

STATE OF SOUTH CAROLINA

In The Court of Appeals

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JUL 18 2012

APPEAL FROM HORRY COUNTY

S.C. Supreme Court

Larry B. Hyman, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TAWANDA WILLIAMS,

PETITIONER

APPENDIX

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

TAWANDA WILLIAMS,

APPELLANT

Appeal from Horry County

Larry B. Hyman, Jr., Circuit Court Judge

Opinion No. 2011-UP-558

PETITION FOR REHEARING

RECEIVED

DEC 22 2011

SC OFFICE OF
APPELLATE DEFENSE

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DEC 22 2011

SC Court of Appeals

Pursuant to Rule 221(a), SCACR, counsel for Tawanda Williams, petitions the Court for rehearing. This Court affirmed the sentence and conviction and in a footnote wrote, "We decline to address Williams's argument concerning the Confrontation Clause violation. Because Williams did not raise this issue to the trial court, this issue is not preserved for appellate review. See State v. Porter, 389 S.C. 27, 38, 698 S.E.2d 237, 243 (Ct. App. 2010) (providing that issues not raised and ruled upon in the trial court will not be considered on appeal); see also State v. Varvil, 338 S.C. 335, 339, 526 S.E.2d 248, 250 (Ct. App. 2000) (holding constitutional arguments not raised and ruled upon in the trial court are waived on appeal)." State v. Williams, 2011-UP-558,

n. 1 (S.C.Ct.App. filed December 9, 2011). Counsel respectfully submits that the Court overlooked the fact that counsel raised the confrontation clause issue to the trial court.

After the judge denied appellant's motion to suppress the drugs based on a defective chain of custody, counsel argued, "Yes sir, Well then I would argue, Your Honor, that State v. Burns suggests that once a "CI" is indisposed that "CI" is a material witness and if the "CI" is not available for cross examination anything that follows from the "CI" would be inadmissible because I don't have a chance to cross examine that "CI", for example, about the video and about the chain." (R. p. 7, lines 1-7). While counsel did not specifically state that the "missing" confidential informant created Confrontation Clause problems, her argument above about her inability to cross examine the CI sufficiently raises the Confrontation Clause issue to the trial judge.

In response to counsel's objection to not being able to cross examine the informant, the judge stated that counsel could require the "CI" to appear. (R. p. 7, lines 8-18). Counsel responded that she had just learned yesterday that the "CI" was missing. (R. p. 7, lines 11-13). Counsel for appellant then moved for a continuance in order to find the informant. (R. p. 7, lines 19-22). The judge denied the motion for continuance. On appeal Williams argues the judge's refusal to grant a continuance constitutes a prejudicial abuse of discretion.

This Court wrote, "We affirm pursuant to Rule 220(b)(1), SCACR, and the following authorities: State v. McKennedy, 348 S.C. 270, 280, 559 S.E.2d 850, 855 (2002) (holding a trial court's denial of a motion for a continuance "will not be disturbed absent a clear abuse of discretion" (quoting State v. Williams, 321 S.C. 455, 459, 469 S.E.2d 49, 51 (1996))); McKennedy, 348 S.C. at 280, 559 S.E.2d at 855 ("This [c]ourt has repeatedly upheld denials of motions for continuances where there is no showing that any other evidence on behalf of the defendant could have been introduced, or that any other points could have been raised, if more

time had been granted to prepare for trial.".)” State v. Williams, 2011-UP-558 (S.C.Ct.App. filed December 9, 2011). In the present case Williams showed that other evidence could have been introduced if counsel had been given the opportunity to locate the “missing” CI.

Additionally this Court affirmed pursuant to “Rule 7(a), SCRCrimP (providing a trial court may only grant a continuance upon "written request by counsel"); Rule 7(b), SCRCrimP ("No motion for continuance of trial shall be granted on account of the absence of a witness without the oath of the party, his counsel, or agent to the following effect: the testimony of the witness is material to the support of the action or defense of the party moving; the motion is not intended for delay, but is made solely because he cannot go safely to trial without such testimony; and has made use of due diligence to procure the testimony of the witness or of such other circumstances as will satisfy the court that his motion is not intended for delay."); Rule 7(b)(2), SCRCrimP (requiring the moving party to set forth under oath what "fact or facts he believes the witness if present would testify to and the grounds for such belief").” State v. Williams, 2011-UP-558 (S.C.Ct.App. filed December 9, 2011). As counsel only learned of the “missing CI the day before trial, she should have been given the opportunity to comply with Rule 7(a) and (b).

A motion for continuance is addressed to the sound discretion of the trial court and its ruling on such motion will not be reversed without a clear showing of abuse of discretion. State v. Browder, 277 S.C. 206, 284 S.E.2d 775 (1981). In State v. Tanner, 299 S.C. 459, 385 S.E.2d 832 (1989), the Court ruled that it was an abuse of discretion to fail to grant a continuance so that the defense could have blood, skin and hair samples tested when the State initially advised that the samples had been misplaced or lost and then, ten minutes prior to the pre-trial hearing, the

State made counsel aware of the existence of the samples. In the present case, counsel only learned of the missing informant the day before trial. (R. p. 7, lines 11-13).

In State v. Burns, 294 S.C. 338, 340-341, 364 S.E.2d 465, 467 (1988) the Court wrote, "The right of an accused to learn the identity of an informant includes more than the state's revelation of the informant's name. See United States v. Goss, 237 F.Supp. 26 (S.D.N.Y. 1965). In cases where the informant's testimony relates to the offense, preliminary matters such as search and seizure, or other constitutional matters, the defense is entitled to a reasonable opportunity to search for the informant." Renzi v. Commonwealth of Virginia, 794 F.2d 155 (4th Cir.1986). See also United States v. Freund, (5th Cir.1976). In Burns the Court ruled that it was an abuse of discretion to fail to grant a continuance so that the defense could locate a government informant. In the present case the failure to grant a continuance so that the defense could locate and interview the government informant constituted an abuse of discretion.

The failure to grant the continuance in conjunction with the admission of the video and audio disc of the transaction results in a Confrontation Clause violation. The Confrontation Clause guarantees an accused the right "to be confronted with the witnesses against him." U.S. Const. amend. VI. The right of confrontation is essential to a fair trial in that it promotes reliability in criminal trials and insures that convictions will not result from testimony of individuals who cannot be challenged at trial. California v. Green, 399 U.S. 149, 90 S.Ct. 1930, 26 L.Ed.2d 489 (1970); State v. Martin, 292, S.C. 437, 357 S.E.2d 21 (1987). The Confrontation Clause requires a witness to testify under oath and submit to cross-examination so that the jury can observe the witness's demeanor and assess his credibility. State v. Cooper, 291 S.C. 351, 353 S.E.2d 451 (1987).

The Confrontation Clause guarantees a defendant the opportunity to cross-examine a witness concerning bias. Davis v. Alaska, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974); State v. Brown, 303 S.C. 169, 399 S.E.2d 593 (1991); *see also* State v. Mizzell, 349 S.C. 326, 331, 563 S.E.2d 315, 317 (2002)(a defendant has right to cross-examine a witness concerning bias under Confrontation Clause). Considerable latitude is allowed in the cross-examination of a witness for potential bias. State v. Clark, 315 S.C. 478, 445 S.E.2d 633 (1994); Brown, 303 S.C. at 171, 399 S.E.2d at 594; State v. McFarlane, 279 S.C. 327, 306 S.E. 2d 611 (1983). On cross-examination, any fact may be elicited which tends to show interest, bias, or partiality of the witness. Mizzell, 349 S.C. at 331, 563, S.E. 2d at 317; State v. Starnes, 340 S.C. 321, 531 S.E.2d 907 (2000); State v. Brewington, 267 S.C. 97, 226, S.E. 2d 249 (1976). The appropriate question under a Confrontation Clause analysis is whether there has been any interference with the defendant's opportunity for effective cross-examination at trial. Kentucky v. Stincer, 482 U.S. 730, 107 S.Ct. 2658, 96 L.Ed.2d 631 (1987); Starnes, 307 S.C. at 250, 414 S.E.2d at 583.

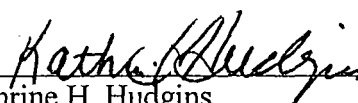
A criminal defendant states a violation of the Confrontation Clause by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby to expose to the jury the facts from which jurors could appropriately draw inferences relating to the reliability of the witness. Delaware v. Van Arsdall, 475 U.S. 673, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986).

In Crawford v. Washington, 541 U.S. 36, 54, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004), the United States Supreme Court held that testimonial hearsay against a defendant violates the Confrontation Clause if (1) the declarant is unavailable to testify at trial and (2) the accused has had no prior opportunity to cross-examine the witness. The State's failure to call the government informant as a witness constitutes a Confrontation Clause violation in the present

case. The video/audio disc constitutes testimonial hearsay against appellant. The State asserted that the informant was unavailable and the defense was not given the opportunity to challenge that assertion. Appellant did not have a prior opportunity to cross examine the government informant. The trial judge erred in refusing to grant appellant's continuance motion to provide a reasonable opportunity to locate the informant when the State's failure to call the informant who allegedly purchased drugs from appellant constituted a violation of the Confrontation Clause.

Based on the above argument, counsel respectfully requests rehearing.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

This 22nd day of December, 2011.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Larry B. Hyman, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TAWANDA WILLIAMS,

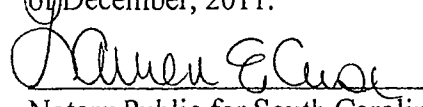
APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Christina J. Catoe, Esquire, this 22nd day of December, 2011.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 22nd day
of December, 2011.
 (L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014.



APR 18 2012

SC OFFICE OF
APPELLATE DEFENSE

The South Carolina Court of Appeals

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April 18, 2012

Appellate Defender Kathrine Hudgins
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: The State v. Williams, Tawanda

Dear Counsel:

Enclosed is a copy of an Order of the Court granting your Petition for Rehearing in the above case.

Unpublished opinion number 2011-UP-558, filed December 9, 2011, is hereby withdrawn and the enclosed opinion is substituted therefor.

The Remittitur in this case will be held in this Court only so long as required by Appellate Court Rule 221 (b).

Please notify this office, in writing, within ten (10) days from the date of this letter, whether or not you want any of the remaining Records on Appeal and briefs we may have in this case. Also enclose a check payable to the S. C. Court of Appeals, in the amount of \$7.50, to cover mailing costs. If we have not heard from you within ten (10) days, the Record on Appeal and briefs will be disposed of.

Sincerely,

*V. Claire Allen*V. Claire Allen
Deputy Clerk of Court

VcA/tf

cc: Assistant Attorney General Christina Catoe

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.
Tawanda Williams, Appellant.

Appeal From Horry County
Larry B. Hyman, Jr., Circuit Court Judge

Unpublished Opinion No. 2012-UP-558
Submitted December 1, 2011 – Filed December 9, 2012
Withdrawn, Substituted, and Refiled April 18, 2012

AFFIRMED

Appellate Defender Kathrine H. Hudgins, of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, and
Assistant Attorney General Christina J. Catoe, all of

Columbia; and Solicitor J. Gregory Hembree, of Conway, for Respondent.

PER CURIAM: Tawanda Williams appeals her conviction for distribution of cocaine. Williams argues the trial court erred in denying her motion for a continuance. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities: State v. McKennedy, 348 S.C. 270, 280, 559 S.E.2d 850, 855 (2002) (holding a trial court's denial of a motion for a continuance "will not be disturbed absent a clear abuse of discretion" (quoting State v. Williams, 321 S.C. 455, 459, 469 S.E.2d 49, 51 (1996))); id. at 280, 559 S.E.2d at 855 ("This [c]ourt has repeatedly upheld denials of motions for continuances where there is no showing that any other evidence on behalf of the defendant could have been introduced, or that any other points could have been raised, if more time had been granted to prepare for trial."); Rule 7(a), SCRCrimP (providing a trial court may only grant a continuance upon "written request by counsel"); Rule 7(b), SCRCrimP ("No motion for continuance of trial shall be granted on account of the absence of a witness without the oath of the party, his counsel, or agent to the following effect: the testimony of the witness is material to the support of the action or defense of the party moving; the motion is not intended for delay, but is made solely because he cannot go safely to trial without such testimony; and has made use of due diligence to procure the testimony of the witness or of such other circumstances as will satisfy the court that his motion is not intended for delay."); Rule 7(b)(2), SCRCrimP (requiring the moving party to set forth under oath what "fact or facts he believes the witness if present would testify to and the grounds for such belief"); see State v. Richardson, 253 S.C. 468, 473-74, 171 S.E.2d 717, 719 (1969) (supporting the proposition that the Confrontation Clause is not implicated merely because the State did not call the informant to testify); id. ("[T]he State is not required to place upon the stand every witness who has knowledge of material facts connected with the crime charged."); id. at 474, 171 S.E.2d at 720 (holding the rules of evidence "do not require that all witnesses who may be present when the offense was committed, or who may be supposed to possess information respecting it, should be produced").

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

AFFIRMED.

FEW, C.J., and THOMAS and KONDUROS, JJ., concur.

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Larry B. Hyman, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TAWANDA WILLIAMS,

APPELLANT

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF GENERAL SESSIONS

08-GS-26-4623

STATE OF SOUTH CAROLINA,

vs.

TAWANDA ANN WILLIAMS,

TRANSCRIPT OF RECORD

JANUARY 4-5, 2010

CONWAY, SOUTH CAROLINA

BEFORE:

THE HONORABLE, LARRY B. HYMAN; AND A JURY

APPEARANCES:

BY: ELIZABETH V. TILLEY, ESQ.
JIMMY A. RICHARDSON, II, ESQ.
ATTORNEYS FOR STATE

BY: KIA T WILSON, ESQ.
ATTORNEY FOR TAWANDA ANN WILLIAMS

BRENDA R. BABB
Circuit Court Reporter

1 ATTENTION BECAUSE AFTER CONSULTING WITH THE OTHERS MORE
2 EXPERIENCED THAN MYSELF I REALIZED I MAY HAVE OVERLOOKED
3 SOMETHING.

4 THE COURT: OKAY.

5 MS. WILSON: I'M ASKING FOR THE COURT'S
6 INDULGENCE FOR MAYBE ANOTHER FEW MINUTES. I KNOW THIS HAS
7 BEEN MUCH DELAYED ALREADY, HOWEVER, IT'S COME TO MY
8 ATTENTION THAT SINCE THE CONFIDENTIAL INFORMANT MAY NOT BE
9 HERE TO TESTIFY IT'S MY UNDERSTANDING THAT THE CONFIDENTIAL
10 INFORMANT WON'T BE HERE AND IS MISSING. I REALIZE THAT I
11 NEED TO MAKE A MOTION TO SUPPRESS THE DRUG EVIDENCE ON THE
12 BASIS THAT THE "CI" IS A MATERIAL WITNESS WHO WOULD BE AN
13 IMPORTANT PART OF THE CHAIN OF CUSTODY IN THIS CASE.
14 WITHOUT THE "CI" THE CHAIN CANNOT FULLY BE ESTABLISHED
15 WHICH MEANS THAT IN ALL PROBABILITY THE EVIDENCE PROBABLY
16 COULD BE SUPPRESSED ON THAT BASIS AND I'M ACTUALLY IN THE
17 PROCESS OF GETTING SOME CASE LAW TO BACK THAT UP.

18 THE COURT: TELL ME ABOUT THAT, MR. RICHARDSON,
19 MS. TILLEY? HOW DO YOU INTEND TO ESTABLISH YOUR CHAIN OF
20 CUSTODY UNLESS PERHAPS THERE WAS SOMEONE WITH THEM OR JUST
21 TELL ME WHAT WE'VE GOT HERE?

22 MS. TILLEY: WELL ACTUALLY, YOUR HONOR, OKAY,
23 YOUR HONOR, OBVIOUSLY THAT IS A QUESTION MY FIRST CONCERN
24 TO LOOK AT WITH THIS CASE IS WHETHER OR NOT I DO HAVE
25 CHAIN. THE REASON IN THIS CASE THAT WE DO HAVE CHAIN AND

1 WE'RE ABLE TO BRING THIS CASE BEFORE YOU AND PROVE IT IS
2 BECAUSE DURING THE TRANSACTION AGENT WOOD WAS THE DRIVER IN
3 THE VEHICLE, PLACED NEXT TO HIM WAS THE CONFIDENTIAL
4 INFORMANT. THE DEFENDANT CAME OVER AND DID THE BUY, IT WAS
5 WITNESSED BECAUSE RYAN WOOD, THE AGENT, WAS SITTING RIGHT
6 NEXT TO THE INFORMANT SO HE SAW THE DRUGS TAKE PLACE AND
7 ACCORDING TO CURRENT CASE LAW IN THE CHAIN OF CUSTODY WE
8 MUST PROVE TO THE REASONABLE, THIS AGENT WOOD CAN TESTIFY
9 AS ---

10 THE COURT: A REASONABLE CERTAINTY.

11 MS. TILLEY: REASONABLE CERTAINTY, YES, YOUR
12 HONOR, SO THAT WAS, OF COURSE, A CONCERN OF MINE AND AFTER
13 THE READING OF CASE LAW AND THE ONE THAT I FOUND TO BE MOST
14 ON POINT WAS STATE V. HATCHER I THOUGHT THE CHAIN COULD BE
15 BECAUSE OF THAT SCENARIO.

16 THE COURT: WELL WHAT ABOUT THAT, MS. WILSON,
17 UNDER THE LAW IF THE AGENT WAS NOT A POLICE OFFICER HE
18 WOULD HAVE BEEN GUILTY OF POSSESSION. I MEAN HE
19 ESSENTIALLY WAS IN CONSTRUCTIVE POSSESSION OF THE, OF THE
20 DRUGS?

21 MS. WILSON: AND, YOUR HONOR, IN RESPONSE I
22 WOULD SAY THAT THERE'S MANY CASES WHERE "CI'S" ACTUALLY DO
23 THE WORK WITHOUT AN OFFICER ACCOMPANYING THEM.

24 THE COURT: I UNDERSTAND THAT, AND IF THAT WERE
25 THE CASE HERE I WOULD SAY YOU GOT A PROBLEM WITH CHAIN. IF

1 A "CI" IS SENT TO A LOCATION AND HE COMES BACK AND HE'S GOT
2 THE DRUGS I'VE GOT A REAL PROBLEM WITH THAT.

3 MS. WILSON: YES, SIR.

4 THE COURT: BUT THE OFFICER IS SITTING RIGHT
5 THERE WITH HIM OBSERVES THE TRANSACTION.

6 MS. WILSON: YES, SIR, WELL, AND, YOUR HONOR, IN
7 ADDITION I WOULD SAY THAT, AND THAT'S ACTUALLY THE CASE LAW
8 I'M WAITING ON. MY UNDERSTANDING IS THERE'S A CASE STATE
9 V. DIAMOND WHICH SPEAKS TO THE MATERIAL NATURE OF THE
10 CONFIDENTIAL INFORMANT EVEN IF AN OFFICER IS PRESENT WITH
11 THEM.

12 THE COURT: WELL IF THERE'S A CASE ON POINT I'LL
13 CERTAINLY WANT TO SEE IT.

14 MS. WILSON: YES, SIR.

15 THE COURT: AND YOU SAY IT'S DIAMOND?

16 MS. WILSON: YES, SIR, AND I AM AWAITING SOME
17 INFORMATION TO THAT AFFECT RIGHT NOW AND THAT'S WHY I'M
18 ASKING THE COURT'S INDULGENCE FOR A BRIEF MOMENT.

19 THE COURT: ALL RIGHT.

20 MS. WILSON: AND I APOLOGIZE AGAIN PROFUSELY.

21 THE COURT: OKAY.

22 MS. WILSON: THANK YOU.

23 THE COURT: LET'S SEE, WE MIGHT WANT TO TAKE
24 THAT OPPORTUNITY TO BRING THAT UP, MS. TILLEY, YOURSELF.

25 MS. TILLEY: YES, YOUR HONOR.

1 THE COURT: I'VE TAKEN THE TIME TO READ DIAMOND
2 AND I THINK DIAMOND SUPPORTS THE STATE'S POSITION MORE THAN
3 IT DOES YOURS. DIAMOND IS OBVIOUSLY A CASE OF WHERE THE
4 STATE WAS ABLE TO PROSECUTE A CASE AT THE INITIAL TRIAL
5 WITHOUT PRODUCING THE INFORMANT IN A SITUATION VERY SIMILAR
6 TO WHAT WE HAVE, AN AGENT WAS PRESENT WHEN THE DRUGS WERE
7 BOUGHT. IN THAT CASE OBVIOUSLY THERE WAS NO NEED TO HAVE
8 THE INFORMANT OR AT LEAST IN THAT TRIAL. THAT ISSUE WAS
9 NEVER RAISED ON APPEAL WHETHER OR NOT THEY COULD GO
10 FORWARD. THE ISSUE THAT WAS RAISED ON APPEAL WAS WHETHER
11 OR NOT THE STATE WAS REQUIRED TO TURN OVER THE NAME OF AN
12 INFORMANT WHO PARTICIPATED IN THE TRANSACTION. THE TRIAL
13 JUDGE SAID, NO; THE COURT OF APPEALS HELD OR THE SUPREME
14 COURT HELD THAT HE WAS ENTITLED TO KNOW. IT'S MY
15 UNDERSTANDING THAT YOU HAVE BEEN PROVIDED WITH THE NAME OF
16 THE INFORMANT?

17 MS. WILSON: I HAVE, YOUR HONOR.

18 THE COURT: OKAY, SO THEY HAVE SATISFIED THE
19 REQUIREMENT OF DIAMOND, ISN'T THAT EXACTLY WHAT DIAMOND
20 SAYS?

21 MS. WILSON: IT IS, YOUR HONOR.

22 THE COURT: YOU'RE ENTITLED TO KNOW?

23 MS. WILSON: IT DOES, BUT IN ADDITION, YOUR
24 HONOR, IN THE DRUG LITIGATION INFORMATION REGARDING DIAMOND
25 IT VERY SPECIFICALLY STATES THAT HAVING THE "CI" PRESENT TO

1 SPEAK ABOUT THE VIDEO OR THE DRUGS IN PARTICULAR IN THIS
2 CASE THE CHAIN THE "CI" IS A MATERIAL WITNESS FOR THOSE
3 PURPOSES AND SUPPRESSION OF THAT MATERIAL WOULD HAVE TO
4 FOLLOW IF THE "CI" IS NOT PRESENT TO SPEAK ABOUT IT.

5 NOW CERTAINLY WHAT THE COURT IS SAYING ABOUT THE
6 OFFICER, I BELIEVE IN THIS CASE OFFICER WOOD, BEING ABLE TO
7 SAY, WELL I WAS WITH HIM WHEN IT OCCURRED THAT'S ALL GOOD
8 AND WELL, BUT HE CAN'T TESTIFY AS TO OR FOR THE "CI" AS TO
9 WHAT THE "CI" DID OR WITNESSED AT THAT TIME.

10 THE COURT: I WOULD AGREE THAT HE CAN'T TESTIFY
11 AS TO WHAT THE "CI" SAW OR PERCEIVED WITH HIS SENSES. THE
12 OFFICER CAN TESTIFY AS TO WHAT HE SAW, HEARD, AND PERCEIVED
13 WITH HIS SENSES IF HE'S THERE. WHY THEN WOULD THE OFFICER
14 NOT BE ABLE TO SAY, I WAS SITTING THERE, I HEARD THE
15 CONVERSATION, I SAW THE EXCHANGE, I SAW THE DOPE, I GOT THE
16 DOPE FROM THE "CI", I WAS RIGHT THERE. ISN'T THAT, DOESN'T
17 THAT REASONABLY AND CERTAINLY ESTABLISH THAT THE DRUGS WERE
18 NOT ALTERED IN ANY WAY? I MEAN YOU MIGHT DEVELOP THAT ON
19 CROSS EXAMINATION BUT IT WOULD APPEAR TO ME THAT THE ISSUE
20 HERE IS WHETHER OR NOT THEY NEED TO HAVE THE INFORMANT IN
21 ORDER TO ESTABLISH THE CHAIN AND CERTAINLY UNDER DIAMOND I
22 DON'T THINK THAT'S WHAT DIAMOND STANDS FOR AND I BELIEVE
23 THAT THEY CAN DO THAT.

24 MS. WILSON: WELL ---

25 THE COURT: IF THEY'RE ABLE TO DO SO.

1 MS. WILSON: YES, SIR, WELL THEN I WOULD ARGUE,
2 YOUR HONOR, THAT STATE V. BURNS SUGGESTS THAT ONCE A "CI"
3 IS INDISPOSED THAT "CI" CLEARLY IS A MATERIAL WITNESS AND
4 IF THE "CI" IS NOT AVAILABLE FOR CROSS EXAMINATION ANYTHING
5 THAT FOLLOWS FROM THE "CI" WOULD BE INADMISSIBLE BECAUSE I
6 DON'T HAVE A CHANCE TO CROSS EXAMINE THAT "CI", FOR
7 EXAMPLE, ABOUT THE VIDEO AND ABOUT THE CHAIN.

8 THE COURT: BUT ALL THESE CASES GO TO PROVIDING
9 THE NAME OF THE "CI", TOO. YOU CAN SUBPOENA THE "CI", YOU
10 CAN REQUIRE THE "CI" TO APPEAR.

11 MS. WILSON: BUT, YOUR HONOR, WE CANNOT BECAUSE
12 THE "CI" IS MISSING AND I DID NOT FIND THIS OUT UNTIL
13 YESTERDAY.

14 THE COURT: I UNDERSTAND THAT BUT THAT HAPPENS
15 SO OFTEN IN EVERY CASE. HE'S ALSO MISSING AS FAR AS THE
16 STATE IS CONCERNED AS WELL. THE STATE DOESN'T HAVE HIM
17 EITHER, BUT THERE'S NOTHING TO PREVENT YOU FROM FINDING HIM
18 AND CALLING HIM.

19 MS. WILSON: THEN, YOUR HONOR, AT THIS TIME I
20 WOULD REQUEST THE OPPORTUNITY TO CONTINUE THIS TRIAL SO
21 THAT I CAN MAKE THOSE EFFORTS TO FIND THIS CONFIDENTIAL
22 INFORMANT.

23 THE COURT: NOW I'M NOT GOING TO DO IT IN THIS
24 LATE DATE. WE'VE GOT A JURY PICKED, WE'RE READY TO GO
25 FORWARD. YOU KNOW THERE'S NO INDICATION THAT YOU KNOW

1 WHERE HE IS OR CAN FIND HIM OR ANYTHING OF THAT NATURE AND
2 YOU'VE KNOWN FOR QUITE SOME TIME WHO THE "CI" IS.

3 MS. WILSON: ACTUALLY, YOUR HONOR, I HAVE TO
4 TELL THE COURT I DO NOT. I RECEIVED ONLY YESTERDAY AND
5 IT'S DATED THE 21ST, IT SAYS RECEIVED IN MY OFFICE AS OF
6 THE 29TH, I DID NOT SEE IT UNTIL YESTERDAY. SO EVEN IF I
7 HAD KNOWN ON THE 29TH, YOUR HONOR, I WOULD GO SO FAR AS TO
8 TELL THE COURT IT WAS NOT TOLD TO ME UNTIL YESTERDAY THAT
9 THE "CI" WAS EVEN MISSING. SO I KNEW THE NAME OF THE "CI"
10 BUT I FOUND THAT OUT WITHIN DAYS OF TRIAL AND NEVER WAS
11 TOLD THAT THE "CI" WOULD NOT BE TESTIFYING OR THAT THE "CI"
12 WAS MISSING IN ACTION.

13 THE COURT: WHAT ATTEMPTS HAVE BEEN MADE TO
14 LOCATE HIM?

15 MS. WILSON: YOUR HONOR, UNTIL NOW NONE CAUSE I
16 DID NOT REALIZE THE "CI" WAS MISSING UNTIL YESTERDAY
17 MORNING, YESTERDAY AFTERNOON.

