

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

William P. Keesley, Circuit Court Judge

RECEIVED
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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JUAN ARROYO,

APPELLANT

APPELLATE CASE NO. 2013-000580

RECORD ON APPEAL

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1 State of South Carolina Court of General Sessions
2 County of Lexington

3
4
5 State)
6)
7 v.) Transcript of Record
8 Juan Rodolpho Arroyo) 10-GS-47-07
9 Defendant.)

10
11 March 4 - 5, 2013
12 Lexington, South Carolina

13 B E F O R E:

14 The Honorable William P. Keesley, Judge; and a
15 jury.

16
17 A P P E A R A N C E S:

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19 Curtis A. Pauling, III, Assist. Attorney General
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23 Attorneys for the Defendant
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1 (The following proceedings were held on
2 March 4, 2013.)

3 **THE COURT:** All right. Ladies and gentlemen,
4 we're going to change our focus now and we're going
5 to move from the more general to the more specific.
6 And what we're going to do is that I'm going to
7 qualify you to serve on a specific case. Much of
8 the procedure is going to be the same as what we
9 went through before.

10 I will qualify all of you. And if anybody is
11 disqualified from this particular case or excused
12 from this particular case, you'll be free to go.
13 But we will qualify everyone and then we will select
14 12 of you to serve as jurors and probably an
15 alternate or two and that's what we're going to do.

16 Now, remember what I told you, that you're
17 under oath, that you have an obligation to be
18 completely truthful and honest with me, that if you
19 have any doubt about whether any of these things
20 apply to you, you need to discuss it with me and let
21 me resolve the doubt, and that if I ever ask you
22 anything that you prefer to discuss more privately,
23 just let me know and we'll come down front and
24 handle it down front.

25 Now, I'm going to be asking you a series of

1 questions. These questions are designed to obtain
2 from you any possible connection you may have to the
3 case, the people in it, the type of case, whether
4 you or someone close to you has ever been through
5 anything that might affect your ability to be fair
6 and impartial.

7 Basically, what I want you to understand is
8 that the goal of this process is to enable us to
9 have a jury serving that is fair and impartial. So
10 if you keep that goal in mind, I think the questions
11 will make more sense to you.

12 The State is calling a case that is captioned
13 the State of South Carolina versus Juan Rodolpho
14 Arroyo. This indictment alleges the following:

15 That Juan Rodolpho Arroyo did, in Horry County,
16 on or about April 29, 2010, sell, manufacture,
17 deliver, purchase or bring into this state or
18 provide financial assistance or otherwise aid, abet,
19 attempt or conspire to sell, manufacture, deliver,
20 purchase or bring into this state or knowingly
21 became in actual or constructive possession or
22 knowingly attempted to become in actual or
23 constructive possession of more than 14, but less
24 than 28 grams of heroin, a controlled substance,
25 under the provisions of section 44-53-110 and

1 subsequent sections of the Code of Laws of South
2 Carolina, 1976, as amended, such conduct not having
3 been authorized by law and such activity occurring
4 and/or having significance in more than one county
5 of this state or arising out of or in connection
6 with a crime having significance in more than one
7 county of the state. That is an indictment for
8 trafficking heroin greater than 14 grams, but less
9 than 28 grams.

10 Now, you'll notice that I read to you that this
11 is alleged to have occurred primarily in Horry
12 County. I won't get too detailed with it, but
13 basically the venue of this case is here in
14 Lexington. This is a State Grand Jury case. It
15 falls under a specific statute and that's really
16 insignificant except that the State is going to have
17 to prove certain elements that I'll explain to the
18 jury at a later stage.

19 Now, this indictment is not evidence. An
20 indictment is nothing more than a charging paper.
21 It is the formal means by which someone is charged
22 and brought to trial.

23 Mr. Arroyo is presumed to be innocent. It is
24 incumbent upon the State of South Carolina having
25 brought this charge to prove every essential element

1 of the offense charged against Mr. Arroyo beyond a
2 reasonable doubt. You may not give an indictment
3 any evidentiary value. And, once again, Mr. Arroyo
4 is presumed innocent. He has no obligation to prove
5 anything at all.

6 I'll be posing questions to you. If any of
7 these questions apply to you or you have doubt about
8 whether they apply to you, please stand and listen
9 carefully to the question I ask of you and answer
10 the question.

11 Is Juan Rodolpho Arroyo in the courtroom today?
12 Mr. Arroyo, I need for you to stand and turn so the
13 jury can see you, please, sir.

14 Thank you very much. You may be seated.

15 Is there any member of the jury panel who is
16 related by blood or marriage or connected by
17 employment with the defendant in this case, Juan
18 Rodolpho Arroyo; if so, please stand?

19 (There was no response.)

20 **THE COURT:** Mr. Arroyo will be represented by
21 Ms. Debra Chapman and Mr. Brad Kirkland.

22 (Ms. Chapman and Mr. Kirkland stand.)

23 **THE COURT:** Thank you very much.

24 Now, the following persons have been identified
25 as potential witnesses for the State. As I call

1 their name, if that person is in the courtroom, I
2 need for that person to please stand and face toward
3 the jury: Investigator Ryan Wood of the Drug
4 Enforcement Unit.

5 **MR. GOINGS:** Not in the courtroom, Your Honor.

6 **THE COURT:** I'm probably going to mispronounce
7 the first name or perhaps the last name, Emigdio
8 Peneloza. It's spelled E-m-i-g-d-i-o, last name
9 P-e-n-e-l-o-z-a. Is that person in the courtroom?

10 **MR. GOINGS:** Not in the courtroom, Your Honor.

11 **THE COURT:** Sharon Lilly, Lisa Floyd.

12 All right. Are any of you related by blood or
13 marriage or connected by employment to any of the
14 potential witnesses for the State, to the best of
15 your knowledge; if so, please stand?

16 (There was no response.)

17 **THE COURT:** All right. The prosecutor for the
18 case is Mr. Cary Goings, Assistant Attorney General.
19 Do you have anybody assisting you, Mr. Goings?

20 **MR. GOINGS:** Yes, sir. Curtis Pauling from our
21 office is here and Kia Goins, our sec -- I mean,
22 paralegal with the AG's office.

23 **THE COURT:** So Mr. Pauling will be assisting
24 you as an attorney?

25 **MR. GOINGS:** That's correct, Your Honor.

1 **THE COURT:** All right. Thank you.

2 Ladies and gentlemen, do you know anything at
3 all about this matter? Do you have any knowledge
4 whatsoever about the underlying factual allegations?
5 To the best of your knowledge, have you heard, seen
6 or read anything through any news account? Have you
7 overheard any conversations? Do you have any
8 knowledge whatsoever about this matter; if so,
9 please stand?

10 (There was no response.)

11 **THE COURT:** Now, I've asked you if you're
12 related by blood or marriage to particular people,
13 the defendant, Mr. Arroyo, and any of the potential
14 witnesses for the State and I need to expand that
15 now and ask you this: If you've got any connection
16 of any kind with anybody that might be involved in
17 this lawsuit, you need to disclose that to us.

18 So, for example, if you're a friend, if you're
19 a neighbor, if you attend the same church or civic
20 clubs, if you're a current or former client of one
21 of these attorneys or anyone with whom they're
22 affiliated, if you've ever been on the opposite side
23 of the case represented by one of these attorneys or
24 anyone with whom they're affiliated, any kind of
25 connection of any kind -- any kind of connection --

1 that's redundant -- any kind of connection, please
2 let us know.

3 (Juror stands.)

4 **THE COURT:** What's your name?

5 **JUROR:** My name is Melba Elsey. And I have
6 known Kia Goins just on a friendship basis for a
7 number of years.

8 **THE CLERK:** She's juror number 79.

9 **THE COURT:** 79, Ms. Elsey, you have known
10 Mr. Goings?

11 **JUROR:** Ms. Goins, the paralegal.

12 **THE COURT:** And what's the nature of the
13 relationship? I'm sorry.

14 **JUROR:** We had a class, a fiction class,
15 together for about four or five years and just -- it
16 was a small group and we just got to know each other
17 and become good friends.

18 **THE COURT:** Is there anything at all about your
19 relationship or experience with the prosecuting
20 entity or anyone in it that would affect your
21 ability to be a fair and impartial juror in the
22 case?

23 **JUROR:** No, sir.

24 **THE COURT:** You can decide the case without
25 regard to what your friend may think of your

1 decision?

2 JUROR: Yes, sir.

3 THE COURT: Do you have any doubt whatsoever
4 about your ability to put aside your relationship
5 and decide the case based on the evidence and the
6 law?

7 JUROR: No doubt whatsoever.

8 THE COURT: All right. Thank you, ma'am.

9 Ms. Elsey is juror number 79. She's eligible
10 to serve.

11 Anybody else?

12 (Juror stands.)

13 THE COURT: Yes, sir, what's your name?

14 JUROR: Travis Goodman, number 97.

15 THE COURT: Mr. Goodman is juror number 97.

16 What's your situation?

17 JUROR: Kia and I went to high school together.

18 I don't know if she remembers. We were friends 20

19 years ago and I guess we're still friends now. I

20 haven't seen her in 20 years. No hard feelings.

21 But I do know Kia from high school.

22 THE COURT: Is there anything at all about your
23 relationship or experiences with anyone on the
24 prosecution side that would affect your ability to
25 be a fair and impartial juror in the case?

1 **JUROR:** No, sir.

2 **THE COURT:** Can you decide the case without
3 regard to what your friend may think of your
4 decision?

5 **JUROR:** Yes, sir.

6 **THE COURT:** Do you have any doubt at all about
7 your ability to put aside any relationship you may
8 have with anyone on the prosecution team and decide
9 this case based on the evidence and the law that's
10 presented? Do you have any doubt about that
11 ability?

12 **JUROR:** No, sir.

13 **THE COURT:** All right. Thank you, sir.

14 Mr. Goodman's juror number 97. He's eligible
15 to serve.

16 Anybody else?

17 (There was no response.)

18 **THE COURT:** All right. Specifically, do any of
19 you have any connection of any kind with the South
20 Carolina Attorney General's Office or anyone in it,
21 close friends, anybody works there that you haven't
22 already told us about?

23 (There was no response.)

24 **THE COURT:** Okay. Now, what agencies will be
25 involved in the testimony, Mr. Goings?

1 **MR. GOINGS:** The Horry County -- actually, it's
2 the Fifteenth Circuit. The Horry County Police
3 Department is the evidence custodian and chemist.

4 **THE COURT:** All right. So it's Horry County
5 Police Department and the Fifteenth Circuit Drug
6 Enforcement Unit?

7 **MR. GOINGS:** That's correct, Your Honor.

8 **THE COURT:** All right. Ladies and gentlemen,
9 do any of you have any connection currently or
10 formerly with the Horry County Police Department or
11 anyone in it; if so, please stand?

12 (There was no response.)

13 **THE COURT:** Do any of you have any connection
14 of any kind currently or formerly with the Fifteenth
15 Circuit Drug Enforcement Unit? The Fifteenth
16 Circuit, I believe, is Horry and Georgetown
17 Counties. If so, please stand.

18 (There was no response.)

19 **THE COURT:** All right. Have any of you or any
20 of your immediate family members ever been employed
21 in the field of law enforcement in any capacity at
22 any level, that would include federal, state, local
23 or military; if so, please stand?

24 (Jurors stand.)

25 **THE COURT:** I'm going to have to get y'all to

1 say your names and -- so we'll go one at a time.

2 Your name, sir?

3 **JUROR:** I'm juror 138. My cousin, Tracy
4 Morgan, is a deputy sheriff.

5 **THE COURT:** Wait a second. I'm sorry. I
6 should have explained this to y'all before. When
7 you say your name and your number, you've got to
8 give me time to find you, okay, because I write down
9 what you tell me.

10 138, Ms. Johns?

11 **JUROR:** Yes, sir.

12 **THE COURT:** And what's your situation?

13 **JUROR:** My cousin, Tracy Morgan, is a deputy
14 sheriff in Alabama.

15 **THE COURT:** He's a deputy sheriff where?

16 **JUROR:** He's in Alabama and he's a drug
17 officer...

18 **THE COURT:** Can you hear her?

19 **COURT REPORTER:** No, sir.

20 **THE COURT:** Drug officer -- your voice trails
21 off. He's a drug officer where?

22 **JUROR:** In Alabama.

23 **THE COURT:** Did you say a county?

24 **JUROR:** No. He lives in Alabama. You said
25 anybody that's related or a family member.

1 **THE COURT:** No, ma'am, you're answering the
2 question right. I just can't hear you. I didn't
3 hear what you said earlier. I'm sorry.

4 **JUROR:** He's in Opa, Alabama, the county.

5 **THE COURT:** All right. Now, is there anything
6 at all about your relationship with him or
7 experiences with him, anything whatsoever that would
8 affect your ability to be a fair and impartial juror
9 in this case?

10 **JUROR:** No, sir.

11 **THE COURT:** Do you have any doubt in your mind
12 about that?

13 **JUROR:** No, sir.

14 **THE COURT:** Thank you, ma'am.

15 Ms. Johns is 138. She's eligible to serve.

16 Yes, sir.

17 **JUROR:** 207, Gerald Price. I have a niece that
18 works with the City of Columbia Police Department in
19 narcotics for several years. Her husband is with
20 the highway patrol.

21 **THE COURT:** And you're a retired deputy
22 sheriff?

23 **JUROR:** Right, 32 years.

24 **THE COURT:** Is there anything at all about your
25 relationship with your niece or her husband that

1 affects your ability to be a fair and impartial
2 juror in this case?

3 **JUROR:** No, sir. I'm an honest man.

4 **THE COURT:** All right. And is there anything
5 at all about your prior experience in law
6 enforcement that would affect your ability to be a
7 fair and impartial juror in the case?

8 **JUROR:** No, sir.

9 **THE COURT:** Do you have any doubt whatsoever
10 about any of those things?

11 **JUROR:** No, sir.

12 **THE COURT:** Thank you.

13 Mr. Price is 207, eligible to serve.

14 Over here on the wall.

15 **JUROR:** 144, Terry Killinger, former deputy
16 sheriff --

17 **THE COURT:** Wait a second. I apologize to you.
18 This list is so long, it takes me a while to find
19 y'all.

20 144. Go ahead, please.

21 **JUROR:** Former deputy sheriff with the
22 Orangeburg County SWAT operator, medic. I just left
23 in August.

24 **THE COURT:** Did you do drug cases?

25 **JUROR:** Yes.

1 **THE COURT:** Is there anything at all,
2 Mr. Killinger, about your experience, your
3 relationship with law enforcement that affects your
4 ability to be a fair and impartial juror in this
5 case?

6 **JUROR:** No, Your Honor.

7 **THE COURT:** Do you have any doubt whatsoever
8 about that?

9 **JUROR:** No doubt, sir.

10 **THE COURT:** Thank you.

11 144 is eligible to serve.

12 Next row. Your name, sir?

13 **JUROR:** Number 97, Travis Goodman.

14 **THE COURT:** Mr. Goodman is 97. Go ahead,
15 please.

16 **JUROR:** I have two first cousins in the
17 sheriff's department, one in Edgefield County, but
18 he's retired, one in Greenwood County. Two cousins
19 that are highway patrol officers.

20 **THE COURT:** Is there anything at all about your
21 relationship with those people that affects your
22 ability to be a fair and impartial juror in the
23 case?

24 **JUROR:** No, sir.

25 **THE COURT:** Any doubt in your mind?

1 **JUROR:** No.

2 **THE COURT:** Thank you, sir.

3 Mr. Goodman's 97, eligible to serve.

4 Yes, ma'am.

5 **JUROR:** Cathy Manz, number 166. My

6 husband's --

7 **THE COURT:** Wait a second. Ms. Manz is 166.

8 Go ahead, please.

9 **JUROR:** My husband's sister is a police officer
10 in Doraville, Georgia.

11 **THE COURT:** Anything at all about your
12 relationship with her or her experiences that
13 affects your ability to be a fair and impartial
14 juror in this case?

15 **JUROR:** No, sir.

16 **THE COURT:** Any doubt in your mind?

17 **JUROR:** No.

18 **THE COURT:** Thank you.

19 Ms. Manz is juror number 166 and eligible to
20 serve.

21 **JUROR:** I'm juror 269, Tammie Trynieszewski.

22 **THE COURT:** All right. Ms. Trynieszewski is
23 number 269.

24 What's your situation?

25 **JUROR:** I have two uncles retired police

1 officers from Oklahoma. One was canine.

2 **THE COURT:** Anything about your relationship
3 with them or their experiences that affects your
4 ability to be a fair and impartial juror in this
5 case?

6 **JUROR:** No, Your Honor.

7 **THE COURT:** Any doubt in your mind?

8 **JUROR:** No, sir.

9 **THE COURT:** Thank you very much.

10 269 is eligible.

11 Yes, ma'am.

12 **JUROR:** Number 79, Melba Elsey.

13 **THE COURT:** Ms. Elsey is 79. Go ahead, please.

14 **JUROR:** My daughter is a lieutenant with the
15 Richland County Sheriff's Department in the lab
16 department. And my son-in-law is a detective with
17 the canine division with Richland County.

18 **THE COURT:** Is there anything about your
19 relationship with them or their experiences that
20 affects your ability to be a fair and impartial
21 juror in this case?

22 **JUROR:** No, sir.

23 **THE COURT:** Do you have any doubt?

24 **JUROR:** Well, they're just such --

25 **THE COURT:** No, don't explain it, just tell me

1 if you have any doubt.

2 JUROR: No, sir.

3 THE COURT: Are you sure?

4 JUROR: I'm sure.

5 THE COURT: You want to expand your answer, you
6 need to come down front.

7 JUROR: Well, I mean --

8 THE COURT: I'm sorry. That was a statement.
9 If you want to tell me more, you need to come down
10 front.

11 JUROR: No, sir.

12 THE COURT: Are you sure?

13 JUROR: I'm good.

14 THE COURT: Come down front. I think the
15 lawyers want to hear what you want to say.

16 (Whereupon, the following bench conference
17 was held on the record.)

18 THE COURT: Okay. Ms. Elsey, what was it you
19 wanted to -- that I cut you off saying?

20 JUROR: Well, I mean, I just -- my son-in-law,
21 he's just such a strong drug advocate, you know.
22 And he's just a firm believer if there's any doubt,
23 whatever, that we need to go to the next level to
24 make sure that there's no doubt. And that's pretty
25 much -- he is pretty much after drugs most of the

1 time, that's what he does, a number of cases.

2 **THE COURT:** Would that be on your mind when
3 you're deciding this case?

4 **JUROR:** No, sir. No, sir. I'm an honest
5 citizen and I have my own principles and I can make
6 decisions on my own.

7 **THE COURT:** So you won't be concerned about
8 what he might think of your decision?

9 **JUROR:** No. No. I mean, if they find him
10 guilty, you know, if there's enough evidence or if
11 there isn't enough evidence, so that's what --
12 that's what my decision will be based on.

13 **THE COURT:** Any doubt at all about your ability
14 to be fair and impartial?

15 **JUROR:** No, sir.

16 **THE COURT:** Any doubt at all about your ability
17 to put aside how your son-in-law or your daughter
18 may feel about allegations concerning drugs?

19 **JUROR:** No, sir.

20 **THE COURT:** Thank you, ma'am.

21 Ms. Elsey is juror number 79. She's eligible
22 to serve.

23 (The bench conference was concluded.)

24 **THE COURT:** Yes, sir, what's your name?

25 **JUROR:** Brian Enell, juror number 80.

1 **THE COURT:** Mr. Enell's juror number 80.

2 What's your situation?

3 **JUROR:** I was a military police. Also, while I
4 was in the military police, I was on DST, Drug
5 Suppression Team.

6 **THE COURT:** What is that?

7 **JUROR:** Basically undercover police work buying
8 and selling drugs.

9 **THE COURT:** What's the acronym? Say it again.

10 **JUROR:** DST, Drug Suppression Team. I was a
11 member.

12 **THE COURT:** Is there anything at all about your
13 experiences that affects your ability to be a fair
14 and impartial juror in this case?

15 **JUROR:** No.

16 **THE COURT:** Do you have any doubt at all about
17 your ability to be a fair and impartial juror in
18 this case?

19 **JUROR:** No doubt.

20 **THE COURT:** Thank you, sir.

21 Mr. Enell's juror number 80. He's eligible to
22 serve.

23 Yes, ma'am.

24 **JUROR:** Paula Miller, 181.

25 **THE COURT:** 181, Ms. Miller. What's your

1 situation?

2 JUROR: My brother is a cop for Forest Acres.

3 THE COURT: Your brother is an officer for who?

4 JUROR: Forest Acres.

5 THE COURT: Is there anything at all about your
6 relationship with him or experiences that affects
7 your ability to be a fair and impartial juror in
8 this case?

9 JUROR: No, sir.

10 THE COURT: Any doubt in your mind?

11 JUROR: No, sir.

12 THE COURT: Thank you.

13 181 is eligible.

14 Anybody else?

15 (There was no response.)

16 THE COURT: Have any of you ever served in any
17 type of capacity as a volunteer or auxiliary member
18 for any law enforcement agency; if so, please stand?

19 (There was no response.)

20 THE COURT: Are any of you members of or
21 financial contributors to any organization that has,
22 as a primary purpose, the enforcement of criminal
23 laws or modification of current criminal laws?
24 Those would include organizations such as Mothers
25 Against Drunk Driving, Citizens Against Violence or

1 CAVE, or any antidrug or drug awareness program such
2 as the DARE program, Drug Abuse Resistance Education
3 program. If any of you are members of or financial
4 contributors to any such organization, please stand.

5 (Juror stands.)

6 JUROR: I'm number 79, Melba Elsey.

7 THE COURT: Yes, ma'am. Go ahead, please,
8 ma'am.

9 JUROR: I've been, I guess, what you would call
10 a contributor of MADD for about 15 years.

11 THE COURT: Anything about your relationship
12 with that organization or its philosophies that
13 affects your ability to be a fair and impartial
14 juror in a case in which it's alleged that the
15 defendant engaged in trafficking drugs?

16 JUROR: No, sir.

17 THE COURT: Anything -- any doubt about that at
18 all?

19 JUROR: No, sir.

20 THE COURT: Thank you.

21 79, Ms. Elsey, is eligible to serve.

22 Anybody else?

23 (There was no response.)

24 THE COURT: Have any of you ever been a member
25 of a neighborhood crime watch program; if so, please

1 stand?

2 (Jurors stand.)

3 **THE COURT:** Your name, please, ma'am.

4 **JUROR:** Donna Sutor, jury number, I think it's
5 257.

6 **THE COURT:** 257, Ms. Sutor.

7 **JUROR:** Yes, sir.

8 **THE COURT:** Are you still a member of an
9 organization for a crime watch?

10 **JUROR:** Yes, sir, founded our organization.

11 **THE COURT:** What organization?

12 **JUROR:** It's our neighborhood crime watch, yes,
13 sir.

14 **THE COURT:** Do you all meet with law
15 enforcement in any capacity for training or
16 reporting?

17 **JUROR:** We have quarterly meetings.

18 **THE COURT:** Quarterly meetings?

19 **JUROR:** Yes, sir.

20 **THE COURT:** And somebody from the sheriff's
21 department come meet with you?

22 **JUROR:** Yes, sir.

23 **THE COURT:** Is there anything at all about your
24 relationship with the law enforcement community that
25 affects your ability to be a fair and impartial

1 juror in this case?

2 JUROR: No, sir.

3 THE COURT: Any doubt in your mind?

4 JUROR: No, sir.

5 THE COURT: Thank you.

6 257 is eligible.

7 Yes, sir.

8 JUROR: 97, Travis Goodman. My Eagle Scout
9 project was a crime watch zone.

10 THE COURT: Eagle Scout?

11 JUROR: Yes, sir.

12 THE COURT: Was that in Lexington County?

13 JUROR: Newberry County, sir.

14 THE COURT: Anything at all about that
15 experience that affects your ability to be a fair
16 and impartial juror in the case?

17 JUROR: No, sir.

18 THE COURT: Any doubt in your mind?

19 JUROR: No, sir.

20 THE COURT: Mr. Goodman's 97. He's eligible to
21 serve.

22 On the aisle up here.

23 JUROR: Juror 269 Tammie Trynieszewski.

24 THE COURT: All right. Ms. Trynieszewski,
25 what's your situation?

1 **JUROR:** Member of neighborhood watch and crime
2 watch, but back in Oklahoma. I haven't been there
3 for two years.

4 **THE COURT:** You're very soft spoken, speak up a
5 little for me.

6 **JUROR:** I'm a member of crime watch and
7 neighborhood watch back in Oklahoma, but haven't
8 been active for two years.

9 **THE COURT:** And did you say where that was?

10 **JUROR:** Oklahoma.

11 **THE COURT:** Anything at all about that
12 experience that affects your ability to be fair and
13 impartial as a juror in the case?

14 **JUROR:** No, Your Honor.

15 **THE COURT:** Any doubt in your mind?

16 **JUROR:** No, sir.

17 **THE COURT:** Thank you.

18 269 is eligible to serve.

19 Yes, ma'am.

20 **JUROR:** Kathy Fudge, juror 86. I've been a
21 member of crime watch years ago in South Congaree in
22 our neighborhood and most recently at Harborside
23 Condominiums here in Lexington.

24 **THE COURT:** All right. So do you all meet with
25 law enforcement regularly?

1 **JUROR:** No, sir. We have enough coverage with
2 law enforcement thank goodness.

3 **THE COURT:** Is there anything at all about your
4 relationship with that organization or those
5 organizations that affects your ability to be fair
6 and impartial as a juror in the case?

7 **JUROR:** None at all.

8 **THE COURT:** Any doubt in your mind?

9 **JUROR:** No, sir.

10 **THE COURT:** Thank you.

11 86, Ms. Fudge, is eligible to serve.

12 Yes, ma'am.

13 **JUROR:** Juror 210, Gail Provost.

14 **THE COURT:** All right. Ms. Provost, 210, go
15 ahead, please.

16 **JUROR:** Neighborhood watch.

17 **THE COURT:** Still active?

18 **JUROR:** Yes, sir.

19 **THE COURT:** Do you all have regular meetings
20 with law enforcement?

21 **JUROR:** About once a year.

22 **THE COURT:** Anything at all about that
23 relationship or experience that affects your ability
24 to be fair and impartial as a juror in the case?

25 **JUROR:** No, sir.

1 **THE COURT:** 210, Ms. Provost is eligible to
2 serve. Thank you.

3 Do any of you have such strong feelings
4 regarding the use or sell of illegal drugs that that
5 might in any way affect your ability to be fair and
6 impartial in a case in which it's alleged that drugs
7 were used or sold; if so, please stand?

8 (There was no response.)

9 **THE COURT:** Do any of you have any personal
10 experiences, close family members, close friends,
11 you, yourself, anything in your personal experiences
12 in life that might affect your ability to be a fair
13 and impartial juror in a case in which a person is
14 charged with committing a crime; if so, please
15 stand?

16 (Juror stands.)

17 **THE COURT:** What's your name?

18 **JUROR:** Brandon Wingard, juror number 293.

19 **THE COURT:** Come down front, please.

20 (Whereupon, the following bench conference
21 was held on the record.)

22 **THE COURT:** Mr. Wingard's 293.

23 You have something in your personal experience
24 that affects your ability to be fair and impartial?

25 **JUROR:** Yes, sir.

1 **THE COURT:** You're free to go, Mr. Wingard.
2 You don't have to call in or come back.

3 **JUROR:** All right. Thank you.

4 (The bench conference was concluded.)

5 **THE COURT:** 293, Mr. Wingard, is set aside on
6 the trial of this case.

7 All right. You want me to ask number six?

8 **MS. CHAPMAN:** Can I approach just for a moment,
9 Your Honor?

10 **THE COURT:** Sure.

11 (Whereupon, a bench conference was held off
12 the record.)

13 **THE COURT:** All right. Ladies and gentlemen,
14 I'm about through with these questions. The next
15 one I'm going to pose, I'm going to ask the
16 question, but we're not going to talk about it in
17 front of everybody else. I'll ask you to come down
18 front. We'll talk about it on the side.

19 Have any of you, any of your immediate family
20 members, anybody very close to you ever suffered
21 from any type of addiction or abuse problems related
22 to drugs or alcohol? Or, have any of you,
23 yourselves, any of you -- anybody close to you,
24 family member, friend, ever been the victim of
25 anything that had, as one of its core causes, a

1 history of alcohol or drug addiction or abuse? It
2 can be anything, it can be domestic violence, it can
3 be anything at all.

4 (Jurors stand.)

5 **THE COURT:** All right. Folks, we're going to
6 talk about these things on the side. Just form a
7 line for me and filter in.

8 (Whereupon, the following bench conferences
9 were held on the record.)

10 **THE COURT:** 166, Ms. Manz.

11 **JUROR:** Yes.

12 **THE COURT:** 166. What's your situation,
13 please?

14 **JUROR:** I had a close friend that died of
15 heroin abuse and alcoholism. I think it was in
16 2000. I lived in Maryland then. And my ex-husband
17 also was involved with heroin.

18 **THE COURT:** Tell me -- your ex-husband did what
19 now?

20 **JUROR:** He was involved with heroin also.

21 **THE COURT:** Was that in Maryland as well?

22 **JUROR:** That was also in Maryland, same time
23 period. It was one of my closest friends and
24 co-worker as well.

25 **THE COURT:** Ms. Manz, you understand that this

1 gentleman's charged with trafficking heroin?

2 **JUROR:** (Juror nodded head.)

3 **THE COURT:** Is there anything in your personal
4 experience that affects your ability to be fair and
5 impartial?

6 **JUROR:** It might.

7 **THE COURT:** I certainly understand. You're
8 through with jury duty. Do you need any kind of
9 slip for work to prove you were up here?

10 **JUROR:** No.

11 **THE COURT:** Thank you very much... You're free
12 to go.

13 166, Ms. Manz, is excused from jury duty.

14 **BAILIFF:** 128.

15 **THE CLERK:** 128, Ms. Hucks.

16 **THE COURT:** Ms. Hucks, what's your situation,
17 please?

18 **JUROR:** I had a cousin that was addicted to
19 alcohol. And he actually killed himself...

20 **COURT REPORTER:** I didn't hear the last part.

21 **JUROR:** He was addicted to alcohol and he drank
22 himself to death. And I currently have a brother
23 who has a fiancée who's addicted to pain medication.

24 **THE COURT:** You understand Mr. Arroyo is
25 charged with trafficking heroin?

1 **JUROR:** Yes, sir.

2 **THE COURT:** Is there anything at all about your
3 relationship with these folks, your experiences with
4 them, what you've seen or observed, have been
5 through that affects your ability to be a fair and
6 impartial juror in the case?

7 **JUROR:** No, sir.

8 **THE COURT:** Any doubt in your mind?

9 **JUROR:** No, sir.

10 **THE COURT:** Thank you very much.

11 Ms. Hucks is 128, eligible to serve.

12 Yes, ma'am.

13 **BAILIFF:** 31, Your Honor.

14 **THE COURT:** Ms. Brady.

15 **JUROR:** Yes.

16 **THE COURT:** 31. Go ahead, please.

17 **JUROR:** I had a younger brother that had an
18 addiction to drugs. And he, with a group, broke
19 into a home to steal, wanting to get drugs. That
20 was when he was a teenager, but he's 47 years old
21 now.

22 **THE COURT:** Is he clean now?

23 **JUROR:** Yes, has been.

24 **THE COURT:** Do you know if he used heroin or
25 not?

1 **JUROR:** He did not. I know he used lots of
2 stuff.

3 **THE COURT:** You understand Mr. Arroyo is
4 charged with trafficking heroin?

5 **JUROR:** Uh-huh.

6 **THE COURT:** Is there anything at all about your
7 experience or relationship with your brother that
8 affects your ability to be fair and impartial?

9 **JUROR:** No.

10 **THE COURT:** Any doubt in your mind?

11 **JUROR:** No.

12 **THE COURT:** Thanks, Ms. Brady.

13 31, Ms. Brady, is eligible to serve.

14 Yes, ma'am.

15 **BAILIFF:** 269.

16 **JUROR:** Tammie Trynieszewski.

17 **THE COURT:** Ms. Trynieszewski is juror number
18 269.

19 What's your situation?

20 **JUROR:** I have a stepson that's been in
21 trouble, in and out of the law for the last ten
22 years, all related to his drug abuse, began with
23 black tar heroin. He's tried to stay clean, but
24 it's been a hard road. I believe I can be impartial
25 because I don't know his circumstances. I don't

1 know anything about the case.

2 **THE COURT:** You understand he's charged with
3 trafficking heroin?

4 **JUROR:** Yes, sir.

5 **THE COURT:** Do you have any doubt at all about
6 your ability to be fair and impartial?

7 **JUROR:** No, I don't. I don't.

8 **THE COURT:** So you're confident you can put
9 aside your stepson's situation and decide --

10 **JUROR:** I believe I can, not knowing the
11 evidence and not knowing anything about him, I
12 believe I can.

13 **THE COURT:** Are you sure?

14 **JUROR:** Yes, sir, I am.

15 **THE COURT:** All right. If you have a problem,
16 you let me know, all right.

17 **JUROR:** I will.

18 **THE COURT:** Thank you.

19 269 is eligible to serve.

20 **BAILIFF:** 79, Your Honor.

21 **THE COURT:** Ms. Elsey.

22 **JUROR:** Yes, sir.

23 **THE COURT:** What's your situation?

24 **JUROR:** My stepson was charged with DUI when he
25 was in an accident, someone was killed. He served a

1 year in juvenile, whatever. And he has been on
2 pretty much every kind of drug there has been in
3 addition to all of that over the years.

4 **THE COURT:** Is he still using as far as you
5 know?

6 **JUROR:** Well, I think he is. He's in trouble
7 now. So, I mean, we thought everything had
8 straightened up, but he -- he's pending, he's in a
9 pending situation right now.

10 **THE COURT:** All right. You understand that
11 Mr. Arroyo is charged with trafficking heroin?

12 **JUROR:** Yes, sir, I do.

13 **THE COURT:** Is there anything at all about your
14 relationship or experiences with your stepson that
15 affects your ability to be a fair and impartial
16 juror in the case?

17 **JUROR:** Well, I mean, I've -- I will -- my
18 decision will be based on the evidence and how I
19 feel about that. I'm, you know, a strong advocate
20 of no drugs, but I'm still, you know, it's based on
21 evidence.

22 **THE COURT:** Do you have any doubt at all about
23 your ability to be fair and impartial as a juror in
24 this case?

25 **JUROR:** No, sir, I don't.

1 **THE COURT:** Thank you, ma'am.

2 Ms. Elsey is 79. She's eligible to serve.

3 **BAILIFF:** 86, Your Honor.

4 **THE COURT:** Ms. Fudge, what's your situation?

5 **JUROR:** My brother is currently homeless,

6 unemployed, his life pretty much destroyed by

7 alcohol and drugs. I don't even know where he is.

8 **THE COURT:** Do you know if any of those drugs

9 involve heroin?

10 **JUROR:** I do not know.

11 **THE COURT:** You understand Mr. Arroyo is

12 charged with trafficking heroin?

13 **JUROR:** Yes, I do.

14 **THE COURT:** Is there anything about your

15 relationship or your experiences with your brother

16 that affect your ability to be fair and impartial in

17 this case?

18 **JUROR:** No.

19 **THE COURT:** Any doubt in your mind?

20 **JUROR:** None.

21 **THE COURT:** Thank you.

22 Ms. Fudge is 86, eligible to serve.

23 **BAILIFF:** 111, Your Honor.

24 **THE COURT:** Ms. Harney?

25 **JUROR:** Yes.

1 **THE COURT:** 111, Ms. Harney. Go ahead.

2 **JUROR:** I have a stepson who's been in trouble
3 with drugs and the law since he was 14. He's now
4 25. He makes bad choices.

5 **THE COURT:** Do you know if any of the drugs
6 involve the use of heroin?

7 **JUROR:** No, not that I know of. It's mostly
8 been marijuana and alcohol.

9 **THE COURT:** You understand Mr. Arroyo is
10 charged with trafficking heroin?

11 **JUROR:** Yes.

12 **THE COURT:** Is there anything at all about your
13 relationship or experiences with your stepson that
14 affect your ability to be fair and impartial in this
15 case?

16 **JUROR:** Nothing.

17 **THE COURT:** Any doubt in your mind?

18 **JUROR:** No doubt.

19 **THE COURT:** Thank you.

20 Ms. Harney is 111. She's eligible to serve.

21 **BAILIFF:** 39, Your Honor.

22 **THE COURT:** Ms. Campbell?

23 **JUROR:** Yes, sir.

24 **THE COURT:** What's your situation?

25 **JUROR:** I have an aunt that died from

1 complications due to decades of drug use. And I
2 have a cousin who is currently awaiting trial on
3 drug charges in Alabama.

4 **THE COURT:** Do you know if your aunt used
5 heroin?

6 **JUROR:** Not to my knowledge.

7 **THE COURT:** Do you know what charges are
8 against your cousin, what drugs?

9 **JUROR:** It was meth.

10 **THE COURT:** You understand Mr. Arroyo is
11 charged with trafficking heroin?

