

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

RECEIVED

MAY 21 2014

APPEAL FROM SPARTANBURG COUNTY

R. Lawton McIntosh, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JOHN DWAYNE GARVIN,

APPELLANT

APPELLATE CASE NO. 2013-001209

RECORD ON APPEAL

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

BARRY BARNETTE
Solicitor, Seventh Judicial Circuit
Spartanburg County Courthouse
180 Magnolia Street, 3rd Floor
Spartanburg, SC 29306-2335
(864) 596-2575

Attorneys for Respondent

INDEX

INDEX.....	i
TRIAL TRANSCRIPT (dated May 21-23, 2013)	1
TESTIMONY	
DAVID PAIT	
Direct examination by Mr. Hunter.....	6
ASHLEY ASBILL	
Direct examination by Mr. Hunter.....	13
DEFENDANT’S REQUEST TO NOT TESTIFY IN <u>DENNO</u> HEARING	20
<u>JACKSON V. DENNO</u> MOTION.....	23
COURT’S INSTRUCTIONS TO THE JURY.....	25
DEFENDANT REQUEST TO BE APPOINTED ANOTHER COUNSEL	33
OPENING ARGUMENT BY MR. HUNTER.....	37
OPENING ARGUMENT BY MR. ROBINSON.....	39
TESTIMONY	
KEN HANCOCK	
Direct examination by Mr. Hunter.....	41
Cross-examination by Mr. Robinson.....	52
Redirect examination by Mr. Hunter.....	54
FREDRICK JERMAN	
Direct examination by Mr. Hunter.....	54
Cross-examination by Mr. Robinson.....	65
Redirect examination by Mr. Hunter.....	70
BETH STUART	
Direct examination by Mr. Hunter.....	72
B. J. TILLINGHESS	
Direct examination by Mr. Hunter.....	76
Cross-examination by Mr. Robinson.....	79

ROGER LUTHER	
Direct examination by Mr. Hunter.....	81
Cross-examination by Mr. Robinson.....	84
DAVID PAIT	
Direct examination by Mr. Hunter.....	86
Cross-examination by Mr. Robinson.....	93
ASHLEY ASBILL	
Direct examination by Mr. Hunter.....	95
Cross-examination by Mr. Robinson.....	103
Redirect examination by Mr. Hunter	104
JOHN GARVIN	
Direct examination by Mr. Robinson	106
Cross-examination by Mr. Hunter	119
JONATHAN PEREZ	
Direct examination by Mr. Robinson	126
Cross-examination by Mr. Hunter	130
RENEWAL OF MOTION FOR A DIRECTED VERDICT	136
CLOSING ARGUMENT BY MR. ROBINSON.....	138
CLOSING ARGUMENT BY MR. HUNTER.....	147
CHARGE ON THE LAW.....	155
VERDICT.....	181
SENTENCING.....	183
STATE'S EXHIBIT# 1 (VOLUNTARY STATEMENT).....	184
INDICTMENT	185
CERTIFICATE OF COUNSEL.....	187

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

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
PLAINTIFF,)
vs.)
JOHN DWAYNE GARVIN,)
DEFENDANT.)

TRANSCRIPT
OF
RECORD
2012-GS-42-05979

May 21st - 23rd, 2013
Spartanburg, South Carolina

B E F O R E :

THE HONORABLE R. LAWTON MCINTOSH, Judge, and a jury.

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

EDDIE HUNTER
ASSISTANT SOLICITOR
Attorney for the State

SCOTT ROBINSON
ESQ.
Attorney for the Defendant

PAMELA E. GREEN
Circuit Court Reporter
Seventh Judicial Circuit

1	<u>I N D E X O F W I T N E S S E S</u>	
2	<u>WITNESSES</u>	<u>PAGE</u>
3		
4	Motion	7
5	Jury Selection	15
6		
7	Motions	44
8	DAVID PAIT	
9	Direct examination by Sol. Hunter	45
10	ASHLEY ASBILL	
11	Direct examination by Sol. Hunter	53
12		
13	Opening by The Court	73
14	Opening by Solicitor Hunter	85
15	Opening by Mr. Robinson	87
16		
17	KEN HANCOCK	
18	Direct examination by Sol. Hunter	89
19	Cross-examination by Mr. Robinson	100
20	Redirect examination by Sol. Hunter	103
21	FRED JERMAN	
22	Direct examination by Sol. Hunter	103
23	Cross-examination by Mr. Robinson	118
24	Redirect examination by Sol. Hunter	133
25	Recross examination by Mr. Robinson	136

<u>1</u>	<u>WITNESSES</u>	<u>PAGE</u>
2		
3	STEVE COOPER	
4	Direct examination by sol. Hunter	138
5	ROBERT ROSENBURG	
6	Direct examination by sol. Hunter	141
7	BETH STUART	
8	Direct examination by sol. Hunter	145
9	Cross-examination by Mr. Robinson	147
10	Direct examination by sol. Hunter	149
11	B. J. TILLINGHESS	
12	Direct examination by sol. Hunter	154
13	Cross-examination by Mr. Robinson	157
14	ROGER LUTHER	
15	Direct examination by sol. Hunter	158
16	Cross-examination by Mr. Robinson	162
17	DAVID PAIT	
18	Direct examination by sol. Hunter	166
19	Cross-examination by Mr. Robinson	173
20	ASHLEY ASBILL	
21	Direct examination by sol. Hunter	174
22	Cross-examination by Mr. Robinson	183
23	Redirect examination by sol. Hunter	184
24	Recross examination by Mr. Robinson	186
25	Redirect examination by sol. Hunter	187

1	<u>WITNESSES</u>	<u>PAGE</u>
2		
3	Motions	188
4		
5	JOHN GARVIN	
6	Direct examination by Mr. Robinson	198
7	Cross-examination by sol. Hunter	211
8	JONATHAN PEREZ	
9	Direct examination by Mr. Robinson	230
10	Cross-examination by Sol. Hunter	234
11	Redirect examination by Mr. Robinson	242
12		
13	Motions	243
14	Closing by Mr. Robinson	245
15	Closing by Solicitor Hunter	254
16	Charge by the Court	262
17	Question from the Jury	287
18	Verdict	293
19	Sentencing	295
20	Certificate	298
21		
22		
23		
24		
25		

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

E X H I B I T S

<u>NOS.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
	<u>State's Exhibits</u>		
S-1	Statement	47	48, 180
S-2	DVD	94	110
S-3	Drugs	96	151

David Pait - Direct examination
by Solicitor Hunter

1 SOLICITOR HUNTER: That's gonna be the one with
2 witnesses. So, yeah, let's do that.

3 THE COURT: I'm sorry?

4 SOLICITOR HUNTER: Yes, sir.

5 THE COURT: Okay. Would you call your first witness?

6 SOLICITOR HUNTER: State would call Agent David Pait.

7 DAVID PAIT, being first duly sworn,
8 testified as follows:

9 DIRECT EXAMINATION

10 BY SOLICITOR HUNTER:

11 Q Please state your name for the record.

12 A David Pait.

13 Q And what's your occupation?

14 A Special Agent with the Bureau of Alcohol, Tobacco,
15 Firearms, and Explosives.

16 Q How long have you been with the ATF?

17 A Over seven years.

18 Q And did you have any previous law enforcement
19 experience?

20 A I did.

21 Q And what was that?

22 A City of Fayetteville, North Carolina for over 11 years.

23 Q Okay. What are your present duties?

24 A Presently I'm assigned to the Greenville field office
25 for ATF just in general, general investigations.

7
David Pait - Direct examination
by Solicitor Hunter

1 Q Okay. Are you a Special Agent?

2 A That's correct.

3 Q Okay. Are you familiar with Miranda warnings?

4 A I am.

5 Q And how are you familiar with them?

6 A ATF has a form with the Miranda warnings written on
7 them. Also I've used them in my prior law enforcement
8 career and I keep a copy in my wallet.

9 Q Okay. And do you recognize the gentleman sitting at
10 the defense table in the blue shirt and red tie?

11 A I do.

12 Q How do you recognize him?

13 A From previous events where we purchased heroin from
14 himself and his codefendant.

15 Q Okay. And specifically in this case what date did that
16 occur on?

17 A July 17th in this we're currently talking about,
18 2012.

19 Q Approximately what time did that, the purchase actually
20 occur?

21 A It was afternoon I believe just after three o'clock or
22 around three o'clock in the afternoon.

23 Q More around four o'clock?

24 A It could be. It was afternoon.

25 Q Okay. Was this defendant arrested?

David Pait - Direct examination
by Solicitor Hunter

1 A He was.

2 Q Okay. How soon after was he arrested?

3 A Just after he, he made the sale they were allowed to
4 leave the location and shortly after that they were taken
5 into custody. So, a matter of minutes.

6 Q Okay. Where was he taken from there?

7 A He was taken to the Spartanburg County Sheriff's Office
8 and placed in an interview room.

9 (WHEREUPON, a statement was marked as State's Exhibit
10 No. 1 for identification purposes only at this time.)

11 Q Okay. Let me show you what's been marked as State's
12 Exhibit 1 for the purposes of this hearing.

13 Do you recognize that item?

14 A I do.

15 Q How do you recognize that item?

16 A After -- when I went to the interview room with Agent
17 Asbill, Ashley Asbill is a task force ATF agent, also he's a
18 SLED agent, after the rights were read to Mr. Garvin he
19 provided a statement which Agent Asbill wrote down and then
20 read it back to Mr. Garvin who was also looked over it and
21 then Mr. Garvin signed it.

22 SOLICITOR HUNTER: Okay. Your Honor, just for purposes
23 of this hearing, we offer State's Exhibit 1 into evidence
24 not for the trial. Just for purposes of this hearing.

25 THE COURT: All right. Be admitted.

David Pait - Direct examination
by Solicitor Hunter

1 SOLICITOR HUNTER: Just for this hearing. Not for the
2 trial.

3 THE COURT: For the purposes of this hearing, Mr.
4 Robinson.

5 MR. ROBINSON: Yes, sir.

6 (WHEREUPON, State's Exhibit No. 1 was received into
7 evidence for purposes of this hearing only at this time.)

8 Q Where were you when this was taken?

9 A I was in the interview room.

10 Q And you said -- anybody else present?

11 A Mr. Garvin was present and Agent Asbill.

12 Q Can you briefly describe the defendant's physical
13 appearance at that time?

14 A Shortly after he was taken into custody he, he
15 presented himself as, as normal.

16 Q Okay. He didn't appear sick?

17 A Didn't appear sick or he didn't appear to be under the
18 influence.

19 Q Have you ever dealt with someone who appeared to be
20 under the influence of alcohol or drugs in your experience?

21 A Numerous times.

22 Q Okay. And it didn't appear that Mr. Garvin was under
23 the influence of any drugs or alcohol when you spoke to him?

24 A It did not appear so.

25 Q Who read Mr. Garvin his Miranda warnings?

David Pait - Direct examination
by Solicitor Hunter

1 A I did.

2 Q Okay. And were they verbally or on a sheet?

3 A I read them verbally from a sheet.

4 Q Okay. Do you have that sheet with you?

5 A I do.

6 Q Can you, can you please tell the Court what you read to
7 Mr. Garvin?

8 A Yes, sir, I advised him that I was gonna read him his
9 Miranda rights, warnings as follows. You have the right to
10 remain silent. Anything you say can and will be used
11 against you in a Court of law. You have the right to talk
12 to a lawyer and to have him present with you while you're
13 being questioned. If you can not afford to hire a lawyer
14 one will be appointed to represent you before any
15 questioning if you wish.

16 You can decide at any time to exercise these rights and
17 not answer any questions or make any statements, and it
18 includes the waiver that I would ask do you understand each
19 of these rights as I have explained them to you. Having
20 these rights in mind, do you wish to talk to us now.

21 Q Okay. What was his response?

22 A He indicated that he would talk to us, that he would
23 waive his rights.

24 Q Okay. Did he ask for an attorney at that time?

25 A He did not.

David Pait - Direct examination
by Solicitor Hunter

1 Q Did he exercise his right to remain silent?

2 A He did not.

3 Q Did you promise the defendant anything for his
4 cooperation or speaking to you?

5 A The defendant was told that anything he told us we
6 would relate to the solicitor's office and we can make no
7 promises.

8 Q Okay. So, there were no promises made?

9 A That's correct.

10 Q How long after -- how long was he in this interrogation
11 room or in this interview room?

12 A Prior to having his Miranda warnings read, I would
13 estimate maybe between 30 minutes, maybe 30, 40 minutes.

14 THE COURT: Is that custody for 20 or 30 minutes?

15 THE WITNESS: Yes, sir. That's from the time he was
16 arrested including the time it took to get there.

17 THE COURT: Oh, okay.

18 THE WITNESS: I believe that, I believe that would be
19 correct.

20 SOLICITOR HUNTER: I believe we're gonna have to show a
21 video that they pulled into the QT around 3:49.

22 At what time was this statement taken?

23 A This statement was taken at 5:49.

24 Q Okay. Mr. Garvin was arrested with another person.
25 who was he arrested with?

David Pait - Direct examination
by Solicitor Hunter

1 THE COURT: It's still---

2 SOLICITOR HUNTER: They go to Perez and ask, just for
3 the testimony that I would seek to elicit, they would go to
4 ask Perez. He states that he'd like to speak to Garvin
5 first. They say that can't happen. So, then they go speak
6 to Garvin, give him the Miranda warnings. He says the same
7 thing and---

8 THE COURT: I'm gonna sustain the objection.

9 SOLICITOR HUNTER: Okay.

10 THE COURT: I can, I can figure this out on my own.

11 Q Okay. When you go and speak with Mr. Garvin, did it
12 appear that his statement was freely and voluntarily given?

13 A Yes, it did.

14 Q Was the statement given in response to the questions by
15 you and Agent Asbill?

16 A I'm sorry?

17 Could you repeat that?

18 Q Was the statement that you have, State Exhibit --
19 State's Exhibit No. 1 given in response to the questions by
20 you and Agent Asbill?

21 A Yes, it was.

22 Q Did, at anytime during this, he ask for an attorney?

23 A No, he did not.

24 Q Or exercise his right to remain silent?

25 A No, he did not.

David Pait - Direct examination
by Solicitor Hunter

1 Q Did he refuse to answer any questions?

2 A No, he did not.

3 Q Okay. Please answer any questions Mr. Robinson would
4 have for you.

5 MR. ROBINSON: Your Honor, I have no questions.

6 THE COURT: Okay. Very good.

7 SOLICITOR HUNTER: State would call Ashley Asbill.

8 THE COURT: You may step down. Thank you, sir.

9 THE WITNESS: Thank you.

10 MR. ROBINSON: Your Honor, I would ask that the agents
11 be admonished not to talk to the other agents, the other
12 witnesses that are out there about their testimony.

13 THE COURT: How about do that?

14 THE WITNESS: Yes, sir.

15 THE COURT: Okay.

16 ASHLEY ASBILL, being first duly
17 sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY SOLICITOR HUNTER:

20 Q Could you please state your name?

21 A Brunson, B-R-U-N-S-O-N, Ashley, A-S-H-L-E-Y, last name
22 Asbill, A-S-B-I-L-L.

23 Q And how are you commonly referred to?

24 A Oh, Ashley.

25 Q Okay. How are you currently employed?

Ashley Asbill - Direct examination
by Solicitor Hunter

1 A I'm employed by the State Law Enforcement Division.

2 Q How long have you been with the State Law Enforcement
3 Division?

4 A A little over 18 years.

5 Q Do you have any previous law enforcement experience?

6 A I do.

7 Q And what was that?

8 A I worked for three years with the South Carolina ABC
9 Commission and before that I worked six years with the City
10 of Clinton Police Department.

11 Q Okay. So you have 27 years of police experience?

12 A Twenty-nine.

13 Q Twenty-nine. I can't add apparently.

14 What are your present duties?

15 A I'm assigned to the special investigations unit
16 currently.

17 Q Okay. Did you have a chance, on July 17th, to speak
18 to Mr. John Garvin?

19 A Yes, I did.

20 Q And where is Mr. Garvin sitted, seated?

21 A He's seated in the courtroom, light blue shirt.

22 Q All right. What was your reason to come speak with Mr.
23 Garvin?

24 A I approached Mr. Garvin following his arrest.

25 Q For?

Ashley Asbill - Direct examination
by Solicitor Hunter

- 1 A For heroin, trafficking heroin.
- 2 Q Okay. Approximately what time was he arrested?
- 3 A what time?
- 4 Q (Solicitor nods affirmatively.)
- 5 A Around, around four o'clock.
- 6 Q Okay.
- 7 A 4:00.
- 8 Q State's Exhibit 1, just go ahead and let this sit up
9 there with you.
- 10 Are you familiar with Miranda warnings?
- 11 A Yes, I am.
- 12 Q And how are you familiar with them?
- 13 A Those warnings are to be read and given to a person
14 that you're talking to as it pertains to an investigation.
- 15 Q When you spoke with Mr. Garvin he was in custody?
- 16 A He was.
- 17 Q Okay. Did you read Mr. Garvin his Miranda rights?
- 18 A I did not.
- 19 Q Who read him his Miranda rights?
- 20 A Special Agent Pait with the ATF.
- 21 Q Were you present when his Miranda rights were read to
22 him?
- 23 A Yes, I was.
- 24 Q Do you remember what the Miranda rights were?
- 25 A I do.

Ashley Asbill - Direct examination
by Solicitor Hunter

1 MR. ROBINSON: Your Honor, I, I would stipulate that
2 Agent Pait read the Miranda warnings to him.

3 THE COURT: Okay.

4 MR. ROBINSON: I would stipulate to that.

5 Q After the Miranda rights were read, did Mr. Garvin ask
6 for an attorney?

7 A He did not.

8 Q Did he appear under the influence of alcohol?

9 A He did not.

10 Q Did he appear under the influence of drugs?

11 A He did not.

12 Q Do you have training and experience to know when
13 someone's under the influence of alcohol or drugs?

14 A Yes, I do.

15 Q Okay. Did he appear to be coerced in anyway?

16 A No, he did not.

17 Q Under duress?

18 A No.

19 Q Was he promised anything to give a statement to you?

20 A He was not.

21 Q Okay. Look at State's Exhibit 1 there in front of you.

22 A Yes, sir.

23 Q Can you briefly read the top of it?

24 A It's a form, a standard form, voluntary statement,
25 statement of John D. Garvin.

Ashley Asbill - Direct examination
by Solicitor Hunter

- 1 Q who, who, whose handwriting is this in?
- 2 A This is my handwriting.
- 3 Q Okay. The top has his age?
- 4 A It does, yes, sir.
- 5 Q what was his age at the time?
- 6 A John -- I'm sorry?
- 7 Q what was his age at the time?
- 8 A Oh, I'm sorry. Forty-one.
- 9 Q And what's the next block?
- 10 A The next block is the date.
- 11 Q what was the date?
- 12 A July the 17th, 2012.
- 13 Q what's the next block?
- 14 A The next block is address.
- 15 Q Okay. And what's the address?
- 16 A It's , Savannah, Georgia.
- 17 Q And the next block?
- 18 A Is a phone, a block for a phone number.
- 19 Q was that filled out?
- 20 A It was not.
- 21 Q Okay. And the next one?
- 22 A Is the DOB, which is date of birth.
- 23 Q And --?
- 24 A It was .
- 25 Q Okay. And the next one is the last one.

Ashley Asbill - Direct examination
by Solicitor Hunter.

1 A It's SSN, Social Security Number.

2 Q Okay. And the statement below, who's statement is
3 that?

4 A That's the statement of -- I wrote it, but it was words
5 related to me by Mr. Garvin.

6 Q Okay. There's a line at the bottom of that, what is
7 that?

8 It's a diagonal line.

9 What is that?

10 A That's a line that I drew. It's standard procedure to
11 draw lines through so nothing can be added at a later date.

12 Q Okay. Did you sign it and date it?

13 A I did.

14 Q Okay. And whose signature appears on the bottom
15 right-hand corner?

16 A On the bottom right-hand corner is Mr. Garvin's.

17 Q Did you observe that signature on this paper?

18 A I did.

19 Q Did you give him a chance to read through his
20 statement?

21 A I did.

22 Q In speaking with Mr. Garvin, could you tell his
23 education level?

24 Was he able to read and write?

25 A He appeared to me, yes, sir, that he could.

Ashley Asbill - Direct examination
by Solicitor Hunter

1 Q Did he appear to understand the statement he had just
2 given to you?

3 A He did.

4 Q And he signed it?

5 A He did.

6 Q And at no time he asked for an attorney?

7 A No, sir.

8 Q Would you briefly describe his physical appearance?

9 A At the time of the statement, with regard to -- he was
10 nervous, but other than that --.

11 Q Was he -- in comparison to your training and
12 experience, was his nervousness so much that he could not
13 freely and voluntarily give the statement?

14 A No, sir.

15 Q Okay. Please answer any questions Mr. Robinson may
16 have for you.

17 MR. ROBINSON: I have no questions, Your Honor.

18 THE COURT: Thank you, sir. You may step down.

19 WITNESS: Yes, sir.

20 THE COURT: Please do not speak with anybody about your
21 testimony.

22 WITNESS: Yes, sir.

23 THE COURT: All right.

24 SOLICITOR HUNTER: That's all the State would have,
25 Your Honor.

1 THE COURT: Mr. Robinson.

2 MR. ROBINSON: May it please the court?

3 THE COURT: Yes, sir.

4 MR. ROBINSON: One second, Your Honor.

5 THE COURT: Yes, sir.

6 (Pause.)

7 MR. ROBINSON: Your Honor, I would call Mr. Garvin to,
8 the stand if I could.

9 THE COURT: Mr. Garvin, you're still under oath. Let
10 me, before you do, give you a couple of warnings please,
11 sir.

12 I want you to realize that if you say something that's
13 contrary to your interest here at the stand, you'll be under
14 oath and the State may use that against you.

15 Do understand that?

16 DEFENDANT: Yes, sir.

17 THE COURT: In other words, do not address anything
18 with regard to your guilt or innocence of the crime that's
19 underlying these charges. You can make your statements with
20 regard to the questions posed, but do not get into anything
21 that may impact and hurt you later. But you do have the
22 Fifth Amendment right not to take the stand.

23 You understand that, don't you?

24 DEFENDANT: Yes, sir.

25 THE COURT: Okay. And you understand -- has Mr.

1 Robinson gone over the Fifth Amendment with you?

2 DEFENDANT: Yes, sir, he, he did.

3 THE COURT: Sir?

4 DEFENDANT: Yes, he has.

5 THE COURT: Okay. And just to make sure, we're really
6 not at the stage of the trial where I normally give you the
7 Fifth Amendment rights. But out of an abundance of caution,
8 the Fifth Amendment to the United States Constitution
9 provides that no person can be compelled to testify against
10 himself in any criminal case.

11 Do you understand that?

12 DEFENDANT: Yes, sir.

13 THE COURT: What that means is that no one, including
14 myself, can force you to come to the stand and testify.
15 However, if you do come to the stand and you do testify, you
16 will be subject to direct examination and cross-examination.

17 Do you understand that?

18 DEFENDANT: Yes, sir.

19 THE COURT: Also, if you say something that would be
20 contrary to your interest in the subsequent trial that we
21 start tomorrow, the State may use that against you.

22 Do you understand that?

23 DEFENDANT: Yes, sir.

24 THE COURT: Now, the decision you make to take the
25 stand today has to be your own choice. So, you have to make

1 that freely and voluntarily.

2 Okay, sir. And knowing your rights under the Fifth
3 Amendment and knowing what to expect if you decide not to
4 exercise your Fifth Amendment rights, do you understand
5 that?

6 DEFENDANT: Yes, sir.

7 THE COURT: Okay. Have you had sufficient time to
8 speak with your attorney about whether or not you wish to
9 testify in this hearing?

10 DEFENDANT: Can I go over it with him again please,
11 sir?

12 THE COURT: Sir?

13 DEFENDANT: May I go over it again with him please,
14 sir?

15 THE COURT: Yes, sir, you may. You certainly may.

16 (Pause.)

17 MR. ROBINSON: Your Honor, he would like to address the
18 Court again please.

19 THE COURT: Okay, sir.

20 Mr. Garvin.

21 DEFENDANT: Yes, sir.

22 THE COURT: Okay.

23 DEFENDANT: I would like to wait until at a later time
24 to testify.

25 THE COURT: I'm sorry?

1 DEFENDANT: I would like to wait until a later time to
2 testify about---

3 THE COURT: Okay.

4 DEFENDANT: ---said statement.

5 THE COURT: Okay. So, you, at -- for the purposes of
6 the hearing today as to whether or not you made a voluntary
7 statement, you wish not to testify, is that correct?

8 DEFENDANT: Yes, sir.

9 THE COURT: Okay. Very good. Thank you, sir.

10 All right. Mr. Robinson, anything further?

11 MR. ROBINSON: Nothing, Your Honor. Just the, just the
12 standard motion in terms of voluntariness and so forth.
13 Just the regular Jackson v. Denno objection at this point.

14 THE COURT: I got you.

15 Let me say this, although the State didn't cover
16 necessarily all the elements of the Jackson/Denno and not
17 necessarily meaning they were relevant to the analysis, but
18 certainly the duration was an extremely short time, 20
19 minutes, 30 minutes from the time that the gentleman was
20 picked up. He seemed to understand the English language,
21 and he was given the opportunity to -- Miranda was probably
22 better than I hear most of the times in most situations and
23 there's a, a -- the Miranda was clearly appropriate.