18 THE COURT: OKAY, WELL I'M NOT GOING TO CONTINUE
19 THE CASE.

20 MS. WILSON: YES, SIR.

21 THE COURT: I'M GOING TO DENY YOUR MOTION.

22 MS. WILSON: THANK YOU, YOUR HONOR.

23 THE COURT: OKAY, WHAT ELSE DO WE HAVE, AND IT'S
24 ALMOST 12 NOW, I'M JUST GOING TO DO A PRELIMINARY CHARGE TO
25 THE JURY AND LET YA'LL DO YOUR OPENINGS WHEN THEY RETURN

1 FROM LUNCH. ANYTHING FURTHER BEFORE WE BRING THE JURY IN?

2 MS. TILLEY: NOTHING FROM THE STATE, YOUR HONOR.

3 THE COURT: OKAY, IF YOU WOULD, MR. HEMINGWAY,
4 BRING IN THE JURY.

5 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT
6 11:47 A.M.)

7 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN OF
8 THE JURY, I AM GOING TO SEND YOU TO LUNCH IN JUST A MOMENT.
9 BEFORE I DO SO, THOUGH, I WANT TO HAVE YOU SWORN AND GIVE
10 YOU A FEW PRELIMINARY REMARKS BEFORE YOU GO OUT.

11 IF YOU WOULD SWEAR THE JURY.

12 (WHEREUPON, THE JURY WAS SWORN.)

13 THE COURT: ALL RIGHT, PLEASE BE SEATED. AS I
14 SAID I'LL BE BRIEF. I JUST WANT YOU TO GET AN IDEA OF WHAT
15 WE'RE GOING TO BE DOING HERE. AS I SAID WE'RE GOING TO
16 START THIS TRIAL JUST AFTER LUNCH AND YOU AS YOU SIT
17 THROUGH THE TRIAL MAY REALIZE THAT ACTUAL TRIALS ARE NOT
18 ALWAYS AS EXCITING OR ACTION PACKED AS YOU MAY HAVE SEEN ON
19 T.V.. IN FACT I'D BE VERY SURPRISED IF THAT WAS THE CASE
20 BECAUSE THE SEARCH FOR JUSTICE IS OFTEN VERY SLOW AND
21 DELIBERATE. YOU MAY THINK THAT THE TRIAL IS MOVING ALONG
22 VERY SLOWLY AT TIMES BUT WHAT IS HAPPENING IS THE LEGAL
23 REQUIREMENTS FOR THE PRODUCTION OF EVIDENCE ARE BEING MET
24 DURING THOSE TIMES.

25 NOW EVERYONE IN THIS TRIAL IS KNOWN TO ME OR THE

1 ATTORNEYS AND THE COURT REPORTER AND THEY'RE ALL SWORN TO
2 ACT ETHICALLY AND HONORABLY DURING THIS TRIAL AND YOU AS
3 JURORS ARE NOW UNDER OATH AND IT IS YOUR DUTY TO ACT
4 ETHICALLY AND HONORABLY DURING YOUR SERVICE AS JURORS.

5 DURING THE TRIAL OF THE CASE EVIDENCE IS GOING TO
6 BE PRODUCED BY THE STATE. IT'S THEIR BURDEN TO CONVINC
7 YOU BEYOND A REASONABLE DOUBT OF THE DEFENDANT'S GUILT AND
8 YOU'RE GOING TO DELIBERATE AT THE END OF THE TRIAL AND AT
9 THE END OF YOUR DELIBERATIONS YOU WILL RETURN A VERDICT.
10 THAT DELIBERATION PROCESS IS REALLY SORT OF TWO PARTS.

11 FIRST OF ALL AFTER REVIEWING ALL THE EVIDENCE IN
12 THE CASE YOU MUST DETERMINE WHAT THE FACTS ARE IN THE CASE.
13 YOU AS A JURY ARE THE SOLE JUDGES OF THE FACTS IN THIS
14 CASE. IF I SAY OR DO ANYTHING DURING THIS TRIAL THAT MAY
15 HINT TO YOU OR INTIMATE TO YOU THAT I HAVE AN OPINION ABOUT
16 THE FACTS IN THIS CASE PLEASE DISREGARD THAT, IT WAS
17 UNINTENTIONAL. I DON'T HAVE THE RIGHT TO HAVE AN OPINION
18 ABOUT THE FACTS IN THIS CASE. THAT IS SOLELY IN YOUR
19 PREROGATIVE.

20 IF DURING THE TRIAL OF THIS CASE THERE IS ANY
21 INDICATION FROM ANY PERSON THAT YOU SHOULD ADOPT A
22 PARTICULAR VIEW OF THE FACTS YOU CAN DISREGARD THAT BECAUSE
23 YOU AS A JURY ARE GOING TO MAKE UP YOUR OWN MINDS.

24 THE OTHER SIDE OF THE DELIBERATION PROCESS IS THE
25 LAW AND THE DELIBERATION PROCESS IS ACTUALLY TAKING THE

1 FACTS AS YOU FIND THEM AND APPLYING THE LAW AS I GIVE IT TO
2 YOU AND YOU MUST BE GUIDED BY THE LAW AS I GIVE IT TO YOU
3 WHETHER YOU AGREE WITH IT OR NOT.

4 YOU MAY HAVE SOME IDEA OF WHAT THE LAW IS AND
5 WHAT THE LAW OUGHT TO BE AND IT MAY DISAGREE WITH WHAT I
6 GIVE YOU, BUT YOU'RE BOUND UNDER YOUR OATH TO APPLY ONLY
7 THE LAW AS I GIVE IT TO YOU AND AT THE END OF THIS TRIAL I
8 WILL INSTRUCT YOU FULLY ON THE LAW THAT IS APPLICABLE TO
9 THIS CASE.

10 RIGHT NOW I CAN'T DO THAT BECAUSE QUITE FRANKLY I
11 DON'T KNOW WHAT I'M GOING TO CHARGE YOU. I WON'T KNOW
12 UNTIL I HAVE HEARD THE EVIDENCE AND FORMULATED A PROPER
13 CHARGE AND THAT COULD BE A DAY FROM NOW OR COULD BE HOURS
14 FROM NOW DEPENDING ON HOW LONG THIS TRIAL LASTS.

15 IT'S IMPORTANT THAT YOU FOLLOW YOUR DUTY TO MAKE
16 A FINDING OF THE FACTS BASED ON THE LAW AND WITH AN EYE
17 TOWARDS THE BASIC PREMISE THAT A DEFENDANT ENTERS THIS
18 COURT WITH A CLOAK OF INNOCENCE AND IS PRESUMED TO BE
19 INNOCENT AND THEY ARE INNOCENT UNTIL THE STATE HAS PROVEN
20 TO YOU BEYOND A REASONABLE DOUBT THAT THEY ARE GUILTY.

21 IN VIEWING THE LAW, I MEAN THE FACTS IN THIS CASE
22 PLEASE UNDERSTAND THAT THERE IS NO WAY THAT WE CAN CORRECT
23 AN ERROR ON THE PART OF THE JURY AS TO THE DETERMINATION OF
24 THE FACTS IN THIS CASE.

25 IF I MAKE AN ERROR IN INSTRUCTING YOU IN THE LAW

1 THE SUPREME COURT CAN REVERSE ME, THEY CAN CORRECT WHAT
2 HAVE I DONE, BUT ONCE YOU HAVE MADE FINDINGS OF FACTS BASED
3 ON YOUR DELIBERATIONS THERE'S ALMOST NO WAY THAT THAT CAN
4 POSSIBLY BE CORRECTED, SO YOUR JOB IS AN AWESOME JOB. IT
5 IS A VERY, VERY IMPORTANT JOB IN THIS TRIAL.

6 NOW IN DETERMINING WHAT FACTS YOU WANT TO
7 BELIEVE, WHAT EVIDENCE YOU WANT TO BELIEVE, YOU CAN APPLY
8 JUST ABOUT ANY TESTS THAT YOU HAVE BEEN ACCUSTOMED TO
9 APPLYING DURING YOUR LIVES. IF IT LEADS YOU TO THE TRUTH
10 YOU CAN USE IT IN DETERMINING WHAT EVIDENCE TO BELIEVE AND
11 WHAT EVIDENCE TO REJECT.

12 YOU CAN CONSIDER A WITNESSES' DEMEANOR ON THE
13 STAND. YOU CAN CONSIDER A WITNESSES' OPPORTUNITY TO SEE OR
14 HEAR WHAT HE'S TESTIFYING ABOUT. YOU CAN CONSIDER ANY
15 INTEREST, PREJUDICE, OR BIAS THAT A WITNESS MIGHT HAVE IN
16 HIS TESTIMONY. ALL THESE THINGS ARE PROPER FOR YOU TO
17 CONSIDER DURING YOUR DELIBERATIONS.

18 LET ME TELL YOU ALSO THAT SOMETIMES DURING THE
19 TRIAL YOU MAY HEAR SOMEONE SAY SOMETHING LIKE, YOUR HONOR,
20 I OBJECT, OR, YOUR HONOR, WE HAVE A MATTER TO TAKE UP
21 OUTSIDE THE JURY, AND IF THAT HAPPENS I WILL SEND YOU BACK
22 TO YOUR JURY ROOM.

23 NOW IT'S NOT THAT WE HAVE ANYTHING THAT WE ARE
24 TRYING TO KEEP FROM YOU. USUALLY THAT OCCURS WHEN THERE IS
25 A QUESTION ABOUT THE ADMISSIBILITY OR THE APPROPRIATENESS

1 OF A PARTICULAR PIECE OF EVIDENCE, AND OFTENTIMES ON RULING
2 AS TO WHETHER OR NOT A PIECE OF EVIDENCE SHOULD OR SHOULD
3 NOT BE ADMITTED I HAVE TO EXPRESS AN OPINION ABOUT THAT
4 EVIDENCE, AND AS I TOLD YOU A MOMENT AGO IT WOULD IMPROPER
5 FOR YOU TO HEAR ANY OPINIONS THAT I MAY HAVE ABOUT A
6 PARTICULAR PIECE OF EVIDENCE AND THAT IS WHY THAT WE ASK
7 YOU TO LEAVE THE COURTROOM OR RETIRE TO YOUR JURY ROOM WHEN
8 WE'RE CONSIDERING THINGS OF THAT NATURE DURING THE TRIAL.

9 NOW IN A MOMENT THE ATTORNEYS ARE GOING TO DO OR
10 WHEN WE GET BACK FROM LUNCH THE ATTORNEYS ARE GOING TO DO
11 WHAT WE CALL OPENING REMARKS.

12 THEY'RE GOING TO TELL YOU WHAT THEY PERCEIVE TO
13 BE THE IMPORTANT THINGS ABOUT THIS CASE THAT SUPPORT THEIR
14 POSITION IN THE CASE. OBVIOUSLY THE PROSECUTOR IS GOING TO
15 TELL YOU WHY THEY BELIEVE THAT YOU SHOULD RENDER A VERDICT
16 OF GUILTY AND MS. WILSON ON THE OTHER HAND IS GOING TO TELL
17 YOU WHY YOU SHOULD NOT RETURN A VERDICT OF GUILTY OR WHY
18 YOU SHOULD RETURN A VERDICT OF NOT GUILTY.

19 THESE OPENING REMARKS ARE NOT EVIDENCE IN THE
20 CASE. THE ONLY EVIDENCE THAT YOU MUST CONSIDER IS THE
21 EVIDENCE YOU HEAR FROM THE WITNESS STAND, SWORN EVIDENCE
22 THAT'S OFFERED, HOWEVER, IT IS APPROPRIATE FOR THEM TO
23 POINT OUT TO YOU THE THINGS THAT THEY INTEND TO PROVE OR
24 SHOW DURING THEIR PRESENTATION OF THEIR CASE.

25 NOW TO MAKE SURE THAT EVERYONE IS PROTECTED I'M

1 GOING TO ASK MS. WILSON AND I'M GOING TO ASK MS. TILLEY IF
2 THEY HAVE ANY FURTHER PRELIMINARY INSTRUCTION FOR ME BEFORE
3 I SEND YOU TO LUNCH. IF I DON'T BRING YOU BACK IN THE
4 COURTROOM I'M GOING TO LET YOU GO ON TO LUNCH AND I'LL HAVE
5 MR. ROPP SHOW YOU THE WAY OUT AND YOU CAN, WE'LL TAKE TILL
6 ABOUT 2:00 FOR LUNCH.

7 THERE'S ONE OTHER THING I WANT TO SAY TO YOU
8 PRELIMINARILY, AND THAT'S THIS. DO NOT DISCUSS AMONG
9 YOURSELVES OR ANYONE ELSE ANYTHING ABOUT THIS CASE WHILE
10 THE CASE IS GOING ON. I KNOW IF WE GO OVER TO TOMORROW
11 IT'S GOING TO BE DIFFICULT FOR YOU TO GO HOME TELL YOUR
12 WIVES OR YOUR HUSBANDS LOOK I CAN'T TALK WITH YOU ABOUT
13 THIS CASE. THE REASON WE DON'T YOU TO DO THAT IS THAT
14 WOULD BE PREMATURE DELIBERATION. WE DON'T WANT YOU TO
15 BEGIN TO DELIBERATE IN THIS CASE UNTIL YOU HAVE HEARD ALL
16 OF THE EVIDENCE.

17 I'LL TELL YOU RIGHT NOW THE DEFENSE IS NOT UNDER
18 ANY OBLIGATION WHATSOEVER TO PUT UP A SINGLE WITNESS OR A
19 DEFENSE WITNESS. THE DEFENDANT IS NOT REQUIRED HIMSELF TO
20 TESTIFY. IT'S HIS CONSTITUTIONAL RIGHT NOT TO, AND IF HE
21 CHOOSES NOT TO YOU CANNOT USE THAT, THAT AGAINST HIM, BUT I
22 ASK YOU TO WAIT UNTIL YOU HAVE HEARD ALL THE EVIDENCE,
23 YOU'VE HEARD ALL THE CROSS EXAMINATION OF THE WITNESSES AND
24 EVERYTHING IS IN BEFORE YOU BEGIN ANY DELIBERATIONS, EVEN
25 AMONG YOURSELVES, AND I ASK YOU NOT TO TRY TO VISIT THE

1 SCENE. I ASK YOU NOT TO TRY TO READ ANYTHING IN THE
2 NEWSPAPERS OR GO BACK AND TRY TO SEARCH ON THE INTERNET FOR
3 OLD NEWSPAPER REPORTS ABOUT THIS. THAT WOULD BE HIGHLY
4 IMPROPER AND I ASK YOU NOT TO DO IT.

5 NOW, MR. ROPP, IF YOU WOULD TAKE THEM IN THE JURY
6 ROOM AND I'LL SEND WORD TO YOU TO RELEASE THEM IN JUST A
7 MOMENT, I BELIEVE, OKAY.

8 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT
9 12:00 P.M.)

10 THE COURT: ANYTHING FURTHER?

11 MS. TILLEY: NOTHING FROM THE STATE, YOUR HONOR.

12 THE COURT: ANYTHING?

13 MS. WILSON: NOTHING, YOUR HONOR.

14 THE COURT: ALL RIGHT, MR. HEMINGWAY, IF YOU
15 WOULD TELL MR. ROPP THAT HE CAN RELEASE THE JURY AND WE'LL
16 BE BACK AT 2:00.

17 MS. WILSON: THANK YOU, SIR.

18 MS. TILLEY: YOUR HONOR, WE DO HAVE ANOTHER
19 MATTER. HAVE YOU ALREADY TAKEN CARE OF CUSTODY STATUS?

20 MS. WILSON: YES, THE JUDGE HAS.

21 MS. TILLEY: OKAY.

22 (WHEREUPON, COURT WAS RECESSED FOR LUNCH AND THE
23 FOLLOWING TAKES PLACE ON THE RECORD AFTER THE LUNCH
24 RECESS.)

25 THE COURT: ALL RIGHT, MR. HEMINGWAY, BRING IN

1 THE JURY.

2 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT
3 2:12 P.M.)

4 THE COURT: ALL RIGHT, MS. TILLEY, YOU MAY
5 ADDRESS THE JURY.

6 MS. TILLEY: THANK YOU, YOUR HONOR.

7 **OPENING STATEMENT**

8 **BY MS. TILLEY:**

9 LADIES AND GENTLEMEN, I AM SURE WHEN YOU MADE
10 YOUR NEW YEARS RESOLUTION JURY DUTY WAS NOWHERE ON THEM AND
11 YOU DID NOT THINK THAT WE WOULD HAVE OUR BUILDINGS AT A
12 BALMY 32 DEGREES OVER HERE IN THE COURTHOUSE, BUT I THINK
13 YOU VERY MUCH FOR BEING HERE. WHAT YOU DO IS A VERY
14 SERIOUS JOB. WITHOUT YOU OUR SYSTEM DOES NOT WORK, YOU ARE
15 THE SAYERS AND THE GIVERS OF JUSTICE AND FOR THAT I DO
16 APPRECIATE YOUR HELP, THANK YOU VERY MUCH.

17 AS WE MENTIONED EARLIER THIS MORNING MY NAME IS
18 ELIZABETH TILLEY. I'M A PROSECUTOR HERE IN HORRY COUNTY.
19 MY JOB IS TO PROSECUTE CRIMINAL OFFENSES THAT OCCUR IN THIS
20 COUNTY. I HAVE A LOT OF DIFFERENT CASES ON MY DOCKET AND
21 UNFORTUNATELY A LOT OF THEM ARE DRUGS AND THAT IS THE CASE
22 BEFORE YOU TODAY.

23 THE CHARGE IS DISTRIBUTION OF A COCAINE BASE.
24 ESSENTIALLY THAT'S SELLING DRUGS AND THAT'S WHAT I HAVE TO
25 DO TODAY. I HAVE TO PROVE TO YOU THE ELEMENTS OF THOSE

1 CRIMES. I HAVE TO PROVE TO YOU THAT THE DEFENDANT SOLD
2 DRUGS, THAT THE DEFENDANT DISTRIBUTED A COCAINE BASE.

3 HOW AM I GOING TO DO THAT? I'M GOING TO GIVE YOU
4 THE EVIDENCE BECAUSE I HAVE A VERY HIGH BURDEN. THE
5 DEFENDANT SETS INNOCENT OVER AT THAT TABLE, THEREFORE, MY
6 BURDEN SHOULD BE HIGH AND I TAKE THAT BURDEN GLADLY. MY
7 BURDEN IS BEYOND A REASONABLE DOUBT AND THE EVIDENCE THAT
8 I'M GOING TO SHOW TO YOU IS GOING TO BE, WELL LET ME, LET
9 ME TELL YOU A LITTLE BIT ABOUT KIND OF THE CRIME THAT TAKES
10 PLACE.

11 IT'S A CONTROLLED BUY. IT'S A BUY WHERE WE HAVE
12 TWO OFFICERS, AGENT GRATE, AGENT WOOD, SET UP A CONTROLLED
13 BUY. BASICALLY THE TWO OFFICERS ALONG WITH A CONFIDENTIAL
14 INFORMANT SET UP A BUY. THEY GO TO A LOCATION AND THEY
15 SELL THE DRUGS. THIS CONFIDENTIAL INFORMANT BUYS THE DRUGS
16 FROM THE DEFENDANT, AND THAT'S WHAT HAPPENED. THE
17 DEFENDANT SHOWS UP AND THE DEFENDANT SELLS THE DRUGS TO THE
18 CONFIDENTIAL INFORMANT DISTRIBUTING CRACK COCAINE. SO MY
19 EVIDENCE IS DOING TO BE, AND I'M GOING TO TELL YOU RIGHT
20 NOW WE DON'T HAVE THE CONFIDENTIAL INFORMANT, AND I'M GOING
21 TO TELL YOU RIGHT NOW WE HAD A VIDEO ON THE CONFIDENTIAL
22 INFORMANT, BUT IT'S NOT NECESSARILY THE BEST VIDEO.
23 THERE'S NO GLAMOUR SHOT OF THE DEFENDANT ON IT BUT WHAT WE
24 DO HAVE FOR YOU ARE THE TWO UNDERCOVER OFFICERS THAT WERE
25 THERE.

1 THERE WILL BE TESTIMONY FROM AGENT WOOD WHO WAS
2 THERE AND WAS THE DRIVER OF THE VEHICLE. HE WAS THE DRIVER
3 OF THE VEHICLE, THE CONFIDENTIAL INFORMANT WAS IN THE
4 PASSENGER SEAT, SO WHEN THE SELL TAKES PLACE, WHEN THE
5 DEFENDANT SELLS THE DRUGS AGENT WOOD WAS RIGHT THERE AND
6 WITNESSES IT.

7 NOW ACROSS THE STREET IS AGENT GRATE. HE'S
8 ACROSS THE STREET AND HE WITNESSES THIS. HE WITNESSES THE
9 DEFENDANT APPROACH THE CAR AND THEN LEAVE THE CAR AND THEN
10 HE DRIVES UP AND MAKES A POSITIVE IDENTIFICATION OF HER AND
11 THAT IS GOING TO BE THE EVIDENCE I'M GOING TO PRODUCE TO
12 YOU TODAY TO PROVE TO YOU THAT THE DEFENDANT SOLD DRUGS.
13 THANK YOU AGAIN FOR YOUR TIME.

14 THE COURT: MS. WILSON?

15 MS. WILSON: THANK YOU, YOUR HONOR.

16 **OPENING STATEMENT**

17 **BY MS. WILSON:**

18 GOOD AFTERNOON, I'M KIA WILSON AND I REPRESENT
19 MS. TAWANDA WILLIAMS. THE STATE HAS BASICALLY TOLD YOU
20 WHAT THEIR JOB IS AND MY JOB IS TO PROVIDE A DEFENSE FOR MY
21 CLIENT AND IN DOING SO I'M GOING TO ASK YOU TO DO ONE
22 PRIMARY THING AS YOU SIT HERE IN YOUR CAPACITY AS THE JURY
23 IN THIS CASE AND THAT IS LISTEN TO ALL OF THE EVIDENCE
24 PRESENTED BUT MORE IMPORTANTLY THINK ABOUT WHAT IS NOT
25 PRESENTED, THINK ABOUT WHAT YOU DON'T GET TO SEE, WHAT

AGENT WOOD - DIRECT EXAMINATION BY MS. TILLEY

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1 YOU'RE NOT GOING TO HEAR, THINK ABOUT THE EVIDENCE THAT IS
2 NOT GOING TO BE BEFORE YOU.

3 THE STATE IS RIGHT IN TELLING YOU THAT THEY HAVE
4 A BURDEN TO PROVE BEYOND A REASONABLE DOUBT THAT MS.
5 WILLIAMS IS GUILTY OF A CRIME. I'M HERE TO SUGGEST TO YOU,
6 TO TELL YOU THAT THEY DON'T HAVE THE PROPER INFORMATION TO
7 DO THAT AND THEY'RE NOT GOING TO BE ABLE TO MEET THAT
8 BURDEN. I HOPE THAT IN YOUR LISTENING YOU AGREE WITH WHAT
9 I'M TELLING YOU HERE TODAY, THANK YOU.

10 THE COURT: MS. TILLEY, CALL YOUR FIRST WITNESS.

11 MS. TILLEY: YES, YOUR HONOR, THE AGENT, THE
12 STATE CALLS AGENT RYAN WOOD.

13 THE COURT: AGENT WOOD, COME AROUND, IF YOU
14 WOULD.

15 AGENT RYAN WOOD

16 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

17 MADAM CLERK: STATE YOUR NAME FOR THE COURT AND
18 SPELL YOUR LAST.

19 THE WITNESS: FULL NAME IS RYAN WOOD, LAST NAME
20 IS SPELLED W-O-O-D.

21 DIRECT EXAMINATION

22 BY MS. TILLEY:

23 Q AGENT WOOD, DO YOU LIVE AROUND HERE?

24 A YES, I DO.

25 Q HOW LONG HAVE YOU LIVED IN THIS AREA?

AGENT WOOD - DIRECT EXAMINATION BY MS. TILLEY

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1 A I WOULD SAY I MOVED HERE WHEN I WAS
2 APPROXIMATELY 14 YEARS OF AGE.

3 Q WHERE DID YOU GO TO HIGH SCHOOL?

4 A MYRTLE BEACH HIGH SCHOOL.

5 Q WHERE DID YOU GO TO COLLEGE?

6 A CLEMSON UNIVERSITY.

7 Q OKAY, WHERE DO YOU WORK NOW?

8 A CURRENTLY EMPLOYED WITH THE CITY OF MYRTLE
9 BEACH POLICE DEPARTMENT AS A NARCOTICS OFFICER. THROUGH
10 THEM I AM ASSIGNED TO A SPECIALIZED DRUG ENFORCEMENT UNIT
11 WITH THE FIFTEENTH CIRCUIT AND IT'S CALLED THE FIFTEENTH
12 CIRCUIT DRUG ENFORCEMENT UNIT. THE UNIT IS COMPELLED OF
13 ALL THE AGENCIES SURROUNDING THIS PARTICULAR AREA IN HORRY
14 COUNTY, NORTH MYRTLE BEACH OFFICERS, CONWAY, MYRTLE BEACH,
15 OF COURSE, GEORGETOWN'S INVOLVED. THERE'S A FEW OTHERS OUT
16 THERE THAT I CAN'T QUITE RECALL RIGHT NOW BUT SLED IS ALSO
17 INVOLVED. IT'S JUST WHERE EVERYBODY COMES TOGETHER AND
18 PROVIDES INTELLIGENCE WHERE WE CAN HAVE A BETTER GRASP ON
19 THE DRUGS IN THIS COUNTY.

20 Q OKAY, AND WERE YOU WORKING IN THAT CAPACITY
21 ON APRIL 29TH OF 2008?

22 A YES, I WAS.

23 Q OKAY, TELL ME ABOUT THAT DAY APRIL 29TH?

24 A ON THAT PARTICULAR DAY I WAS ASSISTING
25 AGENT GRATE WITH, HE'S ALSO WITH THE DRUG ENFORCEMENT UNIT,

AGENT WOOD - DIRECT EXAMINATION BY MS. TILLEY

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1 AGENT GRATE WAS PREPARING A CONTROLLED DRUG BUY IN THE
2 LONGS AREA OF HORRY COUNTY, SOMEWHERE OFF 905 AND 9, IT'S
3 RIGHT UP IN THAT AREA. MY ROLE THAT DAY WAS TO ASSIST
4 AGENT GRATE AND HE WISHED THAT I BECOME AN UNDERCOVER, AND
5 WHEN WE SAY UNDERCOVER IT MEANS I WOULD ACTUALLY BE A PART
6 OF THE BUY AND NOT ON THE EXTERIOR OF IT, ACTUALLY BE IN
7 THERE DURING THE BUY.

8 Q WHAT'S A CONTROLLED BUY?

9 A A CONTROLLED BUY, IT'S A CONTROLLED
10 ENVIRONMENT THAT YOU CAN ACTUALLY BUY DRUGS AND IT'S LAW
11 ENFORCEMENT CONTROLS EVERY ASPECT OF IT TO, TO AN EXTENT.
12 WE PROVIDE THE MONEY THAT WILL BE USED TO PURCHASE THE
13 DRUG. WE USUALLY WIRE AN INFORMANT IF WE HAVE AN INFORMANT
14 WORKING WITH US OR THE AGENTS THAT ARE UNDERCOVER AT THAT
15 TIME SOMETIMES WITH WIRES, AND A WIRE CAN BE HIDDEN
16 SURVEILLANCE CAMERA, TRANSMITTING DEVICES, AND AUDIO, OF
17 COURSE, WILL BE PLACED ON THEM; AND DURING THAT BUY WITH
18 THESE WIRES AND THE AUDIO YOU CAN HEAR ON A TRANSMITTING
19 DEVICE OTHER AGENTS THAT ARE WATCHING THE BUY MAYBE SEVERAL
20 BLOCKS AWAY OR RIGHT ACROSS THE STREET YOU CAN STILL HEAR
21 WHAT'S GOING ON DURING THE BUY, JUST CAN'T SEE IT. USUALLY
22 THE VIDEO PORTIONS YOU HAVE TO COME BACK TO THE OFFICE AND
23 DOWNLOAD THIS INTO A COMPUTER UNTIL YOU CAN SEE THE VIDEO.

