

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Florence County

William H. Seals, Jr., Circuit Court Judge

RECEIVED

JUN 27 2014

S.C. Supreme Court

DONNELL MCFADDEN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002667

APPENDIX

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	)	COURT OF GENERAL SESSIONS
COUNTY OF FLORENCE	)	
	)	2008-GS-21-1598
	)	
	)	
State Of South Carolina	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Darnell Damont McFadden	)	)
DEFENDANT	)	

April 14-15, 2009
Florence, South Carolina

B E F O R E:

THE HONORABLE THOMAS A. RUSSO, Judge and a jury.

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

JOHN JEPERTINGER, DEPUTY ASSISTANT SOLICITOR
Attorney for the State

SCOTT FLOYD, Assistant Public Defender
Attorney for the Defendant

KESHIA REED
Circuit Court Reporter

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1 THE COURT: Okay.

2 MR. JEPERTINGER: Please the Court, Your Honor.

3 THE COURT: Yes, sir, Mr. Jepertinger.

4 MR. JEPERTINGER: The State will call 08-1598, the
5 State against Darnell Damont McFadden. He's charged with
6 distribution of cocaine base in the indictment.

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

8 Mr. Floyd, if I may get you and Mr. Jepertinger to
9 step over here just for a moment.

10 MR. FLOYD: Sure.

11 (WHEREUPON, a bench conference was held in the
12 presence of the jury panel, but out of the hearing of
13 the jury panel.)

14 THE COURT: The State has call the trial the case
15 State of South Carolina vs. Darnell Damont McFadden. Mr.
16 McFadden is charged under indictment 2008-GS-21-1598 with
17 the offense of distribution of cocaine base or what is
18 commonly referred to as crack cocaine. Ladies and
19 gentlemen, let me read to you the allegations that are
20 contained in the indictment. And the indictment alleges
21 that Darnell Damont McFadden did in Florence County on our
22 or about April the 2nd of 2008, violate section 44-53-375
23 subsection (b) (3) of the code of laws of South Carolina as
24 amended. And that he did distribute to a confidential
25 informant of the Florence County sheriff's office a

1 quantity of cocaine base a control substance such
2 distribution not having been authorized by law.

3 Now, ladies and gentlemen, this indictment that
4 brings these charges against Mr. McFadden are simply at
5 this point a formal document that brings the case against
6 him. They're allegations against him. It's a charge.
7 Mr. McFadden to this charge has pled not guilty and that
8 places the burden of proof on the State of South Carolina
9 to prove guilt. Mr. McFadden is presumed innocent of this
10 charge and that presumption of innocence will remain with
11 him throughout the course of this trial unless or until
12 the State proves his guilt beyond a reasonable doubt.
13 This indictment is simply the charge that brings the case
14 into court and is in no way any evidence against
15 Mr. McFadden or any evidence of the allegations that are
16 contained in this indictment. Now, the State is being
17 represented by Mr. John Jepertinger.

18 Mr. Jepertinger, if you would, please, introduce
19 yourself, sir.

20 MR. JEPERTINGER: My name is John Jepertinger, I'm
21 deputy solicitor here in the Twelfth Judicial Circuit,
22 that includes, of course, both Florence and Marion
23 Counties.

24 THE COURT: Thank you, Mr. Jepertinger.

25 Is any member of the jury panel related by blood,

1 connected by marriage or have any close, personal or
2 business relationship with Mr. Jepertinger or who has been
3 in the past represented by Mr. Jepertinger? If so, please
4 stand. Thank you. There are none.

5 Mr. McFadden is represented by attorney Scott Floyd.

6 And, Scott, if you would please represent or excuse
7 me -- introduce yourself as well as your client, sir.

8 MR. FLOYD: Thank you, Your Honor. I'm Scott Floyd
9 and I'm with the Florence County public defender's office
10 and this is my client Mr. Darnell McFadden.

11 THE COURT: Mr. McFadden, if I could just get you to
12 stand and face the members of the jury, so they can get a
13 look at you, sir. Thank you very much. You may have a
14 seat.

15 Ladies and gentlemen, is there any member of the jury
16 panel related by blood, connected by marriage or who has
17 any close, personal or business relationship or who has
18 been represented in the past by Mr. Floyd? If so, please
19 stand.

20 All right, yes, sir, and could I get your name,
21 please?

22 PROSPECTIVE JUROR: David Taylor.

23 THE COURT: All right, Mr. Taylor, and how is that
24 you know Mr. Floyd, sir?

25 MR. TAYLOR: We are members of the same church.

1 THE COURT: Mr. Taylor, the fact that you and Mr.
2 Floyd attend the same church and you know him in that
3 capacity, would that in any way affect your ability to be
4 fair and impartial during the trial of this case if you
5 were selected?

6 MR. TAYLOR: No, sir, it would not.

7 THE COURT: Thank you very much, sir. You may have a
8 seat.

9 Yes, sir, your name?

10 PROSPECTIVE JUROR: James Braxton.

11 THE COURT: Braxton?

12 MR. BRAXTON: Braxton.

13 THE COURT: All right, Mr. Braxton, how do you know
14 Mr. Floyd?

15 MR. BRAXTON: Just know him from around Lake City
16 area.

17 THE COURT: All right, Mr. Braxton, the fact that you
18 know Mr. Floyd from both of you being from Lake City,
19 would that in any way affect your ability to be fair and
20 impartial during the trial of this case?

21 MR. BRAXTON: No.

22 THE COURT: All right. Thank you very much, sir.
23 You may have a seat.

24 Ladies and gentlemen, you just been introduced to
25 Mr. McFadden. Is there any member of the jury panel who's

1 related by blood, connected by marriage or who has any
2 close, business, or personal relationship with
3 Mr. McFadden? If so, please stand. Thank you. There are
4 none.

5 Now, ladies and gentlemen, I'm going to call out a
6 list of witnesses. These are individuals who may or may
7 not testify during the course of this trial, but it's
8 important whether they testify or not that I at least
9 expose you to their names, so that if they do testify,
10 there want be any problem with that. The same question I
11 just asked you regarding Mr. McFadden that is if any
12 member of the jury panel's related by blood, connected by
13 marriage, or who has any close business or personal
14 relationship with any of these witnesses. That's the
15 question that is going to apply as I go through this list.
16 If you -- in listening to this list of names if that
17 question applies to you with regards to any one of these
18 names, please go ahead and stand when you hear the name.
19 Please continue to listen, however, because it may be that
20 you may know more than one of these witnesses, so possible
21 or potential witnesses that they may testify during the
22 course of this trial are as follows: Brad Bazen, Pearlana
23 Matthews, Rollings Rhodes, Beth Hoover, Kim Cockfield.
24 Any member of the jury panel related by blood, connected
25 by marriage or have any close personal or business

1 relationship with those individuals? Ma'am, could I get
2 your name, please?

3 PROSPECTIVE JUROR: Donna Ward.

4 THE COURT: All right, Ms. Ward, and who on that
5 list?

6 MS. WARD: Kim Cockfield.

7 THE COURT: What is that relationship or how do you
8 know Kim?

9 MS. WARD: She's an acquaintance.

10 THE COURT: All right. Well, ma'am, the fact that
11 you know Kim Cockfield as an acquaintance, would that in
12 anyway affect your ability to be fair and impartial?

13 MS. WARD: No.

14 THE COURT: Thank you very much, ma'am. You may have
15 a seat.

16 Anyone else?

17 Ladies and gentlemen, of course, the purpose and the
18 goal of selecting any person for jury service is that our
19 purpose is we want to select a number of individuals who
20 can be fair and impartial, who can listen to the evidence
21 that's presented during the course of the trial, and give
22 both the State of South Carolina, and the defendant at bar
23 a fair and an impartial an trial. Is there any member of
24 the jury panel who knows of any reason why they could not
25 function in that capacity in this case? If so, please

1 stand. Thank you there none.

2 Any further questions from the State?

3 MR. JEPERTINGER: Nothing further from the State,
4 Your Honor.

5 THE COURT: Anything further from the defense?

6 MR. FLOYD: Nothing further, Your Honor.

7 THE COURT: All right, thank you very much. Five and
8 five on the strikes?

9 MR. JEPERTINGER: Yes, sir.

10 THE COURT: Ladies and gentlemen, you all were
11 present yesterday when Judge Anderson pull those juries.
12 We're going to go through the same procedure here with
13 regard to this case. So if you hear your name called, if
14 you please come forward, just come here in front of the
15 bench and then turn and face the back of the courtroom.
16 If you brought anything to court with you, go ahead and
17 bring it with you when you come up because it may be that
18 you're selected, you want go back to your seat. You'll go
19 into the jury box, so please bring anything with you that
20 you may have brought to court if you hear your name
21 called.

22 THE CLERK: Seventy-four, Robert Lee.

23 (Robert Lee, a white male, came forward.)

24 What say the State?

25 MR. JEPERTINGER: Please present the juror.

1 THE CLERK: What say the defendant?

2 MR. FLOYD: Please excuse the juror for purposes of
3 this trial.

4 THE CLERK: You been excused from this trial only.
5 You may return to your seat.

6 151, Starlee Alexander.

7 (Starlee Alexander, a black female, came forward.)

8 THE CLERK: What say the State?

9 MR. JEPERTINGER: We excuse this juror for purposes
10 of this trial only.

11 THE CLERK: You may return to your seat, ma'am. You
12 been excused for this trial only.

13 144, Charles Williams.

14 (Charles Williams, a black male, came forward.)

15 MR. JEPERTINGER: We excuse this juror for the
16 purpose of this trial only.

17 THE CLERK: You been excused from this trial only.
18 Sir, you may return to your seat.

19 118, Sherman Smith.

20 (Sherman Smith, a black male, came forward.)

21 THE CLERK: What say the State?

22 MR. JEPERTINGER: Please present the juror.

23 THE CLERK: What say the defendant?

24 MR. FLOYD: Please swear the juror.

25 THE CLERK: Please have a seat in the jury box.

1 117, Lywonder Simmons.

2 (Lywonder Simmons, a black female, came forward.)

3 THE CLERK: What say the State?

4 MR. JEPERTINGER: Please excuse this juror for
5 purposes of this trial only.

6 THE CLERK: You been excuse from this trial only.
7 You may return to your seat.

8 Number one, David Alderman.

9 (David Alderman, a white male, came forward.)

10 THE CLERK: What say the State?

11 MR. JEPERTINGER: Please present the juror.

12 THE CLERK: What say the defendant?

13 MR. FLOYD: Please excuse the juror for purposes of
14 this trial.

15 THE CLERK: You been excuse from this trial only.
16 You may return to your seat.

17 156, Athena Edwards.