24 He was in custodial interrogation. But there was no
25 threats of leniency or promises of leniency, no coercion, no

1 duress that I can hear of.

2 His physical conditional, although he was nervous,
3 that's understandable. But I mean there wasn't anything
4 further about his physical condition that would make you
5 feel like that wasn't a voluntary statement. Apparently
6 he's got sufficient enough education where he can make, to
7 read and write and make decisions.

8 All that said and done, from the totality of all the
9 circumstances, I'm gonna find he made a free and voluntarily
10 statement. I'm gonna let it come into evidence, and the
11 jury will have to determine later as to whether or not it's
12 a voluntary statement or not --

13 MR. ROBINSON: Yes, sir.

14 THE COURT: -- at the appropriate time.

15 Okay. What else do we have?

16 Is this the statement that the attorneys tell me needs
17 to be---

18 SOLICITOR HUNTER: If I could just briefly approach and
19 show you --

20 THE COURT: Sure.

21 SOLICITOR HUNTER: -- what I think our answer to this
22 is.

23 MR. ROBINSON: All right.

24 (WHEREUPON, a bench conference was held out of the
25 hearing of the jury at this time.)

1 THE COURT: Defense ready, Mr. Robinson?

2 MR. ROBINSON: One second, Your Honor. I want to make
3 sure he understands.

4 (Pause.)

5 MR. ROBINSON: Ready, Your Honor.

6 THE COURT: Let's bring the jury in.

7 (WHEREUPON, the following takes place within the
8 presence of the jury.)

9 THE COURT: All right. Good morning, ladies and
10 gentlemen.

11 Madam Clerk, before we get started, would you swear the
12 jury please, ma'am?

13 THE CLERK: Yes, sir.

14 (WHEREUPON, the jury panel was placed under oath at
15 this time.)

16 THE COURT: All right. Mr. Foreman, before we get
17 started, let me say this to you. If, at anytime, the jury
18 needs a break, let me know.

19 THE FOREMAN: Yes, sir.

20 THE COURT: If any juror who can not hear the
21 proceedings, raise your hands so -- usually we don't have a
22 problem in this courtroom. But if you can't hear something
23 let us know. If I summon you back to the courtroom before
24 the jury's ready to come in, just send word that we're not
25 quite ready. This is certainly not an endurance contest for

1 the jury.

2 Okay. That being said, I don't know if any of you have
3 ever been involved in a trial, whether it be criminal or
4 civil. But I suspect that each one of you have watched what
5 purports to be a criminal trial either on a TV show or the
6 movies.

7 Let me dispel you right now with any notions that you
8 may have about criminal trials. They're not entertainment.
9 They are slow. They are deliberate and they're very
10 methodical, and they are a fundamental part of our justice
11 system and the system that every one of your citizens in
12 this country enjoys. They're a search for the truth to make
13 sure that justice is done.

14 Now, let me say a bit about these attorneys. These
15 attorneys, when they take their oath to become attorneys,
16 have a duty that they swear to zealously represent their
17 side of the case, which means that they are advocates for
18 one side of the case or the other. But at the same time
19 they are officers of this Court.

20 What that means is that you can expect them to be
21 professional, to be competent, ethical in their dealings
22 towards one another, to this Court, and to any witness that
23 may appear before you in this case. Likewise, you've just
24 taken an oath that you'll be fair and impartial in that you
25 will try to reach a verdict in this matter.

1 what that means is that the Court and the parties and
2 attorneys have a right to expect of you that you'll be fair,
3 that you'll be impartial, and that you'll be ethical in your
4 dealings in this matter.

5 Now, what I'm telling you now is not the law that you
6 will apply. I will give you that law at the end of all the
7 presentation of the evidence.

8 Again, I want to remind you that this indictment that
9 has been issued by the State of South Carolina is not
10 evidence of guilt and does not raise an inference of guilt
11 nor any type of presumption of guilt. It's simply the
12 mechanism by which the State of South Carolina can bring a
13 defendant before a jury such as yourselves for a trial and a
14 determination of guilt or innocence.

15 Now, in this case, in fact, the defendant has says,
16 said I am not guilty. What that means is that puts the
17 burden on the State of South Carolina to prove each and
18 every element of the indictment, the indictment by proof
19 beyond a reasonable doubt.

20 Now, let me give you a quick synopsis of the definition
21 of reasonable doubt so you can keep this in your mind
22 throughout this trial. A reasonable doubt is a kind of
23 doubt that would cause a reasonable, sincere, honest, and
24 conscientious person to hesitate to act. Again, the State
25 has the burden to prove the defendant, by guilt, beyond a

1 reasonable doubt.

2 I don't know if any of you have ever been involved in
3 the civil side of the court. In the civil side of the
4 Court, the burden of proof is by what we say a preponderance
5 of the evidence. What a preponderance simply is if you
6 imagine a set of scales being exactly equal, if it tilts
7 ever so slightly in favor of one side or the other, that is
8 the burden of proof in that kind of a case.

9 Now, in criminal cases, the burden is much higher. It
10 is proof beyond a reasonable doubt. Proof beyond a
11 reasonable doubt is proof that leaves you firmly convinced
12 of the defendant's guilt.

13 I will tell you, ladies and gentlemen, that they're
14 very few things in this life that we know with absolute
15 certainty, and, in criminal cases, the law does not require
16 proof that overcomes every possible doubt. If, at the end
17 of this case, you, in your consideration of all the
18 evidence, you are firmly convinced that the defendant is
19 guilty of the crime for which he is been charged, it will be
20 your duty to find him guilty. On the other hand, if you
21 think there's a real possibility that the defendant is not
22 guilty, you must give the defendant the benefit of the doubt
23 and find him not guilty.

24 Now, your purposes, as jurors, is to be finders of
25 fact. In fact, in the vernacular of lawyers, we call you

1 the judges of the facts. What that says -- what that simply
2 means is no one in this courtroom, including myself, has a
3 right to invade your province of finding the facts from the
4 evidence, i.e. which verdict you wish to find, and you will
5 determine what the facts are by listening to the evidence
6 presented here in this courtroom, the sworn testimony you'll
7 hear from that stand, and any exhibits that I allow into the
8 courtroom uninfluenced by any outside things or comments
9 that you may see or hear during the course of this trial.

10 Also, if I do anything that seems to indicate to you
11 the way you're to find facts in this case, I'm gonna ask you
12 and also instruct you that you are to disregard that. Our
13 Constitution of South Carolina does not allow any trial
14 judge to have an opinion on the facts nor to make a comment
15 on the facts of the case. I can assure you I don't have
16 one. My job is to make sure that the process is followed
17 and to instruct you on the law at the appropriate time in
18 this case.

19 Now, it is important that you pay close attention
20 throughout the trial. Ordinarily, if I make a mistake,
21 there's a group down in Columbia that will correct my errors
22 of law. On the other hand, I'll tell you this, a general
23 rule, there is no way to correct an improper finding of
24 fact. So, therefore, please pay close attention throughout
25 this trial.

1 Now, the law that makes you the sole judges of the
2 facts makes me the sole judge of the law. What that simply
3 means is that you must accept the law as I give it to you.
4 You can't pick parts of the law that you like and apply that
5 and disregard the rest or apply the law as you want it to
6 be. It will be your job to apply the law as I give it to
7 you, and I will remind you that you take, you took an oath
8 to do just that.

9 Now, it will be improper, and again, I'm not gonna go
10 through you, negatives I gave you yesterday at length, but I
11 remind you that when we're not, not in session or during
12 session you may not begin your deliberations. I will tell
13 you, at the end of this case, in no uncertain terms when it
14 will be okay for you to begin your deliberations.

15 What that means, in practicalities, is, during the
16 break, you can't look at one another and whisper about the
17 evidence you've heard. You can't talk to your spouses or
18 friends who, face-to-face or through any other form of
19 communications.

20 Now, Spartanburg, you really don't have a whole lot of
21 chances for this to happen, but in the event you were to
22 bump into these attorneys somewhere when you're coming to
23 and from Court, they know that they can not speak to you,
24 and I'm gonna ask you and instruct you not to speak to them.
25 It's okay to nod. But we want -- we don't want one side or

1 the other saying the jurors speak to an attorney because the
2 natural reaction would be that there's improper
3 communications going on.

4 Also, I'll remind you again not to engage in any
5 independent jury research. That's the charge I gave you
6 yesterday.

7 Now, in every single case there are five phases that
8 will occur. In just a minute the State is gonna give you an
9 opening statement. What an opening statement is, is the
10 attorney is gonna tell you what he believes the issues in
11 this case are, and what the, what the road map they intend
12 to prove for you during this case is. The defendant may,
13 but does not have to, give you an opening statement because
14 the burden remains on the State to prove this case.

15 I'll remind you that these attorneys are not sworn
16 witnesses. What they say is not evidence in the true sense
17 of the word of evidence. Evidence is what you hear from the
18 witness stand. That's not to diminish the importance of
19 what they have to tell you because it is important. But
20 they are not witnesses in this case.

21 Also, ladies and gentlemen, the -- all attorneys in
22 every case have an ethical duty to object anytime they feel
23 that there's something improper going on in the courtroom.
24 I imagine this case will be like no other that I've always
25 seen and there's always objections.

1 Mr. Foreman, there may be times where you feel like
2 you're cattle being moved in out of the courtroom, and I
3 apologize to you in advance. But I'll tell you that's
4 simply part of the process. It goes on in every single
5 case. But it would be improper for you to discuss or to
6 allow any deliberations about the fact that there was an
7 objection, and to the extent I let you stay in here and see
8 it, my ruling on that objection.

9 Now, I'm getting ready to send you back to the jury
10 room for one second. I'm gonna find out if I said anything
11 that I shouldn't have said or if I neglected to tell you
12 something that I should have. Then we'll begin with the
13 opening statements.

14 So, if you'll go back to the jury room now.

15 FOREMAN: Yes, sir.

16 (WHEREUPON, the following takes place outside the
17 presence of the jury.)

18 THE COURT: Any additions to the opening charge to the
19 jury from the State?

20 SOLICITOR HUNTER: Nothing from the State, Your Honor.

21 THE COURT: From the defense?

22 MR. ROBINSON: No, sir, Your Honor.

23 THE COURT: Or objections.

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

25 THE COURT: Very good.

1 You want a minute before you get started or you're
2 ready to go?

3 MR. ROBINSON: Ready to go.

4 SOLICITOR HUNTER: Ready to go.

5 THE COURT: would you bring the jury back in please,
6 sir?

7 MR. ROBINSON: Your Honor, before the -- may it please
8 the Court?

9 THE COURT: Yes, sir.

10 MR. ROBINSON: Before the jury is brought in, Mr., Mr.
11 Garvin has a, has something regarding that -- he wants, he
12 wants to say something in this matter. So --.

13 THE COURT: All right. All right. Mr. Garvin, I'll be
14 glad to hear from you.

15 DEFENDANT: Yes, I wanted to address the indictment,
16 the pretrial delay of the indictment because if I'm not
17 mistaken that an indictment is suppose to be reported within
18 90 days of my arrest. This indictment was brought like 142
19 days within, after my arrest, and the -- then it was a
20 post-indictment delay of, of the indictment, and I -- it's
21 been postponed from March 18 to April 8th and now till, till
22 May 20th.

23 And, and, and this is like the first time I been in
24 front of a Court even to try to plead myself as violating my
25 due process. I ain't been -- I haven't, I haven't been to

1 no proceeding since I came, since I been incarcerated. I
2 been, I been, I been incarcerated since July 17th, and
3 this is the first time I been in Court. I haven't been for
4 no initial appearance, the preliminary hearings, no second
5 appearance, nothing.

6 And now, all of a sudden, I'm here and I don't even --
7 he doesn't even go any, any like fine points about the case
8 with me. I haven't even really talked about the case. I
9 really went over any type of defense for this, for to even
10 being doing this.

11 That's why I asked yesterday can I get, can I have, can
12 I have another, can I be appointed another counsel. I've
13 asked previously before can I be appointed another counsel.
14 I wrote a letter to Derham Cole asking, explaining to him
15 about the whole situation of, about my constitutional right
16 being violated and me not being in any type of proceedings
17 or anything, and I, I sent a grievance to him, an inmate
18 grievance to him asking that I be appointed counsel.

19 And then he puts in for a motion to be relieved as
20 counsel, but then all of a sudden he takes it out. That's
21 why I put in for one cause I really don't want, I really
22 don't want him as my lawyer.

23 THE COURT: I understand that. I understand that, and
24 you made that motion yesterday, and I denied your motion.
25 But you should be protected on the record, Mr. Garvin.

1 DEFENDANT: And, and another thing is like with, with,
2 with respect to both of them, I filed complaints against
3 both of them, and this, this case right here I feel, I feel
4 as though I'm being land-slided. I feel two attorneys
5 against one cause I don't feel as though I'm really being
6 represented because I filed a complaint against him with the
7 Office of Disciplinary Council and I filed one against him,
8 and, and I, and I filed a habeas corpus thing that I'm
9 waiting to go through now just because my due process has
10 been, has been violated.

11 THE COURT: Yes, sir, I understand that. You are
12 protected on the record, and, counsel, with both the
13 attorneys, my understanding, even though it's not germane to
14 this today, is that the complaint with ODC's office was
15 dismissed and that's my understanding from the attorneys.

16 DEFENDANT: Excuse me, Your Honor?
17 Who?

18 THE COURT: My understanding from the attorneys is
19 they -- they filled me in on the fact that there was a
20 complaint lodged, but that that complaint had been dismissed
21 is my understanding.

22 DEFENDANT: No, it hasn't been dismissed yet. I still
23 have to respond to it. I have until June 6th to make my
24 response to it.

25 THE COURT: Yes, sir.

1 DEFENDANT: And I'm in the process of doing that now.

2 THE COURT: Okay, sir. Well, let me just tell you, I
3 listened to your grounds and your basis of your motion
4 yesterday.

5 DEFENDANT: Uh-huh. (Affirmative).

6 THE COURT: I did not feel that there were sufficient
7 grounds alleged to warrant dismissing Mr. Robinson as your
8 attorney.

9 DEFENDANT: He hasn't seen me. He hasn't like---

10 THE COURT: I understand that. But we're gonna go
11 forward with this trial this morning. If I made a mistake
12 of law it will be corrected. But right now I feel like the
13 case needs to go forward. I feel like there's been
14 insufficient grounds to warrant relieving Mr. Robinson as
15 your attorney, and, in fact, that issue was brought to me
16 last time I was in Spartanburg that it was withdrawn, and I
17 have the -- my feeling is it's been raised at this point for
18 delay purposes, which happens all the time, and I want to go
19 forward with this case.

20 So, your objections are noted on the record. And,
21 again, Mr. Garvin, if I'm incorrect, then there's someone
22 who can correct me.

23 Okay, sir?

24 All right. Anything further?

25 DEFENDANT: Not now, Your Honor.

1 THE COURT: Okay. Thank you, sir.

2 DEFENDANT: Thank you.

3 (WHEREUPON, the following takes place within the
4 presence of the jury.)

5 THE COURT: State ready to proceed with opening?

6 SOLICITOR HUNTER: The State's ready, Your Honor.

7 THE COURT: Okay. Defense ready?

8 MR. ROBINSON: Yes, sir, Your Honor.

9 THE COURT: All right. Mr. Hunter.

10 SOLICITOR HUNTER: May it please the Court?

11 THE COURT: Yes, sir.

12 SOLICITOR HUNTER: Ladies and gentlemen, my name is
13 Eddie Hunter. I met with you on yesterday. I'm one of the
14 three prosecutors in the drug unit here in Spartanburg
15 County, and I'm here today to prove to you that John Dwayne
16 Garvin is guilty of trafficking heroin.

17 Now, I have the burden of proof in this. As he stated
18 earlier, the judge, in civil cases, it's preponderance of
19 the evidence. Here it's reasonable doubt. Reasonable
20 doubt's a little higher because it's a criminal case, and I
21 take that burden of proof very seriously.

22 But what you'll hear today is Mr. Garvin and his
23 codefendant, Jonathan Perez, came down from North Carolina,
24 met an informant that's working with ATF, SLED, and
25 Spartanburg County Sheriff's Office at the QT on Candlenut

1 Lane in Boiling Springs right off Highway 9. They pulled
2 into the gas station. Mr. Garvin got out of the car he was
3 driving and went into the QT. Mr. Perez got out of the
4 passenger seat, got into the informant's car, and delivered
5 14.53 grams of heroin.

6 Trafficking in heroin is broken up by different
7 weights. You first have possession of heroin. Then the
8 next highest level is manufacture/distribution/possession
9 with intent to distribute heroin. The level after that is
10 trafficking heroin four to fourteen grams, and we are here
11 today for trafficking 14 to 28 grams.

12 What that means is that I'm gonna prove to you that Mr.
13 Garvin did sell, or conspire to sell, or aid and abet in the
14 selling or did bring into this state more than 14 grams of
15 heroin, and it gets even better cause he confessed to it.
16 He confessed to buying four grams of heroin in North
17 Carolina, mixing it up with powdered sugar to make it larger
18 for a bigger profit margin, and bringing it into this state
19 to sell it to our informant, Fredrick Jerman.

20 Now, you'll hear from Mr. Jerman. He's an informant,
21 and that's probably the worst part of my job is that we have
22 to deal with informants cause he is a criminal. He is a
23 drug dealer. But he's not on trial. Mr. Garvin is.

24 Just remember to use your common sense. Look at the
25 facts, look at the evidence, both the evidence that we

1 present through exhibits and the evidence that you hear from
2 the officer's testimony, from Mr. Jerman's testimony, from
3 the chemist testimony who's gonna testify that, that it was,
4 in fact, 14.54 grams of heroin, and just use your common
5 sense.

6 You will see, at the end of the day, that Mr. Garvin is
7 guilty.

8 Thank you.

9 THE COURT: Mr. Robinson, does the defense wish to have
10 an opening statement?

11 MR. ROBINSON: I do, Your Honor.

12 THE COURT: Okay, sir.

13 MR. ROBINSON: Thank you.

14 THE COURT: Yes, sir.

15 MR. ROBINSON: Good morning.

16 My name is Scott Robinson. I'm an attorney and it's my
17 turn to give our position in this case.

18 John Garvin is innocent. You've heard the term being
19 in the wrong place at the wrong time around the wrong
20 people. Lots of us hear that term. It's happened to all of
21 us. But in this case it doesn't mean that you're guilty.
22 It doesn't mean you can be convicted of this, being in the
23 wrong place at the wrong time.

24 You're gonna hear a concept the judge is gonna talk to
25 you about in the end of this case called mere presence.

1 Merely being present when something happens does not mean
2 that you're guilty. Merely being in the wrong place at the
3 wrong time does not mean you're guilty of something, and the
4 State, a second ago when they were talking about the
5 elements and so forth of trafficking, they left out the one
6 other thing that they have to actually -- a crucial part of
7 this.

8 They actually, actually have to show or establish to
9 you, beyond a reasonable doubt, that John Garvin knowingly
10 did these things and they can't do it. They can say he was
11 there. They can say he was in the wrong place at the wrong
12 time, but that's it.

13 Their main witness in this case is an informant whose
14 been working for law enforcement for over six years, and
15 you're gonna hear about that in a minute when the informant
16 testifies.

17 But I also agree that you should use your common sense
18 cause this is what this is all about. When you, when you
19 come to Court, you, you leave a lot of things at the door,
20 but you always bring your common sense, and the judge spoke
21 to you a minute about reasonable doubt. Everything in this
22 courtroom, when you look at, you look at it through the
23 glasses of reasonable doubt.

24 You have to -- the State has to establish, beyond a
25 reasonable doubt, that he's guilty of this offense, and they

1 can't do it cause, again, being merely present is not enough
2 to convict. Being in the wrong place at the wrong time is
3 not enough to convict.

4 As Mr. Hunter talked about a second ago, use your
5 common sense. Think about motive. Think about what a
6 witness has to gain from it. Think about that, but use your
7 common sense.

8 We live in one of the greatest countries in the world.
9 One of the best -- probably the best judicial system in the
10 world, and it's to bring 12 ordinary people with all their
11 backgrounds and experiences that all of you have and to use
12 your common sense, and your things you've learned in your
13 own life.

14 And if you use your common sense, and you pay attention
15 like you, which you will do, you'll find that the State is
16 not and can not convict Mr. Garvin of this crime. Mr.
17 Garvin is innocent.

18 Thank you.

19 THE COURT: would you call your first witness please,
20 Mr. Hunter?

21 SOLICITOR HUNTER: Your Honor, the State would call
22 Investigator Ken Hancock.

23 KEN HANCOCK, being first duly
24 sworn, testified as follows:

25 DIRECT EXAMINATION

Ken Hancock - Direct examination
by Solicitor Hunter

1 BY SOLICITOR HUNTER:

2 Q Would you please state your name for the record?

3 A Kenneth Hancock.

4 Q How are you currently employed?

5 A Spartanburg County Sheriff's Office.

6 Q How long have you been employed there?

7 A Twenty-three years.

8 Q Briefly go over your duties at the Sheriff's Office
9 from 23 years ago up until today.

10 A Started out in 19 -- I think it was 1991 as a uniform
11 patrol officer on third shift. I went to the Narcotic's
12 Division. I spent 12, a little less than 12 years there.
13 Three years as lieutenant over the division. Left there and
14 went to the Interstate Criminal Enforcement Team, excuse me,
15 which is the I.C.E. Team, which is a highway interdiction
16 team. In 2005 I came back to the narcotics -- no, excuse
17 me. Two years ago I came back to the Narcotic's Division as
18 a narcotics and vice investigator.

19 Q Did you happen to have a chance to investigate a crime
20 on July 17th, 2012?

21 A I did.

22 Q And where did that take place?

23 A In Spartanburg County at the QT on Highway 9 just
24 across the new 85.

25 Q Okay. Prior to that, who did you meet with?

Ken Hancock - Direct examination
by Solicitor Hunter

1 A I met with an informant that was provided by the ATF
2 agent sitting at the table, Ashley Asbill with SLED, he's a
3 SLED investigator, and my lieutenant, which is Lieutenant
4 Steve Cooper.

5 Q And what's that informant's name?

6 A I know him as -- his name is Fred, but I know him as
7 Pookey.

8 Q Where did you meet him?

9 A We met him at --- I'm not exactly sure of the street
10 address, but it's right there at North Grove Medical Park on
11 Highway 9 right past Founders Credit Union going towards
12 Business 85 on the right. There's a road that you turn
13 beside into the park. We went all the way down to the back,
14 turned right on the last driveway, which went into a
15 cul-de-sac where they was actually building a medical
16 facility there.

17 Q Okay. Briefly describe how you use an informant in an
18 undercover buy situation.

19 A Basically what you do is you meet the undercover
20 person. If you're gonna, if you're gonna shoot a phone
21 call, et cetera, you keep notes of that on what we call a
22 buy report. Then the person is searched. His vehicle, if
23 he's got a vehicle, or her vehicle is searched. Their
24 person is searched. You provide them with the money that
25 you're gonna use, which the money is then -- the money.

Ken Hancock - Direct examination
by Solicitor Hunter

1 numbers and all serial numbers of all the money is recorded.
2 You provide them with a recording device. They're several
3 different types of devices we use.

4 You -- what you do is you prep the tape then.
5 Basically what we call prep the tape is basically use the
6 time, the date, the location you're going to, the person you
7 buy, buying from, if you know what they're buying, and how
8 much money you provide the informant, and you also let the,
9 the camera know -- the video know that that person and their
10 vehicle has been searched and if any contraband has been
11 found.

12 Q Okay. So, when you met with Mr. Jerman, who searched
13 his vehicle?

14 A The first time I believe Lieutenant Steve Cooper
15 searched his vehicle.

16 Q And who searched Mr. Jerman?

17 A I did.

18 Q Did you find anything on Mr. Jerman?

19 A No, sir.

20 Q And why do you search the informant?

21 A Basically you search them because you don't want -- if
22 you're going to buy narcotics you don't want an informant
23 bringing narcotics to a drug deal. That's what -- you, you
24 basically search him to make sure that you're keeping him
25 honest is what it is that in case he's got anything on him

Ken Hancock - Direct examination
by Solicitor Hunter

1 that would be any question.

2 If he was going to buy \$20 worth of crack, that he
3 wouldn't have \$20 worth of crack in his pocket. He'd go off
4 and keep your money and basically come back and say he met
5 somebody. So, it's basically just for -- it's for safety
6 purposes. Also for -- to make sure we keep him honest.

7 Q Okay. Who provided the video to Mr. Jerman?

8 A I did.

9 Q Okay. And what type of video was it?

10 A It was actually a -- it was actually an undercover
11 watch.

12 Q Okay. Explain what that, how you use that.

13 A Basically it's, it's a watch kind of like. It's really
14 it's -- I believe this one looks like a dress watch. It's
15 got a big face on it. It's got a camera, audio, and video
16 inside internally. It's got the buttons just like this
17 watch does. You mash the side. There's a little small pen
18 light that you watch. When it blinks it shows that it's
19 recording. It blinks twice again and it cuts off.