24 Q WHAT KIND OF DEVICE DOES THE "CI" HAVE ON,
25 "CI" WHAT DOES THAT STAND FOR?

AGENT WOOD - DIRECT EXAMINATION BY MS. TILLEY

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1 A CONFIDENTIAL INFORMANT.

2 Q OKAY, WHAT KIND OF DEVICE DOES THE "CI"
3 HAVE ON HIM?

4 A THAT PARTICULAR DAY HE WAS, HE WAS GIVEN A
5 BUTTON CAMERA. IT LOOKS LIKE A BUTTON AND INSIDE THE
6 BUTTON IS A CAMERA, VERY SMALL, CAN'T SEE IT. IT'S
7 PROBABLY A BLACK BUTTON THAT DAY, NOT SURE, WE HAVE WHITE
8 OR BLACK. IT'S USUALLY PLACED ON A SHIRT WHERE A BUTTON
9 MAY NORMALLY GO. WE BASICALLY REPLACE A REGULAR BUTTON
10 FROM A SHIRT, TEAR IT OFF, AND PUT THAT BUTTON IN ITS
11 PLACE.

12 Q AND WHAT WAS YOUR ROLE THAT DAY ON THE
13 CONTROLLED BUY?

14 A MY ROLE WAS TO GO ALONG WITH THE INFORMANT,
15 I BELIEVE THE INFORMANT HAD PLANNED, THEIR OPERATION WAS A
16 CONTROLLED BUY WHERE THEY WOULD BE BUYING DRUGS FROM A
17 CERTAIN INDIVIDUAL. I WAS GOING TO DRIVE THE INFORMANT TO
18 THAT LOCATION WHERE THE DEAL WAS GOING TO OCCUR.

19 Q OKAY, AND SO WHEN YOU GOT IN THE VEHICLE
20 YOU WERE DRIVING THE VEHICLE AND WHO WAS IN THE PASSENGER
21 SEAT?

22 A WHEN I GOT THERE, WELL I MET WITH THE
23 INFORMANT FIRST, WE KIND OF WENT OVER OUR WHAT WE WERE
24 GOING TO DO FOR THE DAY, AND BEFORE WE GOT STARTED WITH
25 ANYTHING AS WE DO WITH ALL OUR BUYS WE SEARCH THE INFORMANT

AGENT WOOD - DIRECT EXAMINATION BY MS. TILLEY

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1 PRIOR TO THE BUY. WE SEARCHED HIM, HIS PERSON, THEN WE
2 SEARCHED HIS VEHICLE THAT HE ARRIVED IN. I DON'T KNOW IF
3 HE WAS THE DRIVER OF THAT VEHICLE BUT WE DIDN'T USE HIS
4 CAR, WE WANTED TO UTILIZE OUR POLICE UNDERCOVER CAR. THAT
5 VEHICLE IS SEARCHED ALSO FOR ANYTHING LEFT BEHIND FROM ANY
6 OTHER DEALS OR ANYTHING LIKE THAT THAT COULD HAVE OCCURRED
7 AND, OF COURSE, WE DID NOT FIND ANYTHING ON HIM OR IN ANY
8 VEHICLE THAT WAS GOING TO BE USED. AT THAT TIME WE WENT
9 THROUGH OUR PLAN AND HE MADE ONE PHONE CALL.

10 Q NOW THIS IS ONCE YOU'RE IN THE CAR?

11 A THIS IS BEFORE WE GET IN THE CAR.

12 Q BEFORE YOU GET IN THE CAR?

13 A UH-HUH.

14 Q I'M SORRY, GO AHEAD?

15 A THEN HE PLACED ONE PHONE CALL TO WHOM HE
16 SAID WAS THE DEFENDANT IN THIS CASE AND AT THAT TIME HE, I
17 BELIEVE HE ASKED HER THE AMOUNT OF DRUGS HE WISHED TO BUY.
18 HE ALSO ASKED WHERE HE COULD MEET TO DO THE DEAL AND AT
19 THAT TIME WE WERE KIND OF UNSURE, WE KNEW THE GENERAL AREA
20 WE WERE GOING TO GO BUT THE FINAL RESTING SPOT OR WHERE
21 THIS DEAL WAS GOING TO TAKE PLACE SHE DID NOT GIVE US A
22 LOCATION, EXACT LOCATION AT THAT TIME. WE WERE SUPPOSED TO
23 CALL HER BACK WHEN WE GOT CLOSE TO THE AREA OF LONGS.

24 Q OKAY --

25 A SO THAT IS WHEN WE GOT INTO THE VEHICLE AND

AGENT WOOD - DIRECT EXAMINATION BY MS. TILLEY

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1 LEFT OUR PREDETERMINED LOCATION AND HEADED TOWARDS LONGS
2 AREA.

3 Q AND WHO WAS IN THE VEHICLE AT THIS POINT?

4 A IN THE VEHICLE WITH ME IS THE INFORMANT,
5 HE'S SITTING IN THE PASSENGER SEAT, FRONT PASSENGER SEAT.

6 Q AND WHAT AMOUNT OF DRUGS ARE WE TALKING
7 ABOUT?

8 A HE ORDERED, HE CALLED IT AN "8" BALL, OKAY,
9 ON THE STREET THAT IS LINGO FOR 1/8 OF AN OUNCE OR 3.5
10 GRAMS OF CRACK COCAINE IS WHAT HE, HE WAS WISHING TO BUY
11 CRACK COCAINE.

12 Q NOW TELL ME WHAT HAPPENS IN THE CAR,
13 PLEASE?

14 A IN THE CAR WE DROVE TO THE LOCATION, WE
15 WERE DRIVING TOWARDS THE LOCATION AND HE EITHER GOT A PHONE
16 CALL OR MADE A PHONE CALL ONCE WE GOT TO THE AREA
17 DESIGNATED TO MAKE THE PHONE CALL BACK TO HER. AT THAT
18 TIME THEY SET UP THE LOCATION OF THE EXXON GAS STATION
19 WHICH IS RIGHT AT THE INTERSECTION OF HIGHWAY 9 AND 905
20 WHERE THEY MEET.

21 Q OKAY, AND WHAT HAPPENS NEXT?

22 A WE DROVE TO THE EXXON, OF COURSE, DROVE
23 THROUGH THE PARKING LOT AND I PARKED ON THE, I BELIEVE IT'S
24 THE EAST SIDE OF THE BUILDING. IF YOU'RE FACING THE FRONT
25 DOOR IT WOULD BE YOUR LEFT SIDE. I PARKED UP TO THE

AGENT WOOD - DIRECT EXAMINATION BY MS. TILLEY

45

1 BUILDING WHERE THE FRONT OF MY VEHICLE WAS FACING THAT SIDE
2 OF THE BUILDING.

3 Q OKAY, AND WHAT HAPPENS?

4 A WE SAT THERE I DON'T KNOW EXACTLY HOW LONG,
5 SEVERAL MINUTES, MAYBE 10 MINUTES, I THINK I ASKED HIM
6 SHOULD WE CALL HER BACK. HE SAID HE NORMALLY DOESN'T BUT
7 HE SAID HE WOULD, SO HE CALLED HER. AT THAT TIME I THINK
8 THE RESPONSE IS I'M ON THE WAY FROM THE DEFENDANT OR WHO
9 HE'S CLAIMING WAS THE DEFENDANT WHO HE'S TALKING TO ON THE
10 PHONE, SAID SHE WAS ON THE WAY TO THE LOCATION. SO WE
11 WAITED SEVERAL MORE MINUTES AND EVENTUALLY HE RECEIVED
12 ANOTHER PHONE CALL OR MADE ANOTHER PHONE CALL, I CAN'T
13 RECALL RIGHT NOW, STATING THAT SHE WAS IN THE PARKING LOT,
14 THAT SHE WAS ON THE OTHER SIDE OF THE BUILDING.

15 Q AND WHAT DID YOU OBSERVE AT THAT POINT?

16 A AT THAT POINT I OBSERVED THE INFORMANT HE
17 STEPPED OUT OF THE VEHICLE AND HE STARTED WALKING TOWARDS
18 THE FRONT OF THE BUILDING. HE DIDN'T QUITE GET TO THE
19 FRONT OF THE BUILDING, HE GOT TO LIKE THE CORNER AND I
20 THINK HE MADE SOME SORT OF CONTACT WITH THE DEFENDANT WHO
21 WAS STANDING, I'M ASSUMING, IN FRONT OF THE BUILDING CAUSE
22 HE TURNED AROUND AND CAME BACK TO MY VEHICLE, GOT BACK INTO
23 THE PASSENGER SIDE DOOR OR ON THE PASSENGER SIDE.

24 Q ALL RIGHT, AND WHEN HE IS SITTING THERE
25 NEXT TO YOU WHAT DO YOU OBSERVE AT THAT POINT?

AGENT WOOD - DIRECT EXAMINATION BY MS. TILLEY

46

1 A ONCE HE GETS BACK IN THE VEHICLE JUST A FEW
2 SECONDS LATER I SEE THE DEFENDANT WALKING TOWARDS MY
3 VEHICLE AND SHE WALKED DIRECTLY TO THE PASSENGER SIDE. I
4 BELIEVE SHE STATED WHO'S THAT, POINTING TOWARDS ME, AND HE
5 SAID IT WAS HIS NEIGHBOR AND IN THE MEANTIME HE IS IN THE
6 VEHICLE NOW. THE DOOR, HIS DOOR IS OPEN, SHE WALKS AROUND
7 THAT SIDE OF THE DOOR WHERE SHE CAN INTERACT WITH THE, WITH
8 THE INFORMANT; AND AT THAT TIME THEY DO A HAND TO HAND
9 TRANSACTION WHERE SHE GAVE HIM A PLASTIC BAG WITH AN OFF
10 WHITE ROCK SUBSTANCE IN IT AND HE HANDED HER THE OFFICIAL
11 POLICE FUNDS THAT WE HAD ISSUED HIM PRIOR TO US LEAVING OUR
12 PREDETERMINED LOCATION BEFORE.

13 Q SO ABOUT HOW FAR AWAY, YOU'RE IN THE
14 DRIVERS SEAT, HOW FAR AWAY WAS THIS?

15 A TWO FEET.

16 Q OKAY, WAS IT LIGHT OUT, WHAT WAS THE
17 LIGHTING?

18 A IT WAS DAYLIGHT.

19 Q NOW CAN YOU, PLEASE, POINT TO THE PERSON IF
20 THERE IS A PERSON IN THIS ROOM THAT YOU IDENTIFIED THAT
21 DAY?

22 A YES, MA'AM, MS. TAWANDA WILLIAMS SITTING AT
23 THE DESK RIGHT THERE.

24 Q OKAY, AND I'M GOING TO ---

25 THE COURT: LET THE RECORD REFLECT THAT HE HAS

AGENT WOOD - DIRECT EXAMINATION BY MS. TILLEY

47

1 INDICATED THE DEFENDANT WHO'S SEATED WITH COUNSEL.

2 MS. TILLEY: THANK YOU, YOUR HONOR.

3 Q (CONTINUING) I'M GOING TO SHOW YOU WHAT'S
4 BEEN MARKED FOR IDENTIFICATION PURPOSES AS STATE'S EXHIBIT
5 NUMBER 1, DOES THIS ROUGHLY, WHAT DOES THAT LOOK LIKE TO
6 YOU?

7 A IT'S CONSISTENT WITH WHAT SEEMED TO BE
8 CRACK COCAINE.

9 Q OKAY, AND NOW THE DRUGS THAT WERE INVOLVED
10 IN THE HAND TO HAND BUY WHERE DID THEY GO FROM THE
11 DEFENDANT, THEY WENT FROM THE DEFENDANT AND WHERE WERE THEY
12 PLACED IN THE CAR OR WHAT --

13 A ONCE THE, AS SOON AS THE TRANSACTION WAS
14 OVER HE SHUT HIS DOOR I STATED OUT LOUD BECAUSE AGAIN MY
15 OTHER AGENTS AROUND ME WERE OUR PROTECTION AND WATCHING US
16 THEY CAN HEAR WHAT'S GOING ON SO I SAID THE DEAL IS DONE OR
17 THE DEAL IS COMPLETE, SOMETHING IN THOSE, THAT LINE OF
18 WORDS, AND I BEGAN TO BACK OUT AND WE BEGAN TO LEAVE THE
19 LOCATION. I THINK THE INFORMANT THERE SHOWED ME WHAT, AT
20 THAT TIME SHOWED ME WHAT HE HAD, WHAT HE JUST PURCHASED,
21 AND I BASICALLY TOLD HIM TO SET IT IN THE CENTER CUP HOLDER
22 WHICH IS IN BETWEEN OUR TWO FRONT SEATS RIGHT THERE AND HE
23 PLACED IT RIGHT THERE.

24 Q AND THEN WHERE DID YOU TWO DRIVE FROM
25 THERE?

AGENT WOOD - DIRECT EXAMINATION BY MS. TILLEY

48

1 A I THEN DROVE BACK TO OUR ORIGINAL MEET
2 LOCATION WHERE WE PREPARED FOR THE BUY.

3 Q OKAY, AND BETWEEN THERE FROM THE EXXON
4 STATION TO THE MEET LOCATION WERE YOU ABLE TO OBSERVE THE
5 DRUGS ALL THE TIME?

6 A YES, I WAS.

7 Q DID ANYBODY TAMPER WITH THEM OR ANYTHING
8 LIKE THAT?

9 A NO.

10 Q OKAY, AND WHO DID YOU GIVE THE DRUGS TO OR
11 WHERE DID THE DRUGS GO TO ONCE YOU GOT TO THE MEETING
12 LOCATION?

13 A ONCE WE GOT BACK WE WERE THE FIRST TO
14 ARRIVE BACK, A FEW MINUTES LATER AGENT GRATE SHOWS UP,
15 WE'RE STILL IN THE VEHICLE. WE GET OUT OF THE VEHICLE, I
16 SHOWED AGENT GRATE WHERE THE DRUGS HAD BEEN PLACED BY THE
17 INFORMANT IN THE VEHICLE AND HE PICKED THEM UP AND REMOVED
18 THEM FROM THE VEHICLE AT THAT TIME.

19 THE COURT: MS. TILLEY, DID YOU HAVE THE, THAT
20 ITEM OF EVIDENCE MARKED?

21 MS. TILLEY: IT'S MARKED FOR IDENTIFICATION BUT
22 I'VE NOT MOVED IT INTO EVIDENCE.

23 THE COURT: ALL RIGHT, IT'S ONLY MARKED FOR
24 IDENTIFICATION AS NUMBER 1?

25 MS. TILLEY: YES, YOUR HONOR.

AGENT WOOD - DIRECT EXAMINATION BY MS. TILLEY

49

1 THE COURT: ALL RIGHT.

2 MS. TILLEY: AND I'M GOING TO MARK THIS AS
3 EXHIBIT 2 FOR IDENTIFICATION PURPOSES ONLY.

4 (WHEREUPON, STATE'S EXHIBIT NUMBER 2 MARKED FOR
5 IDENTIFICATION.)

6 MS. TILLEY: (CONTINUING)

7 Q HAVE YOU REVIEWED A DISK BEFORE COMING TO
8 COURT TODAY?

9 A YES.

10 Q AND WHAT WAS THAT DISK OF?

11 A THAT IS THE VIDEO AND THE AUDIO PORTION OF
12 THE ACTUAL CONTROLLED BUY OF THAT DATE.

13 Q AND DOES THAT FAIR AND ACCURATELY REPRESENT
14 WHAT HAPPENED THAT DAY?

15 A YES, IT DOES.

16 MS. TILLEY: AT THIS TIME I'D LIKE TO PUBLISH
17 THAT DISK TO THE JURY?

18 THE COURT: ALL RIGHT, YOU NEED TO INTRODUCE IT
19 FIRST.

20 MS. TILLEY: WELL, YOUR HONOR, I'D LIKE TO
21 INTRODUCE THE DISK.

22 THE COURT: ANY OBJECTION?

23 MS. WILSON: NO OBJECTION, YOUR HONOR.

24 THE COURT: ALL RIGHT, WITHOUT OBJECTION, IT'S
25 IN EVIDENCE AND IF YOU'D LIKE TO PUBLISH GO AHEAD.

AGENT WOOD - DIRECT EXAMINATION BY MS. TILLEY

50

1 (WHEREUPON, STATE'S EXHIBIT 2 ENTERED INTO
2 EVIDENCE.)

3 MS. TILLEY: BEAR WITH ME JUST A MOMENT, PLEASE,
4 YOUR HONOR.

5 THE COURT: DO YOU NEED THE SCREEN DOWN?

6 MS. TILLEY: YES, PLEASE.

7 YOUR HONOR, WOULD YOU MIND ASKING IF THE JURY CAN
8 SEE THIS WELL?

9 THE COURT: CAN YOU ALL SEE IT, IF ANYONE CAN'T
10 SEE IT RAISE YOUR HAND? I THINK EVERYBODY.

11 MS. TILLEY: THANK YOU, YOUR HONOR.

12 THE COURT: ALL RIGHT, PUT A MICROPHONE IN FRONT
13 OF YOUR COMPUTER SPEAKER.

14 (WHEREUPON, STATE'S EXHIBIT NUMBER 2 PLAYED IN
15 OPEN COURT.)

16 MS. TILLEY: (CONTINUING)

17 Q AND WHO DID YOU IDENTIFY THIS TO BE, THIS
18 FIGURE HERE, AGENT WOOD?

19 A THAT SUBJECT THERE WAS LATER IDENTIFIED TO
20 BE MS. WILLIAMS.

21 Q I ASK YOU ONE MORE QUESTION, WHAT DID YOU
22 NOTICE IN THAT VIDEO THERE, IN THAT STILL FRAME THERE?

23 A YOU CAN SEE THE PICTURE OF HER, HER HEAD IN
24 THE MIRROR OF THE CAR, RIGHT THERE IN THE CORNER.

25 Q WHAT ELSE DID YOU SEE?

AGENT WOOD - CROSS EXAMINATION BY MS. WILSON

51

1 A IT WENT BY BEFORE YOU PAUSED IT, IN THE
2 CORNER OF THE, BY THE BOTTOM OF THE SCREEN YOU CAN ACTUALLY
3 SEE THE CURRENCY, THE CURRENCY THAT WE PROVIDED TO THE
4 INFORMANT, THE MONEY, BEING EXCHANGED.

5 Q THERE WAS ANOTHER VOICE, WHAT WAS THAT
6 OTHER VOICE?

7 A THERE WAS A SMALL CHILD THERE AS WELL.

8 Q OKAY, WHO IS THE SMALL CHILD WITH?

9 A WITH THE DEFENDANT. I BELIEVE THE
10 INFORMANT ACKNOWLEDGES THE SMALL CHILD. I THINK HE MAY
11 HAVE KNOWN HER. I DON'T, OR I CAN'T RECALL IF IT WAS A
12 FEMALE OR MALE CHILD, I JUST REMEMBER IT BEING A SMALL
13 CHILD WITH HER. BUT THE INFORMANT I THINK SAID, "HEY,
14 GIRL." I'M ASSUMING IT WAS FEMALE, AND YOU CAN HEAR THE
15 CHILD'S VOICE ON VIDEO IF YOU LISTEN CAREFULLY.

16 Q AND WHAT, WHAT COUNTY DID ALL THIS TAKE
17 PLACE IN?

18 A HORRY COUNTY.

19 MS. TILLEY: I HAVE NO OTHER QUESTIONS OF THIS
20 WITNESS, YOUR HONOR.

21 THE COURT: ALL RIGHT, LET'S BRING UP THE SCREEN
22 AND BRING UP THE LIGHTS, ALL RIGHT.

23 MS. WILSON, YOU MAY EXAMINE.

24 MS. WILSON: THANK YOU, YOUR HONOR.

25 CROSS EXAMINATION

AGENT WOOD - CROSS EXAMINATION BY MS. WILSON

52

1 BY MS. WILSON:

2 Q OFFICER WOOD, WHEN THIS OPERATION BEGAN YOU
3 HAD NO IDEA ABOUT WHO YOU WERE REALLY LOOKING FOR, DID YOU,
4 YOU DIDN'T KNOW?

5 A BEFORE, NO, RIGHT AT THE TIME WHEN I MET
6 WITH AGENT GRATE I THINK HE PROVIDED ME A PHOTO FROM A DMV
7 PHOTO, THAT'S ABOUT IT.

8 Q AND SO AGENT GRATE SHOWED YOU A DMV PHOTO
9 AND ---

10 A OF THE DEFENDANT.

11 Q --- FROM THAT YOU KNEW WHO YOU WERE
12 SUPPOSED TO LOOK FOR?

13 A THAT WAS THE, THE TARGET THAT, IN THE
14 OPERATION THAT DAY, THAT WAS WHOM THE INFORMANT STATED HE
15 WAS CALLING.

16 Q OKAY, AND HOW DID YOU KNOW THIS PERSON, BY
17 WHAT NAME?

18 A BY HER CORRECT NAME.

19 Q SO YOU KNEW HER AS TAWANDA WILLIAMS, IS
20 WHAT YOU'RE SAYING?

21 A ONLY BY THE DMV PHOTO THAT I SAW, YES,
22 MA'AM.

23 Q OKAY, BUT OTHER THAN THAT YOU HAD NO PRIOR
24 CONTRACT WITH MS. WILLIAMS, YOU DIDN'T KNOW HER FROM ADAMS
25 HOUSE CAT?

AGENT WOOD - CROSS EXAMINATION BY MS. WILSON

53

1 A NO, MA'AM.

2 Q NOW YOU CLAIMED TO HAVE SEARCHED THE
3 CONFIDENTIAL INFORMANT, CORRECT?

4 A UH-HUH, OR I DID NOT SEARCH HIM.

5 Q YOU WERE PRESENT WHEN HE WAS SEARCHED?

6 A CORRECT.

7 Q AND WHEN THE "CI" WAS SEARCHED AND GOT INTO
8 THE CAR WITH YOU, YOU CLAIM THAT YOU HAD CONSTANT CONTACT
9 WITH THE CONFIDENTIAL INFORMANT?

10 A YES.

11 Q BUT IN FACT THE CONFIDENTIAL INFORMANT GOT
12 OUT OF THE CAR AND WALKED AROUND THE CORNER OF THE BUILDING
13 OUT OF YOUR SIGHT, AM I CORRECT?

14 A HE DID NOT WALK AROUND OUT OF MY SIGHT, NO,
15 MA'AM.

16 Q SO YOU COULD SEE HIM THE ENTIRE TIME?

17 A YES, I MEAN, YOU COULD SEE ON THE VIDEO HE
18 ONLY WALKED TO THE CORNER AND I COULD CLEARLY SEE THE
19 CORNER OF THE BUILDING.

20 Q SO YOU COULDN'T SEE THE PERSON THAT
21 APPROACHED HIM FROM THE CORNER?

22 A AT THE TIME WHAT THE VIDEO SEES OF THE
23 FEMALE SUBJECT STANDING IN FRONT OF THE STORE, NO. I COULD
24 NOT SEE THAT PORTION, ONLY AFTERWARDS WHEN SHE CAME AROUND
25 THE CORNER.

AGENT WOOD - CROSS EXAMINATION BY MS. WILSON

54

1 Q SO YOU DON'T HAVE ANY REAL WAY OF BEING
2 SURE ABOUT WHO HE WAS TALKING TO WHEN HE HIT THE CORNER
3 CAUSE YOU COULD SEE HIM BUT YOU COULDN'T SEE WHO HE WAS
4 ADDRESSING?

5 A ONLY, YOU KNOW I'M GOING BY WHAT THE VIDEO
6 SHOWS AS WELL AT THE TIME, OTHER THAN THAT, NO. I MEAN I'M
7 GOING BY THE VIDEO THAT HE HAD ON HIM AND WHAT IT SHOWED
8 AND THEN MERELY WHAT HAPPENED WAS HE WALKED BACK AND THE
9 SUBJECT CAME [SIC] AROUND THE CORNER.

10 Q BUT LET ME, LET ME BE MORE SPECIFIC THEN
11 CAUSE I'M NOT REALLY ASKING YOU ABOUT WHAT YOU SAW JUST NOW
12 ON THE VIDEO, I'M ASKING ABOUT THE DAY THAT THIS INCIDENT
13 OCCURRED?

14 A OKAY, SURE.

15 Q YOU SAW HIM AROUND THE CORNER AND YOU'RE
16 TELLING ME THAT HE WAS IN YOUR LINE OF SIGHT THE ENTIRE
17 TIME?

18 A HE NEVER MADE IT AROUND THE WHOLE CORNER OF
19 THE BUILDING, OKAY.

20 Q RIGHT.

21 A OKAY. I SAW HIM AND ONCE HE GOT TO THE
22 CORNER HE TURNED AROUND AND CAME BACK TOWARDS ME.

23 Q AND SO YOU, BUT MY QUESTION WAS THEN, YOU
24 DID NOT SEE WHO HE SPOKE TO THAT WAS COMING AROUND THE
25 CORNER TOWARDS HIM?

AGENT WOOD - CROSS EXAMINATION BY MS. WILSON

55

1 A NO, MA'AM, NO, UH-UH.

2 Q SO YOU'RE NOT SURE ABOUT THAT?

3 A NO.

4 Q AND YOU NEVER LEFT THE VEHICLE AT ALL, DID
5 YOU?

6 A NO.

7 Q YOU STAYED IN THE DRIVERS SEAT THE ENTIRE
8 TIME, CORRECT?

9 A YES, MA'AM.

10 Q SO IS IT POSSIBLE THEN, ISN'T IT POSSIBLE
11 THAT WHILE THE SELLER, THE PERSON ALLEGEDLY COMING AROUND
12 THE CORNER, THAT THERE COULD HAVE BEEN ANY PERSON COMING
13 AROUND THAT CORNER TO MEET THIS CONFIDENTIAL INFORMANT WHO
14 THEN MAY NOT HAVE MADE IT AROUND THE CORNER, ISN'T THAT
15 POSSIBLE?

16 A THAT IS POSSIBLE BUT THAT'S NOT THE WAY THE
17 MEET ACTUALLY OCCURRED.

18 Q WELL I'M SURE IT'S NOT BUT IT IS POSSIBLE
19 THAT THE PERSON THAT WAS, WAS SUPPOSED TO COME TO THE CAR
20 DID NOT COME CAUSE YOU DON'T KNOW WHAT WAS GOING ON AROUND
21 THAT CORNER?

22 A NO.

23 Q NOW YOU SAID THAT YOU THINK THAT THE "CI"
24 SHOWED YOU AFTER THE TRANSACTION WENT DOWN, YOU SAID YOU
25 THINK THAT THE "CI" SHOWED YOU WHAT HE HAD IN HIS HAND, YOU

AGENT WOOD - REDIRECT EXAMINATION BY MS. TILLEY

56

1 THINK, YOU'RE NOT SURE ABOUT THAT?

2 A OH, I'M SURE.

3 Q I'M SORRY MAYBE I'M MAKING A MISTAKE. I
4 THINK YOUR WORDS WERE YOU SAID YOU THINK THAT THE "CI"
5 SHOWED YOU WHAT HE HAD AND THEN YOU PLACED IT IN THE
6 CONSOLE?

7 A I DID NOT, I BELIEVE HE PLACED IN -- HE
8 TURNED AROUND AND SHOWED ME THE SUBSTANCE THAT HE JUST
9 PURCHASED IN THE BAG WHICH I JUST SAW HIM PURCHASE.

10 Q AND AT THAT POINT IN TIME THE "CI" PUT THE
11 MONEY INTO THE CONSOLE IMMEDIATELY HAVING WALKED BACK?

12 A NOT THE MONEY, HE PUT THE DRUGS THAT HE
13 JUST PURCHASED OR THE SUSPECTED DRUGS THAT HE JUST
14 PURCHASED INTO THE CENTER CUP HOLDER.

15 Q NOW FOR THE RECORD AND I WANT TO BE CLEAR
16 YOU NEVER RECOVERED ANY MARKED BUY MONEY FROM MS. WILLIAMS,
17 DID YOU?