18 (Athena Edwards, a black female, came forward.)

19 THE CLERK: What say the State?

20 MR. JEPERTINGER: Please present the juror.

21 THE CLERK: What say the defendant?

22 MR. FLOYD: Please excuse the juror for purposes of
23 this trial only.

24 THE CLERK: You been excuse from this trial only,
25 ma'am. You may return to your seat.

1 55, Karen Hamill.

2 (Karen Hamill, a white female, came forward.)

3 THE CLERK: What say the State?

4 MR. JEPERTINGER: Please present the juror.

5 THE CLERK: What say the defendant?

6 MR. FLOYD: Please excuse the juror for purposes of
7 this trial.

8 THE CLERK: You been excuse from this trial only.
9 You may return to your seat.

10 126, David Taylor.

11 (David Taylor, a white male, came forward.)

12 THE CLERK: What stay State?

13 MR. JEPERTINGER: Please excuse this juror for
14 purposes of this trial only.

15 THE CLERK: You been excuse from this trial only.
16 You may return to your seat.

17 158, Amanda Hancock.

18 (Amanda Hancock, a white female, came forward.)

19 THE CLERK: What say the State?

20 MR. JEPERTINGER: Please present this juror.

21 THE CLERK: What say the defendant?

22 MR. FLOYD: Please swear the juror.

23 THE CLERK: Please have a seat in the jury box,
24 ma'am.

25 81, Thomas Marsh.

1 (Thomas Marsh, a white male, came forward.)

2 THE CLERK: What say the State?

3 MR. JEPERTINGER: Please present the juror.

4 THE CLERK: What say the defendant?

5 MR. FLOYD: Please swear the juror.

6 THE CLERK: Please have a seat in the jury box.

7 142, Laurie Whittingham.

8 (Laurie Whittingham, a white female, came forward.)

9 THE CLERK: What say the State?

10 MR. JEPERTINGER: Please present the juror.

11 THE CLERK: What say the defendant?

12 MR. FLOYD: Please excuse the juror for purposes of
13 this trial.

14 THE CLERK: You been excuse from this trial only.
15 You may return to your seat.

16 99, Carol Penn.

17 (Carol Penn, a white male, came forward.)

18 THE CLERK: What say the State?

19 MR. JEPERTINGER: Please present the juror.

20 THE CLERK: The defendant wish to challenge this
21 juror for cause?

22 MR. FLOYD: No cause.

23 THE CLERK: Please have a seat in the jury box,
24 ma'am.

25 129, Brent Tiller.

1 (Brent Tiller, a white male, came forward.)

2 THE CLERK: What say the State?

3 MR. JEPERTINGER: Please present the juror.

4 THE CLERK: Does the defendant wish to challenge this
5 juror for cause?

6 MR. FLOYD: No cause.

7 THE CLERK: Please have a seat in the jury box.

8 78, Mark Lusk.

9 (Mark Lusk, a white male, came forward.)

10 THE CLERK: State wish to challenge this juror for
11 cause I'm sorry -- what say the State?

12 MR. JEPERTINGER: Please present the juror.

13 THE CLERK: Defendant wish to challenge this juror
14 for cause?

15 MR. FLOYD: No.

16 THE CLERK: Please have a seat in the jury box.

17 15, Elizabeth Brayboy.

18 (Elizabeth Brayboy, a black female, came forward.)

19 THE CLERK: What say the State?

20 MR. JEPERTINGER: Please present the juror.

21 THE CLERK: The defendant wish to challenge this
22 juror for cause?

23 MR. FLOYD: No.

24 THE CLERK: Please have a seat in the jury box.

25 58, Charles Haynesworth.

1 (Charles Haynesworth, a black male, came forward.)

2 THE CLERK: What say the State?

3 MR. JEPERTINGER: Please present the juror.

4 THE CLERK: The defendant wish to challenge this
5 juror for cause?

6 MR. FLOYD: No.

7 THE CLERK: Please have a seat in the jury box, sir.
8 12, Jane Boardwine.

9 (Jane Boardwine, a white female, came forward.)

10 THE CLERK: What say the State?

11 MR. JEPERTINGER: Please present the juror.

12 THE CLERK: The defendant wish to challenge this
13 juror for cause?

14 MR. FLOYD: No.

15 THE CLERK: Please have a seat in the jury box,
16 ma'am.

17 80, Terence Malloy.

18 (Terence Malloy, a white male, came forward.)

19 THE CLERK: What say the State?

20 MR. JEPERTINGER: Please present the juror.

21 THE CLERK: Defendant wish to challenge this juror
22 for cause?

23 MR. FLOYD: No.

24 THE CLERK: Please have a seat in the jury box, sir.
25 161, Vickie Morrison.

1 (Vickie Morrison, a white male, came forward.)

2 THE CLERK: What say the State?

3 MR. JEPERTINGER: Please present the juror.

4 THE CLERK: The defendant wish to challenge this
5 juror for cause?

6 MR. FLOYD: No.

7 THE CLERK: Please have a seat in the jury box,
8 ma'am.

9 86, Audrey McKenzie.

10 (Audrey McKenzie, a black female, came forward.)

11 THE CLERK: What say the State?

12 MR. JEPERTINGER: We excuse this juror for purposes
13 of this trial only.

14 THE CLERK: You been excuse from this trial only.
15 You may return to your seat.

16 162, Anand Patel.

17 (Anand Patel, an Indian male, came forward.)

18 THE CLERK: The State wish to challenge this juror
19 for cause?

20 MR. JEPERTINGER: No.

21 THE CLERK: The defendant wish to challenge this
22 juror for cause?

23 MR. FLOYD: No.

24 THE CLERK: You may have a seat in the jury box.

25 THE COURT: One alternate.

1 MR. JEPERTINGER: One and two.

2 THE COURT: One and two on the alternates, yeah.

3 THE CLERK: 14, James Braxton.

4 (James Braxton, a white male, came forward.)

5 THE CLERK: What say the State?

6 MR. JEPERTINGER: We excuse this juror for the
7 purpose of this trial only.

8 THE CLERK: You been excuse from this trial only.
9 You may return to your seat.

10 153, Joseph Bittle.

11 (Joseph Bittle, a white male, came forward.)

12 THE CLERK: State wish to challenge this juror for
13 cause?

14 MR. JEPERTINGER: No.

15 THE CLERK: What say the defendant?

16 MR. FLOYD: Please excuse the juror for purposes of
17 this trial.

18 THE CLERK: You been excuse from this trial only,
19 sir. You may return to your seat.

20 58, Patricia Gordon.

21 (Patricia Gordon, a black female, came forward.)

22 THE CLERK: Does the State wish to challenge this
23 juror for cause?

24 MR. JEPERTINGER: No.

25 THE CLERK: What say the defendant?

1 MR. FLOYD: Please swear the juror.

2 THE CLERK: Please have a seat in the jury box,
3 ma'am.

4 (WHEREUPON, a bench conference was held in the
5 presence of the jury and the jury panel, but out of
6 the hearing of the jury and the jury panel.)

7 THE COURT: Bear with me, ladies and gentlemen, I'm
8 trying to see if there's any -- if we need you for another
9 matter today or whether we're going to have you call back.

10 (WHEREUPON, a pause in the proceedings.)

11 THE COURT: All right. Any motions regarding jury
12 selection from the State?

13 MR. JEPERTINGER: None from the State.

14 THE COURT: Anything from the defense?

15 MR. FLOYD: Yes, Your Honor.

16 THE COURT: All right. Let me do this, ladies and
17 gentlemen, we do not have the ideal situation here in
18 Florence County. And while I've said that, let me take my
19 opportunity to get on my soap box to ask everybody to talk
20 to county counsel people, we need a new courthouse in
21 Florence. But anyway having said that, I have to take up
22 a motion which is involved in this matter and so I need
23 you to not be in the courtroom, but I don't have a nice
24 jury assembly room like every other courthouse in the
25 state to send you to. So what I'm going to ask you to do

1 if you would is to go out into the hallway. It's
2 probably going to take me about ten or 15 minutes to
3 handle this matter, so, you know, if you want to run
4 downstairs to the canteen and grab a soda or something
5 like that, you welcome to do that, but please don't go
6 very far, pretty much stay close by because once I
7 complete this motion, I'm going to need you back in here,
8 okay. I been asked if you would to ask all the members of
9 the jury panel to go down to the first floor and the
10 canteen's down there. You can mill around down there on
11 the first floor and then we'll send somebody to ask you to
12 come back when I've completed this motion, okay. Thank
13 you very much.

14 (WHEREUPON, the jury panel was excused.)

15 THE COURT: Regards to this panel here, ladies and
16 gentlemen, I'm going to ask you if you would to step into
17 your jury room. And let me ask you to do this for me if
18 you would, please. You can say hey to each other and
19 introduce yourselves, but you're absolutely to have no
20 conversation about this case and that's very important.
21 So, please, I'm going to get you to step into the jury
22 room here while I take up this matter and then I'll have
23 you back out.

24 (WHEREUPON, the jury retire to the jury room.)

25 THE COURT: Defense has a motion which they wish to

1 take up regarding jury selection. Mr. Floyd, I will be
2 more than happy to hear from you, sir.

3 MR. FLOYD: Thank you, your Honor. Your Honor, I
4 would like to make a motion pursuant to the Batson case,
5 Your Honor. The State struck, I think, four jurors who
6 were all members of an identifiable racial or ethnic
7 group. I think they were all African Americans. I think,
8 the only white juror that was struck by the State was
9 Mr. David Taylor, who actually identified himself as a
10 fellow congregante of mine at church.

11 THE COURT: Right. And also the alternate juror
12 number 14.

13 MR. FLOYD: And also the alternate who also
14 identified himself as an acquaintance of mine from Lake
15 City. And, Your Honor I would just like to ---

16 THE COURT: Okay. All right, Mr. Jupertinger, my
17 records correct, sir, the first strike the State use was
18 on juror 151.

19 MR. JEPERTINGER: That was Ms. Alexander.

20 THE COURT: Ms. Alexander a black female. Happy to
21 hear from you, sir.

22 MR. JEPERTINGER: She had some reluctance during the
23 general voir dire process wanting to serve on jury this
24 week. She had been a carry over once and then she tried
25 to get out of jury duty. I thought that might play into

1 her thought.

2 THE COURT: All right. Mr. Floyd, you wish to be
3 heard on that?

4 MR. FLOYD: Your Honor, I did not attend that
5 particular voir dire, but Mr. Meetze was there and he says
6 she did in fact express some hesitation.