12 **JUROR:** Uh-huh.

13 **THE COURT:** Is there anything at all about your
14 relationship with either of those people that
15 affects your ability to be a fair and impartial
16 juror in this case?

17 **JUROR:** No, sir.

18 **THE COURT:** Any doubt in your mind?

19 **JUROR:** No, sir.

20 **THE COURT:** Thank you.

21 Ms. Campbell is 39. She's eligible to serve.

22 Yes, ma'am.

23 **BAILIFF:** 152, Your Honor.

24 **THE COURT:** Ms. Layfield.

25 **JUROR:** Uh-huh.

1 **THE COURT:** What's your situation?

2 **JUROR:** My brother's been charged with
3 possession of marijuana. And my sister is an addict
4 of prescription drugs and she's had treatment twice,
5 not for heroin.

6 **THE COURT:** Okay. You understand Mr. Arroyo is
7 charged with trafficking drugs?

8 **JUROR:** Uh-huh.

9 **THE COURT:** Is there anything about your
10 relationship or experiences with your brother or
11 sister that affect your ability to be fair and
12 impartial in this case?

13 **JUROR:** I don't think so.

14 **THE COURT:** Do you have any doubt?

15 **JUROR:** No.

16 **THE COURT:** Thank you. Just have a seat back
17 there.

18 Ms. Layfield is 152. She's eligible to serve.

19 **BAILIFF:** 261, Your Honor.

20 **THE COURT:** Ms. Cureton -- no. 161?

21 **THE CLERK:** 261.

22 **THE COURT:** Okay. Ms. Taylor is 261.
23 What's your situation?

24 **JUROR:** I have two very close family members
25 that are drug addicts.

1 **THE COURT:** Do you know if either of them have
2 a problem with heroin?

3 **JUROR:** No.

4 **THE COURT:** You don't know or they don't?

5 **JUROR:** They don't.

6 **THE COURT:** You understand that Mr. Arroyo is
7 charged with trafficking drugs?

8 **JUROR:** Uh-huh.

9 **THE COURT:** Is there anything about your
10 relationship or experiences that affects your
11 ability to be a fair and impartial juror in light of
12 the situation with your two family members?

13 **JUROR:** I think there is.

14 **THE COURT:** Okay. Ms. Taylor, you're free to
15 go. You're through. Do you need any kind of slip
16 to prove you were up here today?

17 **JUROR:** I'm sorry?

18 **THE COURT:** Do you need a slip to prove you
19 were up here today?

20 **JUROR:** No, sir.

21 **THE COURT:** All right. Thank you.

22 Ms. Taylor is juror number 261. She's set
23 aside from the trial of this case.

24 **BAILIFF:** 27, Your Honor.

25 **THE COURT:** Ms. Blevins.

1 **JUROR:** Yes, sir.

2 **THE COURT:** What's your situation?

3 **JUROR:** I have had a friend pass away from a
4 heroin overdose.

5 **THE COURT:** How long ago?

6 **JUROR:** 2009.

7 **THE COURT:** Was that here in Lexington County?

8 **JUROR:** No, it wasn't in Lexington County. He
9 had resided in Lexington County and then he moved
10 out of state.

11 **THE COURT:** So he died in another state?

12 **JUROR:** Yes, sir.

13 **THE COURT:** Do you understand that Mr. Arroyo
14 is charged with trafficking heroin?

15 **JUROR:** Yes, sir.

16 **THE COURT:** Is there anything at all about your
17 relationship or experience with your friend that
18 affects your ability to be fair and impartial in
19 this case?

20 **JUROR:** Yes, sir.

21 **THE COURT:** All right. Ms. Blevins, you're
22 through with jury duty. I appreciate it very much.
23 You're a bartender, so I assume you don't need a
24 slip to prove you were up here today.

25 **JUROR:** No.

1 **THE COURT:** Thank you.

2 Ms. Blevins is juror number 27. She's excused
3 from the trial of this case.

4 **BAILIFF:** 181.

5 **THE COURT:** Paula Miller.

6 **JUROR:** I was born to a drug addicted mother
7 and I was removed from her care when I was a small
8 child. And her actions led to my brother being drug
9 dependent now. He's actually been arrested in
10 Lexington County, not charged or convicted, but
11 arrested for drug trafficking in the past five
12 years.

13 **THE COURT:** Is your mother still alive or do
14 you know?

15 **JUROR:** Yes, she is.

16 **THE COURT:** Do you have any kind of
17 relationship with her?

18 **JUROR:** It's not a good one. And I now take
19 care of my brother because of his drug issues.

20 **THE COURT:** Is he in jail?

21 **JUROR:** No. He's clean.

22 **THE COURT:** You understand Mr. Arroyo is
23 charged with trafficking heroin?

24 **JUROR:** Uh-huh.

25 **THE COURT:** Anything about your experience that

1 affects your ability to be fair and impartial in
2 this case?

3 **JUROR:** I think I'm pretty biased.

4 **THE COURT:** That's certainly understandable.

5 All right, Ms. Miller, you're through with jury
6 duty. Do you need any kind of slip to prove you
7 were up here today?

8 **JUROR:** Yes, I do.

9 **THE COURT:** Check with those ladies over there.
10 Ms. Miller is 181. She's excused from jury
11 duty.

12 **BAILIFF:** 138, Your Honor.

13 **THE COURT:** Ms. Johns.

14 **JUROR:** Both my mother and my father and my
15 brothers are all alcoholics. My mother was a drug
16 addict, pill popper. She's tried to commit suicide
17 plenty of times. My oldest brother committed
18 suicide over alcohol and drugs.

19 **THE COURT:** You understand Mr. Arroyo is
20 charged with trafficking heroin?

21 **JUROR:** Yes, I do understand. That doesn't
22 have any affect. It was just a question that you
23 had asked throughout the period.

24 **THE COURT:** Yeah. I'm not through with my
25 questions yet. But you understand what he's charged

1 with?

2 **JUROR:** Correct.

3 **THE COURT:** He's charged with trafficking
4 drugs.

5 **JUROR:** Correct.

6 **THE COURT:** Is there anything about your
7 experience, your relationship with your mother,
8 father, brothers that affects your ability to be
9 fair and impartial?

10 **JUROR:** No.

11 **THE COURT:** Any doubt at all about your ability
12 to decide this case fairly and impartially?

13 **JUROR:** No.

14 **THE COURT:** So you can put aside all that
15 experience about drug use and decide this case based
16 only on the evidence and the law?

17 **JUROR:** I just base it off of what I've gone
18 through and the effects that it had and I believe
19 that I can decide fairly. I'm not the type of
20 person that just basically accuses...

21 **COURT REPORTER:** I can't hear you.

22 **JUROR:** I'm sorry. I basically don't accuse
23 people without the facts.

24 **THE COURT:** Okay. So if the facts were to come
25 out, and I don't know anything about the case, but

1 if the facts were to come out that you believe
2 showed that he may be involved with trafficking or
3 may be involved in drugs and I tell you that the
4 State has to prove beyond a reasonable doubt that he
5 was involved with drugs, you can decide this case
6 without regard to what your personal situation is?

7 **JUROR:** Correct.

8 **THE COURT:** Any doubt in your mind?

9 **JUROR:** No.

10 **THE COURT:** All right. Thank you, ma'am.

11 138, Ms. Johns is eligible to serve.

12 **BAILIFF:** Number 8.

13 **THE COURT:** Mr. Aull, number 8. What's your
14 situation?

15 **JUROR:** Well, I had a daughter that passed away
16 last April. She was -- the contributing factor was
17 alcohol. She was addicted. And my father also died
18 at 48 from alcoholism.

19 **THE COURT:** You understand, Mr. Aull, that
20 Mr. Arroyo is charged with trafficking heroin?

21 **JUROR:** Yes.

22 **THE COURT:** Is there anything about your
23 experience that affects your ability to be a fair
24 and impartial juror in this case?

25 **JUROR:** No.

1 **THE COURT:** Any doubt in your mind?

2 **JUROR:** Completely no doubt.

3 **THE COURT:** Thank you. Just have a seat back
4 there.

5 Mr. Aull is juror number 8. He's eligible to
6 serve.

7 **BAILIFF:** 198.

8 **JUROR:** Georgia Papay.

9 **THE COURT:** Ms. Papay is juror number 198.
10 Yes, ma'am.

11 **JUROR:** I'm not sure if this is related or not,
12 but I have a close relative that was arrested for
13 domestic violence due to alcohol. I didn't know.

14 **THE COURT:** No. You did the right thing by
15 talking to me. Is there anything at all about that
16 experience or your relationship with that relative
17 that affects your ability to be fair and impartial?

18 **JUROR:** No, sir.

19 **THE COURT:** Any doubt in your mind?

20 **JUROR:** Huh-huh. No, sir.

21 **THE COURT:** Thank you.

22 Ms. Papay is juror number 198. She's eligible
23 to serve.

24 **BAILIFF:** Number 97, Your Honor.

25 **THE COURT:** Mr. Goodman.

1 **JUROR:** Yes, sir.

2 **THE COURT:** What's your situation?

3 **JUROR:** My sister-in-law and brother-in-law
4 were arrested. It was an association with drugs,
5 but I don't know all the details of it, but I know
6 it was drug related.

7 **THE COURT:** Was that in Lexington County?

8 **JUROR:** I think it was. They move around a
9 good bit. It may have been Kershaw. I'm not sure.

10 **THE COURT:** You understand Mr. Arroyo's charged
11 with trafficking heroin?

12 **JUROR:** Yes, sir.

13 **THE COURT:** Is there anything about your
14 experience that affects your ability to be fair and
15 impartial?

16 **JUROR:** No, sir.

17 **THE COURT:** Any doubt in your mind?

18 **JUROR:** No, sir.

19 **THE COURT:** Thank you.

20 Mr. Goodman's 97, eligible to serve.

21 Yes, ma'am.

22 **BAILIFF:** 210.

23 **THE COURT:** Ms. Provost.

24 **JUROR:** Yes.

25 **THE COURT:** What's your situation?

1 **JUROR:** My father was an alcoholic and my
2 husband has two brothers that are alcoholics. My
3 father has since passed away about 30 years.

4 **THE COURT:** Is there anything at all about your
5 experience or relationship with those individuals
6 that affects your ability to be fair and impartial
7 in this case?

8 **JUROR:** No, sir.

9 **THE COURT:** Any doubt in your mind?

10 **JUROR:** No, sir.

11 **THE COURT:** Thank you.

12 Ms. Provost is 210. She's eligible to serve.

13 **BAILIFF:** 232.

14 **THE COURT:** Mr. Shealy.

15 **JUROR:** Sealy.

16 **THE COURT:** Sealy, I'm sorry. I apologize.
17 What's your situation?

18 **JUROR:** Just to get it on the record, my wife's
19 nephew, her sister's son, died last year as a result
20 of drug abuse, a long time abuser.

21 **THE COURT:** Do you know what drug or drugs?

22 **JUROR:** Numerous.

23 **THE COURT:** Any specific knowledge as to
24 heroin?

25 **JUROR:** No, sir.

1 **THE COURT:** You understand Mr. Arroyo is
2 charged with trafficking heroin?

3 **JUROR:** Yes, sir.

4 **THE COURT:** Is there anything about your
5 experience, your relationship with those individuals
6 that affects your ability to be fair and impartial
7 as a juror in the case?

8 **JUROR:** No, sir.

9 **THE COURT:** Any doubt in your mind?

10 **JUROR:** No, sir.

11 **THE COURT:** Thank you, sir.

12 Mr. Sealy is juror number 232. He's eligible
13 to serve.

14 (The bench conferences were concluded.)

15 **THE COURT:** Have any of you formed or expressed
16 any opinions about this case; if so, please stand?

17 (There was no response.)

18 **THE COURT:** Are any of you aware of any
19 interest, bias or prejudice that you might have for
20 or against the State, for or against the defendant,
21 for or against anyone or any entity involved in this
22 case; if so, please stand?

23 (There was no response.)

24 **THE COURT:** Can each of you give both the State
25 of South Carolina and the defendant, Mr. Arroyo, a

1 fair and impartial trial? If you know of any reason
2 why you cannot, please stand now.

3 (There was no response.)

4 **THE COURT:** Further questions from the State?

5 **MR. GOINGS:** None from the State, Your Honor.

6 **THE COURT:** All right. I feel like I've
7 covered one, two, three, four, five. Six was
8 withdrawn. I've covered eight and nine. I think
9 I've covered, with the general ones, seven. I'm not
10 going to ask ten. I'm not going to ask 11. If
11 y'all want to preserve this for the record, I'll be
12 happy to make this a court's exhibit. Any other
13 questions?

14 **MR. KIRKLAND:** No other questions that we have,
15 Your Honor; however, we would like to preserve it
16 for the record.

17 **THE COURT:** Okay.

18 (Court's Exhibit Number 1, defense request
19 for voir dire, marked for identification purposes.)

20 **THE COURT:** I didn't bring my notebook up. Is
21 five and five the strikes or is it five and -- do I
22 need to go get my notebook?

23 **MR. GOINGS:** You might need to get your
24 notebook, Your Honor.

25 **MS. CHAPMAN:** Because we were asking.

1 **MR. GOINGS:** I think it's five and ten, Your
2 Honor, because it's trafficking, Your Honor.

3 **THE COURT:** All right. Five and ten then.

4 **MR. KIRKLAND:** We'll agree to that.

5 **THE COURT:** All right. Ladies and gentlemen,
6 the jury panel is qualified.

7 Now, what we're going to do, the computer has
8 randomly selected you and we're going to call out --
9 do y'all need them to come forward.

10 **MR. KIRKLAND:** I think some people feel
11 uncomfortable, so I don't think we need them to
12 unless the prosecution does. They can stand in
13 place if they'd like to.

14 **THE COURT:** All right. Folks, if you hear your
15 name called, I need you to stand and wait until
16 you're told to be seated or to come forward, all
17 right.

18 Strikes are five for the State and ten for the
19 defense.

20 Madame Clerk, the agreement was we'd take that
21 list of 40, anybody that was set aside, you just
22 strike through them and you keep going down the
23 list. Do I have the list?

24 **THE CLERK:** Yes, sir.

25 **THE COURT:** All right. Give us a jury, please.

1 **THE CLERK:** Number 128, Amanda Hucks.

2 (Whereupon, Amanda Hucks, a white female,
3 stood.)

4 **THE CLERK:** What say you for the State?

5 **MR. GOINGS:** Please present Ms. Hucks.

6 **THE CLERK:** What say you for the defense?

7 **MS. CHAPMAN:** You can seat Ms. Hucks.

8 **THE COURT:** Ms. Hucks, I need you to come
9 forward and have a seat in the jury box. Bring your
10 personal belongings with you, please.

11 **THE CLERK:** Number 257, Donna Sutor.

12 (Whereupon, Donna M. Sutor, a white female,
13 stood.)

14 **THE CLERK:** What say you for the State?

15 **MR. GOINGS:** Please present Ms. Sutor.

16 **THE CLERK:** What say you for the defense?

17 **MS. CHAPMAN:** Please excuse the juror.

18 **THE COURT:** Just have a seat, please, ma'am.

19 **THE CLERK:** 97, Travis Goodman.

20 (Whereupon, Travis R. Goodman, a white male,
21 stood.)

22 **THE CLERK:** What say you for the State?

23 **MR. GOINGS:** Please present Mr. Goodman.

24 **THE CLERK:** What say you for the defense?

25 **MS. CHAPMAN:** Please excuse the juror.

1 **THE COURT:** Have a seat, Mr. Goodman, please.

2 **THE CLERK:** 79, Melba Elsey.

3 (Whereupon, Melba A. Elsey, a white female,
4 stood.)

5 **THE CLERK:** What say you for the State?

6 **MR. GOINGS:** Please present Ms. Elsey.

7 **THE CLERK:** What say you for the defense?

8 **MS. CHAPMAN:** Please excuse the juror.

9 **THE COURT:** Have a seat, please, Ms. Elsey.

10 **THE CLERK:** 117, Charles Hawley.

11 (Whereupon, Charles J. Hawley, a white male,
12 stood.)

13 **THE CLERK:** What say you for the State?

14 **MR. GOINGS:** Please present Mr. Hawley.

15 **THE CLERK:** What say you for the defense?

16 **MS. CHAPMAN:** Please seat the juror.

17 **THE COURT:** Come forward, please, Mr. Hawley.

18 **MR. KIRKLAND:** What number was that?

19 **THE COURT:** 117.

20 **THE CLERK:** Number 109, Dustin Harmon.

21 (Whereupon, Dustin C. Harmon, a white male,
22 stood.)

23 **THE CLERK:** What say you for the State?

24 **MR. GOINGS:** Please present Mr. Harmon.

25 **THE CLERK:** What say you for the defense?

1 **MS. CHAPMAN:** You can seat Mr. Harmon.

2 **THE COURT:** Come forward, please.

3 **THE CLERK:** 232, Robert Sealy.

4 (Whereupon, Robert B. Sealy, a white male,
5 stood.)

6 **THE CLERK:** What say you for the State?

7 **MR. GOINGS:** Please present Mr. Sealy.

8 **THE CLERK:** What say you for the defense?

9 **MS. CHAPMAN:** Please excuse the juror.

10 **THE COURT:** Have a seat, please, Mr. Sealy.

11 **THE CLERK:** Number 207, Gerald Price.

12 (Whereupon, Gerald M. Price, a white male,
13 stood.)

14 **THE CLERK:** What say you for the State?

15 **MR. GOINGS:** Please present Mr. Price.

16 **THE CLERK:** What say you for the defense?

17 **MS. CHAPMAN:** Please excuse the juror.

18 **THE COURT:** Have a seat, please, sir.

19 **THE CLERK:** 88, Frances Garris.

20 (Whereupon, Frances M. Garris, a white
21 female, stood.)

22 **THE CLERK:** What say you for the State?

23 **MR. GOINGS:** Please present Ms. Garris.

24 **THE CLERK:** What say you for the defense?

25 **MS. CHAPMAN:** Please seat the juror.

1 **THE COURT:** Come forward, please, ma'am. Have
2 a seat in the jury box.

3 **THE CLERK:** 34, Ciara Brooks.

4 (Whereupon, Ciara S. Brooks, a black female,
5 stood.)

6 **THE CLERK:** What say you for the State?

7 **MR. GOINGS:** Please present Ms. Brooks.

8 **THE CLERK:** What say you for the defense?

9 **MS. CHAPMAN:** Please seat Ms. Brooks.

10 **THE COURT:** Come forward, please, ma'am. Have
11 a seat in the jury box.

12 **THE CLERK:** 152, Nicole Layfield.

13 (Whereupon, Nicole K. Layfield, a white
14 female, stood.)

15 **THE CLERK:** What say you for the State?

16 **MR. GOINGS:** Please present Ms. Layfield.

17 **THE CLERK:** What say you for the defense?

18 **MS. CHAPMAN:** Please seat the juror.

19 **THE COURT:** Come forward, please, ma'am. Have
20 a seat in the jury box.

21 **THE CLERK:** 141, Ashley Jovanelly.

22 (Whereupon, Ashley F. Jovanelly, a white
23 female, stood.)

24 **THE CLERK:** What say you for the State?

25 **MR. GOINGS:** Please present Ms. Jovanelly.

1 **THE CLERK:** What say you for the defense?

2 **MS. CHAPMAN:** Please seat the juror.

3 **THE COURT:** Come forward, please, ma'am. Have
4 a seat in the jury box.

5 **THE CLERK:** 269, Tammie Trynieszewski.

6 (Whereupon, Tammie S. Trynieszewski, a white
7 female, stood.)

8 **THE CLERK:** What say you for the State?

9 **MR. GOINGS:** Please present Ms. Trynieszewski.

10 **THE CLERK:** What say you for the defense?

11 **MS. CHAPMAN:** Please excuse the juror.

12 **THE COURT:** Have a seat, please, ma'am.

13 **THE CLERK:** 80, Brian Enell.

14 (Whereupon, Brian M. Enell, a white male,
15 stood.)

16 **THE CLERK:** What say you for the State?

17 **MR. GOINGS:** Please present Mr. Enell.

18 **THE CLERK:** What say you for the defense?

19 **MS. CHAPMAN:** Please excuse the juror.

20 **THE COURT:** Have a seat, please, Mr. Enell.

21 **THE CLERK:** 198, Georgia Papay.

22 (Whereupon, Georgia M. Papay, a white
23 female, stood.)

24 **THE CLERK:** What say you for the State?

25 **MR. GOINGS:** Please present Ms. Papay.

1 **THE CLERK:** What say you for the defense?

2 **MS. CHAPMAN:** Please seat the juror.

3 **THE COURT:** Come forward, please, ma'am, and
4 have a seat in the jury box.

5 **THE CLERK:** 122, Kathryne Heron.

6 (Whereupon, Kathryne M. Heron, a white
7 female, stood.)

8 **THE CLERK:** What say you for the State?

9 **MR. GOINGS:** Please present Ms. Heron.

10 **THE CLERK:** What say you for the defense?

11 **MS. CHAPMAN:** Please seat the juror.

12 **THE COURT:** Come forward, please, ma'am. Have
13 a seat in the jury box.

14 **THE CLERK:** 113, Taylor Harris.

15 (Whereupon, Taylor L. Harris, a white
16 female, stood.)

17 **THE CLERK:** What say you for the State?

18 **MR. GOINGS:** Please present Ms. Harris.

19 **THE CLERK:** What say you for the defense?

20 **MS. CHAPMAN:** Please seat the juror.

21 **THE COURT:** Come forward, please, ma'am. Have
22 a seat in the jury box.

23 **THE CLERK:** 147, Robert Koch.

24 (Whereupon, Robert M. Koch, a white male,
25 stood.)

1 **THE CLERK:** What say you for the State?

2 **MR. GOINGS:** Please present Mr. Koch.

3 **THE CLERK:** What say you for the defense?

4 **MS. CHAPMAN:** Please seat the juror.

5 **THE COURT:** Come forward, please, sir, and have
6 a seat in the jury box.

7 **THE CLERK:** 144, Terry Killinger.

8 (Whereupon, Terry A. Killinger, a white
9 male, stood.)

10 **THE CLERK:** What say you for the State?

11 **MR. GOINGS:** Please present Mr. Killinger.

12 **THE CLERK:** What say you for the defense?

13 **MS. CHAPMAN:** Please excuse the juror.

14 **THE CLERK:** Have a seat, please, sir.

15 Number 8, David Aull.

16 (Whereupon, David R. Aull, a white male,
17 stood.)

18 **THE CLERK:** What say you for the State?

19 **MR. GOINGS:** Please present Mr. Aull.

20 **THE CLERK:** What say you for the defense?

21 **MS. CHAPMAN:** Please seat the juror.

22 **THE CLERK:** Come forward and have a seat in the
23 jury box, sir.

24 **THE COURT:** All right. Draw an alternate.

25 Strikes are one for the State, two for the defense.

1 **THE CLERK:** Number 39, Ashley Campbell.

2 (Whereupon, Ashley M. Campbell, a white
3 female, stood.)

4 **THE CLERK:** What say you for the State?

5 **MR. GOINGS:** Please present Ms. Campbell.

6 **THE CLERK:** What say you for the defense?

7 **MS. CHAPMAN:** Please excuse the juror.

8 **THE COURT:** Have a seat, please, ma'am.

9 **THE CLERK:** 111, Sue Harney.

10 (Whereupon, Sue P. Harney, a white female,
11 stood.)

12 **THE CLERK:** What say you for the State?

13 **MR. GOINGS:** Please present Ms. Harney.

14 **THE CLERK:** What say you for the defense?

15 **MS. CHAPMAN:** Please seat Ms. Harney.

16 **THE CLERK:** Come forward and have a seat in the
17 jury box.

18 That's the alternate, Your Honor.

19 **THE COURT:** Do y'all want more than one
20 alternate?

21 **MR. GOINGS:** The State's good with one, Your
22 Honor.

23 **THE COURT:** All right. Are there any matters
24 to take up, including composition of the jury prior
25 to the jury being sworn, from the State?

1 **MR. GOINGS:** None from the State, Your Honor.

2 **THE COURT:** From the defense?

3 **MR. KIRKLAND:** No, sir, Your Honor.

4 **THE COURT:** All right. Thank you.

5 All right. Ladies and gentlemen, I have to get
6 my bearings from the attorneys to tell me if there
7 are any pretrial issues that I need to address.
8 There usually are and so I'll need to talk with them
9 and find out what I may need to do that does not
10 require your presence. I'll bring you back in here
11 as quickly as I can and we'll let you go to lunch.
12 You'll be on your own for lunch and I'll tell you
13 when to be back.

14 Now, listen really carefully to me, please. Do
15 not discuss this case in any way among yourselves.
16 Later on I'm going to tell you very specifically
17 don't talk about this case at all among yourselves
18 until I tell you to, don't discuss the case with
19 family members or friends or anyone else. Again,
20 there'll be a more specific instruction about that.
21 If you've got cell phones, make sure they're turned
22 off, don't make any calls during this break.

23 Now, you'll go back here into this jury room.
24 You are not permitted to talk about the case. What
25 I do want you to do, without talking about the case

1 or anybody in it in any way, is to pick the person
2 that you want to serve as your foreman, whoever you
3 want to be the foreperson of the jury. It cannot be
4 the alternate, all right. So among the original 12,
5 you all pick a person and write that person's name
6 on a slip of paper. They'll give you something to
7 write with, all right.

8 Okay. Follow this bailiff here and he'll take
9 you back to the jury room.

10 (The jury retires to the jury room.)

11 **THE COURT:** Ladies and gentlemen, if you were
12 not selected for this jury, we don't need you
13 anymore for jury duty and -- just give me a second.
14 Remember what I said to the other group, you have an
15 exemption for three calendar years. So 2013, '14
16 and '15, if you get a notice to come to state court
17 jury duty, just let us know if you do not wish to
18 serve.

19 I used to always give the jurors an opportunity
20 to have a shot at me for questions, comments,
21 criticisms or complaints. I'd take my robe off and
22 come down there and y'all can have at me. But the
23 Chief Justice has told us to stop doing that, so I
24 stopped doing it. But if you have some real serious
25 issue that you think I should address, I'm pretty

1 easy to find on the Internet and you can write me
2 and send me a note.

3 Now, so far I've only had one note and that was
4 in Aiken County and that was from an actual trial
5 jury because some of them got upset because one of
6 the ladies on the trial jury was trying to push her
7 Avon products during the whole trial. Not much I
8 can do about that, that's kind of situational, but I
9 did forward it on to the chief judge in Aiken. And
10 I'd be happy to address any issues you all may have
11 as to how you think we might could do things better
12 or different or any problems you may have come
13 across.

14 All right. There will be a little slip in the
15 paper -- the envelope you get certifying you were up
16 here the day you were actually up here. Any of
17 y'all who get paid for jury duty by your employers,
18 we have had a couple instances in the past where
19 people decided to take the rest of the week off and
20 claim to the employer that they were on jury duty,
21 that won't work. It doesn't work. It's bad. So if
22 anybody tries to put that bug in your ear, resist
23 that, please.

24 It takes about ten days from the end of the
25 term for all the paperwork to get processed and

1 you'll get your Happy Meal check from the county.

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

3 Let me see the lawyers up here, please.

4 (The remaining jury panel was excused.)

5 (Whereupon, a bench conference was held off
6 the record.)

7 **THE COURT:** If the jury is ready, you can bring
8 them back in now.

9 (Pause.)

10 **THE COURT:** The jury selected Nicole Layfield
11 as the Foreperson, 152.

12 (The jury returns to the courtroom.)

13 **THE COURT:** Ms. Layfield, you're the Foreperson
14 of the jury. You stay in that seat throughout the
15 trial. The alternate stays in the end seat on the
16 back row throughout the trial.

17 Folks, I'm going to let you go to lunch. And
18 when you come back, I'm going to give you some
19 instructions. I'm just going to give you the
20 skeleton version of the most essential ones before I
21 let you go to the lunch break and then -- the ones
22 when you come back will be just as important. I'm
23 not saying these are more important than the others.
24 These are just the ones I got to do to get you
25 through lunch, all right.

1 Now, I need you back at 2:15. I'm going to
2 meet with the lawyers before then and deal with a
3 few issues and then we expect that we can get to you
4 at 2:15. When you come back, don't come through the
5 courtroom. The bailiff will show you, there's a
6 glass area over here, you come to that door. There
7 will be somebody there to let you in. It's a
8 secured area back here. So just -- I need you back
9 in the jury room at 2:15.

10 Now, normally, what we do with court is we go
11 until about 5:00, 5:30 with the jury, and that's
12 what I think is going to happen today. So we'll
13 probably try to get most, if not all, of the
14 evidence in today and continue tomorrow and you
15 should get the case some time tomorrow based on what
16 they're telling me.

17 Now, to reiterate what I told you before you
18 went back there, do not discuss this case in any way
19 among yourselves. It's perfectly fine for you to
20 tell a family member or a friend or somebody that
21 you're on a jury, but you cannot discuss this case
22 with anybody else until the week's over, you've been
23 discharged from jury duty. So, you know, you can
24 tell your boss, I'm on a jury. You can tell a
25 friend or a spouse, I'm on the jury, but you can't

1 say anything at all about the case, who's in it,
2 what kind of case it's alleged to be. You cannot do
3 that.

4 If anybody attempts to contact you and discuss
5 the case with you, please report that to me so that
6 I can deal with it.

7 I don't know of any media coverage associated
8 with this trial, but I never know what the media's
9 going to choose to pick up and what they're not. So
10 if there is any media coverage of the trial, get
11 away from it and report to me at the first
12 opportunity what you may have seen, heard or read
13 through the media.

14 You've been given those juror buttons. I know
15 they're not accessories you would choose for your
16 outfit. The reason you've been given those juror
17 buttons is, one of the primary reasons, is that if
18 somebody that is in any way involved in this case
19 were to have contact with you, if y'all were to have
20 a conversation and that were reported to me, it
21 might be perfectly innocent, I have to stop
22 everything we're doing, the trial just sits while I
23 go through a hearing to determine not only what
24 happened, but why it happened. So I've got to try
25 to read people's minds. If you've got that bright

1 red juror button on, then I know that the person who
2 was talking to you knew you were a juror, okay. So
3 that's why you're asked to wear them.

4 I insist that you wear them on the courthouse
5 property. It's better if you wear them if you're at
6 a local restaurant or something. People won't look
7 at you funny. They're used to seeing them I promise
8 you. But if you don't want to wear it at a
9 restaurant, I'm not going to make you. Just -- just
10 when you come back to the courthouse, the safest
11 thing is to get on the elevator and come straight
12 back here. If you're one of these early folks,
13 that's great, there'll be somebody here.

14 Now, you're going to be given an instruction
15 about cell phone use and about social media. Now,
16 what I just told you was you're not to talk about
17 the case with anybody and you're only to talk about
18 the case among yourselves when I tell you to and
19 you're not to talk about the case with anybody else
20 until the week's over.

21 Well, you can't go on Facebook and post
22 something about being on a jury. You can't tweet
23 something about being on a jury. That's the same as
24 if you walked out there in the front of the
25 courthouse and screamed it out to anybody that could

1 hear. So once the trial is over, you can do
2 whatever you like.

3 But I'm going to have to read to you something
4 about use of cell phones, smart phones, social
5 media. And I got to do it, I might as well do it
6 now, all right.

7 Now, this is what the Supreme Court says we
8 have to tell you: Until your jury service is
9 concluded, you're not to discuss the case with
10 others including other jurors except as directed by
11 the court. You're not to read or listen to any news
12 reports about the case. You're not to use a
13 computer, a cell phone or any other electronic
14 device with communication capabilities while
15 attending a trial or during the deliberations. You
16 may use those devices during lunch breaks or
17 extended breaks, but you cannot use them to obtain
18 or disclose information that's prohibited.

19 You're not to use a computer, a cell phone or
20 any other electronic device with communication
21 capabilities or any other method to obtain or
22 disclose information about a case when you're not in
23 court. And information about a case includes, but
24 is not limited to the following types of things:
25 Any information about a party, a witness, an

1 attorney or a court officer, any news accounts of
2 the case, any information collected through juror
3 research on any topics raised or testimony offered
4 by a witness, any information collected through
5 juror research on any other topic that a juror might
6 think would be helpful in the case.

7 Now, gets me to the last point. You're not to
8 do independent research. When you come back and you
9 take the oath of a trial jury, that oath is going to
10 be that you promise us that you will decide the case
11 based on the evidence and the law. And those things
12 are going to come to you in this courtroom. I'm
13 going to tell you the law. The evidence is going to
14 come from the witnesses and the exhibits. So don't
15 do independent research, don't go on the Internet or
16 to a law library and start looking up law, that's my
17 job to tell you the law.

18 Once you hear where something is alleged to
19 have occurred, of course, this is alleged to have
20 occurred in Horry County primarily, you don't go
21 there and look around. Don't do independent
22 research. Just avoid that, please. Don't look up
23 the law, don't look up anything related to anybody
24 in the case including a court officer like me, all
25 right.

1 Any questions before I let you go?

2 (There was no response.)

3 **THE COURT:** 2:15 in the jury room. Follow the
4 bailiff. Thank you. Don't discuss the case.

5 (The jury was excused for lunch.)

6 **THE COURT:** All right. Ladies and gentlemen, I
7 try to say this in every case, so please give me
8 your attention, it won't take but a moment. And I'm
9 assuming everybody in here can speak English because
10 I'm talking to the audience, too. If you can't,
11 somebody who can translate, please tell the audience
12 members.

13 **MS. CHAPMAN:** Judge, I think everybody speaks
14 English.

15 **THE COURT:** Okay. It's really important that
16 you not have contact with these jurors. And while
17 they go back out this way, they come right around
18 into the common areas, the same elevators, the same
19 entrances and exits that you use. If you go to
20 lunch, it's likely that you're going to choose a
21 restaurant that at least one of these jurors is
22 going to choose, so be careful.

23 The safest thing to do is to wait until they
24 clear out and they don't usually clear out quite as
25 quickly as you think they would. So look around,

1 check and make sure there's no juror within earshot
2 and don't be talking about the case in any way that
3 they can overhear.

4 And when I say talk about the case, I mean
5 don't talk about anybody in the case or any of the
6 facts alleged in the case. Anything at all related
7 to the case should be avoided. Just be real careful
8 with that because it really causes a whole lot of
9 problems if I have a juror contacted by somebody
10 associated with the case. And if I decide that
11 somebody has violated my directive, then I hold them
12 in contempt and then I can send that person to
13 prison for six months without a jury trial. So none
14 of us want that, just be careful.

15 I need the lawyers and Mr. Arroyo here at 2:00
16 p.m. Thank you.

17 (Whereupon, there was a luncheon recess.)

18 (State's Exhibit Numbers 1 through 14 were
19 marked for identification purposes.)

20 **THE COURT:** All right. What pretrial issues do
21 we need to address?

22 **MS. CHAPMAN:** Judge, I believe that would be
23 me.

24 Judge, first off, as you know, we tried this
25 case back in November 15th of 2011, so I kind of

1 wanted to make sure that the parameters are --
2 they're pretty much the same as we did back then
3 because he's indicted in the conspiracy to allege
4 multi-counties. We're not going into any of that
5 today. We're just going to try the April 29th, 2010
6 incident, period. Nothing else, nothing about
7 Charleston, nothing about Lexington County, just the
8 29th event that happened in Horry County. So I just
9 kind of wanted to put that on the record.

10 Judge, the other thing, when we were here on
11 November the 15th, if you remember, that case ended
12 in a mistrial. The reason being is it was our first
13 witness, the officer who took the stand ended up
14 mentioning something about Charleston or Lexington.

15 I have read the case law. I have been over it
16 with my client and I know what the law says that,
17 you know, the -- it was granted -- let me back up
18 just a second.

19 The mistrial was granted on my motion and you
20 did, correct me if I'm wrong, but I believe there
21 has to be some kind of prosecutorial misconduct or
22 something that you ruled on that was in bad faith.
23 Judge, I've talked to my client. He believes it is
24 prosecutorial misconduct and so I would make that
25 motion for a double jeopardy.

1 **THE COURT:** Mr. Attorney General.

2 **MR. GOINGS:** Thank you, Your Honor. If it
3 please the Court. On the first issue, yes; the
4 State only, at this point, plans to proceed on the
5 4/29/10 undercover buy. We will not mention
6 anything about any other buys that may have been
7 made against Mr. Arroyo or his participation in the
8 overall conspiracy.

9 As to the second issue, I don't believe there
10 was any intentional or bad faith on part of the
11 prosecution of the November 15th trial. Obviously,
12 that wasn't me and Curtis. But I believe the case
13 law says that you have to show bad faith or ill
14 intentions or some type of misconduct on the part of
15 the prosecution and that hasn't been done and,
16 therefore, it is not double jeopardy.

17 **THE COURT:** All right. Is there anything else
18 that needs to be put on the record related to the
19 granting of the mistrial, how it occurred, anything
20 like that? We've got everything we need on this
21 record of the prior record?

22 **MS. CHAPMAN:** That's correct, Your Honor.

23 **THE COURT:** Motion to dismiss the case based on
24 double jeopardy is denied.

