already heard your argument and I've already ---

MR. ROBERTS: --- it's my 6th Amendment Right to know the nature and cause of the action being taken ---

THE COURT: --- sir I've already told you what the nature of these proceedings are. This deals with Mr. Hunter so you don't have any standing to object.

MR. ROBERTS: Then why am I here?

THE COURT: Because we're going to have a hearing about the suppression of the search warrants after I hear this testimony and that does involve your rights to due process and otherwise which is in your best interest.

MR. ROBERTS: But my right was violated ---

THE COURT: --- I've already ruled, sir. I would suggest you assist Mr. Griffith if you feel your rights were abridged during the execution of the search warrant or the issuance of the search warrant you need to tell him that so that he can effectively cross-examine the witness.

MR. ROBERTS: --- I will ---

THE COURT: --- talk to your lawyer ---

MR. ROBERTS: --- I will not be cooperating ---

THE COURT: --- that's fine. That's your choice. I've told you what's in your best interest.

MR. UNDERWOOD: Thank you, Your Honor.

Q. [Mr. Underwood] Agent Wingo, I'm handing you what has been marked as court's exhibit number 1. What is

that?

[Whereupon, the witness is shown document]

A. That is the copy of the Miranda card that I carry in my credentials case.

Q. And if you would please recite for the court the rights that are listed on that card exactly as you read them to Mr. Hunter.

A. [Reading] This is your Miranda warning. You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to talk to a lawyer and have him present with you while you're being questioned.

If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning if you wish. You can decide at anytime to exercise these rights and not answer any questions or make any statements.

Do you understand each of these rights as I have explained to you? Having these rights in mind do you wish to talk to us now?

Q. And is that exactly how you read those rights to him at that time?

A. Yes, sir.

Q. Under the question in line number 6 do you understand each of these rights as I have explained to you did Mr. Hunter provide a response to that question?

A. He said yes.
Q. As to the question in line number 7 having these rights in mind do you wish to talk to us now, did he provide a response?
A. He voluntarily agreed to cooperate.
Q. And at that time did you advise him the nature of your investigation?
A. Yes, sir.
Q. What did you tell him was the nature of your investigation?
A. I told him that we were investigating a large scale heroin trafficking organization and that he was involved in it.
Q. Is that before he provided any statements to you?
A. Yes sir, it was.
Q. After that did you have occasion then to conduct a short interview with Mr. Hunter?
A. Yes sir, I did.
Q. Where did that interview take place?
A. In the front seat of Corporal or Sergeant Lundenberg's truck with the Dorchester County Sheriff's Office in that same parking lot that we had taken Mr. Hunter to within that same apartment complex.
Q. How long was this encounter with Mr. Hunter?
A. Fifteen minutes, twenty minutes tops.

Q. During that time did he ask to take any breaks?
A. Not that I can recall, no sir.
Q. Did he ask at any time to speak with an attorney?
A. Yes, sir. Towards the end he provided some stuff and then he told us that he wanted a lawyer. Once he told us that he wanted a lawyer we placed him under arrest and he was transported to Alvin S. Glenn.
Q. And why was he placed under arrest?
A. We had warrants sworn out against Mr. Hunter for involvement in this heroin trafficking organization.
Q. So there was already an arrest warrant in place at that time?
A. Yes, sir.
Q. That warrant wasn't served on him until after the encounter and his statements?
A. That's correct, sir.
Q. Do you recall in summary fashion what Mr. Hunter told you during that interview?
A. Mr. Hunter told me that in approximately the winter of 2015 that he has been involved in heroin trafficking in Dorchester and the surrounding counties.

He stated that he began through a connection that he made down here through a female named Sonya who introduced him to a black male known as R. He purchased a small quantity of heroin and more or less sold it back

to Sonya. He then began purchasing heroin from another individual that is in the area of Dorchester, Berkeley, Charleston county area by the name of B.K. and that he would go once a month for about approximately six months and purchase heroin from him.

He said then in the summer of 2015 he started going to Long Island, New York where he would meet -- he would go to the Gateway Inn. He would meet I'm assuming a male named Fresh at a hotel. He would purchase the heroin and then have a female transport the heroin back to South Carolina.

He also told me that prior to this interview that he was in Long Island for two weeks. And then he provided a short list of customers.

Q. Was that information reduced to writing for him to sign?

A. No sir, it was not.

Q. Why not? Did he advise that he wanted to stop cooperating at some point?

A. Yes sir, he did.

Q. Is that the reason why it was not produced to a written statement?

A. Yes, sir. He started crying and then told us that he wanted a lawyer. And once that happened we respected his wishes and placed him under arrest and took him to

jail where he was able to obtain an attorney.
Q. Now you testified here from memory in summary fashion as to what he stated. Closer to that time did you create a memorandum of that interview to more fully summarize that information?
A. Yes sir, I did.
Q. Was that interview ever shown to Mr. Hunter, that memorandum of interview?
A. No sir, not by me. Maybe by Ms. Johns but not by me.
Q. So that memorandum of interview was just from your recollection of what he said at that time?
A. Yes, sir.
Q. Now you mentioned that he became emotional at the end of the interview.
A. Yes, sir.
Q. At the beginning of the interview what was his emotional state?
A. Calm, somewhat a little standoffish but calm.
Q. Based on your observations did you see or hear anything that would indicate to you that he was under the influence of alcohol or drugs at that time?
A. No sir, I did not.
Q. Was there anything you observed that would give you concern that he was mentally or emotionally unable to

understand what was taking place?
A. No sir, I did not.
Q. Agent Wingo, to the best of your ability is it your belief that Mr. Hunter gave that information to you knowingly and voluntarily?
A. Yes sir, I do.
Q. You placed Mr. Hunter into investigative detention and you testified earlier you explained to him what that meant, is that correct?
A. Yes, sir.
Q. Did you coerce him in any way to give you information?
A. No sir, I did not.
Q. Did you threaten him that he would be arrested if he did not give you information?
A. No sir, I did not.
Q. Did any of the other law enforcement officers who were there do that?
A. No, sir.
Q. Did anyone threaten or coerce him in any way to give that information?
A. No, sir.
Q. Did anyone offer him any promises of reward to give that information?
A. No, sir.

Q. Were any promises made to him whatsoever?
A. No, sir.
Q. Were any threats made to him whatsoever?
A. No, sir.
Q. And again from your observations did he freely and voluntarily give that information?
A. Yes, sir.
Q. And did he seem to understand exactly what was going on?
A. Yes, sir.
Q. And all this was after being advised of his Miranda rights?
A. Yes, sir.
Q. Thank you. Please answer any questions Ms. Johns has.
THE COURT: Ms. Johns?
MS. JOHNS: Thank you, Your Honor. May it please the court?
THE COURT: Yes, ma'am.

CROSS-EXAMINATION

BY MS. JOHNS:

Q. Agent Wingo, when you filed this memorandum of interview recorded interview did you state in this memorandum that Mr. Hunter had squared off with law enforcement?

A. No, ma'am. I stated that he was placed into investigative detention.

Q. In this report that you are referring to regarding the statement Mr. Hunter gave you is there a supplemental incident report where you stated that Mr. Hunter squared off with law enforcement on approach?

A. No, ma'am.

Q. And you also had and maybe you did mention this at the time that you and another agent or another law enforcement officer approached Mr. Hunter did you search Mr. Hunter?

A. Yes ma'am, we did. We provided a pat down for weapons.

Q. Okay. Did you find any weapons?

A. No, ma'am.

Q. Did you remove the personal belongings from Mr. Hunter's person prior to putting him into the police officer's car or truck?

A. His cell phone was taken and put -- it wasn't

removed; it was put on the console beside me.
Q. Okay. And was it just one cell phone?
A. From what I recall, yes ma'am.
Q. And can you describe that telephone?
A. I don't remember.
Q. Let me ask you in this fashion. Was it a smart phone or was it a flip phone?
A. I don't remember. I don't know.
Q. Did you take these personal items into custody and provide that to the Statewide Grand Jury evidence custodian?
A. I believe so, yes ma'am.
Q. Okay. Now with regard to his statement you stated that you had told him that you just wanted to talk to him, is that correct?
A. Yes, ma'am.
Q. And you did not tell him that there was an outstanding warrant, isn't that right?
A. At that time, no ma'am. I stated hey man, let's talk for a second. I just...
Q. And at that time you stated that you had placed handcuffs on him, is that right?
A. He was placed in investigative detention, yes ma'am.
Q. Okay. And he was not free to leave according to your standards of placing him in handcuffs and putting

him in the vehicle, is that right?
A. Yes, ma'am.
Q. He did not sign a waiver waiving any of his rights under Miranda v Arizona, correct?
A. I assume you're talking about a Miranda waiver?
Q. Yes.
A. No ma'am, he did not.
Q. Did you have those forms available to you?
A. Not at that time, no ma'am.
Q. Did you have a recording device available to you at that time?
A. No, ma'am.
Q. Did you have a cell phone at the time?
A. Yes, ma'am. I had my cell phone.
Q. Did you inform Mr. Hunter that you had a search warrant for apartment 608?
A. 608 ma'am or 618?
Q. 618; excuse me.
A. Yes ma'am, I did.
Q. Did you ask him if he lived there?
A. Yes, ma'am. That was his residence. I don't recall -- I don't know if I asked him that or not ma'am.
Q. Did you mention the arrest of any of the other occupants that may have resided at 618?
A. No, ma'am. I did not.

Q. You stated on direct examination that Mr. Hunter became tearful?
A. He began crying and wanting a lawyer.
Q. Do you know why he started crying?
A. No, ma'am.
Q. Do you know what prompted him crying?
A. No, ma'am.
Q. Do you know what you said directly prior to his crying?
A. I don't ma'am.
Q. Okay. Would that have involved any kind of promise with regards to any cooperation?
A. No, ma'am.
Q. Would that involve any threats to any of the members of his family?
A. No, ma'am.

MS. JOHNS: Your Honor, nothing further. Thank you.

THE COURT: You're welcome. Any redirect?

MR. UNDERWOOD: Very briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. UNDERWOOD:

Q. Agent Wingo, at any time did you deny Mr. Hunter the right to have an attorney before any questioning?

A. No sir, I did not.

Q. At the time that he asked for an attorney did that end the interview?

A. Yes sir, it did.

Q. Were all of his rights respected?

A. Yes sir, they were.

Q. And prior to him giving information was he advised of all those rights?

A. Yes sir, he was.

Q. And did he agree to waive those rights knowingly and voluntarily?

A. Yes sir, he did.

MR. UNDERWOOD: Thank you. Nothing further, Your Honor.

THE COURT: Sir, you may step down.

[Whereupon, the witness is excused and exits the witness stand]

THE COURT: Anything further from the State?

MR. UNDERWOOD: No, Your Honor.

THE COURT: Any witnesses, Ms. Johns?

MS. JOHNS: No, Your Honor.

THE COURT: Any argument on the motion? I think you argue first Ms. Johns. He has the burden of proof. He gets to -- to save steps he can just respond to the argument.

ARGUMENT OF COUNSEL

BY MS. JOHNS:

Your Honor, I would move that these statements are not voluntary in nature and that the law enforcement had the opportunity to place Mr. Hunter under arrest.

THE COURT: Did they have to?

MS. JOHNS: They did not. They had an opportunity to do so and they did not do that. Mr. Hunter was unable to free himself from the investigative purposes of the interview. Mr. Hunter exercised his right to an attorney. The information that was obtained was not voluntary in nature in that Mr. Hunter was not free to leave and that in and of itself is coercive in nature. And we would move that these statements that were allegedly made by Mr. Hunter were not voluntarily made.

THE COURT: Mr. Underwood?

MR. UNDERWOOD: Very briefly, Your Honor.

ARGUMENT OF COUNSEL

BY MR. UNDERWOOD:

The fact that an individual is in any type of custody prior to giving a statement does not necessarily mean coercion. What that means is that individual would then need to be advised of their rights pursuant to Miranda.

In this case Mr. Hunter was advised of those Miranda rights. He was not under arrest at that time. And more importantly, Your Honor, he did not know that he was about to be placed under arrest. Again, Your Honor, it's not whether or not law enforcement could arrest him, it's what did he understand the situation to be prior to giving these statements. He was not advised that he was about to be placed under arrest. He was advised that he was in investigative detention for safety purposes.

He was advised of his Miranda rights and he demonstrated that he understood those rights by at some point ending the interview and asking to speak with his attorney and that request was respected by law enforcement. He was advised of those rights. He voluntarily waived those rights.

The testimony of Agent Wingo would indicate that he understood what those rights meant at the time he was waiving them and agreed to the interview. Therefore,

Your Honor, all statements made by Mr. Hunter at that time were made knowingly and voluntarily. And we would ask that they be admissible at trial.

THE COURT: The State has met their burden of proof by a preponderance of the evidence that the statements were made freely, voluntarily, knowingly and intelligently. It is not dispositive -- well I guess to some extent it is important that he was in a custodial interrogation situation but normally my experience is that when they are in detention they are not Mirandized. So I commend the police for Mirandizing him as soon as they put him in handcuffs or even before when they anticipated he was going to make -- that they were going to elicit inculpatory statements from him.

So I can see no deficits in their behavior. He was combative. I find the officer's testimony credible in that regard. And they had warrants and they had no duty to advise him that they had warrants really. Reasonable deception is used by the police all the time and there is nothing that prevents them from doing that.

But what is dispositive is once he was put in custody, once his freedom was restrained, once he could not leave that they advised him of his Miranda rights. And clearly he was not, and again I find the officer's testimony credible he was not impaired in any way. He was not under the influence. He was not coerced. He wasn't denied any basic rights such as food, going to the restroom, comfort; other things. And he clearly

understood his rights because he invoked them. And once they were invoked that invocation of his rights was respected and any continued questioning of him was terminated. So the motion to suppress the statement is denied and the statement is admissible. And it doesn't have to be reduced to writing.

I think it is impractical to think that every time there is a custodial situation and the officer's are going to be able to have a Miranda waiver form on the side of the road or in an apartment complex to have it initialed and filled out or to have audio and video that is more practical when you're taking someone to a police station and you sit them down and you Mirandize them and they initial the sheet and then you sit down for the purpose of taking a written statement or a recorded statement or either a video or audio statement.

And depending on the type of the offense makes those mechanisms more amenable and usable. But in most instances like this it is unreasonable to think that they would have a written piece of paper in an apartment complex parking lot for him to initial. And I find the officer's testimony credible that he did in fact Mirandize him and that he understood the rights and waived them and voluntarily entered into making a statement. After which I would imagine he understood the

gravity of his situation and began to cry and then indicated he wanted an attorney, which was respected and the questioning stopped.

THE COURT: Okay, the next is the motion to suppress, is that correct?

MR. UNDERWOOD: I believe so, Your Honor.

THE COURT: How long do you think -- last time it took what 30 minutes for his testimony, 20 minutes, 15 minutes; I can't remember.

MR. UNDERWOOD: I honestly don't recall exactly how long it took.

THE COURT: I think it was about 15 minutes. We'll take a very brief restroom break. Mr. Roberts, do you need to go to the restroom?

MR. ROBERTS: No, but I object to being here. I don't consent. They don't have no jurisdiction over me. That's not me on the charging instruments ---

THE COURT: --- okay sir. I'll note that for the record and overrule it. I've advised you that we do in fact have jurisdiction. There are valid indictments. And this motion to suppress is in your best interest and we're going to proceed with it. We'll be out about five minutes after which we will resume testimony.

MR. UNDERWOOD: Your Honor, could we have about 30 minutes so I could have a chance to prepare a little bit?

THE COURT: I've got to be back in Charleston to close and charge a jury at 1:30, which means I've got to leave here at 12:15 at the latest ---

MR. UNDERWOOD: --- understood, Your Honor ---

MR. ROBERTS: --- Your Honor ---

THE COURT: --- with all that traffic there were three accidents on the interstate this morning. Traffic was backed up to Jedburg when I was coming here. There were five or six fire trucks. There were two very bad accidents going back towards Charleston and there is a very bad accident on 52 where a car jackknifed coming back onto the interstate. So I'm hoping they cleared all of that up but I have to give my court reporter time to get something to eat and be refreshed and set her equipment up and close and charge in Charleston.

MR. UNDERWOOD: Yes, Your Honor. I may be on the fly but we'll get it done.

THE COURT: And I had to accommodate and I appreciate Doctor Maddox coming here because she is going out of the country tomorrow and I needed, and she'll be gone for several days and I needed to, which will be over the span of this trial and I needed to accommodate her schedule.

MR. GRIFFITH: If it please the court? May she be excused?

THE COURT: Absolutely. Was there anything else you wanted to share with us based on your observations?

DOCTOR MADDOX: No, ma'am. I don't know if Mr.

Roberts would maybe like a pad or pencil so that he could take notes. I don't know if that is something if he gets a new lawyer he would want that.

THE COURT: And Mr. Roberts are you certain that you do not want Doctor Maddox to evaluate you before she goes back to her home, which is about three hours away from her.

MR. ROBERTS: Your Honor, my name is W and I don't consent to ---

THE COURT: --- sir I just need a yes or no answer ---

MR. ROBERTS: --- to cooperating ---

THE COURT: --- do you want Doctor Roberts to evaluate -- I mean ---

MR. ROBERTS: --- I don't consent ---

THE COURT: --- Doctor Maddox to evaluate you while she is here?

MR. ROBERTS: I don't consent to this prosecution, Your Honor and ---

THE COURT: --- sir, I asked a yes or no question. Do you want Doctor Maddox to evaluate you while she is here?

MR. ROBERTS: I don't know what's going on, Your Honor.

THE COURT: All right. Then the answer for the

record is no. Thank you, Doctor Maddox. Have a good day, be safe, and have a good trip.

DOCTOR MADDOX: Thank you.

[Whereupon, court is in recess from 11:05 a.m. until 11:10 a.m.]

THE COURT: Are we ready to proceed? Is the State ready?

MR. UNDERWOOD: Yes, Your Honor. We'd just ask the court for a little bit of leave because like I said we're kind of ---

THE COURT: --- well, I've read her motion and it pretty much mirrors Ms. Murray's that we've heard already. That was a cursory review but that's basically what I read. Is that accurate Ms. Johns?

MS. JOHNS: I haven't read Ms. Murray's ---

THE COURT: --- she didn't file anything in writing but you were present for the hearing.

MS. JOHNS: I was, Your Honor. Mine is a little more detailed and what I -- if I may?

THE COURT: Uh Huh.

MS. JOHNS: The way that I wrote this memorandum, Your Honor, I did it backwards. I did the search of the apartment first versus the seizure of the defendant. So we've just had Jackson v Denno ---

THE COURT: --- I think that covered any

suppression of the -- really there is no argument that he wasn't seized appropriately. There was a warrant that was issued and the validity of his arrest really can't be questioned. And I think all of that part of your memo was covered by the hearing we just had.

MS. JOHNS: Well, Your Honor, I'd like to make a record of it if you will just allow me a little bit of leeway. I won't be long with the issue. I have filed a memorandum and I've provided a copy of it.

THE COURT: Yes. Your memo speaks for itself and I'll read it.

MS. JOHNS: Very well.

THE COURT: If I need additional argument I'll ask. But I think any arguments that were encompassed in this writing were encompassed by this hearing. And I do not perceive that any constitutional rights of his were abridged in him being taken into custody.

Now I've already said that if I find that the other part of your issue which deals with the suppression of the search warrant, well that has a domino effect but I'll have to hear the testimony and see. But just based on the bald face of what you're saying about him being taken into custody and arrested I've already ruled on that. I think them taking him into custody for a myriad of reasons based on the officer's testimony was more than

valid. They could have taken him into custody because he was confrontational, he squared up, he was combative for their own safety. They could have taken him into custody because they knew they had a warrant. They had no duty to disclose that to him. Reasonable deception is appropriate and it is used all the time.

They did not have to disclose to him that they had the other people in the apartment under arrest. They didn't have to do any of that. They could have simply walked up to him and said we have a warrant and we're arresting you and Mirandized him. But they didn't have to. Frankly, in Charleston they wouldn't have even Mirandized him. They just would have put him in the car, turned on the camera, and let him talk himself. That's what they generally do.

So I commend them for having Mirandized him. And I'm not criticizing Charleston. I'm just saying that every police jurisdiction does thing differently. And they take the position they don't have to. When he's in the back of that car and he starts talking and the camera is on that's on him.

And to some extent they have some validity to that argument. And I have shared with them I don't think it's prudent to do it that way. But I commend them for having Mirandized him. Now the other part of it that may deal

with the sufficiency of any warrants, that's another thing and I'll hear that in just a moment and then I'll make a contemporaneous ruling regarding that. So it sort of ties in together to some extent based on what I've read but that portion of it deals with what I've already addressed we don't need to rehash.

But the part that deals with sufficiency of the warrant your assertions that there were only conclusory statements and other things in support of the warrant we'll hear that testimony and go from there, all right. And you have a writing that memorializes your arguments.

MS. JOHNS: Very well. Thank you.

THE COURT: Which I assume you gave the Clerk a copy for filing?

MS. JOHNS: Yes, I did.

THE COURT: All right. Yes, sir.

MR. UNDERWOOD: Your Honor, before I call Agent Wingo just for clarification I know that Mr. Griffith was joining in on the motion -- I guess for the separate motion as well. Just to be clear before I begin testimony are we dealing with the search warrant only at Patriot Boulevard or at both Patriot's Boulevard and Summer Creek Drive?

MR. GRIFFITH: Your Honor, we would ask the court consider Summer Creek Drive as well as the ---

THE COURT: --- Patriot Boulevard?

MR. GRIFFITH: Yes, ma'am.

THE COURT: Okay.

MR. UNDERWOOD: Thank you, Your Honor.

THE COURT: You're welcome.

MR. UNDERWOOD: Your Honor, at this time the State calls Special Agent Justin Wingo.

THE COURT: Sir, if you will take the stand.

[Whereupon, Agent Wingo comes forward]

THE COURT: I remind you you're still under oath and just state your name for the record.

THE WITNESS: I'm Special Agent Justin Wingo with SLED.

THE COURT: You may proceed.

MR. UNDERWOOD: Thank you, Your Honor. And Your Honor for the sake of brevity would it be appropriate to ask the court to consider Agent Wingo's prior testimony and ---

THE COURT: --- yes. We can incorporate that into this portion of the record. I don't think we need to rehash what he does for a living and all that.

MR. UNDERWOOD: As well as the subsequent information that was testified at that time?

THE COURT: You mean about the investigation?

MR. UNDERWOOD: About the investigation and what he did ---

THE COURT: --- yes we were all here ---

MR. UNDERWOOD: --- all warrants were presented at the same time.

THE COURT: Yes, you can pick up where you left

off.

MR. UNDERWOOD: Thank you, Your Honor.

- - - - -

JUSTIN WINGO,

Having been previously duly sworn,

Was examined and testified as follows:

DIRECT EXAMINATION

BY MR. UNDERWOOD:

Q. Agent Wingo, earlier you had testified regarding a suppression motion concerning a search warrant that was obtained to search an apartment on Bear Island Road in Summerville.

We're now going to move on to two other search warrants that were obtained at that same time that you briefly mentioned in that earlier testimony ---

THE COURT: --- let me interrupt you one second. You're talking about the sufficiency of the arrest warrants as well Ms. Johns or just the search warrants?

MS. JOHNS: No Your Honor, just the search warrants.

THE COURT: Okay. I just wanted to make sure. All right, continue.

Q. [Mr. Underwood] Agent Wingo, did you obtain all three search warrants at the same time?

A. No sir, I did not.

Q. Did you obtain the search warrant for Summer Creek Drive at the same time as the earlier search warrant?
A. I would have to look at the documents.
THE COURT: Why don't you just ask him what dates did he obtain the search warrants.
MR. UNDERWOOD: Your Honor, if I could just have the search warrants marked as court's exhibits?
THE COURT: Certainly.
MR. UNDERWOOD: I think that might make things easier.
THE COURT: And then he can refer to them.
[Whereupon, court's exhibit numbers 2 and 3 are marked by the court reporter]
Q. [Mr. Underwood] Agent Wingo, I'm now handing you what have been marked as court's exhibits 2 and 3. Could you identify those for the record please?
[Whereupon, the witness is shown documents]
A. Yes, sir. Court's exhibit 2 is the search warrant for 9698 Patriot Boulevard apartment 618, Summerville, South Carolina on February 8th, 2016.
And Court's exhibit 3 is search warrant for 116 Summer Creek Drive, Summerville, South Carolina signed on February 5, 2016.
Q. Agent Wingo, Court's exhibit number 3 search warrant for 116 Summer Creek Drive.

A. Yes, sir.
Q. Did you obtain that at the same time you obtained a search warrant for Bear Island Road on February 5th, 2016?
A. Yes sir, I did.
Q. And did you provide your testimony as well as your affidavit for probable cause to Judge Clifton Newman at the same time for both search warrants?
A. Yes sir, I did.
Q. So you would be able to incorporate all that information together?
A. Yes sir, I would.
Q. And prior to the testimony given for those search warrants had you obtained a GPS tracking device order from Judge Clifton Newman?
A. Yes sir, I had.
Q. And was that a device that was placed on Justin Hunter's vehicle?
A. Yes sir, it was.
Q. And was that device utilized for further surveillance of Mr. Hunter?
A. Yes sir, it was.
Q. Was that information provided to Judge Newman at the time you obtained these search warrants?
A. Yes sir, it was.

Q. Agent Wingo, referring to Court's exhibit number 3 the probable cause portion of your affidavit there are number of paragraphs that are labeled with letters, lower case letters.

Following that you began another paragraph without a number that I believe would have been number 1? And the beginning of that paragraph says within the past 72 hours SLED agents with assistance of a confidential informant. Do you see that?

[Whereupon, the witness reviews document]

A. Yes sir, I do.

Q. What is the purpose of that paragraph?

A. To establish probable cause of why I'm obtaining the search warrant.

Q. And what about that paragraph establishes probably cause for a search of 116 Summer Creek?

A. That within the past 72 hours SLED agents with the assistance of a confidential informant purchased heroin from that address 116 Summer Creek Drive.

Q. And in that paragraph did you identify who the individual was that heroin was purchased from?

A. Yes sir, Emory Roberts or Q.

Q. And that was within 72 hours of obtaining this search warrant?

A. Yes sir, it was.

Q. And that occurred at the place to be searched?
A. Yes sir, it did.
Q. What about paragraph 2? What did you advise Judge Newman under paragraph 2?
A. That on January 7, 2016 the CI under the direction of -- SLED agents arranged for a black male known to him or her as Q who was later identified by law enforcement to be Emory Roberts to sell a quantity of heroin.

The controlled purchase occurred at the Roberts residence located at Lot 116 Summer Creek Drive, Summerville, SC 29483 located inside the Summer Creek mobile home park, that the CI was searched with negative results. We gave him the money to make the purchase. That we accompanied him to the residence, watched him enter the residence.

He stayed inside the residence for a short period of time and returned with a substance believed to be heroin. He was then searched again with negative results and then we obtained a search warrant for the residence on January 7th but we did not serve it.

Q. And who was that search warrant obtained from?
A. Judge Newman.
Q. So Judge Newman had already heard information for a search warrant after the January 7, 2016 incident, is that correct?

A. Yes, sir.
Q. And was that information provided by you to him under oath?
A. Yes sir, it was.
Q. But for investigative purposes you chose not to execute that search warrant?
A. Yes, sir.
Q. At that time for the earlier search warrant that was not served did you provide any additional information under oath to Judge Newman?
A. Only what was in the affidavit. The judge was already familiar with the case.
Q. And why was the judge already familiar with the case?
A. This was an ongoing investigation. The judge had signed tracker orders and other documents of that nature.
Q. And was that information all presented to him under oath?
A. Yes sir, it was.
Q. And is that because at that time Judge Clifton Newman was the administrative judge presiding over the State Grand Jury?
A. Yes sir, it was.
Q. Had arrest warrants at that time been obtained from Judge Newman?

A. On January 7th, sir?
Q. Prior -- I'm sorry, come back to February 5th. Were arrest warrants obtained from Judge Newman?
A. I don't recall what date the arrest warrants were obtained.
Q. Well suffice to say that Judge Newman had received sworn information from you on numerous occasions about this case?
A. Yes sir, he has.
Q. And during those various interactions did you explain to him while under oath how the individuals in this investigation and all of their conduct was connected with each other?
A. Yes sir, I did.
Q. And is it accurate to say that in this affidavit on Court's exhibit number 3 that you do explain to Judge Newman that there were two incidents, at least two incidents, you're under oath that drugs were purchased from defendant Emory Roberts at this location to be searched?
A. Yes sir, I did.
Q. And that one of those took place within 72 hours of obtaining the search warrant?
A. Yes sir, I did.
Q. Moving on now to Court's exhibit number 2 the search

of 9698 Patriot's Boulevard apartment 618. Agent Wingo, did you obtain that search warrant from the same Judge Clifton Newman?

A. Yes sir, I did.

Q. And on both exhibits number 2 and number 3 were all portions of the search warrant properly executed and signed by yourself as the affiant and the judge?

A. Yes sir, they were.

Q. So chronologically speaking exhibit number 3 was obtained prior to exhibit number 2, which was October 8th?

A. Yes, sir.

Q. So Judge Newman at the time of examining the search warrant for Patriot's Boulevard would have had all the information that was presented for the Summer Creek search warrant as well as the Bear Island Road search warrant, is that correct?

A. Yes, sir.

Q. And all that was presented to him under oath?

A. Yes, sir.

Q. So all that information would have been incorporated together?

A. Yes, sir.

Q. In exhibit number 2 if you would and it is reduced to writing in your affidavit I'm going to ask you to be

very brief but could you summarize the information you presented to Judge Newman while under oath of obtaining this search warrant?

A. So everything that was in this affidavit over the past four months SLED agents along with investigators of the Dorchester County Sheriff's Office that we had been conducting a criminal investigation into a heroin trafficking organization operating in Berkeley and Dorchester ---

THE COURT REPORTER: --- slow down just a little bit.

THE WITNESS: I'm sorry.

A. A heroin trafficking organization operating in Berkeley and Dorchester counties. We utilized a cooperating informant to conduct numerous drug purchases from several members of this conspiracy primarily from an individual named Justin Gordon Hunter also known as Mo.

I then listed the buys as well as an interview that we conducted with the CI. And I explain in this affidavit that we placed a court authorized mobile tracking device onto a grey in color BMW and I provided the VIN for it registered to Justin Gordon Hunter.

I stated that we had observed Hunter operating this vehicle on numerous occasions. I stated in the affidavit it was stated that the tracker was placed at the Abberly

Crossing Apartment complex located at 9698 Patriot's Boulevard which is Hunter's residence. And on September 17th Detective Daniel Lundberg and Nas Yanko [phonetic] with the Dorchester County Sheriff's office conducted a trash pull outside of apartment 618.

After reviewing the items they discovered several Western Union receipts with Justin Gordon Hunter's name on them showing him to be wiring money to an individual in New York.

We also discovered South Carolina DMV paperwork or detectives also discovered South Carolina DMV paperwork with Hunter's name on it. I stated that the investigation revealed that Hunter purchased an airplane ticket to New York on Tuesday, January 19, 2016 for a flight that departed Charleston at 10:05.

And then I stated that Mr. Hunter's criminal record or criminal convictions as well as the after placing the MTV, mobile tracking device on Hunter's vehicle law enforcement has observed that on numerous occasions the vehicle has stayed overnight at 9698 Patriot's Boulevard. And then I list the dates, four dates that he had stayed at that residence.

Q. What explanation did you provide to Judge Newman while you were under oath explaining the significance of connections to New York with Western Union receipts that

were found as well as the travel? What is the significance of that?
A. Just to show -- it shows that he had a connection with New York as well as that this affiant is aware of members in -- I believe it is point ten of the affidavit it states that this affiant is aware of members of heroin trafficking organizations operating in South Carolina over the past five years who have travelled to the northeastern part of the United States to purchase bulk quantities of heroin.

This heroin is then transported back to South Carolina for sale to users and retail sellers. This affiant is aware that the northeast of the United States is an area known to be a source for heroin.

We had at that time another case that was operating within SLED where they were getting their heroin from New York. Mr. Hunter was making trips to New York and then it shows that he is from New York as well.
Q. And was that information provided to Judge Newman to show that that conduct was consistent with importing heroin?
A. It was in the affidavit.
Q. Was that the purpose of including that information to Judge Newman?
A. Yes, sir.

Q. So is it fair to say that your affidavit includes drug transactions involving Justin Hunter over a several months period?
A. Yes, sir.
Q. So this would be a long term continuing operation?
A. Yes, sir. The first one that was listed starts on September 30th of 2015 and the last one on that within the affidavit itself shows that on January 14th, 2016 was the last time we had purchased heroin from Mr. Hunter.
Q. And that occasion on January 14, 2016 again did you provide information under oath to Judge Newman that Mr. Hunter was observed going directly from the apartment that was to be searched to the transaction and back?
A. Yes, sir.
Q. And that was roughly two weeks prior to the search warrant being obtained?
A. Approximately, yes sir.
Q. But there had been other transactions for a period of several months?
A. Yes, sir.
Q. And again all the testimony from the prior search warrants as well as the affidavit to receive the tracking device this was all with the same judge, Clifton Newman?
A. Yes, sir.
Q. And he was aware of all that sworn testimony?

A. Yes, sir.
Q. At the time he issued each of these search warrants?
A. Yes, sir.
Q. Thank you. Please answer any questions Ms. Johns has.
THE COURT: Who wants -- you want to go in order of Mr. Griffith since we dealt with his search warrant first or do you want her to go first?
MR. GRIFFITH: I would rather she go first.
THE COURT: Yes, ma'am.
MR. GRIFFITH: He mentioned Mr. Hunter more than they did Mr. Roberts.
THE COURT: That's fine. He just dealt with the first search warrant which was Summer Creek Drive and then Patriot's Boulevard. But either way y'all are comfortable with I'm fine with. Ms. Johns you may proceed.
MS. JOHNS: Thank you, Your Honor. May it please the court?
THE COURT: Yes, ma'am.

CROSS-EXAMINATION

BY MS. JOHNS:

Q. Agent Wingo, did you have any information that you had provided to Judge Newman regarding a buy that was made at 9698 apartment 618 Patriot's Boulevard?

A. A buy that occurred at that residence?

Q. Yes, sir.

A. No, ma'am. On January 14th we saw him leave that residence. We were able to observe him leave the residence, meet and then go back to the residence. But the buy did not occur there.

Q. Yes, sir. So the answer to my question would be no, you did not provide any information about anybody buying anything out of that apartment within the last 72 hours, correct?

A. That is correct.

Q. Okay. Now at any time did you provide any information to Judge Newman that a confidential informant had ever been in the residence at 9698 Patriot's Boulevard?

A. No ma'am, I did not.

Q. Okay. Did you ever have any witness that provided any information to you about ever being in apartment number 618 of 9698 Patriot's Boulevard?

A. No ma'am, I did not.

Q. And with regards to -- you stated in your affidavit that on September the 17th 2015 that there was a Dorchester County deputy that found trash outside of this apartment is that correct?
A. Yes, ma'am.
Q. And that was some three maybe four months prior to the search warrant application, is that right?
A. Yes, ma'am.
Q. Okay. And out of that trash that was abandoned you were provided with documents that had Mr. Justin Hunter's name on it, correct?
A. Yes, ma'am. Several Western Union receipts as well as South Carolina DMV paperwork with Hunter's name on it.
Q. Did you inform Mr. Newman that Mr. Hunter had a child that lived in New York?
A. I was unaware of it when I asked for the affidavit, ma'am.
Q. Okay. Did you inform Judge Newman that Mr. Hunter was from New York in your affidavit?
A. It shows that he has all criminal convictions related to narcotics from the State of New York.
Q. Okay. So you provided information to Judge Newman that Mr. Hunter had lived in New York at one time?
A. As well as that he had purchased a plane ticket from Charleston airport on Tuesday, January 19th to New York.

Q. Okay. And you don't know the real reason why that plane ticket was purchased, isn't that right?
A. Yes ma'am, that's correct; just that he had purchased it.
Q. Okay. And it would make sense to you would it not that if he had a daughter living in New York that he would maybe go visit her, is that correct?
A. Yes, ma'am.
Q. Okay. And you also stated in there that it was your experience, your work experience that you perhaps had another case where heroin was being transported from New York down into the state of South Carolina, is that right?
A. I was aware that over the past five years individuals have travelled to the northeastern part of the United States. I don't specifically say New York but the northeastern part of the United States, yes ma'am.
Q. You're right, it's didn't say New York. But this is based on your own work experience based on another case.
A. Yes ma'am, that's correct.
Q. Okay. And in that other case Mr. Hunter was not involved in that, isn't that right?
A. No, ma'am.
Q. Do you have specific knowledge based on your work experience or any of your other training that would lead

you to believe that heroin is distributed or sold in other states of the United States?
A. Yes, ma'am.
Q. And would that encompass all other 49 states?
A. Yes, ma'am.
Q. So the fact that Mr. Hunter went to New York to specifically pick up heroin is not a fact known to you, is that right?
A. Yes, ma'am.
Q. Now, with regard to...
THE COURT: We need to interrupt you just one second. Mr. Roberts needs to go to the restroom.
[Whereupon, Mr. Roberts exits the courtroom]
THE COURT: Mr. Griffith, do we need your client present to proceed with Ms. Johns' challenge of this warrant?
MR. GRIFFITH: Your Honor ---
THE COURT: --- of the warrant at the residence where your client was not?
MR. GRIFFITH: My client, Mr. Roberts, may at some point want to be aware of some of this. I asked him a couple of days ---
THE COURT: --- we'll wait. Hopefully it won't take him long.
[Off the record momentarily]

[Whereupon, the defendant returns to courtroom]

THE COURT: Ms. Johns, you may resume your questions.

MS. JOHNS: Thank you, Your Honor.

THE COURT: You're welcome.

Q. [Ms. Johns] Mr. Wingo, in referring to your affidavit there has been a date -- not really a date stamp but a Bates stamp that indicates page numbers on your affidavit and going from page number 805 through a portion of 809.

A. Ma'am, I don't have that one on mine.

Q. You don't have numbers?

A. No ma'am, I do not.

Q. Let me rephrase ---

THE COURT: --- those Bates stamps were probably provided by Mr. Underwood for discovery purposes but it wouldn't have been a part of our file.

MS. JOHNS: Okay, Your Honor.

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

THE COURT: I don't mean our file; I mean the State Grand Jury's file.

Q. [Ms. Johns] Let me rephrase. In the body of your affidavit after you I guess started by saying in support of the attached application for search warrants affiant being duly sworn deposes and says. The next several

paragraphs which would include four and a half pages from little number I believe A through O you provided some general conclusory statements regarding your knowledge of how drug traffickers and drug dealers behave, is that correct?

A. Yes, ma'am.

Q. And some of that conclusory statements would include certain items that they might store in a storage area, a home, a car or anything regarding that is that right?

A. Yes, ma'am.

Q. Okay. And to your knowledge based on items A through O do you have any specific facts that have been given to you by an informant by any other witness that Mr. Hunter had any drugs or any other illicit evidence stored at 618 9698 Patriot's Boulevard?

A. Did I have any information from a specific confidential informant that anything listed in this affidavit was at that residence?

Q. Correct.

A. Not from a confidential informant, no ma'am.

Q. How about from a witness other than yourself?

A. No, ma'am.

Q. And with regard to the rest of the affidavit which begins with your four month investigation regarding controlled buys all of those controlled buys had a

resident that was not 9698 Patriot's Boulevard, correct?
A. Yes ma'am, that's correct.
Q. And just for sake of brevity you did file a return for items that were seized from this particular apartment, is that correct?
A. Yes ma'am, I did. I left -- yes, ma'am.
Q. And in that list of items that you retrieved from this apartment is there anything there that would indicate any measurement of heroin?
A. Two plastic containers of brown residue but other than that no ma'am.
Q. And was that residue collected and analyzed?
A. I don't know. I'd have to refer to the search warrant report, ma'am.
Q. That's all I have.
MS. JOHNS: Thank you, Your Honor.
THE COURT: Mr. Griffith? You may proceed when you're ready.
MR. GRIFFITH: If it please the court, Your Honor?
THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. GRIFFITH:

Q. Mr. Wingo -- Agent Wingo, excuse me, as to the warrants issued for 116 Summer Creek, the residence or wherever you had conducted some of your investigation were you provided -- did you provide any info to the judge at the issuance of those warrants for the purchase of drugs at that residence?

A. It's listed in the application that there were two drug transactions that occurred at that residence.

Q. Was there any prior knowledge before the issuance of these warrants that Mr. Roberts was involved with any out-of-state purchases of heroin either from New York or some other state?

A. Not -- I'm sorry; repeat. I need some clarification on that. That Mr. Roberts was going out of state to purchase heroin?

Q. Or that he was involved in any purchase of heroin?

A. Like a conspiracy?

Q. Involvement and/or ---

A. --- yes, sir. There is knowledge that he was involved within the conspiracy.

Q. And what kind of knowledge was that?

A. That Mr. Roberts was operating with Mr. Hunter in a heroin trafficking conspiracy to sell heroin in

Dorchester and other counties.
Q. And was that provided by a confidential informant or a witness or who?
A. It was provided by buys conducted with a confidential informant as well as testimony -- I apologize, not testimony, interviews.
Q. And they informed you that Mr. Roberts was involved with out-of-state purchase?
A. No sir, they didn't inform me that he was involved in out-of-state.
Q. Did you have any evidence at all that prior to the issuance of that warrant that drugs were being stored at 116 Summer Creek?
A. Yes sir, I did. There was a buy that occurred on January 7th of 2016. This search warrant was issued on February 5th.
Q. And you said you didn't execute that warrant that is you didn't serve that warrant at that time when it was issued.
A. Yes sir, that's correct.
Q. Did you at any time later serve that warrant?
A. No sir, I got a new one, which was this one right here [indicates].
Q. And as to the second warrant did you provide the same affidavit as you did the first warrant?

A. I included -- I redid it to include within the past 72 hours the most recent drug transaction that occurred at that residence.

Q. And it was from the same judge, Judge Newman?

A. Yes sir, it was.

MR. GRIFFITH: I have no further questions, Your Honor.

THE COURT: Any redirect?

MR. UNDERWOOD: Briefly, Your Honor.

THE COURT: You may proceed.

REDIRECT EXAMINATION

BY MR. UNDERWOOD:

Q. Agent Wingo, as to the search warrant for Patriot's Boulevard you included in your affidavit that there was documentary evidence located during a trash pull, isn't that correct?

A. Yes sir, two Western Union receipts and some South Carolina DMV paperwork.

Q. And was that trash pull from the location to be searched at Patriot's Boulevard?

A. Yes sir, it was.

Q. And were those documents connected to this defendant Justin Hunter?

A. Yes sir, they were. They had Mr. Hunter's name on them that showed him wiring money to an individual in New York as well as the DMV paperwork that had his name on it as well.

Q. And based upon the GPS tracking information that was available to you and given to Judge Newman was it shown as just prior to the issuance of this search warrant Mr. Hunter was still frequenting that address?

A. The MTV shows that it was in this affidavit was January 24th through January 25 and this was on February 8th.

Q. Therefore, was it relayed to Judge Newman that it

was reasonable that there would still be a chance of collecting similar documentary evidence?
A. Yes, sir.
Q. Do you mention that some of those documents connected the defendant to the state of New York? On cross you were asked about possible reasons to visit New York. Did you have any reason to think that perhaps he would be going to New York to purchase drugs?
A. It says in the affidavit I was aware of other heroin trafficking organizations that would go to the northeast to purchase drugs.
Q. And in fact does Mr. Hunter have convictions for drugs in the state of New York?
A. Yes sir, he does.
Q. So would it be reasonable for Judge Newman to infer that his travels to New York could in fact be drug related based on his history?
A. Yes sir, they could.
Q. Has all of your testimony both to Judge Newman as well as during these hearings been truthful?
A. Yes sir, it has.
MR. UNDERWOOD: Thank you. No further questions, Your Honor.
THE COURT: Sir, you may step down.
MS. JOHNS: Your Honor?

THE COURT: Yes?

MS. JOHNS: May it please the court? I just have a few ---

THE COURT: --- I'll give you limited latitude and limit it to redirect.

MS. JOHNS: Thank you, Your Honor.

THE COURT: There is cross, there is direct, cross, and redirect. They've got the burden of proof; they get the last say.

MS. JOHNS: Thank you, Your Honor.

RECROSS-EXAMINATION

BY MS. JOHNS:

Q. With regard to the mobile tracking device Agent Wingo in your affidavit you stated that on January 18th through January 25th the car in question was at the residence of Patriot's Boulevard, is that right?

A. Yes, ma'am.

Q. Well isn't that the same time that you're stating that Mr. Hunter was in New York?

A. He purchased a flight on January -- he purchased a ticket on January 19th. Now...

Q. So the 19th is inclusive ---

A. --- ma'am, it shows that he purchased a ticket. It never says that he went.

Q. Okay. So then he didn't go?

A. I don't know, ma'am.

Q. And lastly with regard to his convictions in New York a flight ticket to New York that he may or may not have gone and the fact that you are of the opinion that heroin can be purchased through the state of New York that has nothing to do with what is in that apartment, right?

A. So can you repeat that for me again, ma'am?

Q. Let me rephrase. The fact that Mr. Hunter has a conviction from New York has nothing to do with what

might be in that apartment, is that correct?
A. That's correct. It shows his connection to New York.
Q. That's correct. It shows his connection to New York; not a connection to narcotics or illicit ---
A. --- it shows connections to narcotics in New York -- or that he was convicted of narcotics from the state of New York.
Q. Okay. But it doesn't indicate to the judge that narcotics were in that apartment?
A. It shows that the person living in that apartment has connections or ties to narcotics.
Q. Thank you. That's all I have.
THE COURT: Any redirect?
MR. UNDERWOOD: Nothing further, Your Honor.
THE COURT: Sir, you may step down.
[Whereupon, the witness is excused and exits the witness stand]
THE COURT: Any argument?
MS. JOHNS: May it please the court, Your Honor?
THE COURT: Yes, ma'am.

ARGUMENT OF COUNSEL

BY MS. JOHNS:

Your Honor, on behalf of Mr. Hunter I would argue in supplementation of my written memorandum of law several things. One, that there is no connection between this apartment and anything provided in the affidavit that would indicate to any judge or any magistrate that drugs were located in that apartment. There is not an informant that saw any drugs in there within the past 72 hours.

There is not any witness that says that there was any indication that drugs would be located there or any other illicit evidence. That the apartment itself had not been seen by anybody over this four month period of the investigation and nothing was given to the issuing judge regarding probable cause for this search warrant to be issued. And based on that, Your Honor, I would ask that all evidence from apartment 618 at 9698 Patriot's Boulevard be suppressed.

And further, Your Honor, I just want to put this on the record. With regard to the seizure of the defendant I'll let my memorandum speak to that but I just wanted to get that on the record so I wouldn't ---

THE COURT: --- is there anything other than dealing with his Mirandized statements that we've already

dealt with? I can't -- I guess I'm strained to figure what good faith argument you would have about him being taken into custody pursuant to a lawful arrest warrant.

MS. JOHNS: Well, Your Honor it wasn't in pursuant to a lawful arrest. It was the detention or seizure ---

THE COURT: --- they could have stopped him for any reason. They could have stopped him to talk to him. They could have stopped him because they wanted to know his name. They could have done a field interview. They were clearly coming there to execute the search warrant and to execute the arrest warrant. He got combative so I don't think there is any real good faith argument with any merit that he was taken into custody illegally.

MS. JOHNS: Well, for that reason, Your Honor I will stand on my memorandum ---

THE COURT: --- I don't think they needed a warrant to take him into custody based on what happened. They could have taken him into custody just for their safety.

MS. JOHNS: Your Honor, they may have restrained him for that ---

THE COURT: --- they can take him into custody for their safety if he is combative. They can restrain him or do whatever they think common sense dictates to protect themselves and the public.

MS. JOHNS: I understand the court's ruling, Your

Honor.

THE COURT: Is there anything -- well, Mr. Griffith I'll hear from you and then I'll let Mr. Underwood address everything. You may proceed.

ARGUMENT OF COUNSEL

BY MR. GRIFFITH:

Your Honor, Agent Wingo did state that the second warrant was issued within 72 hours of a controlled buy. But we would just argue that in that the first warrant was issued without there having been a buy. That it would taint any further warrant obtained ---

THE COURT: --- I need you to start over for me because I lost you just in the middle of that sentence. Accommodate me and if you could start your argument over for me. I appreciate you accommodating me.

MR. GRIFFITH: We understand that the second warrant was issued within 72 hours of a controlled buy. The first warrant was issued without prior evidence. And it would be prejudicial that the judge had already signed a warrant prior concerning that residence, the same judge being aware that the investigation was going on. And I think it would have prejudiced any decision made to issue that second warrant that is to have proved that second warrant.

THE COURT: Did I misunderstand the testimony or did two buys take place. It was my understanding that the first buy took place and they got a warrant and they chose not to execute it ---

MR. GRIFFITH: --- that's correct ---

THE COURT: --- then another buy took place and within 72 hours they got a warrant and chose to execute it. So that's where I'm sort of lost in your argument unless I misunderstood the facts, which is possible.

MR. GRIFFITH: Well, it wasn't clear I don't believe as to how long it was after that first buy ---

THE COURT: --- does it really matter?

MR. GRIFFITH: Whether it was within 72 hours or not?

THE COURT: I mean if a confidential buy took place isn't that in and of itself probable cause? That's certainly evidence that criminal activity is afoot.

MR. GRIFFITH: It certainly is Your Honor but we would ask that it be suppressed in that the second one was prejudiced, prejudiced the judge that issued from the first warrant. And the first one was never served.

THE COURT: How would he have been prejudiced by them not executing a warrant that was validly given?

MR. GRIFFITH: In that he had knowledge of the first warrant and having had knowledge of the first warrant may have had a preconceived idea in his mind as to what was the probable cause although there was probable cause for the second buy; I do concede to that but just ---

THE COURT: --- there wasn't probable cause from

the first buy?

MR. GRIFFITH: There was probable cause but it wasn't clear as to how far it was from the first buy to the warrant.

THE COURT: Okay.

MR. GRIFFITH: From his testimony.

THE COURT: All right. Anything further?

MR. GRIFFITH: No, Your Honor.

THE COURT: I'll be glad to hear from the State.

ARGUMENT OF COUNSEL

BY MR. UNDERWOOD:

Very briefly, Your Honor. First as to Summer Creek search warrant, Your Honor, as Your Honor very well stated the fact that a controlled purchase took place there 72 hours prior to the search warrant that in and of itself is sufficient probable cause for a search warrant. I believe the affidavit there and Agent Wingo's testimony speaks for itself that there was sufficient probable cause to search the residence at 116 Summer Creek Drive.