7 THE COURT: All right. And just for the record, let
8 me -- I will confirm that Ms. Alexander wanted to be
9 excused. This was not a good week for her. She has some
10 type of business where she felt it was imperative that she
11 be at her business this week. She had already been
12 excused once for that reason, so I was not able to excuse
13 her. All I did tell her was that she needed to be present
14 and take a chance. And if she got -- didn't get selected,
15 she would be able to go to her business. If she got
16 selected, of course, she have to serve. And so I do find
17 that the reason given by the State with regards to Ms.
18 Alexander was a racially neutral reason.

19 Mr. Jepertinger, juror number 144 was your next
20 strike, which was Mr. Charles Williams, who is a black
21 male.

22 MR. JEPERTINGER: Our office indicates he had an
23 arrest for driving under suspension, failure to surrender
24 driver's license, and seat belt violation, and speeding
25 and look like he had a little bit of a record. This was

1 under the idea of -- not the idea, but under the caption
2 of miscellaneous criminal offenses, Your Honor.

3 THE COURT: All right. Mr. Floyd, you wish to be
4 heard on that, sir?

5 MR. FLOYD: Well, Your Honor, I'm certainly not privy
6 to the State's criminal history rap sheets and I'm not
7 sure if it's the same Mr. Williams.

8 THE COURT: Well, I understand. I guess, the
9 question that we need to be brought forth here is,
10 Mr. Jepertinger, are there any other jurors that you
11 seated that have the same other miscellaneous type
12 offenses?

13 MR. JEPERTINGER: Well, Judge, they were, but they
14 were later. We were limited to five strikes.

15 THE COURT: I understand. I'm talking about while
16 you had strikes available.

17 MR. JEPERTINGER: While I had strikes available, this
18 was my second strike, Your Honor. So, I mean the first
19 individual that I struck Starlee Alexander -- let me --
20 this was -- 144 was the third juror called, Your Honor.

21 THE COURT: Right.

22 MR. JEPERTINGER: 118, I did not see had a record nor
23 did 158.

24 THE COURT: All right. I find that the State has put
25 forth a racially neutral reason for that strike. And so

1 we will move to the next strike was juror number 117,
2 Lywonder Simmons, who is a black female.

3 MR. JEPERTINGER: Yes, sir. Your Honor, I took this
4 strike for the very reason that she was from Lake City.
5 The defendant has a Lake City address, Your Honor. When I
6 took this strike, this would have been my third strike,
7 Your Honor. At that time, I knew that there was David
8 Taylor and James Braxton still sitting out there with two
9 possible strikes left. So I took Miss -- I struck juror
10 117 based on that Lake City connection. Now, I can tell
11 you I put somebody from Lake City on the jury already, but
12 it was after ---

13 THE COURT: You ran out of strikes.

14 MR. JEPERTINGER: Well, not when I ran out of
15 strikes. I struck that one, but I knew that Braxton and
16 Taylor were still sitting out there. And if they called
17 up, I was going to save those two strikes. And if you
18 look, the very next strike that I took was Braxton. And I
19 did strike excuse me -- David Taylor I struck next and
20 then Braxton was the alternate that I struck.

21 THE COURT: Okay. All right, Mr. Floyd.

22 MR. FLOYD: Well, Your Honor, as far as I know, this
23 juror did not indicate that she even knew who I was. And
24 you ask her questions, I don't think she indicated she
25 even knew who I was. I certainly don't know her. And, I

1 mean, just because she's from Lake City seems tenuous
2 especially after he just admitted that he put another
3 juror on from Lake City after that.

4 THE COURT: Well, his admission was it was after he
5 had no more strikes.

6 MR. JEPERTINGER: It's not that I didn't have any
7 more strikes.

8 THE COURT: I apologize. His reasoning was
9 Mr. Taylor and Mr. Braxton both indicated personal
10 friendships or knowledge of a relationship with you. And
11 he was saving two strikes in case they came up. I mean,
12 that's just what.

13 MR. FLOYD: I understand, Your Honor.

14 THE COURT: All right.

15 MR. FLOYD: And Mr. Taylor is not from Lake City.
16 Mr. Taylor goes to my church.

17 THE COURT: I understand. I understand.

18 MR. FLOYD: I do want to put that on the record. If
19 his justification was that Mr. Taylor was from Lake City,
20 that's not a justification. He's not from Lake City.

21 THE COURT: That wasn't his... With regards to the
22 selection 117, again the law is that the reason given for
23 the strike is that it's a racially neutral reason. It
24 doesn't have to be one that everybody agrees with. This
25 is a case where the defendant is from Lake City. The

1 defendant's attorney is from Lake City. Lake City is a
2 small community, not that everybody knows everybody, but
3 it is a small community and that was the reason given for
4 the strike and I find that it is a racially neutral
5 reason.

6 Now, with regards to juror number juror 86,
7 Mr. Jepertinger, that is juror number 86 is Audrey
8 McKenzie, a black female.

9 MR. JEPERTINGER: Our office had a pending charge
10 against her, Your Honor, for unlawful negligent of a
11 child. Mrs. Parr is prosecuting it. And I just felt
12 while we got something pending against someone that may
13 not be a wise decision.

14 THE COURT: Mr. Floyd, you wish to be heard on that?

15 MR. FLOYD: I have nothing on that, Your Honor.

16 THE COURT: All right. And then, of course, the
17 alternate was Mr. Braxton who indicated he knew Mr. Floyd.
18 All right. All right:

19 Mr. Floyd, you want -- anything you want to say
20 regarding those strikes or anything regarding your
21 position before I make my decision?

22 MR. FLOYD: Other than what I previously stated, Your
23 Honor, I don't have anything further.

24 THE COURT: All right. I'm going to respectfully
25 deny the motion. I think the reasons given by the State

1 were all racially neutral reasons. The strike used for
2 juror number 117, Ms. Simmons, was given that she's from
3 Lake City and I've already addressed that issue. And the
4 fact that Mr. Jepertinger purpose in reserving those last
5 two strikes were in case those two individuals who
6 admitted knowledge of some relationship with Mr. Floyd,
7 that he was saving those for that reason. All the reasons
8 given I think in total would indicate that the State
9 exercise those strikes in a racially neutral manner and
10 that they were all proper under the law. And so I'm going
11 to respectfully deny the motion of the defense regarding
12 the jury selection.

13 Anything further, Mr. Floyd?

14 MR. FLOYD: Nothing further, Your Honor. Thank you.

15 THE COURT: Anything further from you,

16 Mr. Jepertinger?

17 MR. JEPERTINGER: Nothing further on that issue.

18 THE COURT: On that issue?

19 MR. JEPERTINGER: Yes, sir.

20 THE COURT: All right. Solicitor, could I ask you...

21 (WHEREUPON, a break was taken.)

22 THE COURT: Ask the jurors to join us out here.

23 (WHEREUPON, the jury return to the courtroom.)

24 (WHEREUPON, the jury panel return to the courtroom.)

25 THE COURT: All right. Let me -- if y'all be just

1 patient for one moment, let me address the jury panel
2 here. Ladies and gentlemen, I've got a -- what I got to
3 do I need to send you to an early lunch. The -- we are
4 ready to start this case, but we got one little problem in
5 that a couple of the witnesses that are to testify in this
6 trial are tied up in the trial upstairs, which is probably
7 going to be ending sometime later this morning or early
8 afternoon. But having said that, I need to -- we need
9 those witnesses available for this case. So what I'm
10 going to do -- and that happens occasionally witnesses
11 will overlap. I'm going to send you to an early lunch and
12 ask you if you would to be back here and you can report
13 back here straight to the jury room at two o'clock. It's
14 11 o'clock right now. So if you would be back here at two
15 o'clock.

16 Now, what I'm going to ask you to do and this is very
17 important. As jurors in this case, you are to decide this
18 case based on the evidence and the testimony that is
19 presented during the course of this trial. So it's very
20 important that you have no contact with anybody outside of
21 this trial with regards to this case. So when you go to
22 lunch if anyone tries to speak to you or talk to you about
23 this case in anyway, you need to quickly stop them, inform
24 them that you're a juror and you're not allowed to talk
25 about it, that should end it. If it doesn't, if they

1 persist on trying to talk to you, then you walk away, but
2 you let me know who that is and I'll make sure that that
3 doesn't continue. I'm going to ask you to go enjoy your
4 time at lunch, have no conversation about this case. As a
5 matter of fact, the best thing to do is just put it out of
6 your mind don't worry about it. We haven't started it.
7 You don't know anymore than I told you earlier, just go
8 and enjoy your lunch. And when you come back at two
9 o'clock, then we'll be ready to begin the trial of this
10 case, okay. So I'm going to ask if everyone in the
11 courtroom will remain seated and the jury here you're free
12 to go. We'll see you back at two o'clock.

13 (WHEREUPON, the jury was excuse for lunch.)

14 THE COURT: Now, with regards to the rest of the jury
15 panel, I apologize the need to send you out, but I had to
16 take up those motions. Then I had to confer with Judge
17 Anderson, Judge Anderson is our chief administrative
18 judge. He has indicated that he needs you back at 9:30 in
19 the morning. But when you come back in the morning, you
20 are to report to the 11th floor courtroom. So you're
21 excused for the balance of the day and ask that you please
22 be back to the 11th floor courtroom at 9:30 in the
23 morning. Thank you, ladies and gentlemen. Everyone else
24 remain seated. Members of the jury, are free to go.

25 (WHEREUPON, the jury panel was excuse for the day.)

1 MR. JEPERTINGER: Your Honor, one issue on bond. I
2 ask that you extinguish that bond, Your Honor. Names have
3 been told already in the courtroom, Your Honor, when you
4 read the witness list, Your Honor. I've had issues with
5 witnesses in the past, Your Honor. This is a very serious
6 case. Man's looking at 15 to 30 years, Your Honor, and I
7 just out of abundance of precaution I'd ask that you take
8 him into custody.

9 DEFENDANT MCFADDEN: Sir, I'm not going nowhere.

10 THE COURT: Mr. Floyd.

11 DEFENDANT MCFADDEN: I'm not going anywhere.

12 THE COURT: I understand you're not going anywhere,
13 but the concern that the State has is that...

14 MR. FLOYD: Your Honor, I would say that obviously
15 this is your sound discretion. I mean, I'm not going to
16 argue with any decision you make. I will say that
17 Mr. McFadden has faithfully been here. Your Honor, he has
18 a large family outside. And in fact, I will say this they
19 known who the C.I. in this case was all the time. I mean,
20 they told me who it was. I mean, they've known that for a
21 long time. There's no secret.