25 All right. Now, with State Grand Jury cases,

1 there has to be a significance in more than one
2 county. Is that something you all have stipulated
3 to or is that -- because you say you're not going to
4 go into any of that --

5 **MR. GOINGS:** Your Honor, the case law is clear
6 that we only have to allege that in the indictment
7 and for the grand jury's sake. We don't have to
8 prove it at trial.

9 **MS. CHAPMAN:** That's correct, Your Honor. I
10 did that research.

11 And also, Your Honor, I will let you know the
12 other -- the balance of these charges, I guess, so
13 to speak, still hasn't been decided by the appellate
14 court as far as the wiretaps go and that's why we're
15 not mentioning that.

16 **THE COURT:** All right. Do you have something,
17 Mr. Kirkland?

18 **MR. KIRKLAND:** Yes, sir, Your Honor. The only
19 other issue that I know of is that we do have an
20 agreement as to the video tape in this case. And
21 the agreement is, and I want to make sure I put it
22 on the record so that there's no misunderstanding
23 down the road and, of course, the Attorney General's
24 Office can correct me if I have misunderstood our
25 agreement, my understanding is that they intend to

1 play the video that was recorded on the day of the
2 buy only. And I see him nodding so that appears to
3 be correct.

4 And my understanding is that since we had so
5 much trouble with getting a proper translation, that
6 we've decided to allow them to play the tape without
7 any sound whatsoever. So my understanding is that
8 the tape will be played in its entirety, however,
9 there will be no volume, no sound that the jury or
10 anybody else can hear while the tape is being
11 played. And I'll defer to them to make sure that
12 this is the agreement that we have.

13 **MR. GOINGS:** That is the agreement, Your Honor.

14 **THE COURT:** Okay. Anything else?

15 **MR. KIRKLAND:** That's all we have, Your Honor.

16 **MR. GOINGS:** Nothing from the State.

17 **THE COURT:** We're at ease until we have all our
18 jurors.

19 (Brief Recess.)

20 (The jury returns to the courtroom.)

21 **THE COURT:** Ladies and gentlemen, the first
22 order of business is that I need you placed under
23 the oath of a trial jury. I need you to stand,
24 raise your right hand, the clerk will administer
25 your oath.

1 (The jury was duly sworn by the Clerk of
2 Court at 2:22 p.m.)

3 **THE COURT:** Ladies and gentlemen, what I'm
4 going to do is I'm going to take about seven to ten
5 minutes and go over some housekeeping things with
6 you and give you some instructions that you need to
7 follow throughout the trial.

8 The first thing that's going to happen is that
9 you're going to hear the opening statements of the
10 attorneys. In these opening statements, the
11 attorneys are allowed to give you an introduction,
12 an overview, an outline of how they anticipate the
13 case will proceed. They are not permitted to engage
14 in what we call argument, so it's more of an
15 introductory process in the opening statements.

16 Once the opening statements are finished, then
17 I will call upon the State to present its evidence.
18 The State brought this charge and the State has the
19 entire burden of proof. The State has to prove the
20 guilt of the defendant, every essential element of
21 the charge made beyond a reasonable doubt. So I'll
22 recognize the State to present evidence in an
23 attempt to meet that burden.

24 When the State finishes presenting its case in
25 chief, the Attorney General's Office will advise me

1 that the State rests. At that point, whether you've
2 been in the courtroom for an hour or whether you've
3 been in the courtroom for ten minutes, I have to
4 send you out of the courtroom and talk about legal
5 issues with the attorneys outside your presence.
6 When you come back after that, I'll tell you where
7 we go from there, but that's what you can look for
8 as we get started.

9 Now, it's really important that you understand
10 a few things. First, that oath that you took was
11 one in which you promised us that you will decide
12 this case based on the evidence and the law. So you
13 need to know where those things come from.

14 As I mentioned to you at the outset before you
15 went to lunch, I tell you the law. It's my job to
16 decide what law applies to a case and instruct the
17 jury on the law. So the law comes from me.

18 The evidence comes from the sworn testimony of
19 witnesses. Evidence can also come in the form of
20 exhibits. Now, an exhibit can be anything tangible
21 that's marked in the record. It can be a
22 photograph, a video tape, a map, a chart, a
23 document, anything tangible that's marked into the
24 record. Now, if it's marked as evidence, then
25 generally you have that with you in the jury room

1 when you decide the case.

2 What the lawyers say is not evidence. I want
3 you to pay attention to what the lawyers say, but
4 understand that what comes out of their mouths is
5 not evidence. The evidence comes from the witnesses
6 and the exhibits.

7 Now, there is one exception to that rule about
8 what the lawyers saying not being evidence and if we
9 come upon it in this trial, I'll tell you about it,
10 otherwise I won't bother you with it. So you know
11 where the law comes from, you know where the
12 evidence comes from.

13 It's also important that you understand that
14 there are two judges in the courtroom. As I
15 mentioned to you, I'm the judge of the law. I tell
16 you the law at the end of the trial. I rule over
17 the trial as far as presiding and I decide legal
18 issues as they arise in a trial.

19 You really need to understand that you're the
20 other judge and that you are the only judge of the
21 facts. Only you are going to get to decide such
22 things as whether evidence is believable or not.
23 Only you get to decide what weight, if any, should
24 be put on any evidence. That's entirely your
25 prerogative and I'm not going to invade your

1 province.

2 Now, I want to give you a little example of how
3 our role's differ. And if you'll just bear with me,
4 a few minutes, I think this does a pretty good job
5 of explaining how we've got two judges and how those
6 roles are different.

7 From time to time during the trial of this
8 case, there may be an occasion where one side or the
9 other feels that the opposing side is trying to put
10 something before the jury that doesn't fit within
11 the rules for the jury to consider. And if that
12 happens, these attorneys have taken an oath just
13 like you've taken an oath now and I had to take an
14 oath and we've all got to do our jobs for the system
15 to work, so the attorneys have to stand up and
16 object.

17 And what that calls upon is for me to rule
18 about whether that thing fits within the rules for
19 the jury to consider. So there's an objection made
20 and I will either overrule the objection and let it
21 come before you or I will sustain the objection and
22 it's not proper for you to consider, you disregard
23 it.

24 I want to make sure you understand that in
25 doing my evaluation, if I let something come before

1 you, it will not cross my mind to think about
2 whether that thing's believable or not because
3 that's your job. I won't give one second of thought
4 as to whether any weight should be given to that
5 piece of evidence because that's your job.

6 All I'm going to be doing is looking very
7 narrowly with tunnel vision to see does that thing
8 fit within the rules for the jury to consider. And
9 if I believe that it does, I let it come before you
10 and you decide whether it's believable and you
11 decide what weight, if any, it should have.

12 So you're the judge of the facts and I'm the
13 judge of the law. And no comment that I'm going to
14 make should be construed as any kind of comment on
15 the facts of the case. It's not my job.

16 Now, while you've promised us that you're going
17 to decide this case based on the evidence and the
18 law and you must do that, I'm not telling you to
19 leave your common sense at home. As a matter of
20 fact, I'm asking you to use your common sense, use
21 your sense of logic and reason and your good
22 judgment.

23 Now, it just makes good common sense that you
24 keep an open mind about the case and you don't make
25 up your mind until you've heard all the evidence and

1 you know what the law is. So that's why we have
2 that rule that I've mentioned to you, you're not to
3 discuss this case in any way at all among yourselves
4 until I tell you to. Wait till you got all the
5 information, wait till you got the law, wait till
6 you have the whole thing and you put it in context
7 before you start making any comments about the case.
8 So don't discuss the case with anybody else among
9 the jury until I tell you to and don't discuss the
10 case with anybody at all, family member, friend,
11 anybody at all, until you've been discharged
12 completely from the jury.

13 Now, again, I have to cover these things at
14 this point once again. If anybody attempts to
15 contact you and discuss the case with you, report it
16 to me so I can deal with it. If there's media
17 coverage, get away from it and report to me at the
18 first opportunity what you saw, heard or read
19 through the media. Remember that instruction I gave
20 you about independent investigation, don't do it,
21 don't look up law, don't do any independent
22 investigation.

23 Now, the last thing I want to say, I believe,
24 at this point, is thank you. Folks, I just never
25 have found it appropriate to sit up here and

1 repeatedly say thank you to a jury. And the reason
2 is not because of the lack of gratitude, it's
3 because I think it cheapens it. We all know you got
4 a summons. We all know you had an obligation to
5 meet. This group that came up here today met it
6 head on. Nobody tried to wiggle their way out of
7 it, I appreciate that. It means a great deal to
8 everybody in the courtroom.

9 It's easy to find yourself in a dispute. And
10 if you're ever in a dispute, you'll be very grateful
11 that we have folks like you that take away time from
12 everything else they have to do in their lives so we
13 can resolve our disputes and move forward. So thank
14 you.

15 Now, I can't promise you that there will be a
16 lack of hurry up and wait. If I had to guess, I can
17 promise you the opposite. But I can promise you
18 this, if you're waiting, we're working. There is
19 never going to be a time on my watch when we're out
20 here goofing off if you're back there waiting on us,
21 that will not happen. I know you've got other
22 places to be. I know you've got other things to do.
23 And while you may have to wait on us some, if you're
24 waiting, we're working. Thank you.

25 All right. Now, Lawrence, I don't know if you

1 can help with this or not, but I know we live in a
2 beautiful place that the weather changes a lot, it's
3 hot in here to me.

4 Computers run all these systems now, folks, and
5 we don't just go to a thermostat anymore and change
6 it. I always tell a jury some people are hot
7 natured, some people are cold natured, if you are
8 one of those extremes, you may want to bring a
9 jacket or something you can put on, take off,
10 whatever you need.

11 But can you get them to make a call about this?

12 **OFFICER:** I certainly will.

13 **THE COURT:** All right. I'm going to shut up
14 now.

15 Which of you is going to make the opening
16 statement?

17 **MR. PAULING:** I will, Your Honor.

18 **THE COURT:** All right. You're recognized,
19 Mr. Attorney General.

20 **OPENING STATEMENT**

21 **MR. PAULING:** Thank you, Your Honor. May it
22 please the Court.

23 On April 28th, 2010, an individual by the name
24 of Emigdio contacted a resident of Street
25 in Myrtle Beach, South Carolina. In fact, Emigdio

1 actually went and met with that individual at his
2 home and he spoke with him about purchasing a
3 particular product. They discussed the type, they
4 discussed the price, \$1600. That was on April 28th,
5 2010.

6 The following day, April 29th, 2010, Emigdio
7 contacted that same individual at Street
8 once again and arrangements were made actually for
9 him to purchase that product they had discussed.
10 During that time, though, the price went up, so he
11 actually had to purchase it for \$1800. Emigdio went
12 to Street, spoke with that individual and
13 purchased that item. That particular item he
14 purchased is, approximately, 25 grams of heroin.

15 Now, this type of transaction is typical. It
16 occurs on a daily basis other places. The
17 difference about this transaction was that law
18 enforcement was able to monitor it because, see,
19 Emigdio was a confidential informant. The
20 individual that sold him the 25 grams of heroin, the
21 resident of Street, sits here in this
22 courtroom, that individual is Juan Arroyo.

23 Soon after this particular incident, Mr. Arroyo
24 was charged, arrested and indicted for trafficking
25 heroin more than 14 grams, but less than 28 grams,

1 and that's why he's here today. That is what he
2 stands trial for today.

3 I'm Curtis Pauling. My co-counsel is Cary
4 Goings. We're with the South Carolina Attorney
5 General's Office. We're prosecutors there. It's
6 our duty, our job to prosecute crimes such as this
7 that occur within the State of South Carolina.

8 Now, while Mr. Arroyo is charged, has been
9 indicted with trafficking heroin, he's presumed
10 innocent. That's the way our justice system works,
11 that is how it's required. He comes in this
12 courtroom presumed to be innocent. The burden rests
13 upon our shoulders to prove to you beyond a
14 reasonable doubt that Mr. Arroyo did, in fact, do
15 what he's charged with, what he's been indicted for.

16 Trafficking heroin, and the Judge will explain
17 the law to you at a later point, but trafficking
18 heroin is essentially distributing an amount of
19 heroin, in this case, more than 14 grams, less than
20 28. That's what he's been charged with.

21 But how do we intend to prove our case? Well,
22 you're going to hear from several witnesses
23 throughout the day. You're going to hear from Agent
24 Ryan Wood. Agent Wood is with the Fifteenth Circuit
25 Drug Enforcement Unit.

1 He's going to come here. He's going to
2 testify. He's going to tell you about his
3 investigation. He's going to explain to you how he
4 came to know Emigdio. He's going to explain to you
5 the information that he received regarding Juan
6 Arroyo. He's also going to tell you about how he
7 prepared for that undercover deal on April 29th of
8 2010. He's going to tell you about the surveillance
9 that was done, how that deal was conducted and he
10 will tell you what he received after that
11 transaction occurred.

12 You're also going to hear from Ms. Sharon Lilly
13 from the Horry County Police Department. She's an
14 evidence tech there. She's going to explain to you
15 that once the evidence was sent to their lab or once
16 it got to her, how she secured it before it went to
17 the lab for testing. She'll tell you the procedures
18 they went through to document where that evidence
19 was, where it was placed, how it was maintained.

20 You're also going to hear from a Ms. Lisa Floyd
21 and now she's actually the evidence tech there. And
22 she will tell you what she went through, the
23 procedures she went through to actually test the
24 item that was received. And she's going to be the
25 one to be able to tell you what it was that

1 Mr. Arroyo sold to Emigdio.

2 And you're also going to hear from Mr. Emigdio,
3 Emigdio Penaloza. He was the confidential
4 informant. He's going to get up on the stand and
5 he's going to tell you how he came to know
6 Mr. Arroyo. He's going to tell you about how he
7 came to know Mr. Wood. And he's going to explain to
8 you what happened on April 29th of 2010, that
9 undercover deal. He's going to explain to you what
10 happened when he met with Mr. Arroyo and what he did
11 after the transaction occurred.

12 I've told you all that, what we intend to show
13 you, but what is your role? And I believe the Judge
14 has already told you that, that you're the fact
15 finder. The Judge rules over the law. There may be
16 times when we may have to have a bench conference
17 with the Judge or there may be objections and the
18 Judge is going to have to rule on those matters of
19 law. The 12 of you are going to have to decide what
20 happened on April 29th, 2010, at Street in
21 Myrtle Beach, in Horry County. And just how do you
22 do that?

23 Well, the witnesses are going to come to this
24 box, they're going to swear to tell the truth, the
25 whole truth and nothing but the truth. And you're

1 going to hear them. You'll see them. And you have
2 to decide, listen to the testimony, listen to the
3 evidence, and you have to decide what happened on
4 April 29th of 2010.

5 Now, I will tell you that factually this case
6 is simple, but I'll also tell you that this case is
7 very important to the State. It's important to
8 Mr. Arroyo. I just ask that you pay very close
9 attention to the testimony and the evidence
10 throughout this trial.

11 I'd like to thank you in advance for your time
12 and for your service. At the end of this trial,
13 we're going ask you to return a verdict. We're here
14 seeking justice, nothing more and nothing less. And
15 at the end of this trial, we're going to ask you to
16 return a verdict that speaks justice.

17 **THE COURT:** Thank you, Mr. Pauling.

18 All right. Which of you is going to make the
19 opening statement?

20 **MR. KIRKLAND:** I am, Your Honor.

21 **THE COURT:** Mr. Kirkland, you're recognized for
22 your opening statement.

23 **MR. KIRKLAND:** Thank you, Your Honor. May it
24 please the Court.

25 **THE COURT:** Yes, sir.

1 **MR. KIRKLAND:** I apologize. I'm taking allergy
2 medication, so I may have to take a drink of water
3 during this opening statement.

4 As you probably noticed when we were selecting
5 the jury, both sides have to agree on a particular
6 juror in order to put that juror in that box. And
7 that really says something about the jurors
8 themselves because these are people that we are
9 extremely confident have the abilities, have the
10 background to be an effective juror and the things
11 that it takes are relatively simple. You simply
12 want somebody that's going to be fair, obviously,
13 but you also want somebody that's going to be
14 willing and able to put in the work that is
15 necessary to be a juror.

16 A trial is not, at least for a jury, it is not
17 a spectator sport. It is not like watching a
18 television show or watching a football game. The
19 jury is actively involved in any trial.

20 I mean, to understand what your involvement is,
21 you kind of have to understand the constitutional
22 underpinnings of what a jury is and what your role
23 is. And I'm sure you learned about a lot of this
24 when you were in middle school or high school.
25 Actually, I've heard they don't even teach anything

1 like the constitution anymore, but hopefully some of
2 you will recall from your constitutional law
3 studies, that when the founding fathers, when the
4 framers were drafting the constitution, they were
5 extremely concerned that the government would become
6 too powerful and so they put a lot of limitations on
7 the government.

8 The most talked about limitation is when they
9 separated up the federal government into branches of
10 government and we have the legislative, executive
11 and the judicial branches. And those are three
12 branches serve to provide a check and a balance on
13 the other branches.

14 However, it is apparent from the constitution
15 that they did not feel that the government policing
16 itself was sufficient to ensure the rights of a
17 criminal defendant and so they added another layer
18 of review, another layer of constitutional rights
19 that are particular to a defendant. And, of course,
20 the constitutional right that I'm talking about is
21 that a defendant's entitled to a jury of his peers.

22 And it's very interesting because they didn't
23 simply appoint sort of a civilian type of oversight
24 committee. You hear that sort of thing in the news
25 all the time. They actually decided to do something

1 much more meaningful and they made the juror, as the
2 Judge was telling you, they made the jurors the
3 actual judges of the case. You are, as the Judge
4 told you, the judges of this case.

5 And I know that there's 13 here, but there's
6 one alternate. There are literally, in this room
7 right now, there are 12 judges plus Judge Keesley.
8 And what we expect of you as a judge is exactly what
9 anybody would expect of any judge, expect the judge
10 to be fair, to be honest and to follow the law.

11 But the founding fathers clearly realized that
12 the jurors, they had never been judges before and so
13 they put some guidelines, some constitutional
14 safeguards into the constitution to give you an idea
15 of how it is that you need -- what you need to
16 consider to make your decision about guilt or
17 innocence. And, in fact, the things that they put
18 in there, actually the rules that they put in the
19 constitution actually create an extremely active
20 role for a juror, for example, the State has the
21 burden of proof and they have the burden to prove
22 that the defendant is guilty beyond a reasonable
23 doubt.

24 Well, it sounds as if that that particular
25 burden rests entirely on the State and it doesn't

1 really involve the jury, but if you couple that
2 particular burden, if you couple it with the fact
3 that the defendant, as the Judge told you, has
4 absolutely no obligation to defend himself, he has a
5 right to remain silent, he doesn't have to testify,
6 he doesn't have to put up any evidence, he has no
7 obligation to participate in this process
8 whatsoever, but that doesn't change at all the
9 burden of the prosecution and so that places a
10 burden on the jury because the constitution never
11 envisioned that a criminal defendant had to prove
12 that they were not guilty.

13 The jury is who has to hold the State to their
14 burden. The defendant doesn't have to do it and,
15 quite frankly, the defendant can't do it. We're not
16 going to be back there in the jury room with you.

17 So the jury has the responsibility throughout
18 this trial of holding the State to their burden.
19 And how do you do that? Well, it's very simple.
20 You have to be skeptical of their evidence. You
21 have to think about what these witnesses are saying.

22 This is an extremely high burden. The burden
23 of proof of beyond a reasonable doubt is absolutely
24 the highest burden in the law in the United States.
25 And my understanding is it's the highest burden in

1 the entire world. There is no other standard of
2 proof that's higher anywhere in the world.

3 To give you an example or a better
4 understanding of what a burden of proof is, in a
5 civil case, for example, if you're suing somebody
6 over a contract action, the standard of proof is
7 preponderance of the evidence. And, basically, what
8 that is that's just a simple balancing. The judge
9 will tell the jury in a civil case that you balance
10 the proof that each side puts up and if the scale
11 slightly tips in favor of one party to the other,
12 then you find in favor of that party. Well, we know
13 that that's basically the 50/50 standard. I mean,
14 it's obvious that's what it is.

15 Above that standard, something called clear and
16 convincing evidence. This is the standard that DSS
17 has to meet if they're ever going to take somebody's
18 children away. And, obviously, that's a very high
19 standard. It's a high standard for a very good
20 reason.

21 This standard is above both of those standards.
22 We don't know where that falls on the range of 50/50
23 or 60/40, we're not sure where it falls, but we know
24 that it's the highest standard under the law. And
25 so the government will have that burden and they

1 will have that burden throughout the trial. And as
2 a juror, I submit to you, that it is your obligation
3 to hold them to the burden the entire trial. And I
4 think that the prosecution has already said
5 something to the effect of that they welcome the
6 burden.

7 So I don't want you to think even for a second
8 that there's anything un-American about holding the
9 government to this burden. It is absolutely the
10 single most American thing that you can do as a
11 juror. It is the foundation of our system. And so
12 when you're listening to the evidence, think to
13 yourself, does this particular witness have a motive
14 to lie? Are there any biases that a particular
15 witness has? I think that they're going to show you
16 a video at some point in time. Does the video, in
17 fact, show what they say that it shows? Take this
18 information that you're receiving, tear it apart in
19 your head, think about it.

20 The defendant simply doesn't have the same sort
21 of obligation that you do as jurors. And if you
22 keep this in mind, if you follow these obligations
23 set forth in the constitution, at the end of the
24 trial, you will go back there and you will debate
25 and you will discuss and you will point out the

1 things that you might have doubts about and you'll
2 all talk about it. And if you've done your duty
3 throughout the entire trial, there's no question
4 that you'll reach a just verdict.

5 Now, obviously one side or the other, you know,
6 one side's going to be happy and one side's going to
7 be unhappy with whatever verdict that you give.
8 Both sides are not going to be happy. However, I
9 assure you that if you follow these rules, if you
10 follow the instructions that Judge Keesley gave you,
11 if you take the burden seriously that you have as a
12 juror and hold the government to their burden, then
13 even if one side is unhappy, that side will respect
14 the verdict that you give. Both sides will respect
15 the verdict that you give. That is justice in the
16 United States and that is what is expected of you
17 and that's all that anybody asks of you. Thank you.

18 **THE COURT:** Thank you, Mr. Kirkland.

19 All right. Ladies and gentlemen, we're going
20 to take a ten minute break before we start the
21 presentation of the evidence. If you want to bring
22 some ice water in here or something, that's fine.
23 You have to keep your eyes open, okay.

24 They've already sent the e-mail. I think I'm
25 feeling colder air coming in. I hope I don't freeze

1 any of you, sometimes they go to the extremes. But
2 we'll take a ten minute break and then we'll get
3 started with the evidence. Don't discuss the case.
4 Follow the bailiff, please.

5 (The jury retires to the jury room.)

6 **THE COURT:** I'm sorry, but one of the jurors
7 was really fighting it.

8 **MS. CHAPMAN:** Green shirt?

9 **THE COURT:** Yes. She stayed awake, but she was
10 fighting it.

11 All right. We're at ease for ten minutes.

12 (Brief Recess.)

13 **THE COURT:** State ready for the jury?

14 **MR. GOINGS:** State's ready for the jury.

15 **THE COURT:** Defense ready for the jury?

16 **MS. CHAPMAN:** We are, Your Honor.

17 **THE COURT:** Bring the jury in.

18 (The jury returns to the courtroom.)

19 **THE COURT:** State will call its first witness.

20 **MR. GOINGS:** Pleases the Court, the State would
21 call Agent Ryan wood.

22 **THE COURT:** Come up to the clerk.

23 RYAN CURTIS WOOD,

24 having been duly sworn, testified as follows:

25 **THE CLERK:** Please state your full name for the

1 record.

2 **THE WITNESS:** Ryan Curtis Wood.

3 **THE CLERK:** Please be seated and adjust the
4 microphone once you're seated.

5 DIRECT EXAMINATION

6 BY MR. GOINGS:

7 **Q** Good afternoon, Agent Wood. How are you?

8 **A** Good, sir.

9 **Q** What do you do for a living, Agent Wood?

10 **A** Currently, I'm assigned to the Fifteenth
11 Circuit Drug Enforcement Unit in Horry County, South
12 Carolina, and there I'm an agent. I'm currently
13 employed through the City of Myrtle Beach as a
14 narcotics officer and they're the ones who put me on
15 this task force with the Fifteenth Circuit Drug
16 Enforcement Unit.

17 **Q** And how long have you been with the DEU?

18 **A** DEU, been with them now since 2007.

19 **Q** So this will be your sixth year with the DEU?

20 **A** With the DEU.

21 **Q** How long have you been employed with the City
22 of Myrtle Beach?

23 **A** Since 2000, September of 2000.

24 **Q** Was that the first police agency you went to
25 after you went through the CGA -- CJA?

1 **A** Yes, sir.

2 **Q** So you did graduate from the Criminal Justice
3 Academy?

4 **A** Yes, sir.

5 **Q** So you've had, approximately, 13 years of law
6 enforcement experience?

7 **A** Yes, sir.

8 **Q** Was all of that with or being a narcotics agent
9 or --

10 **A** No. It began as a patrol officer in a patrol
11 car, did that for approximately four years. Then I
12 went into a unit called the street crimes unit which
13 also, basically, dealt with narcotics related
14 crimes.

15 **Q** And what are your duties as a, obviously, a
16 City of Myrtle Beach narcotics investigator and your
17 role as a DEU -- I mean, what is your primary
18 day-to-day activities?

19 **A** Day-to-day is we're constantly gathering intel
20 on narcotic related crimes in our area. We follow
21 up on those crimes by utilizing surveillance
22 tactics. What I mean by that is going out, if I get
23 a certain intelligence on a certain place, then I'm
24 going to go out and watch it first, see what I see.

25 Some of our surveillance is done through the

1 use of confidential informants, which we work with
2 those individuals pretty much on a daily basis.
3 From there, we'll investigate -- investigate those
4 crimes further to incorporate controlled drug buys.

5 And a controlled drug buy is where my agency
6 will provide the money to an informant and we will
7 then send that informant into a location, a known
8 drug location where he may purchase an amount of any
9 illegal drugs at that time and use our currency and
10 our funds. And most of those -- or, obviously, all
11 of those occasions, we have some sort of wire on
12 them at that time, anywhere from a video or an audio
13 wire. There's different little things we use.

14 Q Have you had any specialized training in the
15 area of investigation of illegal narcotics?

16 A Yes, sir. I've attended several training
17 classes dealing all with different types of drugs,
18 identifying drugs, how to investigate undercover
19 drug operations, things like that.

20 Q And, obviously, you've detailed -- you gave a
21 general description to the jury about your
22 background, your knowledge and your training and,
23 obviously, you've participated in the investigation
24 of illegal narcotics. How many cases do you think
25 you've probably done since 2007? I mean, not a

1 specific, but an estimate.

2 A Hundreds, I mean quite a bit.

3 Q And, obviously, you've told the jury a little
4 bit about conducting undercover investigations.

5 Over those hundreds of cases, do they usually
6 involve some type of undercover technique that you
7 use, whether it's a confidential informant or a
8 undercover agent?

9 A I would say, yeah, most of the time. There's
10 only several occasions where you may not use an
11 informant.

12 Q Now, did you have an opportunity to participate
13 in an undercover buy that took place on April 29th
14 of 2010?

15 A Yes, sir.

16 Q Were you the primary agent on that particular
17 undercover buy?

18 A Yes, I was.

19 Q During that undercover buy, were y'all using a
20 confidential informant?

21 A Yes, we were.

22 Q And who was that confidential informant?

23 A His name is Emigdio Penaloza.

24 Q And how did you come to know about Emigdio
25 Penaloza?

1 **A** I met Emigdio, I want to say, approximately
2 maybe a year before that, may have been less, during
3 an investigation of my own into him. Emigdio, at
4 that time, was a target of one of my investigations
5 and that investigation led to his arrest eventually.

6 **Q** Do you remember what you arrested Emigdio for?

7 **A** Yes, sir, cocaine possession.

8 **Q** And how -- let me ask you this: How much coke
9 were you buying or did y'all have on Emigdio when
10 y'all arrested him; do you recall?

11 **A** That we actually caught him with?

12 **Q** Or that he led you to on the day he was
13 arrested?

14 **A** Approximately 1,000 grams, which is one kilo,
15 one kilogram, which is approximately two pounds.

16 **Q** At that point in time, did Emigdio Penaloza
17 wish to cooperate with law enforcement in any way?

18 **A** Immediately upon his arrest.

19 **Q** And, in fact, when you arrested Emigdio, did
20 you actually catch him with a key or did he take you
21 to the key of cocaine?

22 **A** He actually helped us retrieve the key at
23 another location from another individual.

24 **Q** And is that the only time you used Emigdio
25 during your narcotics investigations?

1 **A** No. After that, he was officially signed up as
2 an informant and there we began working several
3 different cases making several different controlled
4 drug buys to different targets.

5 **Q** And we're going to get to the specifics of this
6 case, but just in general, is it uncommon for
7 individuals that you arrest in your narcotics
8 investigations to want to cooperate with law
9 enforcement and to work as a confidential informant?

10 **A** I would say about 99 percent of the time they
11 wish to work and they do end up working as an
12 informant.

13 **Q** And based on your general knowledge, why do
14 they want to cooperate with law enforcement?

15 **A** It will help them with their charges.

16 **Q** Did the cooperation that Emigdio gave to you,
17 not only including the key that he recovered that
18 day, but his ongoing help with law enforcement, did
19 that help him in the long run?

20 **A** Yes, I'm sure it did. Usually I tell -- tell
21 the individuals at the time, it's not my decision
22 what type of help you get. The help is going to be
23 out there. It depends on the work that they do
24 while they're in -- working with us. And I don't
25 have the authority to tell someone the exact help

1 they're going to get. It's my job just to do the
2 work with that individual or the informant. And
3 when we're done, I'll take everything together, turn
4 it over to the prosecution and then they get up with
5 the informant's defense attorney and then the judges
6 make the decision on how the help is distributed.

7 Q Now, as far as Emigdio is concerned, are you
8 aware -- obviously he was arrested by you. Do you
9 know if he was officially prosecuted and actually
10 received a sentence?

11 A I know that he was. I don't have any details
12 of that. He was actually prosecuted through the
13 federal government and he did receive a federal
14 sentence.

15 Q And all this help that Emigdio had given you
16 over the course of y'all's relationship where he was
17 signed up as a confidential informant, did all of
18 that information get to the prosecutors who was
19 handling Emigdio's case?

20 A Yes.

21 Q Now, specifically about the defendant, Juan
22 Arroyo, was this a particular individual that you
23 used Emigdio Penaloza's help on?

24 A Sir?

25 Q Did you use Emigdio to --

1 **A** Yes.

2 **Q** In your investigation of Juan Arroyo?

3 **A** Yes, I did.

4 **Q** All right. Now, how did you come to learn of
5 Mr. Arroyo?

6 **A** Through Emigdio. Emigdio called me one day and
7 stated if I knew this person, Juan Arroyo, and I did
8 not. He told me about him and said he'd known him
9 for a while and knew that he was involved in some
10 things.

11 **Q** Did he indicate whether or not he could
12 purchase any illegal narcotics from Mr. Arroyo?

13 **A** He believed that he could, if that's something
14 I wanted him to do.

15 **Q** And did you, in fact, want him to do that?

16 **A** Yes, I did.

17 **Q** And what type of illegal narcotics did you want
18 Emigdio or did Emigdio think that he could buy from
19 the defendant, Mr. Arroyo?

20 **A** He initially assumed he could purchase cocaine.
21 That was initially.

22 **Q** Did he ever come to the point where he thought
23 he could buy heroin from Mr. Arroyo?

24 **A** Yes.

25 **Q** Did y'all, in fact, set up a deal for him to

1 buy heroin from the defendant?

2 A Yes, we did.

3 Q Now, before we get into the specifics of that
4 undercover buy itself, obviously you said you used
5 Emigdio -- you said it was a year you knew Emigdio
6 prior to even learning about Mr. Arroyo?

7 A I don't have the exact date, so I'm not real
8 sure. I don't know the time that I arrested
9 Emigdio. I don't know that date.

10 Q Let me ask you this: Was the defendant,
11 Mr. Arroyo, the only person you used Emigdio to set
12 up basically?

13 A No.

14 Q Was Mr. Arroyo's investigation also part of the
15 information you sent to the prosecutors who would
16 prosecute Emigdio?

17 A Yes.

18 Q So they were aware of his help with setting up
19 the defendant when they sentenced him or when they
20 worked out any plea agreement with Mr. Emigdio?

21 A Yes. Uh-huh.

22 Q Did they also know about these other
23 individuals that Emigdio helped set up?

24 A Yes.

25 Q Now, let's go back to the actual 4/29 deal

1 itself. Obviously, there came a time where Emigdio
2 tried to purchase some heroin from the defendant.
3 When was the first meeting they had to discuss the
4 heroin transaction?

5 **A** The first meeting took place on the 28th, the
6 day before.

7 **Q** So April 28th of 2010?

8 **A** Yes, sir.

9 **Q** All right. And what happened during that
10 meeting?

11 **A** During that meeting, we were -- well, they
12 discussed the price and the type of product that
13 we'd be purchasing, which was a white powder heroin.
14 And the price was supposed to be \$1600 for,
15 approximately, 25 grams of heroin.

16 **Q** And where did that meeting take place?

17 **A** Inside Juan Arroyo's residence at Street.

18 **Q** Now -- and before we go into the specifics,
19 when you had a confidential informant, I know you
20 talked about it a little bit, you said your normal
21 process was it would be video taped?

22 **A** Yes.

23 **Q** All right. Was the -- actually, the drug buy
24 took place the next day on 4/29. Was it video
25 taped?

1 **A** Yes, video.

2 **Q** What other precautions or procedures do you go
3 through when you're conducting an undercover buy
4 with a confidential informant both prior to the
5 transaction taking place, during the transaction and
6 afterwards, just in general for right now?

7 **A** In general, we always -- first, we set a meet
8 location in a undisclosed area away from everyone.
9 We don't want to see -- the public see me meeting
10 with my informant. We try to keep that as secret as
11 possible. So we meet in a vacant parking lot, maybe
12 behind some vacant building or anywhere.

13 At that point, I'm always providing the money
14 for a buy, so I'll bring the money. That money is
15 taken out of our agency account. I photograph that
16 money and then I'll issue -- later on I'm going to
17 issue that to the informant.

18 Once the informant arrives to the -- to our
19 meet location, I immediately search him first and
20 then I search -- if they're in a vehicle, I will
21 search their vehicle.

22 **Q** Let me stop you right there. What's the
23 purpose of searching the confidential informant and
24 the vehicle upon their arrival?

25 **A** For this very reason, court and due to the fact

1 that, you know, I don't want them having any illegal
2 contraband on them, that way there's no, no way
3 around the fact that wherever I'm about to send him,
4 if he comes back with illegal narcotics, then that's
5 where he got them from. He didn't take them there
6 and they didn't come in his car. I searched
7 everything prior to and the only place he could have
8 purchased that was wherever I was going to send him.

9 **Q** Okay. And go ahead with the general aspects.
10 Obviously, you searched the --

11 **A** Yeah. We initially searched him, like I said,
12 and his vehicle. Once those are completed and
13 everything's clean, then I will go on and put a
14 video wire on that person, could be anything from a
15 button cam to a watch or anything that has the
16 capability of putting a small camera in it. Once we
17 do that, I issue the money. I turn on the video
18 recorder, at which time, I'm speaking and then I can
19 put a heading on it or whatever stating the date and
20 time.

21 **Q** Now -- and, obviously, at that point in time,
22 you send the CI off to wherever the planned location
23 is to meet for the target?

24 **A** Yes. I'll -- obviously, we're going over what
25 we're doing the whole time, where we're going, what

1 I expect of the -- of my informant when he gets
2 there, what I expect of him when he leaves, try to,
3 you know, just plan. And I tell him that, or her,
4 that "I'm going to be in the area. I'm always going
5 to have eyes on you as best I can. Obviously, when
6 you go inside of a building, I can't see you then,
7 however, I'm going to be outside close by.

8 It's in a controlled setting. We usually --
9 you always have more than one agent there, sometimes
10 two, sometimes eight. It just depends, whoever's
11 available, who wants to help, but there's always
12 going to be more than one agent there and it's just
13 a -- safety purposes basically.

14 Once that takes place, the buy is then
15 initiated. So when I call -- I usually call it a
16 buy, but the controlled buy is initiated. I always
17 follow my informants to the location. I'll surveil
18 the area that they've entered. If it's a building,
19 if it's a parking lot, I can keep eyes on them the
20 whole time. Once they leave, I always tell my
21 informants to call me. You know, when you get out,
22 just call me. And then I'll follow them away.

23 We meet at another location. Sometimes it's
24 not the same location that I wired him up in. It
25 may be just another random parking lot in the area.

1 And then I'll go over what happened with the
2 informant. They usually tell me from the time they
3 stepped in the door, what happened. And, at that
4 point, if they received any narcotics during the
5 buy, I will take possession of those narcotics and
6 then release the informant after he gives a
7 statement. And then I'll re-search the informant
8 and his vehicle before he's released.