As to the Patriot's Boulevard search warrant Your Honor there was evidence presented to Judge Newman that would connect drugs to that apartment. Agent Wingo provided in his affidavit and testified that there was direct surveillance by law enforcement of the defendant, Justin Hunter leaving from that apartment going directly to a controlled purchase where he sold heroin to a confidential informant and then returning directly back to the apartment.

So that does connect that apartment to illegal drug activity and provided probable cause to search that apartment. Furthermore, Your Honor the search warrant is also looking for other types of evidence; documentary evidence, things that would reflect the existence of a drug conspiracy and an ongoing drug trafficking

organization. There was evidence presented in the affidavit that on a prior trash pull that very type of evidence had been found at that location. Then there was evidence connecting the defendant on a continual basis to this location that was in fact his residence. Therefore there is probable cause that the type of evidence that was being searched for that there was a likelihood that that type of evidence would be located at the place to be searched.

And that is the appropriate legal standard. It's not a matter of guilt or innocence to any particular person but rather whether or not the type of evidence that is being sought whether there is a likelihood that that evidence would be at the location to be searched. And Your Honor on its face the affidavit clearly states there is such probable cause that that evidence would be there as well as the testimony that was supplemented by Special Agent Wingo.

Therefore, I believe that all search warrants were proper. There is sufficient probable cause for each of them and that all the evidence that was obtained as a result of those search warrants as well as the search warrant from the prior suppression hearing that all of that evidence should be properly admitted.

THE COURT: I will take the warrants in their -- well, I'll make some general statements about the law and then I will take each warrant in the order that the testimony was presented. I think we're all clear that a search warrant is supported by probable cause if given the totality of the circumstances. And totality of the circumstances being the operative language set forth in the affidavit that there is a fair probability that contraband or evidence of a crime will be found in a particular place.

And again as I've indicated the dispositive language is totality of the circumstances because the court does not look at one isolated sentence or one isolated paragraph in an affidavit, a search warrant affidavit. It must look to the totality of the circumstances. In addition to that the court is required to give substantial deference to the issuing judge's findings and who considered the sworn testimony of the officers or officer in issuing the warrants.

In addition to that a warrant establishes probable cause necessary for the issuance of a search warrant; not necessarily just dealing with a residence but when related to the purchase and distribution of drugs if it independently sets forth facts that are more than mere suspicion of drug activity but based on the totality of

the circumstances. In some of those totality of the circumstances that our courts have articulated are numerous tips including drug activity, those who are probably present at the residence who are selling drugs, subsequent surveillance of the residence during which seemingly related drug behavior has been observed and the like. And clearly in this case there was probable cause for the issuance of both warrants and I will take them in the order that they were issued.

The first being which is Court exhibit number 2 -- well, actually number three. Even though they were marked in opposite order they were dealt with in opposite order. I hope that wasn't too convoluted but unless I have it wrong, and Ms. Joy you can correct me, but Court's 3 is the Summer Creek Drive affidavit. And while Mr. Griffith has indicated that by execution of one warrant that was, by the issuance of a warrant that was not executed that somehow his client -- the court may have been prejudiced in issuing another warrant.

I can state with sufficient confidence that two controlled buys would be sufficient enough to establish in a court's mind probable cause for the issuance of a warrant without anything else. And certainly that is evidence that criminal activity is afoot at a particular residence and that it is likely that the fruits of that

activity will be found in the residence. So certainly there was more than adequate support presented to Judge Newman as well as what was found in the affidavits to support it, the execution -- the issuance of both warrants. And for whatever reason the State didn't issue the first warrant as far as I'm concerned that inured to the benefit of Mr. Roberts under those circumstances.

As it regards the Patriot's Boulevard address and to some extent I'm relying on the testimony from our other hearing and I don't think that prejudices your client Ms. Johns because you were present and I think I may have even given you an opportunity to question -- maybe I didn't.

MS. JOHNS: You did.

THE COURT: I couldn't recall; I'm sorry.

MS. JOHNS: You did, Your Honor.

THE COURT: I'm done so much substance since then my memory is kind of hazy on me. But at that time there was testimony regarding how these transactions took place. In other words they did not actually take place at the residence. A call would be dispatched or a text arranging a meeting whereby the sale would be consummated in the parking lot of a strip mall parking -- I mean a shopping center of sorts that was in close proximity to the residence. And that along the points of ingress and

egress that there were officers stationed to watch the person leave the residence at different points to get to the parking lot to transact business and then return to the residence.

So when you look at the entire totality of the events without isolating one or two events out clearly based on the totality of the circumstances there is more than sufficient evidence to have established probable cause in the minds of the issuing court that criminal activity was afoot and that again the fruits of that activity would be located in the residence.

And I agree with Ms. Johns. In and of themselves somebody buying a plane ticket that's not enough. Somebody sending money which you know it has always befuddled me why people would spend money to send my money to somebody. I've never used Western Union in my life and just on principle I never will unless I'm stranded somewhere and somebody has to send me money. But I just don't ever foresee that happening.

People say never say never but I have just never understood the validity of paying somebody to send my money to somebody else. But there are a lot of people who utilize it as a means of paying their bills, as a means of sending money to relatives. So those things in and of themselves granted I agree might amount to mere

suspicion. But when you look at the entire totality of these events and you combine them together without them being isolated there was more than adequate probable cause for the issuance of his arrest warrant as well as the search warrants and therefore the motion to suppress is denied on both counts. Now is there anything else that we need to take up before we adjourn from the State?

MR. UNDERWOOD: I don't believe so, Your Honor.

THE COURT: Ms. Johns?

MS. JOHNS: No, Your Honor, just note exception to the ruling.

THE COURT: I don't think you need to say that. I allowed you to argue it, I denied it; it is preserved.

MS. JOHNS: Thank you.

THE COURT: Yes, sir?

MR. GRIFFITH: Nothing further.

THE COURT: Thank you. Now, I have a few housekeeping things. We have issued the bench warrant for Mr. Hunter. I have advised the Clerk or asked her assistance in making sure that his bond paperwork is present on Monday so I can establish a record that he was advised of his right to be present at trial and if he voluntarily absented himself that he would be tried in his absence. So we will deal with that on Monday morning at the call of the case because I'm going to give him an

opportunity to show up. In the event Ms. Johns that your client is taken into custody over the weekend please arrange for his relatives to bring him some suitable clothes for trial. And please have those here by 8:30 would be wonderful so that they can dress him appropriately. I'm a proponent of people being dressed appropriately for court so that they feel that they are suitably dressed.

Now Mr. Griffith likewise and Mr. Roberts if you have some clothing that you want for trial on Monday you need to let Mr. Griffith know who to call so that they can bring some clothes to you on Monday morning by 8:30 or if you need some other things to groom yourself please let him know. And Mr. Griffith if you have the number for his mother and sister I think you should just -- I mean that's his momma.

I can't imagine that she wouldn't take whatever action she would want to take to help him out if she is inclined to or his sister. Or they may know somebody else that he is connected to that may -- somebody that he might have been friends with or otherwise that may have possession of his clothing and may want to out of their own largesse bring some stuff up here at 8:30 on Monday for him to be dressed out.

MR. GRIFFITH: Your Honor, I will attempt to ---

THE COURT: --- so if you could accommodate the court I would appreciate it. If you can reach somebody fine, if not again I'm a proponent of folks being dressed appropriately for court if we can. If you want to I don't know if the Public Defender's office here does it but in Charleston they have a wardrobe of different sizes of clothing and when folk -- some people just can't afford clothes or their stuff has been lost and they don't have anything. You might want to check with the P.D.'s office here and see if they have some clothing that would fit him in the event that you can't reach anyone. And I'm sure they would be more than willing to help you out.

MR. GRIFFITH: Thank you, Your Honor.

THE COURT: You're welcome. Is there anything else that we need to do before we adjourn Mr. Underwood?

MR. UNDERWOOD: Very briefly Your Honor, just to be clear as to the representation status ---

THE COURT: --- I've not relieved Mr. Griffith. And if Mr. Roberts decides he doesn't want his help I'm going to ask Mr. Griffith to be kind enough to just sit in as shadow counsel to help him in the event that he wants some help. If somebody shows up here on Monday I'll cross that bridge when I come to it. But Mr. Roberts if you decide to hire somebody you need to let

them know that trial is on Monday and you need to make sure they get in touch with Mr. Griffith to get all the discovery and everything they would need to be prepared for trial. Anything else?

MR. UNDERWOOD: Just to be clear, Your Honor, what time would you like everyone here on Monday?

THE COURT: Roll call; whatever time roll call starts you're going to need to be here.

MR. UNDERWOOD: I didn't know if you wanted any pretrial conferences ---

THE COURT: --- we wouldn't have time because roll call usually starts at 9 or 9:30. I just can't remember right now off the top of my head. So you're going to need to be here for roll call. And then right after roll call, which is about 30 minutes I'm going to qualify the jury and we will proceed with jury selection.

MR. UNDERWOOD: Thank you, Your Honor.

THE COURT: And then we'll deal with anything else if we need to. Now I assume you're going to notify everybody else. A notice was sent to everybody else at trial but you're cooperating folk you need to make them aware that they need to be here with their lawyers. All right Ms. Johns, anything further?

MS. JOHNS: No, Your Honor.

THE COURT: Mr. Griffith, anything further?

MR. GRIFFITH: No, Your Honor.

THE COURT: Wonderful. Thank you all for being so accommodating. Have a good day.

State v Emory Warren Roberts
Certificate of the Court Reporter
July 19, 2017

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Berkeley County, South Carolina on the 19th day of July, 2017.

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

October 27, 2017

Joyce C. Rueger, CVR-M
Court Reporter

Certified Transcript provided to SCCID, Office of Appellate Defense

STATE GRAND JURY OF SOUTH CAROLINA COUNTY OF BERKELEY	Court of General Sessions Case No. 2016-GS-47-02
STATE OF SOUTH CAROLINA vs. JUSTIN GORDON HUNTER (a/k/a Mo) EMORY WARREN ROBERTS (a/k/a Q), Defendants.	Transcript of Record DATE: July 24 - July 28, 2017

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THE HONORABLE DEADRA JEFFERSON

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S-143	Lab Report L16-01822		421
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EXHIBITS (continued)

Exhibit	Description	Identification	Evidence
S-145	Lab Report L16-01822		422
S-146	Lab Report L16-01825		422
S-147	Lab Report L16-01822		422
S-148	Lab Report L16-01874		422
S-149	Lab Report L15-10914		422
S-150	Lab Report L15-13649		422
S-151	Lab Report L15-13649		422
S-152	Lab Report L16-01640		422
S-153	Chain of Custody L16-01640		422
S-154	Lab Report L16-01873		422
S-155	Lab Report L16-01874		422
S-156	Chain of Custody L16-01821		423
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S-158	Chain of Custody L16-01819		423
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S-161	Lab Report L16-01819		423
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S-163	Lab Report L16-01821		423
S-164	Lab Report L15-13080		423
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Exhibit	Description	Identification	Evidence
S-167	Photographic Lineup		470
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S-169	Photo lineup		634
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S-170	Photograph		635
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S-190	Cell phone		724
S-191	Justin Hunter's driver's license		724
S-192	Gateway Inn receipt		724
S-193	Green Dot card		725

EXHIBITS (continued)

Exhibit	Description	Identification	Evidence
S-194	Vehicle plate registration from the DMV BMW 7 Series with the license plate number LTQ-710		706
S-195	Vehicle plate registration for BMW 7 Series belonging to Justin Gordon Hunter		706
S-196	DMV Vehicle customer list DMV of all vehicles owned by Mr. Justin Gordon Hunter, includes a 2005 Audi A4, License Plate LSF-463; a 2007 BMW 5 Series with license plate LMQ-556; and a 2006 BMW 7 Series with a license plate LTQ-710		706

(State's Exhibit 1 through 33, disks, were marked for identification.)

(State's Exhibit 34 through 41, photos, were marked for identification.)

(State's Exhibit 42, US passport, was marked for identification.)

THE COURT: Mr. Griffith, do you think your client is going to want a formal arraignment?

MR. GRIFFITH: Your Honor, my client has decided that he would like to represent himself.

THE COURT: Which is fine, but I'm going to leave you as shadow counsel. Have you explained to him what an arraignment is?

MR. GRIFFITH: I have not.

THE COURT: If you can explain that to him so he can tell me whether he wants it or not.

MR. GRIFFITH: Your Honor, I have explained to him what an arraignment is.

THE COURT: And does he wish to have a formal arraignment or not?

MR. GRIFFITH: Your Honor, he says he doesn't understand why he would need an arraignment right now.

THE COURT: So does that mean he waives it?

THE DEFENDANT: I don't waive it. I just never had -- it's been 17 months.

THE COURT: He just explained it to you. An arraignment wouldn't be applicable until now. It's just a matter whether you want me to read what the nature of the charges are or whether you want the clerk to read to you what the nature of the charges are.

THE DEFENDANT: So this is where the misunderstanding is. I thought once the presiding judge of the State Grand Jury had found that it was in accordance with the provisions of Order 15, that it be transferred to venue where appropriate. And that's where the warrant --

THE COURT: Sir, the Supreme Court does that. And they've given me jurisdiction over this case.

THE DEFENDANT: All right. Well --

THE COURT: So the judge that deals with it in Columbia, they rarely, if ever, try these cases. They parse them out to other judges.

THE DEFENDANT: I'm thought once it was transferred to here, I thought I would have a formal arraignment then.

THE COURT: No, sir. That's not what happens. That's not how South Carolina works. People watch a lot of television, and that's not how it works. Every state is different.

THE DEFENDANT: Can I see that?

THE COURT: Only thing that happens in an arraignment, some people do it, it really is perfunctory.

There's no reason for it. The clerk of court will read you the charges and ask you do you want to be tried by God and your country, and you say yes. That's all a formal arraignment involves.

THE DEFENDANT: All right, Judge. But the Sixth Amendment says I have a right to be --

THE COURT: Sir, my office sent you your indictment. So you know what your indictments include. And your lawyer has gone over the discovery with you. So I don't find it plausible that you don't know what you are charged with.

THE DEFENDANT: What does discovery consist of?

THE COURT: Evidence against you.

THE DEFENDANT: I didn't get that. All I got was an indictment.

THE COURT: Mr. Griffith, you said you went over the discovery with him; is that right?

MR. GRIFFITH: I did provide him with all of the discovery that was sent to us, Your Honor.

THE COURT: I will have him go over it with you again at lunch so that you --

THE DEFENDANT: I appreciate it. As well, pursuant to Rule 5, continuing disclosure, I haven't seen any audios, any tapes or --

THE COURT: Because of the confidentiality of the

CI and the way state law works, your lawyer goes and looks at those. But at trial, you will have the opportunity to look at them. And if you would like to look at them, I will give Mr. Griffith the opportunity to do that as well.

THE DEFENDANT: I would also like the State Grand Jury minutes.

THE COURT: You don't get those, sir. In South Carolina, all Grand Jury proceedings are secret. Nobody gets those.

THE DEFENDANT: Well, I have a document from Judge Newman that's to be made public record.

THE COURT: Is that correct?

THE DEFENDANT: Yes. Oh, you are talking --

MR. UNDERWOOD: Your Honor, the transcript from the State Grand Jury do not become a public record. The defendant is able to read them. However, we do not give them a copy. They would have to get them from the court reporter who takes those transcripts.

THE COURT: Sir, you would have to order it from the court reporter and pay for it.

THE DEFENDANT: I tried that.

THE COURT: You have to pay her in advance. She's not going to provide it to you without paying.

THE DEFENDANT: I understand, but they say they do not have that. They have none of that.

THE COURT: Who did you write?

THE DEFENDANT: South Carolina Court Administration.

THE COURT: They don't. You have to write the individual court reporter.

THE DEFENDANT: Desiree Allen, I did that too.

THE COURT: Desiree Allen, she's in charge of the court reporters. You have the responsibility to write the actual court reporter that did it. She then sends you an estimate of what it costs to produce the transcript. You then have to pay her in advance, and then she produces the transcript.

THE DEFENDANT: All right. I have a letter to that effect that says that --

THE COURT: Who did you send it to?

THE DEFENDANT: South Carolina Court Administration.

THE COURT: They are not going to do that for you. That's not their responsibility. All they do is scheduling.

THE DEFENDANT: I thought everything goes through the South Carolina Court Administration.

THE COURT: Only the scheduling. They don't have any responsibility to do anything else. Each court reporter is responsible for their own records. They supervise court reporters, but they don't produce transcripts.

THE DEFENDANT: Okay. I also have a motion that was provided to me that says that I have to get this information from the court reporter of South Carolina Court Administration.

THE COURT: Yeah, and you have to write that particular court reporter. Like, Ms. Andersen is taking down these proceedings, if any of these lawyers want that, they have to write her. She gets the letter. She then tells you the transcript is this many pages. This how much is charged per page. This is how much it costs. Within this many days, you need to have my money to me in certified funds. After which this many days, I will provide you with a transcript. That's what you have to do.

THE DEFENDANT: I understand, but who would you write for that?

THE COURT: You would have to know the name of the court reporter. And if you ask court administration, they will give you that, or you would have gotten that from probably the State Grand Jury clerk.

THE DEFENDANT: All right. Can I provide you with the letter to show that I've done that?

THE COURT: I don't have any reason to doubt your word, but I don't know that court administration -- who is the State Grand Jury court reporters? How does that work? They freelance, don't they? He would have to have written

you to get that court reporter's name?

You would have to have gotten that from the State Grand Jury clerk. Because those reporters that do that are freelance reporters. They are not under court administration.

THE DEFENDANT: I have a letter to that effect to, and she told me to contact my attorney. I also have a letter from the State Grand Jury which is no record is charged.

THE COURT: No. You have a letter from the Department of Public Safety that says that.

THE DEFENDANT: No, I have a letter from the State Grand Jury.

THE COURT: That says what?

THE DEFENDANT: There's no record of said charge.

THE COURT: Of what said charge?

THE DEFENDANT: Any charges, these charges.

THE COURT: Who did you write to?

THE DEFENDANT: I wrote to State Grand Jury in Columbia.

THE COURT: Where do you have a letter that says that?

You have a letter from the Department of Public Safety which you sent to my office that says they have no record of any charges against you. That's the Highway

Department.

THE DEFENDANT: All right. I have that too, but they access South Carolina Code and Annex 30/4 --

THE COURT: Let's just say for argument's sake that all that happened. I sent you copies of your indictments. They exist.

THE DEFENDANT: All right.

THE COURT: I guess I'm trying to figure out what is it that you think you would be able to use from the State Grand Jury record?

THE DEFENDANT: Well, I'm actually going to show that no State Grand Jury even occurred.

THE COURT: Oh, it happened because I have the indictments.

THE DEFENDANT: I have the papers, but that doesn't say it happened.

THE COURT: It happened. I have the indictments that are certified. That's why I sent them to you. And you said you didn't have them. I wanted to make sure you had them.

THE DEFENDANT: Also said that it wasn't certified. On July 19th, you said they didn't have to be. All they had to be was filed. So are they certified now?

THE COURT: They were filed -- once something is in a court order, sir, it's already certified. You only

certify documents when you send them out of state to prove that they are authentic. You would never, under any circumstances that I can think of, send certified indictments to anybody.

THE DEFENDANT: All right. May I address a question to the Court?

THE COURT: Sure.

THE DEFENDANT: If South Carolina Code Annex 30-4-30, I believe, 50, is to access information that's supposed to be readily available to the public under the Freedom of Information, because it comes from --

THE COURT: Grand Jury notes are not Freedom of Information. That's probably why, I guess, you got an order from Judge Newman allowing you to get your Grand Jury notes.

THE DEFENDANT: No. I have a letter from Judge Newman stating that this will be made, the indictment, public information as of May 4th, 2016.

THE COURT: The indictment, not the Grand Jury notes.

THE DEFENDANT: All right. Then just the indictment, all right, this is what I'm talking about, the indictment. I can show you from the Department of Public Safety --

THE COURT: The Department of Public Safety is the Highway Department, sir. They don't keep record of criminal

offenses in South Carolina. They only keep record of traffic tickets, suspensions, and other things.

I have your indictments in my hand. They were filed.

THE DEFENDANT: I can show you that they actually used this --

THE COURT: Public safety is not responsible for keeping court records.

THE DEFENDANT: It's Freedom of Information form that I can show you.

THE COURT: The Department of Public Safety only keeps track of traffic tickets and suspensions. That's it. They do not have records of your offenses.

THE DEFENDANT: I think that that's just a building that the person --

THE COURT: No. That's where the Highway Department is housed. And their only responsibility under statute is to keep track of offenses.

THE DEFENDANT: All right. Can I provide this as evidence to the Court for clarification?

THE COURT: Sir, I don't need you to provide me with knowledge of the code. I've been doing this for 20 years. I know what the code provides.

THE DEFENDANT: I wouldn't doubt that, Your Honor, but --

THE COURT: I know what each department is responsible for by regulation. And the Department of Public Safety is not responsible for keeping charges that are pending. They would have no way of doing that. We got -- we have so many counties, each county has different mechanisms by which each circuit keeps their indictments. The State Grand Jury operates differently. They would have no record of any of it. So that's not dispositive. I've sent you -- when you first raised that issue, I had my staff research it, even though it was not their responsibility, and send you a full record and continuum of your charges.

THE DEFENDANT: Can I have a moment, Your Honor, if you don't mind?

THE COURT: Yes, yes, certainly.

THE DEFENDANT: He's supposed to shadow me, right?

THE COURT: Well, I would suggest to you that you keep him as your attorney, because he knows the rules and you don't. And you tell him what questions you want asked of witnesses so that he can phrase them the way that they should be phrased so that you don't inadvertently incriminate yourself in anything. And I would strongly suggest you take advantage of a very seasoned criminal record.

THE DEFENDANT: But he's not working in my interest, so --

THE COURT: Oh, I think he's working in your interest.

THE DEFENDANT: I don't believe that.

THE COURT: How would it benefit him to work against your interest? He's not going to lose his legal license for you. I wouldn't. I've never met anybody important enough for me to lose my law license. That's my independence. That's my way to make a living. No lawyer is going to lose their license to collaborate with the State.

How long have you been doing defense work, Mr. Griffith?

MR. GRIFFITH: Your Honor, since 2008.

THE COURT: Yes, a long time. You don't want to lose your license over any of this, do you?

MR. GRIFFITH: No, Your Honor.

THE DEFENDANT: Your Honor, I've been unlawfully imprisoned for 17 months. I have to question that, if you don't mind.

THE COURT: You haven't been unlawful imprisoned. You were arrested pursuant to a law enforcement warrant. You were indicted. And your bail was set. And you, for whatever reason, you couldn't make bond. And so you are not --

THE DEFENDANT: Also, have a bond letter that states that I have no bond in violation of 8th Amendment.

THE COURT: I'm sorry. I can't hear you.

THE DEFENDANT: According to this, bond has not been set. And it's in violation of the 8th Amendment. They keep saying I have a bond. I do not have a bond.

THE COURT: Under certain circumstances, they don't have to grant one. The Court doesn't have to give you a bond. If they feel you are a risk of flight or danger, they don't have to set one.

THE DEFENDANT: But they gave me a bond, Your Honor.

THE COURT: Well, that's your responsibility then to make it.

THE DEFENDANT: If it's in the computer that says I have no bond, how can I make bond?

THE COURT: Because the clerk of court has those papers, the same way everybody else in this case that wanted to make bond --

THE DEFENDANT: Court says they have no jurisdiction, Your Honor.

THE COURT: That's not true. If you wanted to post bond, they would have more than accommodated your bondsman to post your bond.

THE DEFENDANT: All right, Your Honor. So if I wanted to post bond, in this system it says --

THE COURT: That probably means that you haven't

posted bond. That doesn't mean you don't have --

THE DEFENDANT: Says bond not set, Your Honor.

THE COURT: That could be --

THE DEFENDANT: Can you look at it for me, please?

THE COURT: No. It could mean a myriad things. Could mean you just never posted your bond. I don't know how they entered it into the system. But I'm having the clerk enter -- your bond was set at $250,000 surety on May 4th of 2016.

THE DEFENDANT: Exactly.

THE COURT: And you were allowed to post 10 percent if you were able to. And that bond was set by Judge Newman on February 9th of 2016. It required that you have GPS monitoring, that you report weekly, that you be placed on house arrest. And let's see here. Oh, that was on 2/19 of '16, he denied bond. But on May 4th of 2016, he set your bond at $250,000. And you were allowed to post 10 percent.

THE DEFENDANT: Your Honor --

THE COURT: So your bond was set. I don't know why you didn't have the ability to make it.

THE DEFENDANT: Because --

THE COURT: But it was set. They wouldn't have -- they don't have anything to do with your bond. If you wanted to post bond at 10 percent, you would have -- the bondsman would have known the mechanism to follow and you

could have set your bond.

THE DEFENDANT: This was signed by an attorney.

THE COURT: Sir, that has nothing to do with your bond being set.

THE DEFENDANT: No, no. Attorney tried to have his bonds people bail me out and this says bond not set.

THE COURT: That doesn't matter. He would know how to go about setting your bond?

THE DEFENDANT: Can I bring up a point about the bond?

THE COURT: Sir, I don't know that it's relevant now. We are about to have a trial. It's not relevant to anything. How is a bond relevant to your trial?

THE DEFENDANT: Because you just said bond was --

THE COURT: It's not relevant. Doesn't matter. We are about to have a trial now.

THE DEFENDANT: All right. Look, you said bail was set.

THE COURT: It was set. It was set on May 4th --

State Grand Jury person indicted by the State Grand Jury for a bailable offense must have a bond hearing before the end of the second business day following the day he was arrested.

THE COURT: Sir, you had both bond hearings.

THE DEFENDANT: This alleged Grand Jury indictment

is April 13th. That would have put --

THE COURT: Sir, you had two bond hearings before Judge Newman. I don't know that a bond -- it doesn't matter. It doesn't have any effect on your trial.

THE DEFENDANT: All right. May I have a moment to ask something before we --

THE COURT: Sure.

Which of these counts in these indictments apply to Mr. Roberts and Mr. Hunter? 2016-GS-4703 applies to Mr. Roberts?

THE CLERK: I believe one applies to him.

THE COURT: This is the only one that applies to him? This one does not?

THE CLERK: That one does.

THE COURT: Do you know what counts apply to him?

THE CLERK: Not off the top of my head.

Gosh, do you know?

MR. UNDERWOOD: As to which defendant, Your Honor?

THE COURT: Mr. Roberts and Mr. Hunter, do Mr. Roberts first, then do Mr. Roberts.

MR. UNDERWOOD: Mr. Roberts is charged under count 1, count 11, 12, 13, 14, 15 and 16. And, Your Honor, that's indictment 2016-GS-4702 for which we are here today.

THE COURT: I know 03 applies to him only. Which of the counts apply to Mr. Hunter?

MR. UNDERWOOD: Mr. Hunter is charged under count 1, count 2, count 3, count 4, count 5 and count 6, Your Honor.

And just to advise the Court, Your Honor, today we are not here for Indictment No. 3, since that was venued in Dorchester County.

THE COURT: What do you plan to do? It doesn't matter, does it? It's a State Grand Jury case, the venue, we are not going to Dorchester to try this.

MR. UNDERWOOD: At this time it's currently -- it was venued by Judge Newman to Dorchester County, because that was where the substantive offense occurred.

THE COURT: Yeah, but once it's assigned, both were assigned to me. So you are saying you plan to go to Dorchester and try it?

MR. UNDERWOOD: Depending on the results of this trial, that may not be necessary, Your Honor.

THE COURT: So I don't need to publish 2016-GS-4703?

MR. UNDERWOOD: Correct, Judge.

THE COURT: Are any of these witnesses on this list that you handed to me inapplicable?

MR. UNDERWOOD: Excuse me, Your Honor?

THE COURT: Are any of these witnesses under your proposed witnesses list the ones listed under Dorchester

County, do you plan to call any of those witnesses?

MR. UNDERWOOD: Yes, Your Honor.

THE COURT: Miss Johns, are you ready to proceed with jury selection?

MS. JOHNS: I am, Your Honor.

THE COURT: Mr. Griffith, are you ready to proceed with jury selection?

MR. GRIFFITH: Your Honor, Mr. Roberts is prepared to go forward.

THE COURT: I am not going to relieve you, I don't think, at this late stage or juncture. He can assist you, but I don't think it's prudent to relieve you as counsel.

MR. GRIFFITH: As the Court sees fit, Your Honor.

THE COURT: Yeah. I need somebody to really advocate for his best interest.

THE DEFENDANT: Your Honor --

THE COURT: While he's allowed, constitutionally, to represent himself, I do not perceive he has sufficient grasps of the rules such that he would be able to protect his own interests. And I am not going to relieve you as counsel.

THE DEFENDANT: Your Honor, doing that is going to incapacitate --

THE COURT: No, it's not. You can tell him everything you want to say. And he will put it in the

context of the rules so that your interests will be protected.

THE DEFENDANT: And he will be destroying my questions to mean something else.

THE COURT: No. You tell him what the questions are. Most of the questions you probably want to ask you won't be able to ask because they won't be in the format they need to be.

THE DEFENDANT: I took very care to make sure --

THE COURT: You need to tell him exactly what you want asked. And if he misses anything, I will take a break and you can ask him what you need asked.

THE DEFENDANT: I don't consent.

THE COURT: That's fine. It doesn't require your consent. I've noted your objection for the record.

Bring in the jury.

THE DEFENDANT: Can I preserve that?

THE COURT: It's already preserved. That's why we've got a court reporter. She takes down everything we say.

THE DEFENDANT: Thank you.

(Whereupon, the Venire returns.)

THE DEFENDANT: Excuse me, Your Honor. I'm alleging constitutional --

THE COURT: Sir, I need you to be quiet for me

while we select a jury. We will take back up what you are talking about in a moment, because it doesn't affect jury selection.

Ladies and gentlemen, we appreciate your patience. I know it was a little warm out there, but the Court had some matters of law it needed to take care of. And we, again, have to protect at all times your impartiality as the finders of the facts in this case.

We are going to try the cases of the State of South Carolina vs. Justin Gordon Hunter and Emory Warren Roberts. And those indictments allege -- the indictment alleges as follows: As to count one, trafficking in illegal drugs, heroin, 28 grams or more; conspiracy, that Justin Gordon Hunter, also known as Mo, Emory Roberts, also known as Q, and other persons whose names are both known and unknown to the State Grand Jury did in Berkeley County and Dorchester County, South Carolina, from January 1st, 2015, to the present, knowingly and intentionally provide financial assistance or otherwise aid, abet or conspired to sell, manufacture, cultivate, deliver, purchase or bring into this state 28 grams or more of heroin, a controlled substance, under provisions 44-53-110 of the Code of Laws as amended, such conduct not being authorized by law, and such activity occurring and/or having significance in more than one county of this state or arising out of or in connection with a

crime having significance in more than one county of this state.

And count two, that Justin Gordon Hunter, also known as Mo, did in Berkeley County, on or about September 30th of 2015, knowingly sell, manufacture, cultivate, deliver, purchase or bring into this state or provide financial assistance, or otherwise aid, abet, attempt or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this state, or knowingly become in actual or constructive possession, or knowingly attempt to become in actual or constructive possession of 4 grams or more but less than 14 grams of heroin, a controlled substance pursuant to 44-53-110 of the Code of Laws as amended. Such conduct not having been authorized by law. And such activity occurring or having significance in more than one county of this state or arising out of or in connection with a crime having significance in more than one county of this state.

And count three, trafficking in illegal drugs, heroin, 14 to 28 grams. That Justin Gordon Hunter, also known as Mo, did in Berkeley County, on or about October 28th, 2015, knowingly sell, manufacture, cultivate, deliver, purchase or bring into this state or provide financial assistance, or otherwise aid, abet, attempt or conspire to sell, manufacture, cultivate, deliver, purchase or bring

into this state, or knowingly become in actual or constructive possession, or knowingly attempt to become in actual or constructive possession of 14 grams or more, but less than 28 grams of heroin, a controlled substance, pursuant to 44-53-110 of the Code of Laws as amended.

And count four, distribution of heroin, that Justin Gordon Hunter, also known as Mo, did in Berkeley County, on or about December 14th, 2015, knowingly and intentionally distribute, dispense, and/or deliver, or did aid, abet, attempt, or conspire to distribute or dispense a quantity of heroin, a controlled substance pursuant to 44-53-110 of the case laws as amended.

And count five, distribution of heroin, that Justin Gordon Hunter, also known as Mo, did in Berkeley County, on or about January 14th, 2016, knowingly and intentionally distribute, dispense, and/or deliver, or did aid, abet, attempt or conspire to distribute, dispense, and/or deliver a quantity of heroin, a controlled substance as defined by Code Section 44-53-110 of the Code of Laws as amended.

And count six, distribution of methamphetamine, that Justin Gordon Hunter, also known as Mo, did in Berkeley County, on or about February 3rd, 2016, knowingly manufacture, distribute, dispense, deliver, purchase, or aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase or possess with intent to

distribute, dispense or deliver methamphetamine, also known as ice or crank, a controlled substance pursuant to 44-53-110 of the code of laws as amended. And alleging these actions to be against the peace and dignity of the State of South Carolina.

And count 11, distribution of heroin, that Emory Warren Roberts, also known as Q, did in Berkeley County, on or about January 7th, 2016, knowingly and intentionally distribute, dispense and/or deliver, or did aid, abet, attempt or conspire to deliver or dispense or deliver a quantity of heroin, a controlled substance pursuant to 44-53-110 of the Code of Laws as amended.

And count 12, that Emory Warren Roberts, also known as Q, did, in Berkeley County, on or about January 19th, 2016, knowingly and intentionally distribute, dispense and/or deliver, or did aid, abet, attempt or conspire to distribute, dispense and/or deliver a quantity of heroin, a controlled substance under Section 44-53-110 of the Code of Laws as amended.

And count 13, that Emory Roberts, also known as Q -- Emory Warren Roberts, also known as Q, did in Berkeley County, on or about February 2nd, 2016, knowingly and intentionally distribute, dispense and/or deliver, or did aid, abet, attempt or conspire to deliver, dispense or deliver a quantity of heroin, a controlled substance

pursuant to 44-53-110 of the Code of Laws as amended.

And count 14, that Emory Warren Roberts, also known as Q, did in Berkeley County, on or about February 8th, 2016, knowingly sell, manufacture, cultivate, deliver, purchase or bring into this state or provide financial assistance or otherwise aid, abet, attempt or conspire to sell, manufacture, cultivate, deliver, purchase or bring into this state, or knowingly become in actual or constructive possession, or knowingly attempt to become in actual or constructive possession of 4 grams but less than 14 grams of heroin, a controlled substance pursuant to 44-53-110 of the Code of Laws as amended.

And count 15, that Emory Warren Roberts, also known as Q, did in Berkeley County, on or about February 8, 2016, possess or visibly display a firearm during the commission of or attempt to commit a violent crime, to wit, trafficking in illegal drugs, that being heroin, alleging violation of Code Section 16-23-490 of the Code of Laws as amended.

And count 16, that Emory Warren Roberts, also known as Q, did in Berkeley County, on or about February 8th, 2016, knowingly manufacture, distribute, dispense, deliver, purchase or aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with the intent to distribute, dispense or deliver, methamphetamine, also known as ice or crank, a controlled

substance pursuant to 44-53-110 of the Code of Laws as amended, and alleging these activities to be against the peace and dignity of the state of South Carolina.

Ladies and gentlemen, we are going to go through a process called voir dire, which is simply a legal term meaning that I'm going to ask you some questions, so that the attorneys in this case can more effectively exercise their preemptory challenges in jury selection. If a question applies to you, please stand, and in a loud and clear voice, give me your name, your juror number, and answer to the question if applicable. And remain standing until I have completed questioning you.

Before we begin that process, I'm going to have counsel for the State to stand and introduce himself, tell us the names of the lawyers in his office, and anyone who will be assisting him in the trial of this case, and have counsel for the State -- I mean, for the defense to stand, face the panel, tell us your name, the name of the lawyers in your offices, and also have Mr. Roberts stand and face the panel.

You may proceed, Mr. Underwood.

MR. UNDERWOOD: Thank you, Your Honor. Hello, everyone. My name is Joshua Underwood. I'm a prosecutor with the South Carolina Attorney General's Office. With me here today is David Fernandez. He's another assistant

attorney general who will be assisting the prosecution of this case.

THE COURT: And names of the lawyers in your office, to the best of your knowledge.

MR. UNDERWOOD: Your Honor, the entire office?

THE COURT: As many as you can remember. That will be helpful.

MR. UNDERWOOD: It's about 100, Your Honor.

THE COURT: The ones you can remember. Just give us an example. That will be helpful.

MR. UNDERWOOD: In the criminal division, other attorneys in the office are Deputy Attorney General Heather Weiss, Assistant Deputy Attorney General Creighton Waters, Assistant Deputy Attorney General Meg Burchstead, Assistant Attorney General LaRone Washington, Assistant Attorney General Kelvin Bright, Assistant Attorney General Kin Abee, Assistant Attorney General Joel Kozak, Assistant Attorney General Brook Beder (ph.), Assistant Attorney General Nick Smith, Assistant Attorney General Clay Mitchell, Assistant Attorney General Brian Petrano, Assistant Attorney General Mike Ross.

THE COURT: Thank you, sir. Ms. Johns.

MS. JOHNS: Good afternoon. My name is Theresa Johns. I'm a member of the South Carolina Bar. I represent Justin Hunter.

THE COURT: Mr. Griffith.

MR. GRIFFITH: Good afternoon. My name is Timothy Griffith. I'm an attorney with the South Carolina Bar. I represent Mr. Emory Roberts.

THE COURT: You both are in solo practice; is that correct?

MS. JOHNS: Yes, Your Honor, I am.

MR. GRIFFITH: Yes, Your Honor.

THE COURT: Mr. Roberts, please stand and face the panel for me, please.

THE DEFENDANT: Ladies and gentlemen, how are you doing? My name is Emory Roberts. I do not particularly --

THE COURT: Thank you, sir. You may take your seat.

THE DEFENDANT: -- constitutionally --

THE COURT: Thank you, sir. You may take your seat.

Ladies and gentlemen, again, if a question applies to you, please stand, and in a loud and clear voice, tell me your name and your juror number and answer to the question, if applicable. And remain standing until I've completed questioning you.

Is there any member of the panel related by blood or marriage to Justin Gordon Hunter or Emory Warren Roberts? If so, please stand at this time.

(No response from the jury.)

THE COURT: Does any member of the panel have a close personal or social relationship with Justin Gordon Hunter or Emory Warren Roberts? If so, please stand at this time.

(No response from the jury.)

THE COURT: Please listen carefully. The following are lists of potential witnesses in this case.

Agent Justin Wingo, Agent Ryan Shipley, Lieutenant Rawl, Max Dorsey, Agent Sal Cirensione, Agent Rhett Holden, Agent Latisha Walker, Lieutenant David Leslie, Agent Trevor Howlett, Agent Quincey Ford, Agent Michael Vasquez, Agent Jason Wells, Agent Regiane Douge, Agent Rod Greene, Agent Lewis Stoertz, Agent Charles Miles, Agent Seth Jarrell, Agent John Neele, Agent Zack Perry, Lawrence Zivkovich, Willie C. Smith, III, Shana B. Sorrells, Maribeth C. McCormack, Douglas Robinson, Lynn Black, Doris Yarbrough, Amy Stephens, Jackie Davis, Agents Daniel -- all of the South Carolina Law Enforcement Division.

Agent Daniel Lundberg, Department of Homeland Security, Sergeant Brandon Allen, Naz Yangco, Lieutenant Frank Thompson, PFC Barrineau, Jody Maida, all of the Charleston County Sheriff's Department.

Who are these other individuals; what entity: Jeff Willaims, Woodring, Horney and Powell?

MR. UNDERWOOD: They are with SLED, Your Honor.

THE COURT: Agent Jeff Williams, Agent Tyler Woodring, Agent Chandler Horney, Agent Katherine Powell, all South Carolina Law Enforcement Division.

Jennifer Aycock, what agency is she with?

MR. UNDERWOOD: She's formerly of SLED, Your Honor.

THE COURT: Formerly of the South Carolina Law Enforcement Division.

Corporal King, Colleton County Sheriff's Office, Chris Hollowell, Stephanie Stover, J.J. Evans, Tommy Sekula, William Brown, Rosemarie Quezada, Shirley Renee Silvis, Craig Valentine, Sean Gibbons, Lason Dickson-Johnson, also known as BG, William Orlando Brown, IV, also known as Will.

Is there any member of the panel related by blood or marriage to any of the people that I've just listed, or does anyone have a close personal or social relationship with any of these individuals? If so, please stand at this time.

Yes, ma'am, tell me your name and juror number.

JUROR 198: Kirstin Tanner, 198.

THE COURT: And who are you related to, ma'am?

JUROR 198: I am not.

THE COURT: Who do you have a friendship with?

JUROR 198: Several.

THE COURT: I need you to tell me who they are.

JUROR 198: Sean Gibbons, Frank Thompson, Daniel Lundberg. Oh, my goodness. You said several.

THE COURT: Would you consider them acquaintances or close friends?

JUROR 198: Close friends.

THE COURT: If you will remain standing.

Yes, ma'am.

JUROR 78: Juror 78.

THE COURT: Who are you affiliated with?

JUROR 78: Agent Quincey Ford is a close family friend.

THE COURT: As a result of these experiences, do you all feel that you can remain fair and impartial and render a fair and impartial decision in this case based solely on the evidence as it will be presented and on the law as the Court will instruct? If your answer is yes, please take your seat.

Let the record reflect that 198 cannot be fair and impartial. She will be excused from the trial of this case.

78 indicated she could be fair and impartial.

Has any member of the panel ever been represented by any of the attorneys involved in this case or any of the lawyers with whom they practice? If so, please stand at this time.

(No response from the jury.)

THE COURT: Is there any member of the panel related by blood or marriage to or have a close personal or social or business relationship with any of the attorneys involved in this case, any of the lawyers with whom they practice law or anyone employed in any capacity whatsoever in their offices? If so, please stand at this time.

(No response from the jury.)

THE COURT: Has any member of the panel formed or expressed an opinion about any issue or matter involved in this case? If so, please stand at this time.

Yes, ma'am. Tell me your name and your juror number.

JUROR 182: Kim Sanderson, Juror No. 182.

THE COURT: What would be the basis of forming an opinion, ma'am, without going into too much detail?

JUROR 182: Someone close to me has been affected by this type of crime.

THE COURT: Are you telling me you cannot be fair and impartial?

JUROR 182: No.

THE COURT: You will be excused from the trial of this case only. You may take your seat.

JUROR 202: Robert C. Taylor, Jr, Juror No. 202. Spent 21 years in law enforcement. I have a son that's a law enforcement officer. I tend to side with them.

THE COURT: So you can't be fair and impartial?
JUROR 202: Yes, ma'am.
THE COURT: You are excused from the trial of this case only. Take your seat.
JUROR 121: Juror 121.
THE COURT: Your name, sir?
JUROR 121: Ermine Kearse.
THE COURT: Yes, sir.
JUROR 121: I have family member that is --
THE COURT: You don't need to go into detail. You are telling me as a result of that, you can't be fair and impartial?
JUROR 121: Yes, ma'am.
THE COURT: You will be excused from the trial of this case only.
JUROR 28: I'm Juror 28, Gale Chappelle. I have an 8-year-old. I have an 8-year-old living with me because of --
THE COURT: Because of this type situation?
JUROR 28: Yes.
THE COURT: Can you not be fair and impartial?
JUROR 28: I cannot right now.
THE COURT: Thank you, ma'am. You will be excused from the trial of this case only. You may take your seat.
Has any member of the panel read, watched or

listened to any media accounts about this case? That includes anything that could have been in the newspaper, radio, television, or on the Internet? If so, please stand at this time.

(No response from the jury.)

THE COURT: Is any member of the panel aware of any bias or prejudice for either the State or the defense in this case? If so, please stand at this time.

(No response from the jury.)

THE COURT: Is there any member of the panel who is a member of the Grand Jury which issued the indictments in this case? If so, please stand at this time.

(No response from the jury.)

THE COURT: Is any member of the panel a member of any type group which has its primary concern -- is there any member of the panel who is a member of or contributor to any group which has as its primary concern the enforcement of victims' rights? These groups would include, but are not limited to, Mothers Against Drunk Driving, Students Against Drunk Driving, Citizens Against Rape, Citizens Advocating a Return to Decency and Ethics, Parents Empowered to Save Teens, or any other type community watch group? If so, please stand at this time.

(No response from the jury.)

THE COURT: Is there any member of the panel who

has a moral, philosophical or religious opposition to sitting in judgment with a fellow human being? If so, please stand at this time.

(No response from the jury.)

THE COURT: Is there any member of the panel who has a moral, philosophical or religious opposition to the consumption of illicit substances or alcohol? If so, please stand at this time.

Yes, ma'am, tell me your name and juror number.

JUROR 130: Elaine Marchena, Juror 130.

THE COURT: And, ma'am, as a result of this predisposition, would you be able to set that aside and follow the law as the Court instructors?

JUROR 130: I don't think so.

THE COURT: Okay. You will be excused from the trial of this case only.

JUROR 82: My name is Ryan Gimple. My number is 82. I'm not sure if I fully understood what you said.

THE COURT: What I'm asking is if you have a moral, philosophical or religious opposition to the use of drugs or alcohol.

JUROR 82: Yes, yes.

THE COURT: Would you be able to set that predisposition aside and follow the law as the Court instructs and be fair and impartial?

JUROR 82: I believe to be fair and impartial, I cannot set that aside.

THE COURT: Okay. Sir, you will be excused from the trial of this case only. You may take your seat.

Is there any member of the panel who feels morally, philosophically and/or for some moral or philosophical reason feels that marijuana should be legalized? If so, please stand at this time.

Yes, sir, tell me your name and juror number.

JUROR 44: Joe Krause, 44.

THE COURT: Sir, as a result of this belief, do you feel you can remain fair and impartial?

JUROR 44: Yes, I do.

THE COURT: Do you feel you can render a fair and impartial decision in this case based solely on the evidence as it will be presented and on the law as the Court will instruct?

JUROR 44: Yes, I do.

THE COURT: Thank you, sir. You may stay in your seat.

Is there any member of the panel who has ever been the victim of a violent crime? If so, please stand at this time.

THE COURT: Tell me your name and -- tell me your name and juror number.

JUROR 78: 78.

THE COURT: You were the victim of a violent crime?

JUROR 78: Yes.

THE COURT: As a result of this experience, do you feel that you can remain fair and impartial and render a fair and impartial decision in this case based solely on the evidence as it will be presented and on the law as the Court will instruct?

JUROR 78: No.

THE COURT: Ma'am, you will be excused from the trial of this case only.

And I need you to listen carefully to this question, because it refers to former employment, not current employment.

Is there any member of the panel who was formerly employed in law enforcement? If so, please stand at this time.

I've already excused you, but if you will tell us name and juror number.

JUROR 202 Robert Taylor, 202.

THE COURT: Tell me your name and juror number.

JUROR 1: Juror No. 1, Austen Adcock. Can you repeat the question?

THE COURT: Were you formerly employed in any capacity in law enforcement, not your current employment,

but former?

JUROR 1: Okay. Never mind.

THE COURT: Thank you, sir.

JUROR 119: 119, Brian Johnson. I used to be a prosecutor with the South Carolina Attorney General's Office.

THE COURT: As a result of this experience, do you feel that you can remain fair and impartial and render a fair and impartial decision in this case based solely on the evidence as it will be presented and on the law as the Court will instruct?

JUROR 119: Yes.

THE COURT: Thank you, sir. You may take your seat.

Is there any member of the panel who has a family member who is employed in law enforcement? If so, please stand at this time.

We will start over here. I need you to give me your name and juror number and what member of your family it is and what agency. And remain standing.

JUROR 66: Allen Falkowski, Juror No. 66. Kenny Harris, Berkeley County Sheriff's Office, he's my cousin. And Stacey Harris, Berkeley County Sheriff's Office, he's my cousin.

JUROR 18: No. 18, James Breaux. My son, he's with

the detention center.

THE COURT: In Charleston?

JUROR 18: In Charleston, Al Cannon.

JUROR 201: Rebecca Taylor, Juror 201. My uncle is a police officer in Hampton County.

JUROR 86: Colleen Gray, 86. My brother is NYPD.

THE COURT: You said NYPD?

JUROR 86: Yes.

JUROR 199: My brother is a police officer in Hampton County.

THE COURT: You said Hampton?

JUROR 199: Yes, ma'am.

THE COURT: Tell me your name and juror number.

JUROR 199: Mary Taylor, 199.

JUROR 1: Juror No. 1, Austen Adcock. My grandpa worked at Lieber prison.

JUROR 43: Laura Croft, Juror 43. My husband is a police officer with the State Port Authority.

JUROR 118: My name is Roy Jenrich, No. 118. My daughter-in-law is an attorney with the Secret Service.

THE COURT: Attorney with who?

JUROR 118: Secret Service out of Washington, DC.

JUROR 67: Eva Bresney, Juror No. 67. My uncle is in Buncombe County, North Carolina and my cousin is a state trooper in North Carolina.

THE COURT: You said your cousin is a state trooper for South Carolina?

JUROR 67: North Carolina.

THE COURT: And did you say someone else as well?

JUROR 67: My uncle is a sheriff in Buncombe County, North Carolina.

JUROR 108: Selicia Holmes-Langford, Juror 108. My sister works for South Carolina Probation and Parole in Berkeley County.

THE COURT: As a result of these experiences, do you all feel that you can remain fair and impartial, and render a fair and impartial decision in this case based solely on the evidence as it will be presented and on the law as the Court will instruct? If your answer is yes, please take your seat.

Let the record reflect that all answered yes.

Does any member of the panel know of any reason whatsoever why he or she should not serve as a juror in this case, with particular emphasis being placed on your ability to be fair and impartial to both the State and the defense? If so, please stand at this time.

(No response from the jury.)

THE COURT: Are there any additional questions from the State, Mr. Underwood?

MR. UNDERWOOD: None, Your Honor.

THE COURT: From the defense, Ms. Johns?

MS. JOHNS: No, Your Honor.

THE COURT: From the defense, Mr. Griffith?

MR. GRIFFITH: No, Your Honor.

THE COURT: The strikes will be five for the State --

MR. UNDERWOOD: It would be five for the State and total of ten for the defense.

THE COURT: Well, they got five of each. Yes.

All right. Who is going to demonstrate for me?

Ladies and gentlemen, if your name is called, please come forward with all of your personal belongings. Stand where the bailiff is standing until we seat or excuse you as a juror. If someone has to come from the inside of the bench, please be courteous and slide down.

We list your names randomly. And we do that by computer. If you give us a moment, please.