22 DEFENDANT MCFADDEN: I'm not going anywhere.

23 MR. FLOYD: But at any rate, obviously, that's in
24 your discretion.

25 THE COURT: I'm going to hold Mr. McFadden here.

1 Mr. McFadden, and I trust me, I got -- I believe you.
2 You been here when you're suppose to be here. I got no
3 problem with that.

4 DEFENDANT MCFADDEN: I'm not going anywhere. Do you
5 mind if I talk to my wife? She suppose to be on her way
6 up here. I'm not going nowhere.

7 THE COURT: I'll give you an opportunity to meet with
8 your wife when that comes, but at least once this trial --
9 once a jury is selected and the trial's in progress, it's
10 appropriate in a case like this for you to remain in
11 custody.

12 DEFENDANT MCFADDEN: I ain't going nowhere, sir.

13 THE COURT: And that's not an issue. I don't have a
14 problem with you going anywhere. I know you not going
15 anywhere, but it's just appropriate to have you remain in
16 custody until this case is resolved, so that's what we're
17 going to do. All right.

18 DEFENDANT MCFADDEN: Excuse me, can I go ahead and
19 take this plea then and let me go on up. I'll stop if
20 you'll go ahead and take the plea.

21 THE COURT: Scott, you want to go ahead and talk to
22 him outside because I know Mr. Floyd right now he's got to
23 be at a doctor's appointment, so we weren't gone start
24 this case ---

25 MR. FLOYD: Your Honor, I'll take the time to talk to

1 him.

2 THE COURT: All right, go ahead.

3 (WHEREUPON, a lunch break was taken.)

4 (WHEREUPON, State's Exhibits Nos. 1-5 was marked for
5 identification.)

6 THE COURT: All right. Okay. State ready to
7 proceed?

8 MR. JEPERTINGER: Yes, sir, I believe that there may
9 be a motion before we start, Your Honor.

10 THE COURT: All right, Mr. Floyd.

11 MR. FLOYD: Could I speak to Mr. Jepertinger, Your
12 Honor?

13 THE COURT: Yes, sir.

14 (WHEREUPON, a pause in the proceedings.)

15 MR. FLOYD: Your Honor, could I indulge you one
16 second before we start? Mr. McFadden, apparently has a
17 motion. He wants to relieve me as his attorney is my
18 understanding, okay.

19 THE COURT: All right.

20 MR. FLOYD: I'm not really making the motion.

21 THE COURT: It's Mr. McFadden's motion.

22 MR. FLOYD: Mr. McFadden's motion.

23 THE COURT: All right. I'll be happy to hear from
24 you, Mr. McFadden.

25 DEFENDANT MCFADDEN: Yes, sir, is there anyway

1 possible I can get me a paid attorney and relieve him?

2 THE COURT: No, sir. What's your reason?

3 DEFENDANT MCFADDEN: Sir.

4 THE COURT: What's your reason?

5 DEFENDANT MCFADDEN: Seem like he ain't working with
6 me with the charge.

7 THE COURT: Not understanding that. What do you
8 mean?

9 DEFENDANT MCFADDEN: Seem like he ain't trying to
10 drop it down no lower or none of that.

11 THE COURT: Mr. McFadden, I don't know anything about
12 plea negotiations or anything like that. I do know from
13 the conversations that occurred in the courtroom earlier
14 that they had made you an offer to a reduced charge and
15 you wouldn't take it and so Mr. Jepertinger pulled the
16 offer off the table.

17 DEFENDANT MCFADDEN: Yes, sir, I told him I was gone
18 plea, I was gone take the offer and plea. He didn't give
19 me a chance to in the morning.

20 THE COURT: But see that's your problem, court don't
21 run on your schedule.

22 DEFENDANT MCFADDEN: Yeah, I understand that.

23 THE COURT: He pulled the offer off the table.

24 Mr. Floyd my understanding has asked him to let you plead
25 to it and he said no. You think a paid lawyer is going to

1 change Mr. Jepertinger's mind? Mr. McFadden, I'm not
2 saying this is happening, but I'm saying as an outsider
3 looking in, it looks like you're just trying to do
4 everything possible to put this off.

5 DEFENDANT MCFADDEN: No, sir, no, I ain't.

6 THE COURT: You got -- and I'll tell you this and
7 this is not a criticism of any of the lawyers in the
8 public defender's office because we're blessed in this
9 circuit. We have a public defender's office that is
10 almost 100 percent staffed by former private lawyers. So
11 these aren't young lawyers just out of law school trying
12 to learn how to practice law. These are all seasoned
13 lawyers. Mr. Floyd was one of the more prominent lawyers
14 in this entire community as a private lawyer not even a
15 year ago. Mr. Lawson, who is the chief public defender,
16 is probably one of the premier defense lawyers in the
17 entire State of South Carolina. He did criminal defense
18 law for 24 years before he left private practice. All the
19 lawyers in this public defender's office are incredibly
20 skill lawyers. So I'm just going to tell you I don't what
21 your financial status is, but I doubt you could go out and
22 hire a lawyer that's going to be any better than what you
23 got right now. So that's why it appears to me that you
24 just trying to delay this thing.

25 DEFENDANT MCFADDEN: No, sir, I ain't trying to delay

1 it. Like, I was telling him when in the morning I plead
2 guilty. I was trying to get in touch with him in the
3 morning plead guilty.

4 THE COURT: It's not his call though, Mr. McFadden,
5 and that's the problem. You keep thinking that this is
6 something Mr. Floyd has control over. The State calls the
7 case. They've call your case for trial. The State makes
8 offers, they make plea offers or they don't make them.
9 This court has no control over what the State does. So if
10 that's the only basis that you have for your motion to
11 relieve Mr. Floyd, it's denied.

12 Anything further?

13 MR. FLOYD: Nothing further, Your Honor. Thank you.

14 THE COURT: All right. Anything we need to take up
15 before we bring the jury out?

16 MR. JEPERTINGER: Just for the record, we premarked
17 certain exhibits. They're not in evidence at this point.

18 THE COURT: They just for identification purposes?

19 MR. JEPERTINGER: For identification.

20 THE COURT: Have you seen those, Mr. Floyd?

21 MR. FLOYD: Yes, Your Honor, Mr. Jepertinger showed
22 them to me earlier.

23 THE COURT: All right. Okay. And again, they are
24 not in evidence they are simply for identification
25 purposes at this point.

1 MR. FLOYD: Yes, sir.

2 THE COURT: Anything else, Mr. Jepertinger?

3 MR. JEPERTINGER: No, sir.

4 THE COURT: Anything, Mr. Floyd, before we begin?

5 MR. FLOYD: Nothing further, Your Honor.

6 THE COURT: All right.

7 MR. FLOYD: Your Honor, Mr. McFadden would like to
8 know if he could speak?

9 THE COURT: I'll be happy to hear from him.

10 DEFENDANT MCFADDEN: Yes, sir, my brother back there
11 he want to know can he stand up and say something for me?

12 THE COURT: No. Your brother certainly allowed to
13 appear on your behalf as a witnesses if he's a witness or
14 whatever and this is nothing against your brother because
15 I don't even know him, any person. The only person that
16 can appear before the Court and represent another
17 individual is a licensed attorney. You can represent
18 yourself or your attorney can speak on your behalf, but --
19 and I don't know what your brother would say, but let me
20 give you a scenario. If your brother came up and said,
21 Judge, I got \$50,000 and I'm going to hire Johnny Cochran,
22 you just need to give us time to get him here. I would
23 deny that motion. This case is going to trial, that
24 jury's been selected. This case is ready to go. There's
25 no reason to delay it any further.

1 All right. Ask the jury to join us please.

2 MR. JEPERTINGER: Your Honor, I would ask that -- I
3 don't think they been sworn.

4 THE COURT: Right. My understanding they have not
5 been sworn.

6 (WHEREUPON, the jury return to the courtroom.)

7 THE COURT: All right. Ladies and gentlemen, I hope
8 everybody had a good lunch and you're ready to go to work.
9 Let me -- Ms. Gordon, if you would, ma'am, I'm going to
10 get you to occupy that chair whenever we're in court,
11 okay. With regards to the rest of you, you're welcome to
12 sit anywhere you want. We don't have assigned seating in
13 the jury box other than Ms. Gordon in this case as an
14 alternate juror, so she would sit there. And at some
15 point this afternoon, I'm going to get y'all to elect a
16 foreperson and I will talk to you more about that when
17 that time comes. And then whoever the individual is that
18 serves as the foreperson, would sit in this seat where
19 this young lady is sitting. Other than those two seats,
20 you're more than welcome to sit anywhere you want in the
21 jury box.

22 Ladies and gentlemen, we are about to begin the trial
23 of the case of State of South Carolina vs. Darnell Damont
24 McFadden. Before we begin this trial, I want to tell you
25 that this trial will probably be very different from what

1 you might expect. Most people don't have the opportunity
2 to sit in on an actual jury trial such as you're doing
3 here today. And their only experience with regards to
4 jury trials or trials in any sense, is what they seen in
5 movies or what they've read in books or what they've seen
6 on television. And, of course, as we all know, those
7 trials are always full of high drama, intense action and
8 riveting circumstances.

9 Now, while any one of those things may be the case
10 during the course of this trial, what you need to
11 understand is that this trial is not for your
12 entertainment. This trial is a fundamental part of our
13 democracy. It is a search for the truth in an effort to
14 make sure that justice is done between the parties that
15 are before the Court.

16 Now, searching for the truth and making sure that
17 justice is done is often slow, deliberate, sometimes
18 repetitive, very much the opposite of what you've seen in
19 movies or read in books or seen on television. This
20 courtroom is a place of honor that is dedicated to the
21 protection and the preservation of citizen's rights
22 through what many people have called the greatest justice
23 system ever created. The attorneys that appear before you
24 are advocates for the parties that they represent, but
25 first and foremost, they are officers of the Court sworn

1 to uphold the integrity and the fairness of our judicial
2 system. You should expect them to be professional,
3 competent, and ethical in the representation of their
4 clients interests.

5 Now, in just a moment, you are going to take an oath
6 to try this case and to reach a fair and a just verdict.
7 And so you are also expected to be professional,
8 reasonable, and ethical in the performance of your duties.
9 I want to thank you for accepting this important
10 responsibility and for your contribution to our system of
11 justice by presiding as jurors in this court. Now, if you
12 would, I am going to ask you -- I'm going to recognize
13 madame clerk and ask if you would give her your attention
14 as she places you under oath for your role as jurors in
15 this trial.