20 But once you turn it on, it's just basically -- it's
21 got a camera right there in the face. Like if I was turning
22 my watch towards the, you guys, it -- I would get everybody
23 on video.

24 Q Okay. And why do you have an informant wear this
25 recording device?

Ken Hancock - Direct examination
by Solicitor Hunter

1 A Basically so you can keep up with all the conversations
2 of the transaction. Also for the identification, if you
3 don't know the person he's buying from, it's a way of
4 identifying the person that he's bought from because nine
5 times out of ten you're gonna get that person's face. Then
6 we can take that video and pull a still picture up off of
7 that video just like a, like taking a camera shot, and we
8 can have a camera picture of that person. And also you can
9 listen to all the audio and basically listen also for safety
10 to keep the informant honest also.

11 (WHEREUPON, a DVD was marked as State's Exhibit No. 2
12 for identification purposes only at this time.)

13 Q Show you what's been premarked State's Exhibit 2.
14 Actually has three different videos on this.

15 But do you recognize that DVR or DVD?

16 A I do, sir.

17 Q Okay. And how do you recognize it?

18 A Basically it's the recording from the surveillance
19 video, both cameras of the surveillance video and the
20 undercover video.

21 Q Okay. The -- when the informant comes, what is the
22 informant do once the buy is completed?

23 A Once he leaves -- once the buy's completed he leaves
24 the location. A lot of times, if they have a cell phone,
25 they'll call you on your cell phone and say hey, the buy's

Ken Hancock - Direct examination
by Solicitor Hunter

1 complete. Then you, then you have them meet you back at a
2 predetermined location. Once you -- you want me to go
3 through the whole -- once you meet back with the informant,
4 and you, you kind of keep the informant under surveillance
5 pretty much the entire time he's making the buy unless he
6 goes into a house or -- but pretty much you watch him go in
7 and watch him come out.

8 But then when you went back with him, his person is
9 searched, the vehicle's searched, he turns over the drugs to
10 the investigator. Basically the undercover equipment, the
11 watch is took off. What we call is we prep the tape again,
12 which basically tells us the time and date of return, what
13 he brought back. Also we have him what we call debrief him
14 on the scene, which he basically gives you a synopsis of
15 what actually took place on the undercover buy.

16 Q Okay. Prior to the buy did you provide any U.S.
17 currency to the informant?

18 A I did.

19 Q How much?

20 A I believe it was \$4,200.

21 Q Okay. When he came back to your location, where did
22 y'all meet up after the buy had occurred?

23 A It was Northern Tool right there. If you're familiar
24 with Highway 9, if you turn right beside Denny's and go down
25 to the little road right beside Denny's. Northern Tool is

Ken Hancock - Direct examination
by Solicitor Hunter

1 on the right down there. We met him in the parking lot
2 right there.

3 Q Okay. Is he searched again?

4 A Yes, sir.

5 Q What did you locate or did you locate anything on his
6 person?

7 A No, nothing on his person, but he turned over, once he
8 got out of the car, he turned over the package of drugs
9 that, that he had purchased.

10 Q Okay. Was that package present when he was searched
11 previously?

12 A No, sir.

13 Q Okay. What did you do with the camera or the watch?

14 A Basically I took it off of him, I debriefed him, and
15 put the stamp, date, and time on it per voice. After that,
16 took it back to the office, downloaded it, and put it on
17 video.

18 Q Is that a copy of it sitting there, State's Exhibit in
19 front of you?

20 A It is.

21 (WHEREUPON, a brown bag was marked as State's Exhibit
22 No. 3 for identification purposes only at this time.)

23 Q Okay. You talk about a brown bag. I show you what's
24 been marked as State's Exhibit 3.

25 You recognize that item?

Ken Hancock - Direct examination
by Solicitor Hunter

1 A I do, sir.

2 Q And how do you recognize that item?

3 A Basically this was what was the C.I., was recovered
4 from the C.I., and turned over to me after the buy was made.

5 Q Okay. What do you do with that once it's returned to
6 you?

7 A Basically what we do is we field test it. After that
8 we place it inside of a sealed B.E.S.T. Bag, which is inside
9 this plastic bag. It's got a -- you fill out the forms.
10 You have him sign a chain of custody form, which I recovered
11 it from him. Then I sign the chain, and I, I put it into
12 the evidence at Spartanburg County Sheriff's Office.

13 But this sealed inside this bag with this red tape, and
14 if it's ever tampered with you can tell the red tape would
15 be tore -- it would be tore off right there, and you can
16 tell if it was void or not, somebody tampered with it. But
17 just seal it up inside the bag and turn it into evidence.

18 Q All right. And did you do that in this case?

19 A I did, sir.

20 Q When did you turn it into evidence?

21 A On the 17th.

22 Q Okay. How do you turn it into evidence?

23 A Basically if it's after five o'clock in the afternoon,
24 we have what -- we have several evidence lockers at the
25 Sheriff's Office. Also there is like a, another type of

Ken Hancock - Direct examination
by Solicitor Hunter

1 evidence locker, which you would be, appear to you to be a
2 big huge like a mailbox like you see on the side of the road
3 where you pull the flap down and just drop it in. It's a
4 steel door and then you close it and it drops down in there,
5 and it's, and it's a big steel vault. You can't recover it
6 once you drop it in there. The only, only person who has a
7 key is the evidence custodian and they open it up in the
8 morning.

9 Q And did you turn that into that evidence vault?

10 A I did, sir.

11 Q Where were you when the buy allegedly took place?

12 A I'm trying to recall. I believe I was across the
13 street at the Raceway because the buy took place at the QT
14 at the gas pumps. Myself and Lieutenant Cooper were across
15 the street sitting in the parking lot of the gas station
16 Raceway.

17 Q Okay. Did you -- what did you observe that day?

18 A I don't recall the color of the car. We picked up --
19 my lieutenant picked up the car coming off the interstate,
20 coming southbound on, and got off on 75, which would be
21 Highway 9 right there by the QT. The informant was sitting
22 at the gas pumps. The car pulls in, and pulls up beside him
23 at the gas pumps, and we tell -- keep going?

24 Q What -- yeah.

25 What did you observe?

Ken Hancock - Direct examination
by Solicitor Hunter

1 A Basically, after he pulls up, the informant's in the
2 car, the driver gets out, goes inside the QT.

3 Q Hold on a second.

4 who, who was the driver?

5 A I believe, I believe it was the defendant sitting over
6 here --

7 Q Okay.

8 A -- from what I could tell.

9 Q Please describe who you're, who you're pointing out.

10 A Okay. Mr. Garvin.

11 Q Okay.

12 A Anyway he gets out, goes in the QT. The passenger gets
13 out. I think that was Perez, gets out of the car, walks
14 around to the passenger side of the C.I.'s vehicle, places
15 something in the back seat, appears to be a paper bag in the
16 back seat. Then he gets in the car with the informant
17 after -- I don't know if it was a minute. I can't say. He
18 gets out or he's fixing to get out. Mr. Garvin comes back
19 out, and it appears to me there's some communication there.
20 The informant gets out, gets back in his car.

21 I can't remember if they pumped gas or not. They get
22 in the car and they leave the scene. The informant leaves
23 and we follow him back to the location.

24 Q All right. And after you get -- when you get to
25 Northern Tool, that's when you get the video?

Ken Hancock - Direct examination
by Solicitor Hunter

- 1 A Absolutely.
- 2 Q And that's State's Exhibit 2?
- 3 A Yes, sir.
- 4 Q And you recovered the State's Exhibit 3 from the
5 informant?
- 6 A Yes, sir.
- 7 Q And placed it into evidence?
- 8 A Yes, sir.
- 9 Q You stated earlier you gave \$4,200 to the informant?
- 10 A Yes, sir.
- 11 Q Do you know if that was ever recovered?
- 12 A I believe it was covered by the, whoever made the
13 traffic stop on them.
- 14 Q Was that covered on Mr. Perez?
- 15 A I don't, I don't remember, sir.
- 16 Q Okay. Please answer any questions Mr. Robinson may
17 have for you.
- 18 THE COURT: Cross-examination.
- 19 MR. ROBINSON: Please the Court.
- 20 CROSS-EXAMINATION
- 21 BY MR. ROBINSON:
- 22 Q Officer Hancock, is that right?
- 23 A Yes, sir.
- 24 Q Officer Hancock, you and Mr. Cooper, is it---
- 25 A Yes, sir.

Ken Hancock - Cross-examination
by Mr. Robinson

1 Q ---were sitting across the street, is that correct?

2 A Yes, sir.

3 Q And how many yards away would that be?

4 A I couldn't say. Maybe across a four lane highway.

5 Q Okay. And when you saw this going down, you saw Mr.

6 Garvin go into the store?

7 A Yes, sir.

8 Q Right?

9 A Yes, sir.

10 Q The QT Store?

11 A Yes, sir.

12 Q And then you saw Mr., the codefendant get out and do

13 some business with the informant, is that correct?

14 A Yes, sir.

15 Q You never saw Mr. Garvin do anything with this
16 informant as far as the transaction of the drugs, did you?

17 A No, sir.

18 Q Okay. And in terms of this informants, this informant

19 is paid money by you, by your office, correct, or your

20 office or a law enforcement office?

21 A At that time, I don't -- I'm not sure if he was working
22 off charges or he was paid, but he was working actually for
23 the ATF at that time.

24 Q Okay. So, to your knowledge, if he wasn't getting paid
25 money, he was working off charges, correct?

Ken Hancock - Redirect examination
by Solicitor Hunter

1 THE COURT: Redirect?

2 MR. ROBINSON: Just briefly, Your Honor.

3 REDIRECT EXAMINATION

4 BY SOLICITOR HUNTER:

5 Q What Mr. Robinson -- Mr. Jerman has had charges that
6 have been dismissed pursuant to cooperation---

7 A Yes, sir.

8 Q ---correct?

9 Okay. Thank you.

10 MR. ROBINSON: I have no recross, Your Honor.

11 THE COURT: May this witness be excused?

12 MR. ROBINSON: Yes, sir, Judge.

13 THE COURT: All right. Thank you, sir. You're
14 excused.

15 WITNESS: Thank you.

16 THE COURT: Call your next witness please, sir.

17 SOLICITOR HUNTER: Your Honor, the state would call
18 Fredrick Jerman.

19 FREDRICK JERMAN, being first duly
20 sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY SOLICITOR HUNTER:

23 Q Please state your name for the record.

24 A Fredrick Leon Jerman.

25 Q Okay. I want to get a few things out of the way.

Fredrick Jerman - Direct examination
by Solicitor Hunter

1 On July 17th, were you paid to make a deal, a drug
2 deal?

3 A \$4,200.

4 Q All right. well, how much were you paid?

5 A Oh, \$300.

6 Q Okay. If you could speak up a little bit. It's kind
7 of hard to hear you.

8 A Okay. I was paid \$300 on July 17th, 2012 --

9 Q Okay.

10 A -- for a controlled heroin buy.

11 Q Okay. Was that the first time you had worked with
12 police?

13 A No.

14 Q And how long have you been working with the police?

15 A 1999.

16 Q Who did you work with in 1999?

17 A Regional FBI Division, State Bureau of Investigations
18 in North Carolina, Vance County Sheriff's Department in
19 North Carolina. Several different police agencies.
20 Richmond, Virginia, North Carolina, South Carolina.

21 Q So, you've cooperated since 1999?

22 A Yes, sir.

23 Q Have you had some charges dismissed due to your
24 cooperation?

25 A Yes, I have. Some, some due to charges. Some due to

Fredrick Jerman - Direct examination
by Solicitor Hunter

1 freelancing.

2 Q All right. Have you had some charges, sentences
3 reduced due to your cooperation?

4 A Yes.

5 Q Okay. Just briefly go over your record --

6 A No problem.

7 Q -- just so that we, you know, make sure the jury knows
8 everything.

9 In 2010 you were charged with distribution of cocaine
10 base first offense --

11 A Correct.

12 Q -- here in Spartanburg or in Spartanburg County?

13 A Correct.

14 Q And that charge was dismissed based on law enforcement
15 request due to your cooperation?

16 A Correct.

17 Q You also have a 2011 actual conviction for financial
18 transaction card fraud?

19 A Correct.

20 Q Okay. You didn't work that charge off though, did you?

21 A No.

22 Q Have you ever worked in Georgia?

23 A For law enforcement?

24 Q For law enforcement?

25 A Yes.

Fredrick Jerman - Direct examination
by Solicitor Hunter

1 Q Okay. Is that with the Lawrenceville, Gwinnett County?

2 A Gwinnett County Police Department.

3 Q Were those charges dismissed through your cooperation
4 there?

5 A Yes.

6 Q All right. And you were charged with marijuana and
7 forgery in Virginia?

8 A Yes.

9 Q And those charges were dismissed as part of your
10 cooperation?

11 A Yes. Yes.

12 Q Okay. You said you've also worked in North Carolina?

13 A Yes. Yes, sir.

14 Q Okay. And that includes a breaking and entering
15 charge?

16 A Yes.

17 Q You were actually found guilty though of that charge,
18 right?

19 A Correct.

20 Q And you actually spent time in jail on that charge,
21 didn't you?

22 A Correct.

23 Q And assault with a deadly weapon, serious injury?

24 A Spent time for that also.

25 Q Okay. In jail?

Fredrick Jerman - Direct examination
by Solicitor Hunter

- 1 A Yes.
- 2 Q And a felon in possession of weapon?
- 3 A Yes.
- 4 Q And maintaining a dwelling place to sell controlled
5 substances?
- 6 A Yes.
- 7 Q You spent jail in all, in time for those, correct?
- 8 A Yes, I did.
- 9 Q Okay. As well as possession of stolen goods?
- 10 A Yes.
- 11 Q Same in North Carolina?
- 12 A Yes, all at the same time. It's concurrent.
- 13 Q Okay. But you spent time in jail on those?
- 14 A Yes, I did.
- 15 Q I know you probably are not gonna want to admit it, but
16 it's safe to say that you're a drug dealer and you---
- 17 A In some sense, yes, sir.
- 18 Q You, you deal drugs sometimes?
- 19 A Yes, sir.
- 20 Q All right. And you've been arrested -- I don't want to
21 go into the specifics, but you've been arrested for
22 distribution of heroin after the offense that we're gonna
23 talk about here today?
- 24 A Yes, I have.
- 25 Q Okay. And cooperating with the police on that?

Fredrick Jerman - Direct examination
by Solicitor Hunter

1 A Yes.

2 Q But you haven't received any promises that your charge
3 is gonna be dismissed?

4 A No.

5 Q Or anything?

6 A No.

7 Q When you cooperate with law enforcement, are you
8 searched prior to any cooperation?

9 A Yes.

10 Q Was your vehicle searched prior to any cooperation?

11 A Yes.

12 Q Are you're normally equipped with an audio video
13 recording device?

14 A Yes.

15 Q Okay. And you're normally surveilled by officers?

16 A Yes.

17 Q On July 17th, 2012, who were you, who were you
18 meeting at the QT?

19 A That guy right there. I know him as Big Unc, and
20 someone he was with by the name of Grills is what I know him
21 as. I was meeting them to purchase a quantity of heroin.

22 Q Okay. And prior to going to meet with them, who did
23 you meet with?

24 Did you meet with officers?

25 A Yes, I met with Alcohol, Tobacco, and Firearms, Agent

Fredrick Jerman - Direct examination
by Solicitor Hunter

1 the officers prior to the buy?

2 A We met at a, we met at a -- in a cul-de-sac out in
3 Spartanburg County off of Boiling Springs Road, Number 9. I
4 believe it's called North Hills Medical Center, over in that
5 area. Met over and behind there.

6 Q During the course of the video, did you ever stop to
7 talk to anybody?

8 A No.

9 Q Did you ever meet anybody?

10 A The only people I met was him and Grills.

11 Q Okay. You see somebody in the vehicle.

12 who is that?

13 A That's the other -- the guy who was with him. His name
14 is Grills.

15 Q Okay. What is he doing?

16 A Counting the funds that I was supplied by, by
17 Spartanburg County and he's counting the money that they
18 gave me, and that's the money that I was suppose to pay him
19 for the drugs. So, he's counting it to make sure it's all
20 there.

21 Q All right. Was it all there?

22 A Yes, it was.

23 Q Okay. Where was the heroin at this time?

24 A At this time the heroin was still in the back floor.

25 Q So, you're sitting at the QT.

Fredrick Jerman - Direct examination
by Solicitor Hunter

1 where are you?

2 A At the gas pump when I first came in, pulled in at the
3 gas pump waiting on them to get off of the highway.

4 Q All right. When they drove in, who's driving?

5 A The guy over there sitting with his lawyer. I think
6 his last name Garvin. I just know him as Big Unc.

7 Q Okay. And who's the passenger?

8 A The passenger was the guy that's actually sitting in
9 the car with me right there counting the money. His name is
10 Grills.

11 Q Okay. And where do they pull up?

12 A They pulled up beside me, actually right beside me at
13 the gas pump. But I didn't -- by not at -- you know, like
14 you have one gas pump and the other. So, we wasn't parked
15 at the same gas pump per se. I was parked on, at, on this
16 side of the gas pump and they pulled directly beside me at
17 the other gas pump.

18 Q So, you were facing -- which way are you facing,
19 towards the store or the road?

20 A I'm facing the store at which point---

21 Q And which way are they facing?

22 A ---they pulled up beside me facing the road.

23 Q Okay. What does Mr. Garvin do?

24 A He was pumping gas. Got out, got out, went in the
25 store, and come back and he was pumping gas.

Fredrick Jerman - Direct examination
by Solicitor Hunter

1 Q Okay. At anytime did he come over to your vehicle?

2 A Yes, he did.

3 Q Why did he come over to your vehicle?

4 A Confirmation. Just making sure that he had got paid
5 and things of that nature.

6 (WHEREUPON, a portion of the videotape was played for
7 the jury at this time.)

8 Q Just whose voice is that so that we know who's, who's
9 speaking?

10 A Saying what?

11 Which one?

12 Q Everything straight in Spartanburg.

13 A Oh, that's the other guy that was with him, Grills.

14 Q Who's, who's the louder person in the video?

15 A That would be me.

16 Q Okay.

17 (WHEREUPON, a portion of the videotape was played for
18 the jury at this time.)

19 Q Do you remember what Mr. Garvin was wearing that day?

20 A He was wearing a green Philadelphia Eagles, Donovan
21 McNabb, Number 5 jersey I believe.

22 Q Okay.

23 A Blue jeans, no hat.

24 Q Can you see this pretty well?

25 A Yes.

Fredrick Jerman - Direct examination
by Solicitor Hunter

1 Q what appears to be approaching your back passenger
2 window?

3 A That's Mr. Garvin. Garvin.

4 Q Do you speak to Mr. Garvin?

5 A Yes, I did.

6 (WHEREUPON, a portion of the videotape was played for
7 the jury at this time.)

8 Q what did you just say?

9 A I was talking to the defendant. I told him, I said you
10 know, we would, excuse my French, but I told him, I said
11 fuck with me a couple more times and you don't have to be
12 this nervous.

13 Q Okay. But you weren't speaking to Perez at that time,
14 were you?

15 A No, I was speaking to the defendant.

16 Q In fact, you called him by what you knew him as?

17 A Big Unc.

18 (WHEREUPON, a portion of the videotape was played for
19 the jury at this time.)

20 Q who responds with the all right?

21 A He did, Mr. Garvin, Garvin, the defendant.

22 Q And when you spoke about your people, you're talking
23 about the people you deal drugs with?

24 A well, it was a ruse. That's what I was telling them,
25 but I was -- yes. Yeah.

Fredrick Jerman - Direct examination
by Solicitor Hunter

1 (WHEREUPON, a portion of the videotape was played for
2 the jury at this time.)

3 Q Okay. At that point the deal is done, correct?

4 A Correct.

5 Q I show you what's been marked State's Exhibit 3.

6 Do you recognize that item?

7 A I do.

8 Q How do you recognize that item?

9 A This was the item that was passed to me through the
10 back window of my car, and this is the item that I received
11 once I paid the police funds over. This is what I received.

12 Q All right. And that's what you received from Grills?

13 A Yes.

14 Q How was it packaged at the time?

15 I know it's packaged a little differently now.

16 A It was on -- it was in a brown box separated in what
17 they call bindles and bricks. It's 15 individually wrapped
18 boxes with 50 bags in each, in each one.

19 Q So, a brick is 50?

20 A A brick of heroin would consist of 50 bags. A bindle
21 would consist of ten bags.

22 Q Okay.

23 A So, a brick is five bindles?

24 A I had, I had -- yes, a brick would be five bindles,
25 which would mean 50 bags. I had a total of 15 bricks.

Fredrick Jerman - Direct examination
by Solicitor Hunter

1 A No, I didn't.

2 Q Okay. At this time you were working with ATF?

3 A Yeah.

4 Q And how much were you paid?

5 A For this buy, \$300.

6 Q Okay. But the whole time during this buy were you
7 under surveillance?

8 A Yes, I was.

9 Q Were you searched before and after?

10 A Yes, I was.

11 Q Did you have any contraband on you?

12 A No, I didn't.

13 Q Who did you buy heroin from?

14 A I bought heroin from Mr. Garvin and as I know him, Big
15 Unc, and Grills.

16 Q Please answer any questions Mr. Robinson may have for
17 you.

18 THE COURT: Cross-examination.

19 CROSS-EXAMINATION

20 BY MR. ROBINSON:

21 Q Is it Mr. Jerman?

22 A Yes, sir.

23 Q You didn't buy anything Mr. -- you didn't buy anything
24 from Mr. Garvin, Mr. Jerman, did you?

25 A Did I buy anything from him?

Fred Jerman - Cross-examination
by Mr. Robinson

1 And you'd be willing to do anything to keep out of
2 jail, wouldn't you?

3 A Well, on July 17th, 2012, I had no pending charges.
4 So, it was no reason for me to have to work with them, the
5 police officers, or be an informant to stay out of jail. I
6 got it for the money to take care of my children. I didn't
7 have a job at the time.

8 Q Oh, I'm sorry.

9 So, you did it for the money at that time, is that
10 right?

11 A At that time.

12 Q Right.

13 But if you didn't have -- if it wasn't for the money,
14 you wouldn't have done it, correct?

15 You did it for the money?

16 A I did it for the money. I been an informant ever since
17 1999.

18 Q Okay.

19 A That's about 14, 14 years. I would say at least ten of
20 those years it's been for the money. It haven't been to
21 work off charges.

22 Q Oh, I'm sorry.

23 But you -- but each time it's either been for money---

24 A Right.

25 Q ---or working off charges and this is through four

Fred Jerman - Cross-examination
by Mr. Robinson

1 testimony today to help law enforcement you're helping to
2 get your charges worked off, aren't you?

3 A No.

4 Q Okay. So, those charges out there that you're telling
5 this jury, as a convicted felon, that that, that -- you're
6 testifying today has nothing to do with you working off the
7 pending charges?

8 A Not dealing with this case, no.

9 Q Okay. All right. Now, the first question I asked you
10 was regarding, regarding your dealings with Mr. Garvin in
11 this case, and I think you answered that you, you did not
12 deal with Mr. Garvin in this transaction.

13 Is that true?

14 A We spoke, but not physically hand-to-hand deal, no,
15 sir.

16 Q So, you wasn't -- he wasn't part of this deal, was he?

17 A Yes, he was.

18 Q Let's not -- now, let me get this straight.

19 Okay. That, that tape up there --

20 A Yes, sir.

21 Q -- doesn't show Mr. Garvin participating in this, in
22 this deal, does it?

23 A No, but if you, if you mind me elaborating on it, I
24 spoke to him and I let him know, you know -- what I would
25 mean by let him know was -- I mean like, like the tape

Fred Jerman - Cross-examination
by Mr. Robinson

1 spoke, the tape said. If you deal with me a little more, he
2 won't be so nervous and then he replied and said all right.
3 So, I would, I would attest to you that he was knowledgeable
4 of what was going on.

5 Q But you have -- but, again, the question is this. He
6 did not participate in this transaction that you have
7 Mr. Perez do?

8 A Can you elaborate when you say participate?

9 Q He didn't participate. He didn't---

10 A He drove.

11 Q Although he drove the vehicle that we're talking about,
12 he didn't deliver the drugs for Mr. Perez to you as the
13 informant in your car, did he?

14 A He drove from North Carolina to South Carolina and met
15 me at the QuikTrip Gas Station. On the phone and things of
16 that nature, he was aware of what was going on. So, I
17 really wouldn't know how to answer what you're trying to ask
18 me, sir, like---

19 Q When the drugs -- let me say it another way, another
20 time.

21 Mr. Garvin went in -- got out of his truck --

22 A Correct.

23 Q -- and went into the QuikTrip, right?

24 A Correct.

25 Q Then you and Mr. Perez did your little deal, didn't

Fred Jerman - Cross-examination
by Mr. Robinson

1 13 years, you're trying to get your charges worked off the
2 pending charges, correct?

3 A Not dealing with July 12th, 2012.

4 Q So, you're coming today to this Court, given that
5 you're a convicted felon --

6 A Correct.

7 Q -- you're coming to this Court and you're telling the
8 jury this information because you're just doing it for what
9 reason, cause you got paid or because you're trying to work
10 off these pending charges?