9 Q Now, going to the specific transaction that
10 took place on April 29th, 2010, obviously, you had
11 testified previously that on April 28th, 2010,
12 Emigdio goes over to the defendant's house and they
13 plan the cost and the amount of heroin that's going
14 to be purchased; is that correct?

15 A On the 28th, yes, sir.

16 Q And, obviously, we assume that -- I'll ask you,
17 what day was the deal set up for?

18 A 29th.

19 Q Okay. And did you have an occasion to meet
20 with Emigdio prior to that transaction taking place?

21 A Prior to the 29th?

22 Q Yeah, to give him the funds and wire him up?

23 A Yes.

24 Q All right. Take us from that point -- I mean,
25 what happened when you got there? What did you do?

1 **A** That date we met at a parking lot within a few
2 miles from Mr. Arroyo's house on Street, met
3 with -- he had already talked to Arroyo --
4 Mr. Arroyo that day, my informant did, on the
5 telephone and they had set up a time that might be
6 good for them, around three o'clock I think it was.
7 So I met my informant around 2:00 or 2:30 that
8 afternoon, basically searched him when he got there
9 like I always do, searched his vehicle because he
10 did have a vehicle. Both were clean.

11 I then issued him the -- well, then I put on
12 the wire, which is a video wire only, only on the --
13 I think it was a button cam we used. And that's
14 basically a button like it sounds, looks just like a
15 button, has a camera in it. Once that is done, I
16 issued him the money. We went over our plans,
17 instructed him what to do, where to go, all that was
18 already discussed. And from there, once we were
19 ready to go, I started to follow him out towards the
20 house.

21 **Q** So just briefly, you didn't find anything on
22 him, his person or his vehicle when you searched
23 him?

24 **A** No, nothing.

25 **Q** He was wired with video?

1 **A** Uh-huh.

2 **Q** And then you send him to the buy location,
3 correct?

4 **A** Yes.

5 **Q** Where is the buy location going to be at?

6 **A** Street. I think it's to my
7 knowledge.

8 **Q** And who was living there to your knowledge?

9 **A** Juan Arroyo and his girlfriend at the time,
10 Michelle.

11 **Q** All right. Now, what happened -- take us from
12 the time that the CI goes to Juan Arroyo's house,
13 did y'all follow and surveil the CI?

14 **A** Yes. From our first location where I wired him
15 and I followed him to Street to Mr. Arroyo's
16 residence. I then parked in eyesight, I don't
17 recall exactly the spot I was in, but I was within
18 eyesight of his vehicle, saw my informant walk out
19 and go to the front door.

20 **Q** And was the drug transaction that was supposed
21 to take place that day, did it actually occur at
22 this point in time?

23 **A** No. At that point, obviously, the informant
24 then called me pretty quick after he had arrived and
25 said that he -- that Mr. Arroyo was not at the

1 residence at that time. His girlfriend was there.
2 She said he ran to the store and that he should be
3 back shortly.

4 So we then left the area and I followed him to
5 another location. On the way, I called -- or we
6 spoke on the phone, obviously, when he called to
7 tell me that she {sic} was not there. I told --

8 **MR. KIRKLAND:** Your Honor, I would object to
9 the hearsay.

10 **THE COURT:** Do you wish to be heard?

11 **MR. GOINGS:** No, Your Honor. I'll rephrase it
12 so we don't talk about anything Emigdio says.

13 **THE COURT:** Sustained.

14 **BY MR. GOINGS:**

15 **Q** All right. So Emigdio calls you. Obviously,
16 the drug transaction couldn't take place?

17 **A** Correct.

18 **Q** And -- so y'all -- what do you do? Do you meet
19 with him again or do you send him on home? What
20 happened?

21 **A** Yeah. He calls me as he's leaving. I tell
22 him, okay, we're going to go to this spot because,
23 obviously, we were going to wait a few minutes. So
24 I chose a new spot up the road to meet in another
25 parking lot and told him to follow me there. And I

1 got in front of him and he followed me to the
2 location.

3 Q During this -- he's constantly wired with video
4 at this point in time, right?

5 A Uh-huh.

6 Q Did you maintain eyes on him during this whole
7 time from the time that he leaves you after you wire
8 him up and give him the funds until you meet back
9 with him at this second meeting spot after he goes
10 to Juan Arroyo's home and he's not there?

11 A Yes. While we were traveling -- I think while
12 we were traveling actually back to the second
13 meeting location once he left Juan Arroyo's house
14 the first time, I got in front of him because he did
15 not know which parking lot we were going to. And,
16 at that time, he got -- we got separated not far
17 from each other, but he got stopped at a red light.
18 I caught the green light, but I went up and I
19 basically waited on him to catch back up to me,
20 which wasn't more than a few seconds I would say, 30
21 seconds at the most. And then we pulled into the
22 parking lot together.

23 Q But no -- the drug transaction hadn't taken
24 place by this point in time?

25 A No.

1 Q So you get to this second meeting location, and
2 I don't want to know what Emigdio says, but,
3 obviously, y'all have a conversation. What is your
4 understanding of why the drug transaction didn't
5 take place?

6 A Because Mr. Arroyo was not home at that time.

7 Q All right. Did Emigdio ever call Mr. Arroyo in
8 your presence at that second location?

9 A Yes. We made a phone call or Emigdio made a
10 phone call and once he hung up the phone, he said
11 the price had changed.

12 Q So now -- what was the price for the
13 transaction?

14 A The original price was one thousand six
15 hundred --

16 MR. KIRKLAND: Your Honor, I don't know if this
17 is going to be hearsay or not, but it sounds like
18 we're talking about what this other person said. So
19 I would object to that.

20 THE COURT: Do you wish to be heard?

21 MR. GOINGS: No, Your Honor. I'll rephrase the
22 question.

23 THE COURT: Sustained.

24 BY MR. GOINGS:

25 Q Based on the conversation -- Emigdio calls Juan

1 Arroyo; is that correct?

2 A Yes.

3 Q In your presence?

4 A Yes.

5 Q All right. He hangs up and then you have a
6 conversation with Emigdio?

7 A Yes.

8 Q Based on those conversations, what was the
9 plan, at that point in time, on April 29th, 2010,
10 what were you going to do?

11 A Based off their conversation?

12 Q Yeah.

13 A I was going to lead him as he was going to
14 follow me in his vehicle. I was driving my vehicle.
15 We were going to go to the bank up the street.

16 Q Why were y'all going to the bank?

17 A We needed to retrieve 200 additional dollars
18 for the buy.

19 Q Because why?

20 A Because the price had changed.

21 MR. KIRKLAND: Objection, Your Honor, that's
22 hearsay.

23 THE COURT: Sustained.

24 BY MR. GOINGS:

25 Q So you had to go get 200 extra dollars for the

1 drug transaction; is that correct?

2 A Yes.

3 Q So now instead of -- how much funds does
4 Emigdio have on 4/29/10 to buy the 25 grams?

5 A I originally gave him 1600 the first time. And
6 when I got the \$200 out of the bank, that made his
7 total \$1800, \$1,800.

8 Q And did you give the extra \$200 to Emigdio?

9 A After I photographed it, yes, sir.

10 Q Now, after you met up with him at the second
11 location and before y'all went to the bank to get
12 the extra \$200, did you leave the video cam running?

13 A No, I did not. I turned it off based -- that
14 video itself does not hold, it's like a mystery how
15 much video it holds to me all the time, so I cut it
16 off to be sure that we were going to have video
17 during our buy. What we were doing at that point,
18 there was no need to video any of that. He was with
19 me. He was under my control and we were just doing
20 inhouse stuff getting the money.

21 Q Now, from the time that you cut the video off
22 until obviously, and we'll get to it in a second,
23 you turn it on again at some point in time, correct?

24 A Yes, I do.

25 Q All right. And you say this is when y'all went

1 to the bank to get the extra money?

2 A Yes.

3 Q During the time you turned it off and the time
4 you turned it back on again, did Emigdio, the CI,
5 ever leave your presence at all during that time?

6 A No.

7 Q He was with you the whole time?

8 A The entire time.

9 Q So was there an opportunity to get any objects
10 or any narcotics or anything else on his persons
11 {sic} or in his car during that gap of time where
12 the video's turned off and is turned back on again?

13 A No.

14 Q So, at some point in time, the drug transaction
15 is back on; is that correct?

16 A Yes.

17 Q You turn the video back on?

18 A Yes, I do.

19 Q And what happens next?

20 A Once I turn the video on, myself and the other
21 agent involved followed the -- followed Emigdio to
22 Juan Arroyo's house on Street.

23 Q Did you have -- did y'all maintain physical
24 eyes on him?

25 A Yes, I did.

1 Q During his travels to the defendant's house?

2 A Yes, I did.

3 Q And what did you do once he got out of the
4 vehicle when he arrived at Mr. Arroyo's house?

5 A I parked acro -- like, just down the road,
6 there's an apartment complex, I pulled in there. If
7 you go behind it like on the side of the parking
8 lot, you can see through the -- just right across
9 the street to his house. So I stayed there during
10 the whole time. Once he entered the home, I
11 couldn't see Emigdio anymore.

12 Q So you don't know what happens in the house?

13 A No.

14 Q While he's in there?

15 A No, I don't.

16 Q What happens next?

17 A He leaves and calls me as he's leaving and then
18 I follow him out. And I gave him instructions on
19 another parking lot to go to so we can meet and I
20 could take the video off of him and retrieve
21 anything.

22 Q Now, from the time he leaves the defendant's
23 home -- well, when he comes out, do you have eyes on
24 him?

25 A Yes. As soon as he enters his vehicle in the

1 yard of Mr. Arroyo's house and then I followed him.
2 He came out, I think it's Street, and take a
3 right on to 3rd Avenue and then he comes back out to
4 Highway 501. At that time, I was in behind him once
5 he passed me and then I got in behind him. Once we
6 got out on the road, I told him on the phone, I was
7 on the phone with him the entire time until we got
8 to the new -- basically, to the new parking lot, I
9 told him just to follow me just up the road. It was
10 within a mile.

11 Q During this whole time that you traveled from
12 the defendant's home until y'all met up in this
13 parking lot or wherever it was, did you have
14 constant eyes on your CI, Emigdio?

15 A Yes.

16 Q Did he make any stops or meet with anybody?

17 A No.

18 Q Did he have an opportunity to put anything in
19 his car or receive anything from anybody else except
20 for whoever was in the house at Street?

21 A No.

22 Q Now, what do you do with the video once the
23 drug deals are taken place?

24 A The video's extracted from the device onto a
25 computer. At that point, we save it to a disk.

1 **Q** I'm going to show you what's been marked
2 State's 14. Have you seen the video concerning the
3 drug transaction that took place on 4/29/2010?

4 **A** Yes.

5 **Q** Is that a copy or a -- the -- how it is burned
6 to a disk from your computer system once it's
7 downloaded from the actual camera itself?

8 **A** Yes.

9 **Q** Has that been changed or altered in any way?

10 **A** No.

11 **MR. GOINGS:** Your Honor, at this point in time,
12 the State would introduce State's Exhibit 14 into
13 evidence.

14 **THE COURT:** Is there any objection?

15 **MS. CHAPMAN:** No, Your Honor.

16 **THE COURT:** Thank you. Mark it in evidence,
17 please, ma'am.

18 (State's Exhibit Number 14, DVD, admitted
19 into evidence.)

20 **BY MR. GOINGS:**

21 **Q** Now, you meet up with Emigdio at this meeting
22 location. What do you do at that point in time?

23 **A** At that time, I told Emigdio to tell me in his,
24 you know, what happened inside of the house. I
25 always do that, get a statement from them, a verbal

1 statement.

2 Q Let's stay away from anything he specifically
3 told you about what went on in the house. What did
4 you personally do once you met back up with your CI,
5 Emigdio?

6 A I retrieved a paper bag that had a tube in it.

7 Q And is this what Emigdio hands you?

8 A Yes.

9 Q All right. And based -- and where did Emigdio
10 get the tube from?

11 A Juan Arroyo.

12 Q I'm going to show you what's been marked
13 State's 11 and actually ask you to open it up and
14 look at the item that's contained within there.

15 A (Witness complies.)

16 Q Do you recognize that item?

17 A Yes, I do.

18 Q And what item is that?

19 A It's a grease tube container. It holds grease
20 of some sort.

21 Q Is that the item that you received from Emigdio
22 on 4/29/2010?

23 A Yes, it was.

24 Q Obviously, you open it on that particular
25 occasion, but other than that, is it in

1 substantially the same shape as it was when you
2 received it on 4/29/2010?

3 **A** Yes, other than a little -- looks like a little
4 damage there just being hit against something and
5 then this seal's broken from where I opened, got
6 into it.

7 **MR. GOINGS:** Your Honor, at this point in time,
8 the State would like to introduce State's Exhibit 11
9 into evidence.

10 **THE COURT:** Is there any objection?

11 **MS. CHAPMAN:** No, Your Honor.

12 **THE COURT:** Mark Exhibit 11 in evidence.

13 (State's Exhibit Number 11, grease tube,
14 admitted into evidence.)

15 BY MR. GOINGS:

16 **Q** So you get this grease tube from Emigdio?

17 **A** Yes.

18 **Q** And what do you do with it?

19 **A** I open it.

20 **Q** Do you take photographs while you're doing
21 this?

22 **A** Yes, sir.

23 **Q** At this time, I'm going to hand you what's been
24 marked State's 1 through 9. If you can just look at
25 those.

1 **A** (Witness complies.)

2 **Q** State's 1 through 9, were those photographs
3 that you took?

4 **A** Yes.

5 **Q** And do they accurately reflect the items that
6 you saw on that particular day?

7 **A** Yes, they do.

8 **Q** In the condition they were in on that
9 particular day?

10 **A** Yes.

11 **MR. GOINGS:** Your Honor, at this point in time,
12 the State would seek to introduce State's 1 through
13 9 into evidence.

14 **THE COURT:** Is there any objection?

15 **MS. CHAPMAN:** No objection.

16 **THE COURT:** Without objection, Madame Court
17 Reporter.

18 (State's Exhibit Numbers 1 through 9,
19 photographs, admitted into evidence.)

20 **BY MR. GOINGS:**

21 **Q** I'm going to show you specifically State's 1
22 and 2 and 3 and -- 1 through 4. Can you please tell
23 the jury what those are photographs of?

24 **A** This is a photograph of the tube that I just
25 presented.

1 Q And that was before or after you opened it?

2 A This is before I opened it.

3 Q Okay.

4 A 1 and 2.

5 Q And go ahead, what's State's Exhibit 3?

6 A Exhibit 3 is actually when I pulled the black
7 top off with the little plastic seal around it and
8 inside you can see pink grease.

9 Q What about State's Exhibit 4?

10 A Number 4 is I started taking the -- squeezing
11 grease out of it.

12 MR. GOINGS: Your Honor, at this point, we'd
13 like to publish State's Exhibit 1 through 4 to the
14 jury.

15 THE COURT: Yes, sir.

16 BY MR. GOINGS:

17 Q What is in State's Exhibit 5?

18 A 5 is when the grease was extracted from the
19 tube by squeezing it out. Inside the grease was a
20 black round-shaped ball. The next picture below it
21 is the black ball itself laying on some napkins that
22 I had in my car.

23 MR. GOINGS: Request to publish State's Exhibit
24 5 as well, Your Honor.

25 THE COURT: Yes, sir.

1 BY MR. GOINGS:

2 Q Now, State's Exhibit 6 and 7 and 8,
3 specifically in State's Exhibit 6, what are we
4 looking at there?

5 A Top picture on Exhibit 6 is the black ball on a
6 scale after we cleaned off the grease from it, so
7 you don't see any grease on it, but it's in the same
8 location as when we were opening the tube.
9 Underneath that is pictures when I got back to my
10 office and sliced a hole inside the black tape on
11 the exterior of this round ball and you can see a
12 white substance underneath the black tape.

13 Q State's Exhibit 7, what are we looking at
14 there?

15 A Top picture on number 7, I start unravelling
16 the black, it was black electrical tape and that's
17 what was on the outside of this ball. Underneath
18 the black tape was a, like a paper towel or napkin
19 and it was wrapped. And it had a very foul odor to
20 my -- I remember that distinctly.

21 Q And what about State's Exhibit 8?

22 A Number 8 is when you get underneath the paper
23 towel, you'll see then a clear plastic bag and it's
24 basically wrapped around a ball of white, off-white
25 powder. Both of those reflect that.

1 **MR. GOINGS:** Your Honor, at this point in time,
2 I'd like introduce State's Exhibit -- or publish
3 State's Exhibit 6, 7 and 8 to the jury.

4 **THE COURT:** Yes, sir.

5 BY MR. GOINGS:

6 **Q** All right. So you get the grease tube, you
7 open it up. You find this black ball of tape. You
8 cut it open, unravel it and you wound up with a
9 clear plastic bag still in a ball of some substance;
10 is that correct?

11 **A** Yes.

12 **Q** And these are all photos as you're doing them
13 on that particular day?

14 **A** Yes.

15 **Q** Now, what did you do with the final product,
16 shall we say, the plastic bag with the white
17 substance in it, what did you do with it?

18 **A** It was tied up. I untied it, got a hair piece
19 out from my test kit, just it's -- it's a field test
20 kit. And what that does is it shows you that it's
21 positive for the presence of heroin.

22 **Q** And I don't want to know what the results of
23 that was, but what would you do with the rest of it?
24 The rest of the ball, after you take your little
25 sample, what do you do with it?

1 **A** At that time, once I take off all the exterior
2 wrapping, I then place the -- just the clear plastic
3 bag holding the white powder, I take that and I heat
4 seal it inside of a clear plastic in my office. So
5 it's basically in a rectangular-shaped, clear
6 plastic bag at that point, is what I put that ball
7 into. And it's heat sealed on every side.

8 **Q** And what do you do with the heat-sealed
9 package? Or what did you do with the heat-sealed
10 package?

11 **A** At that time, I placed it in our DEU office
12 safe.

13 **Q** Now, let me ask you this first: During the
14 time that you open it up, you find this clear
15 plastic bag of a white substance, from the scene to
16 your office, did you have the sole possession and
17 custody of that material?

18 **A** Yes.

19 **Q** Was it altered, changed or -- in any way while
20 it was in your possession?

21 **A** No.

22 **Q** Then you say you take obviously -- you took a
23 sample for your -- and then you put the rest in a
24 heat-sealed plastic and stuck it in the DEU safe; is
25 that correct?

1 **A** Yes, sir.

2 **Q** During that time, except for the sample that
3 you took out, was it altered, changed in any way
4 while it was in your possession?

5 **A** No.

6 **Q** I'm going to show you what's been marked
7 State's Exhibit 9. What's that a photograph of?

8 **A** Number 9, both pictures reflect the clear
9 plastic bag containing the white powder, off-white
10 powder inside the heat-sealed bag that I placed it
11 into prior to putting it into our office safe.

12 **MR. GOINGS:** I'd like to publish State's
13 Exhibit 9 to the jury, Your Honor.

14 **THE COURT:** Yes, sir.

15 **BY MR. GOINGS:**

16 **Q** Now, do you fill out an evidence sheet when you
17 bring back evidence to the DEU?

18 **A** Yes, sir.

19 **Q** I'm going to show you what's been marked
20 State's Exhibit 12. Can you identify that document?

21 **A** Yes.

22 **Q** What is it?

23 **A** That is the, I guess, the carbon copy or one
24 copy, there's like five copies of one, but that's
25 our drug analysis laboratory chain of custody form.

1 **Q** And did you fill in that document when you
2 submitted that white ball that was sealed in the
3 heat-sealed plastic? Did you start that document?

4 **A** Yes, I did.

5 **Q** And, in fact, it shows, based on your signature
6 -- what did you do with it on 4/29/2010?

7 **A** On 4/29/2010, at approximately 2000 hours or
8 8:00 p.m., I dropped it inside the --

9 **MR. KIRKLAND:** Your Honor, it sounds as if he's
10 reading from a document that I don't believe is in
11 evidence.

12 **MR. GOINGS:** I apologize, Your Honor. Now that
13 he's identified this as an evidence chain of
14 custody, the State would like to introduce into
15 evidence State's Exhibit 12.

16 **MR. KIRKLAND:** May I look at that for a moment,
17 Your Honor?

18 **THE COURT:** Certainly.

19 (Pause.)

20 **MR. GOINGS:** Let me ask you this way -- the
21 State will withdraw trying to put this into evidence
22 at this point in time, Your Honor.

23 **THE COURT:** Okay.

24 BY MR. GOINGS:

25 **Q** Just read your -- your signature indicates what

1 on that particular form? What does it mean that you
2 did with that item?

3 A The day that I put it into the DEU office safe?

4 Q Yes. Was what date?

5 A 4/29/2010.

6 Q Okay. And this is the heat-sealed package that
7 State's Exhibit 9 depicts, correct?

8 A Yes.

9 Q The white ball in the heat-sealed plastic?

10 A Yes.

11 Q Now, why do you put it in a heat-sealed package
12 like that?

13 A Well, the heat-sealed package that I placed it
14 in prior to putting it in our safe is procedure
15 before I package it into Horry County Best Analysis
16 Drug Kit. Inside our drug kits, our analysis kits,
17 there is another bag and it has a sealable top on
18 it.

19 Inside that bag is, there's a number on the
20 exterior of that bag -- it comes in an envelope,
21 first of all, and it has the same number on the
22 outside of that envelope and then there's paperwork
23 also in there that depicts the same BEST kit number.
24 On that, you fill it out, put names, dates, you
25 know, case file numbers, everything's corresponding.

1 At that time, we put one of those pieces of
2 paper inside the BEST kit itself, the heat-sealable
3 bag that came with the kit. And then I take my
4 heat-sealed bag, place it into that new kit
5 heat-sealed bag and then on top of that is a
6 tamper-proof heat seal on that bag. At that point,
7 I stick it back in the kit envelope and I would
8 transport that to the Horry County Police Evidence
9 Facility.

10 Q And who retrieved this particular item out of
11 the DEU safe before it went to Horry County
12 evidence?

13 A I did.

14 Q And on what date was that?

15 A May 7th.

16 Q Of 2010?

17 A Yes, sir.

18 Q So from 4/29/2010 until May 7th, 2010, it
19 remained in the DEU safe; is that correct?

20 A Yes.

21 Q In this heat-sealed plastic that you put it in?

22 A That I put it in, yes, prior to putting it in
23 the kit.

24 Q So it's not in the BEST kit yet? It's just
25 in --

1 A Correct.

2 Q -- this little heat-sealed white plastic that
3 you put it in on 4/29/2010?

4 A Correct.

5 Q Now, when you got it out on May 7th, 2010, had
6 the heat seal been broken?

7 A No.

8 Q Did the item look as if it was the same as when
9 you put it in on 4/29/2010?

10 A Yes.

11 Q And who has access to the DEU safe?

12 A My two supervisors.

13 Q So during 4 -- from 4/29 to May 7th, 2010, when
14 you got it out, it hadn't been altered -- or the
15 heat-sealed package you know hadn't been altered,
16 changed or broken in any way?

17 A Correct.

18 Q And then you take it to -- you said you take it
19 to Horry County evidence?

20 A Yes. Horry County Police Department evidence.

21 Q Do you put it in a BEST kit prior to going
22 there or do you put it in the BEST kit when you get
23 there?

24 A Prior to. My office is maybe two miles away.

25 Q And I'm going to show you what's been marked

1 State's 10. And there's several items in here,
2 okay, so I'm going to ask you about a couple
3 specifically. The bag that is contained within this
4 bag that's got the, looks like, blue bordering
5 around it, what is that?

6 A That's a bag that comes in the BEST kits that
7 we put drugs in.

8 Q And did you actually put your heat-sealed
9 plastic in one of those bags on May 7th, 2010?

10 A Yes.

11 Q And is that the bag you put it in?

12 A Yes, it is.

13 Q How do you know that?

14 A By my name and date that I did it.

15 Q So when you take your -- that little
16 heat-sealed plastic, put it in this BEST kit, you
17 sign and date it on the day you did it; is that
18 correct?

19 A The day I seal this bag, yes, sir.

20 Q And when you say seal this bag, tell the jury
21 what you mean.

22 A Can I hold that or can we talk about this --

23 Q You can hold it.

24 A This is -- this bag here is folded over inside
25 this package right now.

1 **MR. KIRKLAND:** Your Honor, I believe he's
2 publishing an exhibit that I don't think has been
3 placed into evidence yet.

4 **MR. GOINGS:** I think he's identifying an
5 exhibit, Your Honor.

6 **MR. KIRKLAND:** Well, I think he needs to
7 identify it himself and then have it placed into
8 evidence and then he can publish it to the jury.

9 BY MR. GOINGS:

10 **Q** In general, tell how a BEST kit is sealed.

11 **A** At the top of the bag, the heat-sealable bag
12 that comes in the kit, at the very top, there's a
13 piece of paper you can tear off and underneath it's
14 sticky glue-like stuff and you cannot -- if it's
15 tampered with, you're going to know it basically.
16 It's a tamper-proof seal.

17 **Q** And what's the point of putting it in a
18 tamper-proof seal?

19 **A** To ensure that there's no tampering of the
20 evidence.

21 **Q** And I don't want you to show it to the jury,
22 but is this the particular BEST kit that you put
23 your heat-sealed plastic that contained the white
24 ball that you got from your CI on 4/29 of 2010, is
25 that the BEST kit that you put it in?

1 **A** Yes, it is.

2 **Q** And then what happens to this BEST kit?

3 **A** Once I'm completed filling it out and sealing
4 it --

5 **Q** That's correct.

6 **A** -- I take it to the Horry County Police
7 evidence facility.

8 **Q** And who do you hand it over to?

9 **A** Any evidence clerk that is working at that
10 time.

11 **Q** Do you know specifically who you handed this
12 BEST kit and this white ball that was in your
13 heat-sealed wrap, who you handed it to on that
14 particular day?

15 **A** That day I handed it to Ms. Sharon Lilly.

16 **THE COURT:** Sharon who?

17 **THE WITNESS:** Lilly.

18 BY MR. GOINGS:

19 **Q** And what do they do with it?

20 **A** (No response.)

21 **Q** You don't know?

22 **A** I don't know all their procedures, no, sir.

23 **Q** So you drop it off, they take it, they sign off
24 on the evidence custody form and then you're done?

25 **A** Yes, sir.

1 Q Let me ask you this: When you searched the CI
2 again, did he have the funds, the \$1800 that you had
3 given him --

4 A No, he did not.

5 Q -- for the drug transaction?

6 A No, sir.

7 Q It was gone?

8 A It was gone.

9 Q One last question, I think. Now, the video
10 that shows the drug transaction, you've watched it
11 and you -- it ends before the CI actually gets back
12 with you; is that correct?

13 A Correct.

14 Q And do you know exactly where it ends?

15 A I don't know the exact time or time stamp on
16 the video, but I know, during the video, it's when
17 he is driving back from -- after he leaves Juan
18 Arroyo's house the second time.

19 Q And do you know why it ended?

20 A Yeah. It was out of memory at that point.

21 Q So the video doesn't actually depict the CI and
22 you meeting back up face-to-face again?

23 A No.

24 Q But it does depict the entire transaction that
25 took place at Mr. Arroyo's residence and also has it

1 after the CI gets back in the car and leaves the
2 residence?

3 **MR. KIRKLAND:** Well, Your Honor, what the video
4 depicts, I think, is hearsay. He didn't make that
5 video.

6 **MR. GOINGS:** It ends before you get --

7 **THE COURT:** Hold on a second. You want to just
8 withdraw it or do you want to -- what do you want to
9 do?

10 **MR. GOINGS:** I mean, I think he's watched the
11 video. He can explain it to the jury and what part
12 it ends on.

13 **THE COURT:** Your objection is hearsay?

14 **MR. KIRKLAND:** Have they already placed it --

15 **MR. GOINGS:** I'm not talking about any
16 communications.

17 **THE COURT:** This video's in evidence, yes.

18 **MR. KIRKLAND:** Then I withdraw my objection.

19 **THE COURT:** Go ahead, Mr. Goings.

20 BY MR. GOINGS:

21 **Q** Does it show the whole transaction?

22 **A** Yes, it does.

23 **Q** And, actually, the CI's in his car on the way
24 back to the meeting spot when it ends?

25 **A** It actually shows him leaving and calling me.

1 And then when he's driving to the location where
2 we're going to meet, it cuts off.

3 Q And, again, your testimony was by that time,
4 you had eyes on your CI the whole entire time,
5 correct?

6 A Yes.

7 Q All right. After the transaction takes place
8 and he's in his car, you have eyes on him?

9 A Yes.

10 Q All right. So even if the video ends, you're
11 still physically surveilling him?

12 A Yes.

13 Q All right. At any point in time, did he stop,
14 meet with anybody or had an opportunity to get these
15 -- those grease tube -- the white powder that you
16 find eventually in the grease tube from any other
17 source?

18 A No. I followed him as soon as he pulled out of
19 the resident's yard and then I got in front of him
20 and we were together the entire time to our parking
21 lot.

22 MR. GOINGS: Beg the Court's indulgence.

23 THE COURT: Yes, sir.

24 (Pause.)

25 BY MR. GOINGS:

1 **Q** And all this happened in Horry County; is that
2 correct?

3 **A** Yes, in the city limits of Myrtle Beach inside
4 Horry County, South Carolina.

5 **MR. GOINGS:** No further questions, Your Honor.

6 **THE COURT:** All right. Folks, y'all have been
7 out here about an hour, so we'll take a ten minute
8 break and then get you back in here. Don't discuss
9 the case. Follow the bailiff, please.

10 (The jury retires to the jury room.)

11 **THE COURT:** During the break, you may step down
12 if you like, but you are not permitted to discuss
13 your testimony with anyone. You understand?

14 **THE WITNESS:** Yes, sir. I'm fine here.

15 **THE COURT:** Thank you. We're at ease for ten
16 minutes.

17 (Brief Recess.)

18 (Court's Exhibit Number 2, jury note, marked
19 for identification purposes.)

20 **THE COURT:** Defense ready?

21 **MS. CHAPMAN:** Yes, sir.

22 **THE COURT:** State?

23 **MR. GOINGS:** Yes, sir.

24 **THE COURT:** Bring in the jury.

25 (The jury returns to the courtroom.)

1 **THE COURT:** Cross-examination.

2 **MS. CHAPMAN:** May it please the Court, Your
3 Honor.

4 **THE COURT:** Yes, ma'am.

5 CROSS-EXAMINATION

6 **BY MS. CHAPMAN:**

7 **Q** Agent Wood, I'm Debbie Chapman. I think we've
8 met in the courthouse before?

9 **A** Yes, ma'am.

10 **Q** It's been a while back I believe.

11 **A** Yes, ma'am.

12 **Q** I just have a few questions for you. This drug
13 buy, it's your testimony on 4/29, is on video?

14 **A** Ma'am?

15 **Q** The 4/29 drug buy is on video?

16 **A** Yes, ma'am.

17 **Q** And you also testified that it is normal
18 procedure for you to search the CI and to search the
19 CI's car?

20 **A** Yes, ma'am.

21 **Q** I think I'd like for you to elaborate on that a
22 little bit for the jury and tell them exactly how do
23 you search a CI's car.

24 **A** How do I search their car?

25 **Q** Uh-huh.

1 **A** Every portion of their vehicle just -- I search
2 the interior, I search the exterior, lift the hood,
3 the trunk area, the back seat area, underneath the
4 back seat, in the doors, the door panels, visors and
5 anywhere -- anywhere anything can be hidden.

6 Usually there's a couple of us searching because
7 that is a lot to search.

8 **Q** But I'm talking about this 4/29. Was it just
9 you that searched the car?

10 **A** That was just me, yes, ma'am.

11 **Q** And it was the CI's car?

12 **A** Yes.

13 **Q** His own personal car that he brought to the
14 scene; is that correct?

15 **A** Yes.

16 **Q** And do you remember what kind of car that was?

17 **A** BMW.

18 **Q** And do you remember anything odd being in that
19 car that you searched?

20 **A** Anything odd?

21 **Q** Uh-huh. That he had in there?

22 **A** Not that I know of.

23 **Q** All right. That's fair enough. That wasn't on
24 the video tape, was it?

25 **A** What, me searching the vehicle?

- 1 Q Searching the car?
- 2 A No.
- 3 Q How about the search of the CI, is it on video?
- 4 A No.
- 5 Q So, really, the whole drug buy isn't on video
- 6 and the procedure that you've done?
- 7 A The drug buy is the procedure. Beforehand is
- 8 not.
- 9 Q Okay. And it's really important to search the
- 10 CIs and their vehicles beforehand, correct?
- 11 A Yes.
- 12 Q So they won't be sneaking drugs in their car
- 13 and blaming somebody else, correct?
- 14 A Yes, that's why I do it.
- 15 Q That's why you search. Now, let me ask you,
- 16 because I've looked at the video, and it's your
- 17 testimony that you had constant eyesight with the CI
- 18 the entire time?
- 19 A Until he reached inside the residence.
- 20 Q Right.
- 21 A And the portion that he was --
- 22 Q Obviously, you couldn't --
- 23 A Red light, the red light incident, but we
- 24 caught --
- 25 Q Well, I do want to talk about the red light

1 incident. How long do you think he was out of your
2 sight during the red light incident?

3 A I don't recall the amount of time, but it
4 wouldn't have been very --

5 Q Would it surprise you if I told you it was five
6 minutes?

7 A That would be too long. We didn't go five
8 minutes away. I don't -- not that I know.

9 Q And then there's a 50-minute break and it's
10 your testimony that's when you went to the bank,
11 correct?

12 A After I turned off the video recorder, yes.

13 Q And the CI followed you to the bank?

14 A Yes.

15 Q Did he go into the bank with you?

16 A I used the ATM on the outside of the bank.

17 Q The ATM?

18 A Yes.

19 Q And, what, did he park next to you?

20 A Yes. He parked right beside me and I actually
21 walked -- we parked right in front of the ATM and I
22 walked to the ATM.

23 Q All right. And after the buy's over with or
24 the alleged buy's over with and the CI walks out, he
25 gets into his car, and I see that on the video, it's

1 not maybe 30 seconds, maybe 45 seconds, the video
2 cuts off; is that a fair estimate?

3 **A** I don't know the exact time.

4 **Q** So this jury can't see you meeting the CI at
5 the prearranged meeting place?

6 **A** Correct.

7 **Q** That's not on the video?

8 **A** No.

9 **Q** They can't see the CI giving you the canister?

10 **A** Correct.

11 **Q** They can't see the search of the car?

12 **A** No, ma'am.

13 **Q** They're not going to see the search of the CI?

14 **A** No, ma'am.

15 **Q** And the 50 minutes, it's, I guess right now,
16 your say so as to whether you kept your eye on the
17 CI the entire time during that 50 minutes that it
18 took to go to the bank and to go to the ATM and also
19 a five minute delay that you got stopped at a
20 stoplight, correct?

21 **A** Like I said --

22 **Q** I estimate a five minute delay. I apologize.

23 **A** The delay was not...

24 **Q** All right. Well, you also testified, I don't
25 think you remembered exactly what your CI's state

1 charges were, is that correct, what you charged him
2 with originally?

3 A The state charge?

4 Q Uh-huh, your charge.

5 A No. My charge should be PWID cocaine,
6 possession with intent to distribute cocaine. No --
7 yeah. That was a confusing night.

8 Q But I thought your testimony was that he led
9 you to over a thousand -- a kilo of cocaine?

10 A He did.

11 Q He did. He wasn't charged with that?

12 A Not through the state.

13 Q Not through the state. That would be the
14 federal government who charged him?

15 A As far as I recollect, yes, ma'am. Federal
16 government, they adopted his case. So from there, I
17 don't know the exact charges or details of the
18 federal case.

19 Q Well, he signed a cooperating agreement with
20 you, did he not?

21 A Yes.

22 Q And he worked with you for probably a little
23 bit over a year by the time he was indicted
24 federally?

25 A Sounds about right. We worked together for

1 quite a while.

2 Q I think that's about right. And I think he was
3 charged with PWID distribution. Do you know what
4 that carries, time-wise?

5 A For?

6 Q PWID distribution of cocaine, possession with
7 intent to distribute cocaine.

8 A In the federal system?

9 Q No, in your charge.

10 A Not off the top of my head, no, ma'am.

11 Q Something like 15 years, does that sound about
12 right?

13 A I don't know. I usually look that sort of
14 stuff up at the time when I need to, so.

15 Q Okay. And in your contract that you had -- and
16 if you don't have a copy of it, I'll be glad to show
17 it to you -- that you have your CI sign, there's
18 certain things he can do and he can't do, correct?

19 A Yeah, that's -- I'd rather answer that once you
20 show me what I'm talking about.

21 (Pause.)

22 MS. CHAPMAN: Sorry, Judge, I thought I had it
23 right in my hand. I'll move on.

24 Q Do you remember having him sign it? I have
25 your worksheet I can hand up for you. Do you

1 remember him signing the agreement?

2 **A** I remember meeting with him to do the
3 agreement.

4 **MS.. CHAPMAN:** I've got it. Judge, if I may
5 hand this up to him?