THE COURT: Is the State ready to proceed?

MR. UNDERWOOD: Yes, ma'am.

THE COURT: Defendants ready to proceed?

MS. JOHNS: Yes, ma'am.

MR. GRIFFITH: Yes.

THE CLERK: Juror No. 172, Hassan Rezzoug, please come forth and bring your personal belongings.

What says the State?

MR. UNDERWOOD: Please excuse the juror.
THE CLERK: Excuse the juror.
Juror No. 225, William Withers.
What says the State?
MR. UNDERWOOD: Please present this juror.
THE CLERK: What says the defendant Hunter?
MS. JOHNS: Please seat the juror.
THE CLERK: What says the defendant Roberts?
MR. GRIFFITH: Seat the juror.
THE CLERK: Seat the juror.
Juror 65, Evan Fabian. What says the State?
MR. UNDERWOOD: Please present this juror.
THE CLERK: What says the defendant Hunter?
MS. JOHNS: Please seat the juror.
THE CLERK: What says the defendant Robert?
MR. GRIFFITH: Excuse the juror.
THE CLERK: Excuse the juror.
Juror 114, Jary Hulst. What says the State?
MR. UNDERWOOD: Please present this juror.
THE CLERK: What says the defendant Hunter?
MS. JOHNS: Please excuse the juror.
THE CLERK: Excuse the juror.
Juror 113, Catina Hughes. What says the State?
MR. UNDERWOOD: Please present this juror.
THE CLERK: What says the defendant Hunter?

MS. JOHNS: Please seat the juror.
THE CLERK: What says the defendant Roberts?
MR. GRIFFITH: Seat the juror.
THE COURT: Wait a second. Does he want to excuse --
THE DEFENDANT: I want to represent myself.
THE COURT: Sir, I've already told you, we settled that. Is the juror to be seated or excused?
MR. GRIFFITH: Please seat the juror, Your Honor.
THE CLERK: Juror 166, Jason Phillips. What says the State?
MR. UNDERWOOD: Please present this juror.
THE CLERK: What says the defendant Hunter?
MS. JOHNS: Please seat the juror.
THE CLERK: What says the defendant Roberts?
MR. GRIFFITH: Seat the juror.
THE CLERK: Seat the juror.
Juror 159, Richard Novak. What says the State?
MR. UNDERWOOD: Please present this juror.
THE CLERK: What says the defendant Hunter?
MS. JOHNS: Please swear the juror.
THE CLERK: What says the defendant Roberts?
MR. GRIFFITH: Please seat the juror.
THE CLERK: Seat the juror.
THE COURT: Number 103, are you present? Sir, did

you tell me you had a real estate closing on Friday? I'm sorry. I just needed clarity on that, because I neglected to tell my deputy clerks that.

Juror 163, Felix Petrowski. What says the State?

MR. UNDERWOOD: Please present this juror.

THE CLERK: What says the defendant Hunter?

MS. JOHNS: Please swear the juror.

THE COURT: What says the defendant Roberts?

MR. GRIFFITH: Swear the juror.

THE COURT: 23, Patrick Bumgarner. What says the State?

MR. UNDERWOOD: Excuse the juror.

THE CLERK: Excuse the juror.

Juror 98, Brandee Harris. What says the State?

MR. UNDERWOOD: Please present this juror.

THE CLERK: What says the defendant Hunter?

MS. JOHNS: Please excuse the juror.

THE CLERK: Excuse the juror.

Juror 32, Allison Clay. What says the State?

MR. UNDERWOOD: Please present this juror.

THE CLERK: What says the defendant Hunter?

MS. JOHNS: Please swear the juror.

THE CLERK: What says the defendant Roberts?

MR. GRIFFITH: Please swear the juror.

THE CLERK: Seat the juror.

Juror 199, Mary Taylor. What says the State?
MR. UNDERWOOD: Please present this juror.
THE CLERK: What says the defendant Hunter.
MS. JOHNS: Please swear the juror.
THE CLERK: What says defendant Roberts?
MR. GRIFFITH: Excuse the juror.
THE CLERK: Excuse the juror.
Juror 96, Jenair Hamilton. What says the State?
MR. UNDERWOOD: Please present this juror.
THE CLERK: What says the defendant Hunter?
MS. JOHNS: Please swear the juror.
THE CLERK: What says the defendant Roberts?
MR. GRIFFITH: Please swear the juror.
THE CLERK: Seat the juror.
Juror 210, Karenda Walker. What says the State?
MR. UNDERWOOD: Please present this juror.
THE CLERK: What says the defendant Hunter?
MS. JOHNS: Please swear the juror.
THE CLERK: What says the defendant Roberts?
MR. GRIFFITH: Please swear the juror.
THE CLERK: Seat the juror.
Juror 144, Brady Miller, III. What says the State?
MR. UNDERWOOD: Please present this juror.
THE CLERK: What says the defendant Hunter?
MS. JOHNS: Please swear the juror.

THE CLERK: What says the defendant Roberts?
MR. GRIFFITH: Please dismiss the juror.
THE CLERK: Dismiss the juror.
Juror 68, Sheila Fernandez. What says the State?
MR. UNDERWOOD: Please present this juror.
THE CLERK: What says the defendant Hunter?
MS. JOHNS: Please swear the juror.
THE CLERK: What says the defendant Roberts?
MR. GRIFFITH: Please present this juror.
THE CLERK: Seat the juror.
Juror 70, Steven Fish. What says the State?
MR. UNDERWOOD: Please present this juror.
THE CLERK: What says the defendant Hunter?
MS. JOHNS: Please excuse the juror.
THE CLERK: Excuse the juror.
Juror 67, Bresney Fanning. What says the State?
MR. UNDERWOOD: Please present this juror.
THE CLERK: What says the defendant Hunter?
MS. JOHNS: Please excuse the juror.
THE CLERK: Excuse the juror.
Juror 26, Dorothy Carter.
MS. JOHNS: Madam Clerk, do you mind repeating the number?
THE CLERK: 26. What says the State?
MR. UNDERWOOD: Please present this juror.

THE CLERK: What says the defendant Hunter?
MS. JOHNS: Please swear the juror.
THE CLERK: What says the defendant Roberts?
MR. GRIFFITH: Please swear the juror.
THE CLERK: Juror 213, Brian Watkins. What says the State?
MR. UNDERWOOD: Please present this juror.
THE CLERK: What says the defendant Hunter?
MS. JOHNS: Please excuse the juror.
THE CLERK: Excuse the juror.
THE COURT: Defendant Hunter has exhausted its strikes.
MS. JOHNS: I'm sorry, Your Honor?
THE COURT: You've exhausted your strikes.
MS. JOHNS: Yes, Your Honor.
THE CLERK: Juror 162, Shyam Patel. What says the State?
MR. UNDERWOOD: Please excuse the juror.
THE CLERK: Excuse the juror.
Juror 66, Allen Falkowski. What says the State?
MR. UNDERWOOD: Please present this juror.
THE CLERK: Any challenge from the defendant Hunter?
MS. JOHNS: No, ma'am.
THE COURT: What says defendant Roberts?

MR. GRIFFITH: Please excuse the juror.
THE COURT: Excuse the juror.
Juror 214, Ashley Watson. What says the State?
MR. UNDERWOOD: Please present this juror.
THE CLERK: Any challenge from defendant Hunter?
MS. JOHNS: No, ma'am.
THE COURT: What says defendant Roberts?
MR. GRIFFITH: Please seat the juror.
THE CLERK: Seat the juror.
Juror No. 9, Tracy Bell. What says the State?
MR. UNDERWOOD: Please present this juror.
THE CLERK: Any challenge for cause from defendant Hunter?
MS. JOHNS: No, ma'am.
THE COURT: What says defendant Roberts?
MR. GRIFFITH: Please seat the juror.
THE CLERK: Seat the juror.
THE COURT: Two alternates, one and two.
THE CLERK: Juror 146, Annette Mims. Was says the State.
MR. UNDERWOOD: Please present this juror.
THE CLERK: What says the defendant Hunter?
MS. JOHNS: Please excuse the juror in this case.
THE CLERK: Excuse the juror.
Juror 40, George Craven. What says the State?

MR. UNDERWOOD: Please present this juror.
THE CLERK: Any challenge?
MS. JOHNS: No.
THE COURT: What says defendant Roberts?
MR. GRIFFITH: Please seat the juror.
THE CLERK: Seat the juror.
Next alternate, Juror 104, Jonathan Hendrix. What says the State?
MR. UNDERWOOD: Please excuse the juror.
THE CLERK: Excuse the juror.
Juror 37, Scott Cooper. Any challenge from the State?
MR. UNDERWOOD: No, ma'am.
THE COURT: What says defendant Hunter?
MS. JOHNS: Please swear the juror.
THE CLERK: What says the defendant Roberts?
MR. GRIFFITH: Please excuse the juror.
THE CLERK: Excuse the juror.
Juror 108, Selicia Holmes-Lankford. Any challenge from the State?
MR. UNDERWOOD: No, ma'am.
THE COURT: What says the defendant Hunter?
MS. JOHNS: Please swear the juror.
THE CLERK: Any challenge for cause from the defendant Roberts?

MR. GRIFFITH: Please swear the juror.
THE CLERK: Seat the juror.
THE COURT: Any motions regarding selection of the jury from the State?
MR. UNDERWOOD: None from the State, Your Honor.
THE COURT: From the defendant Hunter?
MS. JOHNS: No, Your Honor.
THE COURT: From the defendant Roberts?
MR. GRIFFITH: No, Your Honor.
THE COURT: To the balance of the panel, we are sorry that it's taken a little longer than expected this morning. You are excused for lunch. I need you to return to the jury assembly room at two o'clock, at which time Judge Harrington will select her jury, and then we will be done for the day. Appreciate your patience. Have a good lunch. See you at two o'clock.
(Whereupon, the venire leaves.)
THE COURT: Ladies and gentlemen, please stand and raise your right hands so the clerk can swear you.
(Whereupon, the jury is sworn.)
THE COURT: Ladies and gentlemen, I'm going to send you to your jury room for a few moments so I can discuss scheduling with counsel. During this break, please do not discuss the case in any manner whatsoever. Please don't speculate as to what you think it may or could be about.

The bailiffs will also get your cell phone numbers in the event that we need to reach out to you during the course of the trial. I suspect we are going to go to lunch. I just need to know how long we are going to take for lunch. If you will go with the bailiffs for me please, I appreciate your patience in advance.

(Whereupon, the jury leaves open court at 12:48 p.m.)

MR. GRIFFITH: If it please the Court, Your Honor --

THE COURT: I have something else I need to do first, if you hold that for me.

As regards the defendant Justin Gordon Hunter, we held motions in this case last Wednesday. He failed to appear after appropriate notice regarding the proceedings as they were his motions that were filed with the court to be disposed of. Subsequent to the call of the motions, Mr. Roberts joined in the motions likewise.

Mr. Hunter, and I'm referring to Justin Gordon Hunter, had a bond set on December 14th of 2016. That bond was set in the amount of $300,000. He was not allowed to post 10 percent. There were other conditions that he initialed regarding that bond document. The relevant portion, however, is paragraph 10, which reads as follows: The defendant understands that he or she has the right to be

present at trial of his or her case; that it is his or her responsibility to make contact with his attorney and the clerk of court in order to know the date that the trial of his case is scheduled for. The defendant further understands this order acts as a notice of his right to be present at trial, and that the trial will proceed in his absence upon a failure to attend court.

And he initialed and signed the document. And that was on 12/14 of '16. That was set by Judge McMahon. It appears with Sinkler Southeast Bonding in Columbia, posted his surety on December 22nd of 2016. And also on that same date, he likewise initialed that he would be tried: I understand and have been informed that I have a right and obligation to be present at trial. And should I fail to attend the court, the trial will proceed in my absence. And it has been explained to me that if I fail to appear before the court as required, a warrant for my arrest will be issued. And, likewise, he signed, as well as Ms. Johns, on 12/14 of '16. He failed to appear. A bench warrant has been issued for his arrest. And we will proceed with the trial in his absence.

Has anyone notified Sinkler Southeast Bonding? Ms. Johns, did you try to contact his bonding company to see if they have any contact with him?

MS. JOHNS: I have not.

MR. UNDERWOOD: I have not.

THE COURT: Any reason nobody contacted the bonding company to see if they can find him?

MS. JOHNS: Your Honor, I attempted to contact Mr. Hunter directly.

THE COURT: Yeah, but I would think he owes them money. They keep a tight leash. Nobody thought it prudent to call them? Maybe I will give them -- do we have their phone number? I would think during the break, somebody would want to do that, especially in light of the fact that their money is going to start being distributed. It is Sinkler Southeast Bonding, 443D Meeting Street, West Columbia, 29169; Palmetto Surety Corp., 109 Riverlanding, Suite 200, Charleston, 29492.

I'm going to make copies of these documents as a court's exhibit.

Okay. Now, Mr. Roberts, you want to tell me something?

THE DEFENDANT: Yes.

MR. GRIFFITH: First, Your Honor --

THE COURT: I'm sorry, I meant to say Mr. Griffith.

MR. GRIFFITH: If it please the Court, Your Honor, I would move for a mistrial in that during the jury -- while the jury panel was all in here, Mr. Roberts did stand up and

object to being represented. I just wanted to put that on the record.

THE COURT: I will note it and overrule it. A mistrial is an extreme remedy and should only be granted when a curative instruction cannot suffice. When you are the architect of your own dilemma, that does not posture for a mistrial. Motion is denied. If necessary, I will give a curative instruction.

But, Mr. Roberts, I will instruct you that if you make any other outbursts, I'm making arrangements to have a monitor put in a separate room where you and your lawyer will view the trial. So it would be in your best interest that you not have any further outbursts. Because I'm not going to have you being disruptive during the course of these proceedings. There's a decorum that we all must follow. There's rules in place that make sure this is an ordinarily process. They also make sure that your constitutional rights are protected. So I would strongly suggest that you go over those with your counsel. No one has a problem with you making an objection. In fact, in a trial there should be lots of objections. But there's a way it has to be done. And I expect you to follow those rules.

THE DEFENDANT: Can I make an objection now?

THE COURT: No, sir. You need to make your lawyer aware of it and then I will be glad to hear anything that

you tell him. But I'm not rehashing any of that stuff about us not having jurisdiction and any of that. I've already dealt with that for about a couple of hours last week. And I am not entertaining that any further. I made you clear as to what the law is in South Carolina.

THE DEFENDANT: All right. So being that you brought that up, the letter that I have from the court clerk saying there's no jurisdiction --

THE COURT: Sir, I told you that is invalid and that your reliance on that is misplaced.

THE DEFENDANT: All right. Constitutionally, I can represent myself.

THE COURT: Sir, I've already denied that request as well. And for the record, I would note that I do not believe that you understand the significant jeopardy that you are placing yourself in by asking to represent yourself. I do not perceive that you have any grasp of the rules of evidence or procedure. I find for the record that that would be a substantial constitutional deprivation of your rights. So, therefore, I am not going to grant your motion to relieve your attorney and allow you to represent yourself, because I don't believe you understand the consequences of your decision to proceed without a lawyer. However, I have instructed your counsel and I am certain that he will assist in your representation.

And contrary to what Dr. Maddox observed, I have deliberately taken a conscious and concerted effort to observe your behavior. You are more than qualified and adaptable and aware of what is going on. And you have more than adequate ability to assist your counsel. As a matter of fact, you've been actively involved in all the proceedings. And you have more than the ability to communicate with Mr. Griffith.

And I've instructed Mr. Griffith to take into account anything that you've requested. Based on my observations, he has been incredibly amenable during jury selection. Everyone you asked to be struck, he exercised that strike. But I need to advise you that you need to discuss certain strategies with him. He's required to consider what you think, but if it's adverse to your interest, he doesn't have to do it. So I would strongly suggest that you listen very carefully to what he tells you, because he is aware and adept at the rules. And you need to take advantage of that advice.

And I will give you extra time if you need to go over questions and other things with him. In fact, I'm contemplating letting you have time to go over the discovery again with him this afternoon before we proceed with any substantive testimony.

THE DEFENDANT: I am not trying to act

contemptuous.

THE COURT: No, I am not taking it that way. I'm listening.

THE DEFENDANT: In regards to the questions, I sat here and I wrote all the appropriate questions for the objective that I'm trying to reach in spite of my life.

THE COURT: You will have time to go over that with him. That is not the appropriate time. We are picking a jury.

THE DEFENDANT: All right. I want to make sure. If anything, because I stated I feel threatened by him. We do not --

THE COURT: I don't perceive that, sir. And I don't think that's valid. I think that's a dilatory attempt to delay these proceedings.

THE DEFENDANT: I said this since the first time I met him.

What I'm saying is this, I'm supposed to rely on him to ask my questions exactly how I wrote them?

THE COURT: Well, if they are legally appropriate, yes. But he doesn't have to ask them if you put them in a form that we don't recognize in the rules. There are rules we have to follow. You need him to go over the rules with you. Some of your questions may -- if they are not written the way the rules are required, he can't ask them.

What I believe you need to do is make him aware of the general subject matter of the questions you have. If there's anything that you think falls under the category of impeachment stuff, things that deal with credibility of witnesses, you need to make him fully aware of the context you want asked. And then he can advise you whether that is within the context of how our rules allow questions to be asked.

THE DEFENDANT: I understand that format. And it's written to that extent. I understand that facts. Now, I also ask that the assistant attorney general have a subordinate in place because I would like to question him.

THE COURT: You can't question him. He can't be a witness, sir.

THE DEFENDANT: All right. Your Honor, I'm trying to prove corruption on the part of the Office of Attorney General. And I can show that.

THE COURT: Well, then you need to ask the officer that did the investigation. But Mr. Underwood doesn't investigate. And that's not his posture and he can't be a witness.

THE DEFENDANT: All right. So what about the clerk of the State Grand Jury?

THE COURT: If you want to subpoena that person, you can subpoena them, but it's unlikely they would be able

to answer anything you ask them.

THE DEFENDANT: All right. Can I ask you to just review a little bit of information why I'm saying this?

THE COURT: Sure.

THE DEFENDANT: All right. The indictment allegedly happened on April 13th. There are warrants that are fallible because the State Grand Jury, the clerk's office, one month before time, same exact document failed twice, one with the stamp on it --

THE COURT: Sir --

THE DEFENDANT: What I'm saying, these things happened before the actual investigation.

THE COURT: Doesn't matter. An indictment is a notice document. It's just like a summons and complaint. Like, in a civil case, you serve a summons and complaint. I don't have to put everything in it. I just have to tell you why you are being sued so you can know how to defend yourself.

THE DEFENDANT: Beforehand, though?

THE COURT: Yes. An indictment is purely a notice document to tell you why you are in court and what you have to answer to.

THE DEFENDANT: Not that part. What I'm saying is, if somebody -- how could a warrant be issued before -- say a crime didn't occur, right? And somebody issued --

THE COURT: I don't know -- I don't know that it didn't occur. And the court would have to send information --

THE DEFENDANT: Excuse me. I'm sorry.

THE COURT: That's okay.

THE DEFENDANT: According to the date that the State Grand Jury was impaneled, all right, for one, warrants was issued and stamped by the State Grand Jury's office before that even happened.

THE COURT: I don't know what their warrant is for, sir.

THE DEFENDANT: I mean, one was for a search warrant. One was for my arrest that's not signed by --

THE COURT: Those comes before indictments, sir.

THE DEFENDANT: Those come before indictments. All right. So how would a Fifth Circuit judge with a -- according to the State Grand Jury provisions be in accordance with the provisions, how could you issue or have statewide jurisdiction to issue that warrant two months and five days before the actual impanelment of State Grand Jury.

THE COURT: Because that's how it works. We get warrants and search warrants all the time before anybody is ever indicted. That's called the investigation process. They don't know whether they are going to need a Grand Jury

until they do all that.

THE DEFENDANT: But it says in the law, it says that they have to find probable cause.

THE COURT: That's what a judge found when he signed the warrant.

THE DEFENDANT: No, State Grand Jury.

THE COURT: That's different. You are mixing apples and oranges. There's a process. You get search warrants. You find evidence. A judge has to sign a search warrant, which means he has to find that there must be some evidence there based on some corroboration from the officer that criminal activity is present. He signed it. He believed that to be the case.

THE DEFENDANT: But from the 5th District.

THE COURT: No. It's a statewide Grand Jury.

THE DEFENDANT: But the Grand Jury hadn't even sat yet.

THE COURT: Doesn't matter. State Grand Jury sits all year.

THE DEFENDANT: I wasn't indicted yet. How would he have --

THE COURT: They don't have to indict you before they do search warrant and arrest warrants.

THE DEFENDANT: So if he's presiding --

THE COURT: That's all ahead of time.

THE DEFENDANT: If he's presiding judge, he's a part of that investigation.

THE COURT: No, he's not. He's performing a ceremonial function.

THE DEFENDANT: So he's --

THE COURT: We don't go out in the field and investigate, sir. We rely on what people tell us. They are under oath. And if we believe their testimony and their affidavit, we issue what we feel is appropriate.

THE DEFENDANT: So Judge Newman, being presiding judge of the State Grand Jury would be considered impartial?

THE COURT: Yes, absolutely. Judges don't care one way or another whether an arrest takes place.

THE DEFENDANT: I am not questioning that part. What I'm questioning is this is the 9th District. He's in the 5th District.

THE COURT: The Grand Jury is state-wide, sir. It's a state-wide mechanism. We can do it anywhere. He just happens to be the person that sits as a central figure that does that. And that rotates depending on who is in that circuit to do that. And once everything is indicted, then the Supreme Court, chief justice decides who each case is going to be assigned to. In this instance, it was assigned to me. I've had other cases assigned to me that originated in lots of other place, that originated in

Conway, originated in Columbia. Doesn't have to originate --

THE DEFENDANT: My personal value was taken to Columbia. Article 1, Section 11, states that no person should be held against any crime in a jurisdiction over which is not a part of the --

THE COURT: Sir, we have special legislation that's been passed that deals with the State Grand Jury. Everything they did to you was permissible.

THE DEFENDANT: To return indictments, though, Your Honor.

THE COURT: To do anything, sir.

THE DEFENDANT: I would like to see that.

THE COURT: You need to ask Mr. Griffith to provide you with that.

THE DEFENDANT: I would like to see that.

THE COURT: That's a foregone conclusion. I need to deal with things germane to this trial. Anything else you need to share with me before I let the jury go to lunch and we start? Do you need to go over all the discovery with him again?

THE DEFENDANT: All I have is the indictment paper.

THE COURT: I don't believe that. I believe he gave you everything.

But, Mr. Griffith, do you need time to go over all this stuff with him?

MR. GRIFFITH: If it please the Court.

THE COURT: How long is it going to take the State to present their case?

MR. UNDERWOOD: As to that, Your Honor, I had a brief conversation with both opposing counsel prior to selecting the jury. It's my understanding that they were both willing to stipulate that the chain of custody for all the evidence has been established. And they are not going to challenge it, which would greatly truncate the list of witnesses.

THE COURT: I would imagine it would.

MR. UNDERWOOD: I just would like to confirm that is, in fact, the case.

THE COURT: Is that correct, Ms. Johns?

MS. JOHNS: Your Honor, from what I've reviewed --

THE COURT: You really don't have a good faith challenge to the chain, correct?

MS. JOHNS: Mr. Underwood provided me with everything. Internally, it looks like to me like the chain of custody has been met. So I would not be challenging that. And I think that will ferret down that long witness list.

THE COURT: Mr. Griffith?

MR. GRIFFITH: Your Honor, having reviewed the same document provided by Mr. Underwood --

THE COURT: There's no really good faith basis to challenge the chain.

MR. GRIFFITH: -- I would not be challenging.

THE COURT: So how long is it going to take the State to present their case?

MR. UNDERWOOD: Your Honor, I believe that we may be able to finish by the end of Wednesday. I would note to the Court, as far as scheduling for this afternoon, I do have one witness who is a federal agent from out of state who was granted special leave from his superiors to be here today. If there's any way possible --

THE COURT: I will try to do opening instruction, opening argument and that witness. But I do, out of abundance of caution, I need Mr. Griffith to give him time to go over everything with Mr. Roberts. So that if Mr. Roberts has additional questions he wants Mr. Griffith to ask or otherwise, that he has more than abundant time to do that. So I anticipate breaking short of five o'clock to give him that opportunity. Because after the day, you are just weary. and I need him to be able to understand what's going on with him.

Are you going to need equipment to watch the videos or do you have a laptop?

MR. GRIFFITH: I have a laptop, Your Honor.

THE COURT: And you have the videos?

MR. GRIFFITH: I do have the videos in my car.

THE COURT: All right. So I'm anticipating maybe -- let's see. We will go to lunch until 2:10. I've got 1:05. That clock is a little fast. It's five minutes fast. Let's see. I'm thinking like 3:15. Does that give you enough time.

MR. GRIFFITH: I believe so. I'm organized very well. I believe we should be able to get through the videos.

THE COURT: Do we have a place we can put them that they can talk so they can have privacy?

All right. Bring in the jury. I'm appointing No. 32 as the foreperson. And we also, after lunch, will need notepads for the panel.

(Whereupon, the jury returns to open court at 1:06 p.m.)

THE COURT: Ladies and gentlemen, you've been selected for the case of the State of South Carolina v. Justin Gordon Hunter and Emory Warren Roberts. We are going to break for lunch until 2:15. That gives you about an hour and ten minutes, give or take, for lunch. During this break, please do not discuss the case among yourself or with anyone else. Please don't read, watch or listen to media

accounts, if any. Please don't have any contact with anybody in or about the courthouse as you return.

The bailiffs will show you how to leave the courthouse and how to return back to a jury room. Also, please, don't make any comments regarding your jury service on any social networking sites. That includes Facebook, Twitter, IG. I forget. There's so many now. But people read those who are not on jury duty, and they are only too happy to call us and let us know what you said. Out of abundance of caution, so that no comments are misinterpreted, I would ask that you refrain from doing that as well.

You have been incredibly patient with us today and we appreciate that. We appreciate that. Enjoy your lunch. We will see you at 2:15.

(Whereupon, the jury leaves open court at 1:08 p.m.)

THE COURT: Is there anything before we break for lunch from the State?

MR. UNDERWOOD: No. Just if -- the plan was to end court at approximately --

THE COURT: I'm going to play it by ear. But I only plan to call one witness to accommodate your person who is from out of town.

MR. UNDERWOOD: Just so I know how quickly to try

to speed through.

THE COURT: Whenever we finish is when we finish, but I want to have adequate time for Mr. Griffith to go through all of that discovery with Mr. Roberts.

MR. UNDERWOOD: Thank you, Your Honor.

THE COURT: You're welcome.

Anything else, Ms. Johns, before we break for lunch?

MS. JOHNS: No, Your Honor.

THE COURT: Mr. Griffith, anything before we break for lunch?

MR. GRIFFITH: No, Your Honor. I just want to clarify that you wanted me to go over the stuff with him before we brought the jury back?

THE COURT: No, when we break after the first witness. And at lunch, you can go over with him what that witness will testify to in the event he has any questions.

Who is that witness?

MR. UNDERWOOD: Special Agent Lundberg, Your Honor.

THE COURT: And that will be Special Agent Lundberg.

MR. GRIFFITH: Thank you, Your Honor.

All right. See y'all at 2:15.

(Whereupon, a recess transpired.)

(Court's Exh. 1, Bond, was marked for

identification.)

(Whereupon, a recess transpired.)

THE COURT: When the jury comes and goes out, y'all need stand. Do we have notebooks for the jury and pens or pads for the jury?

Is the State ready to proceed?

MR. UNDERWOOD: Yes, Your Honor.

THE COURT: Is the defense, Ms. Johns?

MS. JOHNS: Yes, Your Honor.

THE COURT: And, Mr. Griffith, are you ready to proceed?

MR. GRIFFITH: Yes, Your Honor.

THE COURT: Y'all give me one moment. I needed to get pads and pens for the jury. The bailiff is doing that. As soon as he's done doing that, we will resume.

Were any exhibits pre-marked?

(Whereupon, a brief recess is taken.)

THE COURT: Are there any exceptions to State's 1 through 42 from Mr. Johns?

MS. JOHNS: No, Your Honor. I reviewed all of them and I think they are appropriate.

THE COURT: Any objection, Mr. Griffith?

MR. GRIFFITH: No, Your Honor.

MR. UNDERWOOD: And, Your Honor, I actually just pre-marked a few more. The drug evidence we just got out of

lock-up, can I show those to opposing counsel because they will be introduced through the first witness?

THE COURT: Ask them right quick.

And State's 1 through 42 will be marked and admitted without objection.

(State's Exh. 1 through 42, are received in evidence.)

THE COURT: What are those numbers?

MR. UNDERWOOD: 43 through 48.

THE COURT: Any objection, Ms. Johns?

MS. JOHNS: No, Your Honor.

THE COURT: Any objection, Mr. Griffith?

MR. GRIFFITH: No, Your Honor.

(State's Exh. 43, Drug sealed on 8/8/2015, is received in evidence.)

(State's Exh. 44, Drug labeled L15-12524, is received in evidence.)

(State's Exh. 45, Drug labeled L15-12537, is received in evidence.)

(State's Exh. 46, Drug labeled L15-12523, is received in evidence.)

(State's Exh. 47, Drug labeled L15-12520, is received in evidence.)

(State's Exh. 48, Drug labeled L15-13649, is received in evidence.)

THE COURT: Now, I meant to ask this earlier and I apologize that I didn't. Did the State extend any offers to Mr. Roberts?

MR. UNDERWOOD: Yes, Your Honor, he was given a plea offer.

THE COURT: What was extended to him?

MR. UNDERWOOD: Beg the Court's indulgence, Your Honor.

Your Honor, I believe the plea agreement from the State was that several of the charges would be reduced and that the State's recommendation would be a sentence range of 13 to 15 years, all to run concurrent.

THE COURT: And that was reduced to writing?

MR. UNDERWOOD: Yes, Your Honor.

THE COURT: Did you provide that to Mr. Griffith?

MR. UNDERWOOD: Yes, Your Honor.

THE COURT: Mr. Griffith, did you have a full opportunity to go over that written offer with Mr. Roberts?

MR. GRIFFITH: Your Honor, that first offer I did present to Mr. Roberts on our first engagement. Subsequently, another offer was presented, but I was unable to present that to him until today.

THE COURT: What was the other offer?

MR. GRIFFITH: At that time, the attorney general was talking about the fact that he had provided an offer of

7 to 10.

THE COURT: Yeah, to Mr. --

MR. GRIFFITH: -- cap of 10. And Mr. Roberts was only today able to provide him with that information. Although the attorney general has said that we would have to talk about whether that had been withdrawn.

THE COURT: The reason I'm asking these questions is -- who was the gentleman that pled the other day that received eight years?

MR. UNDERWOOD: Sean Johnson, Your Honor.

THE COURT: Okay. I didn't know an offer similarly had been offered to Mr. Roberts. And with the machinations we had to go through, I really wasn't certain that Mr. Griffith has had a meaningful opportunity to discuss it with him, with him having an open mind about it. And I was going to suggest, though you are not bound by the objection, that you give him the opportunity to fully explore that with his client now that I think he is more informed as to how the system works and is more open to listening to what Mr. Griffith has to say. Would the State be willing to do that?

MR. UNDERWOOD: I would be willing to reopen negotiation with Mr. Griffith once that report is --

THE COURT: I think once he has -- and I'm referring to Mr. Roberts -- once he has a chance now with a

more clear head to go through the discovery with Mr. Griffith, I think he might be in a different posture regarding any negotiations as well.

The Court takes no position one way or the other. But I'm always concerned for PCR purposes when there have sort of been a lot of issues, for lack of a better word, swirling around, and somebody hasn't really taken the time to consider something that might be beneficial to them because of other things. I think that's acceptable to the both of you.

MR. GRIFFITH: I will certainly discuss that with him.

THE COURT: And, sir, I would suggest -- you don't have to agree. You don't have to agree, it's your choice. But if there's something that's been offered that's beneficial to you, I would strongly suggest that you take advantage of your lawyer's voice and really listen to what he's saying to you, and really take into consideration the strength or weakness of the State's case against you and whether you really want to roll the dice and have a trial. Doesn't matter to me whether you take it or reject it. When people reject thing sort of out of hand without thinking about it, it concerns me. So I want to make sure you've thought about it carefully before you reject it. And, normally, at this stage or juncture, the State would not be

amenable to anything. But I think as a courtesy to the Court, they are re-opening the lines of negotiation. And I would strongly suggest you take advantage of it if you are inclined to. If you are not, no harm, no foul. It's your choice.

THE DEFENDANT: I was just speaking to the attorney and I was telling him the other issue being the violation of my speedy trial --

THE COURT: It's a moot issue now, sir. The only remedy for a speedy trial motion is to set a trial date. And you have one. And I can assure, you under South Carolina law, that hadn't been violated. There have been people sitting in jail a lot longer than you. 18 months is not a long time. I've got over 200 in Charleston sitting over two years waiting on a murder trial.

THE DEFENDANT: I'm not on a murder trial.

THE COURT: On all kinds of trials. Murder trial is just at the top of my list because I'm just remembering what's there. They got a jail full of people that have been sitting there two plus years waiting on jury trials.

THE DEFENDANT: On a demand for a speedy trial?

THE COURT: Yes. I deny them all the time because case law just isn't in your favor. But the remedy for a speedy trial is to set a trial date and you have a trial. So it's a moot issue. There's no other remedy. Remedy for

speedy trial is not to dismiss your charges. Doesn't make them go away. Purpose of speedy trial is to get you in front of a court and get you to trial. Cases don't get away or get dismissed on a speedy trial motion.

THE DEFENDANT: I asked to challenge the jurisdiction of the State Grand Jury. Nothing.

THE COURT: You have no basis to challenge it.

THE DEFENDANT: What about the seizure?

THE COURT: We did that. We had a whole hearing on that the other day and I ruled on it.

THE DEFENDANT: On the State Grand Jury seizure?

THE COURT: No, sufficiency of the search warrants. Grand Jury does not issue search warrants.

THE DEFENDANT: So I was talking about the procedure of the State Grand Jury.

THE COURT: You would need to tell me some procedure was violated. And a blanket statement like that doesn't rise to the level of --

THE DEFENDANT: I tried to bring it to your attention earlier --

THE COURT: The remedy is just to re-present your indictments. It's not going to make your case go away.

THE DEFENDANT: So various constitutional violations just happen and it just remedies is cured?

THE COURT: You've called constitutional

violations. Everything you've presented to the court has not been a constitutional violation. You've raised to the Court's attention what are called ceremonial duties, that all of them have ways they can be corrected. And they don't amount to anything that would cause these charges to be dismissed.

THE DEFENDANT: So not having a preliminary hearing or the lack of --

THE COURT: A preliminary hearing wouldn't have made these cases go away.

THE DEFENDANT: I'm talking about as far as being reversible error or not.

THE COURT: It's not reversible error. Preliminary hearing, burden of proof is so minimal, it's rare anything is going to happen at a prelim that's going to dismiss your charges. But did you request one?

THE DEFENDANT: Yes.

THE COURT: When?

THE DEFENDANT: In February.

THE COURT: Did you do it within 10 days of your arrest?

THE DEFENDANT: Yes. I have all of that information.

THE COURT: I don't know why there wasn't a prelim, but I don't know that it wouldn't have made a difference.

THE DEFENDANT: How was I in Richland County? I never been arraigned of it.

THE COURT: That's where you were taken into custody and then eventually you were placed.

THE DEFENDANT: I was taken into custody here.

THE COURT: Yeah, but you can be taken to Richland County to be in front of the Chief Judge. I don't know why that was done, but I then gave strict instructions it wasn't to be done anymore.

THE DEFENDANT: But that's a violation of the Constitution.

THE COURT: It's not a violation. Under State Grand Jury rules, you can go before the State Grand Jury judge at any time.

THE DEFENDANT: It was my understanding they had state-wide jurisdiction to return indictments not to return --

THE COURT: They have state-wide jurisdiction to do everything until a judge is appointed. And they still have jurisdiction to set bonds and deal with bond matters even once I've been appointed. Generally, we don't do that in deference to one another, but sometimes it's done, but it's not a violation.

THE DEFENDANT: So the initiation of the impanelment doesn't start the investigation?

THE COURT: No. Investigation happened long before that.

THE DEFENDANT: I don't see how that would make any sense.

THE COURT: Makes complete sense. You don't have anything to present to a Grand Jury. It's not the Grand Jury's job to investigate. The Grand Jury's job is to determine the sufficiency of the evidence and determine whether there is probable cause for a case to go forward. That's it. It's really perfunctory in its nature. If not, it's rare anything is going to be no billed.

THE DEFENDANT: Like you just said, determine probable cause so whether a case should go forward. I was arrested two months and five days --

THE COURT: Because a judge had already determined there was probable cause to arrest you. You are mixing sort of apples and oranges and concepts. Everybody has a different procedure as it goes along, a different role in the procedure as it goes along. And everybody performed their duties as they were supposed to.

I don't have to wait for a Grand Jury to sign an arrest warrant for you to be indicted. That's putting the cart before the horse.

THE DEFENDANT: All right. So --

THE COURT: The only time you do that is when

there's a direct indictment. And that happens very infrequently.

THE DEFENDANT: I have a letter from Ms. Johns saying that we were directly indicted, that's why we weren't allowed a preliminary hearing.

THE COURT: Whatever Ms. Johns presented to you, I don't know what that's about. And, really, none of it makes a difference now. We have a trial. That's the whole purpose of all of this. Court has jurisdiction. The whole purpose unless you want it heard nonjury, which is, of course, up to you, and make sure all your procedural guarantees are protected and you have the right to confront those that are accusing you and present any defense you may have to these charges.

THE DEFENDANT: All right. So constitutional violation --

THE COURT: Sir, there aren't any constitutional violations.

THE DEFENDANT: All right. Of course, I am not just going to sit here. If I think something is a violation, I don't have a right to challenge it because --

THE COURT: You've already challenged it and I told you there's no validity or merit to the argument. There's no logic to what you're telling me. There's no basis in the law to grant any relief. There's no basis to dismiss your

charges based on anything you've said. And even if I did dismiss them, they are just going to go back and do another indictment. We are just going to end up right back here. There's sufficient evidence for you to have been charged. There's sufficient basis for you to have been arrested. And what happens is, generally, they do control buys, which are recorded. They then go get a search warrant to search the premises. They then get a warrant for your arrest. Then all of that is presented to a Grand Jury. It's not the other way around.

THE DEFENDANT: I understand. All right. I still challenge the State Grand Jury's jurisdiction, as having impact in more than one county.

THE COURT: Statewide Grand Jury is in every county. It's not bound by that. You are talking -- you are confusing jurisdiction and venue, two different concepts.

THE DEFENDANT: I'm talking about now the jurisdiction of the State Grand Jury.

THE COURT: And what basis are you challenging jurisdiction of the State Grand Jury?

THE DEFENDANT: That it didn't have multi-county impact.

THE COURT: It does have multi-county jurisdiction. You are talking about venue, two different concepts.

THE DEFENDANT: I was talking about venue brought

out there. Now the jurisdiction --

THE COURT: State Grand Jury judge has the right to have anybody brought in any county to have hearings in Richland County.

THE DEFENDANT: All right. The jurisdiction of the State Grand Jury as far as proving multi-county impact.

THE COURT: I don't understand what you are saying.

THE DEFENDANT: It says here that you have to have multi- -- they have to affect --

THE COURT: There is multi-county impact. They are alleging these actions happened in Dorchester and Berkeley County. Usually I try them all in one county. Usually people waive venue. I'm a little befuddled as to why we are not proceeding on Dorchester County charges, but it really doesn't matter, because I think they think they are going to get a sufficient enough conviction where they are probably going to nolle pros that indictment. And it's negotiation to become a moot issue, if I understand, Mr. Underwood's statement.

THE DEFENDANT: All right. It says the facts stated in Grand Jury's jurisdiction must be set forth on indictment.

THE COURT: It was stated.

THE DEFENDANT: The facts.

THE COURT: They were stated. I read them to the

jury.

THE DEFENDANT: All right.

THE COURT: What I was reading was the indictment, the facts that a sale took place on a particular date. It's stated in the language of the indictment -- I mean, of the statute, and that's exactly what they did. And even if they didn't, an indictment is simply a notice document. It's just to let you know you are being charged and what defenses you need to provide for yourself. Doesn't have to be without any errors. Doesn't require jurisdiction to hear your case.

THE DEFENDANT: So the probable cause with unsigned warrants is just --

THE COURT: I don't know what you are referring to.

THE DEFENDANT: I have a bunch of warrants that's unsigned. There's no -- I'm being held at Hill-Finklea.

THE COURT: The ones that were signed are the basis of -- that's what we had the hearing on last week. All of the issues were addressed, the sufficiency of the warrant, the underlying basis of the warrant being issued, and probable cause.

THE DEFENDANT: What I'm saying, if a signature of an issuing judge --

THE COURT: They may not have done those warrants. I don't know. But the ones that they proceeded on in this

case were signed. And they were made court's exhibits during the hearing last week.

THE DEFENDANT: Can I compel the Court to show me those? I have warrants that's not signed.

THE COURT: Do you have copies of the warrants, Mr. Griffith?

MR. GRIFFITH: I have copies of the warrants right here.

THE COURT: Are they all signed?

MR. GRIFFITH: I have signed copies of warrants, Your Honor.

THE DEFENDANT: Can I see them?

MR. UNDERWOOD: Your Honor, if I may just also point out, if there were any defects in any arrest warrants, those would have been cured by the indictment.

THE COURT: Uh-huh.

MS. JOHNS: Your Honor, may I be heard? Maybe I can help this out a little bit. When Judge Newman signed these warrants, what he did is, he signed on a line that basically said that he accepted sworn testimony from the agent, instead of signing underneath there where it had been issued by a judge. But he did sign the warrant. It's just in a different place than what usually is expected. That's why there's confusion.

THE COURT: Okay. Thank you for that

clarification.

THE DEFENDANT: It said signature of issuing judge and the judge -- all that is blank.

THE COURT: Didn't matter. He signed it. He issued it. It's called a scrivener's error. I sign on the wrong line of things all of the time, especially when I do bonds. I actually put it on the warrant. Sometimes I put it in the wrong place. That doesn't make it any less effective. I issued a bond and I signed it.

THE DEFENDANT: So you have two warrants in one. You have a Columbia address with a Dorchester County warrant.

THE COURT: He can do that. The actions took place in multi-counties. That's the purpose of the State Grand Jury, when you have multi-county involvement.

THE DEFENDANT: That's what I was trying to challenge. How is this multi-county?

THE COURT: Because they are alleging some of the sales took place in Dorchester and some took place here. And I assume they have video and audio of all of them. And your lawyer is going to show them to you.

All right. Mr. Griffith, are you ready to proceed?

MR. GRIFFITH: Yes, Your Honor.

THE COURT: Ms. Johnson, are you ready to proceed?

MS. JOHNS: Yes, Your Honor.

THE COURT: Please bring in the jury.

(Whereupon, the jury returns to open court at 2:39 p.m.)

THE COURT: Ladies and gentlemen, we appreciate your patience. We had some matters -- I apologize for the feedback on this mic. I'm going to see if we can do the best we can with it. I want to make sure you hear the opening instructions of the Court.

You've been selected for the cases of Hunter -- State of South Carolina v. Hunter and Roberts. I'm going to give you some preliminary instructions regarding the trial of this case so that you may better understand how we will be proceeding in this trial.

Each of you has a notebook. On the front page of that notebook, you should write your juror number so that you will know which notepad belongs to you. We will secure those during breaks and recess. So, please, know that no one will be reading your notes. I will give you some additional instructions regarding the notetaking near the conclusion of these instructions.

As I've indicated, I appreciate your patience. We had some matters of law we needed to dispose of before beginning this process. So, please, know that we do not take your time for granted.

As I've already explained, this is merely an

explanation of the procedures that we will follow in the trial of this case so that you may better understand what is happening.

The defendants in this case are charged by an indictment with several offenses, the elements of which I will explain to you at the conclusion of the case when I give you the instruction on the law applicable to this case.

The indictment, ladies and gentlemen, is simply the charge by which the case is brought in to court. It is not in any sense evidence of any of the allegations that it may contain. The defendants have pled not guilty to the indictment. The State, therefore, has the burden of proving each and every element of each offense beyond a reasonable doubt. And it will be your duty, ladies and gentlemen, to decide whether the State has met their burden or not.

Your purpose as jurors is to find and determine the facts. Each and every one of you is the sole judges of the facts in this case. If at any time I make any comment regarding the facts, you must disregard it. You are to determine the facts from the testimony you hear from the evidence that will be introduced into this record. It is then up to you to decide the inferences which you feel may be properly drawn from the evidence. It is especially important that you perform your duty of determining the facts diligently and conscientiously, because, ordinarily,

there is no way to correct an erroneous determination of facts made by a trial jury.

On the other hand, and with equal emphasis, the same law that makes you the judges of the facts, makes me the judge of the law. The law as given by the Court is the only law you must consider. You must accept and follow it, even though you may disagree with it. The Court cannot tell you what the facts are, and you cannot disagree with the Court as to what the law is or what the law should be. Your responsibility, ladies and gentlemen, is to take the law as it is instructed and apply it to the facts as you find them from the testimony of the sworn witnesses and any other evidence that will be introduced during the course of this trial. After doing that, you will render your verdict, a true and just verdict under the solemn oath that you've taken as jurors in this case.

Until I advise you to begin your deliberations, you must not discuss this case with anyone, that includes among your fellow jurors, your friends, family members or anyone involved in the case. After the case is submitted to you, you must discuss it only in the jury room among your fellow jurors.

The attorneys and the parties in this case have been advised that they are not to speak with you at all. So if you should see any of them around the courthouse, during

lunchtime or even in the parking area as you exit the courthouse, and they don't speak with you, please don't think they are being unfriendly or untoward. They are simply following the Court's instruction. Again, we would not want an innocent conversation to be observed and misinterpreted.

During the trial, you are not to read, listen to or watch any news reports about this case. That includes anything that might be in the newspaper, radio, television or Internet. And you are strictly instructed not to do any independent research of any type on the Internet or otherwise. You are bound by your oath to decide this case according to the testimony that you will hear and the other evidence that is introduced. You must not consider anything that you may have read or heard about this case outside the courtroom, whether it is before or during the course of this trial. It is essential that you maintain an open mind and not decide any issue in this case until all of the evidence has been presented, the parties have made their closing arguments and I have instructed you on the law.

It is your solemn responsibility to determine whether the State has met their burden of proof or not. And your verdict must be based solely on the evidence as it is presented to you in the trial and on the law as I will instruct you during and at the close of the trial.

In just a moment, the assistant attorney general will make what is called an opening statement, in which he will outline for you what he believes the issues in this case will be or what they will show. The attorneys for the defendants may also make opening statements, although they are not required to do so. Keep in mind that what the attorneys say during their opening statements is not evidence in this case. It is only their contention as to what they believe the evidence will show in this case.

The evidence in this case will be presented to you by the testimony of sworn witnesses from the witness stand and by exhibits that may be introduced into evidence. From time to time during the trial, you will hear the attorneys say, Your Honor, I object. Just as in sports, business or any other structured activity, there are certain rules that we must obey in the presentation of evidence. These rules have a definite purpose. They ensure that you receive the most trustworthy and reliable evidence available. An objection is the procedure that an attorney uses to call a possible violation of these rules to my attention as the judge of the court. And for this reason, you should never hold an attorney's objection against them, nor should you conclude from the Court overruling or sustaining an objection that I favor one side or the other. In essence -- in fact, you should expect many objections. And that is

normal in a trial. And, again, you should not hold an attorney's objection against them.

Also, from time to time, you will also hear the attorneys say, Your Honor, we have a matter of law to discuss. They may ask to approach the bench. I may ask them to approach the bench, or it might even be necessary some time for us to excuse you from the courtroom for a short while we discuss matters of law. The reason we do this, ladies and gentlemen, is because you are the finders of the facts. And sometimes when I'm discussing matters of law with counsel, it might be necessary for me to make some comment about the facts in connection with a ruling. And for that reason, we exclude you from the courtroom so that in no way will you be influenced by anything the Court may say or do in connection with the facts of this case.

In determining the true facts, what the true facts are in this case, you must decide whether or not the testimony of a witness or witnesses is believable. It is my responsibility to rule as a matter of law as to whether certain testimony is admissible at all or not. But once it is admitted, ladies and gentlemen, whether or not you believe it is solely a matter for you to determine.

In deciding whether to believe a witness, you have the right to consider the interest of any witness, the bias of any witness, the prejudice of any witness, the

opportunity for the witness to have seen the matters and things about which the witness may testify, and the way the witness acts on the witness stand, what we commonly refer to as their demeanor. You have a right to consider anything that is in the record that will help you evaluate the testimony of the witnesses. That means, ladies and gentlemen, that it is your duty to pay close attention to the witnesses, to observe them, to listen to them and to pay close attention to counsel and to the Court.

Please do not allow your thoughts to wander, but give strict attention to the testimony so that at the end of testimony, after the arguments of counsel and the charge or instructions on the law as given by the Court, you will then be in a position to determine what the true facts are and, thus, render a true and just verdict in this case.

During the course of this trial, you will be given the opportunity to take notes. Notetaking is a privilege that you may choose to exercise or choose not to exercise. Please don't feel you are required to take notes. Not everyone finds notetaking helpful to them. If you should decide to take notes, please don't try to record everything that is said. It's are physically impossible. The average person speaks at over 200 words a minute and that's a moderate speaker. That's not somebody that talks very fast. And as you can well imagine, that would be impossible for

you to take down verbatim. And only reason the court reporter can do it is she's trained in a very complex and specialized form of shorthand that allows her to take down what we say phonetically, along with the assistance of her trustee transcription machine, which is so overly simplistic because it is now a very complex computer. But even with that, before she produces a transcript, she listens to her digital recording to make sure she's taking down everything exactly as it was said. So, please, don't try to record everything that is said.

In addition, we don't want notetaking to become a distraction to you, because as I've explained, as the finders of the fact, you must rely on your powers of observation. So don't allow notetaking to become a distraction to you. You may want to keep an outline of the main points that are being made and the main arguments that are being made by counsel. So that when you retire to deliberate regarding this case, you can allow your notes to serve as a mechanism to refresh your memory.

Please be reminded that your notes are for your specific and your individual purposes. They are not to be shared with anyone else. They are only to be used to refresh your own memory.

During breaks and recess, we will leave your notes in your seats and will secure them during the evening

recesses to make sure there's no premature temptation to deliberate prematurely.

In addition, ladies and gentlemen, I would remind you that your notes are not to be considered any more reliable than the memory of a fellow juror. A fellow juror's memory should be considered just as reliable as notes that may have been taken by a fellow juror.