11 A Because when you become an informant --

12 Q Uh-huh. (Affirmative).

13 A -- and you become an informant, you have a worksheet to
14 fill out. If you become an informant, then they tell you
15 right then they -- well, not tell you, but they ask you if,
16 if you doing informant work, would you be willing to testify
17 in Court if it comes up. That's a question that the agents
18 ask you before they even sign you up to an informant.

19 So, my answer to that question was yes, I would
20 testify. In my own mind I don't have a problem doing that.
21 So, yes, I have a pending charge.

22 Was it discussed that my charge could be worked on if I
23 come and testify today?

24 No. Because, beforehand, before even July 12th,
25 2012, I had agreed to testify on any case that I worked.

Fred Jerman - Redirect examination
by Solicitor Hunter

1 Q And is that agreement over?

2 A Yes.

3 Q You signed a -- did you sign a different agreement with
4 South Carolina police?

5 A Yes.

6 Q Excuse me.

7 Did you sign an agreement with ATF?

8 A Yes.

9 Q Prior to July 17th, 2012?

10 A Yes.

11 Q Okay. And what was that agreement for?

12 A To be an informant.

13 Q And how much were you to be paid in this instance?

14 A Through ATF, \$300.

15 Q Okay. And as part of that AFT agreement, did you agree
16 to testify?

17 A Yes.

18 Q Is that why you're here today?

19 A Yes.

20 Q Since then you've been arrested for distribution of
21 heroin, distribution of heroin half mile, and possession
22 with intent to distribute Xanax?

23 A Correct.

24 Q Are you currently cooperating on those charges?

25 A Yes.

Fred Jerman - Redirect examination
by Solicitor Hunter

1 Q Does your cooperation have anything to do with this
2 testimony?

3 A No.

4 Q Have you had any deals with our office whether this
5 testimony---

6 A No.

7 Q ---would help you in that, in those cases?

8 A No.

9 Q Has the police promised you anything --

10 A No.

11 Q -- with those cases?

12 A No.

13 Q We met a couple weeks ago to review this video?

14 A Correct.

15 Q And then we met again yesterday to review the video
16 again?

17 A Correct.

18 Q Do you remember asking me how you should answer a
19 question?

20 A Yes.

21 Q Did I tell you how to answer any questions?

22 A No, you didn't.

23 Q Did we go over any question sheets --

24 A No.

25 Q -- what would be asked.

Beth Stuart - Direct examination
by Solicitor Hunter

1 You want me to leave---

2 SOLICITOR HUNTER: Just leave it up there.

3 Okay. State would call Beth Stuart.

4 BETH STUART, being first duly sworn,
5 testified as follows:

6 DIRECT EXAMINATION

7 BY SOLICITOR HUNTER:

8 Q Would you please state your name for the record?

9 A Yes, Mary Elizabeth Stuart.

10 Q Okay. How are you currently employed?

11 A I am a school resource officer at Spartanburg County
12 Sheriff's Office.

13 Q Okay. How long have you been in law enforcement?

14 A Ten years.

15 Q Okay. What was your initial reason for joining the
16 Sheriff's office?

17 A A forensic chemist with the Sheriff's Office.

18 Q And how long were you a forensic chemist?

19 A Nine and a half years.

20 Q Okay. Briefly go over your education.

21 A Yes, I have a Bachelor's of Science in Chemistry, a
22 Bachelor's of Science of Biochemistry both from the College
23 of Charleston. I have a Master's Degree in Chemistry from
24 the University of South Carolina. I am certified by the
25 American Board of Criminalistics in all areas of forensic

Beth Stuart - Direct examination
by Solicitor Hunter

1 think is proper based on the facts and evidence in this
2 case.

3 CONTINUED DIRECT EXAMINATION

4 BY SOLICITOR HUNTER:

5 Q Mrs. Stuart, please tell us the procedure of what goes
6 on in the lab when controlled substances come in.

7 A Controlled substances are picked up from the evidence
8 room, and they come to us in usually what's called a
9 B.E.S.T. Bag, Best Evidence Sample Testing, and come to us
10 sealed. If they're not sealed we won't test them.

11 So, the indication I know it was sealed when I got it
12 is because, number one, I tested it, and, number two, I have
13 my initials and the date and letters okay here where I would
14 have unsealed the packaging before I ever tested it.

15 And once it's into the lab, then our testing is a two
16 prong test. One part of it is called a presumptive test and
17 this is basically a color change test. It gives us an idea
18 of the next step to take, and the next test is called a
19 confirmatory test, and it's an instrumental test and which
20 gives us a printout of the drug in question.

21 Q Okay. Were you able to do a presumptive test on the
22 bag in front of you?

23 A I was.

24 Q What did that indicate?

25 A It indicated something in the opiate family, the heroin

Beth Stuart - Direct examination
by Solicitor Hunter

1 family.

2 Q So, at that point what do you do with the controlled
3 substance?

4 A The instrumental portion of the test, the confirmatory
5 test.

6 Q Okay. And did you perform a confirmatory test on the
7 controlled substance?

8 A I did.

9 Q And, in your expert opinion, what did it confirm it to
10 be?

11 A Heroin.

12 Q Okay. How do you weigh the substances?

13 A On an analytical balance. It's tested monthly in the
14 lab and then once a year by an outside company.

15 Q Do you test the substances including the substances
16 that you did the presumptive test and confirmatory test on?

17 A No, all substance is removed from packaging, packaging
18 is removed. All samples are removed before we weigh the
19 substance.

20 Q Okay.

21 A So, what we weigh is what goes back into evidence.

22 Q How was that packaged when you received it?

23 A This was packaged, if I look back at my notes briefly,
24 this came wrapped up in five separate packages that look
25 like presents, and when you unwrap them with a newspaper,

Beth Stuart - Direct examination
by Solicitor Hunter

1 inside were five bundles, and then the bundles had anywhere
2 from like nine to eleven little bitty wax envelopes bound
3 together, and then you would of had powder bound in each wax
4 envelope and there were 746 of these little wax envelopes
5 bundled up.

6 Q And you said it came bundled, bundled up as little
7 presents?

8 A Yes.

9 Q So, why is it in the form it is today?

10 A Because I unwrapped every single little wax envelope
11 and dumped the powder out and did a presumptive test on
12 them.

13 Q Okay. And then you do the confirmatory test?

14 A Yes.

15 Q And then you weigh the substance?

16 A Yes.

17 Q And, in your expert opinion, what was the weight of
18 this substance?

19 A 14.53 grams.

20 SOLICITOR HUNTER: Okay. Your Honor, at this time the
21 State would offer State's Exhibit 3 in evidence.

22 THE COURT: Any objection?

23 MR. ROBINSON: No objection, Your Honor.

24 THE COURT: Be admitted without objection.

25 (WHEREUPON, State's Exhibit No. 3 was received into

B.J. Tillinghess - Direct examination
by Solicitor Hunter

1 THE COURT: Cross-examination.

2 MR. ROBINSON: I have no questions of the witness, Your
3 Honor.

4 THE COURT: May this witness be excused?

5 MR. ROBINSON: Yes, sir.

6 SOLICITOR HUNTER: State agrees.

7 THE COURT: Thank you, ma'am. You may be excused.

8 SOLICITOR HUNTER: State would B.J. Tillinghess.

9 B.J. TILLINGHESS, being first duly
10 sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY SOLICITOR HUNTER:

13 Q Can you state your name for the record?

14 A William Tillinghess.

15 Q And briefly go over your law enforcement career.

16 A I worked for the Sheriff's Office since March 3rd,
17 2008.

18 Q Okay. And how are you currently assigned?

19 A I'm assigned to the narcotic's unit for the Spartanburg
20 County Sheriff's Office.

21 Q And where were you assigned on July 17th, 2012?

22 A To the narcotic's unit with Spartanburg County
23 Sheriff's Office.

24 Q And did you have a chance to work with an undercover
25 buy that day?

B.J. Tillinghess - Direct examination
by Solicitor Hunter

- 1 A Yes, sir, I did.
- 2 Q Okay. Where were you stationed?
- 3 A I was in the Burger King parking lot right there at the
- 4 intersection of Highway 9 and I believe that's Candlenut.
- 5 Q And what county?
- 6 A Spartanburg.
- 7 Q Okay. Did you have a camera with you that day?
- 8 A Yes, sir, I did.
- 9 Q And State's Exhibits 2 is already been entered in
- 10 evidence, but you recognize this video?
- 11 A It appears to be the video of the recording that we
- 12 made that day.
- 13 Q Okay. Did you actually make a recording?
- 14 A Yes, sir, I did.
- 15 Q Okay. And what did you do with that recording?
- 16 A I burnt a copy of it to a disk and it was placed in the
- 17 case file.
- 18 Q And have you reviewed the recording on that disk?
- 19 A Yes, sir.
- 20 Q Does it appear to fairly and accurately depict what you
- 21 recorded that day?
- 22 A Yes, sir, it does.
- 23 Q And with what you saw that day?
- 24 A Yes, sir.
- 25 Q Okay.

B.J. Tillinghess - Direct examination
by Solicitor Hunter

1 (WHEREUPON, a portion of the video was played for the
2 jury at this time.)

3 Q while the video is playing, what are you showing right
4 there?

5 A That vehicle is the vehicle that the informant drove to
6 the location.

7 Q The grayish color---

8 A Yes, sir.

9 Q ---car?

10 A The gray I believe it's a Chevy.

11 Q What car just -- what car just came into view?

12 A The SUV that comes into view is the vehicle that we
13 were watching for to conduct the transaction.

14 Q It appears that the door is opening?

15 A Yes, sir.

16 Q Okay. How long did they sit there before they opened
17 the door?

18 A A few seconds.

19 (WHEREUPON, a portion of the video was played for the
20 jury at this time.)

21 Q Okay. Can you identify the person in the jersey?

22 A He was the driver of the vehicle.

23 Q Is he in the courtroom today?

24 A Yes, sir, he is.

25 Q Where is he?

B.J. Tillinghess - Direct examination
by Solicitor Hunter

1 A He's sitting -- he's the defendant.

2 (WHEREUPON, a portion of the video was played for the
3 jury at this time.)

4 Q Okay. Based on your recollection when he first walked
5 out of the store, what does he appear to be doing?

6 A He appears to be looking around the parking lot.

7 Q Okay. And then what does he do?

8 A He walks towards the vehicles and it appeared that he
9 was speaking to the informant once he reaches the vehicles.

10 Q At this point is he the only person in that Pathfinder
11 outside the vehicle?

12 A Yes, sir, it appears so.

13 Q Okay. And the informant's still sitting there?

14 A Yes, sir.

15 Q What does he appear to be doing?

16 A The informant or --?

17 Q No, Mr. Garvin.

18 A Mr. Garvin appears to be pumping fuel into the vehicle.

19 Q But Mr. Perez is in the front passenger seat?

20 A Yes, sir.

21 Q Please answer any questions Mr. Robinson may have for
22 you.

23 THE COURT: Cross-examination.

24 MR. ROBINSON: Please the Court.

25 CROSS-EXAMINATION

B.J. Tillinghess - Cross-examination
by Mr. Robinson

1 BY MR. ROBINSON:

2 Q So what you see hear is Mr. Garvin pumping gas and
3 going into the QuikTrip and you see him speaking to this
4 informant for about say five seconds or so.

5 would you agree with that?

6 A Yes, sir.

7 Q But you don't know what they were talking about, do
8 you?

9 A From where I was I do not.

10 Q So, you don't know whether they were talking about the
11 weather, the Philadelphia Eagles football team, or whether
12 it was a nice day?

13 You have no idea what they said, do you?

14 A No, sir, I do not.

15 Q That's all I have. Thank you.

16 THE COURT: Redirect.

17 SOLICITOR HUNTER: May this witness be excused?

18 THE COURT: May this officer be excused?

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

20 THE COURT: Thank you. You're excused.

21 SOLICITOR HUNTER: Your Honor, the State would call
22 Roger Luther, Luther.

23 THE COURT: Get the lights back on please, sir.

24 ROGER LUTHER, being first duly
25 sworn, testified as follows:

Roger Luther - Direct examination
by Solicitor Hunter

1 DIRECT EXAMINATION

2 BY SOLICITOR HUNTER:

3 Q Can you state your name for the record?

4 A It's Roger Luther.

5 Q And how long have you been with the Sheriff's office?

6 A I been in law enforcement 25 years. Twenty years with
7 the Sheriff's office.

8 Q Okay. And how were you assigned on July 7th, 2012?

9 A Sergeant, investigator, narcotic's unit.

10 Q Did you happen to be involved in an undercover buy that
11 day?

12 A I was.

13 Q Okay. Where were you positioned?

14 A Across the street from the incident location. Set up
15 for stationary surveillance undercover.

16 Q Who were you in the vehicle with?

17 A Investigator Tillinghess.

18 Q Were you taking a video at the same time he was?

19 A I was.

20 Q Okay. What did you do with that video?

21 A I -- once -- I, I retrieved it off the camera or on the
22 disk and turned it over to the case agent.

23 Q Have you been able to review the video?

24 A I have.

25 Q I show you what's been marked State's Exhibit 2.

Roger Luther - Direct examination
by Solicitor Hunter

1 Do you recognize this?

2 A Yes, sir.

3 Q Were you able to review the video on that disk?

4 A Yes, sir.

5 Q Is that the same video that you took that day?

6 A It is.

7 Q Does it fairly and accurately depict the video as you
8 remember it---

9 A Yes, sir.

10 Q ---the scene that day?

11 Okay.

12 THE COURT: Are you gonna play the video or---

13 SOLICITOR HUNTER: Yes, sir, Your Honor.

14 May we publish it?

15 THE COURT: Yes, sir.

16 SOLICITOR HUNTER: This, this will be the last video
17 for the Court's notice.

18 (WHEREUPON, a portion of the video was played for the
19 jury at this time.)

20 Q Mr. Luther, Mr. Tillinghess was focused on Mr. Garvin.

21 Where were you focused this day?

22 A I maintained my camera on the vehicle pretty much the
23 whole time.

24 Q And what time of day did this occur?

25 A 3:49 as indicated by my dash clock.

Roger Luther - Direct examination
by Solicitor Hunter

1 Q where is the informant's vehicle?

2 A It's at the gas pumps. I should be zooming in there.

3 (WHEREUPON, a portion of the video was played for the
4 jury at this time.)

5 Q what did you observe right there?

6 A A passenger in the target vehicle had got out of the
7 passenger side and approached the confidential informant in
8 this case.

9 Q How does he appear before the informant's car?

10 A I'm not sure what you -- I don't understand.

11 Q what does he do when he comes up to the informant's
12 car?

13 A He eventually was sit down inside the informant's car.
14 (WHEREUPON, a portion of the video was played for the
15 jury at this time.)

16 Q who just came up to the vehicle?

17 A It's gonna be the driver of the vehicle, the suspect
18 vehicle.

19 Q Is he located in the courtroom?

20 A He is.

21 Q where is he?

22 A Sitting right there.

23 Q Describe where he's --.

24 A Sitting next to -- white shirt with the glasses.

25 Q Is it the defendant?

Roger Luther - Cross-examination
by Mr. Robinson

1 A Yes, sir.

2 Q Please answer any questions Mr. Robinson may have for
3 you.

4 THE COURT: Cross-examination.

5 MR. ROBINSON: Please the Court.

6 CROSS-EXAMINATION

7 BY MR. ROBINSON:

8 Q Officer Luther, you didn't hear this conversation or
9 anything that was going on between when Mr. Garvin stopped
10 by that car, did you?

11 A No, sir.

12 Q Okay. So, would you agree with me though that when
13 Mr., when the long haired fellow with the dreads on went
14 into the vehicle, Mr. Garvin has already gone into the
15 store, isn't that right?

16 A Mr. Garvin had went away towards the store. That's why
17 he, I had Investigator Tillinghess track him with his video.

18 Q Yes, sir.

19 And -- right. You saw that -- you saw in that video,
20 the second he took -- that when Mr. Garvin came up to the
21 car, at that point Mr., the, Mr. Perez, the person in the
22 long dreads, got out of the car and then continued to go, to
23 go at that point, isn't that correct?

24 A Yes, sir, they got out of the vehicle and went back to
25 the, their vehicle.

Roger Luther - Cross-examination
by Mr. Robinson

1 Q Okay. So, it could be, it could be just -- it could be
2 that, that he was just getting in cause it was taking too
3 long and he wanted to get back on the road?

4 It could of been that as well, couldn't it?

5 A I can't say either way cause I have no monitoring
6 capability as far as what was being said inside the vehicle.

7 Q Thank you.

8 THE COURT: Redirect?

9 SOLICITOR HUNTER: May this witness be excused, Your
10 Honor?

11 THE COURT: Okay.

12 MR. ROBINSON: No objection.

13 THE COURT: Thank you, sir. You may be excused.

14 SOLICITOR HUNTER: May we approach briefly just about
15 scheduling?

16 THE COURT: Yes, sir.

17 (WHEREUPON, a bench conference was held out of the
18 hearing of the jury at this time.)

19 THE COURT: All right. Mr. Foreman, I've been
20 scheduling with the attorneys just so we can keep the
21 logistics going. What I'm gonna do now is call a lunch
22 break and let you go to lunch on your own. We'll get you
23 back in the jury room no later than 1:45, and then we'll
24 resume testimony at that point in the case.

25 Okay. I'll remind you not to speak to anyone or

David Pait - Direct examination
by Solicitor Hunter

1 Sheriff's Office as well as SLED, South Carolina Law
2 Enforcement Division.

3 Q Was an informant involved in that case?

4 A Yes, he was.

5 Q And at the time whose informant was he?

6 A At the time he was an ATF informant.

7 Q Okay. Did he receive any payment for the deal that he
8 made that day?

9 A Yes, he received \$300 for his help that day.

10 Q And who did he receive that from?

11 A He received it from me.

12 Q Okay. On that day, explain where you were before the
13 deal.

14 A Before the deal we met at a prearranged location that
15 was discussed earlier in the, kind of the back end of the
16 cul-de-sac out of the way of most of the general public.

17 Q Okay. Where were you during --?

18 A During the deal?

19 Q -- the deal?

20 A During the deal I was riding with Investigator Hancock
21 and Lieutenant Cooper I believe.

22 Q Is that Hancock?

23 A Hancock, yes.

24 Q Okay. Did you observe what you believed the deal, to
25 be the deal?

David Pait - Direct examination
by Solicitor Hunter

1 A Yes, we were across the street, the same four lane
2 highway as he's described earlier in kind of another
3 convenience store that was just across the way.

4 Q Okay. And where -- did you follow the informant there?

5 A Yes.

6 Q Where did you follow the informant afterwards?

7 A We went back to a parking lot, which is Northern Tools
8 I believe, and that's where we met him after the deal.

9 Q Okay. Who provided the informant with the buy money?

10 A The buy money partially -- part of it came from AFT and
11 part of it came from the county. As far as who handed it to
12 him, I gave my portion over to Investigator Hancock, Hancock
13 and he, he provided it to the informant.

14 Q What was the total amount?

15 A \$4,200.

16 Q Okay. Did you ever receive that money back?

17 A Yes, at the conclusion of that day I received all the
18 money back.

19 Q Okay. After the buy, where did you go or -- excuse me.
20 After Northern Tool, where did you go?

21 A After -- I went to the, the Spartanburg County
22 Sheriff's Office.

23 Q And why did you go there?

24 A Both of the defendants had been arrested and that's
25 where they were taken and placed in interview rooms.

David Pait - Direct examination
by Solicitor Hunter

1 Q Okay. Are you familiar with what Miranda warnings are?

2 A Yes, sir.

3 Q And how are you familiar with them?

4 A That's a basic part of law enforcement. Through the
5 basic law enforcement academy I was taught what Miranda is
6 and have used it throughout my police career.

7 Q Where -- did you have an occasion to inform this
8 defendant of his Miranda warnings?

9 A Yes, I did.

10 Q And how was he advised of those?

11 A I carry a card in my wallet. I pulled it out and I
12 read it to him line-for-line.

13 Q Okay. Do you still have the card today?

14 A Yes, sir.

15 Q Can you state what warnings you gave him?

16 A Yes, sir, you have the right to remain silent.

17 Anything you say will be used against you in a Court of law.

18 You have the right to talk to a lawyer and to have him

19 present with you while you are being questioned. If you can

20 not afford to hire a lawyer one will be appointed to

21 represent you before any questioning if you wish. If you --

22 you can decide at anytime to exercise these rights and not

23 to answer questions or to make any statements.

24 There's also a waiver where I would ask do you

25 understand each of these rights as I have explained them to

David Pait - Direct examination
by Solicitor Hunter

1 you, and having these rights in mind do you wish to talk to
2 us now.

3 Q Okay. Where were you when this was done?

4 A In the Spartanburg County interview room.

5 Q Approximately what time?

6 A This would have been -- he was arrested just prior to
7 four o'clock. So, it was enough time for them to get him
8 down there, get him inside, and so I would say within about
9 an hour of that time or so.

10 Q Okay. Was anybody else present with you before you
11 advised him of his rights?

12 A Ashley -- special or Agent Ashley Asbill with SLED.

13 Q Okay. What type of room was he in?

14 A It's an interview room. Basically it's a, just it's a
15 room with a little table in the middle. He had a chair on
16 one side and we had two chairs on the other side.

17 Q Was anybody else present or in that room?

18 A No.

19 Q Does anybody else have access to that room?

20 A There was law enforcement that was outside that was
21 there for security.

22 Q Okay. Can you describe the defendant's physical
23 appearance when you read him his rights?

24 A Yes, he appeared that -- he just appeared to be normal.
25 He didn't appear to be under the influence of any type of

David Pait - Direct examination
by Solicitor Hunter

1 narcotics or medication. His, his speech was normal.

2 Q In your training and experience, do you know what
3 someone under the influence of drugs and alcohol looks like?

4 A Yes, sir, for about the past 19 years in law
5 enforcement I've dealt with many people under the influence
6 of narcotics and alcohol and he did not appear to be under
7 any of those influences.

8 Q Did it appear Mr. Garvin was under, under the
9 influence?

10 A No.

11 Q Okay. Did he appear to understand your questions while
12 you were reading those rights?

13 A Yes, sir.

14 Q Was his speech coherent?

15 A Yes, sir.

16 Q Did he ever ask for an attorney at that time?

17 A He didn't -- he did not ask for an attorney, no.

18 Q In any time of your talking with him did he ever ask
19 for an attorney?

20 A He did not.

21 Q Did he ever ask for his right to remain silent?

22 A He did not.

23 Q Did the defendant make a statement that day?

24 A Yes, he did.

25 Q And who did he make the statement to?

David Pait - Direct examination
by Solicitor Hunter

- 1 A Myself and Agent Asbill.
- 2 Q I show you what's been premarked State's Exhibit 1.
3 Do you recognize the item?
- 4 A I do.
- 5 Q How do you recognize that item?
- 6 A This is the statement that Agent Asbill took down and
7 Mr. Garvin signed.
- 8 Q Okay. Did you see him sign that statement?
- 9 A Yes, sir.
- 10 Q Okay. Was he in the room when that statement was
11 written down?
- 12 A Yes, sir.
- 13 Q Did you sign that statement as a witness?
- 14 A I don't believe so, no, sir.
- 15 Q Okay. Just to make sure, did he agree to answer
16 questions of y'all without an attorney present?
- 17 A That is correct.
- 18 Q Was he able to answer the questions coherently?
- 19 A Yes, he was.
- 20 Q Did y'all promise him anything to make the statements?
- 21 A No, sir, we only told him if he made statements we
22 would provide them to the solicitor's office.
- 23 Q Okay. No leniency?
- 24 A No, sir.
- 25 Q Did he appear under any duress?

David Pait - Direct examination
by Solicitor Hunter

- 1 A None other than the normal from being arrested.
- 2 Q Did you coerce him in anyway?
- 3 A No, sir.
- 4 Q Physically, mentally?
- 5 A No, sir.
- 6 Q All right. Please answer any questions Mr. Robinson
- 7 may have for you.
- 8 A Yes, sir.
- 9 THE COURT: Cross-examination.
- 10 MR. ROBINSON: Thank you.
- 11 CROSS-EXAMINATION
- 12 BY MR. ROBINSON:
- 13 Q Agent Pait, did you, did you bring the audio to the, to
- 14 the courtroom so the jury can hear?
- 15 A I'm sorry, which audio?
- 16 Q Did you bring the audio to the courtroom today to let
- 17 the jury listen to this interview you had with him?
- 18 A It was not taped.
- 19 Q It was not taped.
- 20 Okay. Did you bring the video today showing the jury
- 21 what took place at this interview room?
- 22 A No, sir, to my knowledge it was not taped, taped
- 23 either.
- 24 Q So, there's no video or audio to, to back up or
- 25 corroborate what you and the other officer said what Mr.

David Pait - Cross-examination
by Mr. Robinson

1 Garvin may of said, true?

2 A There's no video or, or audio.

3 Q Okay. So -- and you also didn't sign the statement as
4 a witness although you were a witness in this case, you were
5 a witness in this room?

6 A That's correct.

7 Q Okay. Okay. Was there any reason why there's no video
8 to tape this, this interview that you had?

9 A It's not our practice to tape audio or interviews.

10 Q Wouldn't that make it a little more -- wouldn't,
11 wouldn't -- don't you believe that it would make it better
12 to have it taped so it can be checked back on to see if it's
13 true and authentic?