6 **THE COURT:** Yes, ma'am.

7 **BY MS. CHAPMAN:**

8 **Q** What's really important to me is paragraph
9 number 13.

10 **A** (Witness reviewing document.)

11 **Q** Did you make any recommendation to the federal
12 government on your CI's prosecution?

13 **A** What do you -- can you elaborate on what you
14 mean by that?

15 **Q** In paragraph 13, do you agree or the State
16 agrees to make some kind of recommendation to a CI
17 for the work that he has done --

18 **A** Uh-huh.

19 **Q** -- and it's been your testimony that he's done
20 several control buys for you. On his behalf, did
21 you make any recommendation to the federal
22 government?

23 **A** No. I gave everything to the federal agent in
24 charge of his case, works with Homeland Security
25 Investigations. He was very aware of what I did

1 with him and I just tell him what I did --

2 Q That's kind of like making a recommendation.

3 You're not going to tell him he did a really --

4 A Not in front of the court, though.

5 Q -- bad job or anything, did you?

6 A No. I told him what cases we had made while he
7 was working.

8 Q That he was a good CI or you just didn't say
9 anything about him?

10 A I just -- I simply state what cases we make,
11 that's really what --

12 Q Well, let me ask you this: Was he ever
13 prosecuted on your charges?

14 A No, because his case was adopted federally.
15 Once that happens, the solicitor's office in the
16 state...

17 Q Dismiss those charges --

18 A Dismisses his charges and the charges are
19 picked up by the federal government.

20 Q Yeah, they don't have to dismiss them. It's
21 separate jurisdictions, but, in this case, your
22 charges were dismissed probably about a year later
23 about the time the federal charges, I think, were
24 taken care of?

25 A Usually when they're indicted federally, yes,

1 ma'am.

2 **MS. CHAPMAN:** All right. If I could beg the
3 Court's indulgence.

4 **THE COURT:** Yes, ma'am.

5 (Pause.)

6 **MS. CHAPMAN:** I believe that's all I have, Your
7 Honor.

8 **THE COURT:** Redirect.

9 **MR. GOINGS:** Just a couple, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. GOINGS:

12 **Q** Agent Wood, let me first start off, obviously
13 you're in drug investigation, but do you have any
14 personal vendetta against the defendant, Mr. Arroyo?

15 **A** No, sir.

16 **Q** So when you say you searched the CI's car and
17 his persons before, even though it's not on video,
18 did you, in fact, search him and his car?

19 **A** Yes, I did.

20 **Q** Was there any illegal narcotics in his car or
21 the grease tube or the white ball that you
22 eventually found after the drug transaction took
23 place?

24 **A** No, it was not.

25 **Q** When you had to shut the video off and go to

1 the bank and cut it back on, you testified that
2 Emigdio never left your presence, you had eyes on
3 him; is that, in fact, the case? Did you have eyes
4 on him?

5 A Yes, I did. We talked the entire time.

6 Q Did anybody approach him, hand him anything?
7 Did he talk to anybody else or was handed anything
8 from anybody during this time?

9 A No.

10 Q And you testified that although the video ends,
11 you still had eyes on him after the transaction's
12 taken place from the time he gets in his car to the
13 time y'all meet up where he eventually hands you
14 these items. Did you, in fact, have eyes on him?

15 A Yes.

16 Q Did anybody approach him? Did he stop, talk to
17 anybody?

18 A No, sir.

19 Q Now, you were asked there at the end concerning
20 the fact that the charges that you had him on were
21 dropped by the solicitor's office and I want to ask
22 you a couple questions. You may know the answers or
23 not. Do you know was he charged with a conspiracy
24 offense by the feds or do you know that? When they
25 picked it up and it was adopted, was he charged with

1 trafficking by conspiracy?

2 A Yes.

3 Q All right. Would that cover your PWID charge?

4 A That would be above my PWID charge.

5 Q All right. And I'll ask it this way, and you
6 may not know the answer, if you have a person who's
7 charged with conspiracy to traffic and you have a --
8 you arrested him for PWID cocaine, and we're talking
9 about Emigdio.

10 A Uh-huh.

11 Q And the dates that the feds used for their
12 conspiracy charge covers the date your PWID cocaine
13 happens, can the state also prosecute that
14 individual if the feds are prosecuting him?

15 A I really don't know the answer -- I don't know
16 the answer to that question.

17 Q That's fine.

18 MR. GOINGS: I think that's all the questions I
19 have, Your Honor.

20 THE COURT: Thank you.

21 Recross.

22 MS. CHAPMAN: None, Your Honor.

23 THE COURT: Thank you, Mr. Wood. You may step
24 down.

25 Call your next witness.

1 **MR. PAULING:** The State would call Sharon
2 Lilly.

3 **THE COURT:** Come around, please.

4 SHARON TODD LILLY,
5 having been duly sworn, testified as follows:

6 **THE CLERK:** Please state your full name.

7 **THE WITNESS:** Sharon Todd Lilly.

8 **THE CLERK:** Ms. Lilly, if you would, have a
9 chair and adjust the microphone.

10 DIRECT EXAMINATION

11 BY MR. PAULING:

12 **Q** How are you doing, Ms. Lilly?

13 **A** Good.

14 **Q** Please tell the jury, ma'am, where you're
15 currently employed.

16 **A** Horry County Police Department, evidence
17 technician.

18 **Q** And how long have you been with the Horry
19 County Police Department?

20 **A** Five years.

21 **Q** And what capacity do you work at the police
22 department?

23 **A** I work inside evidence.

24 **Q** Are you an evidence tech?

25 **A** Yes, sir.

1 Q Ma'am, what are your duties as an evidence tech
2 there at Horry County?

3 A I log in the property and evidence that's
4 turned in by the officers and hold it for court.

5 Q And when you say the officers, officers such as
6 Agent Wood?

7 A Yes, sir.

8 Q And as it relates to drug evidence that your
9 lab receives, what's the process, procedures, the
10 steps you take in ensuring that that evidence is
11 properly documented and it gets to the place it
12 needs to get to for testing?

13 A We log it into the computer. We have a drug
14 vault that I place it in, it's a secure room. And
15 then whenever it's called for court, it'll be
16 tested, we pull it and I give it to Lisa Floyd to be
17 tested.

18 Q And you mentioned that you log it into a
19 computer. Is there also a written form that you
20 sign off on?

21 A There is a chain of custody, yes, sir.

22 Q A chain of custody form?

23 A Uh-huh.

24 Q How many people work in the area where you are?
25 Is it just you?

1 **A** Two other people.

2 **Q** Two other people?

3 **A** Yes, sir.

4 **Q** Okay. And you mentioned that you have a drug
5 vault. Who has access to that drug vault?

6 **A** The other two people, my supervisor and
7 co-worker.

8 **Q** Ms. Lilly, I'm going to want to focus your
9 attention --

10 **MR. PAULING:** May I approach the witness, Your
11 Honor?

12 **THE COURT:** Yes, sir.

13 **BY MR. PAULING:**

14 **Q** I'm going to show you what's been marked for ID
15 purposes as State's 12, as well as State's 10. I'm
16 going to ask you first if you recognize State's 12?

17 **A** I do.

18 **Q** And what is that, ma'am?

19 **A** That's a chain of custody for the drug kit that
20 Agent Wood turned in.

21 **Q** And does your name appear on that particular
22 chain of custody form?

23 **A** Yes, it does.

24 **Q** And what does -- I said, does your name appear.
25 Does your signature appear?

1 A Signature, yes.

2 Q Okay. And when was that ma'am?

3 A May the 7th, 2010.

4 Q And you signed that?

5 A I signed it then.

6 Q And what does your signature indicate as far as
7 what happened on May 7th of 2010?

8 A Agent Wood turning it into me that day.

9 Q And when you say turning it in, I'm going to
10 turn your attention to State's 10. Do you recognize
11 that particular item?

12 A Yes, sir. That is the drug kit he turned in on
13 that day.

14 Q That's the drug kit he turned in?

15 A Yes, sir.

16 Q And now was that item within that BEST bag,
17 that bag that's got the --

18 A Yes, sir. We have a --

19 Q -- border on it?

20 A We have a control number and the numbers match.

21 Q So that control number that's on State's 10
22 matches --

23 A The chain of custody.

24 Q The chain of custody form?

25 A Yes, sir.

1 Q Is there any other number that's on that form
2 that's also on -- on State's 12, that's also on
3 State's 10?

4 A At this time, there's a lab number on the outer
5 bag that's written. It was written by the chemist
6 after she tested the drugs and then she wrote that
7 number on the chain of custody.

8 Q And who is that chemist?

9 A Lisa Floyd.

10 Q You had mentioned May 7th of 2010. Does your
11 signature appear elsewhere on State's 12?

12 A Yes, sir. On July 27th, 2010, I pulled it from
13 the drug vault and gave it to Lisa Floyd to be
14 tested.

15 Q Now, from May 7th, 2010, until -- what was that
16 second date, ma'am?

17 A July 27th.

18 Q July 27th of 2010, was that evidence maintained
19 in the drug vault?

20 A Yes, sir.

21 Q When you received the evidence from Agent Wood,
22 you put it in the drug vault. While it was in your
23 custody, was it tampered with or altered or changed
24 at all?

25 A No, sir.

1 Q And once you'd taken it out to give to Lisa
2 Floyd on July 27th of 2010, did you examine it to
3 see if it had been tampered or altered at any point?

4 A I did.

5 Q And had it been?

6 A No, sir.

7 Q Now, you said on July 27th, that you signed it
8 out to Ms. Lisa Floyd?

9 A Yes, sir.

10 Q For analysis?

11 A Yes, sir.

12 Q Now, after it is -- do you take part in the
13 analysis process at all?

14 A No, sir.

15 Q Now, after it's analyzed, is that evidence
16 returned to --

17 A It is. She returns it into another -- it's in
18 another heat-sealed package and she returned it into
19 that to me.

20 Q Is it signed off on that she returns it?

21 A No, sir.

22 Q Why is that?

23 A It's just our procedure. We log it into the
24 computer with the lab number that she puts on it and
25 that's all we do. That's our procedure.

1 Q And as far as signing it out to go to court?

2 A It's signed out now for court, I did.

3 Q Say that again, ma'am.

4 A I logged it out this morning in the computer to
5 bring to court in my name.

6 Q But it wouldn't be in that form, but it was
7 logged out in the computer; is that correct?

8 A No, sir. It's in the computer.

9 MR. PAULING: Beg the Court's indulgence.

10 THE COURT: Yes, sir.

11 (Pause.)

12 BY MR. PAULING:

13 Q And, again, just so I understand, from the
14 point that it had been tested, it had been returned
15 and placed in the drug vault; is that correct?

16 A That's correct.

17 Q And then it would have been -- it was logged
18 back out this morning?

19 A Yes, sir.

20 Q On March 4th, 2013, to bring to court?

21 A Yes, sir.

22 MR. PAULING: I have no further questions, Your
23 Honor.

24 THE COURT: Thank you.

25 Cross.

1 **MS. CHAPMAN:** No questions, Your Honor.

2 **THE COURT:** Thank you, ma'am. You may step
3 down.

4 Call your next witness.

5 **MR. GOINGS:** Your Honor, may we approach real
6 quick?

7 **THE COURT:** Sure.

8 (Whereupon, a bench conference was held off
9 the record, in the presence of the jury, but out of
10 the hearing of the jury.)

11 **MR. GOINGS:** The State would call Lisa Floyd.

12 **THE COURT:** Come up to the clerk, please,
13 ma'am.

14 LISA FLOYD,
15 having been duly sworn, testified as follows:

16 **THE CLERK:** Please state your full name.

17 **THE WITNESS:** Lisa Floyd.

18 **THE CLERK:** Please have a seat. After you're
19 seated, please adjust the microphone.

20 DIRECT EXAMINATION

21 BY MR. GOINGS:

22 **Q** Good afternoon, Ms. Floyd. How are you?

23 **A** Well. Thank you.

24 **Q** Ms. Floyd, can you please tell the jury -- well
25 let me ask you this: Were you once employed with

1 Horry County?

2 **A** Yes, I was.

3 **Q** And what was your employment status with them?

4 **A** I worked for the Horry County Police Department
5 from September of 2002 until September of 2012.

6 **Q** And in what role did you work with the Horry
7 County Police Department?

8 **A** I was a forensic drug analyst.

9 **Q** And just briefly for the jury, describe what
10 you do as a forensic drug analyst.

11 **A** I receive evidence for testing that's suspected
12 to be controlled substances or prescription
13 substances, test the evidence and then issue a
14 report.

15 **MR. GOINGS:** Your Honor, at this time, and I
16 believe without objection from the defense, we would
17 like to have Ms. Floyd qualified as an expert
18 witness in the analysis -- or forensic analysis of
19 illegal narcotics.

20 **MS. CHAPMAN:** Without objection, Your Honor.

21 **THE COURT:** All right. She's recognized as an
22 expert in the analysis of forensic -- what did you
23 say?

24 **MR. GOINGS:** Forensic analysis of illegal
25 narcotics.

1 **THE COURT:** Forensic analysis of narcotics.

2 All right.

3 **MR. GOINGS:** Thank you, Your Honor.

4 BY MR. GOINGS:

5 **Q** If you would, for the jury, describe how you
6 become involved with a narcotics case. What
7 happens? When do you become involved in it?

8 **A** When the evidence department would bring me a
9 sealed drug test to test.

10 **Q** And did you have an occasion to test a specific
11 substance that was brought to you in this case?

12 **A** Yes, I did.

13 **Q** Specifically, I'm going to show you an item
14 that's been marked as State's Exhibit 10. When you
15 receive the drugs, what do they come in? I mean,
16 how are they delivered to you? What type of package
17 does it come in?

18 **A** They come to me sealed in a tamper-evident BEST
19 kit inside of a manila envelope.

20 **Q** And what do you do once you get that BEST kit?

21 **A** I would log it in. I would log the numbers
22 that are printed on the envelope, which is the
23 control number, and I would issue it a lab number at
24 that point. And I would also log the law
25 enforcement agency's case number as well.

1 **Q** I'm going to show you this item, which has been
2 marked State's Exhibit 10. Did you have an
3 opportunity to receive that item and review its
4 contents?

5 **A** Yes, I did.

6 **Q** And how do you know that?

7 **A** My initials, the letters O-K, the date and the
8 agency's law enforcement number are all written on
9 there in my handwriting.

10 **Q** Do you also sign off on the evidence sheet when
11 it's brought to you from the Horry County evidence
12 department?

13 **A** Yes. I sign a chain of custody form.

14 **Q** Is this, in fact, your signature on 7/27 of
15 2010?

16 **A** Yes, it is.

17 **MR. GOINGS:** Your Honor, at this time, I
18 believe all signatures have been identified on
19 State's Exhibit 12 and I would like to seek to
20 introduce that into evidence at this time.

21 **MR. KIRKLAND:** No objection, Your Honor.

22 **THE COURT:** When you asked her the question,
23 did you ask her about 12 or 10?

24 **MR. GOINGS:** 12.

25 **THE COURT:** All right. Without objection, mark

1 12 into evidence, please.

2 (State's Exhibit Number 12, evidence sheet,
3 admitted into evidence.)

4 BY MR. GOINGS:

5 Q So on 7/27/2010, Sharon Lilly brings you the
6 BEST evidence kit with the control number on it and
7 then you assign it a lab number; is that correct?

8 A That's correct.

9 Q And what's the lab number you assigned for this
10 particular BEST kit?

11 A It was L-100416.

12 Q And before we get into specifics, what's the
13 purpose of a BEST kit?

14 A The BEST stands for best evidence sampling
15 technique. It's simply a way to ensure the
16 integrity of the evidence before it's tested.

17 Q If you receive a BEST kit that you believe has
18 been tampered with or cut or that you have ill
19 feelings about, would you test the particular items
20 in that case -- in that kit?

21 A No. It would be immediately returned to
22 evidence.

23 Q When you received this particular BEST kit from
24 Horry County evidence, did you have any of those
25 problems?

1 **A** No, I did not, indicated by the letters O-K.

2 **Q** Where you initial it when you receive it, you
3 wrote O-K indicating that the BEST kit, based on
4 your knowledge, had not been tampered with and what
5 your visual inspection showed?

6 **A** Yes. The O-K would indicate that I found no
7 evidence of tampering.

8 **Q** And once you found it okay, you assign it a lab
9 number, put your signature on it, put the control
10 number on it, what do you do at that point in time?

11 **A** It's stored for testing at that point.

12 **Q** All right. And, obviously, we know you
13 received this on 7/27 of 2010. Do you know when you
14 actually performed your analysis on the contents
15 that was contained in that package?

16 **A** Yes. They were performed the following day on
17 July 28th of 2010.

18 **Q** And when you make -- you do your analysis, what
19 do you do? Do you cut open the BEST kit?

20 **A** I do.

21 **Q** When you cut open this BEST kit, do you recall
22 if it was another heat-sealed package, was also
23 there?

24 **A** Yes. There was -- appears a bag within a bag
25 inside the BEST kit itself.

1 Q And did you initial each of those bags?

2 A Yes, I did.

3 Q So we have a baggy. What did the baggy have in
4 it? Did it have the substance that you were going
5 to test?

6 A The substance itself was inside of, yes, what
7 appears to be a folded up baggy inside of a
8 heat-sealed plastic bag.

9 Q When you broke open the BEST kit on this
10 particular day, on 7/28/2010, was this -- obviously,
11 the BEST kit's heat sealed, correct?

12 A Yes, it was.

13 Q Was the individual white heat-sealed bag also
14 in the BEST kit still heat sealed?

15 A I didn't make any indication that it was not,
16 and had it not been, I would have.

17 Q So because you didn't make any indication that
18 it wasn't still sealed, it was still sealed at that
19 time?

20 A Yes.

21 Q And did you open that package on 7/28/10 as
22 well?

23 A Yes, I did.

24 Q All right. And what did you do from there once
25 you got to the substance?

1 **A** Any substance that's received is then subjected
2 to what's called presumptive testing. In this case,
3 it's a powder. So it would simply be a color test,
4 similar to what the officers use, field test kits,
5 just gives a color change that indicates the
6 possibility of the presence of a controlled
7 substance. And then what's called confirmatory
8 analysis is done at that point, which would actually
9 give an indication of the actual drug present, if
10 any.

11 **Q** And do you issue a report?

12 **A** Yes, I do.

13 **Q** I'm going to show you what's been marked
14 State's Exhibit 13. Do you recognize that document?

15 **A** Yes, I do.

16 **Q** And what is it?

17 **A** It is the report that I issued for this
18 particular case.

19 **Q** And is it signed by you?

20 **A** It is signed by me. And it bears the same
21 control number as the BEST kit, the lab number that
22 I assigned it, and the agency's law enforcement case
23 number as well.

24 **Q** And this report was issued on what particular
25 day?

1 **A** It was issued the day after testing, which was
2 July 29th of 2010.

3 **MR. GOINGS:** Your Honor, at this time, the
4 State would seek to introduce State's Exhibit 13
5 into evidence.

6 **THE COURT:** Show it to counsel.

7 (Pause.)

8 **THE COURT:** Any objection?

9 **MR. KIRKLAND:** No, sir, Your Honor, no
10 objection.

11 **THE COURT:** Mark 13 in evidence, please.

12 (State's Exhibit Number 13, drug analysis
13 report, admitted into evidence.)

14 BY MR. GOINGS:

15 **Q** Let me ask you this: After you performed your
16 test on the substance that was contained within the
17 BEST kit that was assigned lab number L-100416, what
18 was your findings?

19 **A** There was a tan powder substance present that
20 was found to be heroin in the amount of 24.78 grams,
21 which is 382.35 grains.

22 **Q** So your test showed presence of 24.78 grams of
23 heroin?

24 **A** That's correct.

25 **Q** Once you conduct your analysis, what do you do

1 with the drugs that you just tested?

2 A At that point, they're repackaged and sealed
3 into a heat-sealed outer envelope and that BEST kit
4 is folded in half and inserted in there along with
5 the actual drugs that were tested and any packaging
6 that would have come with them. And then I heat
7 seal my initials, the date and the lab number into
8 the top of the bag.

9 Q And what happens -- do you hold on to it in the
10 drug lab or do you take it back to evidence? What
11 happens?

12 A Typically, they're held on to until I have a
13 box full of evidence to return back to evidence.
14 And everything is logged onto one chain of custody,
15 everything that I've tested, usually about a month's
16 worth. And it's returned to them at that point.

17 Q And who has access to the drug lab?

18 A I did.

19 Q Anybody else?

20 A Not to my knowledge.

21 Q So while it's -- the drugs or the BEST kit or
22 after you -- even after you test it, while it's
23 secured in your facility, you only have access to
24 it?

25 A That's correct, yes.

1 **Q** I'm going to, again, show you what's been
2 marked State's Exhibit 10. This outer package that
3 all these materials are contained in, can you
4 identify that?

5 **A** The outer clear bag?

6 **Q** Yeah.

7 **A** Yes, I can. I -- as I stated, I put the date
8 that it was tested, my initials and the lab number
9 and heat sealed them into the top of the bag.

10 **Q** And are those your initials?

11 **A** Yes, they are.

12 **Q** And you sealed these back in the bag on
13 7/28/2010 after you conducted your analysis?

14 **A** That's correct. They were resealed the day it
15 was tested.

16 **Q** And this is the remaining heroin that was left
17 over after you conducted your analysis and found the
18 25.78 grams?

19 **A** That's correct.

20 **MR. GOINGS:** Your Honor, at this time, the
21 State would seek to introduce State's Exhibit 10
22 into evidence.

23 (Pause.)

24 **MR. KIRKLAND:** No objection, Your Honor.

25 **THE COURT:** Mark that in evidence without

1 objection.

2 (State's Exhibit Number 10, BEST kit,
3 admitted into evidence.)

4 **MR. GOINGS:** The State has no further
5 questions, Your Honor.

6 **THE COURT:** Cross.

7 **MS. CHAPMAN:** No questions, Your Honor.

8 **THE COURT:** Thank you, ma'am. You may step
9 down.

10 It's ten till 5:00. What do you want to do?

11 **MR. GOINGS:** We already have released our last
12 witness because he's going to take a little longer,
13 Your Honor. We'll come back in the morning.

14 **THE COURT:** All right. Ladies and gentlemen of
15 the jury, we're going to recess for the day. I need
16 you back, please, in the jury room in the morning at
17 9:30. Don't call that number that you were given,
18 just come in.

19 9:30 in the morning. I hope you have a
20 pleasant even -- oh, let me tell you, if you have
21 some true emergency that arises that prevents you
22 from being here, please have somebody call us
23 because we can't start until I account for all of
24 you. If you're not here, I have to send somebody to
25 find you, okay. 9:30 in the morning. Thank you.

1 (The jury was excused for the day.)

2 **THE COURT:** How many more witnesses?

3 **MR. GOINGS:** Just one, Your Honor.

4 **THE COURT:** This is the confidential informant?

5 **MR. GOINGS:** Yes, sir.

6 **THE COURT:** Y'all be careful as you leave that
7 you don't have contact with the jurors because they
8 probably go back to the jury room, get their stuff
9 and come out. The safest thing to do is wait a few
10 minutes before you try to go.

11 Court's in recess till 9:30 in the morning.

12 **MR. GOINGS:** Your Honor, just one other thing,
13 on the three witnesses who testified so far, they
14 traveled from Horry and Greenville, can they be
15 released from their subpoenas?

16 **THE COURT:** Is there any objection to the
17 witnesses being released?

18 **MR. KIRKLAND:** No, sir, Your Honor.

19 **THE COURT:** You're free to go. Thank you.

20 9:30 a.m.

21 (The proceedings were concluded for March 4,
22 2013.)

23 (The following proceedings were held on
24 March 5, 2013.)

25 **THE COURT:** State ready?

1 **MR. GOINGS:** State's ready, Your Honor.

2 **THE COURT:** Defense, are y'all ready?

3 **MS. CHAPMAN:** Yes, Your Honor.

4 (The jury enters the courtroom at 9:48 a.m.)

5 **THE COURT:** All right. Ladies and gentlemen,
6 good morning. We'll continue with the State's case.
7 Call your next witness.

8 **MR. PAULING:** Thank you, Your Honor. At this
9 time, the State would call Emigdio Penaloza.

10 EMIGDIO PENALOZA,
11 having been duly sworn, testified as follows:

12 **THE CLERK:** Please state your name.

13 **THE WITNESS:** Emigdio Penaloza.

14 **THE CLERK:** Would you have a chair up there and
15 adjust the microphone, please.

16 **THE COURT:** Spell your first name for us.

17 **THE WITNESS:** Emigdio Penaloza.

18 **THE COURT:** Spell it.

19 **THE WITNESS:** E-m-i-g-d-i-o P-e-n-a-l-o-z-a.

20 **THE COURT:** That microphone does not work, we
21 found that out yesterday. Speak out loudly, okay.
22 The other ones work, but this one, for some reason,
23 is not working. We tried to get it fixed this
24 morning. We couldn't get it fixed yet.

25 **MR. PAULING:** Thank you, Your Honor.

1 DIRECT EXAMINATION:

2 BY MR. PAULING:

3 Q Mr. Penaloza, just make sure you speak loudly
4 so everybody on the jury can hear you, sir. But if
5 you could, tell the members of the jury where are
6 you from.

7 A I'm originally from Mexico.

8 Q Okay. How old are you, sir?

9 A Thirty-eight.

10 Q Thirty-eight. And how long have you been in
11 the United States?

12 A Twenty years.

13 Q Twenty years. And did you go to school here?

14 A Yes.

15 Q And as far as your educational background, if
16 you could tell -- did you graduate high school here?

17 A No. I graduated from Winston-Salem State
18 University in North Carolina.

19 Q Winston-Salem State University. And about when
20 was that?

21 A 1999.

22 Q Mr. Penaloza, back in 2009, where were you
23 living at that time, sir?

24 A 2009?

25 Q 2009.

1 **A** Myrtle Beach, South Carolina.

2 **Q** Myrtle Beach, South Carolina. Were you working
3 in that particular area?

4 **A** Yes, I was..

5 **Q** And what type of work did you do at that time?

6 **A** I was an electrical contractor.

7 **Q** An electrical contractor. So what did you do
8 as an electrical contractor?

9 **A** I did mostly new houses, residential work and
10 sometimes I did some small commercial jobs.

11 **Q** And do you know an individual by the name of
12 Agent Ryan wood?

13 **A** Yes, I do..

14 **Q** And if you could, tell the members of the jury,
15 sir, how do you know him? How did you come to know
16 him?

17 **A** Technically, he broke into my house and he
18 arrested me at my house.

19 **Q** What did he arrest you for?

20 **A** I was charged with conspiracy.

21 **Q** Conspiracy to do what, sir?

22 **A** To sell drugs.

23 **Q** What type of drugs?

24 **A** Cocaine I guess.

25 **Q** Cocaine?

1 **A** Uh-huh.

2 **Q** And when he approached you -- about when was
3 this? Was this in 2009?

4 **A** I think it was in 2009.

5 **Q** And when Agent Wood approached you at your
6 house, did you have cocaine there at that time?

7 **A** Yes.

8 **Q** Did you show him where cocaine was?

9 **A** Yeah. Yes.

10 **Q** And you said you were charged with conspiracy.
11 Was it conspiracy to traffic cocaine?

12 **A** Yes.

13 **Q** And were you prosecuted?

14 **A** Yes.

15 **Q** Was that the state or was that at the federal
16 level?

17 **A** My state charges were dropped, so they went to
18 federal.

19 **Q** Now, as far as Agent Wood is concerned, you
20 said that he approached you at your house. Did you
21 cooperate with him, with his investigation?

22 **A** Yes, I did.

23 **Q** And what did that entail, you cooperating?

24 **A** I mean, just pretty much answering all the
25 questions that they ask, you know, that's it..

1 Q Did he utilize you as a confidential informant?

2 A Later on, yes.

3 Q And I don't mean immediately after that same
4 day, but, at some point after that, after he
5 approached you, were you utilized as a confidential
6 informant?

7 A Yes.

8 Q And what did you do as a confidential informant
9 working with Agent Wood?

10 A Well, I knew a lot of people in town, so --
11 mostly Hispanics, so every now and then, he will,
12 you know, call me and he'll show me some pictures
13 and he'll ask me if I knew these people, where they
14 live, you know, who their friends were, things like
15 that.

16 Q And when you say in town, you're speaking of
17 Myrtle Beach, South Carolina?

18 A Myrtle Beach, South Carolina.

19 Q And before we get there, you said you were
20 prosecuted in federal court?

21 A Yes.

22 Q Did you have an attorney?

23 A Yes.

24 Q Okay. And now, what was your -- what was your
25 sentence in federal court, if you recall?

1 A I was one year and one day.

2 Q One year and one day?

3 A Uh-huh.

4 Q Do you recall what you were facing prior to
5 going to court? Did you plead guilty?

6 A I pleaded guilty, yeah.

7 Q Do you recall what you were facing before you
8 pled guilty?

9 A Well, they always give you these guidelines
10 where you can face anything from one year to 15
11 years to life. So, specifically, they told me I
12 could be facing from one to five years maybe. My
13 attorney also said that maybe because it was -- I
14 didn't have any criminal record, that maybe I would
15 just get probation.

16 Q Okay. And you went to federal prison, that's
17 correct?

18 A I went to a federal prison camp.

19 Q And now, when were you released from that
20 prison camp?

21 A It will be March of last year.

22 Q March of 2011 -- excuse me -- 2012?

23 A 2012, yes.

24 Q And now, are you currently on probation?

25 A Yes.

1 Q Do you know how long your probationary term is?

2 A Five years.

3 Q I want to take you back to -- that you were
4 testifying earlier about working with Agent Wood.

5 And you said that he would show you pictures of
6 individuals and ask you if you knew those particular
7 individuals.

8 A Yes.

9 Q Do you know the defendant, Juan Arroyo?

10 A Yes.

11 Q If you could tell the jury, sir, how do you
12 know Mr. Arroyo? How did you come to know him?

13 A I guess from working in construction and we had
14 some common friends as well.

15 Q You said working in construction. Did he do
16 electrical work as well?

17 A No. He did framing, concrete, different
18 trades.

19 Q So were there occasions that you worked on the
20 same job?

21 A Very seldom, I think.

22 Q And when I say the same job, I understand you
23 were doing electrical and he was doing other things,
24 but were there times when you were at the same job
25 site?

1 **A** Honestly, I don't quite remember, like,
2 specifically a time when we were on the same job,
3 okay. But when you do construction work, you know,
4 you kind of network yourself, you know, a lot of
5 people that do the same thing or a different trade.

6 **Q** Kind of run in the same circles?

7 **A** Yeah.

8 **Q** Okay. And other than in the construction
9 circles, did you ever see him in a social setting?

10 **A** Yeah, I think so. I think we used to meet at
11 the same club, you know, the same bar.

12 **Q** Okay. And do you recall what club or bar that
13 was?

14 **A** Could have been Tropical Beauties, maybe. I'm
15 not sure.

16 **Q** Was there any other club that you're aware of
17 that Mr. Arroyo would frequent?

18 **A** Specifically when?

19 **Q** In 2009 or 2010?

20 **A** No. It was like I didn't keep up with, you
21 know, with where my friends used to be at, you know.
22 It's just, I would just go out on my own and, you
23 know, my friends would come inside, you know, at the
24 same time.

25 **Q** And now, you said you did construction work

1 while you were in Myrtle Beach. Did you have any
2 other type of employment or any side jobs?

3 A No.

4 Q Are you aware of a club called Tequila Empire?

5 A Yeah. That club opened up in 2010, I think,
6 2010.

7 Q And had you ever been to that club? Do you
8 have any association with that particular club?

9 A I knew one of the -- the main partner of the
10 club and I knew some -- I knew some of the guys that
11 worked there.

12 Q Did you ever see Juan at that establishment,
13 Mr. Arroyo?

14 A A few times as a customer, yes.

15 Q And was he there by himself or was he with
16 others?

17 A He was there with his family and other people.

18 Q Now, you had mention that Agent Wood would show
19 you pictures of various individuals; is that
20 correct?

21 A Yes, that's correct.

22 Q At any point during the time that you were
23 working as an informant with Agent Wood, did he
24 present you a photo of Mr. Arroyo?

25 A Yes.

1 Q Do you know about when that was?

2 A I know it was during the time when the club was
3 opened back in 2010.

4 Q Okay. You said the club. You're talking about
5 this Tequila Empire?

6 A Yeah. Uh-huh.

7 Q That's the beginning of 2010?

8 A The club opened in February of 2010.

9 Q So it'd been around that time --

10 A It had to be somewhere around that time, yes.

11 Q And after you identified Mr. Arroyo, would you
12 explain to the jury -- what happened after that?

13 Did Agent Wood ask you anything about Mr. Arroyo?

14 A He asked questions about the people in those
15 pictures. Honestly, I didn't know most of them. I
16 just knew Mr. Arroyo and his family and that was it.

17 Q Now, did there ever come a time that you became
18 aware that you could perhaps do an undercover deal
19 with Juan Arroyo?

20 A Yes.

21 Q And if you could tell the jury, sir, how did
22 that come about?

23 A Well, most of the time, you know, Officer Ryan
24 will tell me a little bit about the people in those
25 pictures like what kind of activities they had,

1 things like that. So, I guess, he kind of
2 introduced me with the idea of, you know, getting
3 more information from this group of people, which
4 again I didn't know. I didn't know their names or
5 -- I just knew their faces.

6 Q And you knew Juan Arroyo?

7 A Yeah.

8 Q Did you have any discussion with Mr. Arroyo
9 regarding him supplying you drugs?

10 A When? Like...

11 Q In 2010 after Agent Wood -- after you'd
12 identified Juan Arroyo?

13 A Yes.

14 Q Okay. And if you can explain that to the jury.
15 How did that conversation come about?

16 A Well, part of the work that I did with Agent
17 Ryan was doing sometimes small buys from local
18 people, so he suggested that we did a buy from
19 Mr. Arroyo.

20 THE COURT: Speak up, please. Speak up louder.

21 THE WITNESS: He suggested that we do a small
22 buy from Mr. Arroyo.

23 MR. PAULING: Beg the Court's indulgence.

24 (Pause.)

25 BY MR. PAULING:

1 Q Mr. Penaloza, did you, in fact, participate in
2 an undercover deal with Mr. Arroyo?

3 A Can you repeat that again?

4 Q Did you participate in an undercover deal, drug
5 deal with Mr. Arroyo?

6 A Yes.

7 Q And was that on April 29th of 2010?

8 A That sounds right.

9 Q And prior to the deal, did you meet with
10 Mr. Arroyo? Did you meet with him on April 28th of
11 2010?

12 A The day before?

13 Q Yes, sir.

14 A Yes.

15 Q And if you could, just briefly describe that
16 meeting with Mr. Arroyo.

17 A We met and we talked about an exchange of, you
18 know, something, drugs. We talked about prices.

19 Q Where did you meet?

20 A At his house.

21 Q Was that at Street?

22 A I remember the street name. I don't remember
23 the number.

24 Q Was it Street, though?

25 A It was Street, yes.

1 Q In Myrtle Beach?

2 A Yes.

3 Q And now, prior to you meeting with Juan Arroyo
4 at his house, had you discussed the meeting with
5 Agent Wood?

6 A The whole time, yes.

7 Q So he was aware you were going over there?

8 A Yeah.

9 Q And when you met with Juan Arroyo, you said you
10 discussed purchasing a particular drug?

11 A The idea was to buy cocaine, but he didn't have
12 anything. He didn't have any.

13 Q And so what did you agree to purchase from him?

14 A Then he mentioned that he did have heroin.

15 Q Heroin?

16 A Uh-huh.

17 Q And now, you had testified earlier that you
18 were convicted of conspiracy to traffic cocaine.
19 Had you ever dealt in heroin before?

20 A No.

21 Q And now, you said you came to a particular
22 price?

23 A Yes.

24 Q Do you recall what that price was?

25 A I think it was 1600.

1 Q Sixteen hundred dollars?

2 A For, I think, like 25 grams.

3 Q And after you had that discussion, heroin \$1600

4 for 25 grams, did you then leave his residence?

5 A Yes, I did.

6 Q Did you meet back up with Agent Wood?

7 A Yes.

8 Q And did you discuss the meeting that you had --

9 A Yes.

10 Q -- with Mr. Arroyo?

11 A Yes.

12 Q And now, the following day, April 29th of 2010,

13 did you meet with Agent Wood prior to going over to

14 Juan Arroyo's home?

15 A Yes, I did.

16 Q And were you fitted with video recording

17 equipment?

18 A Yes.

19 Q Agent Wood did that?

20 A Yes.

21 Q Okay. Now, prior to the deal, did he check you

22 for contraband?

23 A Yes.

24 Q And when I said did he check you, did he check

25 your person?

1 A My person and they searched the entire car, my
2 car.

3 Q Your car?

4 A My car.

5 Q And what type of car was that at that time?

6 A I was driving a BMW.

7 Q And as far as the -- you said you discussed the
8 price with Juan Arroyo, \$1600. Were you provided
9 money for that particular deal?