18 A NO, WE DID NOT.

19 MS. WILSON: THANK YOU.

20 THE COURT: MS. TILLEY?

21 REDIRECT EXAMINATION

22 BY MS. TILLEY:

23 Q WHAT WOULD BE ONE OF THE REASONS WHY YOU
24 WOULD NOT HAVE FOUND MARKED MONEY ON THAT DAY?

25 A I BELIEVE THE, I DON'T EVEN KNOW, I THINK

AGENT WOOD - REDIRECT EXAMINATION BY MS. TILLEY

57

1 SHE TURNED HERSELF IN ACTUALLY. WE WENT TO MAKE AN ARREST
2 ON HER AT A LATER DATE, WHICH IS VERY COMMON. WE MAY WAIT
3 A MONTH, WE MAY WAIT A YEAR, DEPENDING ON THE
4 INVESTIGATION.

5 Q WHY WOULD YOU, WHY WOULD YOU NOT
6 IMMEDIATELY ARREST HER RIGHT AFTER, RIGHT DURING THE BUY?

7 A IT DEPENDS ON THE INVESTIGATION. IF WE'RE
8 GOING TO MOVE MORE FORWARD WITH IT, MAKE ADDITIONAL BUYS OR
9 ---

10 Q WOULD YOU HAVE CONCERN FOR THE "CI"?

11 A THAT HAS A LOT TO DO WITH IT TO BE HONEST
12 WITH YOU. YOU DON'T WANT TO, YOU RISK BURNING YOUR "CI"
13 VERY QUICKLY IF YOU MADE A BUY AND ARRESTED THEM RIGHT
14 THERE OR IF YOU MAKE THE ARREST ON SCENE OBVIOUSLY THE
15 PERSON SELLING THE DRUGS AND THE PERSON BUYING THE DRUGS
16 ARE GOING TO KNOW EACH OTHER AND THEY'RE GOING TO KNOW ONE
17 OF THEM SET EACH OTHER UP, YOU KNOW, TO, OR BURN, WHATEVER
18 YOU'D CALL IT.

19 MS. TILLEY: OKAY, THANK YOU, NO FURTHER
20 QUESTIONS.

21 THE COURT: MS. WILSON, ANYTHING FURTHER?

22 MS. WILSON: NOTHING, YOUR HONOR.

23 THE COURT: ALL RIGHT, YOU MAY STEP DOWN, THANK
24 YOU, SIR.

25 THE WITNESS: THANK YOU.

AGENT GRATE - DIRECT EXAMINATION BY MS. TILLEY

58

1 THE COURT: MS. TILLEY?

2 MS. TILLEY: YOUR HONOR, THE STATE CALLS AGENT
3 BERNARD GRATE.

4 THE COURT: ALL RIGHT, GET MR. GRATE FOR US.

5 MS. TILLEY: YOUR HONOR, MAY THIS WITNESS BE
6 EXCUSED?

7 THE COURT: HE MAY IF MS. WILSON HAS NO
8 OBJECTION.

9 MS. WILSON: NO OBJECTION, YOUR HONOR.

10 THE COURT: ALL RIGHT, HE MAY BE EXCUSED.
11 COME AROUND, MR. GRATE.

12 AGENT BERNARD GRATE

13 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

14 MADAM CLERK: STATE YOUR FULL NAME AND SPELL
15 YOUR LAST.

16 THE WITNESS: BERNARD GRATE, G-R-A-T-E.

17 DIRECT EXAMINATION

18 BY MS. TILLEY:

19 Q AGENT GRATE, DO YOU LIVE AROUND HERE?

20 A YES, I DO.

21 Q HAVE YOU LIVED HERE LONG?

22 A YES.

23 Q WHERE DID YOU GO TO HIGH SCHOOL?

24 A LORIS HIGH SCHOOL.

25 Q AND HOW LONG HAVE YOU BEEN WORKING WITH THE

AGENT GRATE - DIRECT EXAMINATION BY MS. TILLEY

59

1 POLICE FORCE?

2 A LAW ENFORCEMENT TOTAL 10 YEARS.

3 Q AND IN WHAT POSITION DO YOU CURRENTLY WORK
4 IN?

5 A I'M AN AGENT WITH THE FIFTEENTH CIRCUIT
6 DRUG ENFORCEMENT UNIT.

7 Q AND JUST VERY BRIEFLY WHAT IS THE DRUG
8 ENFORCEMENT, DEU?

9 A DEU IS A TASK FORCE ORIGINALLY ASSIGNED TO
10 THE HORRY COUNTY POLICE DEPARTMENT, THAT'S WHO I'M EMPLOYED
11 WITH, BUT I'M REASSIGNED WITH THE TASK FORCE THROUGH THE
12 SOLICITOR'S OFFICE.

13 Q OKAY, AND ON APRIL 29TH OF 2008 DID YOU,
14 WHAT, TELL ME ABOUT WHAT HAPPENED THAT DAY. WERE YOU, WHAT
15 WERE YOU WORKING ON THAT DAY?

16 A I WAS WORKING ON A CONTROLLED DRUG BUY
17 UTILIZING A CONFIDENTIAL INFORMANT.

18 Q OKAY, AND WITH THAT CONFIDENTIAL INFORMANT
19 WHEN YOU MET WHAT WAS SOME OF THE PRECAUTIONS YOU TOOK WITH
20 HIM BEFORE, BEFORE THE BUY BEGAN THAT DAY?

21 A BEFORE THE BUY WE WOULD SEARCH THE
22 CONFIDENTIAL INFORMANT, SEARCH HIS PERSONS AND HIS VEHICLE,
23 MAKE SURE HE DOESN'T BRING ANY CONTRABAND BEFORE THE
24 CONTROLLED BUY IS DID.

25 Q AND WHAT ELSE DID YOU DO WITH THE "CI"?

AGENT GRATE - DIRECT EXAMINATION BY MS. TILLEY

60

1 A WE WOULD INSTALL EQUIP HIM WITH A AUDIO AND
2 VIDEO RECORDER AND A TRANSMITTING DEVICE.

3 Q AND WHERE DID THE, BEFORE YOU LEFT THE
4 INITIAL LOCATION WHERE DID THE, WHERE DID THE "CI" GO,
5 WHERE WAS HE PLACED AT THAT POINT?

6 A HE WAS PLACED INSIDE A VEHICLE WITH AGENT
7 WOOD.

8 Q AND WHERE WERE YOU?

9 A I WAS IN ANOTHER VEHICLE FOLLOWING AGENT
10 WOOD.

11 Q AND WHERE DID YOU FOLLOW AGENT WOOD AND THE
12 "CI" TO?

13 A I FOLLOWED THEM TO THE EXXON GAS STATION AT
14 THE CORNER OF HIGHWAY 9 AND HIGHWAY 905. THEY PULLED IN
15 THE PARKING LOT OF THE EXXON GAS STATION. I WENT AROUND TO
16 THE PARKING LOT OF THE POST OFFICE WHICH IS RIGHT BESIDE
17 THE GAS STATION.

18 Q OKAY, AND WHEN YOU WERE PARKED THERE WHAT
19 COULD YOU SEE FROM THAT VIEW POINT IN TERMS OF COULD YOU
20 SEE THE VEHICLE, WHAT, WHAT COULD YOU SEE?

21 A I COULD SEE AGENT WOODS VEHICLE WAS PARKED
22 ON THE EASTERN PORTION OF THE GAS STATION PARKING AREA. I
23 WAS PARKED RIGHT THE PARKING LOT OF THE POST OFFICE. I
24 COULD SEE AGENT WOOD, THE ENTIRE VEHICLE, I COULD SEE
25 EVERYTHING FROM WHERE I WAS AT.

AGENT GRATE - DIRECT EXAMINATION BY MS. TILLEY

61

1 Q OKAY, AND WHAT DID YOU OBSERVE WHEN YOU
2 WERE STATIONED ACROSS?

3 A AT THE POINT I OBSERVED THE CONFIDENTIAL
4 INFORMANT EXIT THE VEHICLE AND WALK TO THE CORNER OF THE
5 STORE. I SAW, AT THAT POINT I SAW A BLACK FEMALE AND A
6 KID, SMALLER KID, APPROACH THE INFORMANT, THE INFORMANT
7 TURNED AROUND, IMMEDIATELY TURNED AROUND AND WALKED BACK TO
8 THE VEHICLE, TO THE PASS ---

9 Q WHOSE VEHICLE?

10 A AGENT WOODS VEHICLE.

11 Q OKAY --

12 A WALK BACK TO THE PASSENGER SIDE OF THE
13 VEHICLE. THE BLACK FEMALE AND THE SMALL CHILD WALKED TO
14 THE PASSENGER SIDE OF THE VEHICLE WHERE THE INFORMANT WAS
15 SITTING.

16 Q AND THEN WHEN THEY WERE THERE WHAT WAS THE
17 NEXT THING YOU OBSERVED?

18 A I SAW AS, I SAW THE BLACK FEMALE AT THE
19 DOOR WITH THE INFORMANT. I SAW THE BLACK FEMALE THEN TURN,
20 AT THAT POINT I EXITED WHERE WE EXITED OUR POINT OF WHERE
21 WE WAS PARKED AT, MYSELF AND AGENT BORDAN EXITED OUR POINT
22 WHERE WE WAS PARKED AT AND BEGAN TO TRAVEL OUT OF THAT
23 PARKING LOT INTO THE PARKING LOT OF THE GAS STATION.

24 Q NOW WERE YOU HEARING ANYTHING AT THIS TIME?

25 A YES.

AGENT GRATE - DIRECT EXAMINATION BY MS. TILLEY

62

1 Q WHAT WERE YOU HEARING?

2 A THE TRANSMITTING DEVICE THAT WAS EQUIPPED
3 WE HAD A RECEIVER IN OUR VEHICLE SO EVERYTHING THAT WAS
4 GOING ON WE WAS LISTENING TO AT THE TIME.

5 Q NOW WHEN YOU SAW THE FEMALE LEAVE FROM
6 AGENT WOODS VEHICLE WHERE DID YOU SEE HER GO AGAIN AND WHAT
7 DID YOU DO AGAIN?

8 A AGENT BORDAN WAS DRIVING THE VEHICLE, I WAS
9 A PASSENGER. I KEPT A VISUAL ON THE FEMALE AND WATCHED HER
10 GO TO THE FRONT ENTRANCE OF THE EXXON STORE. WE PARKED IN
11 THE PARKING AT THE GAS PUMP. I GOT OUT OF THE VEHICLE
12 MAINTAINING MY VISUAL OF THE FEMALE AND APPROACHED THE
13 FRONT ENTRANCE OF THE STORE.

14 Q OKAY, SO AT ANY TIME DID YOU LOOSE CONTACT
15 WITH THAT BEING THE WOMAN THAT YOU HAD SEEN?

16 A NO.

17 Q AND WHEN YOU APPROACHED HER WHAT DID YOU
18 OBSERVE?

19 A I SAW THE FEMALE, I WALKED UP TO HER, I
20 REMEMBERED HER.

21 Q HOW DID YOU REMEMBER HER?

22 A WELL I WENT TO SCHOOL WITH HER FROM MIDDLE
23 SCHOOL TO HIGH SCHOOL.

24 Q THE WITNESS YOU WENT TO ---

25 A LORIS MIDDLE AND LORIS HIGH SCHOOL.

AGENT GRATE - DIRECT EXAMINATION BY MS. TILLEY

63

1 Q IS THAT SMALL OR A BIG HIGH SCHOOL?

2 A IT'S A SMALL.

3 Q OKAY, SO YOU RECOGNIZED HER AND THE PERSON
4 THAT YOU SAW THERE AT THE GAS STATION CAN YOU POINT HER OUT
5 IN THE COURTROOM TODAY?

6 A YES.

7 Q AND WHERE IS SHE?

8 A SHE'S RIGHT HERE.

9 THE COURT: THE RECORD INDICATES THAT THE
10 WITNESS HAS POINTED TO THE DEFENDANT.

11 MS. TILLEY: (CONTINUING)

12 Q AND YOU SAID YOU NOW, AND YOU APPROACHED
13 HER AND WHAT DID YOU SAY?

14 A I SAID "HEY, TAWANDA." I SAID THAT TO GET
15 A POSITIVE IDENTIFICATION ON HER TO SEE IF SHE WOULD LOOK
16 AT ME, BUT SHE ALREADY LOOK AT ME; BUT I JUST WANTED TO
17 CONFIRM THAT WAS HER. I WALKED IN THE STORE JUST SO I
18 WOULDN'T LOOK OBVIOUS, WALKED AROUND THE STORE A LITTLE BIT.
19 AND EXITED THE STORE AND GOT BACK INTO MY VEHICLE.

20 Q AND THEN WHERE DID YOU GO FROM THAT POINT?

21 A WE GOT BACK INTO THE VEHICLE. WE DROVE
22 BACK TO THE MEETING LOCATION WHERE AGENT WOOD AND THE
23 INFORMANT WAS AT.

24 Q OKAY, AND AT THAT POINT WHAT DID YOU DO
25 WHEN YOU GOT BACK TO THE MEETING PLACE?

AGENT GRATE - DIRECT EXAMINATION BY MS. TILLEY

64

1 A AT THAT POINT I WENT INSIDE AGENT WOODS
2 VEHICLE AND RETRIEVED THE WHITE PLASTIC BAGGIE CONTAINING
3 AN OFF ROCK LIKENESS SUBSTANCE.

4 Q I'M GOING TO SHOW YOU WHAT'S BEEN MARKED
5 FOR IDENTIFICATION PURPOSES AS STATE'S EXHIBIT 1, WHAT IS
6 THAT?

7 A THAT'S THE BAGGIE AND THE OFF WHITE ROCK
8 LIKE SUBSTANCE THAT WAS PRESENTED TO BE AS CRACK COCAINE.

9 Q AND WHEN YOU RETRIEVED THAT WHAT DID YOU DO
10 WITH IT?

11 A THE LOCATION WE WAS AT THERE'S A LOT OF
12 PEOPLE AROUND SO I PLACED THIS INSIDE MY GLOVE COMPARTMENT,
13 LOCKED IT, SECURED IT, THEN I SEARCHED THE "CI" TO MAKE
14 SURE HE DIDN'T HAVE ANY OTHER THING ON HIM, SEARCHED THE
15 VEHICLE OF AGENT WOODS, THEN I REMOVED THE AUDIO AND VIDEO
16 RECORDING DEVICES OFF OF THE "CI".

17 Q AND THEN WHAT DID YOU DO WITH THE DRUGS?

18 A AT THAT POINT WITH THE DRUGS I HAD SECURED
19 THEM, WENT BACK TO MY OFFICE, FIELD TESTED THE DRUGS, GOT A
20 POSITIVE READING.

21 Q WHAT'S A FIELD TEST?

22 A IT'S A --

23 Q JUST ROUGHLY SPEAKING?

24 A IT'S A KIT THAT YOU CAN USE TO TEST. YOU
25 PLACE A LITTLE SMALL PRESENCE OF THE SUBSTANCE INTO THE

AGENT GRATE - CROSS EXAMINATION BY MS. WILSON

65

1 PACKET AND YOU SHAKE IT AND IT GIVES YOU A POSITIVE READING
2 WHETHER, YEAH, IT'S A COCAINE BASE OR --

3 Q OKAY, AND THEN WHAT DID YOU DO WITH THE
4 DRUGS?

5 A AT THAT POINT I GOT THIS BEST KIT AND
6 PLACED THE DRUGS INSIDE THE BEST KIT AND SEALED IT.

7 Q OKAY, AND WHAT'S A BEST KIT?

8 A A BEST KIT IS THIS, IT'S A SEALED, A TAMPER
9 PROOF PLASTIC BAGGY. YOU PLACE IT IN THERE AND IT ALSO
10 COMES WITH SOME DOCUMENTATIONS THAT YOU FILL OUT BEFORE YOU
11 SUBMIT IT INTO HORRY COUNTY EVIDENCE.

12 Q OKAY, DID YOU SUBMIT IT INTO HORRY COUNTY
13 EVIDENCE?

14 A YES.

15 MS. TILLEY: NO MORE QUESTIONS, PLEASE ANSWER
16 ANY THAT MS. WILSON MIGHT HAVE.

17 THE COURT: MS. WILSON?

18 MS. WILSON: THANK YOU, YOUR HONOR.

19 CROSS EXAMINATION

20 BY MS. WILSON:

21 Q SO, AGENT GRATE, YOU SAY YOU DIDN'T
22 ACTUALLY DRIVE, YOU AND BORDAN DROVE INTO THE EXXON PARKING
23 LOT AFTER?

24 A AS, AS SHE WAS WALKING WE, WE WAS LISTENING
25 TO EVERYTHING THAT WAS GOING ON AND WE KNEW AT THAT POINT

AGENT GRATE - CROSS EXAMINATION BY MS. WILSON

66

1 WHEN SHE APPROACHED THE VEHICLE THAT THE TRANSACTION WAS
2 COMPLETED. WE WERE EXITING THE PARKING LOT OF THE POST
3 OFFICE, WE JUST DROVE AROUND INTO THE EXXON.

4 Q AND NOW YOU SAY TRANSACTION, YOU DIDN'T
5 ACTUALLY WITNESS A TRANSACTION, DID YOU?

6 A I WITNESSED THE FEMALE AT THE DOOR OF THE
7 VEHICLE.

8 Q BUT SHE COULD HAVE BEEN WALKING UP TO THE
9 CAR TO SAY HELLO, CORRECT, THAT'S POSSIBLE?

10 A THAT'S POSSIBLE.

11 Q NOW YOU CLAIMED TO HAVE ATTENDED HIGH
12 SCHOOL WITH MS. WILLIAMS AT LORIS HIGH?

13 A YES.

14 Q ARE YOU SURPRISED TO HEAR THAT SHE ACTUALLY
15 ENDED UP AT FORT RILEY TO ADULT ED TO FINISH HER HIGH
16 SCHOOL EDUCATION?

17 A SHE MIGHT HAVE.

18 Q BUT YOU SAID THAT YOU WENT TO HIGH SCHOOL
19 WITH HER?

20 A YES, I WENT TO MIDDLE SCHOOL, I CAN'T
21 REMEMBER THE YEARS OF THE HIGH SCHOOL WHETHER IT WAS 9TH,
22 10TH, 11TH, OR 12TH, BUT I WENT TO LORIS HIGH SCHOOL.

23 Q SO ARE YOU SURPRISED TO HEAR THAT SHE
24 WASN'T THERE?

25 A SHE WAS -- YES.

AGENT GRATE - REDIRECT EXAMINATION BY MS. TILLEY

67

1 MS. WILSON: THANK YOU, NO FURTHER QUESTIONS,
2 YOUR HONOR.

3 THE COURT: MS. TILLEY, ANY REDIRECT?

4 MS. TILLEY: YOUR HONOR, MAY WE APPROACH,
5 PLEASE?

6 THE COURT: CERTAINLY.

7 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
8 RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING
9 OF THE JURY AND THE COURT REPORTER.)

10 REDIRECT EXAMINATION

11 BY MS. TILLEY:

12 Q NOW WHEN YOU SAY YOU KNEW HER FROM HIGH
13 SCHOOL, YOU'RE NOT NECESSARILY SAYING THAT YOU SAW HER WALK
14 ACROSS THE STAGE WITH YOU?

15 A NO, I'M NOT.

16 Q OKAY, MAYBE FRESHMAN YEAR, SOPHOMORE YEAR?

17 A MAYBE.

18 MS. TILLEY: THANK YOU. YOUR HONOR, THE COURT'S
19 INDULGENCE FOR ONE SECOND.

20 THE COURT: OKAY.

21 RECROSS EXAMINATION

22 BY MS. WILSON:

23 Q AGENT GRATE, SO YOU ARE CONVINCED THAT YOU
24 WERE IN HIGH SCHOOL WITH MS. WILLIAMS?

25 A MIDDLE SCHOOL.

MS. RABON - DIRECT EXAMINATION BY MS. TILLEY

68

1 Q IN WHAT YEAR?

2 A I DON'T EXACTLY KNOW WHICH YEAR.

3 MS. WILSON: THANK YOU, NO FURTHER QUESTIONS,
4 YOUR HONOR.

5 THE COURT: YOU MAY STEP DOWN.

6 MS. TILLEY: YOUR HONOR, MAY THIS WITNESS BE
7 EXCUSED?

8 THE COURT: IF MS. WILSON HAS NO OBJECTION.

9 MS. WILSON: I HAVE NO OBJECTIONS, YOUR HONOR.

10 THE COURT: YOU'RE EXCUSED, MR. GRATE.

11 MS. TILLEY: YOUR HONOR, THE STATE CALLS LORI
12 RABON.

13 THE COURT: ALL RIGHT, MS. RABON, COME AROUND.

14 LORI T. RABON

15 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

16 MADAM CLERK: STATE YOUR NAME FOR THE COURT AND
17 SPELL YOUR LAST.

18 THE WITNESS: LORI RABON, R-A-B-O-N.

19 DIRECT EXAMINATION

20 BY MS. TILLEY:

21 Q MS. RABON, WHERE DO YOU WORK RIGHT NOW?

22 A I'M EMPLOYED BY THE HORRY COUNTY POLICE
23 DEPARTMENT.

24 Q AND WHAT IS YOUR JOB TITLE?

25 A I'M IN CHARGE OF THE PROPERTY AND EVIDENCE

MS. RABON - DIRECT EXAMINATION BY MS. TILLEY

69

1 SECTION.

2 Q AND WHAT DO YOU DO?

3 A OUR DUTIES, THE DUTIES OF OUR SECTION ARE
4 BASICALLY TO INTAKE PROPERTY AND EVIDENCE FROM THE OFFICERS
5 AND DETECTIVES FROM THE HORRY COUNTY POLICE DEPARTMENT AND
6 THE DRUG ENFORCEMENT UNIT FOR THE SOLICITOR'S OFFICE, TO
7 PROCESS THE EVIDENCE AS TO PUT IT UP IN THE SAFE FOR
8 FURTHER TESTING OR FOR COURT TESTIMONY.

9 Q I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS
10 STATE'S EXHIBIT 1 MARKED FOR IDENTIFICATION, WHAT DO YOU
11 IDENTIFY THAT TO BE?

12 A THIS IS A DRUG KIT DROPPED BY THE DRUG
13 ENFORCEMENT UNIT FOR CASE NUMBER DEU-0856.

14 Q OKAY, AND WHAT, WHAT IS YOUR ROLE WHEN IT
15 COMES TO THE CARE OF THAT EVIDENCE?

16 A OUR ROLE IS ONCE THE OFFICERS DROP THE
17 EVIDENCE INTO THE DROP BOX WHICH IS PRIMARILY USED JUST
18 LIKE A MAILBOX ON THE SIDE OF THE ROAD THAT YOU DROP MAIL
19 IN. ONCE YOU DROP IT IN NO ONE CAN GET IT OUT WITHOUT
20 ACCESS THROUGH OUR OFFICE WHICH ONLY OUR EMPLOYEES OF OUR
21 OFFICE HAVE ACCESS TO. IT'S TAKEN AND PROCESSED BY THE
22 CASE NUMBER AND THE BEST KIT NUMBER WHICH EACH BEST KIT HAS
23 ITS OWN UNIQUE NUMBER. IN THIS CASE IT'S LABELED H224334
24 WHICH IS THE SERIAL NUMBER FOR THE BEST KIT. IT'S PUT IN
25 THE VAULT AND HELD UNTIL THE SOLICITOR REQUESTS TESTING.

MS. RABON - CROSS EXAMINATION BY MS. WILSON

70

1 Q AND IF YOU WERE TO HAVE TAKEN THAT OUT HOW
2 WOULD YOU KNOW IF IT HAD BEEN TAMPERED WITH?

3 A WHEN THE ITEM IS DROPPED IT HAS A TAMPER
4 PROOF SEAL ON IT. IF IT'S DROPPED INTO EVIDENCE AND THE
5 SEAL IS TAMPERED WITH AT ALL WE DON'T ACCEPT IT AND WHEN
6 IT'S PULLED TO BE TRANSFERRED TO THE LAB THE LAB WILL NOT
7 ACCEPT IT IF IT'S, IF THE SEAL IS BROKEN.

8 MS. TILLEY: ONE MOMENT, YOUR HONOR. THANK YOU,
9 YOUR HONOR, NO MORE QUESTIONS.

10 THE COURT: MS. WILSON?

11 MS. WILSON: THANK YOU, YOUR HONOR.

12 CROSS EXAMINATION

13 BY MS. WILSON:

14 Q YOU SAY YOU WORK WITH PROPERTY AND
15 EVIDENCE, CORRECT?

16 A I DO.

17 Q YOU WEREN'T AT THIS SCENE OF THIS ALLEGED
18 DISTRIBUTION, WERE YOU?

19 A NO, I WAS NOT.

20 Q YOU WERE NOT A PART OF THE DEU OR DRUG
21 ENFORCEMENT UNITS PLANS FOR THIS?

22 A NO, I WAS NOT.

23 Q AND YOU WERE NOWHERE TO BE FOUND NEAR THE
24 SCENE, CORRECT?

25 A NO, I WAS NOT.

MS. FLOYD - DIRECT EXAMINATION BY MS. TILLEY

71

1 Q YOU COULDN'T VERIFY THAT MY CLIENT WAS THE
2 PERSON INVOLVED IN THIS ACTIVITY, COULD YOU?

3 A NO, I CANNOT.

4 MS. WILSON: THANK YOU, NO FURTHER QUESTIONS.

5 THE COURT: ALL RIGHT.

6 MS. TILLEY: NO QUESTIONS, YOUR HONOR.

7 THE COURT: YOU MAY STEP DOWN.

8 MS. TILLEY: MAY SHE BE EXCUSED?

9 THE COURT: MS. WILSON?

10 MS. WILSON: NO OBJECTION, YOUR HONOR.

11 THE COURT: MS. RABON, YOU MAY BE EXCUSED.

12 MS. TILLEY: THE STATE CALLS LISA FLOYD.

13 THE COURT: COME AROUND, MS. FLOYD.

14 LISA FLOYD

15 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

16 MADAM CLERK: STATE YOUR FULL NAME FOR THE COURT
17 AND SPELL YOUR LAST.

18 THE WITNESS: MY NAME IS LISA FLOYD, LAST NAME
19 SPELLED F-L-O-Y-D.

20 DIRECT EXAMINATION

21 BY MS. TILLEY:

22 Q MS. FLOYD, WHERE DO YOU WORK?

23 A I RUN THE DRUG ANALYSIS LABORATORY FOR THE
24 Horry County Police Department.

25 Q AND WHAT GOES ON THERE?

MS. FLOYD - DIRECT EXAMINATION BY MS. TILLEY

72

1 A BASICALLY I TEST ANY SUBSTANCE THAT IS
2 SUSPECTED TO BE A CONTROLLED SUBSTANCE, PRETTY MUCH
3 EVERYTHING BESIDES MARIJUANA.

4 Q OKAY, I'M GOING TO SHOW YOU WHAT'S STATE'S
5 EXHIBIT 1 MARKED FOR IDENTIFICATION AND ASK IF YOU CAN
6 IDENTIFY THAT?

7 A THIS IS WHAT'S REFERRED TO AS A K-PAC.
8 THIS OUTER HEAT SEALABLE ENVELOPE THAT'S CLEAR THAT YOU CAN
9 SEE THE EVIDENCE THROUGH I AM THE PERSON WHO PUTS EVIDENCE
10 IN IT AND THAT'S INDICATED BY MY INITIALS AND THE DATE THAT
11 I SEAL IT AND THE LAB NUMBER THAT I ASSIGNED IT.

12 Q OKAY, NOW WHEN YOU GET THIS EVIDENCE WHERE
13 DO YOU GET IT FROM?

14 A I RECEIVED IT FROM LORI RABON IN EVIDENCE.

15 Q OKAY, AND IF YOU HAD GOTTEN IT AND IT HAD
16 NOT, WHAT'S THE ONLY WAY YOU WOULD HAVE OPENED THAT BAG AND
17 TESTED IT?