14 A I believe there was myself and Agent Asbill were there.
15 That's -- I felt like that was good enough.

16 Q So, what the jury is to rely upon is no video and no
17 audio, just your testimony, and maybe other agents, other
18 person's testimony that this is what took place, correct?

19 A That's correct.

20 Q Okay. Thank you. That's all I have.

21 THE COURT: Redirect?

22 SOLICITOR HUNTER: Nothing, Your Honor.

23 THE COURT: Thank you, sir. You may step down.

24 SOLICITOR HUNTER: Your Honor, at this time the State
25 would call Ashley Asbill.

Ashley Asbill - Direct examination
by Solicitor Hunter

1 ASHLEY ASBILL, being first duly
2 sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY SOLICITOR HUNTER:

5 Q Would you please state your name for the record?

6 A It's Brunson, B-R-U-N-S-O-N, Ashley, A-S-H-L-E-Y, last
7 name Asbill, A-S-B-I-L-L.

8 Q And what name do you usually go by?

9 A Ashley.

10 Q How are you currently employed?

11 A I'm work for the State Law Enforcement Division.

12 Q All right. How long have you been in law enforcement?

13 A I been in law enforcement going on my 29th year.

14 Q Okay. Can you go over your experience and training for
15 law enforcement those 29 years?

16 A I began my law enforcement career at the City of
17 Clinton as a patrol officer. I worked there for six years.
18 Got a job with the South Carolina ABC Commission. I've
19 worked there for three years, and then the ABC Commission
20 was abolished and all enforcement people were transferred
21 over to the State Law Enforcement Division.

22 Q How long have you been with the State Law Enforcement
23 Division?

24 A About 20 years.

25 Q Okay. what are your duties at the State Law

Ashley Asbill - Direct examination
by Solicitor Hunter

1 Enforcement Division?

2 A I'm assigned to the narcotics, vice, alcohol unit.

3 Q Okay. And were you so assigned on July 17th, 2012?

4 A I was.

5 Q Okay.

6 A And also to the ATF task, violent crimes task force.

7 Q Okay. And do you have an opportunity on that date to
8 investigate any distribution of heroin?

9 A I did.

10 Q Okay. Prior to the buy going down, where were you
11 located?

12 A I was with Sergeant Ferris at the Raceway Gas Station,
13 which is across the street from the QuikTrip.

14 Q Okay. All right. Did you observe Mr. Garvin that day?

15 A I did.

16 Q Okay. Did you have a chance to speak with Mr. Garvin
17 that day?

18 A I, I did.

19 Q Okay. Approximately what time did the buy occur?

20 A It was around 4:30 maybe or quarter till 5:00,
21 somewhere in that time frame.

22 Q Would four o'clock sound about right?

23 A It could be, yeah.

24 Q Okay.

25 A I don't know the exact time.

Ashley Asbill - Direct examination
by Solicitor Hunter

1 Q After the buy, where did you go?

2 A I went to the Spartanburg Sheriff's Office.

3 Q And why did you go to the Sheriff's Office?

4 A We went there to, to interview the, the two persons
5 that were taken into custody.

6 Q Okay. Do you, do you know what Miranda warnings are?

7 A I do.

8 Q Okay. Did you give anybody Miranda warnings that day?

9 A I did not.

10 Q Okay. Did you observe anybody receiving Miranda
11 warnings?

12 A I did.

13 Q And did you observe Mr. Garvin receiving his Miranda
14 warnings?

15 A I did.

16 Q And who gave those warnings to him?

17 A Agent Pait with the ATF.

18 Q Were you in the room with him?

19 A I was.

20 Q Who else was in the room?

21 A I believe we were the only two.

22 Q Other than Mr. Garvin?

23 A That's correct.

24 Q Okay. Can you briefly describe Mr. Garvin's physical
25 appearance in that room?

Ashley Asbill - Direct examination
by Solicitor Hunter

- 1 A He was nervous.
- 2 Q Is that common, in your training and experience, in
3 dealing with someone who's been arrested?
- 4 A It is.
- 5 Q Okay. Have you had the training and experience to deal
6 with people under the influence of drugs and alcohol?
- 7 A Yes, I have.
- 8 Q Did it appear that Mr. Garvin was under the influence
9 of any drugs or alcohol at the time?
- 10 A No, he wasn't.
- 11 Q Okay. Did he appear to understand the rights as read
12 to him by Agent Pait?
- 13 A He did.
- 14 Q When speaking with y'all, was his speech coherent?
- 15 A Yes, sir.
- 16 Q Did it appear that he knew how to read and write?
- 17 A He did.
- 18 Q Did he ever ask for an attorney?
- 19 A He did not.
- 20 Q Did he ever invoke his right to remain silent?
- 21 A He did not.
- 22 Q When speaking to him, did you ever promise him any
23 leniency?
- 24 A No, I did not.
- 25 Q Was the atmosphere in the interview room under duress?

Ashley Asbill - Direct examination
by Solicitor Hunter

1 Was Mr. Garvin under duress?

2 A No, he wasn't.

3 Q Did you physically or mentally coerce him to making
4 this statement?

5 A I did not.

6 Q I want to show you what's been premarked State's
7 Exhibit 2.

8 Do you recognize that item?

9 A I do, yes.

10 Q How do you recognize that item?

11 A This was the statement given by John Garvin that I
12 wrote and also signed.

13 Q Why would you write the statement?

14 A Sometimes the individuals are nervous. They prefer not
15 to write it. You know, they indicate -- I've done just as
16 many where I've written them out as I have letting somebody
17 else write them out.

18 Q And when -- did you ask him questions about the deal?

19 A I did.

20 Q What was this -- what is this voluntary statement in
21 response to?

22 A This statement is in response to the deal in which he
23 was arrested for.

24 Q On July 17th, 2012?

25 A On July 17th, yes, sir.

Ashley Asbill - Direct examination
by Solicitor Hunter

1 Q Did he sign this statement?

2 A He did.

3 Q Did you sign this statement?

4 A I did.

5 Q Was he given a chance to read over this statement
6 before signing it?

7 A He was.

8 Q Did he appear to understand what was written on the
9 statement?

10 A In my view he was, yes, sir.

11 SOLICITOR HUNTER: Your Honor, at this time the State
12 would offer State's Exhibit 1 into evidence.

13 THE COURT: Objections?

14 MR. ROBINSON: Same objections before, Your Honor.

15 THE COURT: All right. Admitted with objections.

16 / (WHEREUPON, State's Exhibit No. 1 was received into
17 evidence at this time.)

18 Q All right. Can you go over the top part of the
19 voluntary statement, what, what it says, what you've written
20 down.

21 A It's a statement of and it has a blank to write in the
22 name. It's John D. Garvin. The next block is his age and
23 41. The next block is the date, 7/17/2012.

24 Q Okay. And then the line below that?

25 A That next one is address. -- excuse me.

Ashley Asbill - Direct examination
by Solicitor Hunter

1 A All of this was done in Henderson, North Carolina.

2 Q So, it does say Henderson, North Carolina?

3 A Yes, I'm sorry.

4 Q Okay.

5 A It does.

6 Q And after that, what's at the bottom of this?

7 A It's I have read this statement consisting of one page
8 and I swear that the statement that I have just given is the
9 truth, the whole truth, and nothing but the truth so help me
10 God. I also swear this statement was given freely and
11 voluntarily, and I have received a copy of my statement.
12 This statement was completed at 5:49PM on the 17th of
13 July, 2012. It's witnessed line signature, my signature,
14 and a line for the signature giving voluntary statement and
15 it is signed John Garvin.

16 Q Okay. Did you observe this defendant sign this piece
17 of paper?

18 A I did.

19 Q And it was after he had a chance to read over that?

20 A Yes, sir.

21 Q And that it was freely and voluntarily given?

22 A Yes, sir.

23 Q And that's the truth, the whole truth, and nothing but
24 the truth?

25 A Yes, sir.

Ashley Asbill - Direct examination
by Solicitor Hunter

1 Q Please answer any questions Mr. Robinson may have for
2 you.

3 THE COURT: Cross-examination, Mr. Robinson.

4 CROSS-EXAMINATION

5 BY MR. ROBINSON:

6 Q Officer, when this statement was given, I want you to
7 go through something with me.

8 The, the -- you say that he could read and write,
9 right?

10 A Yes, sir.

11 Q Okay. He's coherent?

12 A Yes, sir.

13 Q He's not drunk?

14 A Didn't appear to be.

15 Q Okay. He's not, he's not under duress?

16 A No, sir.

17 Q Okay. But you write the statement and he supposedly,
18 and he allegedly signs it.

19 why in the world would he write this, write -- why
20 would you type a statement when he is perfectly able to do
21 that?

22 He's not drunk. He's coherent. He reads and writes.
23 what in the world -- why would you have to write this
24 statement?

25 A Many times they're nervous, very nervous. They don't

Ashley Asbill - Cross-examination
by Mr. Robinson

1 want to write anything, and I didn't type it. It's
2 handwritten. That's my own handwriting.

3 Q But no one -- it wasn't -- this was not preserved by
4 audio, correct?

5 A That's correct.

6 Q It wasn't preserved by video?

7 A That's correct.

8 Q And looking at that exhibit, besides you, no one else
9 witnessed it, did they?

10 A No, sir.

11 Q So, you're the only one -- you, you got the statement,
12 you wrote it out, you wrote it out, and no one witnessed
13 that on that statement, did they?

14 A On this statement?

15 Q Yes.

16 A No, sir.

17 Q Okay. Thank you.

18 THE COURT: Redirect?

19 SOLICITOR HUNTER: Briefly, Your Honor.

20 REDIRECT EXAMINATION

21 BY SOLICITOR HUNTER:

22 Q There's not a witness signature, correct, for another
23 person?

24 A There's not.

25 Q Does it -- on this voluntary statement -- who provides

Ashley Asbill - Redirect examination
by Solicitor Hunter

1 the actual copy of the voluntary statement before anything
2 is written down?

3 whose statement is that?

4 A It's -- this is a -- I'm, I'm assuming it came from
5 Spartanburg Sheriff's Office.

6 Q Okay. Is this---

7 A It's not one of our forms.

8 Q So, this is a form?

9 A Yes, sir, it is.

10 Q Is there a line for anybody else to witness the
11 statement?

12 A There's not.

13 Q Was anybody else in there with you?

14 A Yes.

15 Q Did they also see Mr. Garvin sign his name to this
16 statement?

17 A Yes.

18 Q Okay. You said it's many times you write the
19 statement.

20 Approximately how many times have you written a
21 statement?

22 A I can't give you a number. I don't know. I have
23 written as many as I've watched other people write.

24 Q So, it's pretty normal in your course of business?

25 A Yeah, sure. Yes, sir.

John Garvin - Direct examination
by Mr. Robinson

1 MR. ROBINSON: Yes, sir, Your Honor.

2 THE COURT: Call your first witness please.

3 MR. ROBINSON: Yes, sir, Judge.

4 Your Honor, we would call Mr. John Garvin to the stand.

5 Mr. Garvin, please come up.

6 JOHN GARVIN, being first duly sworn,
7 testified as follows:

8 MR. ROBINSON: Please the Court?

9 THE COURT: Yes, sir.

10 DIRECT EXAMINATION

11 BY MR. ROBINSON:

12 Q John, how old are you?

13 A Forty-two.

14 Q Forty-two.

15 You got any kids?

16 A Two.

17 Q Two kids.

18 How far did you go in school?

19 A Eighth grade, but I received my GED in '97, and I had a
20 year of college.

21 Q Okay. Read and write?

22 A Yes.

23 Q All right. John, let me, let me take you back to what
24 we're here for today.

25 All right. Now, let's talk about the, the tape that we

John Garvin - Direct examination
by Mr. Robinson

1 saw a few moments ago. The jury saw the tape of the gas
2 station.

3 Do you recall that?

4 Did you watch that?

5 A Yes.

6 Q And that was you wearing that, that Eagles---

7 A Philadelphia Eagles.

8 Q That was you?

9 A Yes.

10 Q And tell me what you did at that gas station.

11 what, what was, was going on?

12 A Pulled up, got out the car, went into the QT Gas
13 Station.

14 Q What did you buy?

15 A Gas.

16 Q Gas.

17 Okay.

18 A Paid for the gas and then went back out to the car and
19 then pumped gas.

20 Q Okay. Now, it showed that -- you, you saw the video
21 just like the jury did.

22 It showed you stopping by the car of, of the informant?

23 A Yes.

24 Q Okay. What was that -- what happened?

25 A I was telling him -- well, Perez to come on cause I had

John Garvin - Direct examination
by Mr. Robinson

1 to go.

2 Q Okay. So, the person you spoke to is Perez and not the
3 informant, is that correct?

4 A No, I wasn't talking to him.

5 Q Okay. So, the guy -- so, you went and talked to,
6 talked to Perez and went back to the car.

7 Did you pump gas after that?

8 A Yes.

9 Q Okay. And did you leave after that?

10 A Yes.

11 Q Okay. Now let's go to the, to the statement that is
12 allegedly written by you. This is State's No. 1. Let you
13 take a look at this.

14 Is that your handwriting?

15 Is that your handwriting?

16 A Where, right here?

17 Q In the body of that statement, is that your
18 handwriting?

19 A Only my signature.

20 Q Okay. Let's talk about what happened at this -- when
21 they -- when the officers had you in that room, what
22 happened?

23 A When I was in the room the officer came to me, the ATF
24 officer, he was like give me something. I know you got
25 something. Tell me what you know and he was like if you

John Garvin - Direct examination
by Mr. Robinson

1 tell me what you know -- you're facing 25 years. You -- if
2 you don't, we gonna make sure you get time for this. He was
3 like if you, if you let me know -- if you work with us, if
4 you work with us, we'll make sure it go easy on you.

5 Q Okay. What was your response?

6 A I told him I didn't know anything about what happened
7 with what was going on. I told him all I did was bring him
8 from North Carolina to South Carolina.

9 Q Uh-huh. (Affirmative).

10 A And he was like oh, that's all you know, that's all it
11 is. I was like well, I know something about some other
12 people, and, and everything about, you know, like up north
13 in Jersey and that's about it.

14 Q Okay. Did -- now, your signature is on that, what's
15 been marked State's 1, is that correct?

16 A Yes.

17 Q How did your signature wind up there with the body of
18 that statement there like it is?

19 How did that happen?

20 A When I finished giving, giving my statement,
21 Mr. Asbill, he like had -- cause he had a bunch of papers in
22 his hand, and then he like flipped the papers up, and then
23 he was just like, like this, and then he was like here, you
24 want to read it and then sign. So then I looked at the
25 statement, I read it, saw that, you know, what I had said,

John Garvin - Direct examination
by Mr. Robinson

1 and then I signed it.

2 Q Was what you read to him or said to him what was
3 written on that, what was written on that statement?

4 A This, this right here is not what I said. Because, for
5 one, I didn't, I don't know this guy.

6 Q Okay.

7 A This guy right here as Fred.

8 Q Okay.

9 A I don't know him.

10 Q Okay.

11 A I never dealt with him before.

12 Q Okay.

13 A And then he said me and Perez was roommates. We were
14 not roommates. Then it says I lived in Henderson. I didn't
15 live in Henderson.

16 Q Okay. So, tell me how -- so, how did, how did that
17 come about?

18 You, you just testified that you looked at it, and then
19 you signed it.

20 Is that what you just said?

21 A Yes.

22 Q Is that what you -- is that what you looked at or not
23 what you looked at?

24 A That's not what I, that's not what I looked at. That's
25 not what I signed. I, I read my statement and what I saw

John Garvin - Direct examination
by Mr. Robinson

1 and what I thought I signed, that's what I thought I was
2 signing.

3 Q Okay. Okay. Now, you heard the officer testify that
4 he let you read it over and then okay it.

5 what happened then?

6 what did he have you read over?

7 A The statement that I made.

8 Q Not -- is it the statement that's in this, in state's 1
9 that he wrote?

10 A No, hu huh. (Negative).

11 No.

12 Q Okay. Okay. Okay. So, you said that he was, that he
13 was shuffling papers -- is that what you said?

14 A Yes.

15 Q Tell me -- why don't you describe how that took, how
16 that shuffling papers.

17 what do you mean by shuffling?

18 A well, he was taking notes from a statement that I was
19 giving him about something in Jersey, and then the
20 officer---

21 Q Okay.

22 A ---the ATF officer was asking me about some guy in
23 Jersey that I went to school with and did I know him.

24 Q Right.

25 A I told him I know him. But I don't know, you know,

John Garvin - Direct examination
by Mr. Robinson

1 how -- like what he basically does.

2 Q Right.

3 A Because we just went to school, and I know he dabbled
4 and did what he did from then on, and that's it.

5 Q Right.

6 A But I really -- I told him I ain't really know nothing
7 about him.

8 Q Okay. Now -- and you said that there were several
9 different papers there, that on the desk with your
10 statement, is that right?

11 A Yes.

12 Q Okay. And how did you sign that without looking at
13 that part of it, looking at the body of what the agent
14 wrote?

15 A How did I sign it?

16 Q How did you sign it?

17 How did you sign that statement and not knowing what
18 the agent wrote?

19 If that, if that's not true, how did you sign the
20 statement?

21 A Well, I can only speculate how he did it. I can't
22 really go into like how, how he really was. He had the
23 papers in his hand flipping them around.

24 Q Right.

25 A And like I said, he -- cause he had the papers flipping

John Garvin - Direct examination
by Mr. Robinson

1 them around in his hand---

2 Q Where---

3 A ---and I signed the statement.

4 Q Would it assist you to -- would it assist you if I gave
5 you some papers to demonstrate this?

6 A Yes.

7 MR. ROBINSON: Okay. Can I approach the witness, Your
8 Honor?

9 THE COURT: Yes, sir.

10 Q Tell me -- let me give you a number of -- these are
11 blank sheets of paper. They're approximately four of these.
12 Four blank sheets of paper.

13 why don't you show to this jury how this all worked
14 out?

15 A All right. He was writing this statement right here,
16 the statement that I was giving him --

17 Q Right.

18 A -- and I was telling him, and then he asked me about
19 the other guy, and I was telling him about the other guy---

20 Q Right.

21 A ---that he was asking me about.

22 Q Right.

23 A And then he was like all right. Cause he took notes on
24 that right there with the other guy. So then he took the
25 other paper and shuffled it over, shuffled it like over.

John Garvin - Direct examination
by Mr. Robinson

1 another paper or whatever, and then the statement that I
2 said I guess he took it and put it on top, and then he took
3 the papers like this, and then he was like hey, you want to
4 read it and go over it, and then we did it like that.

5 Q When you signed off on that, did you, did you see the
6 part that he wrote in State's No. 1?

7 A Yes.

8 Q Okay. All right.

9 A Oh, state what he wrote?

10 Q Yes.

11 A What, right here?

12 Q Uh-huh. (Affirmative).

13 A Did I see this part?

14 Q Uh-huh. (Affirmative).

15 Yes.

16 A This is what I saw.

17 Q Okay.

18 A This is not -- this is not what I saw.

19 Q Okay. So, when you put your signature on that form --?

20 A It was like signing a blank check.

21 Q Okay. Okay. But when he asked you to review it, did
22 you see his statement, his, what he wrote on there on that?

23 A I saw the statement that I gave him.

24 Q Okay.

25 A And that's it.

John Garvin - Direct examination
by Mr. Robinson

1 Q Okay.

2 A But this statement right here wasn't the statement that
3 I gave him.

4 Q Okay. All right. So, the statement's that written,
5 although that's your signature, that's not your statement.

6 Is that what your testimony is?

7 A Yes.

8 Q Okay. Now, I want to go back as far as -- now, you
9 have a conviction from 2007, isn't that correct?

10 A Yes.

11 Q Okay. Did you have any contact, either by phone or
12 talking to this informant that was brought into Court today,
13 did you ever talk to him on the phone prior to this thing
14 going down?

15 A The only time I talked to him was coming from North
16 Carolina to South Carolina, and that was to get directions
17 to where he was at.

18 Q Okay.

19 A And that's it.

20 Q That's it.

21 Did you ever---

22 A That's the only time I talked to him.

23 Q Had you ever met him before?

24 A Never met him before.

25 Q Okay. If you were on the street, could you identify

John Garvin - Direct examination
by Mr. Robinson

1 him before this time?

2 A Don't even know him.

3 Q All right. Okay. That's all the questions I have.

4 Answer any questions the prosecution has for you.

5 THE COURT: Cross-examination.

6 SOLICITOR HUNTER: Your Honor, I believe we need to
7 deal with something outside the presence of the jury.

8 THE COURT: Okay. Mr. Foreman, would you take your
9 jury to the jury room?

10 FOREMAN: Yes, Your Honor.

11 (WHEREUPON, the following takes place outside the
12 presence of the jury.)

13 THE COURT: You want to bring in the conviction?

14 SOLICITOR HUNTER: No, not the conviction, Your Honor.

15 He brought it out -- Mr. Garvin stated he'd never met the
16 informant before. That previous buy we have two pictures
17 that the informant will testify to of Mr. Garvin July 7th,
18 2012, where he met and sold heroin to him. I believe, since
19 he's opened the door, under Lyle, be a common intent or
20 plan. Even though it's not a conviction, we have to show
21 clear and convincing evidence that that prior bad act will
22 come in. These are pretty clear and convincing right here.

23 THE COURT: Pass those forward please.

24 SOLICITOR HUNTER: And I believe Mr. Robinson does have
25 copies of those.

1 MR. ROBINSON: I do. I do.

2 THE COURT: And what are these suppose to show?

3 SOLICITOR HUNTER: That is from the informant's video
4 on July 7th, 2012, distribution and we're not gonna go
5 into it before -- he just stated on the stand he had never
6 met the informant before.

7 THE COURT: Mr. Robinson.

8 MR. ROBINSON: Your Honor, I think that he can have the
9 informant, on reply, say he's met him before. But as far as
10 going into the whole case in chief from ten days before
11 this, I think that is inappropriate.

12 THE COURT: well, here's the concern I have. I agree,
13 you know, if he denies it, if you have proof, that's not the
14 truth, you have a right to go into it. Neither of these
15 photographs places the informant in the picture that I can
16 recall. I don't think -- this looks like Mr. Perez and Mr.
17 Garvin or Mr. Garvin in this picture, is that correct?

18 SOLICITOR HUNTER: Correct. The foundation would be
19 that the informant is actually holding the camera as he's
20 taking those pictures.

21 THE COURT: Right. Let's, let's do this. I'm gonna
22 let you question him about it. I don't want you to
23 introduce these pictures on cross-examination. I'm gonna
24 let you bring back here your C.I. in reply if you want to---

25 SOLICITOR HUNTER: Okay.

1 THE COURT: ---and you can then have him testify to
2 them and then we'll work on any proper charges to the jury
3 if you believe that's necessary before these come in if
4 they're authenticated.

5 THE COURT: Okay. Fair enough?

6 SOLICITOR HUNTER: Thank you, Your Honor.

7 THE COURT: So, so we're clear on the record --

8 SOLICITOR HUNTER: And---

9 THE COURT: ---I'm not prohibiting you from
10 cross-examining him about that matter.

11 SOLICITOR HUNTER: Exactly.

12 THE COURT: I just don't want you to introduce those at
13 this time.

14 SOLICITOR HUNTER: I wasn't planning on introducing
15 those for this purpose.

16 THE COURT: All right. Thank you, sir.

17 MR. ROBINSON: Your Honor, what -- is he gonna be
18 allowed to talk about the 7th, what happened on the 7th?

19 THE COURT: He's gonna be allowed to cross-examine him
20 as to whether or not he has any knowledge of this other C.I.

21 MR. ROBINSON: Okay.

22 THE COURT: Okay. Before we get into the contents of
23 those pictures, the surrounding circumstances, then we're
24 gonna have to bring that back in reply.

25 MR. ROBINSON: Yes, sir, thank you.

1 THE COURT: Okay.

2 SOLICITOR HUNTER: I'll limit my questions to his
3 actual knowledge of meeting the informant.

4 THE COURT: Very good.

5 You ready to proceed, Mr. Hunter?

6 SOLICITOR HUNTER: Yes, Your Honor.

7 THE COURT: Mr. Robinson.

8 MR. ROBINSON: Yes, sir, Your Honor.

9 THE COURT: Bring the jury in.

10 (WHEREUPON, the following takes place within the
11 presence of the jury.)

12 THE COURT: All right. Mr. Hunter.

13 CROSS-EXAMINATION

14 BY SOLICITOR HUNTER:

15 Q Mr. Garvin, I want you to clear something up for us
16 real quick.

17 A Yes, sir.

18 Q You said you'd never met this informant before?

19 A Excuse me?

20 Q You said you'd never met him before?

21 A Yes, I said---

22 Q Mr. Jerman.

23 A Yes, I said that.

24 Q So, you'd never seen him in, in your life before?

25 A I've seen him previously before. I've seen him, but---

John Garvin - Cross-examination
by Solicitor Hunter

- 1 Q You've never spoken to him before?
- 2 A Spoken to him like as in how?
- 3 Q Have you ever talked to Fredrick Jerman before?
- 4 A As in how?
- 5 Q Face-to-face.
- 6 A As in how?
- 7 Q Face-to-face, have you ever spoken to him?
- 8 A I've never -- as in how though?
- 9 I've -- like I've seen---
- 10 Q Sir?
- 11 Sir?
- 12 A I've seen him previously before. But seeing him before
- 13 doesn't mean I've actually met him.
- 14 Q Have you ever talked to him, exchanged words?
- 15 A Over the phone.
- 16 Q Have you exchanged words face-to-face?
- 17 A When he asked for Perez.
- 18 Q So, you're saying you haven't spoken to him?
- 19 A Didn't I just tell you when he asked for Perez?
- 20 THE COURT: Just one second, Mr. Garvin.
- 21 WITNESS: Yes, sir.
- 22 THE COURT: Listen to the question asked and answer the
- 23 question.
- 24 WITNESS: Yes, sir.
- 25 THE COURT: If you need to explain it, explain your

John Garvin - Cross-examination
by Solicitor Hunter

1 answer. But you can not ask a question based on a question.