16 (WHEREUPON, the jury was sworn.)

17 THE COURT: Ladies and gentlemen, what I'm going to
18 tell you now is intended to serve as an introduction to
19 the trial of this case. These remarks are not a charge on
20 the law. However, I will instruct you on the law that is
21 applicable to this case at the end of this trial before
22 you retire to consider your verdict. What I'm going to go
23 over with you now is merely an explanation of the
24 procedures that we're going to follow during the course of
25 this trial, so that you may better understand what's going

1 on and what's taking place.

2 In this case, the defendant, Mr. McFadden, is charged
3 by an indictment which is filed with this court and he is
4 charged under that indictment with the crime of
5 distribution of cocaine base or what is commonly referred
6 to as crack cocaine. The elements of this charge I will
7 explain to you later. What you need to understand is that
8 the indictment is simply the charge by which the case is
9 brought into court and is not in any sense evidence of any
10 of the allegations that it contains. To this charge, the
11 defendant has pled not guilty. The State therefore has
12 the burden of proving each of the elements of the
13 indictment beyond a reasonable doubt. It will be your
14 duty, ladies and gentlemen, to determine or decide whether
15 or not the State has met that burden.

16 Your purpose as jurors is to find and to determine
17 the facts of this case. You are the sole judge of the
18 facts of this case. If at any time, I make any comment
19 regarding the facts, please disregard those comments.
20 Often times jurors are referred to as the fact finders and
21 that's your job, is to find what the true facts are in
22 this case. You are to determine the facts from the
23 testimony that you hear during the course of the trial and
24 any other evidence that may be introduced during the
25 course of this trial. It is up to you to determine what

1 inferences which you feel maybe properly drawn from the
2 evidence. It is especially important that you perform
3 your duty of determining the facts diligently and
4 conscientiously because ordinarily there's no way to
5 correct an erroneous determination of facts by a jury.
6 Now, on the other hand, but with equal emphasis, the same
7 law that makes you the judges of the facts, makes me the
8 judge of the law. The law as given by this court is the
9 only law that you may consider. You must accept and
10 follow it even though you may disagree with it. I'm not
11 allowed to tell you what I think the facts are or anything
12 about the facts. And you are not allowed to disagree with
13 me about what the law is or what you think it should be.
14 Your job is to take the law as I give it to you and apply
15 it to the facts as you determine the facts from the
16 testimony of the witnesses and any other evidence that may
17 be introduced during the course of this case. After doing
18 that, you'll render your verdict a true and a just verdict
19 under the oath that you just took as jurors.

20 Now, until I advise you to begin your deliberations,
21 it's very important that you have no conversation or no
22 discussions about the case. When we -- periodically, I
23 may have to excuse you to go into the jury room, you're
24 not to discuss this case amongst yourselves. The only
25 time you're to discuss the case is after you've heard all

1 the evidence, the lawyers have had an opportunity to make
2 their closing arguments, and I have instructed you on the
3 law, and then informed you that it's time to deliberate.
4 It's very important that you determine this case based on
5 the facts and the evidence that you hear in this courtroom
6 and not from what you may hear outside this courtroom or
7 from any other person. It is very important that you keep
8 an open mind and that you not decide any issue in this
9 case until you have heard all of the evidence, the parties
10 have had the opportunity to make their closing arguments,
11 and I've instruct you on the law. It is your solemn
12 responsibility to determine the guilt or the innocence of
13 the defendant. And it is -- and your verdict must be
14 based solely on the evidence that is presented during the
15 course of this trial.

16 Now, in just a moment Mr. Jepertinger, on behalf of
17 the State will have an opportunity to make what is called
18 an opening statement, in which he will explain to you the
19 issues in this case or at least what he believes the
20 issues are in this case. When he's done, Mr. Floyd on
21 behalf of Mr. McFadden will have an opportunity to make an
22 opening statement to you as well although he is not
23 required to do so. What you need to understand is this,
24 what the attorneys tell you during their opening
25 statements, ladies and gentlemen, is not evidence. It is

1 simply their contention as to what they believe the
2 evidence will be. The evidence in this case will be
3 presented to you by the testimony of sworn witnesses who
4 take the witness stand and testify during the course of
5 this trial and any other exhibits which may be introduced
6 during the course of this trial.

7 Now, from time to time during the course of the
8 trial, you may hear one of the attorneys say something
9 along these lines, Your Honor, I believe we have a matter
10 of law we need to take up with the Court or Judge may we
11 approach the bench to discuss a matter of law. During
12 these times, I may find it necessary to ask you to leave
13 the courtroom for a short period of time so that the
14 attorneys and I can discuss a matter of law. Now, the
15 reason that I may ask you to leave the courtroom is simply
16 this, as I told you earlier, I'm not to have any influence
17 over you about the facts in this case. I'm not to say
18 anything that would indicate to you that I have any
19 feeling one way or the other about the facts.

20 However, sometimes when I'm discussing a matter of
21 law with the attorneys, it may be necessary for me to make
22 some comment about the facts which have been presented in
23 connection with the ruling on whether a particular law
24 applies or not. And so to prevent you from being
25 influenced by those comments, I may ask you to step

1 outside the courtroom while I take up matters of law with
2 the lawyers. The reason simply is this, I don't want to
3 influence you anyway in your role as the fact finders.

4 Now, in determining what the true facts are in this
5 case, it's your job as jurors as the fact finders to
6 decide whether or not the testimony of any witness is
7 believable. It's my responsibility to rule as a matter of
8 law whether certain testimony is admissible at all or not,
9 but once testimony is admitted into this case whether or
10 not you believe it is solely up to you to decide. In
11 deciding whether to believe a witness, you have the right
12 to consider the interest that a witness may have, the bias
13 of any witness, the opportunity for the witness to have
14 seen the matters about which they've testified, the way a
15 witness testifies, the way they act on the witness stand.
16 You have the right to consider anything that's in this
17 record that would help you to evaluate the testimony of
18 the witnesses, that means that it is your duty to pay
19 close attention to the witnesses, to observe them, to
20 listen to them, and to pay close attention to the lawyers
21 and to the Court.

22 Please, do not let your thoughts wonder, but give
23 strict attention to the testimony in this case. So that
24 at the end of all the testimony, after all of the
25 arguments of counsel have been made, and then I've charged

1 you on the law, you will be in a position to go into the
2 jury room deliberate, discuss, talk about the evidence,
3 and render a verdict in this case. Now, in just a moment,
4 you're going to hear from the attorneys, but before I do
5 that, let me ask are there any objections or exceptions to
6 the Court's opening remarks from the State?

7 MR. JEPERTINGER: Not from the State.

8 THE COURT: Anything from the defense?

9 MR. FLOYD: Nothing from the defense, Your Honor.

10 THE COURT: All right. Ladies and gentlemen, as I
11 indicated to you just a moment ago, the comments or the
12 opening statements of the lawyers is not evidence, but
13 it's very important that you give them your attention as
14 they present their opening statements to you.

15 With that, I will recognize Mr. Jepertinger on behalf
16 of the State.

17 MR. JEPERTINGER: Yes, sir. Please the Court,
18 counsel. I was listening to what Judge Russo had to say,
19 ladies and gentlemen of the jury, and I'm also going to
20 ask you to use your good God-given common sense in this
21 case. My oldest son, a teenager, always accuses me say,
22 Dad, you may be a good lawyer, but you have absolutely no
23 common sense. Good example, I was trying to do a roast
24 the other day and I was having trouble fitting the roast
25 in the roasting pan. Here I'm trying to figure out, you

1 know, take about ten seconds for him to say, Why don't you
2 use a larger roasting pan that type of stuff. In this
3 case, I'm going to ask you to use your good-old-fashion
4 common sense. We are talking about a distribution of
5 crack cocaine or cocaine base, that's another name for it.
6 And there three things that we have to show as the State
7 to prove that this gentleman is guilty of the crime: One
8 that there was a distribution. Distribution can include a
9 sell of drugs. In this case, you will hear testimony that
10 the sell took place for \$20. Other cases, you might have
11 a situation where there's no money exchange, but it could
12 still be a distribution. A distribution is just a synonym
13 for the word of giving, to give someone, to distribute
14 give a gift, to give a gift, or a sell.

15 Second thing it has to be crack cocaine or cocaine
16 base. We have Ms. Beth Hoover from the State of Alabama.
17 Formally, she was with SLED. She will testify that the
18 substances submitted to her. She tested and they proved
19 to be crack cocaine in this case.

20 The third thing we're going to have to show quite
21 simply is that this crime happened in Florence County.
22 You will hear testimony that the transaction took place on
23 Hickson Road in the Lake City area, which happens to be in
24 Florence county.

25 Ladies and gentlemen, this transaction occurred on

1 April the 2nd, 2008. I've already told you it happened on
2 the Hickson Road area of Lake City. The officers in this
3 case, the narcotics agents Bradley Bazen and Rollings
4 Rhodes used a confidential informant, who's name was
5 mentioned in court who will testify tomorrow. She was
6 wired both for visual and sound. And she went over to the
7 Hickson Road area. She was a passenger in a vehicle with
8 her boyfriend, I believe. They were both searched prior
9 to getting in the vehicle. She outfitted with the wire
10 and given \$60 in state funds to make a purchase of crack
11 cocaine. They went over to the McFadden residence. And
12 at that point, she hooked with Darnell McFadden and he
13 sold her a quantity of crack cocaine, which you will see
14 on the video. He poured it out of a medicine bottle. She
15 got the drugs back in her hand, went back to the vehicle
16 passenger seat, went back directly to Rollings Rhodes and
17 Brad Bazen and basically told them that she purchase the
18 drugs for \$20 cause that's all he had at the time and turn
19 those drugs in. And you will see that in the terms of the
20 audiovisual.

21 Now, I will tell you in terms of the audiovisual
22 cause I've seen it, of course. There's part of the tape
23 that blacks out while she's on the return trip after the
24 transaction. You will see the transaction, that is pretty
25 much what we have to show and what we have to prove.

1 There are some witnesses that are here in court that have
2 to be put up first. Logically, it wouldn't make sense to
3 put them up in the order I'm going to put them up in, but
4 I hope you indulge me with that. I plan to put up Ms. Kim
5 Cockfield, who carried the drugs from sheriff department
6 over to SLED first. She has some other obligations and
7 I'm going to put her up first, but she would not
8 technically be in the order I would call the witnesses. I
9 may do that with Ms. Hoover as well, so indulge me with
10 that. But that's pretty much the case. He distributed
11 drugs on April the 2nd, 2008, and you'll be able to see it
12 on video. Thank you so much.