18 A WHEN I RECEIVE ANY EVIDENCE INCLUDING THIS
19 I WOULD LOOK AT THIS INNER BAG WHICH IS WHAT IT'S SUBMITTED
20 TO ME IN, IT'S FOLDED IN HALF RIGHT NOW, THERE ARE I
21 BELIEVE THREE RED ADHESIVE LINES AT THE TOP THAT IT'S
22 SEALED WITH AND THEN ALL THE WAY AROUND THE OUTER EDGES
23 FRONT AND BACK BOTH SIDES ARE TAMPER EVIDENT DESIGN AND IF
24 THAT DESIGN IS DISTORTED IN ANY WAY OR THE SEAL AT THE TOP
25 IS BROKEN IN ANY WAY THEN I WOULD NOT ACTUALLY RECEIVE THE

MS. FLOYD - DIRECT EXAMINATION BY MS. TILLEY

73

1 EVIDENCE AT THAT TIME. IT WOULD BE REJECTED.

2 Q AND WHAT DID YOU DO WITH THE DRUGS ONCE YOU
3 RECEIVED THEM?

4 A ONCE I RECEIVE THEM AGAIN IT WOULD BE IN
5 THIS INNER ENVELOPE THAT YOU SEE. I WOULD OPEN IT AT THE
6 BOTTOM WHERE THERE'S A LITTLE ONE AND I WOULD ACTUALLY CUT
7 IT ON SO IT'S CONSISTENT EVERY TIME AND I WOULD LOG WHAT
8 WAS REFERRED TO AS THE BEST KIT NUMBER. IT'S ALSO CALLED A
9 CONTROL NUMBER AND IT'S PRESTAMPED ON THE TOP OF EVERY
10 ENVELOPE AND I WOULD ASSIGN IT A LAB NUMBER AND WHEN I OPEN
11 IT I PUT, IF YOU CAN, YOU CAN'T SEE IT DUE TO THE BAR CODE
12 STICKER THAT'S ON THE OUTSIDE HERE, BUT I WOULD PUT MY
13 INITIALS, LET ME MAKE SURE IT'S ON THERE, AND THE LETTERS
14 OKAY WHICH ARE ON THERE AND THE DATE THAT I OPEN IT AND
15 THEN THE CASE NUMBER WHICH IS DEU08056.

16 Q AND WHEN YOU REMOVED THE DRUGS WHAT DID YOU
17 DO?

18 A WHEN I REMOVED THE DRUGS I DO WHAT'S CALLED
19 A PRELIMINARY TEST WHICH IS JUST A PRESUMPTIVE TEST. IT
20 GIVES ME AN IDEA OF WHAT THAT DRUG MAY BE, IF AT ALL, AND
21 IN THIS CASE IT PRESUMPTIVELY TESTED POSITIVE FOR CRACK
22 COCAINE. THEN IT'S FURTHER ANALYZED USING A GAS
23 CHROMATOGRAPH WITH A MASS SELECTIVE DETECTOR WHICH I'LL
24 REFER TO AS A GS MS.

25 CHROMATOGRAPHY IS SIMPLY A SEPARATION TECHNIQUE

MS. FLOYD - DIRECT EXAMINATION BY MS. TILLEY

74

1 THAT CHEMISTS USE AND THEN THE MASS SELECTIVE DETECTOR IS
2 THE DETECTION DEVICE THAT'S HOOKED TO A COMPUTER AND IT
3 GIVES ME A PRINT OUT OF THE ANALYSIS OF WHAT ACTUALLY CAME
4 THROUGH THAT SYSTEM. AND THEN AS A CHEMIST I WOULD LOOK AT
5 THAT PRINT OUT AND MAKE SURE THAT ALL THE ELEMENTS THAT ARE
6 SUPPOSED TO BE THERE FOR THAT PARTICULAR DRUG THAT THE
7 COMPUTER THINKS IT IS ARE PRESENT AND IF I AGREE WITH THAT
8 THEN I LOOK BACK AT THE PRESUMPTIVE RESULTS AND MAKE SURE
9 THAT THEY AGREE AND THEN THAT WOULD BE CALLED A POSITIVE
10 RENDERING AT THAT POINT FOR THAT DRUG.

11 Q I'M GOING TO SHOW YOU AND I'M GOING TO MARK
12 STATE'S EXHIBIT 3 FOR IDENTIFICATION PURPOSES --

13 (WHEREUPON, STATE'S EXHIBIT NUMBER 3 MARKED FOR
14 IDENTIFICATION.)

15 MS. TILLEY: (CONTINUING)

16 Q WHAT IS THAT?

17 A THIS IS A COPY OF MY LAB REPORT FOR THIS
18 PARTICULAR CASE NUMBER WHICH IS ON MY REPORT AND IT'S
19 REFERENCED TO THE SAME LAB NUMBER THAT IS ON THIS EVIDENCE.

20 Q AND WHAT DOES THAT REVEAL?

21 A WHAT WAS SUBMITTED TO ME WAS AN OFF WHITE
22 ROCK SUBSTANCE IN A TORN SANDWICH BAGGY WHICH IS CLEARLY
23 SEEN IN THE INSIDE HERE AND IT WAS FOUND TO BE COCAINE BASE
24 WHICH IS COMMONLY REFERRED TO AS CRACK COCAINE. THE WEIGHT
25 WAS 1.34 GRAMS WHICH IS 20.67 GRAINS.

MS. FLOYD - CROSS EXAMINATION BY MS. WILSON

75

1 MS. TILLEY: YOUR HONOR, AT THIS TIME THE STATE
2 WOULD MOVE EXHIBIT 3 AND EXHIBIT 1 INTO EVIDENCE.

3 THE COURT: MS. WILSON?

4 MS. WILSON: WITHOUT OBJECTION.

5 THE COURT: WITHOUT OBJECTION.

6 (WHEREUPON, STATE'S EXHIBITS NUMBERS 1 AND 3
7 ENTERED INTO EVIDENCE.)

8 MS. TILLEY: I HAVE NO MORE QUESTIONS OF THIS
9 WITNESS.

10 THE COURT: MS. WILSON?

11 MS. WILSON: THANK YOU, YOUR HONOR.

12 CROSS EXAMINATION

13 BY MS. WILSON:

14 Q MS. FLOYD, VERY BRIEFLY. I UNDERSTAND THAT
15 YOU ARE FROM THE DRUG LAB?

16 A THAT'S CORRECT.

17 Q AND YOU ANALYZE THE SUBSTANCE THAT ARE
18 GIVEN TO YOU?

19 A YES.

20 Q HOWEVER YOU HAD NOTHING TO DO WITH THIS
21 ACTUAL UNDERCOVER OPERATION, DID YOU?

22 A NO, I DID NOT.

23 Q AND YOU COULD NOT CONFIRM OR DENY THE
24 IDENTITY OF THE ALLEGED SELLER INVOLVED IN THIS ALLEGED
25 DISTRIBUTION, COULD YOU?

1 A NO, I COULD NOT.

2 MS. WILSON: THANK YOU, NO FURTHER QUESTIONS.

3 THE COURT: MS. TILLEY?

4 MS. TILLEY: NO MORE QUESTIONS, YOUR HONOR.

5 THE COURT: YOU MAY STEP DOWN.

6 MS. TILLEY: MAY SHE BE EXCUSED?

7 THE COURT: MS. WILSON, ANY OBJECTION TO
8 EXCUSING THE WITNESS?

9 MS. WILSON: NO, SIR, YOUR HONOR.

10 THE COURT: YOU'RE EXCUSED AND RELEASED FROM
11 YOUR SUBPOENA.

12 THE WITNESS: THANK YOU, YOUR HONOR.

13 MS. TILLEY: YOUR HONOR, THE STATE RESTS ITS
14 CASE.

15 THE COURT: VERY WELL, LADIES AND GENTLEMEN, I'M
16 GOING TO LET YOU GO TO YOUR ROOM AND TAKE A LITTLE QUICK
17 BREAK. WE'VE BEEN AT IT FOR ABOUT AN HOUR AND A HALF AND
18 AS I SAID I DON'T LIKE TO GO MUCH PAST PREACHING TIME SO
19 I'M GOING TO LET YOU TAKE A BREAK AND REFRESH YOURSELVES.
20 MR. ROPP, MAKE SURE THEY HAVE SOME SOFT DRINKS AND SOME
21 SNACKS, OKAY. WE'LL BE IN HERE FOR A FEW MINUTES WHILE I
22 ENTERTAIN MOTIONS.

23 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT
24 3:34 P.M.)

25 MS. WILSON: YOUR HONOR, I DO HAVE A MOTION.

1 THE COURT: ALL RIGHT.

2 MS. WILSON: AT THIS TIME I WOULD MAKE A, I
3 WOULD MOVE FOR A DIRECTED VERDICT ON THE GROUNDS THAT THE
4 EVIDENCE PRESENTED EITHER THROUGH THE WITNESSES ALL JUST
5 RAISES A MERE SUSPICION OF MY CLIENT'S GUILT. THERE IS
6 NOTHING CONCRETE THAT DIRECTLY CONNECTS MY CLIENT TO THIS
7 CRIME. THE VIDEO IN AND OF ITSELF IS NOT OF ANY REAL USE
8 AS FAR AS IDENTIFYING MY CLIENT AS THE PERSON WHO ACTUALLY
9 GOES AND SELLS TO THIS UNDERCOVER OFFICER AND THIS
10 CONFIDENTIAL INFORMANT.

11 AS A MATTER OF FACT THE PICTURE, THE MINIMAL
12 MEASLY STILL THAT THEY ACTUALLY CAN RETRIEVE FROM THE VIDEO
13 DOESN'T EVEN LOOK LIKE MY CLIENT AND ON THAT BASIS I'M
14 ASKING THE COURT TO DIRECT A VERDICT IN MY CLIENT'S FAVOR
15 AT THIS TIME.

16 THE COURT: ALL RIGHT, I'M GOING TO RESPECTFULLY
17 DENY YOUR VERDICT. THE QUESTION IS WHETHER THERE IS
18 EVIDENCE, NOT THE SUFFICIENCY OF THAT EVIDENCE, AND I FIND
19 THAT THERE IS AMPLE EVIDENCE TO SUBMIT THIS TO THE JURY.
20 WE HAVE DETECTIVE OR OFFICER WOOD AND OFFICER GRATE'S
21 DIRECT IDENTIFICATION OF THE DEFENDANT WHO WAS PRESENT
22 DURING THE ACTUAL GUY. WE HAVE THE DRUGS. I THINK THIS
23 CERTAINLY SHOULD GO TO THE JURY.

24 MS. WILSON: YES, SIR.

25 THE COURT: I RESPECTFULLY DENY IT.

1 MS. WILSON: AND, YOUR HONOR, IN ADDITION AT
2 THIS TIME I WOULD JUST AGAIN RENEW MY MOTION FOR
3 SUPPRESSION. I KNOW THAT EVERYTHING IS DONE AND YOU'VE
4 ALREADY RULED ON THIS BUT ---

5 THE COURT: SUPPRESSION OF?

6 MS. WILSON: OF THE VIDEO AND THE DRUGS IN THIS
7 INSTANCE.

8 THE COURT: ALL RIGHT, AND I WOULD DENY YOUR
9 MOTION.

10 MS. WILSON: YES, SIR, THANK YOU VERY MUCH.

11 THE COURT: THEY WERE ADMITTED WITHOUT OBJECTION
12 WHEN THEY ARE ADMITTED.

13 ALL RIGHT, MS. WILSON, HAVE YOU DISCUSSED WITH
14 YOUR CLIENT HER RIGHT TO TAKE THE STAND IN THIS MATTER?

15 MS. WILSON: I HAVE, YOUR HONOR.

16 THE COURT: AND CAN YOU TELL ME WHETHER OR NOT
17 YOUR CLIENT WISHES TO TESTIFY?

18 MS. WILSON: SHE DOES NOT, YOUR HONOR.

19 THE COURT: ALL RIGHT, THEN I WOULD LIKE TO ASK
20 HER OR INFORM HER OF HER RIGHTS TO MAKE SURE THAT SHE FULLY
21 UNDERSTANDS HER RIGHT TO REMAIN SILENT, OKAY?

22 MS. WILSON: YES, SIR.

23 **EXAMINATION OF DEFENDANT WILLIAMS REGARDING RIGHTS**

24 THE COURT: IF YOU WOULD STAND, MS. WILLIAMS,
25 YOU ARE TAWANDA ANN WILLIAMS?

1 DEFENDANT WILLIAMS: YES, SIR.

2 THE COURT: ALL RIGHT, MS. WILLIAMS, AT THIS
3 TIME I'M GOING TO EXPLAIN TO YOU CERTAINLY YOUR RIGHTS AND
4 IF YOU DON'T UNDERSTAND ANYTHING I SAY I WANT YOU TO,
5 PLEASE, LET ME KNOW AND IF YOU WANT ME TO EXPLAIN ANYTHING
6 IN A MORE DETAILED MANNER LET ME KNOW THAT AND I'LL BE GLAD
7 TO DO SO; DO YOU UNDERSTAND?

8 DEFENDANT WILLIAMS: YES, SIR.

9 THE COURT: ALL RIGHT, AND WE'VE REACHED THE
10 STAGE OF THE TRIAL WHERE YOU MAY PRESENT YOUR DEFENSE.

11 YOU HAVE THE RIGHT TO CLAIM THE PROTECTION GIVEN
12 YOU BY THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE
13 UNITED STATES AND THIS STATE.

14 THIS AMENDMENT SAYS IN PART, NO PERSON SHALL BE
15 COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST
16 HIMSELF OR HERSELF. THIS MEANS THAT YOU CANNOT BE REQUIRED
17 TO TESTIFY IN THIS CASE.

18 YOU HAVE THE RIGHT TO TESTIFY ON YOUR OWN BEHALF
19 IF YOU WISH, HOWEVER, NO ONE CAN MAKE YOU TESTIFY. THIS
20 IS A PERSONAL RIGHT AND NO ONE CAN WAIVE THIS RIGHT EXCEPT
21 YOU.

22 IF YOU DECIDE TO TESTIFY YOU WOULD BE SUBJECT TO
23 THE SAME RULES THAT GOVERN OTHER WITNESSES AND YOU MAY BE
24 EXAMINED AND CROSS EXAMINED ON ANY RELEVANT ISSUE IN THIS
25 CASE.

1 IN ADDITION IF YOU HAVE ANY CONVICTIONS INVOLVING
2 DISHONESTY OR FALSE STATEMENT OR FOR CRIMES PUNISHABLE BY
3 IMPRISONMENT FOR MORE THAN ONE YEAR AND THIS COURT
4 DETERMINES THAT THE PROBATIVE VALUE OF ADMITTING THIS
5 EVIDENCE OUTWEIGHS ITS PREJUDICIAL AFFECT TO YOU THE
6 SOLICITOR WILL BE ABLE TO INTRODUCE YOUR RECORD TO ATTACK
7 YOUR CREDIBILITY.

8 IF YOU DECIDE TO TESTIFY THIS DECISION ON YOUR
9 PART MUST BE FREELY AND VOLUNTARILY AND INTELLIGENTLY MADE
10 WITH KNOWLEDGE OF THE PROTECTIONS GIVEN TO YOU BY THE FIFTH
11 AMENDMENT AND THE CONSEQUENCES OF YOUR DECISION TO TESTIFY.

12 IF YOU DECIDE NOT TO TESTIFY I WILL INSTRUCT THE
13 JURORS THAT THEY CANNOT GIVE THE FACT THAT YOU DID NOT
14 TESTIFY ANY CONSIDERATION WHATSOEVER AND THERE'S TO BE
15 ABSOLUTELY NO PREJUDICE TO YOU BECAUSE YOU DID NOT TESTIFY.
16 IT IS LEFT ENTIRELY UP TO YOU WHETHER OR NOT TO TESTIFY.

17 YOU MAY TALK WITH YOUR ATTORNEY, YOUR FAMILY,
18 YOUR FRIENDS, OR ANYONE ELSE BUT THE FINAL DECISION WILL BE
19 LEFT ENTIRELY UP TO YOU; DO YOU UNDERSTAND WHAT I HAVE
20 EXPLAINED TO YOU?

21 DEFENDANT WILLIAMS: YES, SIR.

22 THE COURT: DO YOU UNDERSTAND THAT IF YOU DO NOT
23 TESTIFY YOU CAN STILL PUT UP OTHER WITNESSES AND OTHER
24 TESTIMONY IF YOU WISH; YOU UNDERSTAND THAT?

25 DEFENDANT WILLIAMS: YES, SIR.

1 THE COURT: DO YOU HAVE ANY QUESTIONS ABOUT WHAT
2 I HAVE EXPLAINED TO YOU?

3 DEFENDANT WILLIAMS: NO, SIR.

4 THE COURT: AND HAVE YOU DISCUSSED WITH YOUR
5 ATTORNEY WHETHER OR NOT YOU SHOULD TESTIFY? HAVE YOU
6 DISCUSSED IT WITH YOUR ATTORNEY -- WELL WE'RE GOING TO TAKE
7 A BREAK. I'M GOING TO LET YOU DISCUSS THAT WITH HER BEFORE
8 I ASK YOU WHETHER OR NOT YOU WANT TO TESTIFY OR NOT, ALL
9 RIGHT?

10 DEFENDANT WILLIAMS: YES, SIR.

11 THE COURT: WE'RE GOING TO BE AT EASE FOR ABOUT
12 10 MINUTES.

13 MS. WILSON: THANK YOU, YOUR HONOR.

14 THE COURT: MS. WILSON, PLEASE CONSULT WITH YOUR
15 CLIENT CONCERNING HER RIGHT TO TESTIFY.

16 ALL RIGHT, LET'S TAKE A BREAK.

17 (WHEREUPON, A RECESS WAS TAKEN AND THE FOLLOWING
18 TAKES PLACE ON THE RECORD AFTER THE RECESS.)

19 THE COURT: MS. WILLIAMS, I WANT TO TALK WITH
20 YOU AGAIN A FEW MINUTES. YOU RECALL MY CONVERSATIONS WITH
21 YOU ABOUT YOUR RIGHT TO REMAIN SILENT?

22 DEFENDANT WILLIAMS: YES, SIR.

23 THE COURT: ALL RIGHT, NOW DO YOU WISH TO
24 TESTIFY?

25 DEFENDANT WILLIAMS: NO, SIR.

1 THE COURT: YOU DO?

2 MS. WILSON: SHE'S SAYING NO, SIR.

3 THE COURT: NO, SIR, OKAY, SHE DOES NOT WISH TO
4 TESTIFY, ALL RIGHT, VERY WELL.

5 MS. WILSON, WILL YOU PUT UP A DEFENSE?

6 MS. WILSON: NO, SIR.

7 THE COURT: OKAY, ALL RIGHT, NOW I'LL BRING THE
8 JURY IN AND YOU CAN REST AND MS. TILLEY HAD HER FINGER UP
9 THERE.

10 MS. TILLEY: YOUR HONOR, I JUST DIDN'T KNOW IF
11 YOU WANTED TO ADDRESS ANYTHING REGARDING THE JURY CHARGES
12 AT THIS TIME?

13 THE COURT: YES, I WILL TAKE THAT UP CAUSE I
14 WANT TO GO RIGHT INTO THE JURY CHARGES.

15 MS. TILLEY: THE ONLY THING, EVERYTHING WAS
16 FINE. THE ONLY THING ARE YOU GOING TO CHARGE ON
17 POSSESSION?

18 THE COURT: I WILL CHARGE, LET ME SEE I THINK I
19 HAVE THAT IN THERE, DON'T I?

20 MS. TILLEY: WELL MY ARGUMENT WOULD BE THAT THAT
21 DOES NOT, WOULD NOT BE APPLICABLE IN THE SITUATION CAUSE
22 IT'S EITHER A BUY OR NOT. IT'S EITHER A DISTRIBUTION OR
23 IT'S NOT.

24 THE COURT: ALL OR NOTHING, RIGHT?

25 MS. TILLEY: YEAH, ALL OR NOTHING IS WHAT I

1 THINK THIS IS.

2 THE COURT: WELL I THINK YOU'RE PROBABLY RIGHT
3 BUT I'M GOING TO HEAR FROM MS. WILSON ON THAT. MS. WILSON,
4 I INCLUDED IN THE CHARGE THE LESSER INCLUDED OF POSSESSION.
5 ACTUALLY I THINK THAT MS. TILLEY'S POINT IS WELL MADE IN
6 THIS CASE, THE TESTIMONY INDICATES THAT IT WAS EITHER A
7 SALE OR IT WAS NOTHING, WHAT DO YOU WANT TO TELL ME ABOUT
8 THAT?

9 MS. WILSON: YOUR HONOR, I THINK THAT CERTAINLY
10 IT'S POSSIBLE FOR THE JURY TO INFER THAT. I MEAN ARGUABLY
11 THEY COULD BELIEVE THAT SHE DID, THAT MY CLIENT (A) WAS
12 EITHER, YOU'RE RIGHT, EITHER IT WASN'T HER OR THAT IT WAS
13 DISTRIBUTION, BUT I ALSO BELIEVE IT'S POSSIBLE FOR THE JURY
14 TO BELIEVE THAT SHE MAY NOT HAVE BEEN THE PERSON WHO --

15 THE COURT: THEN SHE WOULD NOT HAVE POSSESSED IT
16 EITHER.

17 MS. WILSON: RIGHT, I'M FINE WITH TAKING IT OUT,
18 YOUR HONOR.

19 THE COURT: ALL RIGHT, VERY WELL, OKAY. LET'S
20 BRING THE JURY IN AND YOU CAN REST IN THE PRESENCE OF THE
21 JURY.

22 MS. WILSON: YES, SIR.

23 THE COURT: AND THEN I WILL CHARGE.

24 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT
25 4:03 P.M.)

1 THE COURT: WE HAVE EVERYONE BACK NOW. MS.
2 WILSON?

3 MS. WILSON: YOUR HONOR, AT THIS TIME THE
4 DEFENSE RESTS.

5 JURY CHARGE

6 THE COURT: VERY WELL, LADIES AND GENTLEMEN, WE
7 HAVE CONCLUDED THIS CASE AND IT'S NOW TIME FOR ME TO
8 INSTRUCT YOU ON THE LAW AND TO INSTRUCT YOU FULLY ON THE
9 LAW AS I INDICATED I WOULD DO WHEN I GAVE YOU SOME
10 PRELIMINARY REMARKS. I WILL BE REPEATING MYSELF TO SOME
11 EXTENT AND I DO SO JUST SO THAT YOU WILL UNDERSTAND
12 EVERYTHING I HAVE SAID OR PORTIONS OF WHAT I HAVE SAID
13 EARLIER ARE PARTS OF THE LAW WHICH YOU MAY CONSIDER IN THIS
14 CASE OR MUST CONSIDER.

15 I REMIND YOU THAT DURING THIS TRIAL YOU AND I
16 HAVE CERTAIN DUTIES TO PERFORM. AS THE TRIAL JUDGE IT'S MY
17 RESPONSIBILITY TO PRESIDE OVER THE TRIAL OF THIS CASE AND I
18 ALSO HAVE THE DUTY TO RULE ON THE ADMISSIBILITY OF THE
19 EVIDENCE OFFERED IN THIS TRIAL.

20 YOU ARE TO CONSIDER ONLY THE COMPETENT EVIDENCE
21 BEFORE YOU. IF THERE WAS ANY TESTIMONY ORDERED STRICKEN
22 FROM THE RECORD IN THIS CASE DURING THIS TRIAL YOU MUST
23 DISREGARD THAT TESTIMONY. YOU ARE TO CONSIDER ONLY THE
24 TESTIMONY WHICH HAS BEEN PRESENTED FROM THIS WITNESS STAND
25 AND ANY EXHIBITS WHICH HAVE BEEN MADE A PART OF THE RECORD

1 AND ANY STIPULATIONS OR AGREEMENTS OF COUNSEL.

2 I HAVE THE ADDITIONAL DUTY TO CHARGE THE LAW TO
3 YOU APPLICABLE TO THIS CASE. AS THE PRESIDING JUDGE I AM
4 THE SOLE JUDGE OF THE LAW IN THIS CASE. IT IS YOUR DUTY AS
5 JURORS TO ACCEPT AND APPLY THE LAW AS I NOW STATE IT TO
6 YOU.

7 IF YOU ALREADY HAVE AN IDEA AS TO WHAT THE LAW IS
8 OR WHAT THE LAW OUGHT TO BE AND IT DOES NOT AGREE WITH WHAT
9 I NOW TELL YOU THE LAW IS YOU MUST ABANDON THIS IDEA
10 BECAUSE YOU ARE SWORN TO ACCEPT THE LAW AND APPLY THE LAW
11 EXACTLY AS I STATE IT TO YOU.

12 IN EVERY CASE TRIED IN THIS COURT BEFORE A JURY
13 THE JURY BECOMES THE SOLE AND EXCLUSIVE JUDGE OF THE FACTS
14 IN A CASE.

15 A TRIAL JUDGE CANNOT INTIMATE, STATE, COMMENT ON,
16 OR MAKE ANY STATEMENT TO A JURY, A TRIAL JURY, ABOUT THE
17 FACTS OF THE CASE. SINCE YOU THE JURY ARE THE SOLE JUDGES
18 OF THE FACTS IN THIS CASE YOU ARE NOT TO INFER FROM WHAT I
19 HAVE SAID DURING THE PROGRESS OF THIS TRIAL OR IN RULING
20 UPON THE ADMISSIBILITY OF EVIDENCE OR OTHERWISE OR ANYTHING
21 THAT I SAY NOW TO YOU DURING THE COURSE OF THESE
22 INSTRUCTIONS TO YOU THAT I HAVE ANY OPINION ABOUT THE FACTS
23 IN THIS CASE. THE LAW DOES NOT ALLOW ME TO HAVE AN OPINION
24 ABOUT THE FACTS IN THIS CASE. THIS IS A MATTER SOLELY FOR
25 YOU THE JURY TO DETERMINE.

1 AS JURORS IT IS YOUR DUTY TO DETERMINE THE
2 AFFECT, VALUE, WEIGHT, AND TRUTH OF THE EVIDENCE PRESENTED
3 DURING THE TRIAL.

4 THE INDICTMENT CHARGES THE DEFENDANT WITH
5 DISTRIBUTION OF COCAINE OR CRACK, COCAINE BASE OR CRACK
6 COCAINE, AND I REMIND YOU THAT THE FACT THAT THE DEFENDANT
7 WAS ARRESTED, CHARGED, AND INDICTED IN THIS CASE IS NOT
8 EVIDENCE IN THIS CASE AND CANNOT BE CONSIDERED BY YOU AS
9 EVIDENCE OF GUILT IN THIS CASE, NOR DOES IT CREATE ANY
10 PRESUMPTION OR INFERENCE OF GUILT. THIS DOCUMENT IS SIMPLY
11 A FORMAL INSTRUMENT, THIS IS THE INDICTMENT. IT'S SIMPLY A
12 FORMAL INSTRUMENT WHICH CONTAINS THE CHARGE MADE AGAINST
13 THE DEFENDANT AND IT IS THE FORMAL DOCUMENT BY WHICH THIS
14 CASE IS BROUGHT INTO THIS COURT.

15 THE DEFENDANT HAS PLED NOT GUILTY TO THESE
16 INDICTMENTS, OR THIS INDICTMENT, AND THAT PLEA PUTS THE
17 BURDEN ON THE STATE TO PROVE THE DEFENDANT GUILTY.

18 A PERSON CHARGED WITH COMMITTING A CRIMINAL
19 OFFENSE IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE
20 HIMSELF INNOCENT.

21 I CHARGE YOU THAT IT IS AN IMPORTANT, THAT THIS
22 IS AN IMPORTANT RULE OF THE LAW THAT THE DEFENDANT IN A
23 CRIMINAL CASE NO MATTER WHAT THE SERIOUSNESS OF THE CRIME
24 MAY BE WILL ALWAYS BE PRESUMED TO BE INNOCENT OF THE CRIME
25 FOR WHICH THE INDICTMENT WAS ISSUED UNLESS GUILT HAS BEEN

1 PROVEN BY EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A
2 REASONABLE DOUBT.

3 THIS PRESUMPTION OF INNOCENCE DOES NOT END WHEN
4 YOU BEGIN YOUR DELIBERATIONS BUT IT ACCOMPANIES THE
5 DEFENDANT THROUGHOUT THE TRIAL UNTIL YOU REACH A VERDICT OF
6 GUILT BASED ON EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND
7 A REASONABLE DOUBT.