10 A Yes.

11 Q And who provided you that money?

12 A Ryan.

13 Q And -- now, after that, did you then proceed to
14 Mr. Arroyo's home?

15 A Yes.

16 Q And do you recall if Agent Wood followed you or
17 surveilled you, watched you?

18 A They always did.

19 Q Now, when you got to his home on April 29th,
20 was he there?

21 A He was there, but I don't remember exactly if
22 he was there the first time when I went there
23 because I always had problems reaching him by phone,
24 sometimes he wouldn't answer. So I don't remember
25 if he -- if he was there the first time that I went

1 there, maybe I went there, you know, a second time.

2 I don't know. I don't remember.

3 Q And before we get to the actual deal, when you
4 first got to his home, was he there?

5 A Yes.

6 Q Let me ask you this: At any point during the
7 transaction -- you said you had \$1600?

8 A I think he changed the price. I think we had
9 to go to the bank with Officer Ryan Wood because I
10 think he changed it from 1600 to 1800, so we had to
11 go back and get some extra money.

12 Q Because you only had 1600 that law enforcement
13 provided; is that correct?

14 A Yes.

15 Q So when you went to the bank, did you go inside
16 the bank or --

17 A No. I stayed in my car.

18 Q Okay. Were you near Agent Wood, though?

19 A Yeah.

20 Q And so he was the one who actually got the
21 money?

22 A Yes.

23 Q And now, once he provided you with the extra
24 \$200, did you then return to Mr. Arroyo's home?

25 A Yes.

1 Q And when you got there the second time, was he
2 there then?

3 A Yes.

4 Q And did you go inside at that point, inside his
5 home?

6 A I did.

7 Q Okay. And if you could, tell the jury how did
8 the deal take place. What happened once you got
9 inside Mr. Arroyo's home?

10 A I went inside. We talked for quite a few --
11 for some time. We were talking and then I gave him
12 the money and we exchanged -- we made a deal.

13 Q You said you gave him the money. Did you
14 simply hand it to him and say, here's 1800, or what
15 happened?

16 A I don't remember saying, here's 1800. I just
17 remember, you know, exchanging the money. He
18 counted the money.

19 Q He counted the money?

20 A He counted the money and then he gave me the
21 little tube.

22 Q Do you recall where he retrieved the, did you
23 say, the tube from?

24 A Yes.

25 Q Where did he get the tube from? Was he in the

1 house?

2 A He went outside, outside the house, came back
3 inside.

4 Q Then he handed you the tube?

5 A Yes.

6 Q Can you describe the tube?

7 A It looks like a, like a lubricant or some type
8 of oil for cars I guess.

9 Q And after he gave you that tube, did he tell
10 you anything about the tube?

11 A He just told me that the -- that's the way it
12 came all the way from Mexico.

13 Q Did you open it?

14 A No.

15 Q Well, how did you know that heroin was in it at
16 that time?

17 A Because he told me that it was there.

18 Q He told you it was there?

19 A Yes.

20 Q Okay. Did he tell you how to retrieve the
21 heroin out of the tube?

22 A I think he did, but I don't -- I'm not quite
23 sure.

24 Q And now, after you received the tube from him,
25 what did you do with it?

1 **A** Maybe we talked for a few minutes and after
2 that, I left. I left the house.

3 **Q** When you left, where did you go?

4 **A** I was supposed to meet Ryan back at the same
5 place. So as soon as I got out, I called Ryan over
6 the phone.

7 **Q** Agent Wood?

8 **A** Yeah.

9 **Q** And did you meet him?

10 **A** Yeah. Actually, he was driving by. He was
11 pretty close, so he kind of pulled up in front of me
12 and he told me to follow him, so.

13 **Q** So you followed him to the meeting location?

14 **A** Yes.

15 **Q** And once you got to the meeting location, what
16 did you do?

17 **A** I gave him the package and they did the same
18 thing they always do. They searched me and they
19 searched the car again, they took pictures, they
20 stopped the recording, that's it.

21 **Q** And they took the recording device from you?

22 **A** Yes.

23 **Q** Okay. Now, have you reviewed that recording,
24 that video?

25 **A** Not right on the spot, but later --

1 Q Well, I'm not asking you if you reviewed it
2 that day, but have you reviewed it?

3 A Yes.

4 Q Have you seen it?

5 A Yes.

6 Q And does it reflect the deal that happened on
7 April 29th, 2010?

8 A Yes.

9 Q Okay. At Juan Arroyo's home?

10 A Yes.

11 MR. PAULING: Beg the Court's indulgence.

12 THE COURT: Yes.

13 (Pause.)

14 MR. PAULING: Your Honor, at this time, I
15 believe that State's 14 that's in evidence, request
16 that we be able to publish this to the jury, Your
17 Honor.

18 THE COURT: Yes. Have y'all set up to do it?

19 MR. GOINGS: We think so, Your Honor.

20 THE COURT: All right. Ladies and gentlemen,
21 my understanding is that they're now going to show
22 you a video. There is no sound. It's just a video.
23 BY MR. PAULING:

24 Q Before we get started, Mr. Penaloza, I've got
25 one other question to ask you. You said you took

1 that grease tube back to Agent Wood?

2 **A** Yes.

3 **Q** And you were there when he opened it and
4 photographed it?

5 **A** Yes.

6 **MR. PAULING:** If I may approach the witness,
7 Your Honor.

8 **THE COURT:** Yes, sir.

9 BY MR. PAULING:

10 **Q** Mr. Penaloza, I'm going to show you what's in
11 evidence as State's 11, sir. I'm going to ask you
12 if you recognize that particular item. You can take
13 it out.

14 **A** Yeah.

15 **Q** Do you recognize that, sir?

16 **A** Yes.

17 **Q** And what is that?

18 **A** It's the same tube.

19 **THE COURT:** I couldn't hear you.

20 **THE WITNESS:** It's the same tube.

21 BY MR. PAULING:

22 **Q** The same tube that Mr. Arroyo gave you on April
23 29th?

24 **A** Yes.

25 **Q** And that's the same tube that you handed over

1 to Agent Wood after the deal?

2 A Yes, it is.

3 MR. PAULING: Beg the Court's indulgence.

4 (Pause.)

5 (Whereupon, State's Exhibit Number 14 was
6 played for the jury. And during the playing of
7 State's Exhibit Number 14, the following occurred.)

8 Q Now, Mr. Penaloza, can you see the screen fine?

9 A Yes.

10 Q I'm going to ask you to kind of take us through
11 what's being shown here on the video. At this
12 point, sir, you have -- the recorder has already
13 been attached to you; is that correct?

14 A Yes.

15 Q Mr. Penaloza, we're going to let this play, but
16 this is from your vantage point; is that correct?

17 A Yes.

18 Q Now, Mr. Penaloza, that vehicle you just got
19 into, was that Agent Woods {sic} beside you?

20 A Yes.

21 Q You just stepped out of your car?

22 A Yes.

23 Q Okay. Now, Mr. Penaloza, at this point, sir,
24 where are you heading?

25 A I guess this is where I'm heading to his house.

1 **Q** When you say his house, who are you speaking
2 of?

3 **A** Mr. Arroyo's house.

4 (Pause.)

5 **MR. GOINGS:** Beg the Court's indulgence, Your
6 Honor.

7 **THE COURT:** Do y'all need to stop? Do you need
8 a break?

9 (There was no response.)

10 **THE COURT:** Do y'all need some time to get it
11 reset?

12 **MR. GOINGS:** Yes, Your Honor.

13 **MR. PAULING:** Yes, Your Honor.

14 **THE COURT:** Ladies and gentlemen, step in the
15 jury room. Don't discuss the case. And as soon as
16 they got it reset, we'll get you back out here.

17 (The jury retires to the jury room.)

18 **THE COURT:** During the break, if you want to
19 stay there, you may stay there. If you want to step
20 down, you may step down. But you cannot discuss
21 your testimony with anybody during the break, all
22 right.

23 Court's at ease. Thank you.

24 (Brief Recess.)

25 **THE COURT:** Ready for the jury?

1 **MS. CHAPMAN:** We're ready.

2 **THE COURT:** Do y'all need to say something in
3 front of the jury about skipping?

4 **MR. GOINGS:** I think how we were going to work
5 it, Your Honor, is have -- I'm just going to play
6 from where he goes in the house the first time,
7 Curtis is going to ask the witness that, play that
8 portion. Then at the end of that, he's going to
9 make a stipulation that we have agreed to skip the
10 rest of the first attempt and also tell the jury
11 that there's a six to seven minute time period where
12 the CI is waiting --

13 **THE COURT:** They're coming in.

14 (The jury returns to the courtroom.)

15 **THE COURT:** All right. Are we ready?

16 **MR. PAULING:** Yes, Your Honor.

17 **THE COURT:** Do you need to say anything?

18 **MR. PAULING:** No, Your Honor.

19 **THE COURT:** Go ahead.

20 (Whereupon, the playing of State's Exhibit
21 Number 14 was continued and the following occurred.)

22 **BY MR. PAULING:**

23 **Q** Okay. Now, Mr. Penaloza, if you could,
24 describe to the jury, sir, what is going on here.
25 Where are you at this particular time?

1 **A** I think I'm right outside his house,
2 Mr. Arroyo's house.

3 **Q** And who is that individual who's at the door?

4 **A** I think that's Mr. Arroyo's girlfriend.

5 **Q** And what are you doing now?

6 **A** I guess I'm going back to my car.

7 **Q** Was he there?

8 **A** He wasn't there.

9 **Q** Mr. Penaloza, we're going to pause it for a
10 moment.

11 **MR. PAULING:** Your Honor, the State and the
12 defense have reached a stipulation. We're going to
13 fast forward the video. There is a portion of the
14 video, I believe it's six to seven minutes, wherein
15 Mr. Penaloza and Agent Wood are not together, that
16 is in their respective vehicles, they are not right
17 there together for about six to seven minutes, and
18 we're just skipping forward that particular part.
19 But that's the stipulation between the State and the
20 defense.

21 **THE COURT:** Is that correct?

22 **MS. CHAPMAN:** That's correct, Your Honor.

23 **THE COURT:** All right.

24 **MR. PAULING:** And now we're fast forwarding to
25 the second attempt at Mr. Arroyo's home.

1 (Whereupon, the playing of State's Exhibit
2 Number 14 was continued and the following occurred.)

3 BY MR. PAULING:

4 Q Now, Mr. Penaloza, is that you again there,
5 sir?

6 A Yes.

7 Q And who is that that just opened the door, sir?

8 A That's Mr. Arroyo.

9 Q Now, Mr. Penaloza, what is going on right
10 there?

11 A I think this is the point where he's actually
12 counting the money.

13 Q Mr. Penaloza, can you tell what's happening
14 there?

15 A He's counting money.

16 Q Was it the same money you had given him?

17 A Yes.

18 Q Now, Mr. Penaloza, do you know what's going on
19 at that particular point?

20 A I think he goes outside.

21 Q Mr. Penaloza, can you explain what just
22 happened there, sir? What did you have in your
23 hand?

24 A At this point, he comes back inside and I'm
25 holding the tube that he gave me.

1 Q And was that the same tube -- was that the same
2 tube that you handed over to Agent Wood?

3 A Yes.

4 Q Now, Mr. Penaloza, the deal had already taken
5 place; is that correct?

6 A That's correct.

7 Q Had you already paid him the money, the \$1800?

8 A Yes. I'm heading out.

9 Q And when you say you're headed out, where are
10 you headed to?

11 A Back to the same place where I met Ryan Woods
12 {sic} at the beginning.

13 Q Agent Wood?

14 A Uh-huh.

15 Q Now, Mr. Penaloza, at that point -- had you met
16 back up with Agent Wood at that point?

17 A No, I'm on my way there.

18 Q Okay. Were you aware that the recorder had
19 gone off?

20 A No, I had no idea.

21 (Whereupon, the playing of State's Exhibit
22 Number 14 was concluded.)

23 Q Now, Mr. Penaloza, is the person you paid \$1800
24 for the heroin in this courtroom today?

25 A Yes, sir.

1 **Q** Is that the same person or the same person who
2 handed you that grease tube on April 29th, 2010, is
3 that person in the courtroom today?

4 **A** Yes.

5 **Q** And if you could, please, where is that
6 particular individual?

7 **A** Sitting right there.

8 **Q** And you say sitting right there, what is he
9 wearing, sir?

10 **A** A white shirt with a vest and a tie.

11 **Q** What color is the vest and tie?

12 **A** It's black.

13 **MR. PAULING:** Just for the record, Your Honor,
14 just ask that the record reflect that Mr. Penaloza
15 has indicated the defendant, Juan Arroyo.

16 **THE COURT:** So noted.

17 **MR. PAULING:** No further questions, Your Honor.

18 **THE COURT:** Cross.

19 **MS. CHAPMAN:** Yes, Your Honor. May it please
20 the Court.

21 **THE COURT:** Yes, ma'am.

22 CROSS-EXAMINATION

23 **BY MS. CHAPMAN:**

24 **Q** Mr. Penaloza, I'm Debbie Chapman. How are you?

25 **A** I'm good. How are you?

1 Q I hope I don't slaughter your name. I've tried
2 to practice it.

3 A Thank you.

4 Q Earlier you testified that Agent Wood, you met
5 him when he broke into your house. I'm assuming
6 your house was raided?

7 A Yes, technically, that's what I meant.

8 Q And that was back, if I'm not mistaken, it
9 should have been, like, July of '09?

10 A That sounds correct.

11 Q And those were the state charges that you had,
12 correct?

13 A Yes, ma'am.

14 Q Okay. And, at that time, you were charged with
15 distribution -- with intent to distribute cocaine?

16 A Conspiracy.

17 Q Conspiracy.

18 A Conspiracy.

19 Q And would you agree with me that you were
20 looking up to 15 years in jail on that charge?

21 A Again, you know, they have guidelines, so they
22 give you a minimum and a maximum.

23 Q I'm talking about the state charges. I hadn't
24 gotten to the federal charges.

25 A Oh, the state charges, I never got to that part

1 because I went to Conway the next day where they
2 took the picture, fingerprints and that was it. I
3 never --

4 Q And you signed -- I guess you signed a
5 cooperation agreement with Agent Wood; is that
6 correct?

7 A Yes, I did.

8 Q And in return for your cooperation, he agreed
9 to recommend some kind of sentence for you; is that
10 correct?

11 A That's correct.

12 Q And, obviously, your cooperation was to set up
13 drug deals?

14 A Yes.

15 Q And the more drug deals you set up, the better
16 deal you would get; is that correct?

17 A Yes..

18 Q How many drug deals did you do?

19 A Not many, maybe three, three, four.

20 Q And, at this time, you hadn't been indicted
21 federally yet; is that correct?

22 A No.

23 Q And then it was your testimony that Agent Wood
24 showed you some pictures, that was part of your
25 cooperation, of individuals?

1 A Yes.

2 Q They were drug dealers; is that correct?

3 A Yes, that's correct.

4 Q And you were a drug dealer?

5 A I wasn't a drug dealer. I just -- I met the
6 wrong people, okay. And I was asked by someone that
7 I knew to set up a meeting with someone from the
8 Latin, Mexican community, someone who could, you
9 know, sell a large amount of drugs.

10 Q Well, a thousand grams is a lot of drugs, would
11 you not agree with me? A thousand grams is a lot of
12 drugs, would you --

13 A That's a lot, yes.

14 Q And if you participated in a drug deal, you're
15 a drug dealer. You helped facilitate a drug deal;
16 is that correct?

17 A And you're correct. At the time,
18 unfortunately, I wasn't thinking correctly. I
19 thought that just by making a phone call, I was just
20 being a cool guy, you know.

21 Q That happens a lot.

22 A It happens a lot, yes, so.

23 Q And it's your testimony that Agent Wood showed
24 you a picture of Juan Arroyo?

25 A Yes.

1 Q And he wanted you to buy from Juan Arroyo?

2 A Yes.

3 Q And, obviously, buying from Juan Arroyo would
4 help reduce your sentence, correct?

5 A Correct.

6 Q But you weren't good friends with Juan, that
7 was your testimony earlier, correct?

8 A That I was --

9 Q He wasn't -- you weren't good friends with
10 Mr. Arroyo?

11 A No, we were good friends.

12 Q You are good friends?

13 A We were good friends, yes.

14 Q How long have you known him?

15 A Probably four, five years.

16 Q I thought it was your testimony you just worked
17 some construction with him every now and then, and
18 -- correct me if I'm wrong -- and, occasionally,
19 you'd see him out at a restaurant or a bar?

20 A Yes.

21 Q And that would be a good friend to you?

22 A No. I mean -- he meant that's how we started
23 getting acquainted.

24 Q Then y'all became good friends?

25 A And then we became good friends.

1 Q All right. Then some time in September of '09,
2 you were indicted federally, correct?

3 A Not in 2009. It didn't happen until 2011,
4 2010.

5 Q Let me refresh your memory here.

6 MS. CHAPMAN: If I may, Judge, if I could
7 approach.

8 THE COURT: Yes, ma'am.

9 BY MS. CHAPMAN:

10 Q This is your federal indictment.

11 A Okay.

12 Q And it's received and stamped by the federal
13 court on September the 22nd, 2009, correct?

14 A Okay. I don't know all the terminology, okay.
15 The indictment, is that the day when you get
16 sentenced?

17 Q No.

18 A When you get the charges?

19 Q When you're indicted, when the charges were
20 brought by the federal government.

21 A Okay. Then you're correct, 2009.

22 Q And you were charged with a conspiracy
23 involving five keys or more of cocaine?

24 A That's incorrect.

25 Q Well, look on count one of that indictment, if

1 you would, please.

2 **A** What part?

3 **Q** At the bottom of the first paragraph.

4 **A** Yeah.

5 **Q** So that's what you were charged with, correct?

6 **A** That's what I was charged for, okay, but
7 then --

8 **Q** Not what you pled to, but what --

9 **A** Yeah.

10 **Q** I think you might be getting a little bit ahead
11 of me, but I'm with you.

12 **A** Okay.

13 **Q** So you were charged by the federal government
14 in September of '09 --

15 **A** Yes.

16 **Q** -- for a conspiracy to distribute a controlled
17 substance involving five keys or more of cocaine?

18 **A** Yes.

19 **Q** And you would agree with me that that carries a
20 mandatory minimum of ten years to life in prison?

21 **A** Correct.

22 **Q** That's what you were originally charged with?

23 **A** Okay.

24 **Q** Then you signed a cooperation agreement and a
25 plea agreement with the federal government, did you

1 not?

2 A Yes.

3 Q And you agreed to cooperate with the federal
4 government?

5 A Yes.

6 Q And in order to get your sentence cut
7 federally, because you're looking at ten to life --

8 A Yes.

9 Q -- you need to cooperate. And, again, the more
10 drug deals you make, the better deal you get; is
11 that correct?

12 A That's correct.

13 Q And on top of that -- well, just let me give
14 you a copy of your plea agreement in case you have
15 any questions.

16 MS. CHAPMAN: If I may, Judge.

17 THE COURT: Yes, ma'am.

18 BY MS. CHAPMAN:

19 Q Just to refresh your memory. Paragraph eight
20 in that document I just handed you, which is your
21 plea agreement.

22 A Okay.

23 Q Okay. Is a cooperation paragraph, that you
24 agree to cooperate, testify in any trials, tell the
25 government of any criminal activities that you know

1 of; is that correct?

2 A That's correct.

3 Q And I want you to skip over to paragraph 11.

4 A (Witness complies.)

5 Q This paragraph says that if you provide
6 substantial assistance to the government, and
7 substantial assistance is decided by the government,
8 that they would move to reduce your sentence,
9 correct?

10 A Can you help me out finding that line, please?

11 Q Paragraph 11, it's about the middle -- you
12 might know it as a 5K1.1, paragraph 11.

13 A Okay.

14 Q This is the paragraph that the government
15 promises that if you cooperate to their
16 satisfaction, that they will reduce your sentence
17 under what we call a 5K1.1, that's the language that
18 they use, which is a downward departure.

19 A Correct.

20 Q And did you receive a downward departure?

21 A Yes.

22 Q And the government filed that motion on your
23 behalf?

24 A Yes.

25 Q And you pled to a lesser included offense,

1 correct?

2 A Yes.

3 Q If we look at the very front of this plea
4 agreement, you pled to 500 grams or more of cocaine,
5 correct?

6 A Yes.

7 Q And that sentence carries a mandatory minimum
8 of five years up to 40 years and four years of
9 supervised release, probation is another word for
10 it; is that correct?

11 A Correct.

12 Q And your testimony here earlier today was that
13 you were sentenced to one year and one day?

14 A Yes.

15 Q And do you know why you got the one day?

16 A The one day?

17 Q Uh-huh.

18 A Not really.

19 Q Anybody tell you that one day would get you
20 good time and you'd serve less than one year?

21 A Okay. Yeah, you're correct.

22 Q How much time did you serve in jail?

23 A Ten months.

24 Q Ten months. That's a long way from life to ten
25 months, isn't it?

- 1 **A** Yes.
- 2 **Q** That was a pretty good deal?
- 3 **A** Yes.
- 4 **Q** Let me ask you -- I want to ask you just a
5 couple of things. You testified that Agent Wood
6 searched your car?
- 7 **A** Yes, ma'am.
- 8 **Q** And you were present at the time that he
9 searched your car?
- 10 **A** All the time, yes.
- 11 **Q** Can you kind of describe to the jury how he
12 searched your car?
- 13 **A** They would open all four doors, trunk and
14 search inside on the back.
- 15 **Q** And can you describe how he searched your
16 person?
- 17 **A** Myself?
- 18 **Q** Uh-huh.
- 19 **A** Yeah. They would check my pockets, the way
20 they normally search an individual, you know,
21 patting.
- 22 **Q** Patting down and everything?
- 23 **A** Yes.
- 24 **Q** Did he look under the hood of your car?
- 25 **A** Um...

1 Q If you don't remember, that's fine.

2 A I don't remember.

3 Q Did he look under the dashboard; do you
4 remember?

5 A Oh, yeah, yeah, definitely, definitely.

6 Q And, at one point, we saw on the video, it
7 appears that you lost Agent Wood at a stoplight on
8 the way back; do you remember that?

9 A Yes. Yes, I do.

10 Q And do you remember sitting there waiting, you
11 were by yourself, the six to seven minutes?

12 A Yeah. He was in front of me, so he -- he was
13 able to go through the light and I caught the, you
14 know, the light on the red, so I had to stop.

15 Q So y'all were separated for --

16 A Yeah, we were separated.

17 Q -- and the government concedes, six to seven
18 minutes?

19 A Could be. I mean, I don't know how long it
20 takes to go -- for the light to change, but he was
21 right there, you know, right in front of me, so.

22 Q And when you went to the bank, the video was
23 cut off; is that correct?

24 A I can't remember.

25 Q That's fine. If you don't remember, say you

1 don't remember. But he went to an ATM machine?

2 **A** Yes.

3 **Q** Is your testimony. And you sat in the car?

4 **A** I was either sitting in the car or standing
5 outside the car, but, obviously, I was there.

6 **Q** And was Agent Wood watching you the entire time
7 that he was at the ATM machine?

8 **A** Well, he was not by himself. It was a team,
9 okay. So there were several other agents there, so.

10 **Q** Okay. Well, we hadn't heard that testimony.

11 **MS. CHAPMAN:** If I could just have just a
12 moment, Your Honor.

13 **THE COURT:** Yes, ma'am.

14 (Pause.)

15 **BY MS. CHAPMAN:**

16 **Q** Just one more question. Do you know how long
17 that Agent Wood searched your car before you left?

18 **A** You're talking about what day?

19 **Q** On the 29th.

20 **A** On the 29th?

21 **Q** Did it take him a long time or did he do it
22 kind of quickly?

23 **A** He didn't search, someone else did.

24 **Q** He didn't search the car?

25 **A** No.

1 Q Agent Wood did not?

2 A It was another agent.

3 Q It was another agent?

4 A Yeah. Like I said, there were, like, three,
5 four different agents. At times, there were, like,
6 two or three different police, you know, vehicles.

7 Q Okay. And do you remember them pulling the car
8 seats out or anything?

9 A Pulling the seats out?

10 Q Uh-huh.

11 A I wasn't paying attention because I was talking.
12 to them and they were searching the car.

13 Q So the answer is not that you know of?

14 A No, not that I noticed, no.

15 Q And, again, it wasn't Agent Wood who searched
16 your car?

17 A No. No.

18 MS. CHAPMAN: That's all I have, Your Honor.

19 THE COURT: Redirect.

20 MR. PAULING: Just briefly, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. PAULING:

23 Q Mr. Penaloza, prior to this April 29th, 2010
24 deal with Mr. Arroyo, had you conducted other
25 undercover deals with Agent Wood?

1 **A** I think we did. I'm not really sure.

2 **Q** Was this the first undercover deal you had done
3 with Agent Wood at -- or any other law enforcement
4 agent?

5 **A** I think we had done one or maybe two.

6 **Q** Prior to Juan Arroyo, had you helped do
7 undercover deals with other individuals? Did you
8 help set up other people?

9 **A** I think just one individual. I'm not sure
10 about the dates.

11 **Q** Now, the April 29th deal, 2010, with
12 Mr. Arroyo, did you force him to sell you heroin?

13 **A** No.

14 **Q** Had you dealt with heroin before?

15 **A** No.

16 **Q** Had you seen heroin before?

17 **A** No.

18 **MR. PAULING:** No further questions, Your Honor.

19 **THE COURT:** Recross.

20 **MS. CHAPMAN:** No, Your Honor.

21 **THE COURT:** Thank you, sir. You may step down.
22 Any other witnesses for the State?

23 **MR. GOINGS:** The State rests, Your Honor.

24 **MR. PAULING:** Your Honor, at this time, if
25 there's no objection from the defense, we'd just ask

1 that Mr. Penaloza be released from his subpoena.

2 **MR. KIRKLAND:** No objection.

3 **THE COURT:** All right. He's free to go.

4 Ladies and gentlemen, I told you when the State
5 rests, I have to discuss legal issues with the
6 attorneys and I have to do that outside your
7 presence, so that's where we are right now. This
8 usually takes about 20 minutes. I'll go through
9 this with them, get to you as quickly as I can.
10 Don't discuss the case. Follow the bailiff, please.

11 (The jury retires to the jury room.)

12 **THE COURT:** Are there any motions?

13 **MR. KIRKLAND:** Yes, sir, Your Honor. The
14 defense would move for a directed verdict. We don't
15 believe the prosecution has presented any credible
16 evidence from which the jury can infer guilt.

17 I'll make just a couple of points. There was
18 discussion -- well, there was obviously video
19 evidence in this case. There was no video evidence
20 of the search of the car.

21 In fact, at this point in time, it appears that
22 the -- although the agent said that he was there by
23 himself, from what I recall, and that he searched
24 the car, according to the confidential informant,
25 some other person searched the car entirely. So I

1 don't even know that we have any credible evidence
2 at all that the car was searched. The person that
3 searched it doesn't even appear to have been here at
4 the trial.

5 The transaction is not clear on the video. I
6 don't think you see the confidential informant
7 handing whoever it was he handed the money to,
8 didn't see him hand the money to him. The video, as
9 was discussed, turns off prior to the confidential
10 informant reaching the meeting place and, therefore,
11 we don't know what the confidential informant was
12 doing during that period of time. There's a six
13 minute period of time on the video in which the
14 officers lost sight of the confidential informant.

15 The confidential informant has indicated on the
16 stand that he was facing a mandatory ten years to
17 life, that he had to cooperate to the satisfaction
18 of the government. He testified -- the confidential
19 informant testified that the agent approached him
20 about making a buy from Juan Arroyo. I think the
21 agent said the opposite. But my point is, Your
22 Honor, that the confidential informant knew that to
23 cooperate to their satisfaction, he would have to
24 make a buy from Juan Arroyo and so he had a motive
25 to not tell the truth, to make sure that buy

1 occurred because he was facing a life sentence and
2 he did not want to receive a life sentence.

3 And for those reasons, Your Honor, we believe
4 that the evidence that they presented was not
5 credible and a jury could not and would not infer
6 guilt. And that's the motion, Your Honor.

7 **THE COURT:** All right. Credibility is a jury
8 issue. Everything you've raised is a jury issue
9 that I can see. There's significant evidence to
10 allow the case to go to the jury.

11 Anything else?

12 (There was no response.)

13 **THE COURT:** Mr. Arroyo, I need to go over some
14 things with you now. I have to go over these things
15 with anybody who's on trial, whether they're on
16 trial for murder or for a traffic offense. I need
17 you to raise your right hand, please, because I need
18 your responses under oath.

19 JUAN RODOLPHO ARROYO,
20 having been duly sworn, testified as follows:

21 **MR. KIRKLAND:** Let me talk to him real quick
22 about what you're going to talk to him about because
23 he seemed hesitant.

24 **THE COURT:** Okay.

25 (Pause.)

1 **MR. KIRKLAND:** He's ready, Your Honor.

2 **THE COURT:** All right. Mr. Arroyo, the State
3 has rested. They put up their case in chief. And
4 the next thing that would happen is that you -- your
5 side would have the opportunity to present evidence
6 for the jury to consider. You understand where we
7 are in the trial?

8 **DEFENDANT:** Yes, Your Honor.

9 **THE COURT:** Now, regardless of whether you put
10 up any evidence or not, the burden is always on the
11 State. You're presumed innocent and the State has
12 got to prove you guilty beyond a reasonable doubt.
13 You understand that?

14 **DEFENDANT:** Yes, Your Honor.

15 **THE COURT:** Now, in a criminal court setting
16 like this, a defendant who's on trial may testify if
17 he wishes to testify, but he does not have to
18 testify. Do you understand?

19 **DEFENDANT:** Yes, Your Honor.

20 **THE COURT:** So you can choose to testify or not
21 testify. You understand?

22 **DEFENDANT:** Yes, Your Honor.

23 **THE COURT:** No one can force you to testify.
24 You have an absolute right to remain silent. And if
25 you choose not to testify, I'm going to tell that

1 jury they cannot hold your silence against you in
2 any way at all, that they cannot discuss it when
3 they're deciding your case and that it's not to
4 enter their minds in making the decision of whether
5 you're guilty or not guilty. Do you understand all
6 that?

7 **DEFENDANT:** Yes, Your Honor.

8 **THE COURT:** The decision about whether you
9 testify or not is your decision to make and yours
10 alone. You understand that?

11 **DEFENDANT:** Yes, Your Honor.

12 **THE COURT:** Now, I expect that you might talk
13 to your attorneys, with family members or friends or
14 anybody whose opinion you value on important
15 decisions; but, ultimately, it's your decision, it's
16 your call. You decide whether you want to testify
17 or not. You understand that?

18 **DEFENDANT:** Yeah. I went over that with my
19 attorneys.

20 **THE COURT:** Okay. Does he have a prior
21 criminal record that would subject him to
22 impeachment?

23 **MS. CHAPMAN:** No, sir.

24 **MR. GOINGS:** No, sir, Your Honor.

25 **THE COURT:** Okay. Now, Mr. Arroyo, you're in

1 jail; is that correct?

2 **DEFENDANT:** Yes, Your Honor.

3 **THE COURT:** Today have you had any kind of
4 medication or any substance that adversely affects
5 your thinking?

6 **DEFENDANT:** No, Your Honor.

7 **THE COURT:** So you're thinking clearly?

8 **DEFENDANT:** Yes, Your Honor.

9 **THE COURT:** Do you suffer from any physical or
10 mental problems that affect your thinking?

11 **DEFENDANT:** No, Your Honor.

12 **THE COURT:** Have you understood everything I've
13 been over with you?

14 **DEFENDANT:** Yes, Your Honor.

15 **THE COURT:** All right. Has anybody attempted
16 to unfairly influence you to get you to testify or
17 not testify? In other words, has anybody forced you
18 to make this decision one way or the other?

19 **DEFENDANT:** No, Your Honor.

20 **THE COURT:** I'm going to give you a few minutes
21 to talk to your lawyers or if you need more than a
22 few minutes, you let me know, but right now what I'm
23 going to do is I'm going to find that you understand
24 that you have a right to testify, you have a right
25 not to testify. You understand that if you choose

1 not to testify, I'm going to tell the jury they
2 cannot hold your silence against you in any way.
3 You understand that the decision about whether you
4 testify or not is your decision to make and yours
5 alone, and that you've made your decision freely and
6 voluntarily and knowingly.

7 So I'm going to maintain those findings. If
8 anybody does attempt to improperly influence you or
9 does anything wrong, you let me know, all right.

10 **DEFENDANT:** Okay, Your Honor.

11 **THE COURT:** Thank you.

12 All right. We're at ease.

13 (Brief Recess.)

14 **THE COURT:** All right. Does the defense have
15 any evidence to present?

16 **MS. CHAPMAN:** No, Your Honor.

17 **THE COURT:** Mr. Arroyo, do you wish to testify?

18 **DEFENDANT:** No, Your Honor.

19 **THE COURT:** Is that your own decision?

20 **DEFENDANT:** Yes, Your Honor.

21 **THE COURT:** You made it freely and voluntarily?

22 **DEFENDANT:** Yes, Your Honor.

23 **THE COURT:** All right. Thank you. Have a
24 seat, please.

25 All right. Bring in the jury.

1 (The jury returns to the courtroom.)

2 **THE COURT:** All right. Ladies and gentlemen,
3 after conferring with the attorneys, it appears that
4 you now have all the evidence that you're going to
5 have to decide the case and I need to give you an
6 instruction. I need for you to listen very
7 carefully to this, please.

8 I emphasize to you, ladies and gentlemen, that
9 the fact that the defendant in this case elected not
10 to testify is not a factor to be considered by you
11 in any way in your deliberations and in your
12 consideration on the question of whether he is
13 guilty or not guilty. His decision not to testify
14 must not be considered by you in any manner
15 whatsoever against Mr. Arroyo. An accused has a
16 constitutional right to remain silent and the
17 assertion of that right cannot and must not be
18 considered by you in your deliberations.

19 Under the oath you've taken, you are to reach
20 no inference and you are to draw no conclusion
21 whatsoever from the fact that Mr. Arroyo elected not
22 to testify. His decision not to testify should not
23 be discussed by you in the jury room. It should not
24 even enter into your minds in making your decision
25 on the question of whether he's guilty or not

1 guilty. The burden of proof, as I've told you
2 repeatedly, is entirely on the State to prove every
3 essential element of the offense charged against the
4 defendant beyond a reasonable doubt.

5 So, the two stages that remain in the trial are
6 the closing arguments and the charge. The charge is
7 where I tell you the law.

8 We're at the close of all the evidence. I,
9 again, have to talk to the attorneys about some
10 legal matters, even though it's back to back, still
11 have the same procedure. And so what I'm going to
12 do is let you folks go on to lunch. You'll be on
13 your own for lunch and I'm going to give you an
14 extended lunch break because we're going to be
15 working on some things and I need you back here at
16 1:30.

17 You'll hear the closing arguments, I'll tell
18 you the law. If I don't change the draft I've got
19 up here, it's going to take me 16 minutes to tell
20 you the law. So you'll get the case this afternoon.

21 Hopefully, we'll be through with everything and
22 we'll be back from lunch by 1:30 as well. I think
23 there's no problem there, but I'll get to you as
24 close to 1:30 as I can. So, please, be back in the
25 jury room at 1:30. Don't discuss the case. Follow

1 the bailiff, please.

2 (The jury retires to the jury room.)

3 **THE COURT:** Are there any additional motions?

4 Do you need to renew anything at this stage?

5 **MR. KIRKLAND:** In an abundance of caution,
6 we'll renew all of our motions, Your Honor. I don't
7 think that I need to make a motion for a new trial
8 until a verdict is back, so I'll just renew all of
9 our motions at this time.

10 **THE COURT:** Again, it appears they're jury
11 issues and the motions are respectfully denied.

12 All right. Here's what I'm going to do: I'm
13 going to print out a draft of the charge. If you
14 all have specific things you want to talk to me
15 about, you can, but I found it's better if we talk
16 after you read what I intend to tell the jury
17 because you may be satisfied with what I've got.

18 The draft that I've got has a circumstantial
19 evidence charge in it. I don't know if you need
20 that or not, but it's in there. Everything else is
21 pretty straightforward. And I'll -- we can't print
22 from up here, so I have to get somebody else to
23 print it and give it to you. So I need the lawyers
24 to stay here until you have the draft of the charge
25 and the draft of the verdict form and then I want

1 you back here at ten minutes before the jury gets
2 here, let's say, 1:20, all right.

3 **MR. KIRKLAND:** Yes, sir.

4 **THE COURT:** We'll talk about the law then,
5 okay.

6 All right. Now, folks, remember what I told
7 y'all yesterday, give the jury a chance to clear
8 out, please. It's not a good idea for y'all to be
9 on the same elevators with the jurors, so just wait,
10 let them clear out, wait a few minutes. And then I
11 need the lawyers back here with the defendant at
12 1:20. Everybody else 1:30 is when we'll start back,
13 okay. Thank you.

14 (Whereupon, there was a luncheon recess.)

15 **THE COURT:** All right. As I understand it,
16 there was no need to talk about the proposed charge,
17 the draft that I gave you. And my understanding of
18 the evidence is that the only two options the jury
19 has is not guilty or guilty, and there's no question
20 about the weight, so the verdict form reflects that.
21 I don't know if y'all have seen the verdict form or
22 not, but you can look at it now or during the break.