13 THE COURT: Thank you, Mr. Jepertinger.

14 Mr. Floyd.

15 MR. FLOYD: Thank you, Your Honor. May it please the
16 court.

17 THE COURT: Yes, sir.

18 MR. FLOYD: Hi, my name is Scott Floyd and I'm here
19 today to represent Mr. Darnell McFadden seated right
20 behind me at this table. I consider it a real privilege
21 to be able to stand up here and do this. The process that
22 we're going through today is the exact same process that
23 we use in this country ever since our constitution was
24 written by those brilliant and beautiful minds that wrote
25 it. Doesn't matter if you're charged with a traffic

1 ticket or murder. If you're charged with a crime in this
2 country, you are entitled to the privilege of having a
3 jury of your peers hear all the evidence against you. And
4 you've heard the allegations that the State has made in
5 this case, okay. And right now they're accusations, okay,
6 that's what they are, they're accusations. And, of
7 course, accusations carry power in people's minds because
8 I don't know if you've ever watched T.V. or read a
9 newspaper where someone's accused of doing something maybe
10 they shouldn't have, but, you know, we all have a tendency
11 to set a switch off and we might believe that just because
12 it was said. But, you know, in an American courtroom, the
13 power of accusation has no place, okay.

14 As the judge alluded to earlier, Mr. McFadden is a
15 criminal defendant just like any other -- in any courtroom
16 in this country. He's got a presumption of innocence.
17 And the State has the burden of proof in this case, the
18 judge alluded to that earlier. And there's a good reason
19 for that because when our system was devised, the people
20 who wrote our constitution were concerned about the all
21 reaching power of the government. And the reason we have
22 the burden of proof that has to be carried by the State is
23 because the State has power and they can willed it against
24 people.

25 They have unlimited budgets pretty much. They can

1 buy video equipment as you heard them say they used in
2 this case. They have staffs and staffs of investigators.
3 They have chemists. They have all kinds of people at
4 their deposal at any given time. And, of course, in a
5 typical case, a defendant in any courtroom is going to be
6 just a middle class guy. And so the burden of proof is
7 there not just for Mr. McFadden's protection, but for each
8 one of us, okay. And not only the State have the burden
9 of proof, but there's also a standard of proof that they
10 have to meet the Court alluded to earlier which is beyond
11 a reasonable doubt, okay. This isn't like a civil trial
12 where people are arguing over money, might have been in a
13 car accident, they're trying to figure out how much am I
14 owed or am I owed anything. In a case like that, the
15 burden is preponderance of the evidence. In other words,
16 the person asking for the money only has to prove their
17 case to slightly convince you, okay. Tip the scales just
18 a little. But in a criminal trial, we have beyond a
19 reasonable doubt, which means that really a reasonable
20 person shouldn't have any doubt. And, of course, you
21 going to hear evidence from police officers, confidential
22 informants, and you can consider their credibility, their
23 motivations for saying what they say, okay. Just because
24 they say it, you don't have to believe it. So we would
25 just ask that you would throughout the course of this

1 trial keep an open mind and render a fair verdict. Thank
2 you very much.

3 THE COURT: Thank you, Mr. Floyd.

4 You may call your first witness.

5 MR. JEPERTINGER: Yes, sir. The State would call Kim
6 Cockfield to the stand.

7 THE CLERK: Please place your left hand on the Bible
8 and raise your right hand. Do you swear the testimony you
9 give in this case to be the truth, the whole truth, and
10 nothing but the truth so help you God?

11 MS. COCKFIELD: I do.

12 THE CLERK: Please be seated and state your full name
13 for the record.

14 MS. COCKFIELD: Jennifer Kim Cockfield.

15 WHEREUPON,

16 Jennifer Kim Cockfield,
17 after first having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. JEPERTINGER:

20 Q Ms. Cockfield, let me ask you this, you are about to
21 take a new job; is that correct?

22 A Yes, it is.

23 Q Back in April of 2008 for who did you work?

24 A Florence County sheriff's office.

25 Q Okay. And what were your responsibilities at the

1 Florence County sheriff's department?

2 A I was the evidence technician.

3 Q Could you tell the, ladies and gentlemen of the jury,
4 basically what a evidence technician does?

5 A You collect the evidence that's logged in by the
6 various officers and store it and transport it to the
7 various facilities to be tested and return it and logged
8 back in for court.

9 Q And were you the only one that did that in terms of
10 being the evidence tech for the sheriff's department at
11 that time?

12 A Yes.

13 Q All right. I'm going to show you what's been marked
14 as State's Exhibit 5 for identification at this point. Do
15 you recognize this whole object?

16 A Yes, sir.

17 Q Okay. All right. Can you tell the ladies and
18 gentlemen of the jury what that would be?

19 A It's a SLED best pack which contains an envelop
20 containing a off-white-rock-like substance.

21 Q Okay. You used a term that the ladies and gentlemen
22 of the jury may not be familiar with a best pack. Could
23 you explain to them what a best pack is?

24 A It's a sealed envelope that's provided to us by SLED
25 with pamper evident sealing on the top, which is sealed by

1 the officer and then transported by myself to SLED for
2 testing.

3 Q When you would receive a -- any object with the
4 officer had already put it in the best pack or did you put
5 it in the past pack?

6 A No, sir, they put it in more for me.

7 Q Okay. And at that time, and I'm just looking at
8 State's Exhibit Number 5 here. Would it be this inner
9 package we're talking about not this outer package?

10 A Yes, sir, the inner package.

11 Q Okay. And that would be sealed by the officer?

12 A Yes, sir.

13 Q All right. At that point once it was sealed, what
14 would happen? Did they give it to you?

15 A It was locked in a secure box in a narcotics office.
16 I retrieved it from there, logged it into the evidence
17 room, and then transported it to SLED for analysis.

18 Q Okay. And would there be a SLED lab number on that
19 object?

20 A Yes, sir, there is.

21 Q Okay. Can you tell us what SLED lab number is on
22 that object?

23 A It's L08-09117.

24 Q Okay. And are you familiar when you would have
25 carried that to SLED?

1 A I would have to see the report.

2 Q Would you like to look at it to refresh your
3 recollection?

4 A June the 11th, 2008, I took container number B197843
5 to SLED.

6 Q Okay. And you just read a number began letter with a
7 B?

8 A Yes, sir.

9 Q Is that on that package as well?

10 A Yes, sir, it's on there.

11 Q All right. And was that your only involvement in
12 this case, ma'am?

13 A Yes, sir.

14 Q All right.

15 MR. JEPERTINGER: Please answer any questions that
16 Mr. Floyd may have.

17 THE COURT: Mr. Floyd.

18 MR. FLOYD: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. FLOYD:

21 Q Ms. Cockfield, you keep any kind of separate ledger
22 other than what is written on that particular pack that
23 you have?

24 A No, sir, I don't.

25 Q Okay. So what's written on that pack is the only

1 written record that you keep; is that right?

2 A Yes, sir.

3 Q And you personally do you write your name on there?

4 A No, sir, the officer who filled out the envelope did.

5 Q Okay. So at any point, how do you know where you
6 delivered it and when? Is there something that you log
7 in?

8 A This number -- this tag here is placed on there by
9 myself in the evidence room.

10 Q Okay. So you place the tag?

11 A Yes, sir.

12 Q Okay. Is that the tag that has the number beginning
13 with B?

14 A No, sir, that one there is placed by SLED.

15 Q SLED assigns that number you don't?

16 A Right.

17 Q Is that right?

18 A Yes, sir.

19 MR. FLOYD: Thank you very much.

20 MR. JEPERTINGER: That's all the questions I would
21 have of this witness, Your Honor. I would ask if she
22 could be excused.

23 THE COURT: Any objection to Ms. Cockfield being
24 excused?

25 MR. FLOYD: I don't have any objection to Ms.

1 Cockfield being excused.

2 THE COURT: Thank you very much.

3 MS. COCKFIELD: Thank you, sir.

4 (WHEREUPON, the witness leaves the witness stand.)

5 MR. JEPERTINGER: At this time, I would call Ms.
6 Hoover to the stand.

7 THE COURT: All right. Ms. Hoover, if you would
8 please come around to be sworn, ma'am.

9 THE CLERK: Please place your left hand on the Bible
10 and raise your right hand. Do you swear the testimony you
11 give in this case to be the truth, the whole truth, and
12 nothing but the truth so help you God?

13 MS. HOOVER: Yes, I do.

14 THE CLERK: Please be seated and state your full name
15 for the record.

16 MS. HOOVER: Beth Ann Hoover.

17 WHEREUPON,

18 Beth Ann Hoover,
19 after first having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. JEPERTINGER:

22 Q Okay. Ms. Hoover, for whom are you employed?

23 A Currently, I'm employed with the Alabama Department
24 of Forensic Science.

25 Q Okay. And what do you do for the Alabama Department

1 of Forensic Science?

2 A I am a drug analyst for the state.

3 Q Okay. And how long have you been doing that?

4 A Been there for approximately seven months.

5 Q Okay. And prior to that, for who did you work?

6 A I worked for South Carolina Law Enforcement Division
7 also known as SLED.

8 Q And what were your responsibilities there, ma'am?

9 A My responsibilities were to take in evidence and to
10 test them for the presence of control substances.

11 Q And how long did you do that, ma'am?

12 A Approximately a year and a half.

13 Q And what special training do you have to analyze
14 those type things, ma'am?

15 A I have an under graduate degree I'm sorry -- a
16 bachelor's of science degree in chemistry and in biology.
17 I'm about to finish my master's in criminology and
18 criminal justice. I also completed a legals course
19 through South Carolina Criminal Justice Academy to be
20 certified as a class-three law enforcement officer. I
21 have also completed now two different training programs
22 for testing different types or categories of control
23 substances.

24 Q All right. And, Ms. Hoover, have you ever tested
25 excuse me -- strike that. How many drug analysis have you

1 done over the course of your career both in Alabama and
2 here?

3 A That's probably a harder question to answer.
4 Probably an easier way to explain it to you guys each
5 month I approximately test about a 100 cases each month,
6 so over a two-year period, I probably done close to 2,000
7 cases.

8 Q All right. Have you ever testified in court before?

9 A Yes, I have.

10 Q And have you ever been qualified as an expert in the
11 field of drug analysis?

12 A Yes, I have.

13 MR. JEPERTINGER: At this time, Your Honor, I would
14 like to have Ms. Hoover qualified as an expert in the
15 field of drug analysis.