8 THE PRESUMPTION OF INNOCENCE IS LIKE A ROBE OF
9 RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF THE DEFENDANT
10 WHICH REMAINS WITH THE DEFENDANT UNTIL IT HAS BEEN STRIPPED
11 FROM THE DEFENDANT BY EVIDENCE SATISFYING YOU OF THE
12 DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

13 THE PRESUMPTION OF INNOCENCE IS NOT A MERE LEGAL
14 THEORY. IT IS NOT JUST A LEGAL PHRASE. IT IS A
15 SUBSTANTIAL RIGHT WHICH EVERY DEFENDANT IS ENTITLED TO
16 UNLESS YOU THE JURY ARE SATISFIED FROM THE EVIDENCE OF THE
17 DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

18 NOW THE STATE HAS THE BURDEN OF PROVING THE
19 DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT AS I SAID.
20 SOME OF YOU MAY HAVE SERVED AS JURORS IN CIVIL CASES WHERE
21 YOU WERE TOLD THAT IT'S ONLY NECESSARY TO PROVE THAT A FACT
22 IS MORE LIKELY TRUE THAN NOT TRUE SUCH AS BY THE GREATER
23 WEIGHT OR PREPONDERANCE OF THE EVIDENCE.

24 IN CRIMINAL CASES THE STATE'S PROOF MUST BE MORE
25 POWERFUL THAN THAT. IT MUST BE BEYOND A REASONABLE DOUBT.

1 PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT
2 LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT.

3 THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE
4 KNOW WITH ABSOLUTE CERTAINTY AND IN CRIMINAL CASES THE LAW
5 DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT.

6 IF BASED ON YOUR CONSIDERATION OF THE EVIDENCE
7 YOU ARE FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF
8 THE CRIME CHARGED YOU MUST FIND THE DEFENDANT GUILTY.

9 IF ON THE OTHER HAND YOU THINK THERE'S A REAL
10 PROBABILITY OR POSSIBILITY THAT THE DEFENDANT IS NOT GUILTY
11 YOU MUST GIVE THE DEFENDANT THE BURDEN OF THE DOUBT AND
12 FIND HIM NOT GUILTY.

13 WHAT IS A REASONABLE DOUBT? A REASONABLE DOUBT
14 IS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON
15 TO HESITATE TO ACT.

16 NOW THERE ARE TWO TYPES OF EVIDENCE WHICH ARE
17 GENERALLY PRESENTED IN A TRIAL, DIRECT EVIDENCE AND
18 CIRCUMSTANTIAL EVIDENCE.

19 DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO
20 CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT SUCH AS AN
21 EYEWITNESS. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES
22 THE MAIN FACT TO BE PROVED.

23 CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF
24 FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT.

25 IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES

1 COLLATERAL FACTS FROM WHICH THE MAIN FACT MAY BE INFERRED.

2 CIRCUMSTANTIAL EVIDENCE IS BASED ON INFERENCE AND
3 NOT ON PERSONAL KNOWLEDGE OR OBSERVATION.

4 THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN
5 THE WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR
6 CIRCUMSTANTIAL EVIDENCE NOR IS A GREATER DEGREE OF
7 CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN OF
8 DIRECT EVIDENCE.

9 YOU SHOULD WEIGH ALL OF THE EVIDENCE IN THIS
10 CASE. AFTER WEIGHING ALL OF THE EVIDENCE IF YOU ARE NOT
11 CONVINCED OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE
12 DOUBT YOU MUST FIND THE DEFENDANT NOT GUILTY.

13 NECESSARILY YOU MUST DETERMINE THE CREDIBILITY OF
14 THE WITNESSES WHO HAVE TESTIFIED IN THIS CASE.

15 CREDIBILITY SIMPLY MEANS BELIEVABILITY. IT
16 BECOMES YOUR DUTY AS JURORS TO ANALYZE AND TO EVALUATE THE
17 EVIDENCE AND DETERMINE WHICH EVIDENCE CONVINCES YOU OF ITS
18 TRUTH.

19 IN DETERMINING THE BELIEVABILITY OF WITNESSES WHO
20 HAVE TESTIFIED IN THIS CASE YOU MAY BELIEVE ONE WITNESS
21 OVER SEVERAL WITNESSES OR SEVERAL OVER ONE WITNESS. YOU
22 MAY BELIEVE A PART OF THE TESTIMONY OF A WITNESS AND REJECT
23 THE REMAINING PART OF THE TESTIMONY OF THAT SAME WITNESS.

24 YOU MAY BELIEVE THE TESTIMONY OF A WITNESS IN ITS
25 ENTIRETY OR REJECT THE TESTIMONY OF A WITNESS IN ITS

1 ENTIRETY.

2 YOU MAY CONSIDER WHETHER ANY WITNESSES EXHIBITED
3 TO YOU ANY INTEREST, PREJUDICE, BIAS, OR OTHER MOTIVE IN
4 THIS CASE.

5 YOU MAY ALSO CONSIDER THE APPEARANCE AND MANNER
6 OF A WITNESS WHILE ON THE WITNESS STAND, SOMETIMES WE REFER
7 TO THIS AS A WITNESSES' DEMEANOR, YOU MAY CONSIDER THAT.

8 I INSTRUCT YOU AND EMPHASIZE THAT THE FACT THAT
9 THE DEFENDANT DID NOT TESTIFY IS NOT A FACTOR TO BE
10 CONSIDERED BY YOU IN ANY WAY IN YOUR DELIBERATIONS AND IN
11 YOUR CONSIDERATION OF THE QUESTION OF GUILT OR INNOCENCE OF
12 THE DEFENDANT. IT MUST NOT BE CONSIDERED BY YOU IN ANY
13 MANNER WHATSOEVER.

14 A DEFENDANT HAS A CONSTITUTIONAL RIGHT TO REMAIN
15 SILENT AND THE ASSERTION OF THIS RIGHT MUST NOT BE
16 CONSIDERED BY YOU IN YOUR DELIBERATIONS.

17 I REPEAT UNDER YOUR OATH YOU ARE TO DRAW NO
18 CONCLUSION WHATSOEVER FROM THE FACT THAT THE DEFENDANT IN
19 THIS CASE DID NOT TESTIFY.

20 THE FACT THAT THE DEFENDANT DID NOT TESTIFY
21 SHOULD NOT EVEN BE DISCUSSED IN THE JURY ROOM.

22 THE BURDEN OF PROOF AS I HAVE STATED TO YOU IS ON
23 THE STATE. THE DEFENDANT IS NOT REQUIRED TO PROVE HIS OR
24 HER INNOCENCE. THE BURDEN OF PROOF REMAINS ON THE STATE TO
25 PROVE GUILT BEYOND A REASONABLE DOUBT.

1 NOW THE DEFENDANT IN THIS CASE IS CHARGED WITH
2 DISTRIBUTION OF COCAINE BASE COMMONLY KNOWN AS CRACK
3 COCAINE. THE STATE MUST PROVE BEYOND A REASONABLE DOUBT
4 THAT THE DEFENDANT DISTRIBUTED COCAINE BASE OR CRACK
5 COCAINE.

6 DISTRIBUTION MEANS TO DELIVER OR TO ACTUALLY
7 CONSTRUCTIVELY OR ATTEMPT TO TRANSFER A DRUG OTHER THAN BY
8 ADMINISTERING IT OR DISPENSING IT.

9 DELIVER MEANS TO ACTUALLY CONSTRUCTIVELY, OR
10 ATTEMPT TO TRANSFER A DRUG.

11 A TRANSFER CAN INVOLVE AN EXCHANGE FOR MONEY, A
12 BARTER, OR A GIFT. THERE DOES NOT HAVE TO BE ANYTHING
13 GIVEN IN EXCHANGE FOR THE DRUGS FOR A TRANSFER TO
14 CONSTITUTE A DISTRIBUTION.

15 NOW I HAVE INSTRUCTED YOU ON THE LAW IN THIS CASE
16 PRIOR TO YOUR HEARING THE CLOSING ARGUMENTS OF THE
17 ATTORNEYS. THAT WAS A PRACTICE THAT WAS OFTEN FOLLOWED BY
18 MY FRIEND JUDGE COTTINGHAM. SOMETIMES I THINK IT IS
19 HELPFUL FOR THE JURY TO HEAR THE LAW PRIOR TO THE FINAL
20 ARGUMENTS.

21 NOW THERE IS A MATTER THAT I WANT TO INSTRUCT YOU
22 ON THAT I AM GOING TO RESERVE UNTIL AFTER THE FINAL
23 ARGUMENTS AND THAT IS AS TO THE VERDICT FORM AND THE
24 VERDICTS WHICH YOU MAY REACH IN THIS CASE AND I WILL BE
25 BACK WITH YOU TO TALK ABOUT THAT AFTER ARGUMENTS IN THIS

1 CASE.

2 NOW THE STATE AND THE DEFENSE WILL GIVE YOU FINAL
3 ARGUMENTS. AS I SAID EARLIER THESE ARE NOT, THIS IS NOT
4 TESTIMONY, BUT IT IS THEIR POSITION IN THIS CASE AND THEY
5 ARE POINTING OUT THOSE THINGS WHICH THEY THINK ARE
6 IMPORTANT FOR YOU TO CONSIDER IN YOUR CASE OR YOUR
7 DELIBERATIONS.

8 I WILL POINT OUT TO YOU ALSO THAT THEY ARE
9 COMMITTED NOT ONLY TO COMMENT ON THE FACTS IN THE CASE BUT
10 THEY ARE TO COMMENT ON THE LAW IN THIS CASE, HOWEVER, YOU
11 ARE TO UNDERSTAND THAT WHILE THEY ARE, THE ATTORNEYS ARE
12 PERMITTED TO COMMENT ON THE LAW YOU MUST BE GUIDED SOLELY
13 BY THE LAW WHICH I GIVE YOU AS MY INSTRUCTION.

14 ALL RIGHT, MS. TILLEY?

15 MS. TILLEY: THANK YOU, YOUR HONOR.

16 CLOSING ARGUMENT

17 BY MS. TILLEY:

18 LADIES AND GENTLEMEN, THIS CASE IS STRAIGHT
19 FORWARD. THE EVIDENCE IS SIMPLE AND HONEST AND OFTENTIMES
20 THAT'S WHAT THE TRUTH IS, SIMPLE.

21 NOW JUST BECAUSE IT MAY APPEAR STRAIGHT FORWARD
22 DOESN'T MEAN THAT THIS CHARGE IS NOT VERY SERIOUS. DRUGS
23 OBVIOUSLY ARE SOMETHING VERY SERIOUS IN OUR COMMUNITY.

24 YOU HEARD FROM THE TWO OFFICERS ON THE STAND THAT
25 WE HAVE A TASK FORCE SPECIFICALLY CREATED TO TACKLE THE

1 PROBLEM BECAUSE AS WE ALSO HEARD FROM THE TESTIMONY ON THE
2 STAND THAT OFTEN IT AFFECTS SMALL CHILDREN.

3 ALSO BECAUSE IT MAY APPEAR STRAIGHT FORWARD DOES
4 NOT NECESSARILY MEAN THAT CORNERS WERE CUT. YOU HEARD THE
5 EVIDENCE FROM THE TWO OFFICERS.

6 NOW LET'S TALK ABOUT MY BURDEN, THE BURDEN THAT I
7 HAVE, BEYOND A REASONABLE DOUBT. THE JUDGE TALKED BRIEFLY
8 ABOUT THAT. NOW IT'S NOT THAT I HAVE TO PROVE TO YOU
9 BEYOND ANY DOUBT WHATSOEVER BECAUSE VERY FEW THINGS IN LIFE
10 CAN BE PROVED BEYOND ANY DOUBT WHATSOEVER. I HAVE TO
11 FIRMLY CONVINCING YOU OF THE DEFENDANT'S GUILT.

12 LET'S TALK ABOUT THE EVIDENCE NOW. THERE WERE
13 TWO OFFICERS WHO TOOK THE STAND, FIRST AGENT WOOD. AGENT
14 WOOD GOT IN THE VEHICLE WITH THE CONFIDENTIAL INFORMANT, HE
15 WAS THE DRIVER, DROVE DOWN TO THE EXXON STATION AND HE IS
16 AS WE SAW HE'S DRIVING, RIGHT NEXT IN THE PASSENGER IS THE
17 "CI", AND WHAT HE TESTIFIES TO IS THAT HE SEES THE
18 DEFENDANT COME UP TO THE PASSENGER SIDE AND DO THE
19 TRANSACTION.

20 NOW LET'S THINK ABOUT IT WHEN ONE IS IN A CAR AND
21 WE TALK ABOUT A DEAL GOING ON RIGHT NEXT TO YOU, NOT EVEN,
22 MAYBE TWO FEET AWAY, AND HE KNOWS THIS OFFICER, SEEN THE
23 PHOTO OF THE TARGET, THE DEFENDANT, KNOWS WHAT HE'S LOOKING
24 FOR. HE'S TRAINED, HE IS TRAINED TO IDENTIFY, THAT IS THE
25 SOLE PURPOSE OF BEING THERE THAT DAY IS TO IDENTIFY THE

1 DEFENDANT TO GET THERE AND TO DO THE BUY AND HE'S RIGHT
2 THERE. BRIGHT SUNSHINE OUTSIDE, HE SEES IT CLEARLY, SO
3 AFTER THAT TAKES PLACE THEN HE LEAVES.

4 AND THEN YOU HEAR THE TESTIMONY FROM AGENT GRATE
5 WHEN HE GETS ON THE STAND, AND OFTEN AS THEY TOLD YOU
6 WHENEVER THEY DO THESE BUYS THEY'LL HAVE OTHER AGENTS THAT
7 ARE SET UP AROUND TO WATCH, FOR SECURITY ALSO, BUT ALSO TO
8 WATCH. AND THEY'RE LISTENING ON THE WIRE, GOT THAT WIRE
9 GOING AND THEY'RE HEARING WHAT'S GOING ON, AND SO IT'S KIND
10 OF LIKE IF YOU'RE WATCHING SOMETHING FROM AFAR YOU'VE ALSO
11 GOT, YOU KNOW, YOU'RE HEARING IT IN YOUR EAR JUST, YOU
12 KNOW, PUTTING TOGETHER KIND OF WHAT YOU'RE WATCHING. SO HE
13 SEES THE DEFENDANT COME AROUND THE CORNER AND APPROACH
14 AGENT WOOD'S VEHICLE, WATCHES HER APPROACH WITH A SMALL
15 CHILD.

16 NOW DOES HE SEE THE HAND TO HAND, NO, HE SEES HER
17 WALK UP TO THE CAR WHERE AGENT WOOD IS SITTING THERE AND
18 WATCHING THE TRANSACTION AND THEN THE BUY TAKES PLACE, THE
19 DISTRIBUTION OF CRACK COCAINE, THE DRUG DEALING, THE
20 SELLING OF CRACK COCAINE.

21 SO THEN AT THIS POINT AGENT GRATE ONCE AGAIN
22 WHO'S TRAINED IN THIS, HE KNOWS WHAT HE'S LOOKING FOR, HE
23 KNOWS HIS JOB, HE KNOWS HIS DUTY, HE'S KEEPING HIS EYE ON
24 THAT GIRL. HE'S WATCHING HER, DOESN'T LOOSE SIGHT FROM
25 HER. HE IMMEDIATELY PULLS IN, UP THERE ON THE TAPE YOU

1 HEAR WOOD SAY THE BUY IS DONE, SO GRATE PULLS IN, PULLS UP,
2 AND NOT ONLY DOES HE GET A FULL ON LOOK AT THIS GIRL BUT
3 THEY WENT TO SCHOOL TOGETHER, MIDDLE SCHOOL, MAYBE A COUPLE
4 OF YEARS OF HIGH SCHOOL, PLUS I MEAN KIND OF KNOW THE
5 PEOPLE IN YOUR OWN COMMUNITY, SO MUCH SO HE WALKS UP AND HE
6 SAYS, HEY, AND HE SAYS, THAT'S TAWANDA, THE DEFENDANT. HE
7 KNOWS WHO SHE IS.

8 SO ONCE HE MAKES THAT IDENTIFICATION HE GETS BACK
9 IN THE VEHICLE AND THEY GO BACK TO THE LOCATION THAT'S
10 WHERE THE DRUGS ARE SECURE AND THAT'S WHERE THEY TEST. YOU
11 HEARD FROM THE LAB, THE ANALYST, THE WEIGHT OF THE DRUGS
12 THAT SHE WAS SELLING CRACK COCAINE, SO WE HAVE THE
13 TESTIMONY FROM THOSE TWO OFFICERS.

14 NOW LET'S TALK ABOUT IT, IF YOU WERE TO SAY IF
15 YOU DON'T BELIEVE THESE TWO OFFICERS THERE'S TWO THINGS
16 YOU'VE GOT TO GO WITH. I'LL INDULGE THEM FOR A LITTLE BIT.
17 ONE IS THEY JUST DIDN'T KNOW WHAT THEY WERE DOING. THEY
18 WERE JUST LOOKING AT OFF IN THE TREES, YOU KNOW, THEY
19 WEREN'T DOING, THEY DIDN'T KNOW HOW TO DO THE JOB, THEY
20 JUST, YOU KNOW, THEY MIGHT NOT HAVE HAD THE RIGHT PERSON.
21 THEY MIGHT NOT HAVE SEEN THEM RIGHT, THEY MIGHT HAVE BEEN
22 COMING AROUND THE DOOR AT THE WRONG TIME AND THEY WERE NOT
23 LOOKING AT THEM OR MAYBE WHEN THEY WERE SITTING AT THE
24 DRIVERS SEAT THEY DIDN'T LOOK TO THE SIDE. THEY JUST DID A
25 BAD JOB.

1 WELL I THINK WE SAW FROM THEM ON THE STAND THESE
2 ARE COMPETENT SMART GUYS. AND SEE THE THING ABOUT,
3 BEAUTIFUL THING ABOUT A JURY IS COMMON SENSE AND WHAT YOU
4 DO TODAY IS WHAT YOU DO EVERY DAY, THAT'S MAKE A DECISION.
5 YOU MAKE A DECISION WHEN YOU TALK TO SOMEBODY. IS THAT
6 PERSON TELLING ME THE TRUTH, AND YOU LOOK AT THEM AND
7 YOU'RE LIKE IS HE TWITCHING OR ARE THEY NOT BEING HONEST OR
8 YOU CAN USE ALL THOSE DIFFERENT SKILLS YOU USE EVERY DAY TO
9 TELL SOMEBODY IF SOMEBODY IS TELLING YOU THE TRUTH OR IF
10 THEY'RE GOOD AT WHAT THEY'RE DOING OR IF THEY KNOW WHAT
11 THEY'RE TALKING ABOUT TO DECIDE WHETHER OR NOT THESE
12 OFFICERS ARE. AND NOT ONLY, AND YOU WOULD HAVE TO ASSUME
13 THAT THEY BOTH WERE DOING A BAD JOB THAT DAY AND THEY BOTH
14 CAME HERE AND TOOK THE STAND, UNDER OATH, AND TOLD YOU
15 THAT, BUT THEY DIDN'T. THEY CAME HERE, THEY KNEW THEIR
16 JOB. THEY KNEW THEY WERE TRAINED TO DO IT, IT'S WHAT THEY
17 WERE TRAINED TO DO. THIS IS EXACTLY WHAT THAT TASK FORCE
18 WAS THAT THEY'RE ON, THE DRUG ENFORCEMENT UNIT. IT'S TO DO
19 THINGS LIKE THIS, PAY ATTENTION, KNOW HOW TO WORK THE BUY,
20 KNOW HOW TO IDENTIFY WHO IS SELLING THE DRUGS.

21 NOW THE OTHER THING YOU WOULD HAVE TO GO WITH IS
22 IF YOU THOUGHT YOU DIDN'T WANT TO GO WITH THE OFFICERS,
23 WOULD BE THAT THEY'RE BAD COPS. WELL YOU HEARD THEY'VE
24 LIVED HERE, THEY'VE GOT FAMILY. THAT'S A LOT, LOT TO RISK
25 TO SAY THAT OVER THIS CASE THEY WOULD RISK THEIR JOB, THEIR

1 PROFESSIONAL CAREER, THE HEALTH INSURANCE OF THEIR FAMILIES
2 AND THEIR CHILDREN. THAT'S A LOT TO ASSUME, AND ONCE AGAIN
3 I THINK YOU CAN TELL FROM WATCHING THEM SIT UP THERE THAT'S
4 NOT EXACTLY THE CASE. THESE TWO OFFICERS WHO TOOK THE
5 STAND RE TELLING WHAT THEY SAW THAT DAY. WHAT THEY SAW WAS
6 THE DEFENDANT COME UP TO THE VEHICLE WHERE ONE OFFICER WAS
7 IN THE VEHICLE, ANOTHER OFFICER WAS ACROSS THE STREET AND
8 SAW IT. SHE SOLD DRUGS TO THE "CI".

9 LADIES AND GENTLEMEN, THE DEFENDANT IN THIS CASE
10 IS GUILTY, THANK YOU.

11 THE COURT: MS. WILSON?

12 MS. WILSON: THANK YOU, YOUR HONOR.

13 CLOSING ARGUMENT

14 BY MS. WILSON:

15 SO THE STATE WOULD HAVE YOU BELIEVE THAT THIS
16 CASE IS SO VERY STRAIGHT FORWARD WHEN IN FACT IT'S ANYTHING
17 BUT. THE OFFICERS HAVE TOLD YOU THAT THIS WAS A CONTROLLED
18 BUY. THEY, AND I THINK ONE OF THEM WENT SO FAR AS TO SAY
19 THAT THEY CONTROL EVERY ASPECT OF THE TRANSACTION, BUT THIS
20 WAS ANYTHING BUT CONTROLLED.

21 YOU HAVE MANY MANY THINGS MISSING THAT COULD BE
22 HERE IN THIS DAY OF EVIDENCE AND VIDEO AND AUDIO AND
23 CONFIDENTIAL INFORMANTS WE'RE MISSING KEY IMPORTANT BITS
24 AND PIECES OF INFORMATION.

25 WE'VE GOT A VIDEO THAT DOES NOT CLEARLY SHOW

1 ANYONE AND THE PERSON THAT YOU CAN CATCH FOR A SECOND, JUST
2 A SECOND, ON THE VIDEO LOOKS NOTHING LIKE THE LADY SITTING
3 AT THIS TABLE, NOTHING LIKE MY CLIENT.

4 YOU'VE GOT A, A CONFIDENTIAL INFORMANT WEARING A,
5 I GUESS, A LITTLE CAMERA SOMEWHERE ON HIS HAT OR CHEST BUT
6 HE CAN'T QUITE SEEM TO GET A GOOD PHOTOGRAPH OR JUST A FEW
7 GOOD SOLID SECONDS OF THE ACTUAL FACE OF THE PERSON THAT
8 HE'S SUPPOSED TO BE BUYING FROM CAUSE THAT'S THE WHOLE
9 PURPOSE OF THE ENTIRE TRANSACTION, RIGHT. HE CAN'T SEEM TO
10 GET ANY REALLY GOOD AUDIO. YOU CAN BARELY HEAR THE PERSON
11 ON THAT TAPE THAT IS SUPPOSED TO BE SELLING TO THIS, THIS
12 CONFIDENTIAL INFORMANT. AS A MATTER OF FACT YOU CAN
13 HARDLY, IF AT ALL, SEE THE ACTUAL TRANSACTION THAT IS
14 SUPPOSED TO HAVE TAKEN PLACE ON THIS VIDEO. IT'S NOT, IT'S
15 NOT ON THERE TO BE SEEN. THIS IS CONTROLLED, THOUGH.

16 WHAT'S ALSO CONTROLLED ACCORDING TO THE OFFICERS
17 IS THAT THEY'RE GOING OUT TO THE SCENE AND THEY'VE LINED UP
18 ALL OF THESE PEOPLE AND THEY'VE GOT EVERYBODY IN PLACE
19 READY TO DO A SPECIFIC JOB YET NO ONE WAS ARRESTED ON THE
20 SCENE. APPARENTLY NO ONE WAS ARRESTED FOR MONTHS, SO THIS
21 CASE WAS SO CRITICAL AND DRUGS ARE SUCH A SERIOUS PROBLEM
22 AND A SCURGE THAT THEY COULD AFFORD TO WAIT MONTHS BEFORE
23 SEEKING OUT THE VERY PERSON THAT THEY CLAIM THAT THEY COULD
24 IDENTIFY RIGHT THERE ON THE SCENE.

25 AS A MATTER OF FACT AGENT GRATE WENT SO FAR AS TO

1 SAY THAT HE KNEW HER, KNEW MY CLIENT FROM HIGH SCHOOL. NOW
2 OBVIOUSLY I'VE INTRODUCED EVIDENCE TO YOU, OR AT LEAST
3 INTRODUCED INFORMATION THAT SHE WASN'T IN HIGH SCHOOL WITH
4 HIM, DID NOT ATTEND HIGH SCHOOL IN THIS COUNTY AT ALL. HE
5 SAYS HE SAW HER THERE. IT'S NOT UP TO ME TO TELL YOU WHAT
6 TO THINK ABOUT THAT BUT IT IS SOMETHING FOR YOU TO THINK
7 ABOUT.

8 VIDEO AND AUDIO NONE OF IT IS GOOD QUALITY. A
9 CHANCE TO HAMMER HOME THAT THIS LADY WAS THE ONE
10 RESPONSIBLE FOR THIS CRIME YET SOMEHOW THEY'VE MISSED THAT
11 CRITICAL BIT OF EVIDENCE AND INFORMATION, CAN'T QUITE
12 PRESENT THAT TO YOU BECAUSE THEY DON'T HAVE IT TO PRESENT,
13 YET THEY COME IN WITHOUT IT, COULD HAVE HAD IT.

14 ARGUABLY GRATE SAYS HE DROVE UP TO THE GAS
15 STATION TO SEE WHO THIS PERSON WAS TO CONFIRM THE IDENTITY
16 AND COULD HAVE TAKEN ANOTHER PICTURE, COULD HAVE GOTTEN
17 SOME INFORMATION OFF OF THE CAR, COULD HAVE DONE ANY NUMBER
18 OF THINGS TO PLACE MY CLIENT AT THAT SCENE THAT DAY, DIDN'T
19 DO IT, NOTHING TANGIBLE.

20 NOW FURTHERMORE WE DON'T EVEN HAVE THE
21 CONFIDENTIAL INFORMANT HERE. THIS PERSON WHO TALKS FOR 15
22 MINUTES ON THIS TAPE OR FIVE MINUTES OR 10 MINUTES, IT JUST
23 SEEMED LIKE A LONG TIME TO ME, TALKS ABOUT MEXICANS BATHING
24 IN THE OCEAN, TALKS ABOUT HOGS ON THE FARM EATING CORN,
25 TALKS ABOUT LOTS OF THINGS, YOU DON'T HEAR TAWANDA WILLIAMS

1 NAME COME OUT OF HIS MOUTH NOT ONE TIME, YOU DON'T HEAR
2 THAT. HE SAYS, GIRL, SAYS GIRL A LOT, YOU DON'T HEAR
3 TAWANDA WILLIAMS. YOU DON'T HEAR OR SEE HER AT ALL.

4 HE'S NOT HERE TODAY TO TALK ABOUT WHETHER OR NOT
5 IT WAS HER. IMPORTANT EVIDENCE, IMPORTANT INFORMATION THAT
6 IS MISSING FROM THE PRESENTATION OF THE STATE'S CASE,
7 IMPORTANT INFORMATION THAT IS NECESSARY TO CONVICT MY
8 CLIENT. YOU DON'T, THAT INFORMATION IS NOT HERE, YOU
9 DON'T HAVE IT BEFORE YOU.