2 Okay, sir?

3 WITNESS: Uh-huh. (Affirmative).

4 Q Have you previously spoken to Fredrick Jerman
5 face-to-face?

6 A On the 7th.

7 Q You did.

8 Okay. So, when you've said I've never, never met him
9 before while you were just on the stand, that was a lie?

10 A It wasn't a lie.

11 Q When your attorney questioned you you said I have never
12 met him before.

13 Did you say that?

14 A Yes.

15 Q Okay. This statement in front of you, you said you
16 gave a statement about some other things you knew up in
17 Pennsylvania.

18 A Excuse me?

19 Q You said you gave a statement about other things you
20 knew up in Pennsylvania?

21 A Yes.

22 Q Not dealing with this incident?

23 A Yes.

24 Q Did you actually see him write that statement, Agent
25 Asbill?

John Garvin - Cross-examination
by Solicitor Hunter

1 A This statement right here?

2 Q Have you -- did you see him write it?

3 A No, I didn't see, I didn't see him write that right
4 there.

5 Q So, you're saying that an agent of 29 years experience,
6 two agents with over 50 years experience combined, made you
7 sign a statement you didn't read?

8 A I was coerced into signing that statement, and I've
9 read, I've read a statement, and the statement that I
10 thought is the statement that I signed.

11 Q So, you're saying that you didn't see that handwritten
12 statement by Agent Asbill?

13 A This is not the, this---

14 SOLICITOR HUNTER: May I approach the witness?

15 A This is not that statement that I signed.

16 SOLICITOR HUNTER: May I approach the witness, Your
17 Honor?

18 THE COURT: Yes, sir.

19 Q This portion right here, see which one I'm talking
20 about?

21 A Yes, sir.

22 Q Did you see him write that?

23 A No, I didn't see him write that.

24 Q Do you see this portion right here where he wrote this?
25 Did you see that?

John Garvin - Cross-examination
by Solicitor Hunter

- 1 A Did I see that?
- 2 Q Uh-huh. (Affirmative).
- 3 A No.
- 4 Q Is your name John Garvin?
- 5 A Yes.
- 6 Q And you're 41 years old?
- 7 A Yes.
- 8 Q Birthday?
- 9 A Well, 42 now.
- 10 Q At the time.
- 11 A Yes.
- 12 Q Birth, birthdate of , 1970?
- 13 A Yes.
- 14 Q And that is your signature?
- 15 A Yes, sir.
- 16 Q You did sign that?
- 17 A Yes.
- 18 Q So, it's your testimony here today that you didn't see
- 19 any of that?
- 20 A I didn't see that statement.
- 21 Q So, when they got on the stand they lied?
- 22 A When they got on the stand they said that I made that
- 23 statement right there. That statement I did not make.
- 24 Q So they lied?
- 25 A They misled that statement.

John Garvin - Cross-examination
by Solicitor Hunter

1 Q Okay. So, you didn't drive -- where do you -- where
2 did you live in 2012?

3 A 2012?

4 Q July.

5 A In North Carolina.

6 Q 2012.

7 A In North Carolina.

8 Q Okay. So, you didn't live at ,
9 Way, Savannah, Georgia?

10 A No.

11 Q You saw the video.

12 The tag had Georgia plates.

13 Is that your vehicle?

14 A Yes.

15 Q So, you reside in North Carolina, Georgia tag, Georgia
16 address?

17 A Say that again please.

18 Q You resided in North Carolina, but you had a Georgia
19 tag and a Georgia driver license?

20 A Cause I was in the process of trying to move to where
21 my brother was.

22 Q Okay. How did you know Mr. Perez?

23 A Through a mutual friend.

24 Q So, you -- how, how much did you know about Mr. Perez?

25 A Not very much.

John Garvin - Cross-examination.
by Solicitor Hunter

1 Q why did you drive him down there that day?

2 A Because I needed the money.

3 Q You needed the money, the money you were gonna get from
4 the drugs?

5 A No.

6 Q You -- where were you going?

7 A What do you mean where was I going?

8 Q It's a pretty simple question.

9 where were you going that day?

10 A To South Carolina.

11 Q To where?

12 A He asked me to take him from North Carolina to South
13 Carolina cause he didn't have a license.

14 Q You didn't know where you were going?

15 were you going to Spartanburg?

16 A He told me he was going to South Carolina. He needed a
17 ride to South Carolina.

18 Q were you going to Greenville?

19 A I don't know where. He just said take him to South
20 Carolina.

21 Q Just South Carolina.

22 You were just gonna drive down the road, figure out
23 where to stop?

24 A He told me he was going to South Carolina. I got the
25 directions from the guy.

Jonathan Perez - Direct examination
by Mr. Robinson

1 sworn, testified as follows:

2 MR. ROBINSON: Please the Court?

3 THE COURT: Yes, sir.

4 DIRECT EXAMINATION

5 BY MR. ROBINSON:

6 Q Jonathan, how old are you?

7 A Twenty-one years old.

8 Q And where are you currently housed?

9 A Tyger River Correctional Facility.

10 Q And you have been previously sentenced, is that
11 correct?

12 A Yes, sir.

13 Q You're serving a -- how long, how long is your
14 sentence?

15 A Ten years.

16 Q All right. Jonathan, you and I had a chance to meet a
17 few minutes ago, didn't we?

18 A Uh-huh. (Affirmative).

19 Q This is the first time I met you?

20 A Uh-huh. (Affirmative).

21 Q Okay. Did I promise you anything or offer you
22 anything---

23 A No.

24 Q ---in return for your testimony?

25 A No.

Jonathan Perez - Direct examination
by Mr. Robinson

1 Q Do you know when you come to Court you're suppose to
2 tell the truth?

3 You understand that, don't you?

4 A Yes.

5 Q Okay. Do you know Mr. John Garvin?

6 A Yes.

7 Q Okay. what is your relation to him?

8 A He's a friend, but he's like a family member.

9 Q Okay. Now, I want to take you back to 7/17/2012.

10 A Uh-huh. (Affirmative).

11 Q Tell me, tell the jury about that in terms of did John
12 Garvin have any involvement with this transaction?

13 A No.

14 Q Okay. what did he do?

15 what -- tell me what he did.

16 A I just called and asked him if he could drive me to a
17 friend.

18 Q Okay.

19 A I told him I'd give him a little bit of gas money.

20 Q Okay.

21 A And that's all he did.

22 Q Okay.

23 A He did not know my intentions of whatever I'm gonna do
24 at all.

25 Q Okay. Okay. Are you aware of a person by the last

Jonathan Perez - Direct examination
by Mr. Robinson

- 1 name of Jerman?
- 2 A Yes, sir.
- 3 Q And had you dealt with him before?
- 4 A Yes, sir.
- 5 Q Okay. Did John Garvin know him?
- 6 A No, sir.
- 7 Q Okay. Had he spoke to him on the phone though?
- 8 A Yes, sir, because Fred was telling me about the
- 9 directions, and I'm not really good with directions. So, I
- 10 had put John on the phone with the directions.
- 11 Q Okay. Is everything you're telling me the truth?
- 12 A Yes, sir.
- 13 Q Okay. Is there any -- is there any reward for you for
- 14 telling the truth, for---
- 15 A No.
- 16 Q ---giving me testimony in this case?
- 17 A No, sir.
- 18 Q Again, have I promised you anything?
- 19 A No.
- 20 Q Okay. All right. Now, you remember there was a -- the
- 21 stop at the gas station, the QuikTrip --
- 22 A Uh-huh. (Affirmative).
- 23 Q -- where I think John was driving the vehicle,
- 24 Pathfinder, I think it was, is that right?
- 25 A Yes, sir.

Jonathan Perez - Direct examination
by Mr. Robinson

1 Q Okay. And how did that work?

2 How did that transaction work out as, as far as did he
3 go into the QuikTrip?

4 A Yeah, he went to the store.

5 Q Okay. And what did you do?

6 A I got out of the vehicle and I met with Fredrick
7 Jerman.

8 Q Okay. And then what happened?

9 A It was a transaction and I got back in the car. He
10 finished gassing the car up and we were on our way.

11 Q Did he, at some point, come to the window to get you,
12 as far as to get you to come, to come, to go?

13 A Oh, oh, yeah, yeah, yeah, yeah.

14 Q Okay. Do you remember what he was wearing that day?

15 A I think a Philadelphia Eagles jersey.

16 Q Okay.

17 A Jersey.

18 Q Okay. And after he pumped gas, did y'all leave?

19 A Yes, sir.

20 Q Okay. Did he -- did John Garvin receive any money from
21 you from this transaction you did?

22 A Only gas money.

23 Q Gas money?

24 A Yeah.

25 Q Okay. Did he help you in anyway---

Jonathan Perez - Direct examination
by Mr. Robinson

1 A No.

2 Q ---in this transaction?

3 A No.

4 Q Okay. Did he participate in the transaction?

5 A No.

6 Q Okay. And, again, did Mr. Garvin have any knowledge of
7 this transaction?

8 A Hu huh. (Negative).

9 Q That's all I have. Answer any questions the solicitor
10 has please.

11 THE COURT: Cross-examination.

12 SOLICITOR HUNTER: May I approach the witness, Your
13 Honor?

14 THE COURT: Yes, sir.

15 CROSS-EXAMINATION

16 BY SOLICITOR HUNTER:

17 Q Mr. Perez?

18 A Yes, sir.

19 Q Do you recognize what's in front of you?

20 A Yes, sir.

21 Q Is that the heroin you sold to Mr. Jerman?

22 A Yes, sir.

23 Q Okay. And you've pled guilty to that charge, right?

24 A Yes, sir.

25 Q You're sitting in jail, right?

Jonathan Perez - Cross-examination
by Solicitor Perez

1 A Uh-huh. (Affirmative).

2 Q On December 17th, 2012, you pled guilty?

3 A Yes, sir.

4 Q Okay. Where did you get those drugs?

5 A I'm not gonna answer that question, sir.

6 Q You have to answer the question.

7 where did you get those drugs?

8 A Oh, from a person that I know.

9 Q Where did you get those drugs?

10 A In North Carolina.

11 Q Where in North Carolina?

12 A Why do I have to answer these questions?

13 Q What city?

14 A Why?

15 THE COURT: Just one second.

16 Mr. Foreman, would you take your jury back to your jury
17 room please?

18 FOREMAN: Yes, sir.

19 WITNESS: I'm sorry, Your Honor, if I caused a problem.

20 (WHEREUPON, the following takes place outside the
21 presence of the jury.)

22 THE COURT: All right. Mr. Perez, with regard to
23 anything involving, involving the pleas that you, the
24 charges that you pled guilty to, you do not have a Fifth
25 Amendment right.

Jonathan Perez - Cross-examination
by Solicitor Perez

- 1 Q Mr. Perez, where did you get those drugs?
- 2 A Lewisburg, North Carolina.
- 3 Q So, you got it in North Carolina.
- 4 How many grams did you buy?
- 5 A Probably around 20.
- 6 Q You bought 20 grams?
- 7 A (Witness nods affirmatively.)
- 8 Q Okay. That's not 20 grams of heroin though, is it?
- 9 A No.
- 10 Q All right. Did you mix it with anything?
- 11 A Sugar.
- 12 Q You mixed it with sugar.
- 13 Okay. Where did you do this mixing?
- 14 A My house.
- 15 Q Your house.
- 16 In North Carolina?
- 17 A Yes, sir.
- 18 Q Okay. How long have you known John Garvin?
- 19 A A couple of years.
- 20 Q A couple of years.
- 21 What do you call Mr. Garvin?
- 22 A An uncle.
- 23 Q Uncle?
- 24 A Yeah.
- 25 Q You call him Big Unc?

Jonathan Perez - Cross-examination
by Solicitor Perez

- 1 A (Witness nods affirmatively.)
2 Yes, sir.
3 Q You do call him Big Unc?
4 A Uh-huh. (Affirmative).
5 Q Okay. Where did you tell Mr. Garvin you were going
6 that day?
7 A To meet a friend.
8 Q Did you tell him what you were gonna do?
9 A No.
10 Q And you---
11 A I told him I wanted to go to a, the outlet in Gaffney,
12 South Carolina. I forgot what the outlet is called. I
13 think it's off 85 and I told him I wanted to meet a friend
14 also.
15 Q Okay. Did you tell him what you were meeting that
16 friend for?
17 A No.
18 Q Did you tell him you were going to get some money?
19 A No.
20 Q You didn't?
21 Did you give a statement to police?
22 A No.
23 Q You didn't give a statement to police?
24 A No, not at all.
25 Q Okay. You didn't sign any statements?

Jonathan Perez - Cross-examination
by Solicitor Perez

- 1 A No.
- 2 Q They never took down a handwritten statement from you?
- 3 A No, I never wrote a statement.
- 4 May I see that statement if you have one?
- 5 Q Do you remember what the judge said?
- 6 A Oh, I apologize. I apologize. I apologize, sir.
- 7 Q So, you never wrote a statement?
- 8 A No, I never wrote a statement.
- 9 Q All right. After y'all were arrested, you had the cash
- 10 on you?
- 11 A Yes.
- 12 Q How much was it?
- 13 A \$4,100 cause Fredrick Jerman took a hundred dollars.
- 14 Q Okay. But the police recovered 42, correct?
- 15 A No, they recovered 4,100. They kept asking me where
- 16 the other hundred dollars was at.
- 17 Q But they found another hundred dollars in the car,
- 18 correct?
- 19 A I'm not sure.
- 20 Q All right. They received \$4,200 back?
- 21 A They kept asking me did I have a hundred dollars or did
- 22 John Garvin have the hundred dollars.
- 23 Q Where does Mr. Garvin live?
- 24 A In Georgia, but he has family that reside in North
- 25 Carolina.

Jonathan Perez - Cross-examination
by Solicitor Perez

- 1 Q Where does he specifically live?
- 2 A In Georgia.
- 3 Q Okay. Mr. Garvin ever met Mr. Jerman before?
- 4 A No, only with me. But he didn't have -- really they
- 5 really don't know each other.
- 6 Q Has he talked to Mr. Jerman?
- 7 A Yeah, because I had let him talk.
- 8 Q You had let them talk?
- 9 A Yeah.
- 10 Q So, you let them talk to someone?
- 11 A No, because the directions on the phone that I just
- 12 stated whenever.
- 13 Q All right. Never talked face-to-face?
- 14 A Fred was trying to talk, smart talk with him, but it
- 15 didn't really lead nowhere.
- 16 Q When you mixed that with powdered sugar, how much did
- 17 you mix?
- 18 A I'm not really sure. I think about -- I put a lot of
- 19 sugar. It was more sugar in there, in it than heroin.
- 20 Q And you never told police that?
- 21 A No.
- 22 Q The first time you've ever said that was today?
- 23 A Uh-huh. (Affirmative).
- 24 Q And you got it in North Carolina?
- 25 A Uh-huh. (Affirmative).

Jonathan Perez - Redirect examination
by Mr. Robinson

1 what I was really gonna do.

2 Q Okay. Thank you.

3 THE COURT: All right. Thank you, sir.

4 May, may this witness be excused?

5 MR. ROBINSON: Yes, sir, Your Honor.

6 SOLICITOR HUNTER: Yes, Your Honor.

7 MR. ROBINSON: Yes, Your Honor.

8 SOLICITOR HUNTER: Your Honor, if I may go outside
9 briefly to talk to the DOC people?

10 THE COURT: Yes, sir.

11 (Pause.)

12 THE COURT: Mr. Robinson, would you call your next
13 witness?

14 MR. ROBINSON: May it please the Court, that is the
15 defense case, Your Honor.

16 THE COURT: Very good.

17 All right. Ladies and gentlemen of the jury, the
18 defense now has advised that they have presented all the
19 evidence that they intend to present in their defense. I
20 have administrative matters to take up in this matter at
21 this juncture. If you'd go back to your jury room we'll
22 bring you back shortly.

23 (WHEREUPON, the following takes place outside the
24 presence of the jury.)

25 MR. ROBINSON: Your Honor, at this time I would renew

1 my motion for a directed verdict on the same grounds.

2 THE COURT: Okay. That motion is denied.

3 All right. Mr. Hunter, does the State intend to have a
4 reply?

5 SOLICITOR HUNTER: Not at this time, Your Honor.

6 THE COURT: It does not?

7 SOLICITOR HUNTER: No, sir.

8 THE COURT: Okay. So, if I recall yesterday, you're
9 going to do closing and I'll charge the standard way, is
10 that correct?

11 MR. ROBINSON: Correct from the defense, Your Honor.

12 THE COURT: Okay. Do you -- is the defense gonna
13 require the State to open on the law?

14 MR. ROBINSON: No, sir, Your Honor.

15 THE COURT: Okay. So, you'll go first and Mr. Hunter
16 will go second, is that correct?

17 MR. ROBINSON: Yes.

18 THE COURT: Okay. Then we'll have a quick break and
19 then come back and charge them on the law. Okay.

20 SOLICITOR HUNTER: That's fine with the State, Your
21 Honor.

22 THE COURT: Anything further from the State before I
23 bring the jury back in?

24 SOLICITOR HUNTER: Nothing else from the State?

25 THE COURT: Mr. Robinson, from the defense?

1 MR. ROBINSON: No, sir.

2 THE COURT: Will you bring the jury back in?

3 (WHEREUPON, the following takes place within the
4 presence of the jury.)

5 THE COURT: All right. Mr. Hunter, does the State
6 intend to have a reply in this matter?

7 SOLICITOR HUNTER: No, it does not, Your Honor.

8 THE COURT: Very good.

9 All right. Mr. Foreman, ladies and gentlemen of the
10 jury, if you recall, at the beginning of this trial, I told
11 you they're five phases in every case. We had the opening
12 statement. We had the presentation of the evidence. We
13 have just concluded the presentation of the evidence phase.

14 The next phase will be the closing statements by the
15 attorneys. I will then take a quick break and then bring
16 you back in here and charge you on the law that's
17 applicable, and then we'll have a meeting and then we'll
18 send back word that it will be appropriate for you to begin
19 your deliberations.

20 Okay, sir. Mr. Robinson.

21 MR. ROBINSON: May it please the Court?

22 THE COURT: Okay, sir.

23 MR. ROBINSON: Morning, again, how are you?

24 My name again is Scott Robinson. I'm the attorney in
25 this case obviously. But it was my pleasure to, to assist

1 you in going over this case. It's my pleasure to represent
2 Mr. John Garvin.

3 Now, in the beginning of this case I went over with you
4 kind of our position in this case. We believe that John
5 Garvin is not guilty in this case and here's, here's why. I
6 went over a couple of principles that, in a few minutes when
7 the judge charges you on the law, he's gonna discuss that in
8 his jury charges.

9 The first big concept is mere presence, and the judge
10 will charge you that merely being present where something is
11 taking place is not enough to convict someone. It doesn't
12 mean that the person is guilty of this charge. It doesn't
13 mean that. Merely being present -- and you'll remember, in
14 the beginning, I told you about this idea that, you know,
15 sometimes people get caught in positions of being in the
16 wrong place at the wrong time, and this is a real classic
17 case of that unfortunately. But the idea of mere presence,
18 that's the first thing.

19 The second thing is this knowingly part of this, and in
20 a few moments the judge is gonna charge you on what is the
21 law of trafficking in this matter, and one of the key
22 concepts in this is knowingly. Knowingly doing these
23 elements. Okay. Knowingly.

24 So, those are the two things substantively I'd like you
25 to remember in this case. Y'all have notepads and so forth,

1 had an opportunity to listen to the statements in this case
2 from the, from both law enforcement and up to including Mr.
3 Garvin and Mr. Perez. But those are the things I want you
4 to think about in this case, those two concepts.

5 But the judge is gonna charge you too on the issue of
6 the concept of reasonable doubt. The, the defendant in this
7 case, everything has to be looked at in terms of reasonable
8 doubt. If you have any doubt at all you need to find in
9 favor of John Garvin.

10 Now, the idea of could of, maybe, possibly, that
11 doesn't -- that has no place in this courtroom. You've got
12 to conclude beyond a reasonable doubt that John Garvin is
13 guilty of this charge.

14 Now, let's talk about the evidence that the State
15 presented. Now, this is what he have. We have video on
16 here and you'll see the video. They'll let you look at the
17 video I believe in the back there, and you'll see what
18 appears to be Mr. Garvin getting gas at a QuikTrip. He goes
19 into the QuikTrip, gets gas, you'll see him come back, says
20 something at the window, and we don't really know what he
21 said. We don't know what he said. It could be anything.
22 But we don't know. The law enforcement doesn't know because
23 they didn't have an audio of what was said between these
24 parties. They don't have that.

25 So, you have that video. But, again, going back to the

1 idea, mere presence is not enough in this matter, and the
2 State has to show he knowing he participated in this
3 transaction, knowingly, and the judge is gonna read to you a
4 number of things that are included in this trafficking
5 statute. Knowingly is the main thing.

6 But then you go down and you see, you see different
7 things like getting financial, getting money, things like
8 that from it. Mr. Garvin received no money in this case
9 from Mr. Perez. He didn't even know about this going on.

10 You heard Mr. Perez. Mr. Perez is already been
11 sentenced. He has no bone in this fight. He's got nothing
12 to lose in this matter and you heard Mr. Perez testify in
13 this matter.

14 It's up to you whether or not, and the judge will tell
15 you about witnesses and so forth, whether or not you can put
16 anything to what he said. What you can put into it he's
17 already done his business. He's, he's serving his time, and
18 he says that Mr. Garvin had no knowledge of this. He also
19 said how he went about deceiving Mr. Garvin as what he
20 called an uncle that he had known two years. It's not what
21 any of us would probably do to an uncle obviously, deceive
22 them like this, but he told us that he put this stuff in a
23 bag and what he would do. He would go to a mall or some
24 place like that and say listen, I'm gonna go do this and
25 I'll be back. He'd take the bag with him to do his

1 transaction and come back. But there's no evidence in this
2 matter, no audio or video, showing that Mr. Garvin ever
3 participated in this transaction. Nothing. So, think about
4 that.

5 Then we turn to this statement, and you'll see the
6 statement in a few moments that the State is going to be
7 putting in front of you showing this statement that Mr.
8 Garvin signed off on and so forth. But remember a couple
9 things.

10 The first thing is it's not written by Mr. Garvin. It
11 was written by the agent.

12 Secondly, and this is, this is something that was
13 interesting when, when the one agent, when the one officer
14 got on the stand, he said that they do have video and audio
15 in cases. But for some reason there, there wasn't used in
16 this one, and we've all gotten on TV and listened to,
17 watched different programs and so forth, and ask yourself
18 why cause it really would provide a good piece or a good
19 source for y'all to be able to conclude, beyond a reasonable
20 doubt, that this is what happened.

21 But what you have is a statement written by this
22 officer, the two officers together in a room. The guy
23 writes a statement. He gets Mr. Garvin to sign it, and
24 what's interesting in this matter is that, on direct
25 examination by Mr. Hunter, the officer says that there was

1 no other place for someone to sign. But if you notice, on
2 recross, I asked him that's really not true. There is a
3 place underneath there for a notary or someone to sign
4 witnessing it. Think about it.

5 why was that, why were the officers' statements
6 conflicting?

7 Another thing that you, you would note as well, is that
8 not one, not one of these officers, the total I think was
9 five officers, not one of them, while they did surveillance,
10 ever saw Mr. Garvin transact or do this drug transaction.
11 What they did see was Mr. Garvin in a McNabb jersey going to
12 a QuikTrip and then coming out and pumping gas saying
13 something to somebody and going back in. That's all they
14 saw. But none of them saw it.

15 They bring this fellow in the back row, the informant
16 in this matter, whose -- and in -- think about this
17 informant. Now think about it. He has been working for the
18 government for 13 years, from 1999 to 2012.

19 How does he get paid?

20 He gets paid money.

21 He also gets help in working off his charges. One of
22 the key things that the judge is going to charge you in a
23 moment about witnesses is motive in this matter. Think
24 about the motive someone has to lie. Think about it and
25 that's why I question him about what, what your motive would

1 be, and it's clear what his motive was. He tried to float
2 it around a little bit, but the motive was pretty clear.

3 He's under a contract with these folks, and what he
4 gets in return, he gets help with charges and you note, you
5 note he has two pending charges for drugs.

6 Do you really think that if he had not testified the
7 way they asked him to that he would of gotten the benefit of
8 that?