16 MR. FLOYD: I don't have any objection to her
17 qualification.

18 THE COURT: All right. Ms. Hoover is so qualified as
19 an expert. Let me explain, ladies and gentlemen, Ms.
20 Hoover has been qualified as an expert in her field. The
21 difference between an expert witness and a lay witness is
22 simply this: An expert witness because of their education
23 and their experience, their training in a certain area,
24 they are allowed to give their opinion based on their
25 training and experience and their involvement in a case,

1 where as a lay witness is not allowed to give opinion
2 testimony. Lay witnesses must testify as to what they
3 either seen or heard to those facts, but an expert witness
4 is allowed to give their opinion. Now, there is no
5 greater weight that you give to an expert witness
6 testimony than you do a lay witness' testimony. As with
7 all witnesses, you give their testimony whatever weight
8 you feel that it deserves.

9 Mr. Jepertinger.

10 MR. JEPERTINGER: Thank you, Your Honor.

11 BY MR. JEPERTINGER:

12 Q Ma'am, I'm going to show you what's been marked as
13 State's Exhibit 5 for identification. Can you identify
14 that object please?

15 A This is evidence that I had received while I was
16 working at SLED.

17 Q All right. And how do you know that, ma'am?

18 A Whenever I receive evidence and I go to analyze it, I
19 put my name and the date on there for when I received it
20 and the lab number that it pertains to.

21 Q Who did you receive that item from, ma'am?

22 A I received it from log in. SLED has a log-in system
23 where an agency will bring in their evidence, give it to
24 log in, put it in a secure location. And at that time,
25 when I'm ready to work that case, I go down and retrieve

1 that and put it into my custody.

2 Q Does your evidence show which agency brought that in?

3 A Yes, the agency is Florence County sheriff's office.

4 Q And when did you receive that, ma'am?

5 A On -- in my custody, I received it on July 15th 2008.

6 Q Okay. How about the SLED?

7 A It came in SLED on June 11th 2008.

8 Q Does the report indicate on your report who brought
9 that into SLED?

10 A I have a B. Bazen.

11 Q That would be the officer?

12 A Right.

13 Q Do you prepare a written report in terms of your
14 analysis?

15 A I did. And on that report said it was brought in by
16 evidence tech J. Kim Cockfield on that date.

17 Q All right. Now, when you received that from the --
18 your log in there at SLED tell the jury what you did step
19 by step to analyze this substance brought in and how it's
20 brought in, ma'am?

21 A When I go down to receive them, the only thing I have
22 is the inside package and inside that package is evidence,
23 so when I retrieve that from downstairs and bring it up, I
24 first search the tampered proof bag to see if any
25 tampering has occurred. If it had occurred, I would not

1 analyze it. I send it back to the agency. This
2 particular case that had been sealed properly and so I
3 proceed to analyze it. In order to analyze it, we do two
4 different type of test. We do a preliminary chemical
5 color test. Chemicals that -- pretty much recipes that we
6 make and dependent on the color that the chemicals change
7 when this evidence is put into is indicative of which
8 direction we need to go with the rest of our analysis. In
9 this situation, the substance had turn blue, which is
10 indicative of cocaine base also known as cocaine crack.
11 And so for further analysis for confirmation, I take that
12 a representative sample and I did what is called an
13 F.T.I.R. analysis on it.

14 Q What's F.T.I.R.?

15 A Okay. It's a fouier transform infrared spectroscopy.
16 Simply put, you take your piece of evidence and you put it
17 on a platform and you compress that down. A laser is put
18 to shine through that and everything in nature is made of
19 components, molecules that sort of thing. When the laser
20 hits that, depending on the type molecules and chemicals
21 that are in that substance, it's going to bend and stretch
22 and kind of change its form. According to that, it goes
23 to a meter which reads what those stretches are in that
24 molecule and it makes a spectrum or better known as a
25 fingerprint. Everyone knows a fingerprint is distinct to

1 that one thing. And in this instance, the spectrum that I
2 had to analyze was a match to cocaine base or crack.

3 Q Okay. And based on that within a reasonable degree
4 of drug analysis certainty, have you come to a conclusion
5 what the substance was that was submitted to you?

6 A Yes, my conclusion is that the evidence that came in
7 is cocaine base or cocaine crack.

8 Q And was there a weight also in terms of that?

9 A Yes, the weight was 0.08 grams.

10 MR. JEPERTINGER: All right. Thank you so much.
11 Please answer any questions that the defense attorney may
12 have for you.

13 THE COURT: Mr. Floyd.

14 MR. FLOYD: Thank you, Your Honor. Please the Court.

15 CROSS-EXAMINATION

16 BY MR. FLOYD:

17 Q Ms. Hoover, when you receive a bag like you have
18 there, you say it's given to someone else in your office
19 basically before it comes to you?

20 A Correct.

21 Q Is that right. And so when you receive it obviously,
22 you don't have any knowledge of what the deputies did with
23 it before it reached you; is that right?

24 A Correct.

25 Q Okay. So you're just given what's in the bag when

1 it's given to you and then you test it?

2 A Yes.

3 Q Okay. All right. Now, in this particular case, was
4 there any substance that -- when you do your test, does it
5 destroy any of the substance or...

6 A It destroys some of the substance. However, we do
7 not have to use the whole sample to find our findings.

8 Q How much of that sample would you have left?

9 A On my analysis, I usually do a weight after I have
10 used it and I believe hold on I can find out for you. I
11 had 0.07 grams left.

12 Q And when you usually weighed, it was 0.08?

13 A Correct.

14 MR. FLOYD: Thank you very much.

15 MR. JEPERTINGER: No further questions of this
16 witness. Ask if she can be excused?

17 THE COURT: Any objection?

18 MR. FLOYD: No objection.

19 THE COURT: Thank you very much, Ms. Hoover. You may
20 be excused, ma'am.

21 (WHEREUPON, the witness leaves the witness stand.)

22 MR. JEPERTINGER: Your Honor, the State will call
23 Bradly Bazen to the stand.

24 THE COURT: All right. Mr. Bazen, if you come
25 around, please.

1 THE CLERK: Place your left hand on the Bible and
2 raise your right hand. Do you swear the testimony you
3 give in this case to be the truth, the whole truth, and
4 nothing but the truth so help you God?

5 MR. BAZEN: I do.

6 THE CLERK: Please be seated and then state your name
7 for the record.

8 MR. BAZEN: My name is Bradly Bazen.

9 WHEREUPON,

10 Bradly Bazen,

11 after first having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. JEPERTINGER:

14 Q Mr. Bazen, for who do you work?

15 A Florence County sheriff's office.

16 Q And how long have you worked for the Florence County
17 sheriff's office?

18 A Going on eight years.

19 Q Okay. What do you do for the sheriff's office?

20 A I'm currently a narcotic investigator.

21 Q How long have you been a narcotic's investigator?

22 A Three years.

23 Q Okay. So you were a narcotic's investigator back on
24 April 2nd 2008?

25 A I was.

1 Q Can you tell the jury basically in terms of the use
2 of confidential informants? Normally, what do you do in
3 terms of preparation of those type cases?

4 A Normally, when we come in contact with a confidential
5 informant, we'll debrief them and they state who they deal
6 with.

7 Q When you -- just debriefed is kind of a sheriff's
8 term. Can you tell what you mean debrief when you talk to
9 them; is that what you mean?

10 A We talk to them, question them who they deal with,
11 who they can't, how much they can get from the individual,
12 and pretty much everything they know about any drug
13 dealing or drug activities.

14 Q All right. And so what do you do after you talk to
15 them?

16 A Well, we agree on a target. We will meet at a
17 certain location and we have audio-video surveillance.
18 They be outfitted with our equipment, search their entire
19 person. The person be search, vehicle be searched prior
20 to any transaction.

21 Q All right. And in terms of these drug distribution
22 drug sales, do you provide the confidential informant with
23 state serialize money excuse me -- I couldn't even say it?

24 A We provide funds out of the Florence County narcotics
25 account.

1 Q All right. And the person -- what does the person do
2 after they leave you?

3 A Pretty much once we equip -- put our equipment on,
4 we'll -- they go to the target location or whatever
5 predetermine location that is. They'll go to that
6 location and deal with the target.

7 Q All right. And what happens then after they deal
8 with the target?

9 A Pretty much after the transaction, the informant will
10 be instructed to meet back at a predetermined location.
11 And at that point, the contraband will be recovered by
12 myself, the case agent.

13 Q Okay. How about the audio-visual equipment what
14 happens with that?

15 A The audio and visual, we'll remove the equipment and
16 that will be downloaded on our computer and used for
17 evidence.

18 Q Okay. And let me get to the present case one we're
19 here in court today with. Was this a C.I. transaction, a
20 confidential informant transaction?

21 A It was.

22 Q All right. And where did you meet with your
23 confidential informant on that date?

24 A Probably, maybe two miles from the incident location
25 on Hickson Road.

1 Q Okay. Was the C.I. and I believe we've already
2 established it was a female. Did you meet -- was she by
3 herself?

4 A She was with her boyfriend.

5 Q Okay. And did they come to that predetermine
6 location in a vehicle or they come walking?

7 A They were in a vehicle.

8 Q And who was driving that vehicle?

9 A Her boyfriend.

10 Q And had you -- to use the term that as used debriefed
11 her?

12 A Right.

13 Q When did you do that?

14 A We talked again when we meet and probably called -- I
15 think we may have placed a telephone call, I'm not sure,
16 but pretty much she was -- put our equipment on her and
17 she was sent to Hickson Road.

18 Q All right. And at that point, were you with too
19 Officer Rollings Rhodes?

20 A I was.

21 Q Did you conduct surveillance while this transaction
22 was going on, so you could see what she was doing and what
23 the defendant was doing?

24 A Surveillance, we did do surveillance, but we were
25 limited due to the way the layout of where the incident

1 took place. It's on a dirt road and there's no way we
2 could -- and the vehicle that we drive everyone knows our
3 vehicles. We had to stay within reason a way from the
4 incident location not to jeopardize the purpose itself.

5 Q And the incident location took place where?

6 A On Hickson Road.

7 Q And where is Hickson Road located?

8 A Located off Highway 341 in Lake City.

9 Q Okay. And which county is that in?

10 A Florence County.

11 Q Florence County?

12 A Yes, sir.

13 Q Okay. At that -- you put the wire on the C.I.?

14 A I did.

15 Q Okay. And did you search her prior to her going to
16 consummate this deal?

17 A She was searched.

18 Q Okay. Did you search the vehicle that she and her
19 boyfriend was in?

20 A I did not search the vehicle.

21 Q Who searched the vehicle?

22 A Pretty much as a case agent, the case agent search
23 the person and the partner search the vehicle.

24 Q Would that be Mr. Rhodes that searched the vehicle?

25 A That be correct.

1 Q Okay. Her boyfriend was with her, did -- who
2 searched him?

3 A I searched him.

4 Q All right. When you searched these folks, what are
5 you looking for?

6 A Pretty much any contraband. We try to control the
7 environment as much as we can. We don't want them taking
8 anything into an environment jeopardizing any safety, look
9 for any contraband, firearms. We try to search them as
10 thoroughly as we can.