10 NOW CERTAINLY GRATE, NO, ACTUALLY I THINK IT WAS
11 OFFICER WOOD SAID THAT HE WAS SITTING CLOSE ENOUGH TO LOOK
12 AND SEE WHO THE SELLER OR THE DISTRIBUTOR OF THESE DRUGS
13 WAS BUT YET THE STATE WANTS YOU TO LOOK AT A STILL FRAME
14 FROM LIKE A NANO SECOND ON A VIDEO SCREEN IN THE REAR, IN
15 THE SIDE VIEW MIRROR OF A VEHICLE AND IDENTIFY SOMEONE.
16 YOU'RE TECHNICALLY CLOSER, YOUR VIEW IS CLOSER THAN WHAT
17 HIS VIEW WOULD HAVE BEEN RIGHT THERE ON THE SCENE AND I
18 DON'T KNOW, I KNOW I CAN'T IDENTIFY ANYTHING FROM THAT.

19 I BRING ALL THIS IN FRONT OF YOU TO SAY THAT
20 BEYOND A REASONABLE DOUBT IS A SERIOUS BURDEN AND WHILE IT
21 IS NOT ABSOLUTE CERTAINTY CERTAINLY IT MEANS THAT IF THERE
22 IS SOME DOUBT YOU CANNOT CONVICT MY CLIENT, ANY REASONABLE
23 DOUBT THAT SHE IS NOT THE PERSON, ANY REASONABLE DOUBT,
24 BECAUSE IT'S NOT ABOUT THEIR TRAINING. THIS IS NOT ABOUT
25 WHAT THE OFFICERS WERE TRAINED TO DO. THIS IS ABOUT WHAT

1 THEY DID NOT DO, WHAT YOU DO NOT HAVE IN FRONT OF YOU AND
2 IF YOU CANNOT BE REASONABLY CERTAIN, YOU CAN'T BEYOND A
3 REASONABLE DOUBT BELIEVE THAT MY CLIENT COMMITTED THIS
4 CRIME YOU HAVE TO FIND HER NOT GUILTY, THANK YOU FOR YOUR
5 TIME.

6 THE COURT: THANK YOU. LADIES AND GENTLEMEN OF
7 THE JURY, I RESERVED ONE LAST THING THAT I WANTED TO TALK
8 TO YOU ABOUT AND THAT WAS THE FORM OF THE VERDICT AND THE
9 POSSIBLE VERDICTS WHICH YOU CAN REACH IN THIS MATTER.

10 THERE ARE TWO POSSIBLE VERDICTS WHICH YOU CAN
11 REACH, THAT'S EITHER A VERDICT OF GUILTY OR NOT GUILTY AND
12 I HAVE INDICATED ON THE VERDICT FORM BOTH GUILTY AND NOT
13 GUILTY AND THERE'S NO SIGNIFICANCE TO WHICH ONE COMES
14 FIRST, WE JUST HAD TO PUT ONE FIRST. IT SAYS GUILTY AND
15 NOT GUILTY.

16 IF YOU REACH YOUR VERDICT YOU MUST CIRCLE THE
17 VERDICT YOU HAVE REACHED AND I'LL HAVE YOUR FORELADY SIGN
18 IT AND DATE IT.

19 NOW YOUR VERDICT MUST BE A UNANIMOUS VERDICT,
20 THAT IS YOU MUST ALL AGREE ON THE SAME VERDICT. IT CANNOT
21 BE A MAJORITY VERDICT. IT HAS TO BE A UNANIMOUS VERDICT.

22 I'M GOING TO ASK YOU TO GO INTO YOUR JURY ROOM;
23 I'M GOING TO ASK YOU NOT TO BEGIN YOUR DELIBERATIONS UNTIL
24 I HAVE SENT IN THE EVIDENCE IN THIS CASE AND THE VERDICT
25 FORM. THERE MAY BE SOME MORE ISSUES OR SOME FURTHER

1 INSTRUCTIONS THAT I NEED TO GIVE YOU THAT THE ATTORNEYS ARE
2 GOING TO REQUEST.

3 IF I SEND IN THE VERDICT FORM AND THE EVIDENCE
4 THAT MEANS YOU ARE TO BEGIN YOUR DELIBERATIONS. IF I BRING
5 YOU OUT I WILL GIVE YOU FURTHER INSTRUCTIONS, BUT I ASK YOU
6 NOT TO BEGIN YOUR DELIBERATIONS UNTIL YOU HAVE THE EVIDENCE
7 AND THE VERDICT FORM, THAT'S YOUR SIGNAL TO GO FORWARD.

8 MR. ROPP, IF YOU WOULD TAKE THEM IN, PLEASE
9 SEGREGATE THE ALTERNATE, PLEASE, THANK YOU.

10 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT
11 4:31 P.M.)

12 THE COURT: ANY EXCEPTIONS TO THE CHARGE, MS.
13 TILLEY?

14 MS. TILLEY: NO, YOUR HONOR.

15 MS. WILSON: NO, YOUR HONOR.

16 THE COURT: ALL RIGHT, WOULD YOU LIKE TO LOOK AT
17 THE VERDICT FORM?

18 MS. WILSON: THANK YOU.

19 THE COURT: AND IF YOU WOULD MAKE SURE THAT, I
20 THINK THERE WERE TWO EXHIBITS.

21 MS. TILLEY: THREE.

22 THE COURT: THREE, ALL RIGHT.

23 THEY CAN BEGIN THEIR DELIBERATIONS.

24 (WHEREUPON, THE VERDICT FORMS AND EXHIBITS WERE
25 DELIVERED TO THE JURY ROOM WITH INSTRUCTIONS TO BEGIN

1 DELIBERATIONS BEGAN AT 4:33 P.M.)

2 (WHEREUPON, THE JURY KNOCKED WITH A QUESTION AT
3 5:00 P.M.)

4 THE COURT: CAN WE GET A VIDEO PROJECTOR OR JUST
5 A COMPUTER TO WATCH THE VIDEO, I'D RATHER BRING THEM AND
6 LET THEM WATCH IT IN HERE, OKAY.

7 MS. TILLEY: EVERYTHING SHOULD BE SET UP.

8 THE COURT: BRING THEM IN.

9 (WHEREUPON, COURT'S EXHIBIT NUMBER 1 MARKED FOR
10 IDENTIFICATION.)

11 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
12 5:15 P.M.)

13 THE COURT: ALL RIGHT, FIRST OF ALL LET ME
14 EXCUSE YOU, MADAM ALTERNATE, YOU ARE NOT REQUIRED ANY
15 LONGER. YOU ARE FREE TO GO AND THANK YOU FOR YOUR SERVICE.

16 (WHEREUPON, THE ALTERNATE EXITED THE COURTROOM.)

17 THE COURT: WHERE IS MR. ROPP? COUNSEL?

18 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
19 RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING
20 OF THE JURY AND THE COURT REPORTER.)

21 THE COURT: IT'S MY UNDERSTANDING THAT YOU'D
22 LIKE TO SEE THE VIDEO AND THAT IS PERFECTLY ALL RIGHT,
23 WE'LL BE GLAD TO DO IT FOR YOU. WE HAVE THIS FACILITY IN
24 HERE TO SEE IT. WE WILL PLAY IT FOR YOU AS MANY TIMES AS
25 YOU WOULD LIKE. IF YOUR FORELADY WOULD TELL US WHAT SHE

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1 WANTS TO SEE ON IT OR WE WILL PLAY ALL THE TAPE OR I WAS --
2 I KNOW THERE WAS A PART THAT WAS JUST DRIVING IN A CAR, IS
3 THAT WHAT YOU WANTED TO SEE?

4 MADAM FORELADY: NO, I BELIEVE SOMEBODY WANTED
5 TO SEE THE WHOLE CLIP OF THE LADY, THAT FULL SECTION OF THE
6 LADY WALKING AND THE MIRROR.

7 THE COURT: AT THE END THERE?

8 MADAM FORELADY: THE MIRROR, THE REAR VIEW OF IT
9 AND THE WHOLE SECTION, THAT LITTLE CLIP.

10 THE COURT: COUNSEL, YOU NEED TO HAVE A BENCH
11 CONFERENCE WITH ME ABOUT THAT?

12 MS. TILLEY: I'M ASSUMING I'LL JUST FORWARD IT
13 UP TO THE POINT RIGHT BEFORE THE ---

14 MS. WILSON: AND I'M FINE WITH THAT, YOUR HONOR.

15 THE COURT: ALL RIGHT, ALL RIGHT, MS. TILLEY.
16 IF YOU WOULD IF YOU COULD OPERATE THAT AND JUST FAST
17 FORWARD IT UP TO I THINK THAT PERHAPS THE POINT WHERE THE
18 DEFENDANT WAS ARRIVING OR A DEFENDANT OR A PERSON WAS
19 ARRIVING.

20 (WHEREUPON, STATE'S EXHIBIT 2 PLAYED IN OPEN
21 COURT.)

22 THE COURT: MADAM FORELADY, IS THIS, IS THIS THE
23 CLIP RIGHT IN HERE?

24 MADAM FORELADY: YES, SIR.

25 MS. TILLEY: WHATEVER I NEED TO DO, DOES ANYBODY

1 WANT TO SEE IT AGAIN?

2 THE COURT: YOU WANT TO REPLAY THAT SAME, DID
3 THAT CLIP HAVE EVERYTHING YOU WANTED TO SEE BUT YOU WANT TO
4 PLAY THAT CLIP AGAIN?

5 JURY PANEL MEMBER: BRING THE PICTURE IN THE
6 MIRROR, IN THE SIDE MIRROR.

7 THE COURT: OKAY, ALL RIGHT, WOULD YOU LIKE TO
8 MOVE AROUND CLOSER?

9 JURY PANEL MEMBER: IF POSSIBLE.

10 THE COURT: THAT'S PERFECTLY ALL RIGHT. JUST
11 KEEP IN MIND WE CAN'T BLOCK THE PROJECTOR BUT IF, MADAM
12 FORELADY, YOU CAN BRING YOUR JURY AROUND OR IF ANYBODY
13 WANTS TO.

14 MS. TILLEY: IS THAT WHAT YOU WANT?

15 JURY PANEL MEMBER: CAN YOU BACK IT UP A HAIR?

16 MS. TILLEY: BACK IT UP JUST A HAIR, OKAY.

17 JURY PANEL MEMBER: CAN YOU PAUSE IT?

18 MS. TILLEY: CAN I PAUSE IT WHEN SHE WALKS
19 AROUND THE BUILDING, I DON'T, DO YOU KNOW HOW TO --

20 MS. ELDER: I CAN'T SLOW IT DOWN BUT YOU CAN
21 PROBABLY PAUSE IT FRAME BY FRAME.

22 MS. TILLEY: I JUST WANT TO MAKE SURE THAT I'M
23 DOING IT RIGHT. I'M GOING TO FREEZE FRAME WHEN SHE COMES
24 AROUND THE BUILDING AND THEN AT THAT POINT I GUESS LEAVE IT
25 ON FOR A SECOND AND THEN HAVE HER CONTINUE WALKING AND THEN

1 FREEZE FRAME IT AGAIN WHEN SHE GETS ---

2 JURY PANEL MEMBER: IN THE REAR VIEW MIRROR.

3 MS. TILLEY: IN THE REAR VIEW MIRROR, OKAY.

4 MS. ELDER: IT'S NOT A CAMERA, IT'S A PROJECTOR.

5 I CAN FREEZE THE NUMBERS ALONG THE BOTTOM BUT I CAN'T

6 FREEZE FRAME EACH FRAME.

7 MS. TILLEY: ALL RIGHT, SO I'M GOING TO FREEZE
8 IT AT BOTH SPOTS.

9 JURY PANEL MEMBER: IT WON'T FREEZE IT?

10 MS. TILLEY: NO, IT WON'T FREEZE FRAME IT BUT I
11 CAN FREEZE FRAME IT RIGHT AT THE SECTION WHERE SHE'LL
12 APPEAR.

13 THE COURT: THAT'S ALL, THAT'S ALL YOU NEED? IS
14 THAT SUFFICIENT, MADAM FORELADY?

15 MADAM FORELADY: YES, SIR.

16 THE COURT: THAT IS?

17 MADAM FORELADY: YES, SIR.

18 THE COURT: THANK YOU, MR. ROPP, TAKE THEM BACK
19 TO THE JURY ROOM, LET THEM CONTINUE DELIBERATIONS.

20 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT
21 5:30 P.M.)

22 (WHEREUPON, THE JURY KNOCKED WITH A VERDICT AT
23 5:38 P.M.)

24 THE COURT: MR. HEMINGWAY, IF YOU WOULD GET THE
25 JURY.

1 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
2 5:44 P.M. TO DELIVER ITS VERDICT AS TO DEFENDANT TAWANDA
3 ANN WILLIAMS.)

4 THE COURT: ALL RIGHT, IT'S MY UNDERSTANDING
5 YOU'VE REACHED A VERDICT?

6 MADAM FORELADY: YES, SIR.

7 THE COURT: AND THIS IS A UNANIMOUS VERDICT?

8 MADAM FORELADY: YES, SIR.

9 THE COURT: ALL RIGHT, WOULD YOU TAKE THE
10 VERDICT, MADAM CLERK? PUBLISH THE VERDICT.

11 MADAM CLERK: INDICTMENT NUMBER 2008-GS-26-4623
12 THE STATE OF SOUTH CAROLINA V. TAWANDA ANN WILLIAMS AS TO
13 THE CHARGE OF DISTRIBUTION OF COCAINE BASE WE THE JURY
14 UNANIMOUSLY FIND THE DEFENDANT GUILTY, SIGNED BY FOREPERSON
15 STACY HUGHES, JUROR NUMBER 192.

16 LADIES AND GENTLEMEN OF THE JURY, IF THIS IS YOUR
17 VERDICT SO SIGNIFY IT BY RAISING YOUR RIGHT HAND?

18 (WHEREUPON, ALL JURORS RESPONDED AFFIRMATIVELY.)

19 MADAM CLERK: THANK YOU.

20 THE COURT: WOULD YOU REQUIRE AN INDIVIDUAL
21 POLLING, MS. WILSON?

22 MS. WILSON: YES, SIR, YOUR HONOR.

23 THE COURT: ALL RIGHT, POLL THE JURY
24 INDIVIDUALLY.

25 MADAM CLERK: WHEN I CALL YOUR NAME IF YOU WILL

1 PLEASE STAND.

2 JUROR NUMBER 326 WESTON SAWYER, IS THIS YOUR
3 VERDICT?

4 JURY PANEL MEMBER: YES, IT IS.

5 MADAM CLERK: IS IT STILL YOUR VERDICT?

6 JURY PANEL MEMBER: YES, IT IS.

7 MADAM CLERK: THANK YOU. 70, CALVIN CHESTNUT,
8 IS THIS YOUR VERDICT?

9 JURY PANEL MEMBER: YES.

10 MADAM CLERK: IS THIS STILL YOUR VERDICT?

11 JURY PANEL MEMBER: YES.

12 MADAM CLERK: 224, KIMBERLY LAWSON, IS THIS YOUR
13 VERDICT?

14 JURY PANEL MEMBER: YES.

15 MADAM CLERK: IS THIS STILL YOUR VERDICT?

16 JURY PANEL MEMBER: YES.

17 MADAM CLERK: 218, NICOLE KRATZ, IS THIS YOUR
18 VERDICT?

19 JURY PANEL MEMBER: YES.

20 MADAM CLERK: IS THIS STILL YOUR VERDICT?

21 JURY PANEL MEMBER: YES.

22 MADAM CLERK: 402, LAUREN WOOD, IS THIS YOUR
23 VERDICT?

24 JURY PANEL MEMBER: YES.

25 MADAM CLERK: IS THIS STILL YOUR VERDICT?

1 JURY PANEL MEMBER: YES.

2 MADAM CLERK: THANK YOU, 272, TIFFANY MINCEY, IS
3 THIS YOUR VERDICT?

4 JURY PANEL MEMBER: YES.

5 MADAM CLERK: IS THIS STILL YOUR VERDICT?

6 JURY PANEL MEMBER: YES.

7 MADAM CLERK: 192, STACY HUGHES, IS THIS YOUR
8 VERDICT?

9 JURY PANEL MEMBER: YES.

10 MADAM CLERK: IS THIS STILL YOUR VERDICT?

11 JURY PANEL MEMBER: YES.

12 MADAM CLERK: 329, AVIV SHAMAH, IS THIS YOUR
13 VERDICT?

14 JURY PANEL MEMBER: YES.

15 MADAM CLERK: IS THIS STILL YOUR VERDICT?

16 JURY PANEL MEMBER: YES.

17 MADAM CLERK: 257, PATRICIA MCCrackEN, IS THIS
18 YOUR VERDICT?

19 JURY PANEL MEMBER: YES.

20 MADAM CLERK: IS THIS STILL YOUR VERDICT?

21 JURY PANEL MEMBER: YES.

22 MADAM CLERK: 118, JOHN ERBLAND, IS THIS YOUR
23 VERDICT?

24 JURY PANEL MEMBER: YES, MA'AM.

25 MADAM CLERK: IS THIS STILL YOUR VERDICT?

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1 JURY PANEL MEMBER: YES, MA'AM.

2 MADAM CLERK: THANK YOU, 102, CAROLYN DENNIS, IS
3 THIS YOUR VERDICT?

4 JURY PANEL MEMBER: YES.

5 MADAM CLERK: IS THIS STILL YOUR VERDICT?

6 JURY PANEL MEMBER: YES.

7 MADAM CLERK: THANK YOU, 401, PEGGY WISE, IS
8 THIS YOUR VERDICT?

9 JURY PANEL MEMBER: YES.

10 MADAM CLERK: IS THIS STILL YOUR VERDICT?

11 JURY PANEL MEMBER: YES.

12 MADAM CLERK: THANK YOU.

13 THE COURT: THANK YOU VERY MUCH. ALL RIGHT, ANY
14 MOTIONS?

15 MS. WILSON: YES, SIR.

16 THE COURT: I'LL HEAR THEM.

17 MS. WILSON: THANK YOU, YOUR HONOR. AT THIS
18 TIME, YOUR HONOR, WE WOULD MOVE FOR AN ORDER AND ARREST OF
19 JUDGMENT OR THE ALTERNATE FOR A NEW TRIAL ON THE BASIS THAT
20 THE EVIDENCE IN THIS CASE WAS SEVERELY LACKING AND THAT WE
21 DO NOT FEEL THAT IT WAS REASONABLE TO FIND THAT MY CLIENT
22 WAS GUILTY UNDER THESE CIRCUMSTANCE, UNDER THE INFORMATION
23 AND THE EVIDENCE PRESENTED DURING THIS TRIAL.

24 GIVEN THE ABSENCE OF THE "CI" AND GIVEN SOME
25 OTHER THINGS THAT WERE MISSING WE'RE ASKING THE COURT TO

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1 CONSIDER ALLOWING ON THE BASIS OF THE LACK OF EVIDENCE, OF
2 SUFFICIENT EVIDENCE, TO ALLOW US AN OPPORTUNITY FOR EITHER
3 THE ARREST OF JUDGMENT OR A NEW TRIAL AT THIS TIME.

4 THE COURT: ALL RIGHT, AND I WOULD RESPECTFULLY
5 DENY YOUR MOTION. THERE IS NOT ONLY SUBSTANTIAL EVIDENCE,
6 THERE IS OVERWHELMING EVIDENCE OF GUILT IN THIS MATTER OR
7 EVIDENCE TO SUPPORT THE JURY'S FINDING AND I WOULD DENY
8 YOUR MOTION.

9 MS. WILSON: YES, SIR.

10 THE COURT: ANY REASON WHY SENTENCING SHOULD NOT
11 BE IMPOSED AT THIS TIME?

12 MS. WILSON: NO, SIR, YOUR HONOR.

13 THE COURT: ALL RIGHT, LET ME HEAR FROM YOU, MS.
14 TILLEY?

15 MS. TILLEY: YES, YOUR HONOR, AS YOU'RE AWARE OF
16 THE HISTORY OF THIS CASE THIS DEFENDANT HAD AN OPPORTUNITY
17 TO PLEAD GUILTY EARLY ON IN THIS CASE AND BE SENTENCED AND
18 TAKE RESPONSIBILITY FOR HER GUILT AND SHE DECIDED NOT TO DO
19 THAT AND EXERCISE HER RIGHT TO TRIAL WHICH SHE HAD TO DO.
20 IN PREPARING FOR THIS CASE WITH THE OFFICERS THEY HAVE BEEN
21 EVALUATING HER FOR A WHILE AND THERE WERE OTHER, SHE WAS
22 NOT ARRESTED AT THAT TIME BECAUSE THERE WERE OTHER BUYS
23 THAT THEY HAD BEEN MONITORING.

24 WITH REGARD TO HER PRIOR RECORD THERE IS A
25 CONTROLLED SUBSTANCE VIOLATION AND THAT WOULD BE HER ONLY

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1 THING ON HER PRIOR RECORD, HOWEVER, I WOULD INDICATE FROM
2 THE INFORMATION THAT I GOT IN PREPARATION FOR THIS CASE SHE
3 IS NO STRANGER TO THE DRUG COMMUNITY.

4 WHAT CONCERNS ME THE MOST AND SHE HAS FOUR KIDS
5 AND THAT'S VERY MUCH A CONCERN TO ME AND IT'S SIMPLY THE --
6 -

7 THE COURT: IT CONCERNS ME CAUSE THERE WAS A
8 CHILD PRESENT.

9 MS. TILLEY: AND THERE WAS A CHILD PRESENT AT
10 THE SCENE AND THAT CHILD WAS EXPOSED TO THAT DRUG DEAL AND
11 A WHOLE WAY OF LIFE THAT WENT WITH IT AND I WOULD ASK THAT
12 SHE RECEIVE A SIGNIFICANT AMOUNT OF TIME CAUSE THOSE
13 CHILDREN ARE GOING TO GROW UP ONE DAY.

14 THE COURT: THANK YOU, ALL RIGHT, MS. WILSON,
15 I'LL HEAR FROM YOU.

16 MS. WILSON: THANK YOU, YOUR HONOR. YOUR HONOR,
17 G3

18 MS. WILLIAMS IS 31-YEARS-OLD. SHE IS SINGLE, SHE DOES HAVE
19 FOUR CHILDREN. SHE HAS A HIGH SCHOOL DIPLOMA, IS LAID OFF
20 FROM THE WYNDAM WHERE SHE WAS WORKING AS A HOUSEKEEPER.

21 YOUR HONOR, I WOULD ACTUALLY BEG TO DIFFER. I
22 DON'T THINK THAT MY CLIENT'S HAD A LOT OF TIME TO COME TO
23 THE DECISION ABOUT WHETHER OR NOT TO ACCEPT A PLEA. I
24 WOULD TELL THE COURT THAT PROBABLY IF WE HAD HAD THE VIDEO
25 EVIDENCE PROBABLY SIX MONTHS AGO THIS CASE PROBABLY COULD

1 HAVE BEEN RESOLVED A LOT FASTER. WE GOT IT IN MID DECEMBER
2 AND WHEN WE DID GET IT WE HAD THE WRONG INFORMATION.

3 SHE LOOKED AT, WE TALKED ABOUT IT, AND, YES, SHE
4 STILL HAD SOME CONCERN ABOUT THE SUFFICIENCY OF THE
5 EVIDENCE; HOWEVER, I DON'T THINK THAT THAT IN AND OF
6 ITSELF, YOUR HONOR, SHOULD BE A BASIS FOR A LENGTHY PRISON
7 SENTENCE OR TERM FOR MY CLIENT. SHE HAS NO PRIOR RECORD
8 OTHER THAN AS THE STATE MENTIONED THAT PRIOR CONTROLLED
9 SUBSTANCE. IT WAS SOME YEARS AGO AND NOT ACTUALLY EVEN
10 LISTED ON HER CRIMINAL HISTORY. IT'S LISTED ON AS A PART
11 OF HER DRIVING RECORD AND I'M NOT CLEAR EXACTLY WHAT THAT
12 MEANS, BUT CERTAINLY, YOUR HONOR, SHE IS NOT BEEN OUT
13 VIOLATING THE LAW GETTING ARRESTED GETTING IN TROUBLE FOR
14 OFFENSES, THAT'S NOT BEEN THE CASE.

15 I THINK THAT CERTAINLY IT SAYS A LOT ABOUT MY
16 CLIENT THAT SHE HAD THE OPPORTUNITY AS THE STATE SAID TO
17 ACCEPT THE PLEA OFFER AND SHE FELT IT WAS INCUMBENT UPON
18 HER TO FIGHT FOR WHAT SHE BELIEVED WAS HER RIGHT AND, OF
19 COURSE, I DON'T BELIEVE THAT THE COURT WOULD FEEL THAT SHE
20 SHOULD BE PUNISHED FOR EXERCISING HER RIGHT TO HAVE A
21 TRIAL.

22 YOUR HONOR, I WOULD ASK THIS COURT TO TAKE INTO
23 CONSIDERATION THE FACT THAT HER RECORD IS MINIMAL.
24 CERTAINLY THERE ARE MANY PEOPLE WHO COME IN FRONT OF THE
25 COURT EVERY DAY WHO HAVE MUCH MORE SIGNIFICANT RECORDS THAN

1 MY CLIENT DOES RIGHT NOW.

2 THE COURT: DOESN'T SHE HAVE A PRIOR DRUG
3 OFFENSE?

4 MS. WILSON: IT SAYS IT WAS A CONTROLLED, A
5 PRIOR CONTROLLED SUBSTANCE, YOUR HONOR. WE DON'T KNOW WHAT
6 IT WAS.

7 THE COURT: WELL ISN'T THAT A DRUG OFFENSE?

8 MS. WILSON: IT WOULD BE A DRUG OFFENSE, YOUR
9 HONOR, HOWEVER, IT COULD HAVE BEEN A COUPLE OF XANAX OR IT
10 COULD HAVE BEEN ONE. I DON'T KNOW THE NATURE OF IT AND I
11 DON'T THINK THE STATE DOES EITHER. IT'S CERTAINLY NOT
12 LISTED ON THE REPORT.

13 WHAT I WOULD SAY, YOUR HONOR, IS THAT GIVEN HER
14 MINIMAL RECORD, GIVEN THE FACT THAT SHE IS AS YOUNG AS SHE
15 IS CERTAINLY THERE'S AN OPPORTUNITY HERE FOR
16 REHABILITATION. SHE HAS BEEN FOUND GUILTY, WE ARE ASKING
17 THE COURT TO CONSIDER A MINIMAL PERIOD OF INCARCERATION AND
18 EVEN SOME PROBATION IF THE COURT FEELS THAT THAT MIGHT BE
19 APPROPRIATE. AT THIS TIME --

20 THE COURT: WOULD SHE LIKE TO ADDRESS THE COURT?

21 DEFENDANT WILLIAMS: MY NAME IS TAWANDA WILLIAMS
22 AND, YOUR HONOR, I DON'T RECALL MYSELF BEING THERE DOING
23 THAT AND IF I WOULD HAVE DID IT I WOULD HAVE PLED GUILTY
24 BECAUSE I DO HAVE FOUR KIDS AND I WOULDN'T HAVE PUT MY
25 CHILD IN NO DANGERMENT LIKE THAT AND I WOULD JUST ASK THAT

1 YA'LL PLEASE HAVE MERCY ON ME.

2 THE COURT: WHAT KIND OF WORK DOES YOUR CLIENT
3 DO, MS. WILSON?

4 MS. WILSON: YOUR HONOR, SHE WAS A HOUSEKEEPER
5 AT THE WYNDAM RESORT. SHE TOLD ME THAT SHE IS LAID OFF
6 FROM THAT JOB.

7 THE COURT: HOW LONG HAS SHE BEEN LAID OFF?

8 MS. WILSON: SHE TOLD ME AS OF NOVEMBER, YOUR
9 HONOR.

10 THE COURT: DOES SHE HAVE A HUSBAND?

11 MS. WILSON: NO, SIR.

12 THE COURT: HOW HAS SHE BEEN SUPPORTING HER
13 SINCE NOVEMBER, SINCE NOVEMBER OF LAST YEAR?

14 DEFENDANT WILLIAMS: I DO PRIVATE NURSING AND I
15 TAKE CARE OF RAMONA MYRE.

16 THE COURT: WHAT WAS THAT?

17 MS. WILSON: SHE IS, SHE HELPS TAKE CARE OF A
18 LADY, I THINK, SHE TAKES CARE OF A NEIGHBOR WHO HAS
19 MULTIPLE SCLEROSIS. SHE TELLS ME SHE GETS REIMBURSED FOR
20 PRIVATE NURSING.