9 Common sense, which is what we've talked about from the
10 beginning, dictates no.

11 He told me, on cross-examination, that he had not met
12 with the prosecutor. But then when the prosecutor talks to
13 him, he says yeah, we went over the tapes together, went
14 over the tape and so forth. But think about can you believe
15 this person, believe this individual and what he says.

16 You've got officers stating they never saw anything.
17 You got this cat, this informant, saying oh, yeah, it was
18 Mr. Garvin that was part of this deal. But no one else saw
19 it. No one else saw it.

20 Now yesterday you heard from Mr. Garvin on the stand.
21 Now he was pretty much a -- he was sweating profusely up
22 there as a lot of people would do. Don't fault him for
23 being a normal human being on the stand, and getting
24 questions asked of him.

25 And tell you what. He may, he may have made a mistake

1 as far as testifying. He may of been nervous and so forth.
2 But think about what, what he did and so forth. He's a
3 human being. People make mistakes. People say things
4 incorrectly.

5 The question was this. The question I believe that we
6 may of asked was did you know this person. Acknowledge or
7 knowing someone means different things to different people.
8 You heard Mr. Perez a second ago say he had never, didn't
9 know him, but he talked to him on the phone and so forth.
10 That's what you heard. To Mr. Garvin, that may not be
11 knowing this person, knowing this confidential informant.

12 But that's what we have in this case. We have no one
13 on this video that can say that a drug transaction was
14 taking place with Mr. Garvin. We have with Mr. Perez that
15 just testified, and if you notice the -- in the video, he's
16 got dreads on. Today he did not have dreads on. Different,
17 different look. But you don't see a transaction taking
18 place. You don't see that.

19 You don't have a lot of things in this case that you
20 would normally, you should want. Telephone records that
21 would indicate that there was some sort of communication
22 between Mr. Garvin and this informant saying hey, hey,
23 buddy, let's do this deal. Nothing.

24 You don't have anything, you don't have anything like
25 that to conclude that a transaction took place and Mr.

1 Garvin participated in it. You got no one else that can say
2 that cause it didn't exist. It didn't exist.

3 In a few moments the prosecutor is going to give you
4 his closing statement just like I'm giving, and probably
5 hopefully it won't be as long as mine, and not as wordy as
6 mine. But this is my last chance to talk and I need to try
7 to get out as much as I can to make sure I state our
8 position in this matter.

9 But, again, I want to conclude with this. You all have
10 been chosen for your backgrounds, for your common sense, for
11 your education, and your ability to see things, to be able
12 to, to be able to see what's not right and what's right,
13 what doesn't make sense, what makes sense.

14 Think about what makes sense here. Think about what
15 the State is proven in this case really.

16 It's not a question of maybe he did it, could have done
17 it, possibly. If that's the case, he's not guilty because
18 the State has not proven their case beyond a reasonable
19 doubt.

20 So, use your common sense. You've all had the
21 opportunity to write things down, write questions and so
22 forth like that. But every, every nuance, every, every,
23 everything you're thinking about should be in the terms of
24 reasonable doubt.

25 Has the State proven their case?

1 This is not a popularity contest. It's not a beauty
2 contest. This is the question of what's right, what's
3 wrong, guilty or not guilty, and I submit to you, under the
4 law, Mr. Garvin is not guilty, and I ask, from all of you,
5 to return a verdict of not guilty.

6 Thank you very much for -- excuse me.

7 THE COURT: Mr. Hunter.

8 SOLICITOR HUNTER: May it please the Court?

9 THE COURT: Yes, sir.

10 SOLICITOR HUNTER: Mr. Garvin is guilty of trafficking
11 in 14.54 grams of heroin.

12 Mr. Robinson is right. Mr. Garvin didn't participate
13 in the hand-to-hand transaction to Mr. Jerman. That was Mr.
14 Perez. He's correct. But a hand-to-hand transaction is not
15 the only way you can be found guilty of trafficking heroin.

16 The judge, in a few moments, will give you the law on
17 trafficking, reasonable doubt, and a lot of other legal
18 issues. He's the judge of the law. He'll tell you what the
19 law is.

20 But to be found guilty of trafficking, you can sell,
21 deliver, distribute, bring into this state, or financially,
22 provide financial assistance in the selling, delivery, or
23 bringing into this State, or aiding and abetting in the
24 selling, delivering, bringing into this state of heroin.

25 We heard from Mr. Jerman back there. He admitted that

1 he sold drugs and that he sells drugs. He's been an
2 informant since 1999. When I came up to you earlier in the
3 opening statement I told you this is one of the dirtiest
4 parts of the business that I'm in. Not only do I try to
5 prove cases against defendants, I have to use defendants in
6 those cases.

7 But that's why we have video. That's why we have
8 officers search his car before and after, search him before
9 and after. We have officers across the street at the
10 Raceway and why we have officers at the Burger King with
11 video.

12 Mr. Jerman didn't lie on that stand. May of had motive
13 to, but he didn't. I want you to remember Mr. Garvin's
14 testimony. When I asked him if he had talked to Mr. Jerman
15 I felt like I was talking to Bill Clinton when he says it
16 depends on what the definition of it is.

17 I asked him did you talk to Mr. Jerman. Well, it
18 depends on what you mean by talk.

19 Did you speak to him face-to-face?

20 Well, it depends.

21 Finally he admitted he had.

22 But you know what's up, what's funny about that?

23 He also said that he didn't know Perez for that long.

24 You heard Mr. Perez today that they knew each other for
25 years. He's like family. He said he lived in North

1 Carolina. Yet Perez, who's like family to him, says he
2 lives in Georgia. He did use to live in Georgia, but he
3 said he lived in North Carolina. He said that to us.

4 where did Perez say he lived?

5 where did he say he lived?

6 You also heard from Perez today on where he got the
7 heroin, where he purchased it from. He said he purchased it
8 in Launenburg, North Carolina maybe, that he put a lot more
9 sugar in it than heroin. But that Mr. Garvin knew nothing
10 about it. He also said he never told police this. Never
11 told police.

12 How do police know that unless Mr. Garvin told the
13 police?

14 Mr. Garvin wants you to believe that the police were
15 shuffling papers around and that, you know, they blocked
16 this, he didn't say that, they just made him sign that.

17 As a jury, you get to believe everything a witness
18 says, some of what a witness says, or none of what a witness
19 states, says.

20 Mr. Robinson wants you to ask about Mr. Jerman's motive
21 to lie and I do too. But I want you to ask does Mr. Perez
22 have a motive to lie.

23 This is his family, Big Unc. It's exactly what the
24 informant called him, but he's never met him before. Mr.
25 Garvin had the motive to lie.

1 Did you see Mr. Garvin sweating when Mr. Robinson was
2 questioning him or was that sweat pouring down when he was
3 lying?

4 I do have to prove that he knowingly did this, and
5 that's what this statement shows. This guy known as Fred
6 kept calling my roommate I know as Perez. Perez and Fred
7 kept talking about delivering 15 bundles of heroin to
8 Spartanburg. I took Perez yesterday to pick up 15 bundles
9 from a guy that Perez knows. I put in \$200 for this 15
10 bundles. Provided financial assistance.

11 We bought four grams of heroin, and we worked it up to
12 15 grams with powdered sugar. It says four grams of heroin,
13 eleven grams of powdered sugar. He said he put a lot more
14 sugar in there than heroin.

15 How would the police know that since he never told the
16 police that?

17 Mr. Perez never told the police that.

18 How would they know?

19 They just made that up and just happened to be lucky?

20 Mr. Garvin told Agent Asbill, 29 years of law
21 enforcement experience, he wants you to believe that Agent
22 Asbill made this up.

23 How do these officers know that?

24 Mr. Garvin, we're gonna sell it for \$280 per brick.

25 All this was done in Henderson, North Carolina.

1 well, he said Laurenburg, North Carolina. It's North
2 Carolina. They said they were coming -- he said he was
3 coming from North Carolina. That's bringing it into this
4 state.

5 The fact is Mr. Garvin was there. He paid \$200 for
6 that heroin. He helped Mr. Perez mix it up, and while he
7 did not actually hand it to Mr. Jerman, he knew what he was
8 doing.

9 In fact, when I asked him where they were going, he
10 just said South Carolina.

11 where in South Carolina?

12 well, South Carolina.

13 I asked him if he was going to Spartanburg.

14 South Carolina.

15 Asked him if he was going to Greenville.

16 South Carolina.

17 why were you going to South Carolina?

18 Perez says he was going to pick up some money.

19 what did Perez say to that?

20 He didn't say anything about picking up money.

21 In fact, when I asked him specifically were you going
22 to pick up some money, did you tell him you were going to
23 pick up some money?

24 No.

25 I told him we were going to the mall, to the Gaffney

1 outlets.

2 whose been lying the past couple of days?

3 Not Mr. Jerman.

4 Not Agent Asbill.

5 Not Agent Pait.

6 Mr. Garvin and Mr. Perez.

7 There's not anything you wouldn't do for family. So,
8 while Mr. Perez is in jail, he's still trying to help his
9 family, Big Unc. He knew it was Big Unc. Knew him for
10 years as Big Unc. Mr. Garvin gets on the stand. No, I
11 don't know him as Big Unc.

12 Mr. Jerman doesn't know him as Big Unc. I don't know
13 Mr. Jerman.

14 This statement knows, shows that he knew what Mr. Perez
15 was going to do. He helped purchase and he helped bring it
16 into this state.

17 This 14.53 grams of heroin, 746 of these little
18 packages, one person did all of that?

19 You heard Mrs. Stuart. She had to unwrap every single
20 one. It wasn't fun.

21 The great thing about this evidence, you get to take it
22 back into the jury room with you. If you want to watch any
23 of the video, just let the judge know when you come back out
24 and we'll put the videos on for you.

25 You get to read this statement. Most of y'all have

1 been taking notes for this trial. Been writing down what
2 witnesses have said. I hope you paid special attention to
3 what Mr. Garvin and Mr. Perez said because their stories
4 couldn't be farther from each other.

5 When Mr. Garvin went and purchased four grams of heroin
6 in North Carolina, mixed it up into this and brought it down
7 in this state, he's guilty of trafficking heroin, 14 grams,
8 over 14 grams. Excuse me. He delivered it to this state,
9 brought it into this state from North Carolina, and he paid
10 for the heroin in North Carolina. He provided financial
11 assistance so that Mr. Perez could make the transaction. I
12 proved that beyond a reasonable doubt.

13 Who wrote this statement?

14 Excuse me.

15 Agent Asbill wrote this statement in his words. I have
16 read this statement consisting of one pages. I swear that
17 this statement that I've just given is the truth, the whole
18 truth, and nothing but the truth so help me God. I also
19 swear that this statement was given freely and voluntarily
20 and I have received a copy of my statement and this
21 statement was completed at 5:49PM on the 17th day of July,
22 2012. Signed, John Garvin. Witnessed by Agent Asbill, and
23 there is no other witness signature line.

24 All that's left is a notary and a notary has to visibly
25 see the signature as Mr. Garvin's writing it. There's only

1 two agents in that room.

2 Mr. Garvin wrote this down. He wants you to believe he
3 didn't. But you get to read it. Listen to what Perez said.
4 He basically stated this word-for-word, but he never told
5 police. Remember that. Cause Mr. Garvin is guilty of
6 trafficking heroin over 14 grams.

7 Thank you.

8 THE COURT: All right. Mr. Foreman, I have a quick
9 matter or two to go over with the attorneys. It will not be
10 a long time and then I'll bring back in here, and we'll go
11 over the charge and the law.

12 FOREMAN: Yes, sir.

13 THE COURT: If you'll take your jury back please.

14 FOREMAN: Yes, sir.

15 (WHEREUPON, the following takes place outside the
16 presence of the jury.)

17 THE COURT: All right. Gentlemen, one matter I want to
18 clarify.

19 Mr. Hunter gave me Code Section 44-53-392 that we spoke
20 about yesterday actually in chambers. I don't know that we
21 went over it on the record yesterday when we did our charge
22 conference, but it says -- it's entitled weight of
23 controlled substance, and it reads not withstanding any
24 other provision of this article, the weight of any
25 controlled substance referenced in this article is the

1 weight of that substance in pure form or any compound or
2 mixture thereof.

3 Okay, sir. I was intending to read that. I think that
4 would be appropriate in this case. It would be on Page 4 of
5 the charge that I gave to you right before possession.
6 Statements also prove, beyond a reasonable doubt, that the,
7 the amount of the heroin or any mixture containing heroin
8 was 14 grams or more, but less than 28 grams, then I will
9 insert the statute.

10 Any objections?

11 MR. ROBINSON: No objection, Judge.

12 THE COURT: Any objection?

13 I assume not from the State.

14 SOLICITOR HUNTER: Not from the State, Your Honor.

15 THE COURT: All right. Give me one quick second and
16 then we'll come back.

17 (WHEREUPON, a short recess was taken at this time.)

18 THE COURT: okay. would you bring the jury back in?

19 (WHEREUPON, the following takes place within the
20 presence of the jury.)

21 THE COURT: All right. Ladies and gentlemen of the
22 jury, now that you've heard all the evidence in this case,
23 you've heard the arguments of the attorneys, it is my duty
24 to instruct you on the law that applies to this case.

25 My instructions are gonna be in three parts. Before I

1 go into that, let me apologize to you in advance. Some of
2 this will be read to you. I'm not as articulate or smart
3 enough to go through it without reading some of it. But the
4 information contained in this charge is vitally important.
5 So, I don't want to run the risk of misstating or omitting
6 to state something that I need to.

7 Also, Mr. Foreman, it's been mentioned in here about
8 the video. If the jury wishes to watch the video, it's my
9 practice, each judge has a different way of doing things, my
10 practice is that I'll bring you back into the courtroom, and
11 you can watch it as often or as many times as long as you
12 want to. But that's just the way I do it.

13 Okay.

14 FOREMAN: Yes, sir.

15 THE COURT: Now, with that being said, the first part
16 of my instructions will define and control the general rules
17 that control your duties as jurors. The second part will be
18 the substantive law that applies in this case, i.e. what the
19 State must make, must prove in order to make out its case
20 against this defendant, and the third part will be some
21 considerations for your deliberations.

22 Then, Mr. Foreman, I'm gonna go over the verdict form
23 with you and, again, your instructions on how to fill that
24 out.

25 FOREMAN: Yes, sir.

1 THE COURT: Okay, sir. After I give you the charge I'm
2 gonna send you back, just so you know, make sure that I
3 didn't misstatement the law or omit or improperly state the
4 law, and then we'll send word as to whether or not we need
5 you back into the courtroom or whether you can begin your
6 deliberations.

7 Okay, sir?

8 FOREMAN: Yes, sir.

9 THE COURT: So, I remind you, do not begin your
10 deliberations until you reach, until you have unequivocal
11 word.

12 Okay. Now, if you recall, at the beginning of this
13 case, I told you that it's your duty, as judges of the
14 facts, to determine what the facts are from the evidence
15 that you heard in this case. To those facts, as you, the
16 jury, find them to be, you must apply the law as I give it
17 to you.

18 You must not be concerned with what the law is, you
19 want it to be. You must follow the law as I give it to you.
20 In other words, you must take it as it's charged to you
21 today.

22 Also, you must not be influenced by any personal likes
23 or dislikes, opinions, prejudice, or undue sympathy that you
24 may have for one side or the other in this case. What that
25 means is that you are to decide this case solely from the

1 evidence that's been presented here in the courtroom, and
2 according to the law as I give it to you now. In fact, your
3 oath requires you to do just that.

4 In following my instructions, you must follow all of
5 them and not single out any part of the instructions that
6 you like and apply those and ignore others that you might
7 not like. They're all equally important.

8 You must not read anything into my instructions that I
9 give to you as giving you my feeling as to how you are to
10 find facts or the verdict you are to reach in this case.

11 Also, if I have done anything, throughout the course of
12 this trial, that seems to indicate how you are to find
13 facts, I'm gonna ask you and also instruct you to disregard
14 them. I have no feeling one way or the other, and our law
15 and our Constitution does not allow any trial judge to have
16 an opinion or to comment on the facts.

17 What that means is you and you alone are the judges of
18 what the facts are in this case, and you will decide what
19 those facts are by evaluating and weighing the evidence that
20 you heard during this trial from this witness stand, and
21 also the exhibits that have been admitted into evidence.

22 Now, let me tell you, there's no way that I can give
23 you a set of scales for you to weigh the evidence in the
24 literal sense. It is entirely a mental process and you
25 evaluate the evidence by simply using your good common sense

1 and sound judgment and applying the law as I give it to you.

2 Now, in South Carolina, this is what we recognize as
3 evidence, and I'll go further and tell you the different
4 types of evidence in just one minute. You have the sworn
5 testimony of witnesses, whether it be direct evidence -- I
6 mean, excuse me, direct examination or cross-examination or
7 regardless of who called that witness. Also, any exhibits
8 that have been admitted into evidence is evidence. I mean
9 that's all the legal definition of evidence is in this case.

10 Now, there's certain things that are not considered
11 evidence in this case, and I'm gonna go over those with you.
12 The arguments and the statements by these attorneys is not
13 evidence. If you recall, at the beginning of this case, I
14 told you that the attorneys' statements and their arguments
15 is helpful, and it's designed to help you understand the
16 case. But they've not been put up on this witness stand and
17 sworn in. They've not been subjected to examination or
18 cross-examination.

19 what that simply means is this. What they tell you is
20 designed to help you interpret the law and interpret the
21 evidence. However, when you get back to your jury room, if
22 your facts, if the facts, as you recall them to be, differs
23 from what either of these attorneys told you they are in
24 this case, then your memory collectively of those facts will
25 control.

1 Also, let me remind you, as I told you at the beginning
2 of this trial, the fact that a juror's notes may indicate
3 facts as being one way, but somebody's memory may indicate
4 it being another way, does not mean the notes trump
5 somebody's memory. That's why we call it deliberations.
6 Y'all have to hash that out and come hopefully to a
7 collective decision as to what the facts are.

8 Also, questions and objections by lawyers are not
9 evidence. As I told you, lawyers have an obligation, in
10 every case, to raise objections when he or she believes that
11 there's improper procedure of evidence being submitted into
12 the record. The fact that there is an objection raised or
13 to the extent I let you stay in here and see my ruling on
14 that objection shall not be discussed by you in your
15 deliberations whatsoever.

16 Mr. Foreman, that will be your job to make sure it does
17 not happen.

18 Also, anything that you might have heard when Court was
19 not in session, either overnight, during lunch, or during
20 one of your breaks, or during one of the objections by the
21 sides, you're not to discuss anything or consider anything
22 that you did not hear in this courtroom. As I told you at
23 the beginning of the case, the, the purpose of that is your
24 decision must be made based on what you heard here.

25 Now, in South Carolina, we recognize two types of

1 evidence. The first is pretty straightforward. It's called
2 direct evidence.

3 Direct evidence is testimony of a person who asserts or
4 who claims to have actual and direct knowledge of a fact
5 such as an eye witness. An example of an eye witness would
6 be if I were standing on the corner and I would testify that
7 I saw a car run a red light, that would be a direct evidence
8 witness. In other words, I say I saw what happened
9 immediately.

10 Okay. The next type is circumstantial evidence.
11 Circumstantial evidence is indirect evidence, or to put in
12 another way, it is proof of a chain of facts and
13 circumstances from which you may infer or find that another
14 fact exist although that fact has not been proven directly.
15 If that's confusing enough for you, let me give you example.

16 If all of you were to go to bed at night and were to
17 have a fresh sheet of snow in your front yard, if, when you
18 awoke in the morning, you saw tracks through your front
19 yard, you may reasonably infer that someone or something
20 walked through your yard during the night although you did
21 not see the person or thing actually walk through the yard.
22 That is circumstantial evidence.

23 The law makes absolutely no distinction between the
24 weight or value to be given either direct or circumstantial
25 evidence. You, the jury, are entitled to consider both

1 kinds of evidence, and I'll tell you further that there is
2 not a greater degree of certainty required of circumstantial
3 evidence that you may have heard in this case for it to be
4 considered by you. The only prohibition is that the
5 inference that you draw from the circumstantial evidence may
6 not be speculation or surmise.

7 With that being said, ladies and gentlemen, after you
8 have considered all of the evidence that you think is
9 appropriate in this case, whether direct or circumstantial,
10 if you're not convinced of the guilt of this defendant
11 beyond a reasonable doubt, it will be your duty to find him
12 not guilty.

13 Now, in deciding what the facts are in this case, it is
14 essential for you to consider all the testimony and all the
15 other evidence. In doing this, you must decide which
16 testimony that you wish to believe and which testimony you
17 wish not to believe. You have a right to disbelieve all or
18 part of any witness' testimony. You may believe all of a
19 witness' testimony.

20 In making your decision as to the credibility of the
21 witness, you may, but you're not required to take into
22 account a number of factors, and let me give you those
23 factors. You may consider was the witness able to see or
24 hear or know about the things about which that witness
25 testified. How well was the witness able to recall and

1 describe the things about which they testified. What was
2 the witness' manner while testifying. In other words, what
3 was their demeanor while they're on the stand.

4 You may ask yourselves is there some reason that a
5 witness would want to give testimony that would help or hurt
6 one side or the other. Did that witness have an interest in
7 the outcome of this case or any bias or prejudice concerning
8 any party or matter involved in this case.

9 Also you can, can consider how reasonable the witness'
10 testimony was considered in light of all the evidence and
11 testimony in this case, and also whether that witness'
12 testimony had been contradicted by what that witness had
13 said or done at another time or by the testimony of other
14 witnesses or by other evidence in this case.

15 Now, ladies and gentlemen, those are certainly some,
16 but not all of the factors that you may consider in
17 determining the credibility of the witnesses, and, of
18 course, as jurors, you do not check your common sense at the
19 door when you're sworn in, and you should not in this case.
20 You should use those things in your day-to-day lives that
21 you find indicative of truthfulness or indicative of lack of
22 truthfulness when you make this determination of credibility
23 of the witnesses.

24 Again, you may believe as much or little of any
25 witness' testimony that you believe proper. You can believe

1 all or none of a witness' testimony. You can believe
2 several witnesses over one or one over several. But one
3 thing you may not do is add up the number of witnesses who
4 may have testified for one side or the other in reaching
5 this matter of credibility because it does not matter where
6 the truth comes, whether from the defense or from the State.
7 Your sole job, as finders of fact, is to try to find the
8 truth from the evidence presented in this case.

9 Also, ladies and gentlemen, you've heard testimony by a
10 person who is qualified as an expert witness. As I told
11 you, normally witnesses are limited in their testimony to
12 what they see, they hear, they saw, they felt. However, a
13 person, because of their education or their experience or a
14 combination of the two who has gained experience in an
15 expertise in a certain area, may give an opinion with regard
16 to the area of their expertise and may state their reasons
17 for their opinion.

18 I'll tell you that expert testimony should be judged as
19 any other testimony in this case. You may accept it, you
20 may reject it, and give it as much weight as you think it
21 deserves considering the witness' education and their
22 experience, the reasons for their opinion, and all the other
23 evidence in this case.

24 I remind you, ladies and gentlemen, as I have before,
25 that the fact that this defendant has been charged,

1 arrested, and indicted is not evidence of guilt. It does
2 not raise an inference of his guilt nor a presumption of his
3 guilt.

4 This indictment is purely the mechanical means by which
5 the State, excuse me, of South Carolina brings defendants
6 before a jury such as yourselves for a trial and a
7 determination of guilt or innocence. In fact, in this case,
8 the defendant has pled not guilty to the indictment, and,
9 therefore, that plea of not guilty puts the burden on the
10 State to prove him guilty.

11 I'll tell you that a person charged with committing a
12 criminal offense in South Carolina is never required to
13 prove himself innocent. It is an important rule of law that
14 a defendant, in a criminal trial, no matter what the
15 seriousness of the charge, will always be presumed innocent
16 of the crime for which the indictment is, was issued unless
17 there has been guilt proven there, excuse me, unless guilt
18 had been proven by evidence satisfying you of that guilt
19 beyond a reasonable doubt.

20 Now, ladies and gentlemen, this presumption of
21 innocence does not end when you begin your deliberations,
22 but it accompanies the defendant throughout this trial and
23 until you, the jury, reach a verdict of guilt based on
24 evidence satisfying you that there's guilt beyond a
25 reasonable doubt.

1 The presumption of innocence is like a robe of
2 righteousness which is placed upon the shoulders of the
3 defendant where it remains until it has been stripped from
4 his shoulders by evidence satisfying you, the jury, of guilt
5 beyond a reasonable doubt.

6 Now, the presumption of innocence is not just a mere
7 legal theory. It's not just a legal phrase. It is a
8 substantial right which every defendant is entitled to
9 unless you, the jury, are satisfied from the evidence of the
10 defendant's guilt beyond a reasonable doubt.

11 So that leads me to the definition of what reasonable
12 doubt is. This will give you a little bit more detail than
13 I gave you at the beginning of this trial.

14 A reasonable doubt is the kind of doubt that would
15 cause a reasonable, sincere, honest, and conscientious
16 person to hesitate to act in an important matter in their
17 own affairs. Proof beyond a reasonable doubt is proof that
18 leaves you firmly convinced of the defendant's guilt.