23 (Pause.)

24 **MR. KIRKLAND:** That's fine with me.

25 **THE COURT:** And since the defense offered no

1 evidence, the defense will make the last argument.

2 So is the State ready?

3 **MR. GOINGS:** The State's ready, Your Honor.

4 **THE COURT:** Is the defense ready?

5 **MS. CHAPMAN:** We're ready.

6 **THE COURT:** Bring them in, please.

7 (The jury returns to the courtroom.)

8 **THE COURT:** As I told you before the break,
9 there are two stages that remain in the trial, the
10 closing arguments and the charge. The way the
11 closing arguments will go is that the State will
12 make the first closing argument and then the defense
13 makes the last closing argument.

14 I always take a break between when they finish
15 and when I start. Usually, it's a very short break,
16 but I always take some break to get set up and ready
17 to give you the charge. Sometimes I take a break
18 between the arguments of the lawyers, it just
19 depends on how things go. So we'll play it by ear.
20 I invite your close attention.

21 Which of you is going to make the closing
22 argument? Mr. Goings, you're recognized.

23 **MR. GOINGS:** Thank you, Your Honor. If it
24 pleases the Court.

25 **THE COURT:** Yes, sir.

1 CLOSING ARGUMENT

2 MR. GOINGS: Good afternoon, ladies and
3 gentlemen. At the beginning of this trial on
4 yesterday, Curtis Pauling told you that Mr. Arroyo,
5 the defendant, came into this courtroom, sat down at
6 that table an innocent man. The Judge in a few
7 minutes is going to charge you that that presumption
8 of innocence is like a robe of righteousness that's
9 placed around the defendant and it stays with him
10 through this trial.

11 Well, ladies and gentlemen, now that the trial
12 is over, you've heard the witnesses testify, you've
13 seen the evidence, there's not an innocent man that
14 sits at that table anymore, that man is guilty.
15 That man is guilty of selling drugs. He's guilty of
16 selling drugs on April 29th, 2010, at
17 Street in Horry County when he sold 25 grams of
18 heroin and received \$1800 in cash. He's guilty of
19 the charges he's been charged with. He is guilty of
20 trafficking in heroin 14 grams or more.

21 Now, I'm going to get into what y'all heard
22 today, but there's a couple areas of law that I want
23 to talk with you about and the Judge is going to
24 charge you in a little bit on these same areas. If
25 he says something different than what I say right

1 now, well, obviously, you follow him because he is
2 the judge of the law, that's his role in this
3 courtroom. He tells you what the law is.

4 You are the fact finders. You look at the
5 evidence, you determine what really happened, you
6 apply it to the law that he's given you, and you
7 come back with a verdict. That's essentially how it
8 works.

9 Now, in the beginning of the trial, Mr. Pauling
10 told you that we have the burden of proof. When I
11 say we, that means the State of South Carolina has
12 the burden of proving that the defendant is guilty.
13 And that burden of proof in this state is beyond a
14 reasonable doubt. And the Judge is going to talk to
15 you about what reasonable doubt is. The defense may
16 talk to you about what reasonable doubt is, but I'm
17 going to talk to you.

18 In the State of South Carolina, reasonable
19 doubt can be defined a couple of ways. It can be
20 defined as a doubt that would cause a reasonable
21 person to hesitate to act or it can also be defined
22 as if you're firmly convinced of the defendant's
23 guilt, then the State has met its burden of proof.

24 We don't have to prove beyond every doubt that
25 the defendant is guilty because there's really a lot

1 of thing -- very few things that you can prove
2 beyond every doubt. So when you get back there and
3 you take this evidence and you apply it to the law,
4 if you firmly are convinced that the defendant is
5 guilty of trafficking cocaine -- I mean, trafficking
6 heroin 14 grams or more, then you come back with a
7 guilty verdict.

8 Now, the Judge is going to go over what
9 constitutes trafficking in heroin. And I submit to
10 you that there's four basic elements that we have to
11 prove and we have to prove each of those elements
12 beyond a reasonable doubt.

13 Those four elements are that the defendant,
14 Mr. Arroyo, sold, delivered or was in actual
15 possession of heroin and that its weight was more
16 than 14 grams. Four essential elements, that it was
17 the defendant, that he sold, delivered or possessed
18 heroin and that it weighed more than 14 grams.

19 Those are the four things that when I'm going over
20 the facts, I want you to keep those four things in
21 mind and you make the determination of whether we
22 have proved each of those elements beyond a
23 reasonable doubt.

24 Now, let's look at the evidence that you
25 actually heard and that's how we prove our case is

1 we bring witnesses who get up there on the stand to
2 testify, take an oath to tell the truth, the whole
3 truth, nothing but the truth, and then we also
4 submit evidence through those witnesses. These
5 things that have been labeled that I've asked to be
6 introduced throughout this trial, those are things
7 that you're going to have, you can take back to the
8 jury room, you can look at all you want. And you
9 have to remember the testimony that was provided
10 from each of the witnesses and you apply it to these
11 essential elements that I gave you and you determine
12 whether or not we have proved it.

13 We started off with Agent Wood. He came in
14 here and testified, gave you a background of his law
15 enforcement experience, his training, how many drug
16 investigations he's been on. Then he gave you an
17 overview of how they conduct some of these
18 investigations using confidential informants, that
19 they would use these confidential informants to set
20 up other individuals in drug deals.

21 He went through what precautions or procedures
22 they do when conducting these confidential informant
23 buys. They search the informant when they get
24 there, they search his car, they equip them with
25 some type of video so that they can actually record

1 whatever happens during these transactions. Then
2 they meet back up with them, search them again and
3 find out what happened.

4 And then he got into the specifics of this
5 particular case and he told you about Emigdio
6 Penaloza, that's an individual who also testified
7 and I'll get to his testimony. And he told you
8 that, yeah, I arrested Emigdio Penaloza on a cocaine
9 transaction about -- he said it was some time before
10 the actual transaction with Juan Arroyo took place.
11 And he says Emigdio wanted to cooperate right away.
12 He said, in fact, that they took -- Emigdio took him
13 to get a key of cocaine on that particular occasion
14 right then and there.

15 And I want to point out one thing, and I want
16 -- there's going to be several different things that
17 I'm going to point out that I'm going to call smoke
18 screens. These are issues that defense counsel are
19 going to argue that they want you to pay attention
20 to because it, one, affects the credibility of the
21 case or a witness, or they want you to focus on that
22 and not the overall picture of actually what went
23 down on April 29th, 2010, okay. They're smoke
24 screens. They don't want you to pay attention to
25 all of this stuff. They want you to pay attention

1 to a irrelevant inconsistency in testimony.

2 When we get to Emigdio, we find the first
3 inconsistency. Agent Wood testified that when
4 Emigdio began cooperating with him about a year
5 later, that Emigdio was the one who brought Arroyo's
6 name into the picture that said, Hey, I think I can
7 buy from this individual named Juan Arroyo, what do
8 you think about that?

9 Well, obviously, when Emigdio got on the stand
10 later, he said, Well, Agent Wood showed me some
11 pictures of Juan Arroyo and asked me if I knew him
12 and I said, yes, I know him and his family. And
13 that's how the conversation about Juan Arroyo
14 started.

15 Ladies and gentlemen, does it matter? Nobody
16 forced Juan Arroyo to agree to sell heroin. Nobody
17 forced Juan Arroyo to get his hands on 25 grams of
18 heroin on April 29th, 2010, and sell that to Emigdio
19 Penaloza for \$1800. Again, all of this evidence,
20 the testimony shows that that's what happened and
21 nobody forced him to.

22 Well, let's keep going with Agent Wood. So,
23 all right, you got Emigdio, he's cooperating. Juan
24 Arroyo's name's brought up. They're going to set up
25 a deal. And then before we get to the specific

1 deal, there's another smoke screen that's thrown.
2 Agent Wood was asked, you have a cooperating
3 confidential informant that you have charges on,
4 what happened to those charges? Well, the state
5 charges were dropped. He was picked up by the feds,
6 indicted by the feds and actually was sentenced
7 later on.

8 Emigdio gets up and testifies that, yeah, I was
9 charged within the state level. I wanted to
10 cooperate. I cooperated. I was indicted by the
11 federal government. He went through what he was
12 facing and then he went to what he pled to.

13 And I submit to you, yeah, the federal charges
14 he was facing when he was indicted carried ten to
15 life. The state charges when he was originally
16 arrested was a felony that carried zero to 15. I'm
17 not going to say it wasn't.

18 But, ladies and gentlemen, if you're a drug
19 dealer who gets caught by law enforcement pretty
20 much red handed, your ultimate goal is to work down
21 those charges. It happens all the time. In fact,
22 if it didn't happen, law enforcement would have a
23 very difficult job to do their duties. They have to
24 have people to cooperate.

25 Again, if you look solely -- if we came in here

1 and only had Emigdio to testify against the
2 defendant, I can see where that question would creep
3 into your head, well, did he set him up, did he
4 actually get the grease tube somewhere else? That's
5 not all you have. You have this other evidence that
6 corroborates everything that they said and testified
7 to.

8 He was working to get his charges down. I
9 can't fault him for that. He wanted to spend less
10 time in prison as he could so he cooperated with law
11 enforcement. And he told you and Agent Wood told
12 you that Mr. Arroyo was not the only person he
13 helped get or helped set up. There were several
14 others. So don't sit here and think, oh, because
15 Mr. Arroyo got set up, he got this sweetheart deal.
16 No. It was because of all the work he did, all the
17 people he set up. Yes, that includes Mr. Arroyo,
18 but it's not just him. And he was able to work his
19 plea down. He pled to a reduced charge and then he
20 got a light sentence.

21 I'm not going to -- ten to life to one year and
22 one day in prison is pretty good, but Agent Wood
23 told you he was a good confidential informant. He
24 helped set up a lot of people. Unfortunately for
25 Mr. Arroyo, he was one of them.

1 Again, it doesn't change the fact that on April
2 29th, 2010, nobody forced Mr. Arroyo to get 25 grams
3 of heroin, nobody forced him to sell it for \$1800 to
4 Emigdio, nobody forced him. Nobody did anything
5 underhanded.

6 Why would Agent Wood get up here and lie?
7 Obviously, you'd have to discredit Agent Wood to
8 consider anything that the defense may put forward.
9 Why would he get up here and lie? To bring down an
10 innocent man? No. He got up here swore to tell the
11 truth, told the truth because Mr. Arroyo is a drug
12 dealer, plain and simple.

13 So let's go forward. Agent Wood then after we
14 got through the benefit Emigdio got and the fact
15 that he had set him up as a CI, they get into the
16 actual specifics of what happened on April 29th,
17 2010. And Agent Wood told you, I searched the car,
18 I searched Emigdio when he got to the scene.
19 Emigdio testified that, Well, it wasn't Agent Wood,
20 some other officer was searching the car. And I
21 believe, at that point in time, defense counsel made
22 a comment that this is the first time we heard that
23 there were other officers on the scene, or it might
24 have been when they were at the ATM.

25 But if you recall, Agent Wood never said that

1 he was alone by himself during this April 29th deal.
2 He never once said, oh, I was out there by myself.
3 I was the only one that maintained the physical
4 surveillance. I was the only one. In fact, if you
5 recall, he says when they do these drug operations,
6 it can be from two to eight individuals, two to
7 eight agents out there surveilling, helping out with
8 an individual buy.

9 The point is, ladies and gentlemen, Emigdio
10 says his car was searched. Emigdio says his persons
11 were searched. Agent Wood said Emigdio was
12 searched. And Agent Wood testified that, hey, we
13 searched the vehicle as well, and went in depth
14 about what they did inside and out, back and front,
15 under the hood.

16 And what was not there? There's no mention of
17 this grease tube anywhere. Why? Because it hadn't
18 been purchased from Juan Arroyo yet. We're going to
19 get back to that.

20 And there's going to be another smoke screen
21 that defense may bring up when they're talking about
22 the video tape and the wiring and the search of
23 Emigdio and the car that I want y'all to -- I'm
24 going to spend a little time on is why wasn't it
25 video taped?

1 Well, if you'll recall, Agent Wood told you
2 that these little button cameras, he doesn't know
3 the exact space they have, but it's limited space.
4 And, heck, y'all witnessed that firsthand because
5 what happened after the drug buy took place before
6 Emigdio could meet up with Agent Wood? The video
7 cuts off. It cuts off while Emigdio's driving down
8 the street going to meet back up with Agent Wood.

9 Imagine if this extensive search that Agent
10 Wood testified to you about had been recorded. We
11 wouldn't have even seen the drug transaction take
12 place. It might have cut off right when he got to
13 the door and met Juan Arroyo.

14 So that's why it's not taped because then,
15 again, you would have to disbelieve everything Agent
16 Wood told you. And I ask you again, why, why would
17 he get up there and say, this is what we did, I
18 searched Emigdio, his car, made sure he was not
19 having any illegal contraband or anything that he
20 didn't need before he was going to make this
21 purchase? There's no reason. Why? Because
22 everything that Agent Wood told you was the truth
23 that they did it because they were going to purchase
24 heroin from Mr. Arroyo, not that he's trying to set
25 up an innocent man.

1 So what happens next? Well, the 18 -- or
2 actually, at this point in time, it's still \$1600.
3 Agent Wood testified that, you know, I got \$1600 out
4 of our account, photographed it, documented it, gave
5 it to the CI, wired him up and sent him on his way.

6 And we watched some of that video. I know
7 portions were skipped, but the first time Emigdio
8 goes over there, the defendant is not home. The
9 girlfriend's at the door, you can see Emigdio get
10 back in his car, meets back up with Agent Wood. At
11 that point in time, Agent Wood testifies that a
12 conversation takes place with Emigdio and the
13 defendant, Juan Arroyo, and they have to go get \$200
14 more.

15 The important part about this I want you to
16 understand is defense counsel, remember the
17 stipulation we made that there was a six to eight
18 minute gap where there was a lost -- that perhaps
19 Agent Wood and the confidential informant, Emigdio,
20 were not together. Ladies and gentlemen, the drug
21 transaction hadn't took place yet, okay. There's no
22 tube that's been given to Emigdio. Emigdio has not
23 given the \$1600 that he had originally to the
24 defendant, okay. So there's a six to eight minute
25 gap. Oh, well.

1 They want you to focus on, well, what if that
2 could have happened later on. It didn't. Again,
3 you would have to discredit everything Mr. Wood
4 said. Mr. Wood said, yeah, he didn't think it was
5 five minutes, but he did tell you, he was honest
6 with you, there was a time where I lost him, but we
7 caught back up.

8 Again, nothing happened on that first attempt
9 to buy. All he did was go over to the house, find
10 out Arroyo wasn't home, went back and met up with
11 Agent Wood, made a phone call, \$200 more, and they
12 cut off the camera. And then they go get money, the
13 \$200 extra. Agent Wood testifies that, you know,
14 Emigdio was with me the whole time. Emigdio
15 testifies, Yeah, I went, I followed them in my car.
16 I was with them the whole time.

17 Agent Wood said nobody came up to the car. He
18 didn't meet with anybody. There was no opportunity
19 to get this grease tube that we see later on. There
20 was no opportunity for him to get rid of the \$1600
21 he had at that time, which eventually turned into
22 \$1800, there was no opportunity.

23 So you go on, they cut the video back on, send
24 Emigdio back over to Juan Arroyo's house and then
25 you see -- Agent Wood testifies, Well, I have eyes

1 on him until he goes into the house where I can't
2 see anything. He comes out of the house. He says,
3 I had eyes on him again, I follow him to our meeting
4 spot.

5 Yes, the video cuts off before you see this
6 meet, but, again, you'd have to discredit everything
7 Agent Wood says when he says, I had eyes on him, he
8 did not meet anybody, nobody came up to his car and
9 there was never an opportunity for him to get that
10 grease tube on his persons or in his car.

11 So what happens next? Well, you get the grease
12 tube and you start getting the photographs after the
13 grease tube is handed to Agent Wood and he
14 photographs everything he did. And you can see the
15 grease tube, same one we have there, unopened.
16 Starts going through the grease, finds the black
17 ball, unwraps the tape back at the office, finds the
18 white plastic baggy with the white substance balled
19 up in it.

20 And then, at that point in time, in his office
21 on April the 29th, 2010, he says he puts it in a
22 heat-sealed bag, plastic bag, and puts it in the DEU
23 safe. He says there's a couple other people that
24 has access to the safe, but then he tells you on --
25 according to this evidence form that he also fills

1 out, he signs it in the DEU safe on April 29th,
2 2010, come gets it eight days later on May 7th,
3 2010, where he then takes it over to the Horry
4 County Police Department evidence room. He puts it
5 in the BEST kit, which is this blue package right
6 here --

7 Let me go back. When he takes it out of the
8 safe, I asked him, Was the heat-sealed plastic that
9 he put it in, was it tampered with? No. Had it
10 been cut? No. Had it been altered in any way? No.

11 So he takes it over, puts the whole complete
12 heat-sealed pack -- white package that he put it in
13 into this BEST kit, which is then also heat sealed,
14 puts it into evidence through Sharon Lilly is who he
15 gives it to. And he also says that's when I sign it
16 in, I sign my name, 5/7/10, this is what I got from
17 the purchase, from the tube, on 4/29/2010, gives it
18 to Sharon Lilly.

19 Sharon Lilly tells you, we take the BEST kit,
20 the heat-sealed BEST kit, keep it in our evidence
21 until we take it over to be tested by the chemist.
22 It's kept in the Horry County evidence room until
23 July 27th, 2010, where she takes it over to the
24 chemist, Lisa Floyd, who you also heard from, who
25 testifies that, I get it, I put it in my lab that I

1 only have access to until it's ready to be tested.

2 She said, tested it a day later on 7/28. She
3 pulls out the package, the BEST kit. And I asked
4 her was it tampered with, was it messed with, was it
5 cut? She goes, no, because if it was, she would not
6 have tested it. So we know whatever was in here in
7 the BEST kit wasn't tampered with.

8 And I also asked her was the individual
9 heat-sealed plastic that Agent Wood had originally
10 put it in, had it been cut, had it been tampered
11 with? She said, No, or I would have marked it on,
12 there.

13 So, at that point in time, we know, ladies and
14 gentlemen, beyond a doubt whatever Agent Wood got
15 out of this grease tube that he put in that
16 heat-sealed plastic was what she tested. And what
17 does she find? 25.78 grams of heroin. So we know
18 it's heroin. We know it's over 14 grams.

19 So that leaves us with one last witness and
20 that's Emigdio. Emigdio, again, I'm not going to
21 rehash the testimony I already rehashed, but this is
22 where we get to the video, the video of Emigdio
23 where he's at Juan Arroyo's house. And you see him
24 go in and you see them chitchat for a while,
25 obviously. He's playing Play Station or Nintendo or

1 whatever he's playing, I don't know. And then it
2 cuts to a scene where he's obviously counting money.
3 And Emigdio says, He's counting the money I gave
4 him.

5 Another smoke screen might come here. Well,
6 you didn't see him hand him the money, did you? No.
7 I admit that's not on video. But, ladies and
8 gentlemen, even if we assume that the CI, Emigdio,
9 knew the camera angle, what's the number one rule of
10 being a confidential informant who is buying drugs
11 from a drug dealer? I don't want him to know I'm
12 working with the cops. It's not like I can say --
13 Emigdio can say, hey, I don't think that got on
14 camera, can we change the money up here. It's not
15 going to happen. He don't want to be made because
16 if he's made, what's going to happen? Who knows.

17 Same with the drugs, when he comes back, no,
18 you don't see Juan Arroyo on that camera say, here.
19 You don't. It's not on camera. But, again, why?
20 What's Emigdio going to do if his camera's pointed
21 this way, Juan's over here with the tube and says
22 here? He's going to say, no, no, no, I need you to
23 come over here and hand it to me in front of me so I
24 can get it on camera? No. It's not going to
25 happen.

1 But we do know that this grease tube was
2 brought out at the home of Mr. Arroyo. Why?
3 Because it -- once he's got possession of it,
4 Emigdio just sits there and holds it just like this,
5 y'all saw it on camera, holds it right in front of
6 the face of Juan Arroyo who's sitting there talking
7 to him.

8 The defendant didn't act surprised that he had
9 it in his hand. You figure if Emigdio just pulled
10 it out of his pocket, there would be some surprise,
11 but there wasn't. Why? Because Mr. Arroyo knew he
12 just handed that grease tube. Mr. Arroyo knew that
13 Mr. Emigdio just gave him the \$1800 that it cost to
14 buy the 25 grams of heroin.

15 So you put it all together, ladies and
16 gentlemen, and, again, if it was just Emigdio on
17 that stand testifying, I could see where you'd have
18 some caution that, hey, here's this guy who got
19 caught with trying to sell some cocaine and he's
20 doing everything he can, that would include setting
21 up somebody who's innocent.

22 Well, that's not all you have. You have Agent
23 Wood to tell you that I searched him. I know he
24 didn't have anything on him. I gave him the money.
25 I sent him over there unsuccessful the first time.

1 We got more money. I sent him over there again and
2 we surveilled him. He didn't stop. He didn't see
3 anybody. He didn't have an opportunity to get it
4 anywhere else.

5 You've got a video tape when he goes in the
6 house that shows Mr. Arroyo counting a wad of money.
7 You have a video that shows in the house Emigdio
8 having possession of this grease tube. You have
9 the -- you have Mr. Wood telling you that after it's
10 over, I searched the CI. He no longer has the cash
11 on him, but he has this (indicating). And then you
12 have Agent Wood taking photographs of everything
13 that comes out of that grease tube that Juan Arroyo
14 sold to Emigdio on April 29th, 2010. And you have
15 25.78 grams of heroin. And you have a man that's
16 guilty of trafficking in heroin. Thank you.

17 **THE COURT:** All right. Thank you, Mr. Goings.

18 Ladies and gentlemen, we'll take a ten-minute
19 break, stretch your legs, clear your minds and then
20 you'll hear the closing argument of the defense
21 counsel. Don't discuss the case. Follow the
22 bailiff, please.

23 (The jury retires to the jury room.)

24 **THE COURT:** Do y'all have anything?

25 **MR. KIRKLAND:** No, sir.

1 **THE COURT:** Well, the same juror that was
2 fighting sleep yesterday is fighting sleep today.
3 I'm watching her very closely. She has not fallen
4 asleep in my estimation. So I'm watching her. If
5 she falls asleep, we'll deal with it.

6 **MS. CHAPMAN:** We still have our alternate,
7 right?

8 **THE COURT:** We still have an alternate. It's
9 the same lady. I don't know what the issues are,
10 but it's not warm in here today. We're at ease.

11 (Brief Recess.)

12 **THE COURT:** Defense ready?

13 **MS. CHAPMAN:** I am, Your Honor.

14 **THE COURT:** All right. Bring the jury in.

15 (The jury returns to the courtroom.)

16 **THE COURT:** All right. Ms. Chapman, you're
17 recognized for your closing argument.

18 **MS. CHAPMAN:** Thank you, Your Honor. May it
19 please the Court.

20 **THE COURT:** Yes, ma'am.

21 **MS. CHAPMAN:** Well, I think we're to the end.
22 Let me tell you, no matter what story the State's
23 going to tell you, they still have the burden of
24 proof regardless. They have to prove to you, all of
25 you, that my client was guilty by a reasonable

1 doubt.

2 Well, this case is really pretty simple. We
3 had two witnesses, we had a video tape. And I'd
4 like to go through those with you.

5 Agent Wood, okay, I remember him testifying
6 that he searched the car. And he, and I agree with
7 the State, he said he took out the seats, he looked
8 under the hood. Matter of fact, I think he says it
9 takes a really long time and he searched it by
10 himself is my recollection of his testimony.

11 But oddly enough, the CI gets up and testifies
12 he was talking to Agent Wood. Agent Wood didn't
13 search that car, not at all. Matter of fact, there
14 were other agents there. They searched the car.
15 Did we hear testimony from those agents? You need
16 to ask yourself what's that all about? My client's
17 on trial and this is their job to prove to you.
18 This is a serious case.

19 And you ask yourself why the search of the car
20 is so important. Well, you know, I would submit to
21 you that it's opportunity, opportunity because
22 you've heard from the CI, who is a drug dealer, who
23 is convicted federally, who's looking at life, life,
24 and he walks out with ten months. And we're not
25 talking about a drug dealer who dealt just a little

1 bit of dope. We're talking five keys or more is
2 what he was indicted for. So it creates
3 opportunity, which I submit to you is reasonable
4 doubt, but coupled with a bunch of other things.

5 Officer Wood also testified that he lost the CI
6 at a red light. He estimated it wasn't a real long
7 time, it was like 30 seconds. Well, you watched the
8 video, and we kind of passed through it, but you'll
9 have the opportunity to look at it again if you'd
10 like, but the State even conceded it wasn't 30
11 seconds, it wasn't a minute, it was six to seven
12 minutes. And what does that do? That creates
13 opportunity again and I'll submit to you reasonable
14 doubt.

15 And then interesting enough Officer Wood
16 testifies, and I had to go back and look in my
17 notes, the CI came to him about Juan. He didn't
18 even know who Juan was. Well, that's not the
19 testimony we get from the CI. The CI didn't say
20 that. In fact, he said it was Agent Wood who came
21 to him. Remember all the photos that he'd been
22 identifying of drug dealers. Agent Wood came to him
23 and showed him a photo of Juan and wanted him to buy
24 drugs from Juan.

25 Now, you also have to remember something else

1 about the CI. He signed a plea agreement, he must
2 cooperate to the satisfaction of the government in
3 order to get his deal, his life deal to ten months.
4 He must satisfy the government to their
5 satisfaction. His cooperation must be, and you
6 heard him say, the more drug deals I do, the better
7 off I am, the bigger the deal I'm going to get.
8 Well, I submit to you he wanted to please Agent
9 Wood, that's part of his deal. Juan was part of him
10 getting a ten-month sentence.

11 Then I want to talk about the video and exactly
12 what the video doesn't show you, doesn't show you
13 the search of the CI, certainly doesn't show you the
14 search of the car. Matter of fact, we don't know
15 who searched the car. We've got conflicting
16 testimony about the car.

17 We really don't see any exchange of money
18 between Juan and the CI, none. The State wants you
19 just to believe the CI that he gave him the money,
20 he gave him the drugs. Matter of fact, we don't
21 even see drugs on this video tape, no drugs
22 whatsoever, none. You don't even see Juan give the
23 CI the grease tube at all.

24 And, also, there's this 50-minute lapse in the
25 tape where they cut the tape off so they can go back.

1 to the bank to get \$200. And it is the first
2 testimony in this courtroom that there were other
3 agents there.

4 Now, if you remember correctly, that wasn't
5 Agent Wood's recollection, that's not what he
6 testified to. I think he said he might have even --
7 the CI said he got out of his car and talked to a
8 couple of agents. Well, that was the first we heard
9 of it. You didn't see any of these other agents get
10 on the stand and testify to that. The State didn't
11 prove that to you.

12 And then the video cuts off conveniently at the
13 end. So you never get to see the CI go meet Agent
14 Wood. We don't know what the CI did. I don't know
15 if he stopped. I have no earthly idea. Your guess
16 is as good as mine.

17 We never see the search of the tube or the CI
18 giving the tube to Agent Wood. We don't see any of
19 that, none of it. Matter of fact, you know, they
20 made a big deal of taking photos of money and I
21 don't even see any photos of money. Not in this
22 stack over here. I just didn't see it.

23 I would ask you to consider all of these
24 things. And I guess the best recollection, the
25 State has their own, I have mine obviously, but the

1 most important recollection is yours. And that's
2 what I would rely on, what you heard in this witness
3 stand and what you saw on that video.

4 It's really hard to have conflicting stories
5 because I don't think you get the big picture of
6 exactly what happened, how did this case start.
7 You've got one person telling you Agent Wood started
8 it and then you've got Agent Wood saying, hey, he
9 came to me. And then it kind of just goes downhill
10 from there. So there's a lot to consider and I
11 would ask that you consider that because I believe
12 every single one of those is reasonable doubt, every
13 single one of them.

14 This case is truly, truly important to my
15 client. And I know that he will appreciate your
16 time and thought and consideration in this matter.

17 But I want you to remember, you know, we're not
18 here to prove to you -- he doesn't have to prove to
19 you he didn't do it. They have the burden. You're
20 here to protect my client. That's what this system
21 is about to protect him. They have the job of
22 proving to you that my client is guilty beyond a
23 reasonable doubt. And I'd hope that once you look
24 at the evidence, consider it all and consider it as
25 a whole, consider it singularly, but it's truly

1 important, I think you'd find him not guilty. Thank
2 you.

3 **THE COURT:** Thank you, Ms. Chapman.

4 All right. Ladies and gentlemen, like I told
5 you, I always have to take a break between when they
6 finish and when I start. Again, you should be out
7 about ten minutes and then I'll send for you. The
8 law is going to take about 16 minutes to explain to
9 you. Don't discuss the case yet.

10 (The jury retires to the jury room.)

11 **THE COURT:** I want you all to check on
12 something for me, if you would, please. I
13 understand you all have an agreement about whatever
14 audio there is on that DVD. And I often hear the
15 attorneys say, well, we'll just let the jury come
16 into the courtroom to watch whatever they want to
17 watch. And if that's my only option, I guess that's
18 what I'll have to do.

19 I really don't like that because for all I
20 know, they may want to look at the video, stop it,
21 talk about it, and they're not going to be able to
22 do that if we're sitting in the courtroom. So I
23 have to clear the courtroom and then I guess I have
24 to tell them to cut off the security cameras.

25 So my idea -- my question is can't you just

1 disconnect the yellow one that carries the audio
2 that. I've been -- the jury's been told they don't
3 have audio on it and --

4 **MR. GOINGS:** The problem with that format is
5 that disk will not play on that system because it is
6 a generated AVI most likely and I don't think that
7 plays AVIs.

8 **MR. KIRKLAND:** It's not in DVD format. It's in
9 AVI file format and that player is not capable of
10 playing that format.

11 **THE COURT:** Well, for future reference for
12 anybody whoever tries a case in front of me, I don't
13 like that. I mean, y'all need to convert it to
14 something that the jury can look at. And I'm not
15 picking on y'all because I promise you, every trial
16 I have now is like this, and how that ever got
17 started, I don't know. I don't like it.

18 Y'all can talk, see if you can come up with
19 some sort of resolution. If I have to tell the jury
20 they've got to come back in the courtroom, I guess I
21 will, but -- I mean, sometimes a video is like the
22 most central piece of evidence in an entire case.
23 It cuts through all the credibility issues. It gets
24 through all these things. And the jury may want --
25 they may disagree over what that particular picture

1 shows and if they don't have the ability to talk
2 about it while they're looking at it or freeze it or
3 do all the things they can normally do with a video,
4 that bothers me.

5 MS. CHAPMAN: Well, Judge, how about if it can
6 be played on a lap top?

7 THE COURT: Well, as long as you all agree that
8 I tell them they are not to turn on the sound.
9 Y'all told me there's sound on that thing. I
10 assumed there was no sound on it. And for all I
11 know, it's in Spanish. I don't know if they were
12 speaking English or -- I mean, if y'all agree that I
13 can just tell them that it's in Spanish and we don't
14 have anybody to translate so they can't listen to
15 the audio or just tell them don't turn on the audio,
16 but I don't want them to get back there and turn on
17 the audio and one of them speaks Spanish and --

18 MS. CHAPMAN: That's exactly right.

19 MR. KIRKLAND: If we can talk for a minute,
20 maybe we can figure something out.

21 THE COURT: That's what I asked y'all to do.

22 All right. We're at ease.

23 (Brief Recess.)

24 THE COURT: My understanding is that we're
25 going to get the IT people to come in with a

1 computer with a disabled sound card and if the jury
2 wants to watch the video, then they can send me a
3 note. We'll make sure that somebody on the jury is
4 instructed about how to operate the machine and they
5 can watch it back there in private. Is that right?

6 **MS. CHAPMAN:** Yes, sir.

7 **MR. GOINGS:** That's correct, Your Honor.

8 **THE COURT:** The last time we had a similar
9 issue come up, that's what -- we had to get the IT
10 guy to come in and explain it to the jury. I had
11 that done out in open court. Some of the younger
12 people on the jury, maybe some of the older people
13 on the jury know how to do it, but that's what we
14 did before.

15 Where's co-counsel?

16 **MR. GOINGS:** He's working with the IT people --

17 **MS. CHAPMAN:** I think they're both working with
18 the IT --

19 **THE COURT:** So they're not going to be in here
20 for the charge?

21 **MS. CHAPMAN:** That's fine with me, Judge. We
22 can go forward.

23 **MR. GOINGS:** Fine with me.

24 **THE COURT:** Bring them in.

25 During the charge, please stay still, stay

1 quiet, don't do anything to distract the jury.

2 Absent an emergency, please don't be moving around
3 or doing anything to distract the jury.

4 I'm not going to send the computer back there
5 unless they ask for it.

6 **MS. CHAPMAN:** That's fine.

7 (The jury returns to the courtroom.)

8 CHARGE OF THE COURT

9 **THE COURT:** Members of the jury, all of the
10 evidence has been presented, you've heard the
11 arguments of counsel and now it's time for me to
12 instruct you on the law that applies to the case.
13 Please, continue to pay close attention during this
14 next stage.

15 Now, first, you need to understand some basic
16 ground rules. You, the jury members, are the sole
17 judges of the facts. You decide all of the issues
18 of fact. You alone determine the truth of the
19 evidence, its effect, its value and its weight. You
20 alone judge the credibility of witnesses, in other
21 words, whether or not a witness' testimony is
22 believable.

23 Now, in that regard, you may believe all that a
24 witness said or none of what a witness said. So in
25 evaluating the testimony of any witness, including

1 expert witnesses, you may believe all of what the
2 witness said, part of what the witness said or none
3 of what the witness said. You may believe part and
4 disbelieve the balance. You may believe one witness
5 against many, many against one. You may consider
6 any interest or bias or prejudice that you feel that
7 a witness has in the case. You may consider the
8 demeanor and the appearance of the witness and the
9 opportunity for knowledge that the witness had. You
10 may consider the lack of evidence presented by the
11 State.

12 But you're not to exercise these considerations
13 arbitrarily. What I want you to do is to use your
14 common sense, use your sense of logic and reason and
15 your good judgment.

16 Now, it's not proper for me to give you a
17 charge on the facts of the case. I can't discuss
18 the facts with you. I'm not even permitted to
19 convey to you an impression as to what, if any,
20 personal feelings I may develop about the facts of a
21 case. So if, during any stage of this trial, you
22 develop an impression that I've got a personal
23 opinion about the facts, then you must remove that
24 belief totally from your mind. You're the sole
25 judges of the facts.

1 Now, I am the judge of the law that applies to
2 the case and under your oath, you must accept and
3 apply the law as I give it to you. If you have
4 conflicting ideas about what the law is or what it
5 should be, you must abandon those. I give you the
6 law, you apply it to the facts as you determine them
7 to be and in that way, you reach your verdict.

8 It's also my job to decide what evidence is
9 admissible. If I rule something inadmissible or
10 instruct you to disregard something, you're not to
11 consider those things in arriving at your verdict.
12 Base your verdict on the competent evidence before
13 you, consider the testimony of the witnesses, any
14 exhibits admitted and any stipulations of counsel.

15 I need to explain to you that there are two
16 types of evidence generally presented during a
17 trial. There's direct evidence and there's
18 circumstantial evidence.

19 Now, direct evidence is evidence of direct
20 perception, including the testimony of a person who
21 asserts or claims to have actual knowledge of a
22 fact, such as an eyewitness. Circumstantial
23 evidence is proof of a chain. It's proof of a chain
24 of facts and circumstances indicating the existence
25 of a fact.

1 The law makes absolutely no distinction between
2 the weight or value to be given to either direct
3 evidence or circumstantial evidence, nor is a
4 greater degree of certainty required of
5 circumstantial evidence than of direct evidence.
6 What you need to do is to weigh all of the evidence
7 in the case. And after weighing all of the
8 evidence, if you're not convinced of the guilt of
9 the defendant beyond a reasonable doubt, then you
10 must find him not guilty.

11 The defendant in this case, Mr. Arroyo, is
12 presumed to be innocent. Now, this is no mere legal
13 theory. It is a fundamental and substantial right
14 to which everyone is entitled. It's been described
15 as being like a robe of righteousness that's placed
16 around an accused to protect an accused and it
17 remains with him through every stage of the trial.
18 It continues to exist after you go back to your jury
19 room to deliberate so that he is presumed to be
20 innocent unless and until you, the jury, determine
21 that the State has proven him guilty beyond a
22 reasonable doubt.

23 I remind you that the fact that the defendant
24 elected not to testify is not a factor to be
25 considered by you in any manner in your

1 deliberations and in your consideration on the
2 question of whether Mr. Arroyo is guilty or not
3 guilty. His decision not to testify must not be
4 considered by you in any manner whatsoever against
5 him. An accused has a constitutional right to
6 remain silent and the assertion of that right cannot
7 and must not be considered by you in your
8 deliberations in any manner against Mr. Arroyo.