21 THE COURT: WHO REIMBURSES HER?

22 MS. WILSON: THE CLIENT DOES, RAMONA MYRE.

23 THE COURT: AND THAT SUPPORTS FOUR CHILDREN?

24 DEFENDANT WILLIAMS: YES, SIR.

25 THE COURT: I GOT A FEELING THERE'S PROBABLY

1 SOMETHING ELSE GOING ON TO SUPPORT FOUR CHILDREN.

2 MS. WILSON: SHE TELLS ME THAT IN CONJUNCTION
3 WITH CHILD SUPPORT AND SHE TELLS ME FAMILY ASSISTANCE, YOUR
4 HONOR, IS HOW SHE TAKES CARE OF HER FAMILY.

5 THE COURT: MS. WILLIAMS, NOT ONLY WERE YOU
6 DEALING IN A SIGNIFICANTLY DANGEROUS DRUG CRACK COCAINE IS
7 A PLAGUE YOU HAD A CHILD THERE. YOU SAY YOU DIDN'T DO IT
8 BUT THIS JURY SAYS YOU DID AND THAT'S WHAT I GO BY. YOU
9 HAD A CHILD PRESENT AT A DRUG DEALING AND I THINK THAT THAT
10 IN ITSELF WOULD REQUIRE SIGNIFICANT SENTENCING.

11 I DON'T PUNISH PEOPLE FOR SAYING I WANT A JURY
12 TRIAL, THAT'S AN ABSOLUTE RIGHT THAT YOU HAVE. I DO REWARD
13 PEOPLE SOMETIMES FOR ACCEPTING RESPONSIBILITY AND I SEE
14 THAT YOU HAVE NOT.

15 THE SENTENCE OF THE COURT IS THAT YOU SHALL BE
16 CONFINED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A
17 PERIOD OF FIVE YEARS, EXCUSE ME 10 YEARS, THAT IS SUSPENDED
18 UPON FIVE YEARS FOLLOWED BY FIVE YEARS PROBATION, THANK
19 YOU.

20 MS. WILSON: THANK YOU, YOUR HONOR.

21 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, I
22 THANK YOU WHAT YOU HAVE DONE AND NO ONE CAN CRITICIZE YOU
23 AT ALL FOR THE JOB THAT YOU HAVE DONE. IT'S A TOUGH THING
24 TO COME IN AND, AND, AND SIT IN JUDGMENT ON, ON YOUR PEERS
25 AND THAT'S EXACTLY WHAT WE'RE ASKING YOU TO DO WHEN YOU

1 COME TO SERVE AS JURORS ON THE CRIMINAL SIDE OF THE COURT.
2 IT'S AN EMOTIONAL THING. IT'S A TOUGH THING AND I TELL YOU
3 I APPRECIATE THAT.

4 I DID CRIMINAL DEFENSE WORK FOR MANY MANY YEARS
5 MYSELF. I HAVE BEEN SERVING AS A JUDGE FOR TWO YEARS. I
6 WAS A MUNICIPAL JUDGE AND WORKED WITH THE POLICE ON A
7 REGULAR BASIS FOR MANY YEARS BACK IN THE 80'S WHEN I WAS
8 THE MUNICIPAL JUDGE FOR THE CITY OF CONWAY. WHAT YOU HAVE
9 DONE IS CERTAINLY HONORABLY AND YOU CANNOT BE CRITICIZED
10 FOR YOUR WORK HERE TODAY.

11 I LOOK FORWARD TO SEEING YOU AGAIN IN THE
12 MORNING, WE'RE GOING TO GET SOMETHING ELSE STARTED AND
13 MAYBE YOU'LL BE DOUBLY LUCKY, BUT AGAIN THANK YOU SO MUCH
14 FOR YOUR SERVICE. YOU HAVE SERVED HONORABLY. I NOTICED
15 THAT YOU WERE ATTENTIVE ALL DURING THIS TRIAL. YOU
16 REVIEWED THE EVIDENCE, YOU ASKED TO COME BACK AND LOOK AT
17 THE, AT THE VIDEO, THINGS THAT WE WERE NOT REALLY NOT SURE
18 ABOUT BUT YOU HAVE DONE EVERYTHING THAT WE WOULD ASK YOU TO
19 DO. THANK YOU AGAIN FOR YOUR SERVICE, LOOK FORWARD TO
20 SEEING YOU TOMORROW, THANK YOU.

21 (WHEREUPON, THE JURY WAS EXCUSED FOR THE EVENING
22 AT 5:55 P.M.)

23 THE COURT: I DON'T THINK FOR COCAINE BASE I CAN
24 DO A SUSPENSION.

25 MS. TILLEY: NO, YOUR HONOR, THAT IS CORRECT.

1 THE COURT: OR GIVE PROBATION, I THINK I HAVE TO
2 GIVE A STRAIGHT SENTENCE.

3 MS. TILLEY: YES, YOUR HONOR.

4 THE COURT: LET'S BRING HER BACK OUT HERE AND I
5 WILL GIVE HER A STRAIGHT SENTENCE.

6 (WHEREUPON, THE DEFENDANT ENTERS THE COURTROOM.)

7 ALL RIGHT, MS. WILLIAMS, IN SENTENCING YOU I DID
8 NOT CONSIDER THE STATUTORY PROHIBITION AGAINST SUSPENSION
9 OF PROBATION. I AM GOING TO AMEND YOUR SENTENCE TO BE A
10 STRAIGHT 5 YEAR SENTENCE, OKAY.

11 MS. WILSON: THANK YOU VERY MUCH, YOUR HONOR.

12 THE COURT: THANK YOU. I WANT THE RECORD TO
13 REFLECT THAT ALTHOUGH THE ALTERNATE WAS BROUGHT BACK INTO
14 THE COURTROOM WHEN THE JURY ASKED TO SEE PART OF THE TAPE I
15 DISMISSED THE ALTERNATE AT THAT TIME AND CONFIRMED IN THE
16 PRESENCE OF BOTH COUNSEL THAT THE ALTERNATE HAD NOT BEEN IN
17 THE JURY ROOM. THE ALTERNATE WAS SEGREGATED ALL DURING THE
18 DELIBERATIONS. THE BAILIFF MERELY BROUGHT THE ALTERNATE
19 BACK INTO THE COURTROOM BECAUSE WE WERE GOING TO REVIEW
20 SOME EVIDENCE BUT I WENT AHEAD AND EXCUSED THE ALTERNATE.
21 SO THE ALTERNATE HAD NOTHING TO DO WITH THE VERDICT OR THE
22 DELIBERATIONS. ALL RIGHT, THANK YOU VERY MUCH.

23 MS. WILSON: THANK YOU, YOUR HONOR.

24 MS. TILLEY: THANK YOU, YOUR HONOR.

25 END OF REQUESTED TRANSCRIPT- - - -

WITNESSES

66

Bernard Grate DEU - 15th Drug Enforcement Unit

FILED
HORRY COUNTY

2010 JAN -7 PM 12:41

MELANIE HUGGINS-WARD
CLERK OF COURT

ARREST WARRANT NUMBER

J611671

CDR: 3014 44-53-0375 (B) (1)

DOA: 9/2/2008

ACTION OF GRAND JURY

TRUE BILL

James C. Wuburn
Foreperson of Grand Jury NOV 2 0 2008
Date:

VERDICT

Foreperson of Petit Jury
Date:

The State of South Carolina

County of Horry

Elizabeth V. Tilley

08H03909

COURT OF GENERAL SESSIONS

November, 2008 TERM

THE STATE

vs.

Tawanda Ann Williams

B/ F

h

Lcm 011668

DOB: 04-22

SSN:

ATTORNEY:

Indictment for

DISTRIBUTION OF COCAINE BASE

J. Gregory Hembree, Solicitor

CERTIFIED COPY

2010 JAN -7 PM 12:45

Melanie Huggins-Ward
CLERK OF COURT
HORRY COUNTY

ORIGINAL

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF HORRY)

At a Court of General Sessions, convened on November 20 2008, the Grand Jurors of Horry County present upon their oath:

CLERK OF COURT
Horry County
FILED
2010 JAN -1 PM 15:11

DISTRIBUTION OF COCAINE BASE

CDR: 3014 44-53-0375(B)(1)

That **Tawanda Ann Williams** did in Horry County, on or about April 29, 2008 distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver a quantity of Cocaine Base, a controlled substance under provisions of Section 44-53-110, et. seq., Code of Laws of South Carolina, 1976, as amended, such distribution not having been authorized by law, and being in violation of Section 44-53-375(B), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

CLERK OF COURT
Horry County
2010 JAN -1 PM 15:12
CERTIFIED COPY

COUNTY OF Horry
 STATE VS.
Tawanda Ann Williams
 AKA:
 Race: B Sex: F Age: 31
 DOB: 11/11/77 SS#: 123456789
 Address: 1234
 City, State, Zip: Longs, SC 29568
 DL#: 007692494 SID#: 123456789

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: PWID/Dist/Mfg Cocaine Base or Meth. 1st Offense

INDICTMENT/CASE#: 2008GS2604623

A/W#: J611671

Date of Offense: 4/29/2008

S.C. Code §: 44-53-0375 (B) (1)

CDR Code #: 3014

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 44-53-0375 (B) (1) of the S.C. Code of Laws, bearing CDR Code # 3014
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Tilley, Elizabeth V. 71146 Tawanda Williams K. A. Shubon 69441
 SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 26-53-13

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-25 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

§ 47-12 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ _____

§ 14-1-213 (Drug Court Surcharge) \$100 \$ 100.00

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

§ 90.7 (SCCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 6.90

TOTAL \$ 236.90

Clerk of Court/ Deputy Clerk Melanie Huggins Ward

Court Reporter Branda Brown

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ 25.00 beginning 02/05/2015

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed defense counsel
 § 47-12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge _____

Judge Code: 2152

Signature Date: 1/5/10

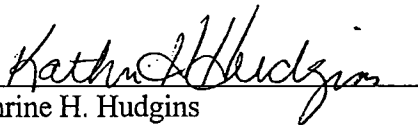
FILED
 Horry County
 2010 JAN -7 PM 2:45
 CLERK OF COURT
 MELANIE HUGGINS WARD

CERTIFIED COPY
 2010 JAN -7 PM 2:45
 CLERK OF COURT
 MELANIE HUGGINS WARD

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

April 29th, 2011


Kathrine H. Hudgins
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Larry B. Hyman, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TAWANDA WILLIAMS,

APPELLANT

FINAL BRIEF OF APPELLANT

KATHRINE H. HUDGINS
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ATTORNEY FOR APPELLANT.

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial judge err in refusing to grant appellant's continuance motion to provide a reasonable opportunity to locate the informant when the State's failure to call the informant who allegedly purchased drugs from appellant constituted a violation of the Confrontation Clause?

STATEMENT OF THE CASE

In November of 2008, the Horry County Grand Jury indicted Williams for distribution of cocaine base, indictment #2008-GS-26-4623. On January 4, 2010, Williams proceeded to jury trial before the Honorable Larry B. Hyman. The jury returned a verdict of guilty and Judge Hyman sentenced Williams to five years. A timely notice of intent to appeal was filed on January 7, 2010. This appeal follows.

ARGUMENT

1. The trial judge erred in refusing to grant appellant's continuance motion to provide a reasonable opportunity to locate the informant when the State's failure to call the informant who allegedly purchased drugs from appellant constituted a violation of the Confrontation Clause.

Williams is alleged to have sold crack cocaine to an informant. The informant did not testify at trial. Agent Ryan Wood with the Myrtle Beach Police Department testified that he, acting in an undercover capacity, assisted in a controlled buy. (R. p. 21, lines 1-23). Wood testified that the informant arranged the buy and then Wood drove the informant to the arranged meeting location. (R. pp. 23-25). According to Wood, the informant got out of the car and met appellant. (R. p. 25, lines 16-23). The informant then returned to the car. Wood then testified that appellant followed the informant back to the car and sold him a white rock like substance. (R. p. 26, lines 1-12). The white rock substance tested positive as 1.34 grams of crack cocaine. (R. p. 54, lines 21-25).

Appellant moved pre-trial to suppress the drug evidence based on the fact that the State was unable to establish a complete chain because the informant was missing. (R. pp. 2- 6). The judge, relying on State v. Diamond, 280 S.C.296, 312 S.E.2d 550 (1984), denied the motion to suppress. The judge stated, "Why then would the officer not be able to say, I was sitting there, I heard the conversation, I saw the exchange, I saw the dope, I got the dope from the "CI", I was right there. Isn't that, doesn't that reasonably and certainly establish that the drugs were not altered in any way? I mean you might develop that on cross examination but it would appear to me that the issue here is whether or not they need to have

the informant in order to establish the chain and certainly under Diamond I don't think that's what Diamond stands for and I believe that they can do that." (R. p. 6, lines 13-23).

The issue in Diamond involved whether the State was required to disclose the identity of the informant. In the present case, appellant acknowledged that the State provided the name of the informant. (R. p. 5, lines 1-22). Appellant argued that the informant was a material witness and without his testimony the State failed to establish a complete chain of custody for the drugs, requiring suppression. (R. p. 5, lines 23 – p. 6, lines 1-9).

After the judge denied appellant's motion to suppress the drugs based on a defective chain of custody, counsel argued, "Yes sir, Well then I would argue, Your Honor, that State v. Burns suggests that once a "CI" is indisposed that "CI" is a material witness and if the "CI" is not available for cross examination anything that follows from the "CI" would be inadmissible because I don't have a chance to cross examine that "CI", for example, about the video and about the chain." (R. p. 7, lines 1-7). During the transaction the informant wore a button camera. (R. p. 22, lines 4-11). At trial, the Judge admitted, without objection, a video and audio of the transaction and the disc was published to the jury. (R. p. 29, lines 1 – p. 30, lines 1-15; State's exhibit #2).

In response to counsel's objection to not being able to cross examine the informant, the judge stated that counsel could require the "CI" to appear. (R. p. 7, lines 8-18). Counsel responded that she had just learned yesterday that the "CI" was missing. (R. p. 7, lines 11-13). Counsel for appellant then moved for a continuance in order to find the informant. (R. p. 7, lines 19-22). The judge denied the motion for continuance. The judge erred in refusing to grant a continuance.

A motion for continuance is addressed to the sound discretion of the trial court and its ruling on such motion will not be reversed without a clear showing of abuse of discretion. State v. Browder, 277 S.C. 206, 284 S.E.2d 775 (1981). In State v. Tanner, 299 S.C. 459, 385 S.E.2d 832 (1989), the Court ruled that it was an abuse of discretion to fail to grant a continuance so that the defense could have blood, skin and hair samples tested when the State initially advised that the samples had been misplaced or lost and then, ten minutes prior to the pre-trial hearing, the State made counsel aware of the existence of the samples. In the present case, counsel only learned of the missing informant the day before trial. (R. p. 7, lines 11-13).

In State v. Burns, 294 S.C. 338, 340-341, 364 S.E.2d 465, 467 (1988) the Court wrote, "The right of an accused to learn the identity of an informant includes more than the state's revelation of the informant's name. See United States v. Goss, 237 F.Supp. 26 (S.D.N.Y. 1965). In cases where the informant's testimony relates to the offense, preliminary matters such as search and seizure, or other constitutional matters, the defense is entitled to a reasonable opportunity to search for the informant." Renzi v. Commonwealth of Virginia, 794 F.2d 155 (4th Cir.1986). See also United States v. Freund, (5th Cir.1976). In Burns the Court ruled that it was an abuse of discretion to fail to grant a continuance so that the defense could locate a government informant. In the present case the failure to grant a continuance so that the defense could locate and interview the government informant constituted an abuse of discretion.

The failure to grant the continuance in conjunction with the admission of the video and audio disc of the transaction results in a Confrontation Clause violation. The Confrontation Clause guarantees an accused the right "to be confronted with the

witnesses against him.” U.S. Const. amend. VI. The right of confrontation is essential to a fair trial in that it promotes reliability in criminal trials and insures that convictions will not result from testimony of individuals who cannot be challenged at trial. California v. Green, 399 U.S. 149, 90 S.Ct. 1330, 26 L.Ed.2d 489 (1970); State v. Martin, 292, S.C. 437, 357 S.E.2d 21 (1987). The Confrontation Clause requires a witness to testify under oath and submit to cross-examination so that the jury can observe the witness's demeanor and assess his credibility. State v. Cooper, 291 S.C. 351, 353 S.E.2d 451 (1987).

The Confrontation Clause guarantees a defendant the opportunity to cross-examine a witness concerning bias. Davis v. Alaska, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974); State v. Brown, 303 S.C. 169, 399 S.E.2d 593 (1991); *see also* State v. Mizzell, 349 S.C. 326, 331, 563 S.E.2d 315, 317 (2002)(a defendant has right to cross-examine a witness concerning bias under Confrontation Clause). Considerable latitude is allowed in the cross-examination of a witness for potential bias. State v. Clark, 315 S.C. 478, 445 S.E.2d 633 (1994); Brown, 303 S.C. at 171, 399 S.E.2d at 594; State v. McFarlane, 279 S.C. 327, 306 S.E. 2d 611 (1983). On cross-examination, any fact may be elicited which tends to show interest, bias, or partiality of the witness. Mizzell, 349 S.C. at 331, 563, S.E. 2d at 317; State v. Starnes, 340 S.C. 321, 531 S.E.2d 907 (2000); State v. Brewington, 267 S.C. 97, 226, S.E. 2d 249 (1976). The appropriate question under a Confrontation Clause analysis is whether there has been any interference with the defendant's opportunity for effective cross-examination at trial. Kentucky v. Stincer, 482 U.S. 730, 107 S.Ct. 2658, 96 L.Ed.2d 631 (1987); Starnes, 307 S.C. at 250, 414 S.E.2d at 583.

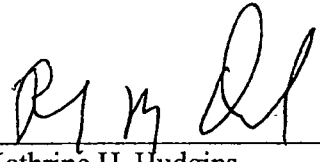
A criminal defendant states a violation of the Confrontation Clause by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby to expose to the jury the facts from which jurors could appropriately draw inferences relating to the reliability of the witness. Delaware v. Van Arsdall, 475 U.S. 673, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986).

In Crawford v. Washington, 541 U.S. 36, 54, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004), the United States Supreme Court held that testimonial hearsay against a defendant violates the Confrontation Clause if (1) the declarant is unavailable to testify at trial and (2) the accused has had no prior opportunity to cross-examine the witness. The State's failure to call the government informant as a witness constitutes a Confrontation Clause violation in the present case. The video/audio disc constitutes testimonial hearsay against appellant. The State asserted that the informant was unavailable and the defense was not given the opportunity to challenge that assertion. Appellant did not have a prior opportunity to cross examine the government informant. The trial judge erred in refusing to grant appellant's continuance motion to provide a reasonable opportunity to locate the informant when the State's failure to call the informant who allegedly purchased drugs from appellant constituted a violation of the Confrontation Clause.

CONCLUSION

Based on the above argument, Williams' sentence and conviction should be reversed and the case remanded for a new trial.

Respectfully submitted,

By: 
Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT.

This 19th day of May, 2011.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Larry B. Hyman, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

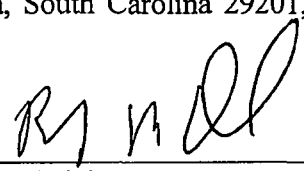
V.

TAWANDA WILLIAMS,

APPELLANT

CERTIFICATE OF SERVICE

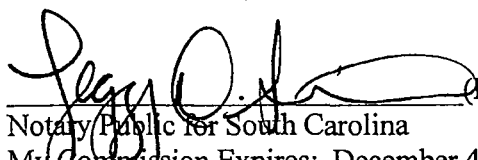
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Christina J. Catoe, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 19th day of May, 2011.

By: 

Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 19th day of May, 2011.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: December 4, 2017.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County
The Honorable Larry B. Hyman, Jr. Circuit Court Judge

THE STATE OF SOUTH CAROLINA

RESPONDENT

v

TAWANDA WILLIAMS

APPELLANT

FINAL BRIEF OF RESPONDENT

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Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge properly denied Appellant's motion for continuance, where Appellant did not comply with Rule 7, SCRCrimP, and did not make any attempt to locate the confidential informant even though the State provided Appellant with his name in advance of trial.

STATEMENT OF THE CASE

Appellant was indicted in November 2008 for distribution of cocaine base (2008-GS-26-4623). On January 4, 2010, she proceeded to trial before the Honorable Larry B. Hyman, Jr. (See R. p. 1). The jury found Appellant guilty, and Judge Hyman sentenced her to five (5) years. (R. p. 87, lines 11-15; p. 96, line 15 – p. 98, line 10). A timely notice of appeal was served and filed.

ARGUMENT

The trial judge properly denied Appellant's motion for continuance, where Appellant did not comply with Rule 7, SCRCrimP, and did not make any attempt to locate the confidential informant even though the State provided Appellant with his name in advance of trial.

Issue Preservation

Appellant now argues that the trial judge erred in denying her continuance motion because the State's failure to call the informant constituted a violation of the Confrontation Clause. However, at trial, the sole ground asserted as a basis for the continuance motion (as opposed to the previous suppression motion based upon the chain of custody, see R. p. 2, line 5 – p. 7, line 18) was that Appellant's counsel needed more time to attempt to locate the confidential informant since she just recently learned that he was not being called by the State. (See R. p. 7, line 11 – p. 8, line 22). Appellant never asserted that a Confrontation Clause violation was the basis for her continuance motion.¹ (See R. p. 2-8). Accordingly, no Confrontation Clause issue is preserved for review. See State v. Adams, 332 S.C. 139, 144-145, 504 S.E.2d 124, 126-27 (Ct. App. 1998) (argument not preserved for appeal where precise issue not presented to the trial court) (citations omitted); State v. Caldwell, 378 S.C. 268, 283, 662 S.E.2d 474, 482 (Ct. App. 2008) (a party may not argue one ground at trial and another on appeal).

¹ Nor did Appellant object to admission of the videotape on Confrontation Clause grounds or any grounds at all. (See R. p. 29, lines 4-25). If Appellant wished to challenge the constitutionality of admitting the statements of the confidential informant, she should have objected on Confrontation Clause grounds at the time the State offered that evidence for admission. (See R. p. 23-31). See Crawford v. Washington, 541 U.S. 36, 40 (2004) (defendant objected when the State sought to introduce his wife's taped statement against him at trial). In that vein, the Confrontation Clause is not implicated simply because the State did not call the confidential informant to testify. See Crawford, supra; see also State v. Richardson, 253 S.C. 468, 473-74, 171 S.E.2d 717, 719 (1969) ("the State is not required to place upon the stand every witness who has knowledge of material facts connected with the crime charged"). The Confrontation Clause only comes into play if a defendant objects to the admission of testimonial hearsay statements. See Crawford, supra. In this case, the trial judge never heard or addressed any concerns regarding Confrontation Clause violations.

The Judge Properly Denied the Continuance Motion

The trial judge did not abuse his discretion when he denied Appellant's motion for continuance where Appellant failed to comply with the relevant rule regarding continuances. Rule 7(a), SCRCrimP, "Authority to Grant [Continuances]," states that a motion for a continuance made to the presiding judge of a term of court may be granted only if there is a "written request by counsel." Further, Rule 7(b), SCRCrimP, "Continuance Because of Absence of Witness," states:

No motion for continuance of trial shall be granted on account of the absence of a witness without the oath of the party, his counsel, or agent to the following effect: the testimony of the witness is material to the support of the action or defense of the party moving; the motion is not intended for delay, but is made solely because he cannot go safely to trial without such testimony; and has made due diligence to procure the testimony of the witness or of such other circumstances as will satisfy the court that his motion is not intended for delay.

Subsection (2) of Rule 7(b) additionally requires that the party must set forth under oath what "fact or facts he believes the witness if present would testify to and the grounds for such belief."

Appellant did not file a written motion pursuant to Rule 7(a), SCRCrimP, and did not submit an affidavit pursuant to Rule 7(b), SCRCrimP. Accordingly, where Appellant failed to comply with Rule 7, the trial court did not abuse its discretion in denying Appellant's motion for continuance. State v. Fuller, 267 S.C. 44, 45-46, 225 S.E.2d 866, 867 (1976); State v. Gosnell, 262 S.C. 345, 204 S.E.2d 391 (1974); see also State v. Lytchfield, 230 S.C. 405, 410-11, 95 S.E.2d 857, 860 (1957) (pointing out that a reversal of the denial of a continuance motion is "about as rare as the proverbial hens' teeth").²

² These three cases were decided under the precursor to the current Rule 7, Circuit Court Rule 27.

Even if compliance with Rule 7 could be forgiven, the judge properly denied a continuance where Appellant's counsel admitted that her office was provided with the name of the confidential informant at least seven days earlier, although she apparently did not review the information until the day before. (See R. p. 7, line 9 – p. 8, line 17). If Appellant felt that the confidential informant was a "material witness" in this particular case, she had at a full week's opportunity to inquire if the State was planning to call the confidential informant to testify, and to make attempts to locate the informant if she wished to call him as a witness for the defense. See State v. Burns, 294 S.C. 338, 341, 364 S.E.2d 465, 467 (1988) (the trial court abused its discretion in denying the defendant's continuance motion where the defendant was deprived of the *opportunity* to locate an informant because the State refused to turn over the relevant information) (emphasis added); see also State v. Richardson, 253 S.C. 468, 473-74, 171 S.E.2d 717, 719 (1969) ("the State is not required to place upon the stand every witness who has knowledge of material facts connected with the crime charged").

Further, upon being personally informed the day before trial that the confidential informant would not be called by the State, Appellant's counsel again had the opportunity to make at least some efforts to locate him. (See R. p. 8, lines 13-17). Because she did not, Appellant is unable to show any prejudice from the denial of the continuance. See, e.g., State v. Squires, 248 S.C. 239, 244, 149 S.E.2d 601, 603 (1966) & State v. McKennedy, 348 S.C. 270, 280, 559 S.E.2d 850, 855 (2002) (there is no abuse of discretion in denying a continuance motion where the defendant fails to make a showing that further points could have been raised in his behalf and fails to show that he was actually prejudiced by denial of the continuance). More likely, the informant would have

testified favorably to the State. In that vein, since the evidence against Appellant was overwhelming simply based upon the testimony, nothing she could have discovered had she received a continuance would have changed the outcome of the case. (See R. p. 20-28; p. 39-45; p. 54, line 21 – p. 55, line 7). See, e.g., State v. Porter, 389 S.C. 27, 37, 698 S.E.2d 237, 242 (2010) (a defendant cannot show prejudice from trial errors where there is overwhelming evidence of guilt). Therefore, for all of these reasons, the trial judge did not abuse his discretion when he denied Appellant's continuance motion.

CONCLUSION

Based on the foregoing, Respondent requests that this Court affirm Appellant's conviction and sentence.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

May 9, 2011

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County
The Honorable Larry B. Hyman, Jr., Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

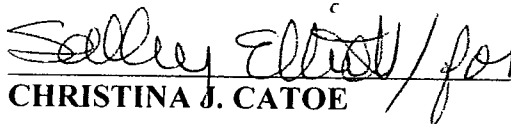
v.

TAWANDA WILLIAMS,

APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the **Final Brief of Respondent** complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court's August 13, 2007 **Order on Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings**.


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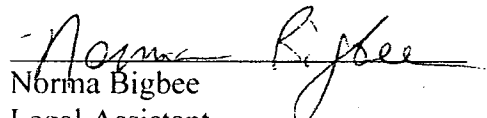
PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the within **Final Brief of Respondent** on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

**Kathrine H. Hudgins, Esquire
Division of Appellate Defense
South Carolina Commission on Indigent Defense
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I further certify that all parties required by Rule to be served have been served.

This 9th day of May, 2011.


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Legal Assistant

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