19 Now, ladies and gentlemen, they're very few things in
20 this world that we know with absolute certainty, and, in
21 criminal cases, the law does not require proof that
22 overcomes every possible doubt. If, based on your
23 consideration of the evidence, you are firmly convinced that
24 the defendant is guilty of the crime charged, you must find
25 the defendant guilty. If, on the other hand, you think

1 there's a real possibility that the defendant is not guilty,
2 you must give the defendant the benefit of the doubt and
3 find him not guilty.

4 A reasonable doubt may arise from the evidence or from
5 the lack of the evidence. I further instruct you that a
6 defendant is entitled to every reasonable doubt that may
7 arise in a case.

8 Now, what that simply means, ladies and gentlemen, is
9 this. That if, upon any issue of fact essential to a
10 conviction and a verdict of guilt of the offense for which
11 this defendant has been charged, if you have any reasonable
12 doubt as to how that issue should be resolved, it will be
13 your duty to resolve that in favor of the defendant.

14 Also, ladies and gentlemen, in order to establish
15 criminal liability, criminal intent is required. For
16 example, the mental state required to be proven by the State
17 for a particular crime may be purpose, intent, knowledge,
18 recklessness, or criminal negligence. Criminal intent must
19 be proven by the State beyond a reasonable doubt. Criminal
20 intent is always a matter that must be determined by the
21 jury from the circumstances surrounding the situation.

22 Now, there's no way that, to prove intent to a
23 mathematical certainty. There's no way that medical science
24 can dissect a person's brain and determine what that person
25 had in mind. So, the law says that criminal intent may be

1 inferred from the circumstances shown to have existed, and
2 that is how, ladies and gentlemen, you make a determination
3 of whether or not the element requiring intent was present.
4 It is not necessary to establish intent by direct and
5 positive evidence. But intent may be established by
6 inference in the same way as any other fact by taking into
7 consideration the acts of the parties and all the facts and
8 circumstances in the case.

9 Criminal intent is a mental state. It is a conscious
10 wrongdoing. It is up to you, ladies and gentlemen, to
11 determine what this defendant intended to do based on the
12 circumstances shown to have existed. Criminal intent can
13 arise from action or a failure to act. It may arise from
14 negligence, recklessness, or an indifference to duty or to
15 the consequences that is considered by the law to be
16 equivalent to criminal intent.

17 All right. Mr. Foreman, ladies and gentlemen, that is
18 the first phase of my charge. For your edification, that
19 will be the longest aspect of this charge. The next part of
20 my charge is the substantive law that you must apply in this
21 case.

22 The defendant has been charged under South Carolina
23 Code annotated 44-53-370 for trafficking in heroin. The
24 defendant, ladies and gentlemen, is charged with trafficking
25 in heroin. The State must prove, beyond a reasonable doubt,

1 that the defendant knowingly sold, manufactured,
2 distributed, cultivated, delivered, purchased, brought into
3 this state, provided financial assistance, or otherwise
4 aided, abetted, attempted, or conspired to sell,
5 manufacture, cultivate, deliver, purchase, or bring into
6 this state, was knowingly in actual or constructive
7 possession, knowingly attempted to become in actual or
8 constructive possession of heroin.

9 The State must also prove, beyond a reasonable doubt,
10 that the amount of the heroin or any mixture containing
11 heroin was 14 grams or more, but less than 28 grams.

12 I will further charge you, ladies and gentlemen, that
13 under Code Section 44-53-392, Code of Laws of South
14 Carolina, it provides that notwithstanding any other
15 provision of this article, the weight of any controlled
16 substance referenced in this article is the weight of that
17 substance in pure form or any compound or mixture thereof.

18 To prove possession, the State must prove, beyond a
19 reasonable doubt, that the defendant had both the power and
20 the intent to control the disposition or use of heroin.
21 Possession may be either actual or constructive.

22 Actual possession means that the defendant, that --
23 excuse me. Actual possession means that the heroin was in
24 the actual physical custody of the defendant.

25 Constructive possession means that the defendant had

1 dominion and control or the right to exercise dominion or
2 control over either the heroin itself or the property on
3 which the heroin was found. Mere presence at the scene
4 where the drugs were found is not enough to prove
5 possession.

6 The defendant's knowledge and possession may be
7 inferred when a substance is found on the property under the
8 defendant's control. However, this inference is simply an
9 evidentiary fact to be taken into consideration by you along
10 with the other evidence in this case and to be given the
11 weight you decide it should have.

12 I will also instruct you that two or more persons may
13 have joint possession of a drug.

14 To deliver means to actually, constructively, or
15 attempt to transfer the drug.

16 Distribute means to deliver other than by administering
17 or dispensing a drug.

18 Manufacturing means to produce, prepare, convert,
19 process, plant, cultivate, grow, or harvest a drug naturally
20 or chemically. Manufacturing includes any packaging or
21 re-packaging of the drug or labeling or re-labeling of the
22 drugs container.

23 Also, ladies and gentlemen, I tell you, charge you the
24 hand of one is the hand of all. If a crime is committed by
25 two or more people who are acting together in committing the

1 crime, the act of one is the act of all.

2 A person who joins with another to commit an unlawful
3 act is criminally responsible for everything done by the
4 other person which happens as a probable or natural
5 consequence of the acts done in carrying out the common plan
6 and purpose. For example, two people can be guilty of
7 killing another person when only one of the two had a gun,
8 there was only one bullet, and only one of the two fired the
9 shot that caused death. If two or more people are, are
10 together, acting together, assisting each other in
11 committing the offense, the act of one is the act of all or,
12 as it is sometimes said in the law, the hand of one is the
13 hand of all.

14 Prior knowledge that a crime is going to be committed
15 without -- excuse me. Prior knowledge that a crime is going
16 to be committed without more is not sufficient to make a
17 person guilty of that crime. Mere knowledge that another
18 person is going to commit a crime, even if the defendant is
19 present when the crime is committed, is not sufficient to
20 convict the defendant as a principal. Guilt as a principal
21 is shown by actual or constructive presence at the scene as
22 a result of prior arrangement. Therefore, a finding of a
23 prior arranged plan or common scheme is necessary for a
24 finding of guilt as a principal.

25 The State must prove, beyond a reasonable doubt, by

1 competent evidence, the theory of the hand of one is the
2 hand of all. A principal in a crime is one who either
3 actually commits the crime or who is present aiding,
4 abetting, or assisting in committing the crime.

5 When a person does an act in the presence of and with
6 the assistance of another, the act is done by both. When
7 two or more acting with a common plan or intent are present
8 at the commission of a crime, it does not matter who
9 actually commits the crime. All are guilty. The hand of
10 one is the hand of all.

11 Present at the commission of a crime means to be
12 sufficiently near to aid, and abet, and assist in the
13 commission of the crime. However, mere presence at the
14 scene of the crime is not sufficient to convict one as a
15 principal on the theory of aiding and abetting.

16 Intent is also a necessary element for there must have
17 been a common design or intent to commit the crime, and the
18 crime must have been committed pursuant thereto with the
19 person aiding and abetting by some overt act.

20 Intent means intending the result which actually
21 occurs. Not accidentally or involuntarily. Intent may be
22 shown by acts and conduct of the defendant and other
23 circumstances from which you may naturally and reasonably
24 infer intent. The State must prove these elements beyond a
25 reasonable doubt.

1 Next, ladies and gentlemen, is the law on mere
2 presence. Mere presence at the scene is not sufficient to
3 prove someone guilty of a crime. A defendant's presence
4 where a crime is being committed or mere association with
5 the person who commits the crime does not make a defendant
6 an accomplice, an accomplice or aider and abettor of the
7 person committing the crime. The burden is on the State to
8 prove every element of the crime charged.

9 If you find, after reviewing all the evidence, that the
10 State has proved that the defendant was only present at the
11 scene of a crime, and that they did not, and that they have
12 not proved, beyond a reasonable doubt, any other
13 participation in the crime, then you must find the defendant
14 not guilty. The law is that proof of being at the scene of
15 a crime is not sufficient to find someone guilty.

16 Finally, ladies and gentlemen, as to the substantive
17 law, there has been submitted into evidence a statement of
18 the defendant. A statement alleged to have been made by the
19 defendant has been admitted into evidence in this case.
20 While the Court has determined that the statement is
21 admissible, I instruct you that you make the ultimate
22 decision of whether or not the defendant made the statement.
23 If the defendant did make the statement, you must determine
24 whether the statement was made by the defendant voluntarily
25 and of his own free will.

1 This means that the statement was not caused by
2 pressure, force, fear, threats, coercion, or intimidation,
3 or by hope or a promise of leniency, or a reward of any
4 kind. In determining whether the statement was voluntary,
5 you should consider both the characteristics of the
6 defendant and the details of the questioning.

7 Some of the factors that you must consider are the age
8 of the defendant, the defendant's education, or lack of
9 education, the defendant's ability or capacity, the
10 defendant's IQ or intelligence, the defendant's background
11 and environment, the place and length of detention, the
12 nature of the questioning, and the advice or lack thereof to
13 the defendant of his Constitutional rights including, but
14 not limited to, the right to remain silent. That any
15 statement could be used against him in a Court of law. The
16 right to have a lawyer present, and that if he could not
17 afford a lawyer, a lawyer would be appointed to represent
18 him without any cost, and that he could stop making the
19 statement at anytime.

20 You must carefully consider all of the surrounding
21 circumstances before you give any weight to an alleged
22 statement. The state has the burden of proving, beyond a
23 reasonable doubt, that the alleged statement was voluntary.
24 If you determine that it was, you may give the statement any
25 further consideration that you deem proper. You must decide

1 what weight, if any, should be given to the alleged
2 statement. If you determine the alleged statement was not
3 true -- excuse me. If you determine that the alleged
4 statement was not the free and voluntary statement of the
5 defendant, you should not consider the statement at all.

6 Now, finally, Mr. Foreman, ladies and gentlemen of the
7 jury, I want to talk to you briefly about your
8 deliberations. Let me point out to you that you don't serve
9 as jurors to be partisans or advocates for one side or the
10 other. In fact, you were chosen by both sides because both
11 sides felt that you could be fair and impartial and decide
12 this case solely based on the evidence and without any bias
13 or prejudice towards one side or the other and according to
14 the law as I give it to you.

15 That means, in your deliberations, you are to use your
16 experiences in life, your good common sense, and your sense
17 of logic and reasoning, apply that to the law when finding
18 the facts as you find them to be.

19 Let me give you a definition of deliberation. It is
20 defined as this. It is a careful consideration weighing up
21 with a view to a decision.

22 Now, regardless of what any of you may think about our
23 criminal justice system, I would submit to you that our jury
24 system allows 12 good men and women such as yourselves who
25 come from 12 different backgrounds who have 12 different

1 life experiences and prospectives to listen to all of the
2 evidence in the case, to listen to the law that applies, to
3 talk about the evidence and the law, and ultimately to reach
4 a verdict.

5 We call them deliberations for a, a reason. You are to
6 consider all of the evidence in this case thoroughly,
7 courteously, and deliberately in a calm and courteous
8 manner. Remember you're not partisans or advocates for one
9 side or the other. You are judges of the facts, and your
10 sole interest in this matter is to determine the truth from
11 the evidence you heard in this courtroom.

12 I'm gonna ask you and I'm also gonna charge you that
13 you are to listen to your fellow jurors points and their
14 points of view, talk to and discuss through all the evidence
15 thoroughly, and remember, if you're doing something
16 deliberately, you're not in a big hurry, and you shouldn't
17 be today. I'll point out to you that this is both the State
18 and the defendant's only day in Court, and this case is
19 important to both the State and to this defendant.

20 Now, in order for your verdict to stand it must be
21 unanimous. That being said, each of you must decide this
22 case for yourselves, but you should only do so after you
23 have impartially considered all the other evidence, you have
24 discussed it fully with your fellow jurors, you've listened
25 to all your juror's point and points of view. Do not be

1 afraid to change your opinion if the discussion persuades
2 you that you should. On the other hand, do not come to a
3 decision simply to appease your fellow jurors.

4 Now, Mr. Foreman, if, during your deliberations, at any
5 time you should ever have a question, I'm gonna ask that you
6 write your question down on a piece of paper, sign it, and
7 knock it on, knock on the door and I will receive it here
8 with the attorneys and the parties here in the courtroom and
9 we will react accordingly.

10 Okay, sir?

11 FOREMAN: Yes, sir.

12 THE COURT: If the jury needs anything by way of
13 refreshments or drinks, just let the bailiff know and
14 they'll provide those to you.

15 That being said, the verdict form, in just a few
16 moments, is to be sent back to you. The verdict form is
17 this, and let me just tell you, before I go over it with
18 you, the order in which your options appear is of no
19 consequence because I have to put them in some order
20 throughout. Your verdict form is we, the jury, unanimously
21 find, under Indictment Number 2012-GS-42-5979,
22 drugs/trafficking in heroin, 14 grams or more but less than
23 28 grams, that the defendant is. You will have a space for
24 not guilty and a space for guilty. Once the jury reaches a
25 unanimous decision, you'll check the applicable option,

1 you'll sign your name, you'll knock on the door, you'll fold
2 this over and crease it, and we'll receive it in evidence.

3 Okay, sir?

4 FOREMAN: Yes, sir.

5 THE COURT: Now, that concludes my charge on the law to
6 you. I need to speak with these attorneys to see if I
7 omitted to tell you something or I mischarged you on the
8 law. If I need to bring you back I will. If not, you'll
9 receive work in no uncertain terms that you may begin your
10 deliberations, which gives you all the evidence.

11 Again, if you want to watch the video you may do so as
12 many and for as long as you want. It's just we're gonna do
13 it here in the courtroom.

14 FOREMAN: Yes, sir.

15 THE COURT: Okay, sir. Mr. Alternate, when I send the
16 evidence back to the jury, I'm gonna ask you to come back
17 out.

18 Okay, sir?

19 ALTERNATE JUROR: Yes, sir.

20 THE COURT: At this point I'm gonna ask you to go in
21 with the jury and then we'll have you back out in the few
22 minutes.

23 Okay, Mr. Foreman.

24 (WHEREUPON, the following takes place outside the
25 presence of the jury.)

1 THE COURT: Any additions or exceptions from the State?

2 SOLICITOR HUNTER: Nothing from the State, Your Honor.

3 THE COURT: From the defense?

4 MR. ROBINSON: No, sir, Your Honor.

5 THE COURT: All right. Guys, let me just say this.

6 Regardless of the outcome, I want to thank the attorneys for
7 being prepared and ready to try the case. It makes my job
8 much simpler when we have attorneys who are professional and
9 prepared and both of you met that, and I appreciate that
10 very much.

11 with that being said, if you intend to leave anywhere,
12 leave your numbers so we can get back to you closely. But
13 if y'all would go over the evidence and the exhibits rather
14 and make sure they're all there.

15 Mr. Garvin, you may not leave this courtroom.

16 Okay, sir?

17 (Defendant nods affirmatively.)

18 THE COURT: All right.

19 DEFENDANT: Can I go to the bathroom?

20 THE COURT: He'll be in the back. Very good.

21 All right. If you'll go through that please and here's
22 the verdict form.

23 THE COURT: If you would take it in and ask them to
24 begin their deliberations please, sir.

25 BAILIFF: The alternate?

1 THE COURT: Oh, yeah, bring the alternate out. Thank
2 you.

3 (WHEREUPON, the alternate juror was dismissed at this
4 time and the jury began deliberations at 11:16AM and
5 returned with a question at 12:06PM.)

6 THE COURT: All right. Guys, the jury is requesting to
7 review all three of the evidence videos. Is that on the
8 board -- I assume that you're aware of that and you got it
9 ready?

10 You're ready to go?

11 SOLICITOR HUNTER: State's ready, Your Honor?

12 THE COURT: Okay. You've got those parts of the video
13 marked where you can fast forward through?

14 SOLICITOR HUNTER: I have the time written down, Your
15 Honor.

16 THE COURT: All right.

17 SOLICITOR HUNTER: Also, Your Honor, I didn't know if
18 you would just like to request which order they'd like to
19 watch them in.

20 THE COURT: Let's just do them in the order played. If
21 I recall, it's third, first, second.

22 Is that the way you played them?

23 SOLICITOR HUNTER: I think it was third, second, first.

24 THE COURT: Oh, you just did it in reverse order?

25 SOLICITOR HUNTER: Yeah.

1 FOREMAN: Yes, sir.

2 THE COURT: Would you pass it to the bailiff please,
3 sir?

4 (Foreman complies.)

5 THE COURT: Madam Clerk, would you publish the verdict
6 please?

7 CLERK: State of South Carolina, County of Spartanburg,
8 the state of South Carolina versus John Dwayne Garvin, we,
9 the jury, unanimously find the, find under Indictment Number
10 2012-GS-42-5979, drugs, trafficking in heroin, morphine, et
11 cetera, 14 grams or more but less than 28 grams that the
12 defendant is guilty. It is signed by the foreperson and
13 dated today's date.

14 Ladies and gentlemen of the jury, if this is your
15 verdict and still your verdict please raise your right-hand.

16 (WHEREUPON, all jurors raise their hands at this time.)

17 CLERK: So say you all.

18 THE COURT: Very good.

19 (WHEREUPON, the jury panel was dismissed at this time.)

20 THE COURT: All right. Mr. Robinson, if y'all will
21 stay put. I'll be out in just one second please.

22 MR. ROBINSON: Yes.

23 (Pause.)

24 THE COURT: Mr. Hunter, would you prepare me a
25 sentencing sheet?

1 decision, which our system does, and I think that we have to
2 stand by that decision, but I'd ask for mercy please, sir.

3 THE COURT: Thank you.

4 What is the range on this, Mr. Hunter?

5 SOLICITOR HUNTER: There is no range, Your Honor. It's
6 a 25 year sentence and a \$200,000 fine.

7 THE COURT: Is it not 25 to 30 or a straight 25 and
8 200,000?

9 SOLICITOR HUNTER: Correct, non-suspendible,
10 non-probation.

11 THE COURT: That's what I was thinking.

12 Okay. I thought it was ranging between 25 and 30. I
13 didn't know it was just a straight up sentence.

14 Okay. Mr. Garvin, you'll have ten days to appeal the
15 verdict in this matter. I will advise you of that. As you
16 heard, I really have no discretion in this matter. However,
17 if you'd like to have anything to say I'd be glad to let you
18 say it at this juncture.

19 DEFENDANT: I did not, I did not have anything to do
20 with this. I really don't have -- I really can't talk right
21 now.

22 THE COURT: All right. Again, Mr. Garvin, just so the
23 record is clear, excluding today, you'll have ten days to
24 appeal.

25 Okay, sir?

1 DEFENDANT: Do what?

2 THE COURT: I want to make sure you do---

3 DEFENDANT: Appeal it to where, The Clerk of Court here
4 in Spartanburg?

5 THE COURT: I can't advise you, but the appeal would be
6 to the Appellate Courts, and Mr. Robinson will advise you on
7 your appellate rights.

8 MR. ROBINSON: Yes, Your Honor.

9 THE COURT: And you'll perfect the appeal?

10 MR. ROBINSON: I will, Your Honor, yes, sir.

11 THE COURT: Very good. Thank you.

12 The Sentence of the Court is 25 years and a fine of
13 \$200,000.

14 Good luck to you, sir.

15 MR. ROBINSON: Thank you, judge.

16 (WHEREUPON, the statement formerly State's Exhibit No.
17 1 was marked as Court's Exhibit No. 3 for identification
18 purposes only at this time.)

19

20

21 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

22

23

24

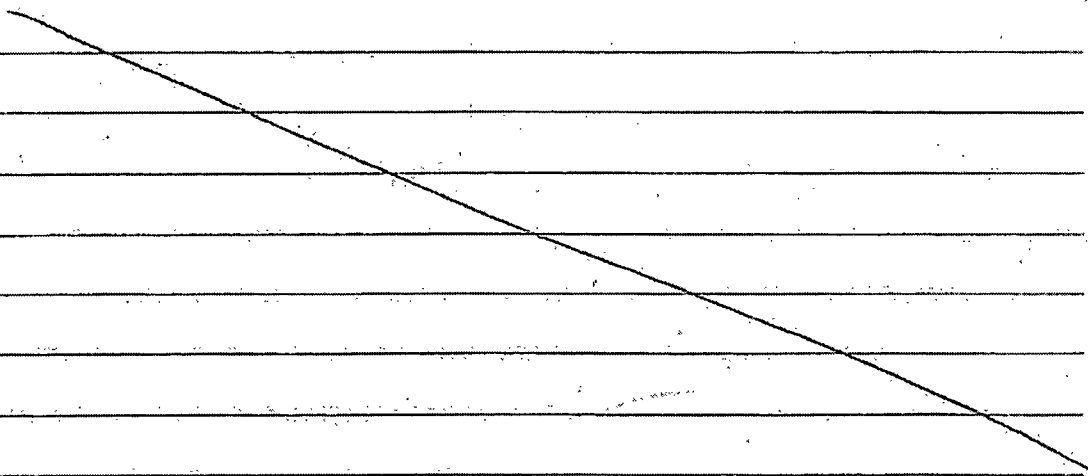
25

VOLUNTARY STATEMENT

STATEMENT OF: <u>JOHN D. GARVIN</u>	AGE: <u>41</u>	DATE: <u>7-17-12</u>
ADDRESS: <u>10449 GREY FOL WAY SAVANNAH GA</u>		
PHONE # <u> </u>	DOB: <u>11/21/70</u>	SSN: <u> </u>

THIS GUY KNOWN AS "FRED" KEPT CALLING MY ROOMMATE I KNOW AS PEREZ. PEREZ AND "FRED" KEPT TALKING ABOUT DELIVERING 15 BUNDLES OF HEROIN TO SPARTANBURG. I TOOK PEREZ YESTERDAY TO PICK UP 15 BUNDLES FROM A GUY THAT PEREZ KNOWS. I PUT IN \$200⁰⁰ FOR THIS 15 BUNDLES. WE BOUGHT 4 GRAMS OF HEROIN AND WE WORKED IT UP TO 15 GRAMS WITH POWDERED SUGAR. WE WERE GOING TO SELL IT FOR \$280⁰⁰ PER "BRICK". ALL OF THIS WAS DONE IN HENDERSON, NC.

WE HAD DONE THE SAME DEAL ABOUT A WEEK AGO WITH "FRED" FOR 2 BRICKS FOR \$1800⁰⁰. I GOT \$300⁰⁰ AND PEREZ WAS GOING TO TAKE THE REST TO GET SOME MORE HEROIN.



I have read this statement consisting of 1 page(s), and I swear that the statement that I have just given is the truth, the whole truth, and nothing but the truth, so help me God. I also swear this statement was given freely and voluntarily and I have received a copy of my statement. This statement was completed at 5:49 P. M. on the 17 day of July 2012.

WITNESS: B.A. Ahelf

[Signature]
Signature of person giving voluntary statement

SWORN to before me this _____ day of _____, 20__.

(Seal)
Notary Public of South Carolina
My Commission expires: _____



WITNESSES

SPTBG CO SHERIFF'S OFFICE

1. SENTENCE MADE

2. REPORT ENDED

3. CARD FILLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT COPY WARRANT NUMBER FINE CARD MADE

8. TRAFFIC VIOLATION COPY

N158322

ACTION OF GRAND JURY

Alan Dill

True Bill

DEC 06 2012

Foreperson of Grand Jury
Date:

VERDICT

Guilty

Foreperson of Petit Jury
Date: 5-23-13

DOCKET NO. **12-GS-42-5979**

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

2012

TERM

THE STATE
vs.

JOHN DWAYNE GARVIN

Indictment for

TRAFFICKING IN HEROIN

SC Code: 44-53-370

FILED
CLERK OF COURT
SPARTANBURG

2012 DEC 12 AM 8:53

M. HOPE BLACKLEY

CB

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on DEC 13 2012 the
Grand Jurors of Spartanburg County present upon their oath:

TRAFFICKING IN HEROIN

That John Dwayne Garvin did in Spartanburg County on or about July 17, 2012, knowingly sell, manufacture, cultivate, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase or bring into this State, or did knowingly actually or constructively possess or did knowingly attempt to become in actual or constructive possession of more than (14) fourteen grams of Heroin, a schedule I controlled substance, in violation of §44-53-370 , *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

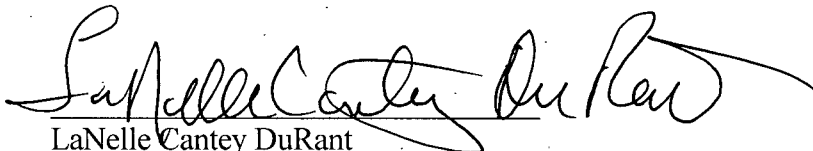


ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

May 21st, 2014

A handwritten signature in black ink, reading "LaNelle Cantey DuRant". The signature is written in a cursive style with a long horizontal flourish extending to the right.

LaNelle Cantey DuRant
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

ORIGINAL

Appeal from Spartanburg County

R. Lawton McIntosh, Circuit Court Judge

RECEIVED

MAY 21 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

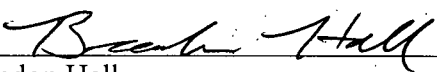
V.

JOHN DWAYNE GARVIN,

APPELLANT

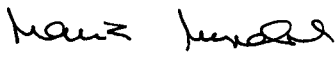
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Johanna C. Valenzuela, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 21st day of May, 2014.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 21st day of May, 2014.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.