It is your added duty, Madam Forelady, to fill out verdict forms and to write out any questions that the jury may have during deliberations. And I will give you further instructions regarding that at the conclusion of the case.

Ladies and gentlemen, the foreperson is purely an administrative function. That person does not have any greater vote or voice than any other juror. It's simply that we need someone to fill out the verdict form and write out any questions that you all may have during the jury deliberation process. It's a purely random process. I wish we had some scientific method to do it, but we don't. And it's purely random. But, again, that person does not have any greater vote or voice than you do.

In order to preserve everyone's rights, I'm going to give counsel the opportunity to take exception to anything that the Court has said by way of opening instruction.

Any exceptions from the State?

MR. UNDERWOOD: None, Your Honor.

THE COURT: From the defense?

MR. GRIFFITH: None, Your Honor.

MS. JOHNS: None, Your Honor.

THE COURT: Thank you all very much.

Mr. Underwood, you may proceed with opening, after which we will follow with Mr. Griffith and then Ms. Jones.

MR. UNDERWOOD: Thank you, Your Honor. May it please the Court.

Heroin, cocaine, methamphetamine, those three dangerous drugs are what bring us all here today. We are here today for a jury trial as a result of a long-term investigation into a drug trafficking organization. This is an investigation involving numerous law enforcement agencies from multiple jurisdictions. The focus of which was a drug trafficking organization primarily dealing with heroin. A heroin trafficking organization that operated not only in Berkeley County, but in Dorchester County and touching into Charleston County.

We are here because a number of individuals, particularly the defendants in this trial, Justin Gordon Hunter, also known as Mo, Emory Warren Roberts, also known as Q, that these two individuals, along with others, combined together in a drug trafficking organization to bring heroin, cocaine and methamphetamine into Dorchester

and Berkeley Counties.

Now, in this trial, you are going to hear a lot of new information that you may not be familiar with, investigation into investigative techniques that law enforcement uses when investigating large-scale drug organizations. You are also going to hear about other techniques that are your more standard drug investigative techniques.

You are going to hear about a case where an individual became what's called a cooperating informant. This is a person who is not a police officer, but a person who works with the police to, essentially, work undercover to try to get other people to sell them illegal drugs. You are going to hear how that investigation spawned a larger investigation that revealed an actual organization beyond your typical street-level drug deal.

We are going to prove to you in this trial that Justin Gordon Hunter and Emory Warren Roberts worked together, along with others, to bring these illegal drugs to South Carolina and to distribute them. Now, it's important that idea that they are working together. The very first charge that the judge read to you was trafficking heroin by conspiracy. What does that mean? Well, at the end of the case, the judge is going to give you a full definition of that. But suffice it to say for now, it's when two or more

people agree to work together for an illegal goal, to commit an unlawful act. And that unlawful act in this case was trafficking heroin.

You are going to hear testimony from individuals who actually dealt in this organization. You are going to hear testimony from a confidential informant. Now, unfortunately, heroin is a very addictive drug. And you might see some people in this trial, hear testimony from people who have become addicted to that terrible drug. I wish that when we were presenting these cases to you, the only people I would be presenting are teachers and preachers and well-known upstanding people in the community. Unfortunately, those are not the kind of people who have information about drug trafficking organizations. The people who know about drug trafficking organizations are drug users and drug dealers. They are the people that have the information that you need to reach a proper verdict.

In addition to proving that there was an agreement between Justin Hunter and Emory Roberts to traffic this heroin, we are going to prove to you that they actually did it. In addition to hearing testimony from people involved in their group talking about what was happened historically over a period of time, you are going to have plenty of evidence of what's called controlled purchases of drugs. This is where the confidential informant wears a wire, audio

device or a camera, goes undercover for target of an investigation to sell illegal drugs. You are going to be presented with numerous controlled buy evidence, videos, audio, pictures. You are going to see drug evidence that's introduced in this case of actual heroin that was purchased as part of this investigation.

You are going to see evidence that not only did Justin Hunter and Emory Roberts agree to traffic heroin, that they actually did, and that the amount that they trafficked is well beyond what would be deemed trafficking amounts of heroin. We are talking about large amounts of heroin over a period of time.

You are also going to hear evidence that this organization dabbled in other drugs as well. You are going to hear evidence of at least one methamphetamine transaction, where a defendant in the case, with the assistance of Justin Hunter, sold methamphetamine to the confidential informant. And this is in addition to the heroin.

You are going to hear testimony how search warrants were used in this case. So we don't only have people coming to tell you about what happened. We have the controlled buys, which is video and audio evidence of actual drug deals. We also have evidence that was found in the defendants' homes, evidence that shows that they had drugs,

that they were prepared to package, deliver and sell those drugs as part of this drug trafficking organization. So you have all three types of evidence that you would normally expect in a drug case. You are going to be exposed to all three in this trial.

Now, as the judge has told you, and you will hear more at the end of this case, the State has what's called the burden of proof. That means that myself, Mr. Fernandez, law enforcement officers, people that come up here and present evidence to you, it is our burden to prove that Justin Hunter and Emory Roberts are guilty. I submit to you that we are going to give you more than enough evidence for you to come to that conclusion. After you have seen and heard all of the evidence in this case, it will be your job to deliberate and consider that evidence.

I submit to you that when you consider that evidence, you will find Justin Hunter and Emory Roberts guilty of all counts charged. Thank you.

THE COURT: Mr. Griffith, you may proceed.

MR. GRIFFITH: Thank you, Your Honor. May it please the Court.

THE COURT: Yes, sir.

MR. GRIFFITH: Ladies and gentlemen of the jury, thank you very much for participating in this function. If it were not for you, of course, we couldn't find any kind of

justice. It is your service that we depend upon to find the facts in this case. And that's what we are looking for. We are looking for the facts in this case.

There are elements of the crimes that my client, Mr. Roberts, is accused of committing. And the State has the burden to show that all of those elements are met. If all of those elements are not met, then Mr. Roberts is not guilty of that crime. And in order to show that all of those elements have been met, of course, they are going to present evidence, but Mr. Roberts and I will have the opportunity to question those witnesses and to try to clarify what it is that we believe they are trying to say, and that they must prove beyond a reasonable doubt in your mind that those things that he is accused of he's actually done.

Being present at a scene where a crime occurs is not a crime. Merely being present is not a crime at all. In fact, I have a nephew who lived with my mother and he brought drugs into her house, but my mother never committed a crime, drug dealing or anything like that. Knowing criminals is not a crime. There are probably many of us who are aware of other criminals and know criminals, but just knowing criminals is not a crime. Does not make you part of their conspiracy, part of their criminal activity.

And Mr. Roberts is presumed to be innocent until

the State or if the State were to prove him guilty beyond a reasonable doubt. But he sits here right now presumed innocent. And, of course, our system of law would like for you to continue to presume he is innocent throughout this trial until all of the evidence is given and you can weigh all of that evidence and make a determination of whether or not you believe there is reason to say that he is not innocent beyond a reasonable doubt. If doubt arises, of course, then he is not guilty.

The attorney general, what he said up here, of course, is not testimony. I didn't have a chance to question him or to ask what he meant by certain things or to challenge what he said. But Mr. Roberts has an opportunity as each witness comes up to challenge what they have to say and to bring out his version, or that is to say, try to show his side of what they are saying to show that he is not part of what they are convinced that he is guilty of.

The AG -- the attorney general, I'm sorry -- has the opportunity and will present a witness who is what's called a confidential informant. That confidential informant is not necessarily your nicest person. As he said, they are going to try to present people who know about crimes and things like that. But at the same time, he is a tainted person. And he has an incentive to please the Attorney General's Office. He has an incentive. And they

are giving him something in order to, and we will show, that in order for him to testify, there was some kind of exchange that went on.

And so, ladies and gentlemen, I would ask that you listen to the whole trial. Don't make up your minds until the end of the trial, until all of the evidence has been presented, and to weigh the witnesses. Of course, there are some law enforcement people. I have the highest respect for every law enforcement person there is. But there are also other witnesses for whom we can have questions in our mind as to whether the truthfulness. And law enforcement agencies, unfortunately, depend on those people to get their information.

So if you will listen carefully and don't decide what you are going to find as being the truth in this matter until the end of the matter, until it's all over with and we've heard all of the evidence. And if you do not find -- if you find that there is some doubt, that you cannot find no reasonable doubt, then you must find Mr. Roberts not guilty of this crime.

Thank you, ladies and gentlemen.

THE COURT: Ms. Johns.

MS. JOHNS: Thank you, Your Honor. May it please the Court.

THE COURT: Yes, ma'am. You may proceed.

MS. JOHNS: Good afternoon. I introduced myself at the very beginning when y'all were here this morning. I am Theresa Johns.

One question, is it too late for me to say I'm sorry that you are serving jury duty? I do know that it's a large sacrifice for you to give up your day to come into this court, to sit in judgment of what law enforcement and the State Law Enforcement Division, Dorchester County Sheriff's Department, Attorney General's Office, to sit and give them, give me and give my co-defendants's counsel the attention necessary in order for everybody to get a fair trial.

Now, I only took one business class when I was in college. And it was a lot about sales and delivery. And a lot of times, the trial is the same way. Basically, the Prosecutor's Office have something to sell to you and they should, in fact, deliver. And if anybody has had any experience in sales and delivery, you know that when you are listening to HSN or QVC or looking at something on line or somebody is trying to sell something to you, you order it, it comes in the mail and you go, oh, this is just not what I expected. They sold it to you. They oversold to you and they underdelivered what you expected. That's kind of what this criminal trial is.

They are selling you something. And it's your job

to determine whether or not what it is they are selling you is going to actually be delivered, because you can oversell and underdeliver.

And in this case, I am with everyone else with regards to respect we have for our law enforcement officers. This is not an easy job. This job requires commitment. It requires passion. It requires hours and hours away from their family. It requires dedication. And either you are really good at it and you can present these cases, or you really should find something else to do. These law enforcement officers that are going to be presented to you today, I have the utmost respect for. They work so hard. Those cases are long, ongoing case, has taken many months to put together. And a lot of it that they have brought to you will, in fact, show that there was a drug trafficking organization, drug trafficking sales, drug trafficking deliveries. And it's not pretty.

And what they have done is, they have employed, not necessarily by payment, but they have employed certain lay people that have to go in and they have to actually communicate with people who are selling drugs. And that's the nature of this business. You have to be able to trust somebody that's going to go in and going to be able to be trusted by people who are selling drugs in order for the drugs to be sold to them. So this person may have had

experience. These people that are coming in as lay people to testify to you as to what they saw, who they saw, when they saw it, how much they got paid, all supplemented with the technology of audio recording and video recording.

Now, the reason for the audio and video recording is that it helps enhance the believability of somebody who may be a drug addict. Makes sense. We have the technology today. Many people have the ability to audio or video anything on their cell phone, on their laptop, on their tablet, whatever that may be. So that is here and we are going to rely on that technology.

But when you look and listen to the technology, there is one thing you have to ask yourself. The person that they have recorded, the people that they have listened to, the people that they have followed, who are these people? It's not that there isn't drug trafficking going on state-wide, nation-wide. It's not that heroin is not a terrible, terrible thing.

It starts from pharmaceuticals. You will hear from a witness that says he started with pain pills and then he moved on to heroin. I don't want you to come in here and sympathize with the fact that there is a drug addict that the State had to use in order to get information from. That is a by-product of his choice. I don't want you to sympathize with the fact that heroin and pain pills is a

nation-wide epidemic. It is. But if you are going to blame somebody, there are so many people to blame. And you have to look to see who takes that witness stand, who is credible, who is believable, what is in it for them, and why did they agree to help law enforcement? And what are they expecting to get out of it? Are they going to not get arrested for their participation in this drug trafficking organization? Are they going to get rewarded in some other way? Are they not going to get prosecuted or are they going to get time cut off of their sentence? We've got to know the reason why.

And while you are sitting listening to the evidence and the witnesses, I want you to think about what it is that motivates this person to come and have to do this work. Because it's challenging. It's challenging for a layperson at any rate. I want you to ask yourself why. And I want you to ask yourself, when you are looking at the evidence that they presented to you based on the technology, can you tell who this person is who sold these drugs to the informant? That's what you have to do. You have to look. You have to listen. Yoou have to leave your biases about heroin addiction, drug addiction and all of those other prejudices that you bring to you every day life, you have to leave that outside of this courtroom. You have to be objectionable. You have to be smart. You have to be

attentive. And we chose you. I chose you based on the answers that you gave in court, based on the fact that you can give Justin Hunter a fair trial. And we are relying on that.

So when you listen to the evidence in this case, I want you to specifically ask yourself if you can tell who it is that's on that video. Is that person Justin Hunter?

And when you conclude at the close of the State's evidence, you will figure out that the State has failed to provide to you that the person on the video is, in fact, Justin Hunter.

Thank you.

THE COURT: The State may proceed.

MR. UNDERWOOD: The State calls Special Agent Daniel Lundberg.

DANIEL LUNDBERG,

having been duly sworn, testifies as follows:

THE CLERK: State your name for the the court reporter.

THE WITNESS: Daniel Lundberg.

THE COURT: Spell your last name, please.

THE WITNESS: L-u-n-d-b-e-r-g.

THE COURT: Thank you. You may proceed.

DIRECT EXAMINATION

BY MR. UNDERWOOD:

Q. Good afternoon, Agent Lundberg. If you would, please, introduce yourself to the members of the jury. Tell them where it is you currently work and about your history in law enforcement.

A. Yes, sir. I am Daniel Lundberg. I'm currently a special agent with Homeland Security investigations under the Department of Homeland Security. Before that, in 2006, I graduated from the college called Western Illinois University where I received my bachelor's degree in criminal justice.

And then in 2007, I was employed by the Dorchester County Sheriff's Office as a patrol deputy, where I worked as a patrol deputy until about 2010.

In 2010, I was given an opportunity somewhat promoted to be a criminal investigator in the narcotics unit, where I worked in narcotics unit until I left in December of 2016, when I took this job in Homeland Security.

During that time, I was responsible for investigating, obviously, drug-related crimes, as well as I was promoted to a sergeant over the unit in the early months of 2016, and I was responsible for other kinds of training within the department.

Q. Specifically as relates to this investigation, what were your job duties as a corporal and then sergeant in the narcotics unit?

A. We were responsible to investigate, like I said, drug-related crimes, whether it be from information that we gained from our own investigations. A lot of times we received drug complaints from citizens, maybe neighbors or something, they smell a funny smell coming on, you know, late at night and think maybe its meth related, so we would investigate it; or they notice that maybe there's a lot of traffic coming in and out of the neighbor's house. Again, we would kind of go and see what's go on, see if we can give the complaint any relevance or dismiss it as not being suspicious activity. In which the case I was involved with the case we are here for today in reference to investigating a drug trafficking organization that was operating within Dorchester County as well as the tri-county areas, Berkeley and Charleston.

Q. Agent Lundberg, how did you begin your investigation into this drug trafficking investigation, primarily focused on heroin?

A. In the early months of 2015, I started receiving information from individuals about an organization that was possibly located in Dorchester County in a certain area that I was familiar with that was in the Ladson area specifically. So I started to kind of dig into that area, because my whole time from 2007 until I became an investigator, we had certain areas where we work. So I was

really familiar with this area, because I had been there my whole career. And I knew a lot of the people in the area, you know, a lot of younger kids that have grown up and a lot of people still living there. So I kind of had a good familiarity with the area to kind of look into things. So I started to try to kind of build up that information that I was getting, try to corroborate it.

Going into the heroin, I was working another case in, which we often do, we often have multiple things that we are doing at one time, in which I was using a confidential informant. And this confidential informant was purchasing quantities of heroin from an individual known as Thomas Sekula, in which we did multiple deals. I built up a case on the distribution of heroin, which led us to -- eventually, I approached Thomas Sekula when I felt that my case was at a good point to kind of go further. Because I could kind of tell that he wasn't the one that was, you know, providing the larger quantities. He was kind of what you would consider a middleman, a lower class person. And the goal that we have is to kind of stop the head people from supplying the lower, essentially cut the head off the snake.

So I approached him to see if he would be willing to work with the sheriff's office and provide information and really just cooperate.

Q. And was that in capacity as a confidential informant?

A. That would have been in the capacity of coming on to sheriff's office as being a confidential informant for the sheriff's office.

Q. If you could briefly explain to the jury what a confidential informant is and the reasons why a person might become a confidential informant?

A. Basically, a confidential informant is a person that is cooperating with law enforcement in a confidential nature. When we do our paperwork and things like that, we are required and feel it necessary to protect this individual from these people that may be involved, to try to protect them from harm that may come of them at a later date, since they are not law enforcement. They are just normal people. And a lot of times, people are worried about, you know, what will happen afterwards if we put their actual name and address and everything on the paperwork. So, basically, a confidential informant could be anybody. It could be one of you. It could just be somebody with information, or it could be somebody that maybe has had charges and they are working off charges or they could be somebody that is seeking to get paid.

We do provide currency to these individuals for information or controlled purchases. And by controlled

purchases is where we will set the individual up with an audio and video recorder and give them our money that's pre-recorded. And we will let them go and buy the controlled substance.

Q. Now, you mentioned one of the motivations for a person to become a confidential informant was working off charges. Can you explain what that means in general and how the Dorchester County Sheriff's Office would approach that subject?

A. Yes, sir. Basically, working off charges would be somebody that has not a serious crime, nothing as far as, you know, any kind of murder or child pornography, anything like that. But more than likely, it would be a drug crime, in which they have relevant knowledge to drug activity going on and which they will cooperate in the hopes of getting help on what charge they may be looking at. And when we deal with the cooperating individuals, it's clear to them that we can't promise them anything. And they know this beforehand that just because they do something for us, provide us information, doesn't mean that the charge is just going to go away. It's just basically in hopes that it can help them out for whatever they are looking at in the future.

And if the person is reliable and person, you know, cooperates and does what we ask them and does things

legally, then we make our recommendations to the prosecuting entity. And by that, it could be, depending on -- maybe it's a smaller ticket that an officer wrote them, and we can approach the officer and see if they would be willing to help, or if it is a warrant that has went to the solicitor's office, we will approach the solicitor and tell them, this is what this individual has done and, you know, would you be willing to help since they have cooperated.

Q. Agent Lundberg, is it necessary to develop individuals who sometimes have these criminal charges pending or that could possibly be pending in order to infiltrate drug trafficking organization?

A. Yes, sir. Unfortunately, individuals like this are sometimes necessary. I personally wish that I could keep them out, due to the physical harm that could possibly come after. I do feel a necessary need to, you know, attempt to protect them from what will happen. If I could do it myself, I would much rather be the person that would go in and do it myself, but I don't always have that inner working or that knowledge or have the ability to kind of get myself into these groups and make these purchases.

As was mentioned earlier about, it would be good to have school teachers and pastors and somebody do these buys for us, but, unfortunately, those just aren't the people that were involved with people who deal drugs.

THE COURT: Let me interrupt. Madam Forelady, ladies and gentlemen of the jury, we need to take a brief restroom break. During the break, please do not discuss the case and please leave your notepads in your seats.

(Whereupon, the jury leaves open court at 3:21 p.m.)

THE COURT: The State ready to proceed?

MR. UNDERWOOD: Yes, Your Honor.

THE COURT: Defense ready to proceed?

MS. JOHNS: Yes, Your Honor.

MR. GRIFFITH: Yes, Your Honor. Sorry.

THE COURT: Please bring in the jury.

(Whereupon, the jury returns to open court at 3:33 p.m.)

THE COURT: We will now resume testimony.

You may proceed, Mr. Underwood.

BY MR. UNDERWOOD:

Q. A few minutes ago, we were discussing how you confronted an individual named Tommy Sekula about becoming a confidential informant. As you approached him, did he agree to become a confidential informant?

A. After I had approached him, basically, identified ourselves and kind of went through the whole procedure of, you know, that whole temporary detainment to see what was going on, we began to talk. And which while I was

explaining who I was, because at the time I had a longer beard and longer hair, that, you know, I had been working a case on him for distribution of heroin, and to which I kind of laid out the groundwork of how long I had been doing it and what exactly I had against him at that time, in which he then showed interest in cooperating at that time, and to which we went back to our office and went further into it.

Q. Earlier you mentioned that you had information about a trafficking organization that was operating in Dorchester and Berkeley Counties. Did Mr. Sekula offer you any information at that time related to that investigation?

A. Yes, sir. Going back on that information, I just kind of had that on the side burner, still trying to look into it and develop more information. When we got back and really started to kind of talk to Thomas about what had been going on over the period of time where we had been working this case, and a supplier of his for, namely, heroin, along with other things, he did mention to me that there was the group that he frequented in the Ladson and College Park area that sold heroin.

As he explained it to me, he nicknamed a male by the name of Q, which I was familiar hearing when I was attempting to identify, as well as some other things about that description of where the house was and a description of

Q. I kind of started matching up to the information that I had previously from other information that I had gathered.

Q. That other information, is that from other interviews of individuals?

A. Yes, other interviews of people that had been arrested for drugs.

Q. And after that confrontation, did you sign up Thomas Sekula as a confidential informant?

A. Yes. After we had that talk and kind of debriefed him a little bit, debriefed, meaning get the story of who, what, when, where, all of that information, we did sign him up as a confidential informant in which we have an agreement, which is just kind of almost like a contract, where it goes through and spells out all the things that confidential informant can and can't do and what they can expect as far as when they are operating with us to do these controlled purchases.

Q. And what did you explain to Mr. Sekula that he could expect as a result of becoming a confidential informant?

A. I explained to him, kind of like I explained earlier, that there was no guarantee that the charges that I had on him would be taken care of. I couldn't promise that. However, I did promise that I would at least, you know, keep the solicitor up-to-date on what he was doing and where it

was going, to just kind of keep them in the loop of things to try to get him some help for the help that he was providing the sheriff's office.

Q. And you mentioned the solicitor. At that time in your investigation, was the Attorney General's Office involved in the case?

A. Not at that time.

Q. After you signed up Thomas Sekula as a confidential informant, what things did he do as a confidential informant to further your investigation?

A. Basically, it all started, when we debriefed him, we found out that Thomas owed an amount of money already. Was considered fronting, is where a drug dealer will give the person drugs without payment. And then expect payment after, they will go and sell it. Found out that he had been fronted an amount of heroin. And he owed this Q individual, who was later identified as Emory Roberts, an amount of money.

And due to the information that I heard and how long I had been trying to work into the group, I felt that it was necessary to kind of jump on it then, since I had already been able corroborate a lot of the information, which we placed a recorded telephone call to the number that I was told was to Q, and which we went into a discussion.

As we did it, I could hear the conversation happen

as it was going, in which I heard Thomas speaking to Q about the money that was owed and about coming through where he lived to get an additional quantity of heroin.

And once that was all set up, we went further from there, which Thomas was equipped with audio and video transmitter. So we could not only record the controlled purchase, but we could hear it as it occurred. And he was issued a pre-recorded amount of US currency, in which all the serial numbers are recorded for the money we provide him to use for the drug deal.

MR. UNDERWOOD: May I approach the witness, Your Honor?

THE COURT: You may.

BY MR. UNDERWOOD:

Q. Agent Lundberg, I'm showing you what's been admitted as State's Exhibit 1 and 2. Do you recognize those?

A. Yes, sir.

Q. What are those?

A. They are audio recordings from, I believe, phone calls that were made.

Q. Are these phone calls that you just described?

A. Yes, sir.

Q. And whose initials appear on those disks?

A. Those are mine.

Q. Is there another set of initials as well in addition?

A. Yes, yes.

Q. The initials you placed on those disks, what do those initials mean?

A. DL, my initials Daniel Lundberg.

Q. The fact that your initials appear on those disk, what does that represent?

A. That I did have a chance to review them and that that is correct information.

Q. Are these recordings complete and accurate as to what you heard at the time?

A. Yes, sir, they are complete and accurate.

Q. Agent Lundberg, if you could, please explain the standard procedure that Dorchester County Sheriff's Office would use when starting a controlled purchase operation.

A. Initially, when we will meet with confidential informant, we always meet in pairs. We won't meet them alone by ourselves. We will always have another detective with us, in which we will perform a strip search. And, obviously, if it's female, we will have either a female detective or a female officer meet us and conduct that. But in this case, it was a male. And we conduct a strip search just to ensure there is no contraband being brought in hopes of maybe framing this individual or, you know, any hopes of

maybe falsely accusing. So we are assured that there is no -- nothing being brought.

So we will strip search them. And then we will outfit them with an audio and video recorder. After we do that, we will test it. And then we will do a brief monologue where we will set it up, which includes the date, the time, you know, how much money we are giving the confidential informant, where we are going. And then we will go from there.

Q. Is that the same procedure you used with Thomas Sekula?

A. That is.

Q. Did Thomas Sekula perform more than one controlled purchase?

A. Yes, sir, he did.

Q. Off the top of your head, do you know how many he performed?

A. A number? He performed six just with the Dorchester County Sheriff's Office. And then when SLED got involved, he did a number more.

Q. And was the same procedure followed when SLED became involved as well?

A. Yes, sir. We were involved with it throughout the entirety of the case, in which we did the same thing every time.

Q. When Thomas Sekula would be doing a controlled purchase, how would he get to the deal location?

A. Due to Thomas not having a valid driver's license, we would have an agent or detective who would operate in an undercover capacity and drive an undercover vehicle with Thomas to the area, in which Thomas would be dropped off, you know, just a couple houses down from where he was going. And Thomas would then walk up on foot to the house where he was going.

Q. What is the purpose of the undercover officer not going all the way to the location?

A. A lot of times, from my experience, when a drug dealer is not familiar with somebody who just shows up and drops them off, they become very suspicious and almost confrontational. Just to avoid any kind of confrontation, we felt it was safer just to let him walk up on foot, which is more normal. It's just kind of one of those safety things.

Q. At the conclusion of each of the controlled purchases, what did Mr. Sekula do with the drug evidence?

A. As we would hear the control purchase conclude, you could hear usually Thomas coming out. We would then radio the undercover detective to come by. In which, he would pick up Thomas. And then once in the car, Thomas would relinquish custody of those drugs to the undercover

detective, in which he would then take custody of them.

Q. At the conclusion of a controlled-buy operation, would a confidential informant be searched again?

A. Yes. After it was all said and done, we would go back to our undisclosed meeting location, usually where we will set it up at, get it started, like I explained, which again, the audio and video is removed. And we will search him a final time to ensure that there's nothing else on him.

Q. Is that a strip search as well?

A. That is also a strip search.

Q. During any of the searches of Thomas Sekula, either before or after any of these buys, was he ever found to be hiding drug evidence?

A. No, he was never found to have anything on him.

Q. If you will, I also want to hand you a few more exhibits. These are going to be State's Exhibit 21, 24, 5, 16, 10, 11, 12, 13, 14, 15. Now, Agent Lundberg, have you reviewed all of these disks?

A. Yes, sir.

Q. And all of these have been pre-admitted without objection. Do you recognize your initials on each of these exhibits?

A. Yes, sir, I do.

Q. And what do these exhibits represent?

A. These are audios from recorded phone calls that

were placed.

Q. Are these in connection to several different controlled buy transactions?

A. Yes, sir.

Q. Are some of these before SLED was involved and some after?

A. Yes, sir.

Q. Are all of those recordings fair and complete and accurate of what was happening at the time?

A. Yes, sir.

Q. During these controlled purchase transactions, were you the undercover officer that drove Mr. Sekula?

A. No, sir, I was not.

Q. Who was?

A. Detective Brandon Allen.

Q. What role did you play into these transactions?

A. I began as the case agent, which I was in charge of the overall case.

Q. And during the transactions themselves, did you participate in some way?

A. I did. I was there usually in the beginning to get everything started as far as the search, the phone call, issuing the money in there. And then throughout the controlled purchase, I would be on surveillance, in which we would either be in the area or be on a stationary point

where we could have an advantage of seeing the controlled purchase.

Q. Aside from the potential to see the controlled purchase, what's the purpose of having surveillance agents in addition to the undercover effort?

A. A lot of it is safety. Safety is our number one priority when we are doing things like that, not just you see on the outside, but also responsible for the safety of the confidential informant, as well as furthering investigation too. We can also see other things happening, people coming and going as well as the confidential informant and other things of that nature.

Q. At times during these transactions, were you ever in a position close enough to see the people that Thomas Sekula was interacting with?

A. On occasion, yes. During the course of the whole thing, there had been times where I was close enough to see.

Q. Were you able to identify the faces of the people he was dealing with?

A. On occasions, yes, two in specific.

Q. Who were the individuals that you were able to identify based on your own observations?

A. One occasion, I was able to identify a male that I knew as Will. That was identified as William Brown. On a

second occasion, I was able to identify Mo as Justin Hunter. Through my investigation, I was familiar with him beforehand. And then I was able to see their faces out in public.

Q. And which transaction do you recall that you saw Justin Hunter?

A. I don't remember the exact buy, but I remember that it occurred at the gas station on College Park near the McDonald's. I don't remember the exact date.

Q. Was that transaction during daylight or nighttime?

A. It was during the daylight.

Q. Was there another occasion where there was a controlled purchase from Justin Hunter at that gas station?

A. Yes. There was also an additional one that happened there.

Q. And what time of day was that?

A. That was at night.

Q. Was there a video made from your perspective using a cell phone at that time?

A. During the night deal, yes, there was cell phone video that was taken.

Q. What was the purpose of that cell phone video?

A. Just to further gather information, be able to show Hunter's vehicle come in and meet with confidential informant, where you can observe the confidential informant

exit the vehicle and then you watch as Hunter's BMW leave the parking lot.

Q. Throughout the course of your investigation, were you able to confirm that that was, in fact, Justin Hunter's BMW?

A. Yes, sir. I spent numerous hours conducting surveillance on Mr. Roberts and Mr. Hunter.

Q. And you personally observed Mr. Hunter driving that BMW?

A. On numerous occasion.

Q. Was that BMW registered to him at the DMV?

A. Yes, sir.

Q. I'm going to hand you State's Exhibit 26. Do you recognize that?

A. Yes, sir.

Q. What is that?

A. That is a buy video from Mo.

Q. Is this the cell phone video we were just discussing?

A. Yes, sir.

Q. And does it bear your initials as did the other exhibits?

A. Yes, sir, it does.

Q. Does that signify that this is a fair recording of what you saw at that time?

A. Yes, sir.

MR. UNDERWOOD: Your Honor, may I publish?

(Video playing.)

Q. Whose voice was that we were hearing?

A. That was mine.

Q. And whose car was that depicted in that video?

A. That was my undercover truck.

Q. And the vehicle that was seen backing up and pulling out?

A. That was Hunter's vehicle.

Q. During the video, you mentioned the name Charlie. What does that name mean?

A. Basically, Charlie is just a name that we will use for the confidential informant instead of saying informant over the radio, we will say Charlie, just in case somebody else is able to hear.

Q. And the confidential informant that was used in that transaction was that Thomas Sekula?

A. That was Thomas Sekula.

Q. Agent Lundberg, you mentioned you were in a position at least one, if not numerous occasions, to observe Justin Hunter?

A. Yes.

Q. And you've had an opportunity to see what he looked like?

A. Yes, sir.
Q. I want to hand you State's Exhibit 42, which was already admitted into evidence. Do you recognize that?
A. That's a U.S. passport.
Q. And, specifically, whose passport is that?
A. Justin Hunter's.
Q. Is that a picture of Justin Hunter in that passport?
A. That is.
Q. And do you recognize the person in that picture to be the same person you observed in these transactions that you know as Justin Hunter?
A. Yes, it is Justin Hunter.
MR. UNDERWOOD: Permission to publish, Your Honor.
THE COURT: You may.
BY MR. UNDERWOOD:
Q. And, again, that's the individual that you know as Justin Hunter?
A. Yes, sir.
Q. And you saw him perform these drug deals?
A. On the occasions we spoke of, yes.
Q. Have you had other opportunities to interact with Justin Hunter?
A. I have.
Q. Before I get to those, were there any other

techniques you used to gather information into this drug trafficking organization other than controlled purchases?

A. Yes, sir. I used a number of law enforcement database, as well as trash pulls and other surveillance.

Q. What is a trash pull?

A. A trash pull, basically, is when someone puts their trash out, essentially to the curb. They kind of are discarding it and give up ownership of it for the trash company to come and pick it up. A lot of times for a house, it will be out at the road away, off the curtilage. By curtilage I mean not like up against the garage, but on the roadside for pickup.

And in this case, the specific apartment complex that Hunter lived at, they had their own trash company. So what they would do is they would essentially put trash cans outside the door. And the trash company would come and pick up their trash, put a new bag in it, and then the people would just bring their cans back inside. It's craziest thing I've seen. But it was a nice apartment complex. It was the first time that I had actually seen something like that happen. Instead of actually bringing your own garbage to the dumpster, somebody comes and gets it.

Q. What apartment complex are you referring to?

A. Abberly Crossing. It's off of Patriot Boulevard. I believe the address is 9698 Patriot Boulevard.

Q. Do you recall what apartment number off the top of your head?

A. Building 600, Apartment 618.

Q. Do you recall when you performed this trash pull?

A. I don't remember the exact date off the top of my head. It's in my notes. I know it was in September. Obviously, it was at nighttime.

Q. Was this in September 2015?

A. Yes, sir.

Q. As a result of that trash pull, did you find anything you found to be significant evidence for your investigation?

A. Yes, sir. During the trash pull, we just took the bag from the can, went back and went to my truck, and we went back to my office. Upon inspection of the contents inside the bag, found Western Union receipts where Justin Hunter had shipped money, wired money through Western Union at a local Food Lion. I believe we found two of those receipts when he had done so, he wired money to New York, which had listed his name on there and then who it was going to and amount of money.

And then we also located small quantity of marijuana in there, in which we field tested it. By field test, I mean, we've got these little kits where you can put the drugs in. And you break the chemicals open, and if it's

that specific drug for that test kit, it will react and turn a certain color so will let you know that it's field testing positive for that drug, as well as some other paperwork. We located paperwork for an individual at an additional apartment complex which we knew them to have ties to, but just hadn't been able to prove it yet. There was actually mail in there for another individual from that apartment as well as some other paperwork for the family that lived there with kids.

Q. Did you find any evidence of prepaid debit cards?

A. I believe we might have. I would have to look at the notes.

Q. Did you photograph the items that you recovered from the trash pull?

A. We did. We photographed all the evidence.

Q. I want to show you what's been marked first as State's Exhibit 34 and 35. Do you recognize those photographs?

A. Yes.

Q. What are those?

A. They look like the paper to a prepaid Visa card.

Q. What's the significant of prepaid debits cards in the drug trafficking world?

A. Basically, it's just a way to transfer money inconspicuously.

Q. Earlier you mentioned mail to another apartment complex. I'm going to show you State's Exhibit 36. Do you recognize that photograph?

A. Yes, I do.

Q. What is that?

A. That is mail that is addressed to 1001 Bear Island Road Apartment 531, Summerville, South Carolina, which is the apartment complex that I believe them to have ties to, which is the Vista Sands.

Q. Now showing you State's Exhibit 41, what is in that photograph?

A. It is mail. It's Primerica, which is an insurance company, which is addressed to an Alonzo Stony at 1001 Bear Island Road Apartment 531, Summerville, South Carolina.

Q. And, again, is that the same apartment that you at that time suspected this organization had connections to?

A. Yes, it is.

Q. Later in the investigation, were you able to confirm that there were connections to that apartment?

A. I was.

Q. At this time, I want to show you Exhibits 37 and 38. Do you recognize those photographs?

A. I do.

Q. What do those depict?

A. Those are the South Carolina Department of Motor

Vehicles, they are essentially receipts where Mr. Hunter had paid for a service at the DMV.

Q. What address is listed for Mr. Hunter on that receipt?

A. On this receipt, it's 1128 Wilhite Drive, Ladson, South Carolina, 29456.

Q. Where was this item recovered from?

A. Trash at Abberly Crossing, which was the 9698 Patriot Boulevard.

Q. Now I want to show you State's Exhibit 39 and 40. Do you recognize those?

A. I do.

Q. What are those?

A. Those are the Western Union receipts.

Q. Again, what's the significance of Western Union receipts?

A. Again, it's an easy way to, essentially, transfer money without actually having to do it personally, actually doing the hand-to-hand. You can wire it.

MR. UNDERWOOD: Permission to publish, Your Honor.

THE COURT: You may proceed. What number is that?

MR. UNDERWOOD: Beginning with State's Exhibit 34 and 35.

Q. Agent, are these the prepaid debit card packaging?

A. Yes.
Q. Are these depicting the front and the back?
A. Yes.
Q. Exhibit 36, is this one of the items of mail to 1001 Bear Island Road?
A. Yes.
Q. Exhibit 39 and Exhibit 40, these are the Western Union receipts, correct?
A. Yes.
Q. Exhibits 38 and 37, what is that?
A. Those were the DMV printout receipts.
Q. And the address that's listed on that receipt, is that different from the address where it was found?
A. That is different.
Q. And then State's Exhibit 41, is this the other item of mail to 1001 Bear Island Road, Apartment 531?
A. Yes, it is.
Q. Agent Lundberg, after the first several purchases where you utilized Thomas Sekula, I believe it was mentioned it was six, what was the next step in your investigation?
A. Basically, the next step, we had identified that there was a large number of people involved. And it was hard for us with jurisdiction, and by jurisdiction, seeing as I worked in Dorchester County, I am allowed to their things in Dorchester County. And they were operating in the

tri-county area. So we were attempting to try to set up, you know, with all these other agencies. And it was a bigger organization, in which we reached out to SLED and to see maybe if they would be interested in helping us due to this trafficking organization operating in the Lowcountry.

Q. And SLED is a state-wide agency, but they have jurisdiction in all counties?

A. They do.

Q. Is that part of the reason you asked for their assistance?

A. It is.

Q. Were additional controlled purchases done between the sheriff's office and SLED using Thomas Sekula after that point?

A. Yes, sir, there was.

Q. Did they follow the same procedures you described earlier?

A. Yes, I was there on all of them.

Q. And just to be clear, prior to all of the controlled purchase, was Thomas Sekula strip searched?

A. Yes.

Q. And did he have drugs at that time?

A. No.

Q. At the conclusion of the operation, did he return to the undercover officer with drugs?

A. He returned to the undercover, yes, with drugs.
Q. Was he wearing a wire at all times?
A. Yes.
Q. The recording equipment that is used by the confidential informant, is it perfect?
A. No.
Q. What kind of problems can be expected during controlled purchase?
A. There's a number of given issues. It's technology. I, today, the older I get, the harder it is. With the new technology coming out, there's always something that seems to be going wrong. But there could be a number of things. There could be wires that short out. It could get too hot and shut off. It may not see things clearly, depending on what lens you use. If you go from outside to inside, it doesn't adjust well. You might not see the person just due to the lens. If we had a different lens on it, it may be more clear. The transmitter cuts out. Sometimes you will just hear bits and pieces of it due to like the radio frequencies in the air. A lot of technical issues that I am not even an expert to sit here and explain, but all those issues do happen.
Q. Does the video and the audio record independently?
A. They can. They can do both. We try to set them up to both record same time.

Q. Are there times that one might fail while the other does not?

A. Yes.

Q. What kind of training are the confidential informants given in using that equipment?

A. As much as you would expect. I mean, we don't divulge all the information about what it can do, just because we've come into the problem that, you know, in the future, if this person somehow, you know, decides that they are done with this and they don't want to keep cooperating, and they tell other individuals about the things that we use, it could be a problem. And we've seen it in the past, where somebody has obviously known about what kind of device we are using. And it was more than evident that that's what happened. So it's kind of a safety thing. So just bear minimum of how it works, just try to get them to square up and talk loudly.

Q. Is it fair to say that the confidential informants are not professional cameramen?

A. Yes.

Q. Agent Lundberg, at the conclusion of the controlled purchases, what happened to the drug evidence?

A. At the conclusion, depending on which one it was, we will bring it back to our secure office, which we will go ahead and we will process it. By process it, I mean, we

will take photographs of it. We will weigh it. And then we will go ahead and field test it to make sure that it is presumptive for whatever we purchased. After we do all that, we package it. And then put it into what is a SLED BEST kit, which is a sealed plastic envelope. And which we then submit into the Dorchester County Sheriff's Office in to a locked drug box until the drug technician or the evidence technician comes and gets it out of the box.

Q. And then procedurally what do they do with it?

A. Then they take it up to their office and begin to process it and make sure all the paperwork is necessary to go to SLED, do their own thing, and then they eventually end up taking it to SLED.

Q. Does it remain in the custody of law enforcement the entire time?

A. Yes.

Q. And is that in a secured facility?

A. Yes.

Q. You mentioned the BEST kit, that it was a sealed packaging. What is the purpose of it being sealed?

A. Just to show it hadn't been tampered with. You can't open it. The tape just sticks. If you accidentally do it, you have to throw the bag away and get it. Once it's stuck, it's stuck.

Q. The drug evidence that was recovered by yourself

and -- there was a Detective Brandon Allen, the undercover?

A. Yes.

Q. The drug evidence recovered by yourself and Investigator Allen, did the two of you personally ensure that that drug evidence was photographed and placed into the BEST kits?

A. Yes.

Q. Is there any way to signify that one or the other of you had put those into the BEST kits?

A. Yes. When you fill out the BEST kit, it has the name of who is submitting the BEST kit, which will print our names and sign.

Q. And I want to show you State's Exhibit 43, 44, 45, 46, 47 and 48. Do you recognize each of those items?

A. I do.

Q. What are they?

A. They are SLED BEST kits.

Q. Are these the BEST kits that were completed by yourself and Brandon Allen?

A. Yes.

Q. Are these from the first six controlled purchases that Dorchester County did involving this investigation?

A. Yes.

Q. After these items were placed in the BEST kit, did

they undergo that same procedure that you described earlier?

A. Yes, they did.

Q. And were they kept in these sealed containers for the purpose of establishing a clean chain of custody?

A. Yes.

Q. And where were they eventually sent for testing?

A. I believe they were sent to SLED for testing.

Q. And to your knowledge, was there any tampering of any of that evidence?

A. Not to my knowledge.

Q. Agent Lundberg, do you recall the individuals that this drug evidence was purchased from?

A. Yes.

Q. Do you recall which was which?

A. I do.

Q. If you could, to the best of your recollection, beginning with State's Exhibit 43, what transaction was that from?

A. This was the transaction that was sealed on 8/8 of 2015. This transaction actually began at 8/7, but went past midnight. So the time it was sealed was actually 8/8, but this was the first controlled purchase with Mr. Roberts.

Q. That's the individual commonly referred to as Q?

A. Q.

Q. You were later able to identify Q as Emory Roberts?

A. Yes, sir.
Q. Now, State's Exhibit 44, do you recall that transaction?
A. I do. This will be the second transaction that occurred on 8/11/2015, which we purchased the narcotics from Mr. Roberts.
Q. State's Exhibit 45, do you remember that transaction?
A. I do.
Q. What was the nature of that transaction?
A. We had initially set it up with who I believed to be Mr. Roberts. Upon getting there to the address 1009 Margaret Drive which is in Ladson where these all occurred, County of Dorchester, it appeared that Mr. Roberts was asleep or something was going on with him, and which we dealt with Mr. Hunter.
Q. That's the individual known as Mo?
A. Mo.
Q. The location you mentioned 1009 Market Street, that's in Ladson?
A. Ladson.
Q. What county is that in?
A. Dorchester.
Q. Did all of these occur at that same location?
A. All of those were 1009 Margaret Drive, Ladson.

Q. Now moving to State's Exhibit 46, do you recall that transaction?

A. Yes. This occurred on August 27th, 2015, which we purchased heroin from Mr. Roberts.

Q. And where did that take place?

A. 1009 Margaret Drive.

Q. State's Exhibit 47?

A. This occurred on September 9th, 2015. At this time, we did go ahead and set it up with Mr. Roberts. When we got there, there was a female by the nickname that we knew her at the time as Cicci. She took part in the controlled purchase. Eventually they, when they got there, they were all there and they had conversation in which she went and collected the heroin, in which she weighed it in front of the confidential informant, Mr. Sekula. And then we exchanged it with her.

Q. Was Emory Roberts present during that transaction as well?

A. Yes.

Q. Do you know this from reviewing the video footage?

A. Yes.

Q. State's Exhibit 48, what do you remember about that transaction?

A. That was again 1009 Margaret Drive, which we exchanged with Mr. Roberts.

Q. And all of this drug evidence was turned into SLED for analysis?

A. Yes.

Q. Agent Lundberg, after SLED became involved and you continued doing undercover purchases, were there other individuals from whom you bought suspected drug evidence?

A. There was.

Q. Who were they?

A. There was a number of people. There was an individual by the alias of G that we purchased from. There was an individual by the alias of Keith. As well as, again, we purchased some more narcotics from Cicci and Q, Mr. Roberts and Mo, Mr. Hunter.

Q. In those transactions, was it the same process that was used as far as the procedure to the operation?

A. Yes.

Q. Did Brandon Allen continue to function as the undercover driver?

A. Yes.

Q. Were those operations successful in getting drug evidence?

A. Yeah, they were successful.

Q. You mentioned an individual by the nickname G. Do you remember the circumstance of that controlled purchase?

A. It did -- it ended up occurring, I believe, at the

Sunoco Gas Station, which the video that we saw earlier occurred at, which they went inside and did the controlled purchase.

Q. Where is that gas station?

A. On College Park Road.

Q. Is that in Berkeley County or Dorchester County?

A. That's in Berkeley.

Q. Do you remember where at the gas station it took place?

A. Inside somewhere, maybe the bathroom. I stayed on the outside, but I believe it was the bathroom.

Q. Do you remember what type of vehicle the individual drove?

A. I have it in my notes. I don't remember off the top of my head exactly what car he was in. I believe it was a tag out of Georgia.

Q. Was that documented by other agents as well?

A. I believe so, yes.

Q. You mentioned an individual named Keith. What were the circumstances of that purchase?

A. It occurred in Berkeley County. There was the additional address location in the College Park area where they seemed to operate out of. And when you would call, they kind of dictated where they wanted you to go. Due to the way it seemed, is they were all working together. So if

one area didn't have the drugs, they would tell you to go to another one. And if this area didn't have it, they would tell you to go to another one. That's why SLED came in pretty handy, because trying to get that all on the fly was almost impossible to do.

So we were directed to go to the College Park area, in which we went into the neighborhood. And it pretty much was a main street that led you in and a bunch of streets that just kind of broke off that were all eventually deadends, but it was one way in, one way out, which Thomas was led out of the vehicle, as he was prior in all the other controlled purchase. And the male, Keith, had cut through some backyards and come up on another side street.

Q. Did the transaction then take place?

A. The transaction did take place there on the roadway.

Q. And you mentioned it seemed that these individuals were working together. What evidence was there that made you think they were working together?

A. Due to the information that I obtained beforehand, just about the group of individuals in Ladson and College Park, corroborating that with Mr. Sekula, Tommy, he would tell me about that group and this group. And then when you call them, they would tell you on the phone, go see them in Ladson or, you know, go see them in College Park. They

would direct you. So if they weren't working together and knowing that they had the heroin, I mean, that is how it appeared to me.

Q. Earlier you testified about part of the procedure being, when possible, to make a phone call to set up the deal. Were there times that the phone call would be made and a different person would answer than was expected?

A. Yes. It was quite often where they would call a main number, in which that was -- almost initially being kind of like a hotline. Like, you would call and they would tell you where to go, in which we were having to deal with that.

Q. Were you ever in a position to observe the defendant, Emory Roberts, known as Q, during the course of your investigation?

A. During the investigation, yes, I did observe him.

Q. And were you close enough that you would be able to recognize him if you saw him again?

A. Yes.

Q. Is that individual Emory Roberts, also known as Q, in the courtroom today?

A. Yes, he is.

Q. Will you point him out here?

A. He's sitting at the defense table.

Q. Would you describe what he's wearing?

A. Black male wearing a blue shirt with long braids pulled back.

MR. UNDERWOOD: Your Honor, I ask the record to reflect the proper identification of the defendant, Emory Roberts.

THE COURT: You may proceed.

BY MR. UNDERWOOD:

Q. Agent Lundberg, during the time you were using Thomas Sekula as a confidential informant, did he ever commit any misconduct during any of your operations?

A. No, not during.

Q. And each of those operations, was he able to acquire drug evidence from one of the suspects?

A. Yes.

Q. And it was confirmed the location where that came from based on a search prior to and immediately after?

A. Yes. Beforehand he was searched, and he was not LET out of our custody until we dropped him off and he went to that location. And then as soon as he was done, he was back in our custody and with us until we searched him again.

Q. And you've reviewed all of the audio and video evidence?

A. I have.

Q. Is there anything in that evidence that would make

you believe or cause you to suspect that the drug evidence came from any source other than the targets of the investigation?

A. No.

MR. UNDERWOOD: Thank you. Please answer any questions the defense has.

THE COURT: Mr. Griffith.

MR. GRIFFITH: Thank you. May it please the Court.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. GRIFFITH:

Q. Mr. Thomas Sekula -- how do you pronounce it?

A. Sekula.

Q. Sekula, the CI, you said that you determined that he was a middleman. Is that what you said?

A. That's what it appeared to me, that he was on the lower end of the spectrum.

Q. So was he a drug user?

A. As far as I know, yep.

Q. And did he sell drugs?

A. Yes.

Q. And so he was a drug user and a dealer, wouldn't you say so?

A. Yes.

Q. And so, when you offered to hire him, basically, to

be your confidential informant, what kind of crimes were you helping him with at the time? You said that you were helping him, that you would help him with certain problems he was having that he was accused of. What types of crimes were you helping him with?

A. I wasn't going to help him with a crime. I was going to help him with the charges that he had acquired for the crimes that he had committed, not helping him.

Q. I understood you weren't going to actually commit the crime. I'm sorry. Let me rephrase it. What types of crimes were you going to give him aid in not being charged with?

A. I was going to suggest aid for the crimes of distribution of heroin.

Q. The distribution of heroin?

A. Yes.

Q. Same crime for which these defendants are also accused and some of which --

A. Some of it, but some were charged with trafficking and conspiracy of trafficking.

Q. During the time you were using this CI, did he continue to use drugs?

A. Not in my presence.

Q. Not in your presence. To your knowledge, did he continue to use drugs?

A. I never was there when he did it. You would have to ask him. I never saw him use drugs.

Q. Did you have knowledge that he was using drugs during the time that you were using him as a confidential informant?

A. I never personally could say that he was using drugs. I mean, was it possible? Yeah. But I never saw him physically do it and I never caught him with it.

Q. Do you have any knowledge that he was committing other crimes during the time that he was working with you as a confidential informant?