9 Under your oath, you are to reach no inference,
10 you're to draw no conclusion whatsoever from the
11 fact that the defendant elected not to testify. You
12 should not discuss that in the jury room. His
13 decision not to testify should not be discussed by
14 you. It should not enter into your minds in making
15 the decision of whether he is guilty or not guilty.

16 The burden of proof is entirely on the State to
17 prove every essential element of the offense charged
18 beyond a reasonable doubt and an accused has no
19 obligation to prove anything at all. So a
20 defendant's not required to prove his innocence.
21 He's not required to prove anything. The burden's
22 on the State and the State has to prove beyond a
23 reasonable doubt every essential element of the
24 offense charged.

25 The State is not required to prove the guilt of

1 the defendant beyond all doubt or beyond every
2 doubt. The appropriate standard is proof beyond a
3 reasonable doubt. So what do I mean by that?

4 Well, some of you may have served as jurors in
5 civil court and if you have, you know that the
6 burden of proof in a civil case is known as the
7 greater weight or a preponderance of the evidence.
8 You have to prove that something is more likely than
9 not in civil court. But in criminal court, which is
10 what we're in now, the standard's much higher and
11 the proof required is much stronger than the civil
12 standard. The burden of proof in this case is proof
13 beyond a reasonable doubt.

14 Now, what I mean by that term is this: Proof
15 beyond a reasonable doubt is proof that leaves you
16 firmly convinced of the defendant's guilt.

17 There are few things in the world that we know
18 with absolute certainty and in criminal cases, the
19 law does not require proof that overcomes every
20 possible doubt. If, based on your consideration of
21 the evidence, you are firmly convinced that the
22 defendant is guilty of the crime charged, then you
23 are to find him guilty. If, on the other hand, you
24 think there is a real possibility that he is not
25 guilty, you have to give him the benefit of the

1 doubt and find him not guilty.

2 There's no obligation on the part of Mr. Arroyo
3 or the defense to raise any doubt or any other
4 possibility. He's presumed to be innocent. The
5 State has the entire burden of proof and the State
6 has to prove to you that Mr. Arroyo is guilty of the
7 crime charged to the exclusion of any other real
8 possibility.

9 All right. Now, let's turn to the specific
10 charge that's alleged here. As you know, Mr. Arroyo
11 is charged with trafficking in heroin. And,
12 basically, the indictment alleges that Juan Rodolpho
13 Arroyo did, in Horry County, on or about April 29,
14 2010, knowingly and unlawfully sell, deliver or
15 possess heroin weighing more than 14 grams, but less
16 than 28 grams.

17 I read the indictment to you at the beginning
18 of the trial and I remind you that an indictment is
19 not evidence. You cannot give it any evidentiary
20 value. It's merely a charging paper.

21 Now, let me explain to you what trafficking
22 means. The Legislature has defined certain
23 activities related to controlled substances as
24 trafficking. Heroin is a Schedule I Controlled
25 Substance. Where a person knowingly sells, delivers

1 or is in actual possession of more than 14 grams of
2 heroin, that constitutes trafficking in heroin.

3 So to prove the defendant guilty of the offense
4 charged, the State has to prove to you beyond a
5 reasonable doubt that on the date alleged and in
6 Horry County, South Carolina, the defendant sold,
7 delivered or was in actual possession of more than
8 14 grams of heroin.

9 The State has to prove to you that the
10 defendant engaged in this alleged unlawful conduct
11 knowingly, intentionally and willfully. The State
12 has to prove to you that the substance in question
13 was heroin. The State has to prove to you the
14 weight and that is that they have to prove to you
15 that the amount of heroin exceeded 14 grams in
16 weight. And the State has to prove to you that the
17 defendant either sold it, delivered it or actually
18 possessed the heroin.

19 Now, actual possession of a controlled
20 substance exists when the person has actual physical
21 custody of that substance. To deliver something in
22 context of drug distribution or drug delivery means
23 to actually transfer heroin as alleged in the
24 indictment.

25 But mere presence of the controlled substance

1 in proximity to a defendant is not enough. The
2 State has to prove that the defendant knowingly
3 possessed and delivered heroin, that the drug was
4 present and that he knew that he was exercising
5 control over the drug. There has to be actual
6 knowledge of the presence of the controlled
7 substance by the defendant.

8 And, finally, the State has to prove to you
9 that the offense occurred in Horry County, South
10 Carolina, on or about April 29, 2010.

11 Now, the last thing I need to explain to you
12 about the law, ladies and gentlemen, is that a
13 defendant is entitled to every reasonable doubt that
14 arises in an entire case. If upon any issue
15 essential to a conviction, you have a reasonable
16 doubt as to how that issue should be resolved, you
17 have to resolve the doubt in favor of the defendant.
18 So if upon reviewing an entire charge, you have a
19 reasonable doubt as to whether the defendant has
20 been proven guilty of that charge, then he is
21 entitled to that doubt and a verdict of not guilty.

22 On the other hand, if upon reviewing the entire
23 case, you find that the State has proven every
24 essential element of its case of the offense charged
25 against the defendant beyond a reasonable doubt,

1 it's equally your duty to find the defendant guilty
2 of that charge.

3 And that's the law.

4 Now, folks, I have to give you a couple of
5 housekeeping instructions and then I'm going to wrap
6 this up. First of all, the Chief Justice has, and
7 the Supreme Court, set certain guidelines for judges
8 to inform jurors about. I already read you the one
9 early on about the independent investigation. Well,
10 there's a similar one dealing with guns. If a case
11 involves firearms and they bring firearms, we have
12 to go through certain steps.

13 But with drugs, there's an instruction that's
14 common sense and I feel kind of silly even saying
15 it, don't open the sealed bag, okay. Don't open
16 those sealed exhibits, because you'll have all the
17 exhibits back there with you when you decide the
18 case.

19 Now, that gets me to the second thing. There
20 is a video tape in evidence, a DVD type -- it's
21 actually on a computer format. And it won't play on
22 a regular T.V. like that one over there. It has to
23 be a computer. So that is in evidence and you have
24 a right to review it as much as you like. And the
25 disk itself is going to go back there with you in

1 the jury room is my understanding. It's completely
2 up to each individual jury as to whether -- to what
3 extent you may want to see the evidence again or
4 look at the evidence again, that's up to each
5 individual jury and juror.

6 What I've done in cases where we've had these
7 types of digital format is I bring an IT person in
8 and they supply a computer and we make sure one
9 person, at least, on the jury knows how to operate
10 it, but I'm not going to send that back there unless
11 you tell me that you want that done.

12 So if you want to watch the video, send me a
13 note. It's no big deal. I'm happy to do it.
14 They're standing ready to come in here and explain
15 how to operate the computer. But I won't send that
16 back unless you send me a note, unless the lawyers
17 tell me -- convince me different, all right.

18 Now, how you go about your deliberations, your
19 discussions is in -- that's in your sole discretion
20 and how you go about reaching your verdict is in
21 your sole discretion subject to this requirement:
22 The verdict has to be unanimous. All 12 have to
23 agree before the verdict can be recorded. You
24 cannot do anything to change the requirement of a
25 unanimous verdict. In other words, if it's a

1 verdict, that means it's unanimous. So if you're
2 able to reach a verdict, that means that all 12 of
3 you must agree in order for it to be a verdict.

4 So when you go back to your jury room, you're
5 going to have all the exhibits, you're going to have
6 this verdict form. And on this form, you're going
7 to tell me your decision. It's got a caption up
8 here at the top and then -- it reads: As to the
9 charge of trafficking heroin greater than 14 grams,
10 we, the jury, unanimously find the defendant, and
11 you have two options, you may find him not guilty or
12 you may find him guilty of trafficking heroin
13 greater than 14 grams.

14 Madame Foreman, part of your job is to record
15 this verdict for me. I think you'll find it
16 self-explanatory, just choose the option chosen by
17 the jury and sign your name on the signature line.
18 When you've reached your verdict, knock on the door,
19 the bailiff will respond to your knock.

20 Now, folks, I've told you probably a dozen
21 times not to discuss the case until I tell you to
22 and believe it or not, it's not time yet. The
23 lawyers have to have an opportunity to go over with
24 me what I just told you and that's just common
25 sense, we don't want you back there deciding this

1 case using the wrong law. So if I said something
2 wrong, they have to be given an opportunity to point
3 it out to me and that's what we'll do.

4 Now -- actually, my practice is that I print
5 out the draft of the charge before lunch and I gave
6 it to the jury -- excuse me -- I gave it to the
7 lawyers. The lawyers read it over lunch and we've
8 met before y'all came back and we've already talked
9 about this. So it shouldn't take very long. But I
10 never read the charge verbatim. Sometimes I say
11 things I don't even know I said, so the lawyers
12 point something out to me.

13 This is the signal you need to look for.. If
14 I'm satisfied with what I told you, I will send back
15 to the jury room the verdict form and the exhibits
16 and the alternate will be brought out. When it's
17 just the 12 of you in there, no bailiff, no
18 alternate, just the 12 of you and you've got those
19 exhibits and the verdict form, you can start talking
20 about the case, you don't have to wait another
21 second, but don't talk about it until then.

22 I greatly appreciate your attention.

23 Madame Alternate, I need you to go back now and
24 I'll send for you momentarily, hopefully.

25 All right. Folks, if you'll retire to the jury

1 room, I would appreciate it.

2 (The jury retires to the jury room.)

3 **THE COURT:** State for the record exceptions,
4 additions or objections to the charge or
5 instructions, from the State.

6 **MR. GOINGS:** None from the State, Your Honor.

7 **THE COURT:** Defense.

8 **MS. CHAPMAN:** None, Your Honor.

9 **THE COURT:** Is that okay about the computer?

10 **MR. KIRKLAND:** It is, Your Honor. And I'll put
11 on the record what I saw them physically do to it in
12 case I'm asked about it years from now.

13 There are -- obviously, for a computer to play
14 sound, there has to be a speaker hooked up to the
15 computer. And everyone, of course, is familiar with
16 the external speakers that you plug in the back of a
17 computer. This is a desk top computer. Most people
18 are not aware that virtually all desk top computers
19 have an internal speaker and it's the speaker that
20 makes the beeps whenever you turn the computer on.

21 Not only have the external speakers been
22 removed from the computer, the internal speaker has
23 been physically unplugged from the motherboard. So
24 in order for the jury to play the sound, they have
25 to know enough to open the computer case and replug

1 in the internal computer speaker. And so we're
2 satisfied that's virtually impossible that it would
3 occur, so I don't think it's possible to play sound.

4 **THE COURT:** As far as they know, there's no
5 sound. So I don't know why anybody would even go to
6 that extreme and they'd have to speak Spanish.

7 Do y'all have anything else?

8 **MR. GOINGS:** Nothing from the State, Your
9 Honor.

10 **THE COURT:** All right. Well, folks, it's been
11 a great pleasure being with you. You've done a very
12 good job. The jury's got the most difficult job in
13 the courthouse. We'll put it in their hands. But
14 regardless of the outcome, I appreciate the respect
15 you've shown to the Court throughout the trial.

16 All right. Check the verdict form, check the
17 exhibits. When you're satisfied, give those to the
18 bailiff, please.

19 **MR. GOINGS:** Your Honor, the only other thing
20 is if they do request it, we'll have to check the
21 DVD to make sure it plays correctly before we send
22 it back.

23 **THE COURT:** That's fine.

24 (Pause.)

25 **THE COURT:** Bring the alternate in.

1 (The alternate enters the courtroom.)

2 **THE COURT:** Ms. Harney.

3 **JUROR:** Uh-huh.

4 **THE COURT:** Ms. Harney, we've gotten through
5 the case without losing any of the jurors, so I
6 don't have to substitute you in anyone's place. I
7 hope you understand, we -- I wind up using an
8 alternate in about half the cases, so we have to
9 have you over there. Once we swear the jury,
10 jeopardy attaches so we need to keep moving forward.

11 But you're through with jury duty. You don't
12 have to call in. You don't have to come back.
13 You're discharged as soon as you want to leave. You
14 have a three-year exemption, 2013, '14 and '15, in
15 state court jury duty. And since you actually sat
16 on a jury, you're disqualified from state court for
17 one year. They'll mail a little check to you with a
18 slip if you need that.

19 You're welcome to stay if you'd like to stay,
20 but you're free to go any time you wish to go, all
21 right.

22 **JUROR:** Thank you.

23 **THE COURT:** Thank you very much.

24 (The alternate was excused.)

25 **THE COURT:** We're at ease on this case pending

1 a verdict.

2 (The jury commences its deliberations at
3 3:08 p.m.)

4 (A recess transpired.)

5 **THE COURT:** I've been informed the jury has a
6 verdict. Please do not show any sign of approval or
7 disapproval with the verdict, don't shake your head
8 in agreement or disagreement, don't make any sounds,
9 just stay still and stay quiet.

10 Bring the jury in.

11 (The jury returns to open court to report
12 its verdict at 3:33 p.m.)

13 **THE COURT:** All right. Madame Forelady, has
14 the jury reached a verdict?

15 **FORELADY:** We have.

16 **THE COURT:** Would you pass it to the bailiff,
17 please?

18 (The bailiff hands the verdict to the
19 Judge.)

20 VERDICT OF THE JURY

21 **THE COURT:** All right. This is case number
22 2010-GS-47-07, the State Grand Jury of South
23 Carolina, Court of General Sessions, State of South
24 Carolina versus Juan Rodolpho Arroyo. As to the
25 charge of trafficking heroin greater than 14 grams,

1 we, the jury, unanimously find the defendant guilty
2 of trafficking heroin greater than 14 grams, signed
3 by the Foreman.

4 Madame Forelady, ladies and gentlemen of the
5 jury, if I've accurately stated your verdict, that
6 is guilty, please signify by raising your right
7 hand.

8 All hands are raised. Thank you very much.

9 Are there any matters to take up prior to the
10 jury being discharged, from the state?

11 **MR. GOINGS:** None from the State, Your Honor.

12 **THE COURT:** From the defendant?

13 **MS. KIRKLAND:** We would make a motion for a new
14 trial based on all --

15 **THE COURT:** Do you want them polled? That's
16 what I'm asking.

17 **MR. KIRKLAND:** Yes, sir, we would like them
18 polled.

19 **THE COURT:** All right. Madame Foreman, ladies
20 and gentlemen, what that means is that the clerk is
21 going to call the roll. As he calls your name,
22 raise your hand so he knows where to look and you
23 can put your hand down once he sees you. And then
24 he's going to ask you -- sometimes they ask the
25 question together, sometimes they ask two separate

1 questions, but basically the question or questions
2 will be this: Was this your verdict, is it still
3 your verdict? Just answer him truthfully.

4 Are you ready?

5 **THE CLERK:** Yes, Your Honor.

6 Ladies and gentlemen of the jury, the verdict
7 that has just been published was the verdict you
8 reached in the jury room. I ask you now was it your
9 verdict then and is it your verdict now? As I call
10 your name, please answer yes or no: Nicole
11 Layfield.

12 **JUROR:** Yes.

13 **THE CLERK:** Amanda Hucks.

14 **JUROR:** Yes.

15 **THE CLERK:** Charles Hawley.

16 **JUROR:** Yes.

17 **THE CLERK:** Dustin Harmon.

18 **JUROR:** Yes.

19 **THE CLERK:** Frances Garris.

20 **JUROR:** Yes, sir.

21 **THE CLERK:** Ciara Brooks.

22 **JUROR:** Yes.

23 **THE CLERK:** Ashley Jovanelly.

24 **JUROR:** Yes.

25 **THE CLERK:** Georgia Papay.

1 JUROR: Yes.

2 THE CLERK: Kathryne Heron.

3 JUROR: Yes.

4 THE CLERK: Taylor Harris.

5 JUROR: Yes.

6 THE CLERK: Robert Koch.

7 JUROR: Yes.

8 THE CLERK: David Aull.

9 JUROR: Yes.

10 THE COURT: All jurors indicated in the
11 affirmative. Anything else before the jury is
12 discharged?

13 MR. GOINGS: Nothing from the State, Your
14 Honor.

15 MR. KIRKLAND: Of course, that we would make a
16 motion for a new trial, Your --

17 THE COURT: I just need to know if --

18 MS. CHAPMAN: They can be excused, Your Honor.

19 MR. KIRKLAND: Nothing else that we need --

20 THE COURT: I'll hear from you after they
21 leave.

22 Folks, that concludes your jury service. I
23 thank you very much. You are through with jury
24 duty. You don't have to come in. You don't have to
25 call back. You're exempt for one year -- I'm sorry

1 -- you're exempt for three years, 2013, '14, '15.
2 You're disqualified for one year since you actually
3 served on a jury. Now, that only applies to state
4 court, civil or criminal. It won't help you if you
5 get a summons from magistrate's court or municipal
6 court or federal court.

7 The computers are supposed to purge you from
8 the list through 2015, sometimes it doesn't work.
9 So if you get a notice and you're in an exemption
10 period, you don't want to serve, let the clerk know.
11 And if you're disqualified, make sure you let us
12 know, okay.

13 I used to talk to jurors. I used to go back
14 and take off my robe and let them have at me for
15 questions, comments, criticisms or complaints.
16 There were a few issues that arose on some cases and
17 the Chief Justice decided that it was probably a
18 better practice not to do that. I hate that we've
19 come to that because I felt like the jurors got a
20 lot out of it and I know I got a lot out of it. I
21 can't discuss any jury's verdict. I'm not permitted
22 to do that, but we could talk about why we do
23 certain things and how we do them and things like
24 that.

25 But because those issues arose and then -- it

1 all happened behind closed doors and there was no
2 record of it and then the judge becomes a witness
3 and it just got to be a mess, so the Chief said
4 stopped so I stopped. It wasn't directed at me. It
5 was directed at all judges.

6 Now, what I do want to make sure is this, that
7 I tell you, if there is some issue that's arisen,
8 some serious thing that's bothering you about your
9 experience, how you were treated, how you think
10 things could be improved, questions, comments,
11 criticisms or complaints, if you put it in writing,
12 you can find me on the Internet pretty easily and
13 you send it to me and I'll get you a response. I
14 may not be able to respond depending on what you ask
15 me or what you say, but I'll at least acknowledge
16 it. And if there's anything we can do to pass it
17 along, I will do it, okay.

18 You've been an exemplary group. I thank you
19 very much and you're free to go. Thank you.

20 (The jury was excused.)

21 **THE COURT:** All right. Now, motions.

22 **MR. KIRKLAND:** There was a little bit of drama
23 going on over here, so I wasn't paying the sort of
24 attention that I would have liked to have paid.

25 We would make a motion for a new trial and

1 that's simply based on all of the objections that we
2 made throughout the trial and the arguments that
3 were made during closing argument by Ms. Chapman.

4 **THE COURT:** All right. The motions are
5 respectfully denied.

6 Do y'all have a sentence sheet?

7 **MR. GOINGS:** We do, Your Honor.

8 **THE COURT:** Isn't this mandatory 25?

9 **MR. GOINGS:** Yes, sir, Your Honor.

10 **MS. CHAPMAN:** It is, Your Honor.

11 **THE COURT:** Y'all don't have to sign it unless
12 you want to. In my opinion, after a trial, you
13 don't have to sign it. Now, I could be wrong.

14 (Pause.)

15 **MR. KIRKLAND:** Your Honor, we are ready for
16 sentencing.

17 **THE COURT:** Does the State have anything
18 related to sentencing?

19 **MR. GOINGS:** Nothing from the State, Your
20 Honor. I believe the statute's clear, it's a
21 mandatory 25, no discretion. So we'll rest with
22 that.

23 **THE COURT:** And what does the defense want me
24 to hear?

25 **MR. KIRKLAND:** The family members would like to

1 address the Court; however, two of the family
2 members speak only Spanish and so a friend, I
3 believe, will have to translate. So I'll get them
4 to stand up and introduce themselves. Do you want
5 them to address the Court from right here?

6 **THE COURT:** No.

7 **MR. KIRKLAND:** How about this microphone right
8 here in the front?

9 **THE COURT:** Well, right now I'm trying to get
10 past the translation issue. Can the ones that speak
11 English just have the ones that speak Spanish tell
12 them and then --

13 **MR. KIRKLAND:** Yes.

14 **THE COURT:** Not like as a translator, but just
15 like if they were reading me a letter or something.

16 **MR. KIRKLAND:** Yes, sir.

17 **THE COURT:** All right. I'll be happy to take a
18 break and let y'all get that together.

19 **MS. CHAPMAN:** No, we're ready.

20 **THE COURT:** What's your name, ma'am?

21 **MS. ARROYO:** My name is Anna Arroyo. I'm
22 related to Mr. Juan Arroyo. I'm his sister. And
23 I'm speaking on behalf of my mother and my sister.

24 We would like to let you know that we really
25 appreciate everything that has happened right now.

1 We are truthfully believers of God and we know that
2 sometimes he lets things happen for -- we love him,
3 we love God so we know that anything that happens is
4 for the good. Whatever the sentencing is, we would
5 just like you to consider he's a father of three and
6 that -- and that God bless you. That's basically
7 it.

8 **THE COURT:** Thank you, ma'am.

9 **MR. KIRKLAND:** And Mr. Arroyo has indicated
10 that he wishes to address the Court. Would you like
11 him to stand at this same microphone?

12 **THE COURT:** He can stay there as long as the
13 court reporter can hear him.

14 **DEFENDANT:** First of all, I would like to
15 apologize, you know, to the Court, especially to my
16 family, to God. And then I want to thank you for
17 the opportunity. I just want to -- I want to be
18 honest and say that I'm just sorry.

19 **THE COURT:** Mr. Arroyo, you may want to talk to
20 your lawyers. If you say anything that incriminates
21 you --

22 (Mr. Kirkland confers with the defendant.)

23 **THE COURT:** You understand, sir, under this
24 law, I have no discretion, I have to give you 25
25 years --

1 **DEFENDANT:** Yeah, I understand, Your Honor.

2 **THE COURT:** -- and a 200,000 dollar fine.

3 **DEFENDANT:** I understand.

4 Basically, I just -- God have me here for a
5 reason. And I just thank everybody being here. And
6 I'm sorry that I made you be here, you know, wasting
7 your time.

8 **THE COURT:** You're not wasting my time,
9 Mr. Arroyo.

10 **DEFENDANT:** Well, thank you. I just want to
11 say, like I say, you know, thanks -- thank you. And
12 that's it, Your Honor.

13 **THE COURT:** Okay. Thank you, sir.

14 All right. Mr. Arroyo, I have to cover a
15 couple of housekeeping issues, so just bear with me.
16 I have to do this, okay.

17 **DEFENDANT:** Yes, Your Honor.

18 **THE COURT:** The first is that there is a
19 statute that has been enacted. I don't think a lot
20 of people know about it. I would probably not have
21 known about it except some smart lawyers brought it
22 to my attention in a matter. And it's section
23 16-23-500, I believe, of the code.

24 And what it provides is that I am supposed to
25 make a specific finding on the record that you have

1 been convicted of a violent crime, which I have
2 done, and that it is a felony, which I have done.
3 And the significance of that statute is that it
4 relates to your inability to possess any type of
5 firearm or ammunition.

6 So you can get your lawyers to print that code
7 section out for you and you can read it. You can
8 read as well as I can. But there's a separate
9 section dealing with handguns that doesn't require
10 the judge to make that finding. This is -- I think
11 it was passed in 2010.

12 So I'm finding on the record, and I'm going to
13 write on this sentence sheet, that I found on the
14 record that this is a violent felony under the law.
15 You understand?

16 **DEFENDANT:** Yes, Your Honor.

17 **THE COURT:** You cannot possess rifles,
18 shotguns, ammunition, anything or you'll be in
19 violation of that law. You understand?

20 **DEFENDANT:** Yes, Your Honor.

21 **THE COURT:** The second thing I need to cover
22 with you is this: You have a right to appeal
23 anything from this proceeding. And I would
24 encourage you to go ahead and instruct your
25 attorneys to file a written notice of appeal. It

1 has to be in writing. There's a relatively short
2 timeframe. You can't play around with the
3 timeframe. You have to get it filed.

4 Now, if you cannot afford an attorney to
5 represent you on the appeal, there's an agency of
6 the state that will take up your appeal and
7 represent you at the appellate level.

8 So you understand that if you want to file an
9 appeal, you need to tell your lawyers to file that
10 written notice right away. Do you understand that?

11 **DEFENDANT:** Yes, Your Honor. We already talked
12 about it.

13 **THE COURT:** Okay. Well, you have fine
14 attorneys and I'm sure you have. Like I said, I've
15 got to cover these things on the record.

16 SENTENCE OF THE COURT

17 **THE COURT:** All right. If there's nothing
18 further, the way I read the statute, it doesn't
19 matter whether I agree or disagree with the statute,
20 you, having been convicted of trafficking heroin
21 greater than 14 grams, the sentence of the Court is
22 that you be committed to the South Carolina
23 Department of Corrections for 25 years and pay a
24 fine of \$200,000. Now -- plus the costs and
25 assessments. You're given credit for any jail time

1 under section 24-13-40. That's to be calculated and
2 applied by the South Carolina Department of
3 Corrections.

4 Now, Mr. Arroyo, I've imposed your sentence.
5 Do you have \$200,000?

6 **DEFENDANT:** No, Your Honor.

7 **THE COURT:** Well, it's probably closer to half
8 a million when they get through adding all the costs
9 to it. Do you have appointed lawyers?

10 Were y'all appointed?

11 **MR. KIRKLAND:** We were not, Your Honor.

12 **THE COURT:** Do you have any assets anywhere
13 that --

14 **DEFENDANT:** No, Your Honor.

15 **THE COURT:** No real estate?

16 **DEFENDANT:** No, Your Honor.

17 **THE COURT:** No bank accounts?

18 **DEFENDANT:** No.

19 **THE COURT:** Well, what I'm going to do is I'm
20 going to make a finding that I have imposed the fine
21 and I have given you an opportunity to pay the fine
22 and that you cannot pay the fine. And so I'm going
23 to extinguish the fine because -- that I can
24 extinguish, but some of them they won't let me
25 extinguish. But -- if I'm reading the statute

1 right, I'll go back and read it, the fine is
2 mandatory I believe. Let me make sure I'm reading
3 it right.

4 (Pause.)

5 **MR. GOINGS:** That's correct, Your Honor.

6 **THE COURT:** Do you understand your sentence,
7 Mr. Arroyo?

8 **DEFENDANT:** Yes, Your Honor.

9 **THE COURT:** Good luck to you, sir.

10 **DEFENDANT:** Thank you.

11 **MS. CHAPMAN:** Thank you, Your Honor.

12 **MR. KIRKLAND:** Thank you, Your Honor.

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14

END OF PROCEEDINGS

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 4th - 5th of March, 2013.

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

June 27, 2013

A handwritten signature in cursive script, reading "Stacy L. Sheppard", followed by a circular flourish.

Stacy L. Sheppard, RPR
Circuit Court Reporter



ATTORNEY GENERAL'S OFFICE)

STATE GRAND JURY)

CASE NO 2010-GS-47-07

STATE OF SOUTH CAROLINA,)

vs)

DEFENDANT'S PROPOSED
PROPOSED VOIR DIRE

JUAN ARROYO,)

Defendant)

1. HAVE YOU OR ANY MEMBER OF YOUR FAMILY EVER BEEN EMPLOYED BY A LOCAL, STATE OR FEDERAL LAW ENFORCEMENT AGENCY SUCH AS THE FBI, DEA, SLED, SHERIFF'S DEPARTMENT OR ANY MUNICIPALITY?
2. HAVE YOU OR ANY MEMBER OF YOUR FAMILY EVER BEEN A MEMBER OF A LAW ENFORCEMENT AUXILIARY GROUP OR VOLUNTEERED SERVICES WITH A LAW ENFORCEMENT AGENCY AS DEFINED ABOVE.
3. ARE YOU OR ANY MEMBER OF YOUR FAMILY A MEMBER OF ANY GROUP WHICH ENCOURAGES STRICT ENFORCEMENT OF CRIMINAL LAWS OR MODIFICATION OF OUR PRESENT LAWS SUCH AS MOTHERS AGAINST DRUNK DRIVERS (MADD), CITIZENS AGAINST VIOLENCE (CAVE), OR ANY ANTI-DRUG OR DRUG AWARENESS PROGRAMS SUCH AS DRUG ABUSE RESISTANCE EDUCATION (DARE)?
4. HAVE YOU OR ANY MEMBER OF YOUR FAMILY EVER PARTICIPATED IN A NEIGHBORHOOD CRIME WATCH PROGRAM?
5. HAVE YOU OR ANY MEMBER OF YOUR FAMILY EVER HAD A DRUG OR ALCOHOL ABUSE PROBLEM?
6. FOREIGN NATIONALS ARE ENTITLED TO SAME RIGHTS TO A FAIR TRIAL AS ANY OTHER PERSON. DO YOU FEEL THAT YOU CAN BE FAIR TO BOTH SIDES IN A CRIMINAL CASE INVOLVING A FOREIGN NATIONAL?

7. DO YOU FEEL THAT YOU CAN FAIRLY DECIDE A CASE INVOLVING THE STATE GOVERNMENT ON ONE SIDE AND AN INDIVIDUAL ACCUSED OF VIOLATING THE LAW ON THE OTHER?
- √8. DO YOU HAVE SUCH STRONG FEELINGS REGARDING THE USE OR SALE OF ILLEGAL DRUGS THAT YOU COULD NOT BE FAIR AND IMPARTIAL IN A CASE INVOLVING THE ALLEGED USE OR SALE OF ILLEGAL DRUGS?
- √9. WOULD ANY PERSONAL EXPERIENCES PREVENT YOU FROM BEING FAIR TO BOTH SIDES IN A CASE INVOLVING A PERSON CHARGED WITH A CRIME?
10. JURORS ARE OFTEN REQUIRED TO DECIDE WHICH WITNESSES TO BELIEVE AND WHICH NOT TO BELIEVE. IN DECIDING BELIEVABILITY, JURORS MAY CONSIDER HOW THE WITNESSES PRESENTED THEMSELVES, CERTAIN FACTORS IN THE WITNESSES' BACKGROUND, AND MANY OTHER FACTORS. HOWEVER, YOU MAY NOT JUDGE BELIEVABILITY OF A WITNESS SIMPLY BASED ON THAT PERSON'S OCCUPATION OR POSITION IN LIFE.
- UNDERSTANDING THESE RULES, WOULD YOU BE ABLE TO JUDGE THE BELIEVABILITY OF LAW ENFORCEMENT OFFICERS AND OTHER GOVERNMENT WITNESS BY THE SAME STANDARD AS ANY OTHER WITNESS?
11. REGARDLESS OF ANY OPINION YOU MAY HAVE CONCERNING A PARTICULAR LAW, WOULD YOU BE ABLE TO SET ASIDE YOUR FEELINGS AND FOLLOW THE LAW AS STATED BY THE JUDGE?

RESPECTFULLY SUBMITTED,



DEBRA Y. CHAPMAN
ATTORNEY AT LAW

BRAD KIRKLAND

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA

CASE NO. **2010GS 47 07**

VS.

JOSE JUAN GARCIA ROBLES.
 FRANCISCO GUERRERO-FLORES.
 JUAN RODOLPHO ARROYO.
 GADIEL GARCIA DE DIOS
 "ANDRES SANDAVOL".
 MANUEL HERNANDEZ ROBLES.
 JOSHUA GRIFFIN.
 ALFREDO PEREZ-PEREZ.
 BOBBY BURROUGHS.
 KENNETH ANDREWS.
 BRAINEN BORCHERS,
 BARBARA BREITENBACH,
 WILLIAM CHRISTOPHER BROWN.
 MICHAEL RION BYRD.
 EDGAR ALLAN CRAIG.
 WENDY ANNETTE CRAIG.
 IAN MATTHEW CRAVEN.
 JAMES ADAM GLEATON,
 JEREMY LEWIS GRAY.
 LARRY ALLEN HOURIHAN,
 LISA AMANDA LONDONO,
 PETER TURANEC,

INDICTMENT FOR **ORIGINAL FILED**
 UNLAWFUL DRUGS

SEP 15 2010

JAMES R. PARKS
 CLERK, STATE GRAND JURY

Trafficking Heroin (Conspiracy)
 > 28 grams

S.C. Code Ann. § 44-53-370 (e)(3)

Trafficking Heroin > 28 grams
 S.C. Code Ann. § 44-53-370 (e)(3)
 Four Counts

Trafficking Heroin 14-28 grams
 S.C. Code Ann. § 44-53-370 (e)(3)

Possession with Intent to Distribute
 Heroin
 S.C. Code Ann. § 44-53-370 (a)(1); (b)(1)

DEFENDANTS.

At a session of the State Grand Jury of South Carolina, convened in Columbia.

South Carolina, on September 15, 2010, the State Grand Jurors present upon their oath:

A TRUE COPY

Attest: James R. Parks, Clerk

By:

Margaret J. Seay
 Deputy Clerk

COUNT I
TRAFFICKING HEROIN > 28 GRAMS
(CONSPIRACY)
S.C. Code Ann. § 44-53-370 (c)(3)

That Jose Juan Garcia Robles, Francisco Guerrero-Flores, Juan Rodolpho Arroyo, Gadiel Garcia De Dios a/k/a "Andres Sandavol", Manuel Hernandez Robles, Joshua Griffin, Alfredo Perez-Perez, Bobby Burroughs, Kenneth Andrews, Brainen Borchers, Barbara Breitenbach, William Christopher Brown, Michael Rion Byrd, Edgar Allen Craig, Wendy Annette Craig, Ian Matthew Craven, James Adam Gleaton, Jeremy Lewis Gray, Larry Allen Hourihan, Lisa Amanda Londono, Peter Turanec and other persons whose names are both known and unknown to the State Grand Jury, in Lexington County, Horry County, and Florence County, South Carolina, during the period of time extending from, on, about or between September 2009 to the present, did conspire to sell, manufacture, deliver, purchase, or knowingly become in actual or constructive possession or knowingly attempt to become in actual or constructive possession or provided financial assistance or otherwise aid, abet, or bring into this State, more than twenty-eight (28) grams of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been 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.

COUNT II
POSSESSION WITH INTENT TO DISTRIBUTE HEROIN
S.C. Code Ann. § 44-53-370 (a)(1); (b)(1)

That Francisco Guerrero-Flores, did in Lexington County, on or about November 5, 2009, manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been 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.

COUNT III
TRAFFICKING HEROIN > 28 GRAMS
S.C. Code Ann. § 44-53-370 (e)(3)

That Francisco Guerrero-Flores and Joshua Griffin, did in Lexington County, on or about March 16, 2010, sell, manufacture, deliver, purchase, or bring into this State, or provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, 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 more than twenty-eight (28) grams of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been 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.

COUNT IV
TRAFFICKING HEROIN > 14 GRAMS BUT < 28 GRAMS
S.C. Code Ann. § 44-53-370 (e)(3)

That Juan Rodolpho Arroyo, did in Horry County, on or about April 29, 2010, sell, manufacture, deliver, purchase, or bring into this State, or provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, 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 more than fourteen (14) but less than twenty-eight (28) grams of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been 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.

COUNT V
TRAFFICKING HEROIN > 28 GRAMS
S.C. Code Ann. § 44-53-370 (e)(3)

That Alfredo Perez-Perez and Bobby Burroughs, did in Florence County, on or about May 1, 2010, sell, manufacture, deliver, purchase, or bring into this State, or provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, 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 more than twenty-eight (28) grams of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been 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.

COUNT VI
TRAFFICKING HEROIN > 28 GRAMS
S.C. Code Ann. § 44-53-370 (e)(3)

That Juan Rodolpho Arroyo, did in Horry County, on or about May 21, 2010, sell, manufacture, deliver, purchase, or bring into this State, or provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, 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 more than twenty-eight (28) grams of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been 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.

COUNT VII
TRAFFICKING HEROIN > 28 grams
S.C. Code Ann. § 44-53-370 (e)(3)

That Juan Rodolpho Arroyo and Gadiel Garcia De Dios a/k/a "Andres Sandavol" did in Georgetown County, on or about August 2, 2010, sell, manufacture, deliver, purchase, or bring into this State, or provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State or did knowingly become in actual or constructive possession or did knowingly attempt to become in actual or constructive possession of more than twenty-eight (28) grams of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976),

as amended, such conduct not having been 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.

Against the peace and dignity of the State and contrary to the statute in such case made and provided.

A True Bill

R. J. King 9-15-10
FOREMAN

Henry McMaster
HENRY McMASTER (rem)
ATTORNEY GENERAL

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 27, 2014


Benjamin John Tripp
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

William P. Keesley, Circuit Court Judge

ORIGINAL
RECEIVED
JAN 27 2014
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

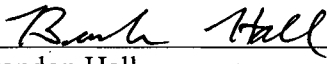
JUAN ARROYO,

APPELLANT

APPELLATE CASE NO. 2013-000580

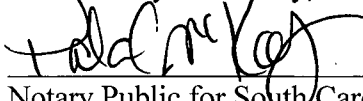
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Cary N. Goings, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 27th day of January, 2014.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 27th day of January, 2014.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.