A. Yes, I believe he did get in trouble for shoplifting. I think that was during the time.

Q. Were there other crimes besides just shoplifting that he was accused of?

A. That's all I remember now, to be honest with you.

Q. Would it surprise you to find out that he was arrested for burglary?

A. Was that prior?

Q. During the course of this investigation, would that surprise you?

A. I don't remember that. Sorry.

Q. And you observed -- you said that you identified the -- the CI identified a person that was buying from him known as Q. And during that time, among other people, and

you have said that you finally had a chance to meet Mr. Roberts. Who identified him to you as Q?

A. Who identified Mr. Roberts as Q?

Q. Being Q.

A. Oh, Thomas Sekula.

Q. So the same guy, the drug dealer/user that you were using identified Mr. Roberts as being one of the people that was selling drugs; is that correct?

A. Yes.

Q. And so during the time that he was a drug dealer and user and that you were helping him -- I don't mean helping him to commit crimes, again, but that's when he was identifying other people, according to you, that he was telling you were doing drugs, did you actually ever see Mr. Roberts, personally see him with your own eyes, sell any drugs?

A. No, not in person; on video.

Q. Did you -- you said at the gas station you stayed in your car while some drugs were sold inside, possibly in the bathroom?

A. Right.

Q. So did you ever see with your own eyes any drugs being sold by Mr. Roberts?

A. No.

Q. So you really have no knowledge yourself of

actually seeing a crime committed by Mr. Roberts at all?

A. Besides the audio and video, no, I did not personally see it. But that's essentially why we use audio and video, due to the probability of him selling drugs with me right there is not very likely, in my experience.

MR. GRIFFITH: Please answer any questions Ms. Johns may have for you.

THE COURT: Ms. Johns.

MS. JOHNS: Thank you, Your Honor. May it please the Court.

THE COURT: You're welcome.

CROSS-EXAMINATION

BY MS. JOHNS:

Q. Hello, Agent Lundberg. My pleasure. I wanted to start with your years of experience with Dorchester County Sheriff's Department. What was the extent, was it a couple of years, three years? I didn't get that.

A. For?

Q. How long were you employed with them?

A. I was employed February 2007 to December of 2016.

Q. Okay. And how many of those years were narcotics?

A. From 2010 to the time I left, so almost seven, six.

Q. Six years, years. Okay. Now, you had mentioned that there were some recorded phone calls that were made to certain individuals; is that correct?

A. Yes, ma'am, there was recorded phone calls.
Q. Okay. And you had also mentioned on direct examination that some of these phone calls would be answered by other people.
A. Yes.
Q. Correct?
A. Yes, that's correct.
Q. So if you were to call out -- if Tommy Sekula was to call a specific number, did you know who might answer that phone?
A. Later on, we started calling to direct numbers. There was just one number in specific where it was kind of unsure of where -- who you were going to get. But as the investigation went on, we did start contacting direct phone numbers.
Q. Okay. During the time there was one phone that was being used, was that prior to SLED getting involved?
A. It was.
Q. Was that during the time that you were investigating Mr. Roberts and several other members of this drug trafficking organization?
A. Yes, it was. We did start specifically calling Mr. Roberts on his own phone before SLED actually got involved, but, yes.
Q. And as to Mr. Hunter, when did you start calling

him directly?

A. After SLED got involved.

Q. Okay. Now, this phone call that you put or that your confidential informant, Tommy, put in, did you verify that that phone belonged to Mr. Hunter?

A. Not at the time, no. But we did, during the phone calls, you can hear him kind of make sure that it is who he's talking to. There was a number of times that he confirmed that it was Mr. Hunter on the phone.

Q. Okay. And what about the other times that it wasn't confirmed, because somebody else was responding to the call?

A. At that time, no.

Q. Were you able to -- using the intelligence of law enforcement, were you able to determine who was responding to any text messages to any of the phones?

A. No. I mean, it went to the phone where you would send the text, and then that person would show up. So I would assume that that was the person that you were talking to.

Q. Now, repeat that again. You said that when you send the text, when Tommy would send a text, he would send it to a phone number, right?

A. Right.

Q. And that phone number would respond; is that

correct?

A. Essentially, yeah.

Q. And then a person would show up; is that right?

A. Yes. Example of, if we sent a text to Mo saying that they wanted to do a controlled purchase, I mean, Mo would show up. So I would assume that it was probable that Mo was the other one on the end of the line.

Q. But you don't know that for sure?

A. I wasn't there with Mo to take the call, so I can't say for sure.

Q. And Tommy was the one that told you he was calling Mo's phone; is that correct?

A. Essentially, he said that number was Mo's. I was actually sometimes the one that actually entered in the number, just to ensure what number we were calling.

Q. And out of the numbers that you entered in, were you able to verify that that phone belonged to Mo?

A. Not at that time, no.

Q. How about at a later time?

A. No.

Q. Now, you had started talking about Tommy Sekula. He's your confidential informant?

A. Yes, ma'am.

Q. Now, let me ask you, when did you start building a rapport with him again?

A. Sometime in the spring, going into the summer of 2015.

Q. Okay. Had you met him prior to this time?

A. Just not met him, as where I was developing my case that led me to Thomas Sekula.

Q. So then you were able to ascertain from certain incident reports that Mr. Tommy Sekula was stopped in September 2014, with a needle on him, wasn't he?

A. I would -- I can't say for sure that I read it. That was before I got involved. I didn't get involved with Tommy Sekula until 2014.

Q. If Mr. Tommy Sekula was caught with a hypodermic needle and some scales in his car, would you be notified of this in 2015?

A. Maybe. There's no specific -- sometimes the -- if -- depends on, one, where it's at. Obviously, if it happens in a different county, I am not going to get notified in Dorchester. Two, it kinds of depends on the officer. Sometimes they notify us. Sometimes they don't. There's people who get arrested that, you know, come in with drugs and nobody tells us about until after they are gone. Sometimes it's too late. Sometimes they feel like they don't want to wake us up and call us at night if they feel it's not important. I mean, so there's no real, you know, for certain.

Q. Would it be fair to say that Tommy Sekula was already on your radar as drug dealer in 2015, right?

A. In 2015, yes. I was purchasing --

Q. And also, that Tommy Sekula was actually arrested in April of 2015 for possession of heroin, correct? You don't know?

A. I don't recall.

Q. Now, let's talk about Tommy's distribution habits. Okay? You were involved in actually investigating him. And there was a controlled purchase made by another confidential informant where he bought from Tommy. And that location was in a convenience store; is that correct?

A. I believe one of them, yes, was in a convenience store.

Q. And it was sometime around June of 2015 where he had told or you had found out that he had placed some heroin on top of a soda can?

A. Right.

Q. And then following week, in June 9th, 2015, then you also had surveillance on Tommy Sekula inside the Publix; is that correct?

A. That's correct.

Q. And that's when Tommy had put some heroin on a yogurt container, correct?

A. Uh-huh.

Q. And the CI was actually under surveillance by some of your officers inside the Publix, correct?

A. Right.

Q. So you knew it was Tommy that left the heroin on the yogurt container, right?

A. Yes, we set it up that way. Tommy again would kind of dictate how it was done, where he wanted to meet and what was going on. And that was kind of one of the things to not draw suspicion, to do the, per se, hand-to-hand, where people could see, was to drop it somewhere where the confidential informant would be able to pick it up and it would not look suspicious.

Q. You had enough people helping you with this investigation that you sent a live person, an investigator, in there to maintain continued surveillance on your CI inside a Publix, right?

A. Yes.

Q. And then on June the 17th of 2015, then there was another transaction where he put the heroin in a package of gum; is that right?

A. Sounds right.

Q. And then passed it outside of another store somewhere; is that right?

A. Sounds right. I can't say for sure the dates, but it does sound familiar with this way --

Q. And then finally this last one was in July, on July 31st of 2015. You actually went to his home based on a search warrant; is that right?

A. Again, I can't say for sure on the date, but, yeah, we did go to where he was staying.

Q. This is Winter Drive, right?

A. Yes.

Q. That's a trailer park, right?

A. That is a trailer park.

Q. And do you remember what you found in his house?

A. No, I don't, not off the top of my head.

Q. Now, we have at least four distributions that are recorded during the summer of 2015; would you agree?

A. I think that's a safe number to say.

Q. Okay. Now, let me ask you if you are aware of a female by the name of Amber Ross?

A. I am.

Q. And who is she?

A. That is Thomas Sekula's significant other.

Q. Okay. And you are also familiar with man by the name of Michael Sekula, correct?

A. I am.

Q. And you are aware that on September the 4th of 2015, there was a home invasion --

MR. UNDERWOOD: Objection, Your Honor.

Relevancy.

THE COURT: Please approach.

(Whereupon, a bench conference takes place off the record.)

THE COURT: Madam Forelady, ladies and gentlemen, I have a matter of law to take up outside your presence. During the break, please do not discuss the case and please leave your notepads in your seats.

(Whereupon, the jury leaves open court at 4:38 p.m.)

THE COURT: How is this relevant? Can you prove by clear and convincing evidence they actually were involved in this, because that's the first hurdle you have to clear before you can even mention it. It's the prior bad act not the subject of the conviction.

MS. JOHNS: Your Honor, it goes to credibility.

THE COURT: That is not my question. My question is can you prove -- doesn't matter what it goes to. There's several stages of this. In order for you to introduce a prior bad act that is not the subject of the conviction, you have to be able to prove by clear and convincing evidence these individuals were actually involved in it. Then we go to the rest of it about whether it's relevant, whether it's more probative than prejudicial and whether you can connect the dots. And I need to know whether you can prove other

than just sort of throwing it out there.

MS. JOHNS: I will tell you what I have. I have an incident report that is dated 9/4/2015, which involves this home invasion burglary, stealing of a motor vehicle. There were several individuals that were interviewed at the time. One of them was the significant other of Tommy Sekula by the name of Amber Ross, who states that she was not involved in the actual burglary, but that Tommy and his brother was.

THE COURT: But what does that have to do with Mr. Sekula?

MS. JOHNS: Mr. Sekula is the confidential informant who has agreed --

THE COURT: No, then I must have misunderstood the testimony.

MS. JOHNS: Michael is his brother.

THE COURT: Yeah, but he said she's the significant other of Tommy, not Michael.

MS. JOHNS: Okay.

THE COURT: So you just said to me that she said that his brother Tommy was the subject of this home invasion.

MS. JOHNS: Maybe it's the girlfriend of Michael Sekula who was also a suspect, Your Honor. And when they interviewed her --

THE COURT: How do I know she's telling the truth

and she's not just trying to exculpate herself.

MS. JOHNS: We don't know that.

THE COURT: Yeah, but that's your burden to prove.

MS. JOHNS: Well, if you are asking me --

THE COURT: I'm not asking you to do anything the Supreme Court has not instructed that you must do, which means, basically, you have to have a mini-trial within a trial to prove by clear and convincing evidence that it happened.

MS. JOHNS: I'm saying there's an accusation that he was involved with his brother in this burglary. And he had already signed an agreement with law enforcement that said he would not be committing other crimes during the time that he's working as a CI.

THE COURT: How is that relevant?

MS. JOHNS: It's relevant if he's --

THE COURT: Only relevant if you can prove that they are going to give him deference on that and the charges are going to be dismissed and she's going to be subject to some reduced penalty; otherwise, it's character.

MS. JOHNS: That's right.

THE COURT: Pardon me?

MS. JOHNS: That's correct, Judge.

THE COURT: So how can you prove that he's going to get something in exchange for that?

MS. JOHNS: I wouldn't know that, Judge, until I ask the question.

THE COURT: Then ask the question in-camera and then I will make that determination. Otherwise, it's character and it's not permissible.

MS. JOHNS: Very well, Judge.

BY MS. JOHNS:

Q. Agent Lundberg, were you aware of --

MS. JOHNS: Can I just lay some groundwork?

THE COURT: I need you to create a proffer. Ask the questions you were going to ask.

MS. JOHNS: I'm going to lay extra groundwork instead of just going to the point.

BY MS. JOHNS:

Q. You are who Michael Sekula is, correct?

A. I do know who Michael Sekula is.

Q. And he's the brother of Tommy Sekula, the CI?

A. Yes.

Q. And he's also a drug addict; is that right?

A. As far as, I know. I haven't personally had any contact with him as far as that, but as far as what I know of him, just hearsay.

Q. Did you interview Tommy Sekula during the course of your investigation?

A. Yes.

Q. Did he list Michael Sekula as somebody he would sell drugs to?

A. I believe that he said that Michael does use heroin.

Q. Okay. Would it help if I give you the --

THE COURT: He's not going to be able to rely on that. It's hearsay. You are going to have to ask Tommy Sekula those questions.

BY MS. JOHNS:

Q. So you are not aware of a burglary?

A. I believe I know which one you are talking about, where I believe the brother was arrested for it, but they -- I don't think they ever charged Thomas Sekula, not that I know of. Nobody ever approached me about it. I know nothing about it. But I do know Michael got in trouble for something like that.

MS. JOHNS: Okay. That's the point I would proffer.

THE COURT: How is that relevant?

MS. JOHNS: Your Honor, I understand the Court's ruling that you are saying --

THE COURT: I haven't ruled yet. I've been waiting for you to answer questions so I can make a reasonable ruling based on case law, contemporaneous ruling based on case law.

MS. JOHNS: Very well. The reason that I want to get this out is because Michael Sekula, Tommy Sekula, by way of his interview, Tommy Sekula's interview, that they were all involved in using, buying drugs. And --

THE COURT: I don't think there's any contention that Mr. Sekula was involved until using drugs and he's working off charges.

MS. JOHNS: Okay. He was working off charges, Your Honor.

THE COURT: That's what the witness already testified to.

MS. JOHNS: I want to know whether or not this agent knows of whether or not the burglary first was one of the charges that --

THE COURT: He just said that to his knowledge he wasn't charged, that Michael Sekula was charged.

MS. JOHNS: Okay. I will move on.

THE COURT: What's the State's position regarding his testimony?

MR. UNDERWOOD: Your Honor, I believe that would be improper. There is no clear and convincing evidence that Thomas Sekula was involved in such an incident. The only evidence that there is is that Michael Sekula, his brother, may have been arrested for a charge. That's not relevant to Thomas Sekula. It does not go to Thomas Sekula's

reliability as a confidential informant, nor does it go to his truthfulness; therefore, I believe it would be improper to mention this before the jury.

THE COURT: Mr. Griffith, do you have any position?

MR. GRIFFITH: Your Honor, I think that it would be advantageous for the jury to know the kind of person that was doing the investigation for the Attorney General's Office and for SLED. I agree with Ms. Johns that I think that it's relevant as to his character. Of course, we would have to show that he actually was involved and that these were dismissed or not prosecuted. And if there was evidence of that, it should be allowed in, in my opinion, Your Honor.

THE COURT: Anything further, Ms. Johns?

MS. JOHNS: No, Your Honor.

THE COURT: The objection is sustained. One, you cannot prove by clear and convincing evidence that the event that you are questioning this witness about ever took place.

Two, you cannot prove by clear and convincing evidence that Mr. Sekula, that being Tommy, was involved in this offense. At most, you can only imply that Michael Sekula was involved, and based on hearsay, that he was in fact arrested. This witness has testified he has no direct knowledge of Tommy Sekula being charged with the event. He has some knowledge of the event but no knowledge that Tommy Sekula was involved.

While I agree with both defense counsel, the credibility, especially in a case of this type, of the CI is always relevant and is not prejudicial. However, under these circumstances, there's absolutely no testimony to tie this witness to that event. There's absolutely no testimony to tie it to the fact that he would receive any deference from the State, that being any reduction in charge or any reduction in the current charges he's facing as a result of any cooperation on this offense. And, therefore, I'm hard-pressed to find that it is relevant or probative. So I would find that it's -- any probative value is outweighed by its potential prejudice.

You can question somebody's credibility, but you can't put their character in evidence unless they put it in first. So the objection is sustained.

Are we ready to proceed?

MS. JOHNS: Yes, Your Honor.

(Whereupon, the jury returns to open court at 4:50 p.m.)

THE COURT: We appreciate your patience. We will now resume the witness's testimony.

Ms. Johns, you may proceed.

Ladies and gentlemen, you are to disregard Ms. Johns's last question and any potential answers from the witness. You are to give it absolutely no consideration in

your deliberations. You may proceed.

MS. JOHNS: Thank you, Your Honor.

THE COURT: You're welcome.

BY MS. JOHNS:

Q. Agent Lundberg, when you discussed Tommy Sekula with any prosecuting agency, did you discuss this with the Dorchester County Solicitor's Office or did you do the tri-county solicitor's office?

A. It was the Dorchester County, because it was for my charges that I had, which all occurred in Dorchester County.

Q. And what was your understanding of what they would do for him?

A. We didn't come to an actual conclusion at the time. We were still trying to see what was coming of it. And then SLED got involved. And to be honest, I really didn't have too much of a discussion with them after that.

Q. And, normally, if you had Mr. Sekula not become a cooperating defendant for you, you would have four warrants for distribution of heroin; is that correct?

A. That's correct.

Q. Now, you had provided a lengthy interview with Mr. Sekula about his -- where he may have been getting his drugs from; isn't that right?

A. I believe, yeah, I might have -- I know we did

multiple interviews throughout the time. I know SLED was involved with one. I was involved.

Q. And you have had an opportunity to review that interview; is that right?

A. No.

Q. No?

A. No.

Q. Well, let me provide this for you just to help. Let me ask you the question first. And if you can't answer, then I will provide this to you. Do you recall whether or not in the interview with Tommy Sekula, whether you had listed Justin Hunter as a supplier to Tommy?

A. Yes.

Q. Okay. And had you or had you not?

A. Can you say that one more time? I don't understand.

Q. Did you have Justin Hunter listed as a source of supply for Tommy?

A. Yes.

Q. Did you also have a list of -- a number of other people that is not Justin Hunter?

A. Yes.

Q. And approximately how many other people had you had listed?

A. I can't say an exact number without looking, but

there's multiple that were involved in the drug trafficking organization that I was undercovering, so to say.

Q. Would you say -- would you agree with me that was probably in excess of 10 people?

A. In excess of 10 people?

Q. More than 10?

A. I mean, I don't know.

Q. Was it less than 10?

A. Maybe somewhere around 10, a little less, a little more. I would have to look at what you are looking at to say for sure.

Q. And when you asked Tommy Sekula who he had been selling to, did he reveal to you everybody he had been selling to?

A. I don't remember, to be honest with you. I don't recall exactly what we had without reviewing my notes. It's a long time ago.

Q. At any time, did Tommy Sekula tell you that he bought drugs from Justin Hunter at Patriot Boulevard?

A. Specifically, I don't recall him saying. He did tell me that there was an apartment, but he was unable to provide exactly which one that was at, to say for sure that one in specific. I don't remember him disclosing that exact Patriot apartment.

Q. Now, you had a written agreement with Tommy Sekula,

correct?

A. Yes.

Q. And one of the major things in that written agreement is that he's not allowed to commit other offenses, correct?

A. Correct.

Q. And shoplifting would be one, correct?

A. That's correct.

Q. And actually buying heroin would also be a crime, right?

A. Outside of doing it with us, yes.

Q. Right. Now, he started working with you sometime in the summer of 2015, right?

A. Yes, essentially, August 2015.

Q. And he worked through January or February; is that fair to say?

A. The next year, yeah, I believe that's fair to say.

Q. Okay. And which agent did you assign to Tommy Sekula when he wasn't working in a confidential informant capacity?

A. I don't understand what you are asking.

Q. Did you have an agent with Tommy Sekula during the entire six or seven months of your investigation?

A. Agent with him?

Q. Yes, with him, surveilling him, being with him, watching what he does?

A. No.

Q. So my point is that law enforcement was not continuously with Tommy Sekula 24 hours a day, seven days a week?

A. No.

Q. For six months; is that right?

A. No, they don't --

Q. What Tommy Sekula was doing outside the presence of law enforcement, you do not know?

A. I don't know.

Q. Now, sometime later during this investigation of the distribution of heroin, you and SLED were still working -- you were still working on the case, even though SLED got involved; is that correct?

A. Yes. I was there just to kind of facilitate things, a place to meet and some of the equipment and things like that.

Q. And so you had mentioned on direct examination that you had met with Tommy and you understood that there was a debt that was owed to Q; is that right?

A. Yeah, when we first started.

Q. Now, how many other debts did you pay off for Tommy?

A. Just that one, I believe.
Q. So there was not a debt owed to anybody at Summer Creek Road?
A. I don't remember exactly.
Q. The money that you provided to Tommy Sekula was money that was the government's money that you used for him to make the purchase of heroin or some other drug, right?
A. Initially, yeah, that first time, which is common. You know, without being able to make that debt good, they most likely, in my experience, wouldn't deal with Thomas. And due to the potential of how big this organization is, my supervisors cleared it that we would go ahead and pay off this debt to get into the organization, to exactly see how big they are.
Q. Okay. And would you be surprised then if in your investigation, you realized that there was another debt that was paid off during the course of him working as a confidential informant?
A. I mean, without looking at specifically what you are talking about, I can't say for sure. I don't recall.
Q. All right. Now, you had mentioned that there was a report by Tommy that he had been to Q's home in Ladson, which is the Margaret Drive residence; is that right?
A. Yeah, that's right.
Q. And that he had told you that he was not able to

buy from Q. And he one time bought from Cicci; is that right? When he was at Q's house, Tommy bought from Cicci because Q was asleep?

A. No.

Q. Who did Tommy buy from when Q was asleep?

A. I believe the specific one that you are talking about was on August 17th, 2015. I believe that's what you are talking to, in which we purchased from Justin Hunter.

Q. Okay. Now, what evidence do you have other than Tommy saying so that it was Justin Hunter?

A. The audio and video that we had on Tommy as he went in. The video, again, like I mentioned, some of the problems with the equipment coming from light to dark, sometimes it's hard to see. So in the video, it was clear that it was a different individual, but it was hard to make out that individual.

Q. And was that a different voice? Would you agree with that?

A. Yeah.

Q. And do you have a photograph, a still photograph from this transaction showing that it was Justin Hunter?

A. I don't personally remember if I do.

Q. Other than that, do you have anything else to prove that it was Justin Hunter?

A. No, just the testimony that Thomas had given to me.

He told me that he bought from Justin Hunter. He described Mr. Roberts being passed out. And he described Will being there. And he said that he bought it from Justin.

Q. Now, you had mentioned that there was a trash pull in front of 618 Abberly Crossing Apartment?

A. Abberly Crossing, yes, ma'am.

Q. And there was other documents entered that didn't belong to Mr. Hunter; is that right?

A. Right, there was other mail in there.

Q. And the mail for 101 Bear Island Road, was that addressed to anybody specifically?

A. One of them it was.

Q. Who was that?

A. I believe his name was Alfonzo Stoney.

Q. Had you made an arrest of Alfonzo Stoney?

A. No.

Q. Do you know how Alfonzo Stoney is related to Justin Hunter?

A. I don't know exactly how they are related, no.

Q. Do you know whether or not Alfonzo Stoney was ever a resident at Bear Island Drive or Road?

A. I can't say for sure it was him. During my surveillance, I did see one or two different black males there that I couldn't make out that I didn't see before speaking with people who work at Vista Sands. I believe

Mr. Stoney's sister was the tenant that was on the lease. However, they disclosed to me that they don't believe she stays there. They said that there was an incident where there was a female that came to drop off the rent that wasn't on the lease. And, again, they said that they don't ever see the female that was on the lease. So they felt like it was kind of a third-party thing.

Q. Okay. Let's talk about this gift card for a minute. You said that you found the remnants of a gift card. Do you know the amount of the gift card?

A. I don't. I don't think it was on there.

Q. And this is actually a gift card. You can pick that up from Walmart, Bed, Bath and Beyond, and it's one of those gift cards you take to the register and put money on?

A. Right. It was a specific -- it was a Visa. It wasn't like a Bed, Bath and Beyond, where you can only use it as Bed, Bath and Beyond. But I think you could get something like that at Walgreens to put money on. It's just a prepaid card.

Q. You are not aware of the amount of money?

A. Not sure.

Q. Could have been 50, could have been 5 grand? We don't know?

A. Right. I think there's a limit on them.

Q. What's the limit?
A. I don't know, but I think there is one.
Q. Now, you also said that there was some Western Union receipts that were put into evidence.
A. Yes, ma'am.
Q. Either of those over $200?
A. I don't remember the exact amount on there, but I know it's on there, if we could look at it again.
MS. JOHNS: May I approach the witness, Your Honor?
THE COURT: You may.
BY MS. JOHNS:
Q. Looking at State's Exhibit No. 40, which is the Western Union receipt, can you see what amount is down there?
A. I believe it says $270 was transferred.
Q. And looking at State's Exhibit No. 39, can you tell me how much money is on that?
A. That one was $150.
Q. $150. Then I want to show you State's Exhibit 42, which is the passport belonging to Justin Hunter. Can you give me the state of residence for Mr. Hunter?
A. State of residence or state of birth?
Q. State of birth, excuse me.
A. New York.
Q. And the Western Union wires were sent to New York;

is that right?

A. That's correct.

Q. And it was $200-some, 270 and then 150?

A. That's correct.

Q. Now, would it surprise you that Mr. Hunter might have some family that lives in New York, like children or whatever?

A. No, I could believe that.

Q. So the fact that there was a transaction made is just an assumption that it was for drugs; is that right?

A. Well, it could be. I didn't specifically talk to him about that wire transfer. However, it was disclosed by Mr. Hunter that he purchased drugs in New York.

Q. Right. All right. Now, with regard to the strip searches of Tommy, who conducted those strip searches?

A. There were usually two of us there. Just depended on the day.

Q. When you say strip search, do you mean even cavity searches?

A. I mean, yeah, squat and cough, like something that would be in a jail, to make sure that there's nothing shoved up the rectal. Usually, like, if they will have you squat and cough, I guess your muscles let it go.

Q. Just wanted to make sure.

A. Okay.

Q. Whenever you said that you would or your undercover agent, Mr. Bryant, was it -- no, I'm sorry, Brandon -- no, the undercover agent that would drop Tommy off --

A. Brandon Allen, yes.

Q. Agent Allen?

A. Yes, ma'am.

Q. When he dropped him off at a certain location, who followed him or watched him walk to the door of the house?

A. It would usually be somebody out there doing surveillance. What we would try to do is when we had a location set up, we would try to get out there and do pre-surveillance, see who is in the area, see what cars are there. And we would usually try to get a fixed location, because that's the best. We sit there and watch the whole thing. If not, we would have multiple people driving by at different times just to confirm and check on things, make sure everything is all right.

Q. How long would the transactions work?

A. Short, matter of minutes.

Q. And how long would the walk from the house back to the undercover car last?

A. Matter of minutes.

Q. Five minutes?

A. Depending on where exactly they went or how fast they walked or ...

Q. Would you know whether or not Tommy would have thrown down any money or thrown down any kind of dope during this walk within his path?

A. I couldn't say for sure without watching him 100 percent of the time. However, you can see from the videos that they go in and purchase it, and then he brings back that amount similar to what we do purchase. So, I mean, I would say it's unlikely.

Q. Would you agree there were hundreds of people affected by Tommy Sekula's drug dealing, Tommy Sekula's use and Tommy Sekula's sales in this organization, hundreds of people?

A. I couldn't say that, not hundreds.

Q. Would you say there's more than 25?

A. Are we talking about for Tommy or for the organization --

Q. I'm sorry. I didn't mean to cut you off.

A. No, because for the organization, yeah, I could say definitely around 100, because I sat and watched multiple people come in and out. Tommy, I couldn't say 100 for sure. Because the only thing I knew really of seeing Tommy was the one that I had with my confidential informant.

Q. Okay. But when you debriefed him, he told you everybody he bought from that you know of and everybody he sold to; is that right?

A. I don't know if that was in my debrief or it was in SLED's.

MS. JOHNS: I don't have anything further. Thank you, Your Honor.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MR. UNDERWOOD:

Q. Agent Lundberg, during the controlled purchase operations using Thomas Sekula, did he ever appear high to you?

A. No, he didn't ever appear high. Sometimes it looked like he was not feeling good. Sometimes I had to go and find him, just because his phone and him not having a place to live, but ...

Q. Now, on cross-examination, you were asked about being able to identify Justin Hunter from the audio video evidence. Were there any images that were clear of his face in those videos?

A. Video in particular?

Q. Yes.

A. I can't say for sure without reviewing on that specific one if I could see his face or not.

Q. Is his voice captured in audio recordings on both phone calls and the controlled purchase?

A. Yes, on some of the further ones, definitely.

Q. And have you reviewed those recordings?
A. Yes.
Q. Now, it was established by looking at his passport that he's from the state of New York, correct?
A. Yes.
Q. Does he have a strong accent?
A. Yes.
Q. Have you had an opportunity to speak with Justin Hunter outside of these operation?
A. I have.
Q. What was the circumstances of that?
A. Upon the finalizing of the case, we served multiple search warrants and arrest warrants and different things, in which myself and Special Agent Wingo with SLED, we had an opportunity to sit down and talk with Mr. Hunter.
Q. In general summary fashion, what did he tell you in that discussion?
A. Basically, he disclosed that he was selling heroin. He disclosed that he did go to New York to get it. I can't say exactly the exact amount he said, but I believe it was somewhere in the ounces range, that he would go up there and come back with it and that he would sell in Charleston, in South Carolina area.
Q. And as a result of that conversation that you've had with him, were you able to recognize his voice in

recordings?

A. Yeah, I can tell if it's clear.

MR. UNDERWOOD: Permission to publish State's Exhibit 24.

THE COURT: Any objection, Ms. Johns?

MS. JOHNS: No, Your Honor. It's already in evidence.

THE COURT: Mr. Griffith?

MR. GRIFFITH: No objection, Your Honor.

THE COURT: Proceed.

(Whereupon, audio is played.)

BY MR. UNDERWOOD:

Q. Do you recognize the three voices in that recording?

A. Yes.

Q. Whose voices are they?

A. Myself, Thomas Sekula and Justin Hunter.

MR. UNDERWOOD: Thank you. That's all the questions I have, Your Honor.

THE COURT: Any objection to the witness being excused from the State?

MR. UNDERWOOD: None, Your Honor.

THE COURT: From the defense, Mr. Griffith?

MR. GRIFFITH: No, Your Honor.

THE COURT: From the defense, Ms. Johns?

MS. JOHNS: No, Your Honor.

THE COURT: Sir, you are excused.

(Whereupon, a bench conference takes place off the record.)

THE COURT: Madam Forelady, ladies and gentlemen, we are going to take advantage of this break in testimony to take our evening recess. During the break, please do not discuss the case in any manner whatsoever. Please do not read, watch or listen to any media accounts about this case. And please do not do any independent research on the Internet regarding any issue or matter involved in this case. As I've already indicated, you are bound by your oath to decide this case according to the sworn testimony and the other evidence that will be introduced.

When you come to the courthouse in the morning, you will come directly to your -- you will follow their instructions on how where you need to congregate. I think y'all meet downstairs and then you bring them up here.

We will resume in the morning at 10. We are going to start a little bit later because we have some matters of law that we need to dispose of and I don't want y'all waiting while we are doing that. So we appreciate your patience. We will see you in the morning at 10. Please stack your notepads on the edge of the banister as you leave so we can secure those during the evening recess. Have a

great evening. We will see you in the morning at 10.

(Whereupon, the jury leaves open court at 5:14 p.m.)

THE COURT: Is there anything else before we adjourn for the evening from the State?

MR. UNDERWOOD: Nothing from the State, Your Honor.

THE COURT: From the defense, Mr. Griffith?

MR. GRIFFITH: Nothing from Mr. Roberts.

MS. JOHNS: No.

THE COURT: You can leave your stuff in here. It's locked, so you don't have to worry about anybody going through your things and you don't have to take stuff unless you feel like it. See you all in the morning at 10.

(Whereupon, proceedings are adjourned.)

(Whereupon, the trial continues on July 25, 2017.)

THE COURT: Did you have an interim opportunity to go over all the discovery with your client?

MR. GRIFFITH: Of course, I did not go over all the --

THE COURT: Well, the highlights, yeah.

MR. GRIFFITH: I did have an opportunity to show him where he appeared in the video and where they spoke his name. And also went over some of the written discovery, the reports from the officers, but then to discuss --

THE COURT: The plea offer.
MR. GRIFFITH: -- the plea offer.
THE COURT: Did you all have plea negotiations?
MR. GRIFFITH: I did speak with Mr. Roberts concerning the prior agreement and --
THE DEFENDANT: He mentioned to me, Your Honor, but --
THE COURT: I don't want you to, like, compromise yourself and tell me anything like that y'all said.
THE DEFENDANT: I was just --
MR. GRIFFITH: Let me just ask.
THE DEFENDANT: I know how to pose --
THE COURT: I'm just trying to protect your interests.
THE DEFENDANT: I was really basing that consideration off of what you said yesterday when he had a time to actually view whatever was --
THE COURT: The most damaging evidence against you is what I contemplated him showing you.
THE DEFENDANT: I didn't see anything. That's what I'm saying. He mentioned it to me and he showed me the video, but I didn't see anything incriminating what I'm saying.
THE COURT: Okay.
THE DEFENDANT: In consideration of the plea, I

thought that the opportunity was to give consideration to once I view the most highlights or incriminating parts, which I didn't see.

THE COURT: If you think it's worth -- you have to make the decision, because you have to live with the consequences. If you are happy with your decision, I'm happy with your decision.

THE DEFENDANT: My grandmother is 82 years old. If I take a plea right now, I'LL never see her again in my life. She's 82 with heart congestion failure, Your Honor.

THE COURT: Well, I'll tell you what. I've seen people go in Hospice and tell people they don't have but five days to live and they come out and live five more years. You just never know what's going to happen in life.

I just always have to look at worst scenarios. And I think what you are looking at is mandatory 25, which at 85 is -- my math isn't good. That's why I went to law school. That is 21.25 years? Sir, how old are you?

THE DEFENDANT: 38.

THE COURT: Worst case scenario, you would almost be 60. So you would have to decide -- what did you all offer him, Mr. Underwood?

MR. GRIFFITH: Your Honor, if it please the Court. That is not the worst case scenario.

THE COURT: That's sort of the tip of the iceberg,

isn't it?

MR. GRIFFITH: That's the lowest mandatory is what he could be -- that carries 25 to 40. And the other two charges carry 7 to 25 and 25, respectively. So there's a significant amount of more time.

THE DEFENDANT: So the plea, you said 7 with a 10 cap, right? Is this nonviolent?

THE COURT: I don't know. Is it nonviolent?

MR. UNDERWOOD: They are violent and serious, Your Honor.

THE COURT: But if you have a range of 7 to 25, your lawyer can argue for 7, and they can argue for 25. I am not -- like I told you, I'm not particularly good at math, but it would seem to me the odds on that are better than the straight whatever else you are facing. But you've got to evaluate the evidence.

THE DEFENDANT: Yeah, I was just -- not just based on the evidence.

THE COURT: I don't know that I would leave my faith to 12 people. I'm just --

THE DEFENDANT: My faith is in the Court's hands regardless --

THE COURT: I don't make the decision. The 12 folks make the decision.

THE DEFENDANT: I understand that, but the

presumption is there. I was trying to understand the plea. Cap means --

THE COURT: Cap means the most you could get is whatever the cap they've offered you. And the minimum is the minimum, which would require them to reduce your thirds to seconds.

Right? Is that what you would have to reduce it to? You have to reduce his thirds to seconds? I can't remember.

MR. UNDERWOOD: I'm sorry, Your Honor, I missed the first part of the question.

THE COURT: What y'all have offered him, the range, requires that you reduce his charges, correct?

MR. UNDERWOOD: Correct.

THE COURT: From thirds to seconds.

MR. UNDERWOOD: Might have been actually to first.

THE COURT: Oh, yeah.

THE DEFENDANT: It would be nonviolent, right?

THE COURT: I don't know. Would it be violent?

MR. UNDERWOOD: Trafficking is violent and serious, Your Honor.

THE COURT: Okay. And what did the other gentleman receive the other day? What did you all do with him?

MR. UNDERWOOD: He was sentenced to eight years.

THE COURT: Yeah, but what did you all offer him? Was it negotiated eight or was it a cap.

MR. UNDERWOOD: It was a recommended cap, Your Honor.

THE COURT: The recommended cap was eight years?

MR. UNDERWOOD: Yes, Your Honor.

THE COURT: Okay.

MR. UNDERWOOD: And the offer in this case, Your Honor, would have been -- the discussions I had with Mr. Griffith prior was a cap of 10 years with some cooperation.

THE COURT: Oh.

MR. UNDERWOOD: And that was -- we were still in discussions. And that was what led to last night, the opportunity for them to speak some more, Your Honor.

THE COURT: So are you -- what would he be discussing with his client, I guess, is what I'm asking? The 10?

MR. UNDERWOOD: Best case scenario would have been a cap of 10 years with cooperation from the defense.

THE COURT: Okay. And that would go then, the cooperation would go beyond Mr. Hunter; or what is the extent of Mr. Hunter?

MR. UNDERWOOD: Well, at this point, other individuals in the organization, Your Honor.

THE COURT: Okay. So the first offer was a minimum of seven and a cap of --

MR. UNDERWOOD: The very first offer, Your Honor, I believe was 13 to 15 or 13 to 16, somewhere in that range.

THE COURT: So is the offer of the cap of 10 still available to him with cooperation?

MR. UNDERWOOD: It wasn't quite a firm offer. Mr. Griffith and I were discussing that as a possible option.

THE COURT: I was just trying to be clear what it was he needed to discuss with him.

MR. UNDERWOOD: But if that was an offer, cooperation would be a key component on that.

THE COURT: Absolutely. I would imagine it would be.

MR. GRIFFITH: Your Honor, Mr. Roberts asked me that if he were to plead guilty, could he then file an appeal on the constitutional grounds that he has --

THE DEFENDANT: Not an appeal, a writ.

THE COURT: It would be an appeal, sir. It wouldn't be a writ. A writ is what you file in federal court.

THE DEFENDANT: For constitutional violation --

THE COURT: They don't have any jurisdiction over this. They kick that back. You would have to go to our

Court of Appeals. And once a decision is rendered there, if you didn't like it, you would have to go to the Supreme Court, if they accept it, sir.

THE DEFENDANT: And so, yeah --

THE COURT: And at a minimum, you are looking at six years before any of that gets resolved, which you would already have maxed out what they were offering you, pretty much.

THE DEFENDANT: All right. Because I have a petition right now in federal court.

THE COURT: They are going to kick it back. You haven't even had a conviction yet. And it's going to take them probably forever to do it. So if you are hanging your hat on those hopes, you know -- they are not going to do anything until you've exhausted all of your State court remedies. And you really -- I mean, again, I can't give you legal advice, but I can tell you all of your arguments don't have any merit. The ones you presented to the Court, if they had any merit, I would have granted relief on it.

MR. GRIFFITH: As his attorney, Your Honor, I can tell him that the Court, this Court, has already heard his arguments and has ruled on those arguments. And those arguments are no longer before the Court.

THE COURT: That's correct. So now they are preserved for appeal purposes. So once we get done with

this trial, it would have to be appealed to the Court of Appeals. And you have to assume that they would see if there was any merit once they reviewed the record. And the appellate defense might look at this, the entirety of this record, and say there's no grounds and dismiss it and say to the court, it's a waste of their time to look at it, in which case it's done. And you could conceivably file a writ with the federal court, but they are not going to -- they are just going to kick it back with a form order.

THE DEFENDANT: That brings me back to the consideration of the plea provided that I see incriminating evidence on -- can I see something?

THE COURT: I believe he's gone over with you everything that they have against you.

You do recognize that your co-defendants are coming to testify against you? All of them have already pled guilty and their pleas are contingent on cooperation. And they plan to come and testify, correct; or am I incorrect?

MR. UNDERWOOD: Your Honor, co-defendant William Brown is scheduled to testify tomorrow morning. The last meeting that I had with Ms. Quezada did not go very well. Her attorney was going to meet with her again and get back to me.

THE COURT: And then Mr. Brown said he wasn't going to cooperate?

MR. UNDERWOOD: Mr. Johnson was not cooperating. He's already been sentenced, Your Honor.

THE COURT: I suspect Ms. Quezada will come around, because when I am done with this trial, I'm sentencing everyone who is involved. I am not waiting. So you need to make them aware that they all need to be here at the conclusion of this case, because I'm disposing of it all so I can write a letter to the Supreme Court to tell me it's done with. All right?

Now, what do you want to do? Do you want to talk to your lawyer more and make a decision? Whatever decision you make, I can live with. None of us can make that decision for you, because none of us will have to live with your consequences. I'm just not a betting person. I like dealing in things that are empirical and certain. So you have to weigh and you have to decide.

There's really is no good outcome because you can't go home. So now you have to decide whether 7 is palatable to you, the 7 to 25, or the 10 with cooperation, or whether you just want to roll the dice.

THE DEFENDANT: They didn't say that yesterday. They said 7 with a 10 cap.

THE COURT: I think they said 7 with -- what now? Your lawyer and I think what Mr. Underwood is saying is that they would be willing to discuss a ten-year cap as long as

you cooperated.

THE DEFENDANT: They didn't say nothing about cooperation.

THE COURT: Well, any deal is going to include cooperation unless they are going to ask for the high-end of whatever they are looking for. Now, that doesn't mean they are going to get it. They can ask. I don't know what I'm going to do.

MR. GRIFFITH: Your Honor, if it please the Court, I wonder if I can speak to Mr. Underwood just for a moment.

THE COURT: Sure. Go right ahead.

(Whereupon, an off-the-record discussion takes place.)

MR. GRIFFITH: If it please the Court, Your Honor, I've discussed the plea offer. There are two that they offered. They've offered a cap of 10 if he would cooperate.

Mr. Roberts said that he just doesn't feel it would be honorable for him to cooperate and testify against other people.

THE COURT: That's the position that Mr. -- I forget the other gentleman's name -- took as well. That's his decision.

MR. GRIFFITH: But they had said they would observe 18, straight 18 if he were to plead without any cooperation.

Of course, we were arguing that nobody else in this case got anything like 18.

THE COURT: Yeah. My other question is, why wouldn't he just extend -- based on what I discussed with y'all yesterday -- the original offer, since he really didn't have a meaningful conversation with his lawyer about that one? At least I don't perceive that he had a meaningful conversation with him about it, because he wouldn't talk to him.

MR. UNDERWOOD: Your Honor, my understanding was the original offer was communicated. It was the second offer that was not communicated.

THE COURT: I'm sorry. I might have my continuum confused. What was the first offer?

MR. UNDERWOOD: It was a range in the teens, Your Honor.

MR. GRIFFITH: 15 to 17.

THE COURT: And what was the second offer?

MR. UNDERWOOD: Second offer was the cap of 10 with cooperation.

MR. GRIFFITH: With cooperation.

THE COURT: So where did I get a minimum of 7 and a cap of 25?

MR. GRIFFITH: That's the statutory -- it was 7 to 10 with the cooperation.

THE COURT: Okay. I got you. Now, what statutory range would that be for, what offense?

MR. UNDERWOOD: The offense of trafficking heroin, 4 to 14 grams as a first offense carries 7 to 25 years.

THE COURT: That's not what he's facing.

MR. UNDERWOOD: If he were to plead, that is the level he would be pleading to.

THE COURT: Yeah, but if he's convicted, that's not first.

MR. UNDERWOOD: If he's convicted on the top count it would be a minimum of 25 up to 40, Your Honor.

THE COURT: 25 to 40. Now, are you all willing to negotiate in the range of 7 to 25 on the first if he pleads, or some range of that, or some combination of the charges?

MR. UNDERWOOD: I'm not sure if I understand what you mean by the combination, Your Honor.

THE COURT: Well, he has seven counts. That's what I'm referring to.

MR. GRIFFITH: Your Honor, statutorily, if he were to plead to one that is 7 to 25, it would be at the discretion of the Court to determine whether it was 7 or 25 or someplace between there.

THE COURT: That's correct.

MR. GRIFFITH: And so if he's going to --

THE COURT: But they would have to extend the plea

to him to let him do it as a first, wouldn't they. Because isn't it a first? I don't know his record. What's his record?

THE DEFENDANT: This is a first, Your Honor.

THE COURT: Do you know your client's record, Mr. Griffith?

MR. GRIFFITH: As far as I know, he has no record here in South Carolina.

THE COURT: But does he have a record in other states?

MR. GRIFFITH: His New York record is not significant.

THE COURT: Doesn't include any drug offenses?

MR. GRIFFITH: Doesn't include any.

MR. UNDERWOOD: If I can beg the Court's indulgence, I'm going to pull his rap sheet.

THE COURT: Are you aware of anything that would amount to an enhancement?

MR. GRIFFITH: I am not, Your Honor.

THE COURT: Okay. Are we ready?

MR. UNDERWOOD: He does have a prior conviction from New York. I'm trying to see if it serves as an enhancement, Your Honor.

THE COURT: What level? What was he convicted?

MR. UNDERWOOD: It's listed as criminal possession

of controlled substance, fifth degree. I can't remember the exact definition of that. I know there are at least seven degrees in New York.

THE COURT: I would have to plead ignorance. I have no idea.

MR. GRIFFITH: That was 2002.

THE DEFENDANT: That was 2002. And it was crack cocaine.

THE COURT: Yeah, but would it be like a simple possession?

THE DEFENDANT: Yeah, it was possession.

THE COURT: It would still count as an enhancement in South Carolina.

THE DEFENDANT: Oh, I thought 10 years it was gone.

THE COURT: No. 10 years is used against you to impeach you, but a drug offense couldn't be used to impeach you anyway, because the Supreme Court said that doesn't prove whether you are truthful or not. But it can be used to enhance your offenses if it's higher than a magistrate level offense where you were counseled and you had a lawyer. So that would make these seconds, which increases the penalty range. What do you want to do?

MR. GRIFFITH: Your Honor, any time he pled guilty, I just wanted to clarify -- he just needs some

clarification. He doesn't understand the process really. The judge always decides what the sentence will be. It's up to the judge within the statutory limits.

THE COURT: Absolutely. Y'all can each argue for what you want, but it's ultimately the Court's decision, unless it's a negotiated plea where y'all agree to what it's going to be. And then I can either honor it or reject it.

MR. GRIFFITH: Thank you, Your Honor. So our plea agreement we've been talking about now is what we just discussed.

THE COURT: Which is the 7 to 25?

MR. GRIFFITH: Cap of 10 if he would cooperate; 18 recommendation if he does not cooperate. And then we just discussed whether they would let him plead to a trafficking, first offense trafficking, which carries 7 to 25. And I believe they have said that they are not willing to let him plead in that case straight up on --

MR. UNDERWOOD: No, Your Honor. We feel that with his criminal history and his involvement and his propensity for violence, Your Honor, we think 18 years would be an appropriate sentence. And we would stand with that recommendation should we go with a plea.

THE COURT: If these are firsts, you can't stop him from pleading straight up on all of them, can you? What would be the range?

MR. UNDERWOOD: If he were to plead straight up to count one, Your Honor, that's a mandatory minimum of 25 years.

MR. GRIFFITH: Yes. He has the other charge of trafficking 28 grams or greater, which is 25 to 40.

THE COURT: Yeah.

MR. UNDERWOOD: And the trafficking of 4 to 14 grams, Your Honor, if it's a second offense, that would also have the mandatory 25 as a second offense.

THE COURT: Yeah. We have to figure out what it is.

MR. UNDERWOOD: But count one, it would be 25 regardless straight up.

THE COURT: If I'm facing 25 and you are offering me 18, what incentive do I have to plead guilty? I might as well roll the dice. Isn't that many more years. I'm just thinking the way they think. I'm thinking the way I would think. I've got a 50/50 chance. Your video is up there. I've never seen a video that's clear, ever. Most on them just show me the sidewalk and some steering wheels. I've been doing this a long time.

So you've got to figure out whether, you know, how -- the strength of your evidence. And you have to determine just how clear your co-defendants are going to be, because it wouldn't be the first time they walk along the

stand and try to protect themselves and try to keep their street credibility and sort of cooperate with the deal. No, you've got to weigh all those things.

MR. UNDERWOOD: I've considered those, Your Honor. Our recommendation, if there were a plea, would be for a sentence of 18 years.

THE COURT: All right. What do you want to do?

Who is the State's next witness?

MR. UNDERWOOD: Your Honor, our next witness is Lieutenant Max Dorsey from SLED.

THE COURT: What number is that on your list?

MR. UNDERWOOD: Your Honor, that would be number 4.

THE COURT: Number 4. And then who would be after that?

MR. UNDERWOOD: After that, we anticipate calling Tommy Sekula, who's number 47.

THE COURT: That's number what?

MR. UNDERWOOD: 47, Your Honor.

THE COURT: Okay. And then who would be after that?

MR. UNDERWOOD: After him would be Sergeant Brandon Allen, number 35.

THE COURT: Number 35.

Who on this list are you not going to be calling?

I need to know for planning purposes. You are going to call Mr. Wingo. Number two, Ryan Shipley, will you be calling him?

MR. UNDERWOOD: I don't anticipate calling him.

THE COURT: Number 3?

MR. UNDERWOOD: Yes, Your Honor.

THE COURT: Number 5?

MR. UNDERWOOD: No, Your Honor.

THE COURT: Number 6?

MR. UNDERWOOD: Your Honor, it may be shorter if I tell you who I actually do plan to call. It's rather short.

THE COURT: It would be easier for me to just knock off, because that will give me my ultimate number.

Number 6?

MR. UNDERWOOD: No, Your Honor.

THE COURT: Number 7?

MR. UNDERWOOD: No, Your Honor.

THE COURT: Number 8?

MR. UNDERWOOD: No, Your Honor.

THE COURT: Number 9?

MR. UNDERWOOD: No, Your Honor.

THE COURT: 10?

MR. UNDERWOOD: No, Your Honor.

THE COURT: 11?

MR. UNDERWOOD: Yes, Your Honor.
THE COURT: 12?
MR. UNDERWOOD: Yes, Your Honor.
THE COURT: 13?
MR. UNDERWOOD: No, Your Honor.
THE COURT: 14?
MR. UNDERWOOD: No, Your Honor.
THE COURT: 15?
MR. UNDERWOOD: No, Your Honor.
THE COURT: 16?
MR. UNDERWOOD: No, Your Honor.
THE COURT: 17?
MR. UNDERWOOD: No, Your Honor.
THE COURT: 18?
MR. UNDERWOOD: No, Your Honor.
THE COURT: 19?
MR. UNDERWOOD: No, Your Honor.
THE COURT: 20?
MR. UNDERWOOD: No, Your Honor.
THE COURT: 21?
MR. UNDERWOOD: No, Your Honor.
THE COURT: 22?
MR. UNDERWOOD: No, Your Honor.
THE COURT: 23?
MR. UNDERWOOD: No, Your Honor.

THE COURT: 24?
MR. UNDERWOOD: Yes, Your Honor.
THE COURT: 25?
MR. UNDERWOOD: Yes, Your Honor
THE COURT: 26?
MR. UNDERWOOD: Yes, Your Honor.
THE COURT: 27?
MR. UNDERWOOD: Yes, Your Honor.
THE COURT: 28?
MR. UNDERWOOD: Yes, Your Honor.
THE COURT: 29?
MR. UNDERWOOD: Yes, Your Honor.
THE COURT: 30?
MR. UNDERWOOD: No, Your Honor.
THE COURT: 31?
MR. UNDERWOOD: No, Your Honor.
THE COURT: 32?
MR. UNDERWOOD: No, Your Honor.
THE COURT: 33?
MR. UNDERWOOD: No, Your Honor.
THE COURT: Let's see. 36?
MR. UNDERWOOD: No, Your Honor.
THE COURT: 37?
MR. UNDERWOOD: No, Your Honor.
THE COURT: 38?

MR. UNDERWOOD: No, Your Honor.
THE COURT: 39?
MR. UNDERWOOD: No, Your Honor.
THE COURT: 40?
MR. UNDERWOOD: No, Your Honor.
THE COURT: 41?
MR. UNDERWOOD: No, Your Honor.
THE COURT: 42?
MR. UNDERWOOD: No, Your Honor.
THE COURT: 43?
MR. UNDERWOOD: Assuming that our evidence comes in through another witness, no, Your Honor.
THE COURT: 44?
MR. UNDERWOOD: Same. Assuming our evidence comes in through another witness, no, Your Honor.
THE COURT: And 45?
MR. UNDERWOOD: Same, Your Honor. If evidence comes in through another witness, then no.
THE COURT: 46?
MR. UNDERWOOD: The same, Your Honor, if our evidence comes in, no.
THE COURT: They are all chain witnesses?
MR. UNDERWOOD: And also who were involved in the search warrant.
THE COURT: William Brown?

MR. UNDERWOOD: Yes, Your Honor.
THE COURT: Rosemarie Quezada, pretty much figure she will eventually or not, but on the safe side, say she is?
MR. UNDERWOOD: Yes, Your Honor.
THE COURT: Shirley Silvis.
MR. UNDERWOOD: No, Your Honor.
THE COURT: Craig Valentine?
MR. UNDERWOOD: Yes, Your Honor.
THE COURT: And 52, Sean Gibbons?
MR. UNDERWOOD: No, Your Honor.
THE COURT: Mr. Griffith, what do you want to do?
MR. GRIFFITH: Your Honor, he's asking what the incentive is. And I tried to explain to him that a minimum --
THE COURT: Well, the incentive is 25 to 40 years is a long time --
MR. GRIFFITH: It's a long time.
THE COURT: -- versus 18 times 85 percent, which is about --
MR. GRIFFITH: with their recommendation of 18, Your Honor, of course, we would argue --
THE COURT: It's 15 years, give or take.
THE DEFENDANT: That's with the enhancement, Your Honor? That's what I'm trying to consider.

THE COURT: I think they are going to let you plead to first. Enhancements mean that your minimum is raised. They get greater. The penalty gets greater if that drug offense in New York comes against you. That's a matter of law for the Court to determine if it's an enhancement on your sentence.

THE DEFENDANT: All right. What I was trying to ask him was on the -- I'm going to ask it this way.

THE COURT: Sure.

THE DEFENDANT: If I pled to the 7 and 25 --

THE COURT: I don't think that's available to you.

THE DEFENDANT: All right. Then I can't. Oh, yeah.

THE COURT: Only offer on the table is 18.

THE DEFENDANT: Oh, no.

THE COURT: And at 85 percent, that's 15.3 years. Of course, I don't calculate sentences. And then you would get credit for the time you've already served. And I stopped trying to figure out what the Department of Corrections does. Because one time I gave somebody seven years and I had a bunch of anxiety about it, and they let him out after four months. I stopped thinking about it.

THE DEFENDANT: Four months?

THE COURT: I just used that as an example, but under regulation and statute, they have the ability to

calculate sentences and determine when they are going to let folk out. And I just don't have anxiety about those things anymore. I just do what I think is appropriate. And it's up to them to determine how they calculate your sentence. I don't want you to think there's any guarantees. I'm just saying, worst case is 15.3 years. But you never know what they'll do once you're there. I have no idea, but you certainly would get credit for the time you already served at the detention center.

MR. GRIFFITH: And, of course, any sentencing is at Your Honor's discretion.

THE COURT: The Court's discretion. We all have a role to play.

THE DEFENDANT: But I just need this --

THE COURT: Sir, we just need a final decision from you whether you want to do it or not, so we can proceed with the trial if you don't want to.

THE DEFENDANT: The discretion of 18 years?

THE COURT: I think that's what the State is offering.

I guess I'm trying to figure out, are you all asking him to enter a negotiated plea of 18 years, or are you going to be asking for 18 years? Because I don't think any of these offenses carry 18 years; do they?

MR. GRIFFITH: Except for count one.

THE COURT: That carries 25.

MR. GRIFFITH: The other -- the next one down carries 7 to 25.

THE COURT: Which is the trafficking?

MR. GRIFFITH: Trafficking less than 14 grams.

THE COURT: The 4 to 14 grams carries 7 to 25 years.

The second offense is a mandatory 25 years.

So, sir, if the drug offense in New York constitutes an enhancement, you would be facing a mandatory 25 on that, and $100,000 fine.

14 to 28 grams is a mandatory 25 years.

28 grams or more is 25 to 40 years. And no part may be suspended nor probation granted.

So based on what y'all are telling me, if he pleads straight up to the 4 to 14 grams, that's 7 to 25. 14 to 28 is a mandatory 25, unless y'all reduce the quantity and agree to the 18, I guess. Is that what you are telling me?

MR. UNDERWOOD: I'm sorry, Your Honor?

THE COURT: I said, how do you come to the 18-year offer, is what I'm asking?

MR. UNDERWOOD: That's the number that we think is fair.

THE COURT: That's not my question. How are you going to deal with the charges to make that fit, because one

of them is a mandatory 25.

MR. UNDERWOOD: He would plead to as a first offense. All the trafficking charges would be reduced to 4 to 14 grams.

THE COURT: I got you. That was the question I was asking. Okay.

That means they are going to take enhancement off the table, basically. If you agree to 18, it's 18. Because they are going to reduce them all. In consideration for them offering you the 18, they are going to reduce all of the weights down to that range, because, otherwise, they are all mandatory 25. One of them is a 25 to 40. The 28 grams or more is 25 to 40.

Which count is that?

Sir, the most serious count you are facing is count one, which is the 28 or more grams, which carries the range of 25 to 40 years.

Then the distribution of heroins are not more than 15 years, if they are first, but the minimum of five and max of 30 if they are seconds.

The trafficking 4 to 14 is 7 to 25 years. If it's a second, it's a mandatory 25.

The possession of a weapon is a mandatory five years.

And the PWID meth is 0 to 15, or if it's a second,

five to 30.

THE DEFENDANT: Can I say something?

THE COURT: Sure.

THE DEFENDANT: Johnson, right, the plea range, right --

MR. GRIFFITH: That's not up to the judge.

THE DEFENDANT: I know.

THE COURT: Mr. Johnson got in the boat earlier. That's the deficit you had. You waited a long time. The longer you wait to do things, the more hard their stance get. Mr. Johnson over a week ago or couple week ago decided he was going to plead guilty. So then their position on him was different. The longer you wait, the more their position changes. Because now they've had to get ready for trial and do other things. And they feel like that's just --

THE DEFENDANT: That's what I'm saying. So I have no incentive if I take 7 to 25 because I took long. I don't have no incentive?

THE COURT: No, just means their posture changes. I don't know why their posture changes. It just does.

How many sales did Mr. Johnson have? I can't remember.

MR. UNDERWOOD: Mr. Johnson? He had one.

THE COURT: Yeah. Mr. Johnson only had one sale. And you had sales on 1/7, /1/19, 2/2, 2/8 and -- yeah, 2/8.

So that's, one, two, three, four. And that might be why they took the position they took with him. I'm not sure.

MS. JOHNS: Your Honor, Mr. Johnson was the one found with a big amount of cocaine in his apartment in Bear Island. Remember? They had over 28 grams.

THE COURT: But they reduced it, didn't they?

MS. JOHNS: Uh-huh.

THE COURT: I don't know. What was -- I can't remember.

All right. Mr. Roberts, what do you want to do? Time is ticking away and I've got a jury waiting and I need to proceed with these witnesses.

THE DEFENDANT: I'm sorry, Your Honor. I was just trying to -- now if -- I mean, that's crazy. I'm going to have to go to trial. I can't -- because I feel like --

THE COURT: You don't have to explain to me.

THE DEFENDANT: I just want to be fair. If it can be around that.

THE COURT: Around what?

THE DEFENDANT: That area of 8, 7 area, but as I'm feeling that, because I worked to this point, I'm trying to defend myself that it's going to be more, 7, 25 --

THE COURT: I'm sorry. I didn't hear you. Repeat that.

THE DEFENDANT: I don't want to come across as

being a difficult person.

THE COURT: Oh, I don't think that at all. You know, as I sit and do my job every day, I am very sincere when I tell people I'm a great believer in the trial system, because I am. I never try to anticipate what a jury will do, because you never know what 12 people will do. People have been found guilty that I never thought would be found guilty. People have been exonerated that I never thought would be exonerated. So I quit -- I really take seriously the State Constitution that says I can have no position about the facts. I don't.

It's up -- I sat in the family court for six years where I was the finder of fact. It is a great luxury and relief to me that 12 people make the decision now, that I don't to make it. All I have to do is make calls about questions of law. So I'm acutely aware of what it's like to be a finder of fact. You have 12 different people with 12 different backgrounds deciding what the facts are in a case. And you never know what they are going to do.

So only you can make that decision. And I mean it wholeheartedly when I say it, whether I'm trying this case or another one, that's what I'm going to be doing today or tomorrow. Because if your case gets resolved, we finish this one, I will pick another one. So whether you plead or don't plead, it's up to you. Because, ultimately, you need

to make that decision because you are the only one that has to deal with the consequences. If you can deal with 25 years, I can deal with 25 years. If you can deal with 18 years, I can deal with 18 years. It's your decision.

MR. ROBERTS: I'm just saying reasonable to a person whose life is in jeopardy from the 7 to 25, my --

THE COURT: They are not willing to offer that at this point. And I have no control over what they offer.

THE DEFENDANT: All right.

THE COURT: So now your decision you have to make is whether you want to have a certainty of 18 and have the reduction of these charges, or whether you want to face a minimum of 25 to 40. And I'm certain they are probably going to ask for a lot more than 25 if you are convicted. Your sentencing is up to me. And I believe people should be -- I don't believe in, like, retaliatory behavior because people have a trial.

Sometimes people get higher ranges after a trial. And that's because the facts are more developed and the Court gets to see more of what happened. You know, in a plea, you get a little snapshot of what happened. But in a trial, you get to hear all the details. And sometimes that enhances the penalty because the Court gets to hear all the details.

But I don't believe in punishing people because

they exercised their constitutional right. It's your right to have a trial. That's why we are here. That's why we have jurors.

THE DEFENDANT: That's what I'm saying. I don't know if you can, but I was just looking to be treated fairly. You said 7 to 25 --

THE COURT: But you can't compare yourself to somebody else, because I don't know what their circumstances were. And every case is fact-driven. And I don't know what they had against Mr. Johnson. And I don't know what evidence they had against him. I don't know how weak or strong their indication is. All that stuff plays into the offer that is made. Also, how quickly people get onboard plays into it, because that's a lot less preparation. That's one less thing I have to attend to. And that part of my file is closed and I can move on to the next part of it.

So as has been my experience, and I've been in -- I think I've been in every county except three in South Carolina, or four. I can't remember at this point. It has been my experience, with the exception of a couple of solicitor's offices, that the longer you wait, the more the penalties become enhanced. The deals get higher and higher the longer you wait to take advantage of it.

THE DEFENDANT: Yeah, but 18 is no different than life for me.

THE COURT: Well, I'm going tell you, 25 years is a lot longer than 18. And 40 is a lot longer than 18. That's a long time.

THE DEFENDANT: I understand that, but 18 is -- I don't see the difference, like. Once I'm there, 18 is --

THE COURT: Well, you got 18, which comes down to 15. And you will get credit for a year, five months and seventeen days. So then you would sit down with your counselor, and they would tell you what your expected max-out date is. But it's up to you.

THE DEFENDANT: No, we can go to trial.

THE COURT: All right. Let's proceed. Get the jury for me, please.

MR. UNDERWOOD: Your Honor, if I may briefly, just to clarify, the plea was being offered as a recommendation, not a negotiation. I'm not sure if that was --

THE COURT: So he could get less than 18?

MR. UNDERWOOD: It would be within your discretion, but we are recommending 18.

THE COURT: Hold up. I misunderstood. I misapprehended what you said to me. I'm sorry.

You could argue for less than 18.

THE DEFENDANT: Okay. Can we --

THE COURT: I can't give you any guarantees, though. I don't know what I'm going to do until I hear it

all. That's why I never talk to lawyers in chambers about their clients. Because then people come back on PCR and say, judge said that I was going -- I don't know what I'm going to do. I change my mind 10 times while I'm listening to you all talk.

THE DEFENDANT: What do you mean, I can argue for it?

THE COURT: Your lawyer can ask for less than 18.

THE DEFENDANT: Oh.

(Whereupon, an off-the-record discussion takes place.)

MR. GRIFFITH: Your Honor, we are ready to move forward.

THE COURT: What do you want to do?

MR. GRIFFITH: He does not wish to plea. He wishes to proceed to trial.

THE COURT: You recognize your lawyer can ask the Court for less than 18 years? I'm asking this for PCR purposes, because I don't want you coming back later and saying Mr. Griffith didn't explain it to you; you didn't understand. Hindsight is always 20/20. I need you to make sure you are doing this with your eyes wide open and you know exactly what is being offered to you and you are freely and voluntarily rejecting it.

THE DEFENDANT: One question.

THE COURT: Yes, sir.

THE DEFENDANT: How it was explained to me, that they wouldn't have nothing to do with it because I took longer --

THE COURT: They are going to ask for 18. Your lawyer is going to ask for less.

THE DEFENDANT: All right.

THE COURT: That's the bottom line. That's it in a nutshell. So do you want to take advantage of that and face the mandatory minimum of 25 and continue with the trial or do you want to take advantage of the plea offer where the State is going to ask for 18 and your lawyer can ask for less than 18?

THE DEFENDANT: All right. I will take the plea.

THE COURT: All right. Stand up for me, sir. Raise your right hand to be sworn. I need the plea sheets.

MR. UNDERWOOD: I have to make --

THE COURT: Which range is he pleading to for the 18? He's pleading to first on everything?

MR. UNDERWOOD: Yes, Your Honor.

THE COURT: So that would be --

MR. UNDERWOOD: Well, on the trafficking charges, Your Honor.

THE COURT: So tell me which count he would be pleading to under this plea deal. Because count one is a

mandatory 25. So you are going to reduce the quantity of that to the 7 to 25?

MR. UNDERWOOD: May I have just one second, Your Honor?

THE COURT: Ah-huh. Bear with us one second, sir. We need to make sure so I can be clear of the range of penalty.

THE DEFENDANT: And it's no enhancement, right?

THE COURT: Not if they let you plead to first and reduce the amount of quantity of drugs, which is what they are going to do.

THE DEFENDANT: Your Honor, I have another question.

THE COURT: Sure.

THE DEFENDANT: So I have to waive my right to appeal?

THE COURT: You are not waiving your right to appeal. You can appeal a guilty plea, but it's unlikely if ever the Supreme Court is going to grant anything on it. And if you file a PCR back on it later, it probably isn't going to be granted.

Either you are going to plead guilty and you are certain of that, or you are not. If you want a trial, we're going to go forward with the trial.

THE DEFENDANT: I will go forward with a trial.

I'm sorry.

THE COURT: I mean, why would you file an appeal of a guilty plea? You know, I'm going to ask you that you can appeal it, but the Supreme Court is not going to reverse a guilty plea. You can file a PCR, speak to Mr. Griffith, but unless you're out of your mind and you didn't know what you were doing, it's not going to be reversed. I believe in being honest. It's an exercise in futility to file an appeal on a guilty plea.

MR. GRIFFITH: I believe, Your Honor, he is concerned about filing an appeal.

THE COURT: He wants a guarantee. He wants to file an appeal if he doesn't get what he wants. And that's the bottom line.

MR. GRIFFITH: He's talking about appealing on all those constitutional --

THE COURT: You waive all of that. And you are not really waiving anything because there are no constitutional grounds for you to pursue. And I don't know who you've been listening to, but they have been misleading you. And I am a real direct person. I don't believe in being flowery with people. I'm real direct.

The problem is, when you have a lot of time on your hands and you are listening to armchair lawyers who think they know what they're talking about and they do not, they

can put your life in jeopardy. You are listening to folk that don't know what they are talking about, who don't have a law degree.

THE DEFENDANT: I'm talking about the case law.

THE COURT: There is no case law to support your posture. And anybody that's told you that is misleading you. And there's a whole group of people over in that detention center that have been listening to those folk, and they put their lives in jeopardy. And I can tell you five off the top of my head that had wonderful plea deals, that were in the five-year range, and ended up taking 25, because they were listening to them who don't know anything about the law. Don't put yourself in jeopardy listening to folk that don't have a law degree and never practiced law. Because it sounds beautiful in theory, but it's not reality. Now, I'm just trying to be real honest. As young people say, I'm keeping it 100. Okay? Because I am not -- that's probably one of my deficits as a woman. I'm very direct. I grew up in a family that's very direct. We don't lie to each other. We could tell each other the truth and still love each other. And I believe that is how you are with folk. You tell them the truth so that they are never unclear about what is going on. And you need to be clear about what's going on.

If you plead guilty, you are waiving -- basically,

you can appeal it. I'm going to ask you if you know you can appeal it in 10 days. But the likelihood of any court of appeal in this state reversing a guilty plea is about zero.

Now, you can file a PCR and say that you didn't know what you were doing. That's unlikely that's going to be granted either. Because, basically, by virtue of entering the plea, you are telling me you are doing it freely and voluntarily, that you know all your rights, you know you are waiving all of your rights. So you can file it, but it's an exercise in futility.

So it's up to you. And it's up to you whether you want to go from being able to argue for less than 18 years to facing a mandatory 25. I have no discretion of mandatory minimums. They get imposed if you are convicted.

THE DEFENDANT: All right. We will do the plea. I'm just -- I'm just looking at it like the -- what I was looking at as a constitutional violation --

THE COURT: What constitutional violation are you looking at that you think has --

THE DEFENDANT: Took me to Columbia.

THE COURT: That has no validity. Under the State Grand Jury rules, they can take you wherever the State Grand Jury Chief Judge is sitting to do whatever he wants to do. Whether it's to set a bond, have you serve your indictments, they are not restricted that way. They take you to Columbia

because the Chief Judge in the State Grand Jury sits there. And that's where you get -- that's where you get taken until the case is assigned to a judge in whichever circuit it is determined the case is going to be tried.

Right now if they ask for a bond, they can take you to Columbia to Judge Newman right now. They don't have to defer to me. He's never -- whoever, I don't know if it's Judge McMahon or Judge Newman or Judge Benjamin or Judge Lee, they are not deprived of their jurisdiction just because you are in Berkeley County. And in the grand scheme of things, it really doesn't matter. It's not going to change anything. It's not going to cause a dismissal of charges.

Let's just say that we take your argument they shouldn't have taken you to Columbia, what difference do you think that's going to make?

THE DEFENDANT: I was looking at the part that I was prejudiced from a speedy trial from there. I have a right to be tried in another county where the crime was committed.

THE COURT: Berkeley County. They already established venue.

MR. GRIFFITH: You know, you do a speedy trial, it's a trial.

THE COURT: And I looked it up yesterday after you

made -- I was assigned this case on May 20th of 2016. I was prepared to try it within six months. I gave deference to the lawyers in this case. That's why we are trying it now, to their schedules, otherwise, because I don't let grass grow under my feet. When something is assigned to me, I dispose of it usually within six months. Even a death penalty, I dispose within a year. Because the longer you wait on stuff, the longer it takes to do it. The more string you give lawyers, the more excuses they are going to have why you can't come to court. And I do that to keep me honest, because I don't like stuff on my desk. If it's assigned to me, I deal with it.

I was assigned this case on May 20th. I immediately had status conferences and set a scheduling for this case. So you don't have -- and the remedy for a speedy trial motion is to have a trial. And you are having one. There's no other remedy. Speedy trials is not going to result in a dismissal of your charges. What you get if you make a speedy trial motion is the judge says, set a trial date. That's your remedy on a speedy trial. That's the only remedy on a speedy trial. Your charges are not going to be dismissed. So if that was your belief set, that's not correct.

THE DEFENDANT: My Fourth Amendment rights was --

THE COURT: What Fourth Amendment rights?

THE DEFENDANT: That he was -- it's not a neutrally attached magistrate who issued the warrant.

THE COURT: I already heard those motions and ruled on them.

MR. GRIFFITH: Your Honor, just to help him understand, if he pleads today, he can still appeal. And many of us present, our opinion, that appeal would not be successful. However, he may appeal and --

THE COURT: But Indigent Defense might do an Andrews brief and say it's a waste of the court's time and there aren't any violations.

MR. GRIFFITH: But he still has the right to appeal.

THE COURT: Oh, absolutely.

MR. GRIFFITH: And it would be up to the Appeal's Court, not to us.

THE COURT: That's correct.

MR. GRIFFITH: Whether we have an opinion or not.

THE COURT: I agree. And they will issue an opinion one way or another.

Mr. Roberts, I need to know what you want to do, because I've been dealing with this since ten o'clock and it's 11:25. An hour and 25 minutes I've had a jury sitting in a jury room, hour and 20 minutes longer than I ever would allow. So I need to know. I've given you great deference.

I've given you time to discuss it with your lawyer. I've given you time to make a reasonable decision and I need to know what you want to do.

THE DEFENDANT: I'm going to go.

THE COURT: Okay. Get the jury. Let's roll.

Are you withdrawing the offer, Mr. Underwood?

MR. UNDERWOOD: Yes, Your Honor.

THE COURT: Sir, do you understand that this offer is off the table now? It's not going to be offered to you again? You can't come back an hour from now and tell me you want the deal, because at this moment, if you tell me no, it's done. There is no more deal. Do you understand that?

THE DEFENDANT: It's 18 discretionary, right?

THE COURT: That's correct. They can argue for 18. Your lawyer can argue for less.

THE DEFENDANT: I'm ready, Your Honor.

THE COURT: All right. You understand it's off the table, period. You can't come back to me an hour from now or tomorrow and say, I want the deal back. I need you to say yes or no?

THE DEFENDANT: Yes.

THE COURT: Are you doing that freely and voluntarily and of your own will?

THE DEFENDANT: Yes.

THE COURT: Are you suffering from any mental

disability or under the influence of any drugs or alcohol?

THE DEFENDANT: No.

THE COURT: Did anybody force you to reject the deal?

THE DEFENDANT: No.

THE COURT: All right. Let's roll. Get the jury for me, please. Is your witness ready?

MR. UNDERWOOD: Yes, Your Honor.

THE COURT: All right. Let's try to go through as many of these as we can before lunch.

(Whereupon, a recess transpired.)

THE COURT: The State ready to proceed?

MR. UNDERWOOD: Yes, Your Honor.

THE COURT: Defense ready to proceed?

MR. GRIFFITH: Yes, Your Honor.

MS. JOHNS: Yes, Your Honor.

THE COURT: Mr. Griffith, let me ask one additional question. Is Mr. Roberts rejecting this deal with or against your advice?

MR. GRIFFITH: I'm sorry, Your Honor?

THE COURT: Did Mr. Roberts reject the deal with or against your advice?

MR. GRIFFITH: Against my advice, Your Honor.

THE COURT: I just ask that for PCR purposes.

(Whereupon, the jury returns to open court at 11:31

a.m.)

THE COURT: Ladies and gentlemen, we appreciate your patience. We were working through some matters of law this morning. Took a little longer than anticipated. So please know I do not take your time for granted. I would ask the State to call its next witness.

MR. UNDERWOOD: May it please the Court, Your Honor. The State calls Lieutenant Max Dorsey.

DONALD MAX DORSEY, II,

having been duly sworn, testifies as follows:?

THE CLERK: State your name for the court reporter and spell your last name.

THE WITNESS: My name is Donald Max Dorsey, II, D-o-r-s-e-y.

DIRECT EXAMINATION

BY MR. UNDERWOOD:

Q. Please introduce yourself to the jury and tell them and little bit about your career and training in law enforcement.

A. Yes, sir. Good morning, everyone. My name is Max Dorsey. I'm a lieutenant and supervisor, special agent with the South Carolina Law Enforcement Division, commonly referred to as SLED. I've worked in the narcotics investigations field for the majority of my career. September it will be 20 years I've been a special agent

either working or supervising majority of narcotics investigations here in various parts of South Carolina.

Q. And what type of education and training do you have both in law enforcement, and in narcotics investigations particularly?

A. Well, I'm a graduate of the University of South Carolina. I had a major in political science, graduated from South Carolina Criminal Justice Academy in Columbia. And after that, I've attended numerous narcotics training classes, to include the narcotics commander school here in South Carolina. I'm actually an instructor there. I have been since mid-2000s. I have attended other training classes, whether it be on managing narcotics investigations, technical surveillance, just a wide variety of training classes that I've attended.

Q. Lieutenant Dorsey, as far as your career at SLED working in narcotics, is there a particular type of investigation you specialize in?

A. Well, for some reason, I have kind of resonated to specializing in narcotics trafficking conspiracies, most of which I have multi-county impact. But I found a niche in that. I enjoy doing that. I've done that the majority of my career.

Q. Have you ever been qualified as an expert in any South Carolina courts?

A. Yes, sir, I have, on at least one occasion in a trial in Greenville County back in the mid-2000s.

Q. And what field were you qualified as an expert?

A. Narcotics trafficking conspiracy investigations.

Q. Have you ever presented any testimony to Congress or any other legislative body?

A. Yes, I have. I actually testified before congressional committee in Washington in 2012. I've testified before the State legislature regarding narcotics -- well, narcotics laws and investigations.

MR. UNDERWOOD: Your Honor, at this time, the State would present Lieutenant Dorsey as an expert witness in the field of narcotics trafficking, conspiracy investigations.

THE COURT: Any exceptions or questions, Mr. Griffith?

MR. GRIFFITH: I have no questions, Your Honor.

THE COURT: Any exceptions? Any exceptions to him being qualified as an expert?

MR. GRIFFITH: I accept his testimony as being qualified.

THE COURT: As an expert.

Ms. Johns?

MS. JOHNS: I do have a couple of questions.

THE COURT: Proceed.

VOIR DIRE EXAMINATION

BY MS. JOHNS:

Q. Lieutenant Dorsey, did you say that you are being offered as an expert in conspiracies or narcotics?

A. Narcotics trafficking conspiracy investigations or narcotic trafficking investigation, which in the statute, actually, conspiracy is in the wording of that statute.

Q. So are you qualified in your knowledge of what a conspiracy consists of, or is it just your experience as a narcotics officer?

A. I would say both.

Q. And you said you were qualified as an expert in general sessions court and one of the courts in South Carolina?

A. Yes, ma'am.

Q. Do you know what year that was?

A. It would have been mid-2000. It was Judge Macaulay, was the trial judge. And it would have been in 2006 or '07, I believe.

Q. Okay. And the specialized knowledge is based on some sort of education?

A. Education and experience.

Q. And what's the education, sir?

A. Formal education? I've attended -- I've attended -- I can't remember any specific training, any formal specific training on conspiracy investigations. I

cannot recall. I cannot recall.

Q. Do you remember when you were qualified as a law enforcement officer at SLED?

A. I was sworn in in September of 1997.

Q. 1997?

A. Yes, ma'am.

Q. And within SLED then, you've had other training, other seminars that you've attended; is that right?

A. Yes, ma'am.

Q. And a lot of those involved narcotics observation and surveillance and that sort of thing, right?

A. That's correct, yes.

Q. Do you remember the last time that you attended one of those seminars?

A. I instructed at the narcotics commander school last year. I'm sorry, that wasn't narcotics school. That was the commanders school last year. I instructed the year before. I sit on the law enforcement coordinating committee at U.S. Attorney's Office as a drug subcommittee and we sponsor the drug narcotics commander school. Several years ago, we decided to alternate. Every other year, we do a narcotics commander school. And the other years, we do a commander school, a general commanders school. And so I've been a part of that committee for several years, been an instructor at that school.

Q. How long have you been an instructor?
A. Since the mid-2000s, since around 2005.
Q. How often do you instruct?
A. I instructed almost every year up until we started alternating. And I did not instruct last year at the commanders school, although I was still a part of the committee.
Q. What is the topic of your instruction?
A. Search warrants, money in evidence and raid planning.
Q. Raid?
A. Yes, ma'am, search warrants and raid planning.
Q. Based on that, does that give you any specialty with regards to narcotic sales? Because you are talking about the law of a search warrants, correct?
A. Correct.
Q. And you are talking about how to functionally choreograph a raid into --
A. Correct, that's an element of it, yeah.
Q. And with regard to any kind of narcotics recognition, you don't have any other special expertise than any other officer at SLED?
A. I'm sorry. Say that again.
Q. You don't have any other expertise that you can offer than any other officer within SLED that's in the

narcotics division?

A. No, ma'am, I would disagree with that.

Q. Okay. Then tell us what they are.

A. Like I said, this September it will be 20 years. The majority of my time at SLED have been assigned to narcotics investigations, of which I have been the lead on multiple State Grand Jury investigations. I have supervised multiple State Grand Jury investigations. During the course of all of that, I have the basis of -- majority of those investigations have been conspiracies. We work drug organizations. We try to identify and completely work -- disrupt those organizations.

So during the course of all of that, I've gained an enormous amount of experience. And not just actually doing those things, but the people I've worked with, I've learned an enormous amount of information from those people who also have been working those investigations. So, again, I am not trying to sound -- well, I'm explaining to you what my qualifications are. And I would say I'm one of the most experienced narcotics agents in the agency.

MS. JOHNS: Your Honor, I don't have any further questions; however, I do take exception --

THE COURT: No speaking objections. Madam Forelady, ladies and gentlemen, I have a brief matter of law to take up. During the break, please do not discuss the

case and please leave your notepads in your seats. Thank you in advance for your patience.

(Whereupon, the jury leaves open court at 11:42 a.m..)

THE COURT: You may proceed, Ms. Johns. What's the basis of the objection?

MS. JOHNS: I would object based on the fact that the Court must act as a gatekeeper with regards to who should be qualified as an expert and offered as your expert, because as we know, expert testimony that's offered is usually given a higher degree of weight, for lack of a better word, for the jury. What this witness has said is that he's got a lot of experience and that he's headed a lot of the investigations involved in narcotics investigations in the state. I don't think that the number of years of experience really amounts to the fact that someone could call themselves an expert.

His training, Your Honor, is basic educational law enforcement training he received in the 1990. Of course, he has mentioned that he has attended future seminars or further seminars with regards to that. You know, the fact that he's worked there are for 20 years and has instructed other law enforcement officers, I don't think fits him as being more of an expert in narcotics investigation than any other qualified officer.

THE COURT: Mr. Underwood?

MR. UNDERWOOD: Your Honor, the rule as to qualifications of an expert provides that the individual must have some sort of specialized knowledge.

THE COURT: Well, there are facets to that. It's education, training and experience. But it's beyond experience. The only case that supports simply having experience is the coon dog case, which there was no specialized training. But in this instance, there are classes he can take and there are other things. He indicates he didn't take any classes.

But my concern -- I guess I'm trying to figure out, what purpose did you call this witness? What does he make more or less probable in this case?

MR. UNDERWOOD: To explain how organizations of individuals who are dealing drugs function, what types of investigative techniques are used on organizational investigations rather than individual investigations and what types of things law enforcement looks for and what types of things can be seen as evidence of an organization rather than an individual who happens to be dealing drugs.

THE COURT: I guess my other question becomes, aren't you going to call other witnesses who actually were involved in this case on that as well?

MR. UNDERWOOD: Your Honor, Lieutenant Dorsey is

actually the supervisor of our case agent, Special Agent Wingo.

THE COURT: Well, then why didn't you elicit that?

MR. UNDERWOOD: I was going to get into the case specific portion later in his testimony, Your Honor.

THE COURT: Okay. So what exactly -- what exactly are you going -- so you are going to speak in generalities, not about this specific case?

MR. UNDERWOOD: Yes, Your Honor, what types of things would law enforcement find in the investigation of a drug trafficking organization. I was not going to elicit an opinion as to this particular case, but rather, the types of evidence that would be used.

THE COURT: With that clarity, do you still have an objection?

MS. JOHNS: Well, Your Honor, my concern is if he's not going to elicit an expert opinion, why would he offer --

THE COURT: No, he's eliciting an expert opinion, but expert opinions cannot be -- it's almost like never have a person that testifies about sexual abuse dynamics. They can't talk about the specific case. They can only talk in generalities. So that's my understanding of what he's going to ask this witness.

MS. JOHNS: Well, that coupled with the fact that Lieutenant Dorsey is Agent Wingo's supervisor, would he be

acting in the supervising roll over this case and make an opinion as to this case?

THE COURT: Are you eliciting an opinion?

MS. JOHNS: I wasn't going to elicit an opinion on the ultimate issue, Your Honor, only as to what type of evidence are found in drug trafficking organizations. And also, Your Honor, just to discuss the qualifications of Lieutenant Dorsey, he has mentioned he has actually been an instructor in this schools of narcotics investigation --

THE COURT: Actually, the areas that he said he instructed on were search warrants, money in evidence and raid planning.

MR. UNDERWOOD: I believe that was just for one year. I believe that the topics changed. Also, Your Honor, the fact he has been recognized by a circuit court judge --

THE COURT: That was a long time ago.

MR. UNDERWOOD: He's been recognized by the United States Congress as an expert in this field, as well as our state legislature, providing testimony to both.

THE COURT: But I don't know what topics in Congress. Nobody has elicited that.

MR. GRIFFITH: If it please the Court, Your Honor, I would object to his testimony as well because it would draw the jury to believe that this organization acted exactly as he were to describe some kind of organization

basically because he was supervising in this investigation of Mr. Wingo. I think it would prejudice the jury.

THE COURT: Let me ask another question, because I was thinking through that as you mentioned that. If there's no reference to him being Mr. Wingo's supervisor, do you all have an objection to him testifying in general, I don't mean to sound redundant, but the dynamics of how a conspiracy works?

MR. GRIFFITH: I would object, Your Honor, if he's not going to specifically address this particular case. He said he's not going to talk about this case.

THE COURT: Well, I think it's prejudicial for your client to talk about this particular case. I think that's bolstering. I don't think he can do that.

MR. GRIFFITH: I would object to him talking about this case --

THE COURT: I think he can talk in generalities if he's qualified, these are the characteristics we look for. But I don't think he can talk to this case. And I don't think Mr. Underwood could argue that, because it would be bolstering and it would be improper.

MR. GRIFFITH: Having him up there is really just adding more confusion to the jury. If they are going to listen to somebody talk about what an organization does and then he's not going to apply it to this case, why are we

having his testimony? So I would object to his testimony on those grounds. And if he's going to be identified either now or later as Mr. Wingo's supervisor, then that would lead credence to --

THE COURT: I'm thinking about them not making any reference to that.

MR. GRIFFITH: Well, if they don't make a reference to it, why would we need his testimony? It's an additional load on the jury's mind.

THE COURT: I think Mr. Underwood would argue that most people don't know how a drug organization works. And so that it would aid in giving clarity to the jury on that issue, as that would not be within the ambit of the average person's knowledge. However, with all these new TV shows and other things, I don't know anybody's life who hasn't been touched by drugs, really, whether people stand up during voir dire or not. I think most people probably know on the periphery how drug organizations works.

But I think their argument would be -- I don't mean to supplant your argument, you can correct me if I'm inaccurate -- is that, for general educational purposes, that's why they would be offering it. I would never let them say as it applies to know particular case, because that would not be appropriate.

MR. GRIFFITH: Your Honor, I would argue that the

jury is going to -- here we are in this case. They are going to assume that his testimony applies to this case automatically.

THE COURT: Well, if that's the case, you could never have anybody talk about the dynamics of sex abuse, because that's what we allow and what the Supreme Court has allowed. You can talk in generalities about things that a jury doesn't have general knowledge of. You just can't apply specifically to the case, because then that does bolster and add and sort of comment on the veracity of the State's case. But I think you can talk in generalities. I think you just can't go beyond that. You can't say in this case, therefore, in this case, my opinion is valid. I think in terms of generalities, you can talk about things that a jury would not have common knowledge of.

MR. GRIFFITH: Your Honor, if he were to specifically say, I am not talking about this case, I'm talking in generalities, for instance, perhaps that would help the jury to understand that he's not here to testify about what happened in this case. I would object otherwise --

THE COURT: Then the other problem you run into, Mr. Underwood, and there's a case -- and last week I tried a case on sex abuse, that's the only reason I'm sort of more attuned to this issue, there's a case that's up on cert

right now where the solicitor's office called the actual person who was involved in this case to talk about the dynamics of sex abuse. And the Court of Appeals said that was okay. Supreme Court has accepted cert. I'm not clairvoyant, but I suspect they are going to reverse it. They are going to say the general principle is okay, but nobody connected to the case should be talking about it, because it adds an indicia of credibility to their testimony, because they are involved in it.

The whole line of cases that say you can call a totally detached expert, like -- again, my best example is in the dynamics of sex abuse, you generally call a therapist who knows nothing about the case, who has never seen anybody, who just comes in and says, listen, kids delay reporting. That's just the nature of it. They have fear. They have other things. Is it unusual for them to be around the person they are accusing of abusing them? No, not at all. These are the dynamics of what happens, why people delay, why they bathe, why they do all these other things. And that's okay.

But in this case that I read last week that the Supreme Court has accepted cert on, they allowed the person who actually examined the child and who was the supervisor to render that opinion and to qualify it and say, well, you know, this doesn't apply to this case, but I'm going to

render this detached opinion.

And I think it's sort of an oxymoron to say that somebody involved in the case can offer a detached opinion. I think it's probably going to end up getting reversed. I am not clairvoyant, but I can read the tea leaves coming.

MR. UNDERWOOD: If it can aid matters, I can refrain from discussing any of Lieutenant Dorsey's actual involvement in this particular case.

MS. JOHNS: Your Honor, I'm going to rely on Rule 702, the testimony of expert witness, D: The expert has reliably applied the principles and methods to the facts of the case.

THE COURT: Experts, I think our view of expert testimony has gone beyond that definition, because our Supreme Court has said that you can render opinions. As a matter of fact, they endorse rendering opinions where the person is not attached to the case because they don't want to add an indicia of reliability to their testimony. And they do not want the jury to tie that to this particular case.

And then you couple that with certain rules of -- what's the word I'm looking for? Like, for example, therapists that render opinions of this type, ethically, they can't say it's tied to that person, because they can lose their license for doing that. Ethically, they are

bound not to do that. And other disciplines, it's the same thing.

So I guess I'm trying to -- why would you want him to be able to tie it to this case?

MS. JOHNS: That's --

THE COURT: I think that gives him an added indicia of reliability and it hurts your client. I think it's prejudicial.

MS. JOHNS: I agree with that, Your Honor, but I was just following the rule here under the testimony by expert witnesses. I think that in the case where you are talking about a young person being sexually assaulted, that a scientist could come in or therapist or psychologist could come in and they can render an expert opinion as to how that science would apply --

THE COURT: I think the Supreme Court hasn't limited it just to science. It's any area of any topic that requires specialized education, training and knowledge that is beyond the average person's knowledge that helps illuminate for them the subject matter they are considering. So I don't think the case law would confine it just to an area of science. Because, like I said, you've got coon dog case. There's no specialize training that you get in breeding a coon dog. But the State has recognized that a person can, based on your experience, render opinions about

how you breed those dogs, how you sell them, their value, all of that. So I think it's an ever-expanding area, but you do have to have sufficient education, training and experience to render an opinion.

So now what I need to know at a basic level, do you all object -- because you've got two separate thing. You have whether he's qualified. And then you have the extent of his opinion. So if you don't -- I need to know if you object to his expertise?

MS. JOHNS: Yes, I do.

THE COURT: And do you object to the opinion?

MR. GRIFFITH: Your Honor, I object to his opinion.

THE COURT: So you don't object to his expertise? You just object to him rendering the opinion?

MR. GRIFFITH: I defer that to Ms. Johns as far as his expertise. What he is aware of as a person who has worked a long time in these particular areas is irrelevant to me as far as the fact that I think that it's just throwing a lot into the jury's mind that is not going to add to the case. But they are going to assume, just by hearing it, why was he put on the stand? He was put on the stand so that they could hear about theses things, and automatically associate that with this case.

If Mr. Wingo is going to testify about how things

happened in this case, in this particular, if it was an organization, then he can tell what happened. He can tell that they did this and that. I really don't understand why he would have to fill the jury's mind with more information for them to process and cloud the issue as to whether this is exactly what this group or these persons are accused of doing.

THE COURT: Mr. Underwood?

MR. UNDERWOOD: Again, Your Honor, the purpose of Lieutenant Dorsey's testimony would be to educate the jury in a field that the average layperson would have limited knowledge.

THE COURT: But isn't Agent Wingo going to say the same thing?

MR. UNDERWOOD: Not to the extent of Lieutenant Dorsey as far as the education aspects, Your Honor.

THE COURT: What do you mean education aspects?

MR. UNDERWOOD: How the investigation works and the type of things one would expect to find in these types of investigation. I was not going to elicit an opinion from Lieutenant Dorsey as to this particular case, rather, only to educate what drug trafficking organizations are and how they operate and how they are investigated.

MS. JOHNS: And that doesn't make him an expert, I don't think.

MR. GRIFFITH: I would also join in objecting to him as an expert as she elaborated upon some of the items she did in that he's had no truly specialized training as an investigator of these particular organizations that we heard. He's worked in it for a long time. That makes him experienced, but it doesn't make him an expert. I would join in her objection, Your Honor.

THE COURT: I need to study it a little bit. I'm going to take it under advisement. You can call your next witness.

Sir, you may step down subject to recall. Thank you for your patience.

Bring in the jury for me, please.

THE COURT: You need to call your next witness.

MR. UNDERWOOD: The State's next witness is Tommy Sekula.

(Whereupon, the jury returns to open court at 11:59 a.m.)

THE COURT: Ladies and gentlemen, we appreciate your patience. The State may proceed.

MR. UNDERWOOD: Your Honor, the State calls Thomas Sekula.

THE COURT: Sir, if you will come forward to be sworn.

THOMAS SEKULA,

having been duly sworn, testifies as follows:

THE CLERK: Say your name and spell your name for the court reporter.

THE WITNESS: Thomas Sekula, T-h-o-m-a-s, S-e-k-u-l-a.

THE COURT: You may proceed, Mr. Underwood.

MR. UNDERWOOD: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. UNDERWOOD:

Q. Good afternoon, Mr. Sekula. Mr. Sekula, how old are you?

A. 33.

Q. Where are you from?

A. Summerville.

Q. Have you lived in Summerville your whole life?

A. Other than the seven years that I lived in Bluffton.

Q. How far did you go in school?

A. Two years of college.

Q. Where did you go to school?

A. College of Charleston and then Trident.

Q. Are you currently employed?

A. I'm doing some work under the table doing installation of heating and air units.

Q. Did you used to have a regular job?

A. Absolutely. I was a manager at Walmart.
Q. How long were you a manager at Walmart?
A. As a hourly manager, seven years, and assistant for a couple of months.
Q. Mr. Sekula, have you ever had a problem with abusing drugs?
A. Yes, most of my life.
Q. How did that begin?
A. Started smoking weed and drinking alcohol when I was in college. And then when I moved back in from my grandparent's house to my mom's house, I didn't really have the relationship with my brother that I wanted, and he was hanging out with my mom's boyfriend's stepson and nephew. And they were involved in smoking and drinking. And in order to hang out with my brother, I kind of got tied up in those things.
Q. Did you ever move on to different drugs?
A. Yes, as they were exposed to us, just to try them and see what they were all about.
Q. What other drugs were you exposed to?
A. I've done cocaine. I've tried Ecstasy at a party, heroin, opiates, you know, weed.
Q. How were you introduced to opiates and heroin?
A. The first time I ever took an opiate was when I had my wisdom teeth removed and got them from the doctor,

Lortabs and stuff. And then through the years, mainly from the doctor, until I got a little older. They would come up occasionally. People would have them. You just -- somebody would give you one and you buy one, you know. Nothing crazy at all.

Q. Did you develop an addiction to opioid pills?

A. Absolutely.

Q. How old were you then?

A. When I truly got addicted, I would say, it was when I was about 26 years old.

Q. How old are you now?

A. 33.

Q. Did you ever move from pills to heroin?

A. Yes.

Q. How did that happen?

A. When I was living in Bluffton, after I had a knee surgery, I had really started getting heavy into the pills. And the guy that I got them from, I contacted him to get some, and he said he didn't have any. And he sent me a text message that said dope. And I told him no at first. But after not being able to get any pills and being sick, I finally said yes.

Q. And that was in Bluffton?

A. Yeah.

Q. So did that person introduce you to heroin?

A. More or less, yeah, but -- it was the first time I had ever tried it, yeah.

Q. Since that time, have you continued to use heroin?

A. Yes.

Q. Would you consider yourself to be addicted to heroin?

A. Yeah.

Q. How long would you say you've been addicted to heroin?

A. Four or five years, about five years.

Q. And in that time, have you been able to hold steady employment?

A. Not steady. The longest I've had since I've actually been using, I would say it was about six months, the longest job I've held, and that was when I was still in Bluffton.

Q. How has your addiction to heroin affected your life?

A. Negatively. I mean, overall, it's caused problems with my family. It's caused problems with work. It caused problems with legal issues. It's just been a monkey on my back, you know, so to speak.

Q. And you mentioned legal issues. Have you gotten in trouble with the law because of your addiction?

A. Yeah, absolutely.

Q. As a result of that, have you been involved in incidents of shoplifting?

A. Yeah.

Q. Have you actually been convicted of that?

A. Yeah.

Q. In your capacity as a user of heroin, did you ever get heroin for other people?

A. Yeah. It kind of goes without saying in that lifestyle. When you are using, you are around other people that use. And when you start to recognize how it wreaks havoc on your own life and others when you don't have it as much as it does when you do and you are sick and can't function, you help each other out. If I don't have something and I need something, somebody would help me. And if I needed something and they didn't have it, I would help them.

Q. By help them, what do you mean?

A. I would locate it and use their money to get it for them.

Q. So you would buy heroin on behalf of other people?

A. I have, yes.

Q. And they would do the same for you?

A. Absolutely.

Q. Have you ever combined your money with other people to purchase heroin?

A. Uh-huh, yes.
Q. How does that arrangement work?
A. Just like you say, I find out how much money you had. If you contact me and if I have money, then we go get it, whatever we can afford.
Q. Where would you go get it?
A. Most of the time, after I moved back to the Summerville area, when I started to really get involved with heroin, I only had one connection that I could go to directly. And that was known as The Boys. I mean, that's where I went.
Q. What are, as you call, The Boys?
A. It was a group of guys that I was introduced to through other friends that used. And they were the ones that most consistently and, really, the only people I knew that had anything. And they were known as the CP Boys as first, just what the guys that introduced me to called them. It was just a group of guys that sold heroin.
Q. What does CP stand for?
A. College Park.
Q. Is that a reference to College Park Road?
A. Uh-huh.
Q. Who introduced you to The Boys?
A. Matt Simpson, Dave, Bengi, a couple of guys that I would actually go to initially to go get the stuff. They

would take me first.

Q. Were The Boys who supplied Dave and Bengi and Matt?

A. Yeah.

Q. Would you travel with Dave and Bengi and Matt to The Boys to get heroin?

A. Oftentimes, I would be their ride.

Q. How does that arrangement work?

A. Nine times out of ten, it would be them taking my money, and me taking them to get it. Wherever they have to go, they would just hop out of the car wherever, go get it and come back. They would always take their cut, either in drugs or money. Nothing is free, you know. Nobody does anything for free.

Q. When did you start going to The Boys with these other friends of yours?

A. Whenever I moved back to Summerville and found out that it was just as hard to get pills here as it was in Bluffton.

Q. Do you remember what year that was?

A. End of 2012, more like the end of 2013, after I got settled in.

Q. How long was it after you got settled in that you were introduced to The Boys?

A. Almost immediately. I would say I was back here

six months, less than six months. So by June of 2013, I was introduced to them some way or another.

Q. At the beginning, when you said you were going with these other people, were you able to go by yourself to get heroin?

A. No, not initially, no.

Q. Why not?

A. Because I didn't have that relationship with them. I didn't know them personally. I never deal with them or buy from them in that manner. It was always somebody else's connection.

Q. What does that mean for someone to have a connection?

A. They basically have the ability to go somewhere and buy something you don't. Just as somebody here may pay to go to Costco. I don't have that ability. I've never paid to do that. I have not got that opportunity given to me, you know.

Q. So was there someone sense of exclusivity?

A. Yeah, absolutely.

Q. At some point, were you introduced to The Boys?

A. At some point, I was -- they had seen my car so many times. And, specifically, one individual, the one that would in the beginning drive around and meet everybody, had seen my vehicle so many times. And the number was in my

phone. So I just went ahead and called him myself and explained who I was. And that was the way that I was able to just cut everybody else out, all the middlemen, so to speak.

Q. Let's backtrack that just a little bit. You mentioned a particular person, who is that?

A. That would have been Mo.

Q. Do you know Mo's real name?

A. Justin Hunter.

Q. How was his number in your phone?

A. It was used by one of the previous individuals to call and set up a meet.

Q. So it was saved on your phone from somebody else contacting him?

A. Uh-huh.

Q. Did your friends know that you were contacting Justin Hunter directly?

A. Not initially, but they knew rather quickly when I told them, you know. I wasn't calling them anymore to go do what we were doing.

Q. Is that what you mean by cutting them out?

A. Yeah.

Q. You no longer had to go through them to get supply?

A. Absolutely, yeah.

Q. Okay. How would, at that juncture, at that time

period, how would it work for you to get heroin? What was the arrangement?

A. With those individuals?

Q. Yes.

A. I would have to call them, make sure they were available. And then they would have to make a phone call and make sure that they were available on the other end, that either Mo or whoever was on, was available and had something. And then if all of that worked out and there wasn't other people involved who had money that they were trying to help out, I could actually go pick them up and go, you know, meet and get what we were getting.

Q. When you first started dealing directly with The Boys, as you called them, how much heroin were you buying at a time?

A. Anywhere from a gram to a ball. I was working landscaping then, so I had pretty decent money. So --

Q. You mentioned the term "a ball", what is that?

A. Three and a half grams.

Q. Is that -- that term "ball", is that short for 8 ball?

A. Yes.

Q. Is that because three and a half grams is a 8th of an ounce?

A. Yeah.

Q. And that's the drug user/dealer terminology, call it a ball?

A. Uh-huh.

Q. So you would buy from a gram to three and a half grams at a time?

A. Yes.

Q. How often would you do that?

A. If it was a lower, like, amount of a gram, it would be almost every day. If it was a ball, it would be every couple of days, however long it took to use that, you know, between, you know, me and one other person mainly.

Q. You mentioned another person. Why was there another person involved?

A. Of me using?

Q. Yes.

A. Because my other half, my girlfriend, has been kind of caught up in this the way that I have for some time, and taking care of two habits.

Q. At that time, did you ever sell heroin to other people?

A. There were occasions where I had friends that were using as well that would be looking. And the same people that would call me to go get it for them, if I had it, I would come off of it for them, yes.

Q. At that time, how many different people would you

sell heroin to?

A. On a regular basis, not very many a day, but there were several people that I knew that would get it from me. I don't know a specific count.

Q. How long were you buying heroin from The Boys at that rate of one to three and a half grams at a time?

A. For a long time, up until they were no longer available, really. It was something --

Q. Did you ever buy larger amounts then?

A. Yes.

Q. When did you start buying larger amounts?

A. There were just occasions of where we would have extra money or something like that that we would do that. And then really whenever I bought the larger amounts of, like, a half ounce or something was when I got involved in what I'm doing here.

Q. What was the largest amount, before you worked with law enforcement, what was the largest amount you would buy from The Boys?

A. I largest amount I ever bought from them at one time was 21 grams.

Q. How long ago was that?

A. 2014 some time, probably just after -- probably right around January -- no, it would have been early January, 2015.

Q. Who did you buy that 21 grams from?
A. Specifically, I believe that came from Keith.
Q. Do you know Keith's real name, full name?
A. I do not.
Q. You've mentioned the group collectively as The Boys, who were the individuals that make up this group The Boys?
A. There were 11 that I can remember specifically. I believe there was Munch, Mo, Black, Keith, Jacob, Omar, Q, Chris, Cici. She's obviously not a boy. John, Shorty at one time. And there may even be a few more that have come in and out. There was a lot of individuals throughout the four years.
Q. Was there an individual named G?
A. Yeah, there were two Gs, actually.
Q. What was the difference between the two of them?
A. One guy was a smaller individual compared to the other and he had dreads. The other guy was a larger individual, male, just a big guy, light-skinned complexion.
Q. Did you have dealing with both of them?
A. Yes.
Q. By dealings, buying heroin from them?
A. Yes.
Q. You mentioned someone named Q. Who is Q?

A. He happens to be the defendant that's here today.
Q. He's in the courtroom today?
A. Yeah.
Q. Could you identify him, please?
A. He's sitting right there.
Q. What's he wearing?
A. Blue-collared shirt.
MR. UNDERWOOD: Let the record reflect he identified the defendant.
THE COURT: You may proceed.
BY MR. UNDERWOOD:
Q. Do you know his real name?
A. Emory Roberts.
Q. Mr. Sekula, who was the head of this organization that called itself The Boys?
A. As far as I always understood it and from the way things were structured, Mo.
Q. Again, Mo is who?
A. Justin Hunter.
Q. Did you deal directly with Mo?
A. On multiple occasions.
Q. Was that the normal way that would work? Would you normally deal directly with him?
A. In the beginning, certainly. It was almost always Mo.

Q. When did that change?

A. There was -- I don't know the specific date, but there was a time where he started just bringing people in, so to speak. And I guess he had gotten busy or busier or trying to expand. I don't know. But three people showed up that were at the trailer that he would have us go to. And he was no longer just the one that was there. When he was out doing things, people could go there and still get what they were looking for, you know, basically.

Q. Where was this trailer?

A. Off of Arno, over in -- off of Gleason on College Park Road, Caromi.

Q. Who would be at that trailer?

A. Pretty much all of the individuals I named earlier. At first, after Mo brought people on, Keith Jacob and G were the first three that were there typically.

Q. And later on, did it continue to be them?

A. Yeah, they were there. And then other people were added to it.

Q. Who were those other people?

A. Omar would be over there, Chris, the other G. Q wasn't really ever at the trailer on College Park over on Caromi. He was always off of Ladson Road or in Summer Creek, different locations.

Q. You said -- what were those two locations, first

the one in Ladson?

A. Over in Fairlawn off of Margaret. The other was in Summer Creek Trailer Park off of College Park as well, but just not the same location.

Q. So it was a different trailer?

A. Uh-huh.

Q. At the height of your dealing with this group called The Boys, how much would you buy at a time and how often?

A. The most I would buy at a time, like, probably seven grams would be the most consistent amount that was a higher amount. I mean, I bought more and less. But consistently for a while, seven was a pretty decent number that I was buying regularly, almost every day when I just happened to have money available like that.

Q. How long did that last that you were buying seven grams a day?

A. Probably about a month, a little longer, maybe six weeks to two months. I just, like I said, I had money that I didn't expect to have and it got ran through pretty quickly.

Q. How often were you getting this 7 grams?

A. Every day at first, yeah, whenever I could. Like I said, when the money was at my disposal, I was using ridiculous amounts. And it was every day.

Q. Going beyond your girlfriend, did you ever buy heroin for other people? Ever resell to other people?

A. Yeah, absolutely.

Q. When did you start reselling to people?

A. When people started -- pretty much right then, at the most. But when I started having extra on me and people would call me to go get them something, rather than just going to get it for them, if I had, I would just sell it to them then. That way, I didn't have to travel and take the risk of doing all that. Although I took another risk, obviously, I wasn't thinking about at the time, just selling it in general. Being that person, that was a risk.

Q. You mentioned that you were getting 7 grams a day while you had money, but it didn't last.

A. Uh-huh.

Q. What happened when the money ran out?

A. The little bit of money that I was able to save got -- went through quite quickly. And then looking to other means to get money to feed the addiction, whether it be side jobs or just pawning things, or as you mentioned earlier, shoplifting sometimes.

Q. Did you ever have to make heroin sales to support your own habit?

A. Oh, that's the primary way that it happens, is you wait for somebody to contact you. And if it does, you go

get them something and you are able to get yourself well by doing that, you know. That's the main way people that don't have money and do heroin try to maintain from being sick, is middleman.

Q. So when you say middleman, that's when you are buying for someone else?

A. Yeah.

Q. At some point, did you get into trouble with the police as a result of your heroin activities?

A. Yeah.

Q. What happened?

A. I was at my brother's house. And we had gotten some stuff to party with that night. And his girlfriend was unhappy with something that had happened between them. And she called the law on us for a party in her house, even though she was part of the party. And around three o'clock in the morning or so, about 15 officers came in to the house and found drugs on the table and took all of us to jail.

Q. What happened after that?

A. After that, I went to Dorchester County. And they were released on a PR bond. We all were, but I had a bench warrant to sit on for paraphernalia. So I had to ride that time out. And I got out and, unfortunately, went right back to the same things. And somebody, evidently, got in trouble themselves and used me as their fall guy. And put me in a

predicament to where they were watching me. And then I got caught with heroin again.

Q. Let me ask you a question. You said "made you a fall guy," what does that mean?

A. Basically, they got in trouble and they moved up the ladder to me.

Q. How did they move up the ladder? What did they do?

A. They bought from me.

Q. So you sold drugs to someone else?

A. Uh-huh.

Q. And was that someone working as a confidential informant for the police?

A. Yes.

Q. Does the fact that they were a confidential informant for the police change the fact that you sold them heroin?

A. No.

Q. Did the police come and confront you about that?

A. Eventually, yes.

Q. What happened with that confrontation?

A. I was given my options and explained in a very plain manner what was going to happen and what was going on and what had happened to me. And I chose to take an option out and do as was done to me. And I went and bought from

somebody to try alleviate my situation. Because what I was facing was really a bad scenario and would not have occurred had I not been in the situation I was with the drugs themselves, if I was not addicted to heroin.

Q. At that time, did you sign up as a confidential informant?

A. I did.

Q. What was your understanding of the agreement that you entered into for that?

A. That I would have to purchase heroin from somebody which was already been predetermined for me, more or less, because I had been watched. And it was understood what was going on. So I had to make a buy. And as long as there was a conviction or I followed through with everything that was asked on me, I would have my charges disposed of.

Q. Is that what your expectation -- were you specifically promised that?

A. Yes.

Q. So your motivation in being a confidential informant was to try to work off your problem charges?

A. Yeah, my charges, yes, as well as my girlfriend's that she was in the house that first time. I didn't want anything to happen to her, you know.

Q. Did you do more than one buy from somebody for the police?

A. Absolutely. I did multiple buys.
Q. Before you started doing the buys, did you agree to be interviewed and tell the police everything you knew about trafficking of heroin?
A. I told them everything that I knew about my life and everything I've done related to drugs. That was something that was a requirement.
Q. Did that discussion you had help determine who your target was going to be for your controlled buys?
A. No, not really. That was almost determined beforehand because they had watched me and seen me already. They had investigated me to some extent and already kind of knew who I was going through, that I didn't have a whole a lot of options as it was. I pretty much had the one. And they knew where I was getting it from. So, I mean, I just pretty much confirmed what they knew with the story with my life, the information I gave them.
Q. Who was the first person you bought heroin from for law enforcement?
A. Q.
Q. The defendant in this trial, Emory Roberts?
A. Yes.
Q. Why was he the one chose to be the first person to buy from?
A. Well, first, his phone was on. He was -- why did I

choose to or why did law enforcement choose?

Q. Why was the choice made?

A. Why was the choice made that night?

Q. Yes.

A. Because he was on and his phone was the one that I was told to go to.

Q. You mentioned his phone was on. When you would contact this group, who was your point of contact?

A. Typically, it was The Boys' phone. It was a hub phone that somebody would have. It could have been Mo. Could have been Keith. Could have been any of the guys. And they would pretty much tell you where to go. They would tell you CP or Ladson. And if their phone wasn't on and I couldn't contact Mo directly, I could contact Q's phone directly and go see him.

Q. So there's Mo's phone, Q's phone and what you call the hub phone?

A. Yeah, The Boys' phone.

Q. So The Boys' phone, is that a cell phone?

A. Uh-huh, yeah.

Q. And it was rotated around?

A. Yeah. It was the phone that was the primary phone to begin with. It was the only number you ever called.

Q. So when you were able to get Mo's phone number or Q's phone number, that was a more exclusive relationship

than general?

A. Than some people had, yes, absolutely. Not everybody dealt with Mo all the time or with -- you had to pretty much got to a certain point that Mo was only going to deal with people for certain amounts, unless he had The Boys' phone, that is when he would be doing that work. And Q wasn't always around. And when he did come around, he had his own number, sometimes he would be able to do something when the other guys couldn't.

Q. At the time of this first buy that you did, did you owe Q any money?

A. No, I didn't owe Q any money, not him specifically. If I owed anybody money, it would have been Mo.

Q. Are you familiar with this term "fronting"?

A. Yeah.

Q. What is that?

A. Where you get your product or drugs up front before you've paid for them, basically with credit.

Q. What's the expectation by getting the drugs on credit?

A. That before you get more, you pay that off.

Q. How would you normally get more money if you didn't have a job?

A. At that point in time with the stuff fronted, you would sell it if you could. People needed something, a lot

of times when you ask for a front, you already have the expectation that you have people that wanted something.

Q. And by people that wanted something, other heroin customers?

A. Absolutely, that or you do as I had to do again, like I said, with the shoplifting thing. When your habit gets in the way and you have to make up the money somewhere, and you get a front. And then you are able to go operate and make money because you are not sick. That's why we ask for a front, so we can get well before we try to get our jobs or whatever it is we are doing done. Because, otherwise, you are sick. You're throwing up and you can't really function.

Q. Is that as a result of withdrawal?

A. Absolutely.

Q. What was the procedure that you would follow when you would do these drug buys for law enforcement?

A. I would be contacted during the day some time that -- to make sure it was -- I was available and that I could meet with these guys at a predetermined location to where we could -- I could be searched, strip searched, full search. So I didn't bring anything, money or anything with me or whatever. And then I would be wired up or fitted up with an audio device and visual device. And then I would be made to make a phone call. But I wouldn't dial with my

phone. They would use a phone to call with. And then it would transport the call to my phone so that they could record the conversations. And I would be told how much to ask for. Then they would give me the quantity of money that was marked or maybe photocopied or whatever, taken. It was tracked. And make sure that I could set that up with whatever they wanted me to get.

And then, like I said, I would call and find out where to go. And then I would ride with a specific detective each time, the same one every time, to wherever the meet location was to pick up the heroin. I would either get dropped off or walked to a house or we would wait somewhere for the arrival of whichever individual was bringing the heroin.

And whenever they got there, I got to the house, I would get out, go get it, do the business and transaction. And then I would come directly back to the detective, give him the heroin immediately. We would ride back to the same location that we met at. And I would then be strip searched again. All the equipment would be taken off. And then I would have to give a statement of exactly what it is that occurred in that situation.

Q. And you did this multiple times?

A. Yes.

Q. Did you do this with agents only from Dorchester

County Sheriff's Office?

A. No. Initially, I did. But after a couple buys, SLED got involved.

Q. And was it then those two agencies working together?

A. Yes.

Q. Do you recall who the primary agents were both from the county and from SLED that you worked with?

A. I do.

Q. Who were they?

A. For Dorchester County, the main agent was Danny. Brandon and Gaz, I worked with the three of them. And then primarily from SLED, it was Special Agent Wingo.

Q. Now, you mentioned earlier that you were fitted with recording devices?

A. Uh-huh.

Q. Have you had an opportunity after all of this was said and done to review those recordings?

A. I have.

MR. UNDERWOOD: Permission to approach, Your Honor.

Q. Mr. Sekula, I've got a lot of disks here I want to show you. This is State's Exhibit 1 through, I believe it's 32. If you could please take a moment to review each of those disks.

Mr. Sekula, are these the same disks that you've

reviewed?

A. Yes. They each have my initials on them, as I did the disk after I reviewed them.

Q. By signing your initials, what does that signify?

A. That either the audio or the visual on that disk occurred exactly as it played out, as I remember.

Q. So each of these are fair and accurate recordings of what happened?

A. Absolutely, yeah.

MR. UNDERWOOD: Your Honor, with the Court's permission, may I publish these while going through direct?

THE COURT: What are the numbers again?

MR. UNDERWOOD: Should I just call them out as I go for each one, Your Honor?

THE COURT: I just need you to tell me the number. Are they sequential.

MR. UNDERWOOD: Yes, Your Honor. I believe it's 1 through 32.

THE COURT: You may proceed.

MR. UNDERWOOD: Thank you, Your Honor.

THE COURT: You're welcome.

BY MR. UNDERWOOD:

Q. You mentioned at the beginning of the transactions you would typically make a phone call; is that right?

A. Yes.

Q. I'm now playing for you what's been entered into evidence as Exhibit 1.

(Whereupon, audio is played.)

BY MR. UNDERWOOD:

Q. Whose voices are in that recording?

A. Mine and Mo.

Q. You mentioned 190 --

THE COURT: You need to make sure, what disk is that? What State's exhibit are you referring to?

MR. UNDERWOOD: Your Honor, this is State's Exhibit No. 1.

THE COURT: Thank you.

BY MR. UNDERWOOD:

Q. You mentioned 190. What was that for?

A. There was a front.

Q. So you had purchased heroin from Mo and got money for that?

A. Yes.

Q. How much money did you get for that 190?

A. It was part of a debt, because it would have been a whole one, 150 or whatever. But just under 2 grams would have been 190.

Q. What was the price scale for heroin that you would purchase from the boys?

A. 50 a half; 100 a whole; 300 a ball. They changed,

though, over time.

Q. You mentioned those terms "half" and a "whole"?

A. Half gram, whole gram.

Q. But those prices would change over time?

A. Yes. At one point in time, I may have paid $100 all the way up for a half ounce; whereas, in the end, it was $1,000.

Q. Mr. Sekula, was there a transaction that followed that phone call?

A. Yes, there was.

Q. Do you remember who that transaction was made with?

A. I believe that one was made actually with Q over in Margaret.

Q. That's Margaret Street in Ladson, the Ladson area?

A. Yes, over in Fairlawn.

Q. Was there another call that was made prior to the transaction itself?

A. There probably was of me approaching or getting close to the house, I would imagine.

Q. At times, would they also make audio recordings when they were giving you the money?

A. Oh, absolutely, yeah. Whenever -- before the money was given to me, it would be counted out and whatnot so it was on record.

MR. UNDERWOOD: At this time, Your Honor,

publishing Exhibit Number 2.

(Whereupon, audio is played.)

BY MR. UNDERWOOD:

Q. Is that the same recording as before?

A. Yeah, that was the same one.

Q. We will now move to State's Exhibit No. 3. And, Mr. Sekula, if you can turn your chair to see the screen.

Mr. Sekula, when they would first wire you up, would they test the equipment before the actual transaction?

A. Yes, they had a sound test.

Q. I'm looking now as first track one. Is that one of those sound checks?

A. Yes.

Q. And then track 2.

(Whereupon, audio is played.)

BY MR. UNDERWOOD:

Q. Is that another check?

A. Yes, sir.

Q. Track 3.

(Whereupon, audio is played.)

BY MR. UNDERWOOD:.

Q. Mr. Sekula, whose voice is that?

A. That is Danny.

Q. That was the agent from Dorchester County?

A. Yes.

Q. And that's him giving you the money for the buy?
A. Yes.
Q. Now, going to track four.
(Whereupon, audio is played.)
BY MR. UNDERWOOD:
Q. Is that your voice?
A. Yes.
Q. Who are you talking to?
A. Detective Allen.
Q. What time of day was this?
A. That's at night.
Q. What's happening during this part of it?
A. In transition from the meet location to the house in Fairlawn riding in the car.
MR. UNDERWOOD: Your Honor, with the Court's permission, I can fast-forward to the relevant portion.
THE COURT: That's fine.
(Whereupon, audio is played.)
BY MR. UNDERWOOD:
Q. Mr. Sekula, who was that individual we just saw on the screen?
A. That was Q.
(Whereupon, audio is played.)
BY MR. UNDERWOOD:
Q. Again, for the record, that was Exhibit No. 3.

Mr. Sekula, in that transaction, there was talk of the numbers 190, 140 and 150 and 340, or somewhere thereabouts. What was that whole transaction about?

A. The 190 was for the debt. The 150 was for a gram and a half. And the other number would have been 340. That was total.

Q. So in that transaction, you paid off your debt?

A. Uh-huh.

Q. You purchased another gram and a half?

A. Yes.

Q. And the total for that was $340?

A. Yes.

Q. And the individual that you purchased that from, who was that?

A. Q.

Q. Was that the only controlled purchase you did for law enforcement involving Q?

A. No.

Q. Were there other transactions that were attempted between Q and Mo?

A. Yes.

Q. Now, every time that you were going to do one of these buys, were you always able to make contact by phone prior to, or sometimes was it set up in advance?

A. We always contacted by phone. But I would make

sure beforehand that they were on or available throughout the day so that it wouldn't be a waste of everybody's time.

Q. So it wasn't just a cold call?

A. No, not all the time. There were times that that happened.

Q. Were there ever times that you communicated with them by text message?

A. Quite often. There were times where they wouldn't answer the phone. Mo a lot of times wouldn't answer the phone or couldn't get ahold on them. And they would just text instead.

Q. Did you ever leave voice messages for them?

A. Yes. Well, I don't know that I actually left a voice message, but we called and got their voicemail. Sometimes the voice message wasn't set up.

Q. Did you do -- again, did you do another transaction involving Q on August 11th, 2015?

A. Yes.

Q. If I may publish State's Exhibit No. 4.

(Whereupon, audio is played.)

BY MR. UNDERWOOD:

Q. Beginning with track 1, was that just an equipment check?

A. Yes.

Q. Track 2.

(Whereupon, audio is played.)

BY MR. UNDERWOOD:.

Q. Was that recording of you getting buy money?

A. Yes.

Q. Track 3.

(Whereupon, audio is played.)

BY MR. UNDERWOOD:

Q. Does this begin with you riding in the car with the undercover officer?

A. Yes.

MR. UNDERWOOD: Your Honor, if I may fast-forward.

BY MR. UNDERWOOD:.

Q. Mr. Sekula, whose face is that you see? Can you tell?

A. It's Q.

Q. It's Q?

A. It's easier when it's moving.

MR. GRIFFITH: Objection, Your Honor, he's leading the witness.

THE COURT: Sustained, leading, rephrase. We don't need him to annotate the video. It speaks for itself. I will give you some latitude, but be careful.

(Whereupon, audio is played.)

BY MR. UNDERWOOD:

Q. Mr. Sekula, who is the other individual you are talking to?

A. They call him Unc. He lives over in the neighborhood.

THE COURT: Can you repeat that answer?

THE WITNESS: I apologize. They call him Unc. I don't know his real name, but he's just a gentleman that lives in the neighborhood that hung out over there.

(Whereupon, audio is played.)

BY MR. UNDERWOOD:

Q. Mr. Sekula, who else was in the house?

A. Will.

Q. Who's Will?

A. Just one of the guys that was hanging over at Q's house from time to time helping out with things.

Q. What role, if any, did Will play in the organization of The Boys?

A. There were times when Q would be sleeping, or something like that, and he would help out over there. Like, he would answer the door and take care of me on a couple of occasions or just kind of hung out over there.

Q. When you say take care of you, what do you mean?

A. Serve me a couple of times.

Q. By serve you, what do you mean?

A. Buy heroin from him.

Q. Now, Mr. Sekula, that transaction we just watched, where did it take place?

A. Off of Margaret in Fairlawn.

Q. Do you remember the exact address?

A. I do not remember the exact address.

Q. Did you do another controlled purchase on August 17th, 2015?

THE COURT: We are going to break for lunch. Madam Forelady, ladies and gentlemen, we are going to take advantage of this break in testimony to take our lunch recess. We will resume at two o'clock. It's one o'clock now. During the break, please do not discuss the case. Please leave your notebooks in your seats. And we will return at two once everyone has returned. You can go with the bailiffs, please. Have a good lunch.

(Whereupon, the jury leaves open court at 1:00 p.m.)

THE COURT: Sir, during the lunch recess, you cannot discuss your testimony with anyone. Do you understand?

THE WITNESS: Yes, ma'am.

THE COURT: Okay. Thank you, sir. You may step down. Anything before we adjourn for lunch from the State?

MR. UNDERWOOD: Nothing, Your Honor.

THE COURT: From the defense?

THE DEFENDANT: Yes. I want to go over something. I want to know --

THE COURT: With who?

THE DEFENDANT: Just when I'm sitting back there for lunch.

THE COURT: That's fine.

Anything, Ms. Johns?

MS. JOHNS: No, Your Honor.

THE COURT: Have a good lunch. See y'all -- I don't pay attention to no clock in no courthouse. They are always wrong. So you might want to synchronize your watches. I have 1:01. We will be back at 2.

(Luncheon recess was taken.)

THE COURT: The State ready to proceed?

MR. UNDERWOOD: We have about 30 seconds to move some of these exhibits out of the way.

THE COURT: The State ready to proceed?

MR. UNDERWOOD: Just about, Your Honor.

The State is ready, Your Honor.

THE COURT: Mr. Griffith, are you ready to proceed?

MR. GRIFFITH: Ready, Your Honor.

THE COURT: Ms. Johns, are you ready to proceed?

MS. JOHNS: Yes, ma'am.

THE COURT: I will remind you you are still under oath?

THE WITNESS: Yes, ma'am.

(Whereupon, the jury returns to open court at 2:11 p.m.)

THE COURT: Ladies and gentlemen, I hope y'all had a pleasant lunch. We will now resume testimony.

The State may proceed.

MR. UNDERWOOD: Thank you, Your Honor.

THE COURT: You're welcome.

BY MR. UNDERWOOD:

Q. Mr. Sekula, just before we broke for lunch, we were talking about the date of August 17th. Did you perform another controlled transaction for a heroin buy on that date?

A. Yes, sir.

MR. UNDERWOOD: Your Honor, I was about to publish State's Exhibit No. 5.

THE COURT: Proceed.

(Whereupon, audio is played.)

BY MR. UNDERWOOD:

Q. Whose voices were in that recording?

A. That was my voice and Mo's voice.

Q. And who was the third voice?

A. Danny, previously.

Q. From Dorchester County?

A. Yes, sir.

Q. Were you able to make a transaction following that call?

A. Yes.

MR. UNDERWOOD: Your Honor, I would now like to publish State's Exhibit No. 6.

THE COURT: Proceed.

MR. UNDERWOOD: Beginning with track number 2.

(Whereupon, audio is played.)

MR. UNDERWOOD: Now track 3.

(Whereupon, audio is played.)

MR. UNDERWOOD: Your Honor, if I may fast-forward.

THE COURT: Uh-huh.

BY MR. UNDERWOOD:

Q. Who is that individual?

A. Will.

Q. At this point in the video, Mr. Sekula, how many people are there?

A. Three.

Q. Who are they?

A. You have Q sleeping on the couch. Mo in the back room, just came out, and Will.

Q. Which one is Will and which one is Mo, based on their clothing?

A. Mo had a black shirt and Will had on a white shirt.

Q. Mr. Sekula, during the latter part of that video, while you were walking back, there was in cursing involved. What happened?

A. I broke my cigarette.

Q. Is that why you were making those expletives?

A. Yes. I was a little upset. It was the only cigarette I had.

Q. Now, during the time you were in the house, there was a lot of motion on the camera. Please tell the jury what was happening. Who was doing what?

A. Q was sleeping. I was talking to Mo. And Will was fixing the product.

Q. On whose behalf was he fixing the product?

MS. JOHNS: Your Honor, I object.

THE COURT: Basis?

MS. JOHNS: He has to have --

THE COURT: No speaking objection. What is the basis of the objection?

MS. JOHNS: Speculation, Your Honor.

THE COURT: Sustained. You have not led the appropriate foundation that that was within his rational perception. Rephrase.

BY MR. UNDERWOOD:

Q. Who did you arrange the drug deal with?

A. I called Mo.

Q. Was Mo present when Will was preparing the drugs?
A. Yes.
Q. Again, did you give the drugs directly to the undercover agent as you described earlier?
A. Yeah.
Q. Did you conduct another controlled purchase transaction on August 27th, 2015?
A. Yes, sir.
MR. UNDERWOOD: Permission to publish Exhibit No. 7, Your Honor.
THE COURT: Proceed.
MR. UNDERWOOD: Track 2.
(Whereupon, audio is played.)
MR. UNDERWOOD: Track 3.
(Whereupon, audio is played.)
MR. UNDERWOOD: Permission to fast-forward, Your Honor.
THE COURT: Yes, sir.
(Whereupon, audio is played.)
BY MR. UNDERWOOD:
Q. Mr. Sekula, the video is a little bit dark when you went in the house. Please tell the jury who was with you and what happened.
A. Q was there. I got the dope and left, simple as that.

Q. Did he hand it to you? Did you pick it up somewhere?

A. I gave him the money and he gave it to me.

Q. What was the discussion about concerning the brother?

A. Apparently, my brother was hanging out with another individual, a female that knew Q, and had hung out with him from time to time. And he and her conspired to -- for him to contact Q to go get something, because I wasn't helping him out that day. And he went over there under his own initiative and made that happen, apparently. And it was thought that I had given him permission or told him to go over there on my behalf and vouch for him, basically. And I never did that.

Q. Why would that be an issue whether or not you would vouch for him?

A. Well, you don't normally want just strangers showing up at your house and serving them drugs without somebody who's been coming through letting them know who you are.

Q. Why is that?

A. Because of things like this and because they could rob you or -- it just puts you at risk.

Q. When you were in the house, did you ever notice any of the target silhouettes hanging on the walls?

A. Yes. They have the target practice, picture of a dummy or whatever on the wall as you go into the left in the dining room area. There was one there. And at one point there was one by the front door as well as.

Q. Did you ever see guns at Q's house?

A. I've seen guns with Q before, yes.

Q. How many guns?

A. I couldn't put a number on it. And there was just different guns at different times.

Q. Do you know what they did with the guns?

A. I mean, it was my understanding that they were sold, a lot of them. Some were held on to.

Q. Do you know where they got the guns?

A. Different customers, a lot of times, for the most part. It's very well-known amongst people that do --

MS. JOHNS: Your Honor, I'm going to object.

THE COURT: Sustained. Relevance, prior bad acts.

Ladies and gentlemen, you are to disregard the last question and its answer in its entirety. You are to give absolutely no consideration to it in your deliberations.

Proceed.

BY MR. UNDERWOOD:

Q. Without going into any speculation, Mr. Sekula, do you have any firsthand knowledge --

THE COURT: It's still a prior bad act, not the

subject of a conviction. It raises character. Move on.
BY MR. UNDERWOOD:
Q. Were there ever any other methods of payment other than cash for the drugs?
A. Yeah, merchandise, as far as guns or electronics, anything of value would be traded for heroin.
Q. Mr. Sekula, did you ever feel afraid when you were at Q's house?
A. I mean, there were times, absolutely. He had to ask me if I had ever eaten a bullet before over a confrontation that had occurred. There was a time when he shorted me intentionally because somebody had knocked on his front door. And I had to call Mo to correct it. And when I went back to pick up what I was shorted, he threw it at me and threatened me if I ever went over his head again, I would regret it.
Q. Why was he characterizing it as going over his head when you had to talk to Mo?
A. Because Q wasn't going to make it right on the purchase, but Mo had the autonomy to do that. He could have told him to fix it.
Q. Was Mo Q's boss?
MS. JOHNS: Objection, Your Honor.
THE COURT: Basis?
MS. JOHNS: He's also speculating.

THE COURT: Approach.

(Whereupon, the following bench conference takes place.):

MR. UNDERWOOD: Your Honor, it goes to show the structure of organized --

THE COURT: You need to stop characterizing and let him answer the question. You are leading. Either he knows it of his personal knowledge or he doesn't.

MR. UNDERWOOD: The response he gave just prior to that was going over his head. I was trying to elicit what that meant. And he said he had to go over his head.

THE COURT: You need to rephrase the question.

(Whereupon, the bench conference ends.)

THE COURT: Objection sustained. Rephrase.

BY MR. UNDERWOOD:

Q. Mr. Sekula, what did it mean to go over Q's head? What did you mean by that?

A. To make sure that the persons who was in charge made things right, because it was his operation. It was -- Mo was there from the beginning. Mo was always there. And these people always were added to what Mo was already doing.

Q. Whose operation was it?

A. Mo's.

Q. Moving on. Did you have a chance to do another controlled purchase on December 9th, 2015?

A. Yes.

MR. UNDERWOOD: Permission to publish State's Exhibit 8.

THE COURT: You may proceed.

MR. UNDERWOOD: Track 1.

(Whereupon, audio is played.)

MR. UNDERWOOD: Track 2. Permission to fast-forward, Your Honor.

(Whereupon, audio is played.)

BY MR. UNDERWOOD:

Q. Mr. Sekula, who was present in the house during that transaction?

A. Q and Cici.

Q. Who did you contact to arrange that transaction; do you recall?

A. I don't recall at the moment, no.

Q. Who was the individual who actually gave you the drugs in that case?

A. Cici.

Q. Is that what was happening in the kitchen?

A. Yeah.

Q. What was the discussion you had with the undercover officer when you made it back to the vehicle?

A. I put my foot in my mouth and bust these guys' balls a lot of times and I said she made it heavy. And I

asked if I could have it, joking around. You know? That would never occur.

Q. When you say "made it heavy", what do you mean by that?

A. It weighed more than it was supposed to. It was supposed to be a gram and a half and she said she made it fat so it weighed more than a gram and a half.

Q. And you were joking?

A. Yes, that would never happen, obviously.

Q. Again, you were strip searched after?

A. Yes. Every time I got back, I had to take every piece of clothing off, the whole nine, just like I'm being processed into jail.

Q. Did you arrange to do another controlled purchase on December 16th, 2015?

A. Yes, sir.

MR. GRIFFITH: Your Honor, may we approach?

THE COURT: Yes.

(Whereupon, the following bench conference takes place.):

MR. GRIFFITH: Mr. Roberts has to go to the restroom.

(Whereupon, bench conference ends.)

THE COURT: Madam Forelady, ladies and gentlemen, we need to take a brief break. During the break, please do

not discuss the case and keep your notepads in your seats. You will be out in less than five minutes.

(Whereupon, the jury leaves open court at 2:44 p.m..)

THE COURT: As soon as Mr. Roberts has refreshed himself, we will resume testimony. Sir, you can stand up if you would like.

THE DEFENDANT: I'm a diabetic, that's all.

THE COURT: You don't need to apologize. Just give us the high sign. We will break every time you need it.

(Whereupon, a recess transpired.)

THE COURT: Please bring in the jury.

(Whereupon, the jury returns to open court at 2:52 p.m.)

THE COURT: You may proceed.

MR. UNDERWOOD: Thank you, Your Honor.

THE COURT: You're welcome.

BY MR. UNDERWOOD:

Q. Mr. Sekula, we were discussing September 16th, 2015. Did you participate in another controlled purchase with Dorchester County on that day?

A. Yes.

MR. UNDERWOOD: Permission to publish State's Exhibit 9, Your Honor.

THE COURT: You may proceed.

MR. UNDERWOOD: Listening to track 2.

(Whereupon, audio is played.)

MR. UNDERWOOD: Track 3.

(Whereupon, audio is played.)

MR. UNDERWOOD: Permission to fast-forward, Your Honor.

(Whereupon, audio is played.)

BY MR. UNDERWOOD:

Q. Mr. Sekula, were you able to purchase heroin during that transaction?

A. Yeah.

Q. Who did you purchase it from?

A. Q.

Q. Did you turn that heroin over to the undercover officer?

A. Yes, sir.

MR. GRIFFITH: Objection, Your Honor, continues to coach and lead.

THE COURT: No speaking objection. The objection is leading?

MR. GRIFFITH: Excuse me?

THE COURT: Is the objection leading? Is that the basis of the objection?

MR. GRIFFITH: Leading.

THE COURT: Sustained. Leading. Rephrase.

BY MR. UNDERWOOD:

Q. After you got the heroin and returned the vehicle, what did you do with it?

A. Gave it to Detective Allen.

Q. On September 25th, 2015, did you have occasion to conduct a controlled purchase of heroin from a person you knew as G?

A. Yes.

Q. Were there a series of phone calls to set that deal up?

A. Yeah. Yes, there were a series of phone calls, yes.

MR. UNDERWOOD: Permission to publish State's Exhibit 10?

THE COURT: You may proceed.

(Whereupon, audio is played.)

BY MR. UNDERWOOD:.

Q. Who were you trying to call in that transaction?

A. Q, but I got G.

Q. Is that --

A. Q had the phone quite often at that time and they sound similar.

Q. But the individual you spoke to --

A. Was G.

Q. You mentioned something about basketballs; what

does that mean?

A. I just needed to 8 balls, rather than saying it over the phone, blatantly.

Q. And the reference to Ladson, what did that mean?

A. That would have been going to the house in Fairlawn at Margaret.

MR. UNDERWOOD: Permission to publish Exhibit No. 11, Your Honor.

THE COURT: Proceed.

BY MR. UNDERWOOD:

Q. What did that reference to CP mean?

A. Over to College Park, which would have been Arno at the time, but that would have been my understanding.

MR. UNDERWOOD: Permission to publish Exhibit 12, Your Honor.

THE COURT: Proceed.

BY MR. UNDERWOOD:

Q. Which Sunoco is being referenced in that call?

A. The one by McDonald's on College Park Road.

MR. UNDERWOOD: Permission to publish Exhibit 13, Your Honor.

THE COURT: Proceed.

(Whereupon, audio is played.)

BY MR. UNDERWOOD:

Q. Who is Chris?

A. Another guy that was kind of around for a short period of time. I had owed him $120 for something and I had to make sure to pay him. He pulled a knife on me at some point to make it clear he wanted the money.

Q. You said it was someone who was around. What do you mean by that?

A. He helped out, but he wasn't there for any extended amount of time, just was there, then he wasn't there.

Q. What did he do to help out?

A. Oh, he was serving. He was selling heroin. He also had his own number.

Q. Why did you owe him money?

A. Because he fronted me something.

Q. Permission to publish Exhibit 14, Your Honor.

THE COURT: Proceed.

(Whereupon, audio is played.)

BY MR. UNDERWOOD:

Q. Mr. Sekula, were there times that you would meet at locations other than a residence to do the transactions?

A. Yes.

Q. Was this one of those times?

A. Yes.

Q. Who arrived to do the transaction?

A. G.

Q. Was he alone?

A. No, there was another individual with him.
Q. Do you know who that was?
A. His name was Black.
Q. How did they get there?
A. They arrived in a vehicle.
Q. Do you remember what kind?
A. It was a burgundy Mercedes.
Q. Where did the actual transaction take place?
A. In the bathroom, the female's bathroom, yeah.
Q. Of that same Sunoco?
A. Yes.
Q. I'm going to move on to September 30th, 2015. Did you conduct another controlled purchase on that date?
A. Yes.
MR. UNDERWOOD: Your Honor, permission to publish State's Exhibit 20.
THE COURT: Proceed.
(Whereupon, audio is played.)
BY MR. UNDERWOOD:
Q. Is that one of the sound checks?
A. Yeah.
Q. Track 2.
(Whereupon, audio is played.)
BY MR. UNDERWOOD:
Q. During this transaction, was the recorder started

and stopped several times?

A. Yes. You can hear the snapping, you know.

Q. Track 3.

(Whereupon, audio is played.)

MR. UNDERWOOD: Track 4.

(Whereupon, audio is played.)

MR. UNDERWOOD: Track 5.

(Whereupon, audio is played.)

MR. UNDERWOOD: Track 6.

(Whereupon, audio is played.)

BY MR. UNDERWOOD:

Q. Was this more preparation for the transaction?

A. Yes.

MR. UNDERWOOD: Track 7.

(Whereupon, audio is played.)

BY MR. UNDERWOOD:

Q. Mr. Sekula, where was this transaction supposed to take place?

A. The Sunoco on College Park Road.

Q. Are there any other businesses at that Sunoco?

A. At the actual Sunoco, there's a McDonald to the right and BP to the left.

MR. UNDERWOOD: Permission to fast-forward, Your Honor.

(Whereupon, audio is played.)

BY MR. UNDERWOOD:

Q. Mr. Sekula, what were you doing during this portion of the recording?

A. Waiting.

Q. Who were you waiting for?

A. G.

(Whereupon, audio is played.)

BY MR. UNDERWOOD:

Q. Mr. Sekula, did you recognize the vehicle that you got into in that transaction?

A. Yeah. That was Mo's vehicle.

Q. Who was driving the vehicle?

A. Mo was.

Q. Was there anyone else in the vehicle?

A. No.

Q. Earlier you mentioned you were waiting for G. Were you waiting for G and Mo showed up, or what happened?

A. That doesn't seem like that's the right video for the phone calls, because the phone calls, when I met G, he came in the burgundy Mercedes and I met him at the Sunoco in the bathroom.

Q. I was asking about a different date.

A. Okay.

Q. Did you do transactions at that same Sunoco station with G and Mo?

A. Yes. He's picked me up at the McDonald's. I met them at the McDonald's several times. That was a very common thing.

Q. Right. I didn't give you the videos for the other transaction.

A. All right.

Q. The video we just saw, whose car was that?

A. That was Mo's Beamer.

Q. And by "Beamer", you mean BMW?

A. BMW, yes.

Q. You mentioned a debt. What was that about?

A. Someone had given me a gun, or I bought a gun from somebody that Mo was interested in taking or trading with me for. And it turned out that even though the revolver kicked out and everything, it was no more than an air pistol.

Q. So did you owe him money because of that?

A. Yeah, I had to pay him for the gun.

Q. What color was the BMW that you got into?

A. It was charcoal gray.

Q. Whose car was that?

A. It was Mo's.

Q. Towards the end, when you got into the undercover vehicle again, you said something about a nice knock. What does that mean?

A. It was a large bag of heroin.

Q. I want to skip now to October 19th, 2015. Did you have the opportunity to do a controlled purchase from the individual you knew as Keith?

A. Yes.

Q. And was a phone call used to set up that purchase?

A. Yes.

MR. UNDERWOOD: Your Honor, I request permission to publish State's Exhibit 21.

THE COURT: You may proceed.

(Whereupon, the following bench conference takes place.):

MR. GRIFFITH: I keep objecting, but he keeps saying, hey, did you sell drugs on this day? Yeah. Did you do this and that on this day, or did this happen? Yeah. And he answered yes or no.

THE COURT: You just need to object.

MR. GRIFFITH: He's testifying.

THE COURT: If you didn't object, I can't do anything.

MR. GRIFFITH: I just hate to keep jumping up and down.

THE COURT: I told you to expect it.

(Whereupon bench conference ends.)

THE COURT: Objection is sustained. Leading. Rephrase.

MR. UNDERWOOD: Your Honor, may I publish the exhibit?

THE WITNESS: Yes, sir.

(Whereupon, audio is played.)

BY MR. UNDERWOOD:

Q. Whose voices were in that recording?

A. Mine and Keith.

Q. You mentioned something called a rack. What is that?

A. $1,000.

Q. How much heroin can you get for $1,000?

A. In that situation, half ounce, 14 grams.

Q. Which phone did you call to reach Keith?

A. The Boys's number.

Q. I am not going to play the recording of the transaction. Can you briefly tell the jury what happened?

A. I was driven from the location to College Park Road down Gleason off of College Park, and dropped off around the bend. Walked down to Arno and proceeded to meet Keith. Gave him the money in a cigarette pack. He counted the money, told me it was correct. And then gave me the heroin. And then I walked back and got the car with Detective Allen. And gave him the dope and drove back to the location we met at and was searched again.

Q. How much heroin did you purchase at that time?

A. 14 grams, a half ounce.
Q. Moving now to October 28th, 2015. What did you do on that date?
A. I made another buy.
Q. Was that set up using a phone call as well?
A. Yeah. They were always set up with phone call or tabs.
MR. UNDERWOOD: Your Honor, permission to publish State's Exhibit 24.
THE COURT: Proceed.
(Whereupon, audio is played.)
BY MR. UNDERWOOD:
Q. Whose voice is on that recording?
A. That is Mo.
MR. UNDERWOOD: Permission to publish State's Exhibit 25, Your Honor.
THE COURT: Proceed.
(Whereupon, audio is played.)
BY MR. UNDERWOOD:
Q. Mr. Sekula, did you have multiple devices on you that were making recordings?
A. Yes.
Q. Is this recording of the same from the previous exhibit?
A. Same conversation, yes.

MR. UNDERWOOD: Permission to publish Exhibit 26, Your Honor.

THE COURT: You may proceed.

MR. UNDERWOOD: Correction, Your Honor, State's Exhibit 27.

THE COURT: Proceed.

MR. UNDERWOOD: Beginning of track 3.

(Whereupon, audio is played.)

MR. UNDERWOOD: Track 4.

(Whereupon, audio is played.).

MR. UNDERWOOD: Permission to fast-forward, Your Honor.

(Whereupon, audio is played.)

BY MR. UNDERWOOD:

Q. Mr. Sekula, was there a significant wait period during this particular transaction?

A. Yes, there were oftentimes.

Q. Track 5.

(Whereupon, audio is played.)

MR. UNDERWOOD: Playing track 6.

(Whereupon, audio is played.)

BY MR. UNDERWOOD:

Q. Mr. Sekula, at this point, was there a problem with the video?

MS. JOHNS: Your Honor, I object. Leading.

THE COURT: Sustained. Leading. Rephrase.

BY MR. UNDERWOOD:

Q. Mr. Sekula, what technology problems did you have, if any, during this transaction?

A. The video ceased to work. The audio continued to work, but the video did not pick up.

Q. Did you have -- again, did you have multiple recording devices?

A. I did.

Q. Mr. Sekula, what happened in that portion where the video cut out but the audio continued?

A. We continued to wait for Mo. I walked over to where he was supposed to be. Didn't see him. I started to walk back. Didn't see him. Got back into the car. You can hear me counting the money out. Counted the money out, gave it to him. He gave me the dope. Talked a little bit more. You can hear the seatbelt thing chiming for me not putting my seatbelt on. And got out and went back to Detective Allen's car. And gave him the dope. And that's the end of the recording.

Q. What kind of dope was it?

A. It was heroin, one big half ounce chunk.

Q. Who did you get the heroin from?

A. From Mo.

Q. What's Mo's real name?

A. Justin Hunter.
Q. What vehicle did you get into?
A. His BMW.
Q. Moving on now, what did you do on January 4th, 2016, in relation to this case?
A. I conducted another buy.
MR. UNDERWOOD: Permission to publish State's Exhibit 28.
THE COURT: Yes, sir.
MR. UNDERWOOD: Track 1.
(Whereupon, audio is played.)
MR. UNDERWOOD: Track 2. Permission to fast-foward, Your Honor.
THE COURT: Yes, sir.
(Whereupon, audio is played.)
BY MR. UNDERWOOD:
Q. Mr. Sekula, other than yourself, who else was in that recording?
A. In the car or in the trailer?
Q. Both?
A. In the trailer, Q; in the car, Detective Allen.
Q. What happened in the trailer?
A. I purchased just an eight-ball of heroin.
Q. From who?
A. Q.

Q. How much money did you give him for it?
A. 300.
Q. What did you do with the heroin?
A. I gave it to Detective Allen.
Q. As relates to this case, what did you do on January 14th, 2016?
A. I made another buy.
MR. UNDERWOOD: Permission to publish State's Exhibit 29.
THE COURT: Yes, sir.
MR. UNDERWOOD: Track 2.
(Whereupon, audio is played.)
BY MR. UNDERWOOD:
Q. Mr. Sekula, I apologize. I forgot to ask you one question about the last recording that we watched. Where did that take place?
A. Summer Creek Trailer Park up on College Park Road.
Q. As to the recording we are watching now, is this another one where there's a significant wait time?
A. Yeah. I was standing out front of Walmart waiting on Mo.
Q. What was the arrangement?
A. To meet him at the Summerville Walmart.
MR. UNDERWOOD: Permission to fast-foward, Your

Honor.

THE COURT: Yes, sir.

(Whereupon, audio is played.)

MR. UNDERWOOD: Track 3.

(Whereupon, audio is played.)

BY MR. UNDERWOOD:

Q. Mr. Sekula, whose vehicle did you get into?

A. Mo's.

Q. Who else was in the vehicle?

A. His dog, Blaze.

Q. Who was driving?

A. Mo.

Q. What happened in the vehicle?

A. I gave him the money for the heroin.

Q. How much money?

A. Should have been $1,000 for half ounce again.

Q. What did you get in return?

A. He gave me that heroin that I gave Detective Allen.

Q. Where did that take place?

A. Summerville Walmart parking lot.

Q. When you got into the vehicle, did you stay in place or did you go somewhere else?

A. We drove through the parking lot up to the stop sign where it comes out closer to, like, by Hardee's in the back of the parking lot. That's where I got out of the car.

Q. Mr. Sekula, are you sure about the amount that you paid and received?

A. No. It's just typical for -- any time I dealt with Mo, it was 14 or better, unless he had The Boys's phone. I was just assuming that. The phone call or the beginning of the video, Danny would have counted out the money. If you told me how much money I spent, I could tell you what I got.

Q. Tell me this. Was there ever an occasion where you did one of the controlled purchase where you were unsuccessful in getting heroin?

A. There were times we called and weren't able to get ahold of anybody, yes.

Q. Were there times you actually met with someone and weren't able to get heroin?

A. Yeah. There was a time when I bought ice from somebody instead, from Cici.

Q. Was there ever a time that you met with someone and couldn't get drugs of any kind?

A. I don't recall. I can't remember a specific time, but it could have happened.

Q. You just mentioned one occasion with a different drug. What drug was that?

A. Meth, ice.

Q. How did that operation take place?

A. I believe that they contacted me saying that she had it. And it was a spur-of-the-moment thing. I let Danny know. And he decided he was going to do it.

Q. Let's clarify. Who is "they"?

A. As in they are going to do it or they had it?

Q. You said they contacted you. Who is "they"?

A. The Boys. The Boys's number contacted me, or Mo may have contacted me from The Boys's number, or one of the numbers from the individuals involved in the group that I got the heroin from let me know that they had some ice at the time.

Q. Was it normal for you to buy ice?

A. It was something that happened on occasion, yes.

Q. After you were notified about ice, what did you do?

A. I let Danny and the detectives I was working for know that it was something that was mentioned, because they were trying to do a buy on heroin. And I don't think I was able to get any at the time.

Q. Did you participate in a transaction as a result of that?

A. Yes.

Q. Who set the deal up with you?

A. Set the deal up to the deal?

Q. Yes.

A. Mo did.

Q. How?
A. Through his number, contacted and told me that Cici would meet me at a certain place in the shop center off of Main Street near Target and Kohl's.
Q. Is that in Summerville?
A. Yes.
Q. How did he contact you with the phone?
A. Text message.
Q. Did you go to that location?
A. I did.
Q. Was that under the supervision of law enforcement?
A. Yes.
Q. What happened when you got there?
A. I waited on the side of the building at the picnic table by Kohl's for some time until I received -- I can't remember if it was a phone call or text from Mo with direction to sit on the bench in front of Kohl's, kind of by the PetSmart side, in which I would meet Cici there.
Q. Is that the same Cici that we saw in the video earlier?
A. Yes.
Q. What happened when she met you there?
A. I talked to her about her broken cell phone. Gave her some money and got, I believe it was a half gram of ice. It may have been a gram. I don't remember the specifics.

I'm pretty sure it was a half gram, though.

Q. By "ice", is that methamphetamine?

A. Crystal meth, yeah.

Q. What did you do with the meth after you got it?

A. I gave it to Detective Allen, as all the drugs.

Q. In relation to this case, what did you do on January 19th? Do you remember the date of that methamphetamine transaction?

A. It was either late January or early February.

Q. Could it have been February 3rd?

MS. JOHNS: Objection, Your Honor.

THE COURT: Basis?

MS. JOHNS: He's leading the witness.

THE COURT: Sustained. Leading. Rephrase.

BY MR. UNDERWOOD:

Q. Do you remember the exact day?

A. No, I don't. I know it was early February, late January. The specific day, I don't remember the exact day other than ...

Q. In regard to this case, what did you do on January 19th, 2016?

A. I did another buy, controlled buy for Dorchester County and SLED.

MR. UNDERWOOD: Your Honor, permission to publish State's Exhibit 30.

THE COURT: Proceed.

MR. UNDERWOOD: Playing track 2.

(Whereupon, audio is played.)

MR. UNDERWOOD: Permission to fast-foward, Your Honor.

(Whereupon, audio is played.)

BY MR. UNDERWOOD:

Q. Mr. Sekula, where did that transaction take place?

A. Summer Creek Trailer Park.

Q. Do you remember which trailer?

A. I don't know the address, but, I mean, I could point it out.

Q. Who typically stays at that trailer?

A. Q.

Q. Who was present during this transaction?

A. Will.

Q. Was Q there?

A. Not that I'm aware of, no.

Q. Who did you arrange for that transaction to take place with?

A. I had spoke to Q earlier that day.

Q. What happened between you and Will in the trailer?

A. I bought an eight-ball of heroin from him.

Q. Was there anything significant about the way it was packaged?

A. It wasn't all in one baggie. It was probably pre-packaged into grams and halves. And he gave me the equivalent through that packagings so he didn't have to weigh anything out. It was already pre-made.

Q. Was that the normal way it was packaged?

A. It came that way from time to time, not all the time. Just depended if they had sold all the balls already made and just had halves and grams off of it.

Q. In the video, on the left side, you could see cages. Were there animals in those cages?

A. Yes, there were.

Q. What kind?

A. Dogs, pit bulls.

Q. Do you remember how many?

A. Not exactly. There were more than a couple.

Q. Do you know who owned the dogs?

A. As far as I knew, they were Q's. They were in the house. You know, they were in the house on Margaret. Prior to that, they were there, and then they got moved to Summer Creek.

Q. Did anyone else in that group own pit bulls?

A. Mo had a pit pull, an older dog, full grown.

Q. Did anyone else?

A. I am not 100 percent sure on that. I have no idea. Those are the only two that I had ever seen.

Q. The heroin that you purchased from Will, what did you do with it?

A. I gave it to Detective Allen. Well, I put it all in one cellophane, first of all, not to lose the individual bags. And then gave it to Detective Allen in the car.

Q. Where was Detective Allen in relation to the trailer?

A. If you were to come out of the trailer and take a left, across the street there was some storage units right there. He wasn't 25, 30 yards away across the street.

Q. Moving on to February 2nd, 2016, what did you do that day?

A. Another controlled buy.

MR. UNDERWOOD: Your Honor, request permission to publish Exhibit 31.

THE COURT: Proceed.

MR. UNDERWOOD: Playing track 2.

(Whereupon, audio is played.)

MR. UNDERWOOD: Permission to fast-forward, Your Honor.

(Whereupon, audio is played.)

BY MR. UNDERWOOD:

Q. Mr. Sekula, where did that transaction take place?

A. Summer Creek Trailer Park.

Q. Was it the same trailer we discussed before?

A. Yes.
Q. Who did you interact with in the trailer?
A. Q.
Q. What happened?
A. He was on the phone discussing his affairs with somebody. And he weighed it out and didn't put it in a bag. So I had to put it in a bag and tie the bag up. And then I left and gave it to Detective Allen.
Q. Gave what to Detective Allen?
A. The heroin.
Q. Mr. Sekula, what did you do in regards to this investigation on February 23rd, 2016?
A. I would have been making another controlled buy.
MR. UNDERWOOD: Your Honor, permission to publish State's Exhibit 33.
THE COURT: Proceed.
MR. GRIFFITH: May it please the Court, Your Honor --
THE COURT: Madam Forelady, ladies and gentlemen, we are going to take a brief restroom break. During the break, please do not discuss the case and please leave your notepads in your seats.
(Whereupon, the jury leaves open court at 4:18 p.m.)
THE COURT: We will be at ease for a few moments.

Sir, you can walk around. Just don't discuss your testimony with anyone.

(Whereupon, a recess transpired.)

THE COURT: State ready to proceed?

MR. UNDERWOOD: Your Honor, may I approach briefly on a scheduling matter?

THE COURT: Sure.

(Whereupon, a bench conference takes place off the record.)

THE COURT: The State ready to proceed?

MR. UNDERWOOD: Yes, Your Honor.

THE COURT: Defense ready to proceed?

MR. GRIFFITH: Yes, Your Honor.

MS. JOHNS: Yes, Your Honor.

THE COURT: Please bring in the jury.

(Whereupon, the jury returns to open court at 4:34 p.m.)

THE COURT: Proceed.

MR. UNDERWOOD: Thank you, Your Honor.

THE COURT: You're welcome.

BY MR. UNDERWOOD:

Q. Mr. Sekula, I apologize. Just before we took the break, I think I misread my notes about what I wanted to ask you about.

Did you do anything concerning this investigation

between September 22nd of 2015 and September 23rd?

A. Excuse me?

Q. Between September 22nd, 2015, and the following day, September 23rd, 2015, did you do anything concerning this investigation?

A. I believe so, yes.

MR. UNDERWOOD: Again, Your Honor, request permission to publish State's Exhibit 33.

THE COURT: Proceed.

MR. UNDERWOOD: Beginning with track 4.

(Whereupon, audio is played.)

MR. UNDERWOOD: Now track 5.

(Whereupon, audio is played.)

MR. UNDERWOOD: Permission to fast-forward, Your Honor.

THE COURT: Yes, sir.

(Whereupon, audio is played.)

BY MR. UNDERWOOD:.

Q. Mr. Sekula, what happened during this transaction?

A. I was given $700 to get 7 grams. I was able to get it for $600 instead. If you continue to listen, you will see in the car where I give the money to Detective Allen, but I bought a quarter ounce of heroin from Q.

Q. Was anyone else present?

A. Will.

Q. Where did this take place?
A. In Fairlawn on Margaret.
Q. Mr. Sekula, throughout your time dealing with these individuals, how much time did you purchase from them in total?
A. Between working for the law enforcement and personal?
Q. Yes.
A. Anywhere from 2- to 300 grams total, I mean, at least.
Q. Do you have any idea how much money you paid to this organization for heroin?
A. Between all of the individuals?
Q. Yes.
A. I have no idea. I know I spent an astronomical amount. I probably could have bought everyone in here a house.
Q. The individual that you dealt with known as Mo, you identified at Justin Hunter, is he in the courtroom here today?
A. No.
MR. UNDERWOOD: May I approach the witness, Your Honor?
THE COURT: You may.
BY MR. UNDERWOOD:

Q. I'm handing you a passport that's been entered as State's Exhibit 42. Do you recognize the individual in that passport?

A. Yeah. That's the individual I know as Mo.

MR. UNDERWOOD: May I approach?

(Whereupon, a bench conference takes place off the record.)

THE COURT: Sir, if you will step down. I remind you are still under oath. The State may proceed. You need to stay in the courtroom, please.

MR. UNDERWOOD: Your Honor, the State calls Lawrence Zivkovich.

LAWRENCE ZIVKOVICH,

having been duly sworn, testifies as follows:

THE CLERK: If you can spell your name for the court reporter.

THE COURT: Sir, state your name for the record and spell your last name for the record.

THE WITNESS: Lawrence, Z-i-v-k-o-v-i-c-h.

THE COURT: Thank you. You may proceed.

DIRECT EXAMINATION

BY MR. UNDERWOOD:

Q. Good afternoon, Mr. Zivkovich. Will you please tell the jury where you are employed and what you do for a living.

A. I work with the South Carolina Law Enforcement Division, commonly known as SLED. And I'm employed as a forensic scientist whose specialty is dealing with controlled substances.

Q. And as an analyst, what exactly is it that you do?

A. We analyze substances that are submitted by outside agencies to find out whether they do or do not contain controlled substances.

Q. What kind of specialized training do you have in that field?

A. I received a bachelor's of science degree in chemistry from the University of South Carolina. And then when I was employed by SLED, I went through their forensic chemist program, training program. And I've also received classes through DEA and also the University of West Virginia.

Q. Have you had the opportunity to testify in court before?

A. Yes, sir.

Q. And during that testimony, were you qualified as an expert?

A. I was.

Q. In what field?

A. In forensic chemistry.

Q. How many times have you testified as an expert in

chemist chemistry?

A. 39.

MR. UNDERWOOD: The State offers Mr. Zivkovich as an expert in forensic chemistry.

THE COURT: Any objection or question?

MR. GRIFFITH: I have no objection. I will accept him --

THE COURT: I'm sorry. I can't hear you.

MR. GRIFFITH: No objection and I will accept him as an expert in chemistry.

MS. JOHNS: No objection and no exception.

THE COURT: Thank you. So admitted without objection. You may proceed.

MR. UNDERWOOD: May I approach the witness, Your Honor.

THE COURT: Yes, sir.

BY MR. UNDERWOOD:

Q. Mr. Zivkovich, did you have an opportunity to conduct analysis on evidence that was seized during this case?

A. I have.

Q. And could you explain to the jury -- and as you are preparing to do that, I'm going to hand you State's Exhibit 98 through 105 -- could you explain to the jury what safeguards are made in order to ensure that the proper

substances are tested and not contaminated?

A. Yes, sir. So outside agencies will take their evidence, and depending on the size, they will either put it in a box or they will place it inside a package that we give to outside agencies to submit drug evidence. Once that evidence has been sealed, then they bring it into the SLED laboratory and take it to the check-in area where it's assigned a unique SLED lab number for that one particular piece of evidence. And then they determine who gets to have assignments for that piece of evidence.

Once that's been determined, then it's put inside a vault down in the evidence intake area. And whoever has an assignment has been notified. That person then comes and picks up the evidence and takes it to their work area and keeps it either in their custody or inside their own personal vault until they are finished with the evidence, at which time they reseal it, take back to evidence intake by the outside agency.

Q. And is there a way that SLED tracks, once the evidence arrives at SLED, who handles that evidence and where it goes?

A. Yes, sir. It's all tracked electronically by what we say is an electronic chain of custody. Every time it transfers from one person to another person, it's entered into the electronic chain.

Q. If you could, while referring to the exhibits in front of, do those exhibits identify particular lab numbers?

A. Yes, sir.

Q. And those exhibits, if you could just identify the exhibit number and the lab number associated with each.

A. We have Exhibit No. 98, and that is Lab L15-12523; Exhibit No. 99, which is L15-12520; Exhibit 100, which is Lab No. L16-00406; Exhibit 101, with a Lab No. L15-12924; Exhibit 102 with Lab No. 15 -- I apologize, Lab No. L15-13382; and Exhibit No. 103 with Lab No. L15-14458; Exhibit 104 with Lab No. L15-16511; and Exhibit No. 105 with Lab No. L15-12524.

Q. Are those documents kept in the regular course of business at the SLED lab?

A. They are.

MR. UNDERWOOD: Your Honor, at this time, I would seek to admit Exhibits 98 through 105.

THE COURT: Any objection?

MR. GRIFFITH: No objection, Your Honor.

MS. JOHNS: No, Your Honor.

THE COURT: Marked and admitted without objection. You may proceed.

(State's Exh. 98, Analysis L15-12523, is received in evidence.)

(State's Exh. 99, Analysis L15-12550, is received in evidence.)

(State's Exh. 100, Analysis L15-406, is received in evidence.)

(State's Exh. 101, Analysis L15-12924, is received in evidence.)

(State's Exh. 102, Analysis L15-13382, is received in evidence.)

(State's Exh. 103, Analysis L15-14458, is received in evidence.)

(State's Exh. 104, Analysis L15-16511, is received in evidence.)

(State's Exh. 105, Analysis L15-12524, is received in evidence.)

BY MR. UNDERWOOD:

Q. I now want to show you for right now State's Exhibits 44, 46 and 47. Could you take a moment to examine each of those items?

A. Yes, sir.

Q. Did you have an opportunity in your profession to examine the items in that package?

A. I did.

Q. Beginning with Exhibit No. 44, could you explain to the jury what you did to analyze the substances in that package?

A. The outside package is what we call a K pack. This is what I seal the evidence in after I was finished analyzing it. And I can see that it hasn't been tampered with, because all the seals are still intact. And the date underneath the seal has the date that I sealed it with my initials on it. And inside the bag is one of the packages that we submit, give to outside agencies to submit drug evidence in.

And on that package for Exhibit No. 44, it has Lab No. L15-12524. And it has the date that I check to make sure that all the seals were intact with my initials. And what we do we check it has tamper evident sealant on it, which is a design around the outside with an adhesive seal on the top. And what happens is, the design will be broken or the adhesive seal will be broken if somebody tampered with the evidence after it's been sealed. And I verified on January 28th, 2016, that the seal was intact.

Q. And what would you have done if the seal was not intact?

A. If the seal was not intact, then we have to report that to our supervisor. And then they decide how to proceed as far as contacting the agency and deciding how to dispose of the evidence.

Q. Was the seal intact in that particular specimen?

A. It was.

Q. What did you do to analyze it?

A. Once I've determined that the seal has been intact, then I open the evidence and compare it to the inventory on the submission form. And if everything matches up, then I proceed with a preliminary test on the evidence, which I would have to look at my case notes to see which preliminary tests I performed. And then we perform a final analysis on it to determine exactly what the contents do or don't contain. After that has been determined, then we seal the case back up. I issue a report and take the case back down to the evidence log-in for pick up by the outside agency.

Q. Were you able to successfully test that substance or substances in that package?

A. I did.

Q. And what were the results or conclusions that you were able to draw?

A. For SLED No. L15-12524, I found it contained heroin with a weight of 3.41 grams.

Q. And moving on to your next item, which I believe is Exhibit 46.

A. Yes, sir.

Q. Were you able to test that using the same procedures you just described?

THE COURT: I need you to correct that number, please. Not his number, but our number. Because you said

No. 48 and you just marked 98 through 105. I don't want the court reporter to be confused.

MR. UNDERWOOD: I apologize, Your Honor. That was for the tracking sheets. This is the Exhibit 46, the BEST kit itself.

THE COURT: I understand that, but the court reporter doesn't. You need to make sure. You referred to both corresponding numbers. So that it can be straight so the court reporter for the record can be clear.

BY MR. UNDERWOOD:

Q. If you would, the last exhibit you were referring to, State's Exhibit 44, was that Lab No. L15-12524?

A. Yes, sir.

Q. That was State's Exhibit 44 that we previously discussed?

A. Correct.

Q. And the results were the 3.41 grams of heroin?

A. Yes, sir, 3.41 grams.

Q. Okay. Now, if I could draw your attention to State's Exhibit No. 46, what is your lab number for State's Exhibit 46?

A. State's Exhibit 46 has a SLED lab number of L15-12523.

Q. Were you able to test the substances in that exhibit?

A. Yes, sir.
Q. What were the conclusions you were able to reach as a result of those tests?
A. I found L15-12523 to contain two plastic bags with each containing heroin with a total weight of 1.45 grams.
Q. And moving on now to State's Exhibit No. 47, what is your corresponding lab number for State's Exhibit 47?
A. Exhibit 47 has a lab number of L15-12520.
Q. And what were you able to do with that particular exhibit?
A. I found this to contain heroin and methamphetamine with a weight of 1.28 grams.
Q. I now hand you State's Exhibit 112. Do you recognize that?
A. Yes, sir.
Q. What is that?
A. It's SLED Lab No. 15-14458.
Q. And were you able to test the items in that package?
A. I was. I found it to contain heroin with a weight of 14.03 grams.
Q. Now, moving on to State's Exhibit 113, do you recognize this exhibit?
A. I do. It's SLED Lab No. L15-13382.
Q. Were you able to conduct tests on the items in that

package?

A. Yes, sir.

Q. What were the results of those tests?

A. Lab No. L15-13382 was found to contain heroin with a weight of 13.96 grams.

Q. And does that correspond to State's Exhibit No. 113?

A. It does.

Q. Now, handing you State's Exhibit 114, will you examine that, please? And do you recognize it?

A. Yes, sir, this is SLED Case No. L15-16511.

Q. Were you able to conduct tests on the items in that BEST kit?

A. Yes, sir.

Q. What were the results of those tests?

A. L15-16511 was found to contain heroin with a weight of 3.30 grams.

Q. And, again, that corresponds to State's Exhibit 114; is that correct?

A. That's correct.

Q. Now, handing you State's Exhibit 115, would you examine that, please?

A. Yes, sir. This is the case that I worked with SLED Lab No. L16-00406.

Q. What were the results of your tests concerning the

items in State's Exhibit 115?

A. Exhibit 115, which was Lab No. L16-00406, was found to contain four plastic bags, all containing heroin with a total weight of 3.38 grams.

MR. UNDERWOOD: Court's indulgence, Your Honor.

THE COURT: Yes, sir.

BY MR. UNDERWOOD:

Q. Now handing you State's Exhibit 117. Would you examine that for me, please?

A. Yes, sir. This is a SLED lab case that I worked with a number L15-12924.

Q. Were you able to conduct your test on the items in that package?

A. Yes, sir.

Q. What were the results of your testing?

A. I found it to contain seven plastic bags, each containing heroin with a total weight of 7.10 grams.

Q. Thank you, sir. Now handing you State's Exhibit 110, 118, 106, 107, 108, 109, 111 and 115. Could you please examine those documents for me.

A. Yes, sir. These are all reports, SLED reports I issued on evidence that I worked while employed at SLED.

Q. Do each of these reports correspond to the items we just discussed your working on? And if you could identify the exhibit number to the lab number.

A. So Exhibit 115, which is L16-00406, corresponds to report which is Exhibit 115.

State's Exhibit 114 is Lab No. L15-16511, and that corresponds to SLED report which is State's Exhibit 111.

State's Exhibit 113 is Lab No. L15-13382, and that corresponds to SLED lab report with Exhibit 109.

State's Exhibit 47, which is Lab No. L15-12520, and that corresponds to the SLED lab report which is Exhibit 108.

Exhibit 46, which is Lab No. L15-12523, that corresponds to SLED lab report which is State's Exhibit 107.

State's Exhibit 44, which is L15-12524, corresponds to SLED lab report which is State's Exhibit 106.

State's Exhibit 117 is Lab No. L15-12924, and that corresponds to SLED lab report which is State's Exhibit 118.

And State's Exhibit 112 is L15-14458, and that corresponds to the SLED lab report which is Exhibit 110.

MR. UNDERWOOD: Thank you, Your Honor. At this time, the State offers into evidence Exhibits 112, 117, 44, 46, 47, 113, 115, 114, 110, 118, 106, 107, 108, 109, 116 and 111.

THE COURT: Any objection?

MR. GRIFFITH: No objection, Your Honor.

THE COURT: Any objection, Ms. Johns?

MS. JOHNS: No, Your Honor.

THE COURT: 43 through 48 have already been marked and admitted. So the remaining exhibits will be marked and admitted without objection.

(State's Exh. 106, Drug Analysis L15-12524, was marked in evidence.)

(State's Exh. 107, Drug Analysis L15-12523, was marked in evidence.)

(State's Exh. 108, Drug Analysis L15-12520, was marked in evidence.)

(State's Exh. 109, Drug Analysis L15-13382, was marked in evidence.)

(State's Exh. 110, Drug Analysis L15-14458, was marked in evidence.)

(State's Exh. 111, Drug Analysis L15-16511, was marked in evidence.)

(State's Exh. 112, Drug labeled L15-14458 was marked in evidence.)

(State's Exh. 113, Drug labeled L15-13382, was marked in evidence.)

(State's Exh. 114, Drug labeled L15-16511, was marked in evidence.)

(State's Exh. 115, Drug labeled L16-406, was marked in evidence.)

(State's Exh. 116, Drug labeled L16-00406, was marked in evidence.)

(State's Exh. 117, Drug labeled L15-12924 was marked in evidence.)

(State's Exh. 118, Drug Analysis L15-12924, was marked in evidence.)

BY MR. UNDERWOOD:

Q. Did you perform any other work on this case?

A. Not to my knowledge.

MR. UNDERWOOD: No further questions.

THE COURT: Any questions, Mr. Griffith?

CROSS-EXAMINATION

BY MR. GRIFFITH:

Q. Mr. Zivkovich, you would be unaware as to which particular buys these were connected to and which -- whether these were collected -- who they were collected from, et cetera? You would not know that, correct?

A. That's correct.

MR. GRIFFITH: That's the only question I had.

THE COURT: Ms. Johns?

MS. JOHNS: No questions.

THE COURT: Any objection to the witness being excused, from the State?

MR. UNDERWOOD: None, Your Honor.

THE COURT: From the defense, Mr. Griffith?

MR. GRIFFITH: No, Your Honor.

THE COURT: Ms. Johns?

MS. JOHNS: No, Your Honor.

THE COURT: Could counsel approach for me, please.

(Whereupon, a bench conference takes place off the record.)

THE COURT: Madam Forelady, ladies and gentlemen, we are going to take advantage of this break in testimony to take our evening recess. We anticipate that the remaining examination of one of the witnesses is going to take another two hours, so I am not going to keep y'all here that late.

In addition to that, I'm sure you noticed it went from being very cold to very hot. We've had challenges with our air conditioning equipment and the gentlemen can't get to work on it while we are in here. So the sooner we leave, the sooner they can fix it, the sooner we can be cool. So I'm all for being cool. I don't know about y'all, but it's hot. So we are going to break for the evening.

We will resume in the morning at 9:30. I don't anticipate us having any delays in starting, as we've resolved many of the matters of law that we were grappling with today.

During the break, please do not discuss the case in any manner whatsoever. Please do not read, watch or look up anything on the Internet or anything that might be in the newspapers or radio.

You are bound by your oath to decide this case

according to the sworn testimony you hear and the other exhibits. Please don't have any contact with anyone in or about the courthouse and when you return. Please do not make any comments regarding your status on any social networking sites. Have a great day. If y'all stack them up for me, he will collect them during recess. And I will see you in the morning at 9:30. Attach your badge to your notepad, that will help them out as well.

(Whereupon, the jury leaves open court at 5:17 p.m.)

THE COURT: Is there anything we need to take up before we break for the evening recess, from the State?

MR. UNDERWOOD: Nothing, Your Honor.

THE COURT: From the defense?

MR. GRIFFITH: Nothing, Your Honor.

THE COURT: Ms. Johns, anything?

MS. JOHNS: No, Your Honor.

THE COURT: Y'all have a good evening. And I will see you in the morning at 9:30. Hopefully it will be cooler.

(Whereupon, the trial continues on July 26, 2017.)

THE COURT: The State ready to proceed?

MR. UNDERWOOD: Before we get started, I was just speaking with opposing counsel about some potential stipulations. The subject was, as to the drug analysis

reports for all of the drug evidence in question in this case, it's my understanding that both counsel are willing to stipulate and have all of those documents admitted into evidence and accept them as true. I just wanted to see --

THE COURT: I think we already admitted the documents, haven't we?

MR. UNDERWOOD: There are more, Your Honor. That was just for one count. We have six more.

THE COURT: I don't think you need the stipulation. I think you need to mark them into evidence. That affects argument. That affects argument. That doesn't affect -- they are not going to argue that it's not what it is.

MR. UNDERWOOD: Yes, Your Honor. And in that case, Your Honor, I believe they are not objecting to those going into evidence.

THE COURT: What number are those?

MR. UNDERWOOD: We are putting numbers on them right now in just a moment.

THE COURT: Since that does not affect the cross-examination of the witness, do I really need to delay starting?

THE DEFENDANT: I have a question. Just for my safety purposes, and counsel said it was done when I wasn't here or day before I was here, I don't want to argue about it, I just want to preserve it for appeal --

THE COURT: What is it you are trying to preserve? We don't have hybrid representation. Your lawyer represents you. So if there's something that needs to be protected, he will do that. I don't understand what you are referring to when you make reference to your safety. That's not something that's an appellate issue.

THE DEFENDANT: No, I'm talking about as far as the outcome of the trial as far as appeal goes.

THE COURT: I don't understand what you are talking about.

THE DEFENDANT: I just wanted to preserve some issues on here.

THE COURT: Sir, you need to make Mr. Griffith aware of those. And at the appropriate time -- you don't sort of throw issues out to preserve them. It has to be made contemporaneous with evidence that is being introduced. You don't get to just make statements for the record. The rules don't work like that. And if it's what we've already gone over, I'm not regurgitating that again. I've already gone over all of that with you. I've ruled on it. We are done. We are past that place. It's not going to be Groundhog Day, repeating the same day every morning. That's not going to happen.

THE DEFENDANT: All right. This is in regards to the indictment.

THE COURT: I've already dealt with that and ruled on it.

All right. Are we ready to proceed with the cross-examination of the witness. Where is he?

MR. UNDERWOOD: He's just outside the door, Your Honor.

THE COURT: You need to get him.

Who is going to cross Mr. Sekula first?

MS. JOHNS: Mr. Griffith is, Your Honor.

THE COURT: Sir, I will remind you, you are still under oath.

Please get the jury.

(Whereupon, the jury returns to open court at 9:47 a.m.)

THE COURT: Good morning, ladies and gentlemen. I hope y'all had a pleasant evening recess. We will now resume with the cross-examination of the witnesses.

Mr. Griffith, you may proceed when you are ready.

MR. GRIFFITH: Thank you, Your Honor. May it please the Court.

THE COURT: Yes, sir. You may proceed.

THOMAS SEKULA,

having been previously sworn, testifies as follows:

CROSS-EXAMINATION

BY MR. GRIFFITH:

Q. Mr. Sekula, is that how you pronounce it?

A. Yes, sir.

Q. Mr. Sekula, you are addicted to opiates, aren't you you?

A. Yes, sir.

Q. And you are still using opiates or pills now, aren't you?

A. Not at the moment.

Q. That is to say, when was the last time you took an opiate or pill or heroin?

A. Last week.

Q. Last week. So you were using opiates while you were acting as a CI; is that right?

A. I was.

Q. So a lot of that time you were under the influence of opiates or heroin; isn't that right?

A. During the buys or during that time frame?

Q. During the buys or any of that time frame.

A. I was asked to come to the buys sober.

Q. You were asked to come to the buys sober, but between the buys, you were still using opiates; isn't that right?

A. Yes, sir.

Q. Okay. In fact, that's how you became involved in

this operation, is from your use of opiates, isn't it?

A. Yes, sir.

Q. So you used the term The Boys.

A. Uh-huh.

Q. That's a name you came up with yourself, isn't it?

A. No, sir. It was something that was given to them before I was around. It was what they were referred to prior to my involvement. That's how they were defined to me by others.

Q. By "others", do you mean law enforcement?

A. No, sir.

Q. But you didn't actually hang out with these guys, did you?

A. I had been around them from time to time giving rides to them, or I may have been in their presence for longer than just purchasing at times.

Q. But most of the time in all those videos, you would go in the store, you would come out?

A. During the videos, certainly. It wasn't something that I wanted to hang out and enjoy time doing during that operation. The whole goal was to get there, make the purchase and then leave.

Q. But you didn't go to lunch with these guys or go over to their house and eat dinner, did you?

A. No, I never ate dinner with them.
Q. You didn't really know these guys intimately, did you?
A. No, I wouldn't say I did.
Q. You would really have no idea of any kind of organization or how they did anything other than the way you communicated with them; isn't that right?
A. Or what they communicated to me.
Q. You referred to an individual known to you as Q.
A. Yes.
Q. When did you associate that name with Emory Roberts?
A. A young lady named Amy hung out with him. And she had seen his name on his ID in their interaction. And she's the one that had referred to him as Emory Roberts and let me know his real name.
Q. But it was SLED and the Darlington Police who really let you know who that was; isn't that right?
A. Well, they had asked me if I knew his name prior to that, and I did. And I let them know that I knew him name was Emory through the individual Amy Moore.
Q. Besides your drug offenses that the SLED and the agents are helping you with in exchange for your testimony, you've committed other crimes at times to support yourself and your habit; isn't that true?

A. Yes.
Q. You mentioned shoplifting.
A. Yes, sir.
Q. Were you ever involved with receiving stolen goods? You are under oath.
A. Not that I didn't steal myself or that I was aware was stolen at the time. I've never taken something knowing that it was stolen at the time.
Q. You were involved with some burglaries or breaking and enterings?
A. No, I was not involved myself. My brother was.
MR. GRIFFITH: I have no further questions. Please answer any questions Ms. Johns has.
THE COURT: Ms. Johns.
MS. JOHNS: Thank you, Your Honor. May it please the Court.
THE COURT: You're welcome.

CROSS-EXAMINATION

BY MS. JOHNS:
Q. Your name is Thomas Sekula?
A. Yes, ma'am.
Q. Would it be okay if I call you Tommy?
A. Yes, sir.
Q. Is that your nickname?
A. That's what I go by, yes, ma'am.

Q. Tommy, on your direct examination yesterday, you gave us a little bit of history about your life.

A. Yes, ma'am.

Q. And you stated that you started using opiates when you had your wisdom teeth removed.

A. The first time I had taken them, yeah.

Q. And that was prescribed to you by a doctor; isn't that right?

A. Yes, ma'am.

Q. How old were you then?

A. I was 18 or 19.

Q. Okay. And you were given a limited amount of painkillers for that surgery; is that right?

A. Yes, ma'am.

Q. Were you living in this area or were you living in Bluffton at the time?

A. I was in Summerville at the time.

Q. At some point, you left Summerville and you moved to Bluffton?

A. Yes, ma'am.

Q. And this is because of discourse with your mother; is that right?

A. No, it was because my grandfather had actually passed away, and I was being promoted within the company I was working for, and so was my girlfriend, and we chose to

go with her promotion over mine.

Q. How old were you then?

A. 24, 23, 24.

Q. And were you working for Walmart yet?

A. Yes, ma'am, that's where I was working.

Q. And she was also working for Walmart?

A. Yes, ma'am. She was in the vision center.

Q. And you had stated yesterday that you were a manager?

A. I was, yes, ma'am.

Q. And what does a manager do?

A. At that time, I was the grocery manager before I got promoted. And I was in charge of scheduling, planograms, maintaining other people's work ethic and their schedules, their tasks, ordering, maintaining on-hands and PI, perpetual inventory, ordering features, maintaining the presentation, cleanliness, just the overall -- I don't know what the word is, just maintaining the department.

Q. But you weren't the manager of the entire store?

A. No, I was not the store manager, no, ma'am.

Q. So you were the manager of a department within the store?

A. Yes, three departments within the store, yes, ma'am.

Q. How long did you maintain that management position?

A. Six years.
Q. Six years?
A. Yeah.
Q. Did you work your way up or just get hired on as manager?
A. No, I started as just a cashier when I first got hired. Started work from high school.
Q. From high school?
A. Yes, ma'am.
Q. And you did graduate high school?
A. Yes, ma'am.
Q. You said you attended college?
A. Yes, ma'am.
Q. Did you enjoy those years in college?
A. Yes and no. It was a bit of a difficult time. I didn't really have the parents in my life I needed or academic advisor and utilized it. So I was taking on too much and trying to work full-time as well as a manager. So it was a bit of a stressful time.
Q. Did you have any involvement during those years you worked for Walmart with heroin in this community?
A. No, ma'am.
Q. And when was your first time using heroin? Where were you?
A. I was in Bluffton.

Q. What prompted the use of your heroin in Bluffton?
A. I was using Roxies at the time. And the individual I was getting them from did not have any. Well, actually, prior to that, I was at somebody's house and they had a little bit, and told me it was the same thing as a Roxy. And I just tried a little bit there. That was the first time.
Q. Please inform this jury of the many ways in which you can use heroin.
A. You can use it intravenously. You can sniff it. You can smoke it. That's pretty much the most common ways.
Q. So intravenously, means shooting in a vein?
A. Yes, ma'am.
Q. You can smoke it?
A. Uh-huh.
Q. Which means you can dust a cigarette or marijuana joint with it; is that right?
A. Sure, or tar. You can smoke however, yeah. There's many ways.
Q. A tar?
A. Yeah, tar. It's like a thicker substance. I guess you would smoke it like -- I've never personally done it, but I guess you can heat it on something, a foil or -- yeah.
Q. And smoke it like through a pipe?

A. Yeah, I suppose. Like I said, I've never smoked it.

Q. And then smoking, in the vein, and what was the other one?

A. Sniffing.

Q. So you can snort this?

A. Yes. You can actually eat it as well.

Q. What's the difference in the high exposure you get from each one of those uses?

A. Well, the amount you would have to use would be different. And then the intensity, also the amount of time it would take for it to take action.

Q. So what's your favorite method?

A. Favorite method or most commonly used?

Q. The one that you prefer.

A. Intravenously, because it's more instant. And it's something that I tried one time, and it's -- the habit is as addictive as the drug is.

Q. The first time you did that in the vein, where were you living?

A. I was living in Summerville.

Q. And did Mo teach you how to do that?

A. No, Mo did not teach me how to do that.

Q. Did G or Sissy teach you how to use that?

A. No, none on them taught me how to use that. I

learned that on my own.

Q. You learned on your own?

A. Through other people that I was around that were using at the time.

Q. At that time, was Mo, my client, around?

A. The first time I shot up?

Q. Yes, sir.

A. No, but he did serve me the heroin that I shot.

Q. Oh, he did?

A. Yes.

Q. Okay. And when was this?

A. It was in the summer of 2013.

Q. Okay. Well, who is Matthew Simpson?

A. Matthew Simpson? Somebody that went to Mo for me sometimes, one of the individuals that actually introduced me to Mo or helped me come into contact with him.

Q. So Matthew Simpson was your connection when you moved back to Summerville; is that right?

A. He was my middleman, yeah, when I first got back, yeah.

Q. Also, prior to this, you were using cocaine?

A. Many, many years ago, yeah, not in the recent years, no, ma'am.

Q. And you bought cocaine from a person named Rico?

A. Yes.

Q. And you also used Ecstasy; isn't that right?
A. I did, yes, ma'am. I experimented.
Q. And that didn't have any kind of pain relief that you are looking for, does it?
A. Actually, it does. The serotonin in your head will relieve pain just as dopamine does. It's -- actually, Tramadol does the same thing as an SSRI. So it affects the serotonin, rather than dopamine, which is a pain relieving method.
Q. Serotonin is sort of same thing that helps you sleep?
A. Well, it can, yes.
Q. All right. You met Matthew Simpson in Summerville or Bluffton?
A. In Summerville.
Q. And he had some roommates, right?
A. Matt really hasn't ever been in a home. More or less, was in hotels for most of the time that I've known him.
Q. How did you meet Matt?
A. Through a family member, or through my mom's ex-boyfriend's son, which is kind of like my brother. I've known my entire life.
Q. Kind of like a stepbrother?
A. Yes, so to speak.

Q. What's his name?
A. Matt Rapagna.
Q. So this child Matt Rapagna was somebody you grew up with?
A. Yes, I've known him pretty much my entire life.
Q. And he was into drugs?
A. Weed and alcohol. He's never been in anything hard-core really.
Q. Who else? Who is Michael?
A. That's my brother.
Q. How old is Michael?
A. He would be 30 at the time.
Q. And you are 33?
A. Yes, ma'am.
Q. So you are the older brother?
A. Yes, ma'am.
Q. Okay. And does Michael have a girlfriend?
A. He had a girlfriend. I wouldn't call her his girlfriend now.
Q. He knew a woman named Amy Moore; is that correct?
A. Oh, that was never his girlfriend, but, yes, he knew her.
Q. Is Amy Moore the girlfriend that called the police when y'all were --
MR. UNDERWOOD: Objection, Your Honor.

THE COURT: Basis?

MR. UNDERWOOD: Relevance, goes to the earlier objection.

THE COURT: Please approach.

(Whereupon, the following bench conference takes place.):

THE COURT: First of all, it's hearsay unless you can establish he was there. He can't repeat any part of the conversation.

MS. JOHNS: During examination yesterday, he mentioned that the reason he had possession of heroin charge was because Amy Moore called the police and 30 police officers arrived at the house where he was.

THE COURT: Yeah, but you would still have to establish it was from his own personal knowledge that she called the police. But it's still hearsay. He can say what he did as a result, unless it fits into some exception.

MS. JOHNS: I will expand on what he did as a result.

THE COURT: You can do that, but it's hearsay.

(Whereupon, a bench conference ends.)

THE COURT: Sustained. Rephrase.

BY MS. JOHNS:

Q. There was a time in April of 2015 when you were at a home when an estimate of 30 police officers showed up; is

that correct?

A. I couldn't say 30, but quite a few, over a dozen.

Q. Over a dozen?

A. Yeah.

Q. Okay. And at that time, you and a number of other people were charged with possession of heroin, correct?

A. Two other people.

Q. Okay. And who were the two other people?

A. My brother and my girlfriend.

Q. And your girlfriend's name is Amber; is that right?

A. That is correct.

Q. Was your brother arrested?

A. He was.

Q. And was Amber arrested?

A. She was.

Q. Anybody else in the house?

A. Yes.

Q. Who was in the house?

A. Ashley Strickland.

Q. That's it?

A. That's it.

Q. Now, who was Bengi?

A. He is an individual that lived over at Big Dave's house.

Q. Did he use?

A. He did.
Q. What about Big Dave, did he use?
A. He did as well, yes.
Q. Do you know where Big Dave got his dope?
A. One of his sources was from Mo.
Q. And who else?
A. I don't really know all his other sources.
Q. You don't?
A. No. I know one other person he may have got it from, that was BK, yeah.
Q. You traveled with him when he went to get his dope, didn't you?
A. Occasionally, more when he went to take me to get something or I would take him to get something.
Q. So is it your testimony that G and Q and Mo and BK, that they are your only source of drugs? Is that your testimony?
A. At that time frame, they were the only people we were able to get dope from when I came back from Summerville.
Q. You were able to get drugs from?
A. I didn't have anybody else. It was almost like I was new to the area again after being gone for seven years. I didn't have a whole big social network here anymore. Especially when it came to those things, because when I left

the area, I wasn't involved in heroin.

Q. So you got drugs from Q?

A. I have gotten drugs from Q, yes.

Q. What about Chris? You got drugs from Chris before, didn't you?

A. Yes, he was one of The Boys over there.

Q. He was one of The Boys?

A. Yes. He was associated with them. That's how I met him. He served me for The Boys through that number.

Q. And there was a guy name Will; is that right?

A. He had been present at Q's house, yes.

Q. So everybody that you were buying dope from is listed as The Boys?

A. Yeah. They were all a part of that organization. At one time or another, I could have called that number or a number that I got from the individuals who had that phone at one point and got a direct number for them.

Q. What number was that?

A. There were so many. One point it was like 302-2310. They had a 1904 number. They had several numbers.

Q. What was that -- I'm sorry. Go ahead.

A. They changed it. It's not something that stayed the same all the time. If somebody was to get in trouble close to the group, they would change it, just as they made

me change my number before.

Q. Now, you said that there was a number that you used as a hub number. Do you remember that number itself?

A. Again, that number would change. As I said, at one point in time, it was something along the line of 302-2310, but I haven't called any of those numbers. They have gotten locked up a year ago the previous February. So it's been some time since I've dialed that number or even seen it in a phone.

Q. Who owned that number?

A. I wouldn't have ever looked at their records. I imagine it was a burn phone.

Q. You've had experience with cell phones, correct?

A. Yes.

Q. And when you get a cell phone, is it listed in your name?

A. It has been. And there have been times when it was not.

Q. Why wouldn't it be?

A. Just, obviously, reasons of what you may have been doing or the fact that I got a new number every month and I didn't want them to bill me for the cell phone.

Q. Okay. So when you got a new number every month, you would use it, and then you would owe money, and then you would just --

A. You wouldn't necessarily owe money unless you wanted to continue the service on it. You can always buy a new SIM card and it was cheaper than paying the bills for the next month's service.

Q. So you had a way of getting around anybody finding out that you were in this drug dealing business, right?

A. Well, I had a way to keep my cell phone bill down. It was cheaper to pay for a new month's cell phone than it was to keep the phone going, which it changes by now.

Q. During the time you were employed with law enforcement in Dorchester County, did they pay for your phone?

A. No.

Q. They didn't?

A. No.

Q. You were still paying for your own phone?

A. At some point during that, my girlfriend's grandmother got her a phone so she could stay in contact, and we didn't have to worry about that anymore. I just used her phone.

Q. Did you use that phone for the entire time?

A. Oh, not the entire time, no, ma'am.

Q. How long did you use that phone?

A. The exact date, I don't know.

Q. You don't know that date?

A. No, I wouldn't, no.
Q. So do you know the phone that you had before that, how long you had that phone?
A. No, I don't know how long. I've had bad runs with phones as far as breaking them. And being that they are $20 at Walmart, it wasn't hard to replace.
Q. Now, you had said earlier yesterday that there was something called transporting a phone number, where there would be a phone number that was used. Could you explain that to the jury, please?
A. Yes, ma'am. The detectives would use a phone or a device, I think they called it a Ninja phone or Ninja something, and they would basically call -- they would call my phone. And I would answer their call. And then it would call the number, the target number we were dialing so that they could record the conversation. So I never actually called their phone number. They would call me and then call the phone for Q or Mo. And it would be through that system that they would be able to record.
Q. So what you are saying is that somebody could use a phone and call a number, for example, they could use that transporting device, call a phone number?
A. Uh-huh.
Q. Like the 302 number?
A. Uh-huh.

Q. Call you, and when you looked at the phone, it would be coming from that 302 number?

A. As long as the individual's number that you were using as representation answered and -- I would have to answer their call first and allow that to take place. They couldn't just do that without my consent.

Q. Okay. You are aware of other technology that allows one to call a phone and it shows up as a different phone number, aren't you?

A. Yes. They have apps like that.

Q. So that's an app?

A. Yeah. That particularly wasn't an app. That was more of a device specifically designed for that.

Q. And the difference is that the app would show different phone number; whereas, the device helps law enforcement record it?

A. Yes. And it actually uses the same number. It actually traveled through my phone. It didn't just show up as a number. It used my phone.

Q. Right. But the app, you could use an app and you can call a number and it could transport --

A. Yeah, you could do that, yeah.

Q. Now, so with this arrest that occurred in April of 2015, I think that on cross-examination, Mr. Griffith asked you about other crimes?

A. Yes, ma'am.
Q. And you stated that you had stolen something that didn't belong to you; is that right?
A. From a store, yes.
Q. Is that the only time you've ever been caught?
A. From store shoplifting? I've had two shoplifting charges.
Q. Two charges?
A. Yes.
Q. But you've shoplifted more than twice?
A. Yes.
Q. Okay. And so being caught twice doesn't necessarily mean you've only done it twice; am I right?
A. No, as with anything.
Q. Okay. And so if you did go to the pawnshop and pawn something, did it actually belong to you or did it belong to somebody else?
A. Most of the time, things belonged to me that I've actually pawned. I am not real popular with the pawn shops. I haven't gone to the pawn shops a whole ton.
Q. And you are not popular with the pawn shops because they don't want you --
A. Not that they don't like me. More I just don't like that situation. I'm not real comfortable with that rather.

Q. Well, Amber has gone in and done that for you, hadn't she?
A. We've pawned things, yes, we have.
Q. And so has Amy, right?
A. I don't think Amy's ever pawned any merchandise for me.
Q. What about your brother?
A. Pawning things for me, no, I don't believe so.
Q. So other than money, have you obtained drugs by use of other things.
A. Yeah, like traded things, like gift cards. As I gave testimony yesterday, there was a gun that I purchased that I traded for something before.
Q. You purchased a gun?
A. Yeah, from an individual. It turned out to be an aerosol pistol.
Q. And you used that air pistol, which was like a, what, like a BB gun?
A. Yes, like a high-powered pellet gun, so to speak.
Q. And you used that to trade for drugs?
A. I did.
Q. And what about other items, laptops, iPads, cell phones, anything?
A. I haven't ever taken those particular devices. I took my brother at time to trade for those things.

Q. Let's talk about your brother a little bit, because in one of the recordings yesterday that we heard, I believe while you were at Summer Creek, somebody had asked you about your brother and you said he wasn't around anymore. Do you remember that?

A. I don't remember that. They asked me about another individual. That was not about my brother.

Q. It wasn't?

A. No, that was about Wes.

Q. Who is Wes?

A. Guy that I met through my cousin.

Q. The guy you met through your cousin Wes, did he use dope?

A. He did.

Q. Did you all ever share any dope?

A. What do you mean, share dope?

Q. Did he buy some dope and share it with you?

A. That had taken place before.

Q. Had you bought dope and shared it with him?

A. Yes, that has taken place before.

Q. Was Wes one of The Boys?

A. No. I never called that number and reached Wes. He never obtained that phone number. He had his own phone number.

Q. Oh, he had his own number? So the only people that

you were able to make contact with under the hub number was considered The Boys?

A. Or that called me from that number or told me that I could contact them to get heroin from that group.

Q. So let me see if I got this straight. If you were looking for heroin and you called Wes and he didn't have any, would he tell you where you could find some?

A. No, that wouldn't be likely. That wasn't really his avenue.

Q. So other than The Boys, if you called somebody, some other friend of yours looking for some heroin and they didn't have anything, wouldn't they tell you where you could find it?

A. If they knew where to find it. But then there would also be the days where you would just lay in the bed sick.

Q. Now, when they didn't have it and they didn't know where you could get it, did you get a phone call back from them telling you that they found some for you?

A. Sometimes, not always, not particularly always. People in that game, if you are not doing something for them, they are not really going to do something for you. And you do not always have the most amount of money to spend on that stuff. Things get tight. If you've got 20, 40 bucks, it's not enough to take care of them as well. They

are not really going to do you that favor. There's not a lot of favors out there. It's more like, you scratch my back, I scratch yours.

Q. Or every man for themselves?

A. A lot of times or just depends on which group you spend your time with. That's why the friends are few and far between in that.

Q. How many of your friends did you turn into the law enforcement?

A. Friends?

Q. Yes, sir.

A. Did I turn into law enforcement? I would never have considered them to be friends. They were business associates or acquaintances.

Q. I'm talking about your friends.

A. No friends.

Q. You don't have any friends?

A. I haven't turned any friends into law enforcement.

Q. Okay. Now let's talk about this agreement that you have with law enforcement.

A. Okay.

Q. First of all, they knew that you had a heroin charge from April of 2015, correct?

A. Yes.

Q. And then somebody set you up; is that right?
A. That is correct.
Q. And this somebody that set you up was not a friend of yours or was a friend of yours?
A. I couldn't tell you. Don't know who they are.
Q. So during this time that this person set you up, you went to four different locations. And you distributed heroin to the person, isn't that right?
A. No, I am not aware. I was under the impression that it was one location one time. I never seen the motion discovery, the Rule 5. All I know is that it happened. I never seen any of that. So I don't know how many times or what.
Q. Well, I was under the impression yesterday that when you were talking about your agreement, that law enforcement told you exactly what was going on and what consequences --
A. I was told that they had evidence against me, video and audio, that I had sold them heroin, and that was my situation. Plus, I was already facing the charges. So that was enough to enlighten me to know that I needed to do something.
Q. So they knew that you had distributed heroin and they told you about it?
A. That I had sold something to a CI.

Q. And did they tell you that at that time, without other convictions, that you could have gotten up to 15 years for that?

A. Not exactly the exact time frame. I know I could have done time. Again, it's been a long time since we've had those conversation.

Q. How long is a long time?

A. I mean, over two years, I believe. April 2005, so it's been about two years.

Q. So two years they knew, two years ago, that you were distributing heroin?

A. That I did at that time, yeah. And that's when I got arrested for it. And then I was presented the same opportunity that anybody of a conviction or the charges would have been presented.

Q. As far as you know?

A. Yes, as far as I know, yes.

Q. At least that's what they offered you, right?

A. Yeah.

Q. Now, you said that they didn't tell you that you had only done it one time?

A. They didn't say how many times I had done it.

Q. You knew you did it more than once?

A. Well, I knew I done it once.

Q. You had only done once?

A. That they knew of to that individual.
Q. Okay. Well, if you only did it once, then you would know who it was that turned you in, wouldn't you?
A. No, once to that individual.
Q. Okay. So if you did it with that individual more than once, they would know that, wouldn't they?
A. They would know, yes.
Q. And you wouldn't know that, would you?
A. I only know that they had evidence against me.
Q. So if you were selling heroin seven days a week, that would have been seven times that they would have known, right?
A. If that was the circumstances, yes.
Q. Okay. So did they go over dates with you?
A. They may have. I know that it said that I went to a specific location that was, I think, assigned or predetermined by me, and met them, and sold them less than a gram. And that's all that I know.
Q. Okay. And do you know if that was Publix?
A. I do not know.
Q. Or Sunoco?
A. I don't know the location.
Q. Well, you sold at Publix before, hadn't you?
A. I believe so, yes.
Q. And inside a convenience store where you hid it

underneath the soda can, right, or a bottle of soda for somebody with it on there, right?

A. I don't know if it was exactly that circumstance, but that's a possibility.

Q. Well, you used items to conceal the dope?

A. I have, yes.

Q. For example, like a gum pack?

A. Yeah, possibly.

Q. And then they also had gone to your home at one time at Winter Drive, didn't they?

A. I don't know if they did or not.

Q. Well, did they raid your house or not?

A. Oh, the police had raid the house?

Q. Yes.

A. Yes.

Q. And when they raided your house, they found evidence, didn't they?

A. No, they didn't find anything.

Q. They didn't?

A. They didn't find anything in my home.

Q. They didn't find syringes?

A. I don't believe so.

Q. Did they ever find a scale in your possession?

A. They found that at my brother's house at the time, in April. And it wasn't in my possession. It was on the

coffee table, as was everything except for some Xanax was in my pocket.

Q. Do you remember a time when Amber got pulled over and there were scales underneath your seat? You had a syringe in your pocket?

A. Yes, I've had syringes on me, yes. And Amber wasn't driving. She didn't get pulled over. Somebody else was driving. Amber hasn't been driving for a while. She may have been with me.

Q. Was that Elwood?

A. Elwood? No, I've never been with Elwood before.

Q. In this agreement that you made with law enforcement, you agreed not to commit any crimes, didn't you?

A. I agreed to be on my best behavior. I told them up front that it would be very difficult to send a heroin addict to buy heroin and to be around that environment still and not to try to not be sick still.

Q. Okay. Now, in this agreement, you agreed that you would be on your best behavior?

A. That I wasn't going to be out there running around doing anything crazy on the streets. I wasn't going to be out there buying and selling heroin or anything like that, you know, moving it around. They knew that I had an addiction.

Q. So you basically lied to them about that, didn't you?

A. No, I did not.

Q. You did buy, didn't you?

A. That's buying and selling for people, I mean as far as distributing, buying to sell.

Q. When you use it, you are buying it, aren't you?

A. That's what I'm saying. I bought for personal, but I wasn't buying to sell and move around. I wasn't selling heroin still. You have to buy it in order to sell it, I wasn't doing that part of it. I was taking care of my addiction.

Q. So you weren't selling it, but you were buying it?

A. I was.

Q. And you were buying it while you were working for police?

A. Not at the same time as the buys were going on, but in my free time, yes, I still buy heroin.

Q. I am not trying to trick you on that. I'm just asking you for an honest response.

A. I just want my wording to be taken correctly. I don't want them to think that I was buying heroin while working for them.

Q. I understand. So let me just sort of summarize your testimony. You weren't buying while you were doing a