11 Q When you're talking about use the word contraband,
12 are you looking to see if they're carrying any more
13 cocaine or crack on themselves?

14 A Correct.

15 Q All right. And in this case, did you find anything
16 on her boyfriend?

17 A I did not.

18 Q Okay. Did -- to your knowledge, do you know if
19 Officer Rhodes found anything in the vehicle?

20 A He did not.

21 Q And did you find anything on the young lady?

22 A No, sir.

23 Q All right. How much money did you give her?

24 A She was given \$60 from the Florence County narcotic's
25 account.

1 Q Did you mark down the serial numbers on those bills?

2 A Not in this particular case.

3 Q You did not do that. And at that point, how long was
4 she gone from you and it's just a guess?

5 A Maybe, the most 20 minutes.

6 Q All right. And when -- did she return that day?

7 A She did.

8 Q To the predetermine location?

9 A Right.

10 Q Okay. And at that point, did she give you anything?

11 A I recovered a off-white-rock-like substance believe
12 to be crack cocaine.

13 Q I'm going to show you what's been marked as State's
14 Exhibit 5 for identification at this stage of the game.
15 Can you tell me what that object is, please, sir?

16 A That's a baggy containing off-white-rock-like
17 substance.

18 Q All right. And can you tell us what you did with
19 that off-white-rock-like substance when you received it?

20 A It was then forwarded to the Florence County
21 sheriff's office and logged into evidence, log number
22 4170.

23 Q Let me ask you though, did you put it in this bag,
24 the inner bag?

25 A The best pack.

1 Q You did that?

2 A I did.

3 Q Do you have those bags with you in your police
4 vehicles?

5 A They provided through SLED.

6 Q Okay. And you had those, access to them?

7 A Yes.

8 Q And did she give you the audio-visual equipment back
9 that you give her?

10 A I recovered the surveillance equipment, yes, sir.

11 Q Now, as a result of that -- dealing with that
12 surveillance equipment, I'm going to show you State's
13 Exhibit 4. Can you tell the jury basically what State's
14 Exhibit 4 is? Does this look like a disk?

15 A It is.

16 Q All right. Did you provide my office a disk of what
17 you downloaded on the computer?

18 A I do.

19 Q All right. And would this disk contain the
20 audio-visual transaction as occurred on that date?

21 A Correct.

22 Q Okay.

23 MR. JEPERTINGER: At this time, Your Honor, I would
24 like to publish and have this admitted into evidence and
25 publish it to the jury.

1 THE COURT: Any objection?

2 MR. FLOYD: Your Honor, I would object. I don't
3 believe that's been properly authenticated.

4 BY MR. JEPERTINGER:

5 Q Would this disk fairly and accurately portray the
6 events in question on April 2nd 2008?

7 A It did.

8 MR. FLOYD: Your Honor, my understanding is that the
9 video was out of the officers presence for some period of
10 time.

11 THE COURT: You mean the disk itself?

12 MR. FLOYD: Well, the recording equipment that made
13 the disk, Your Honor.

14 MR. JEPERTINGER: Your Honor ---

15 MR. FLOYD: My understanding he wasn't there when the
16 recording was made. I am not sure how he can testify
17 what's on it as an accurate representation of what was
18 being reported at the time if he wasn't there.

19 MR. JEPERTINGER: Your Honor, it was retrieved off of
20 surveillance equipment that he got back from the C.I. and
21 it would have been downloaded and given to me. And it's
22 really non-fungible type object, Your Honor.

23 THE COURT: All right. I'm going to overrule your
24 objection, I'm going to allow the disk.

25 MR. JEPERTINGER: I ask that we could play it for the

1 jury at this point.

2 THE COURT: Yes.

3 MR. JEPERTINGER: I'm going to need Mr. McEachin or a
4 five-year-old child to play this disk. And that would be
5 State's 4 in evidence over objection at this time.

6 (WHEREUPON, State's Exhibit No. 4 was admitted into
7 evidence.)

8 THE COURT: Ladies and gentlemen of the jury, as they
9 play this, if anyone needs to move so you can see it or
10 whatever, just let us know.

11 Is there audio to this, Mr. Jepertinger?

12 MR. JEPERTINGER: I believe so, Your Honor.

13 THE COURT: If you can't hear, let me know and we
14 will try to adjust that.

15 (WHEREUPON, the DVD was played for the jury.)

16 MR. JEPERTINGER: Your Honor, may we approach for one
17 second.

18 (WHEREUPON, a bench conference was held in the
19 presence of the jury, but out of the hearing of the
20 jury.)

21 THE COURT: Ladies and gentlemen of the jury, I am
22 going to take a short recess. And I'm going to ask you
23 when you go back to the jury room to do me a favor and
24 that is select amongst yourselves a foreperson. And let
25 me tell you briefly what that role entitles someone to do.

1 And that is simply this, a foreperson is the contact
2 between the jury panel and the Court. That person is the
3 one that the Court would communicate with if the jury has
4 a question or anything like that, I would deal with the
5 foreperson on that. If -- also, the foreperson would be
6 the one who would once deliberations begin would say,
7 okay, let's go ahead and start.

8 I'll tell you now that when you deliberate, when you
9 get to that point in the trial where you're going to be
10 deliberating, that you're only to deliberate when everyone
11 is present. So if someone has to use the restroom, then
12 the foreperson would say, okay, let's stop talking about
13 the case until they return. Then they return and we start
14 back and so that's certainly the role. I would tell you
15 this that the foreperson is no more important or less
16 important than any member of the jury.

17 I will tell you that your vote when it comes time to
18 decide must be a unanimous decision. All of you must
19 agree. So the foreperson's input is no more important
20 than any of you. Your 12, 13 equal people and everyone
21 has -- everyone's vote is weighted the same because you
22 have to have a unanimous verdict. But you still going to
23 need to have someone who can say, okay, let's begin and
24 let's stop. And then if there's a question for the jury
25 that has -- the jury has a question for the Court someone

1 to communicate back and forth to the Court with, so that's
2 basically the role of the foreperson.

3 So during this break if you step back there and if
4 you need anything, let us know, and don't discuss this case
5 at all. Don't talk about any of the evidence that's has
6 been presented thus far, just select a foreperson. And
7 when you have that person selected, write that on a piece
8 of paper and then pass it out to me so I'll know who it is
9 and then I'll bring you back out shortly.

10 (WHEREUPON, the jury retire to the jury room.)

11 THE COURT: All right. Ladies and gentlemen, we are
12 going to be in recess for ten minutes.

13 (WHEREUPON, a break was taken.)

14 THE COURT: Okay.

15 MR. JEPERTINGER: Please the Court, Your Honor, we're
16 back on the record with Darnell Damont McFadden on
17 08-1598. There has been a change of plea from not guilty
18 to guilty, I understand. He's pleading to distribution of
19 cocaine base third offense, Your Honor. Represented by
20 Mr. Floyd, of course.

21 THE COURT: Mr. McFadden, sir ---

22 MR. FLOYD: I'm sorry, Your Honor, he has family
23 here. I didn't mean to interrupt you.

24 THE COURT: No, that's all right.

25 MR. FLOYD: He ask if his family could stand and I

1 ---

2 THE COURT: Absolutely. And I'll be happy to hear
3 from them if they want to say anything. I just need to
4 get through qualifying.

5 MR. FLOYD: Sure.

6 THE COURT: They're welcome to come up and stand
7 along side him.

8 Now, Mr. McFadden, sir, you are aware that on
9 indictment 2008-GS-21-1598, which is an indictment for
10 distribution of cocaine base or what is commonly referred
11 to as crack cocaine, that being a third offense that the
12 maximum -- the penalties for that charge are not less than
13 15 years up to 30 years and or a fine of up to \$50,000.

14 MR. JEPERTINGER: I believe, it's a 100,000, Your
15 Honor.

16 THE COURT: Is it a 100? And or a fine of up to
17 \$100,000. And it also requires that your privilege to
18 drive will be suspended for some period of time. Do you
19 understand that?

20 DEFENDANT MCFADDEN: Yes, sir.

21 THE COURT: Also, Mr. McFadden, this is considered a
22 non-parolable offense or what is commonly referred to out
23 on the street as a 85 percent crime. Do you understand
24 that? I need you to speak up, sir.

25 DEFENDANT MCFADDEN: Yes, sir.

1 THE COURT: All right. And, Mr. McFadden, let me say
2 this, the reason I need you to speak up really is for your
3 protection as well as anyone else's because Miss Reed is
4 taking down everything that we're saying because she is
5 making a record and it's important that she's not always
6 looking at me and you. Sometimes, she's having to look
7 somewhere else and so she has to go by what she hears.

8 DEFENDANT MCFADDEN: Yes, sir.

9 THE COURT: Now, understanding that the nature of the
10 charge against you and the possible punishment associated
11 with that offense, how do you plead to that charge guilty
12 or not guilty?

13 DEFENDANT MCFADDEN: I plead not guilty.

14 THE COURT: All right. Let's get the jury back out
15 here. I need my witness to get back on the stand, please.
16 State ready to proceed?

17 MR. JEPERTINGER: Yes, sir.

18 THE COURT: The defense ready to proceed?

19 MR. FLOYD: I'm ready, Your Honor, thank you.

20 THE COURT: Sam, ask the members of the jury if they
21 would join us, please.

22 (WHEREUPON, the jury return to the courtroom.)

23 THE COURT: All right. Ladies and gentlemen, thank
24 you for your patience. Sometimes, I tell a jury that --
25 sometimes, they go back there and think their first

1 decision needs to be to decide whether to vote on buying
2 the judge a new watch or not, short break turned into a
3 fairly lengthy break, but thank you for patience.

4 Mr. Malloy, I want to give you either congratulations
5 or condolences however you want to accept it. I'm just
6 kidding. Thank you for your willingness to serve as the
7 foreperson of the jury. We are ready to begin. If you
8 recall, we ended up at the end of the video and now so
9 we're still on the State's direct.

10 Mr. Jepertinger.

11 DIRECT EXAMINATION CONTINUED

12 BY MR. JEPERTINGER:

13 Q Okay. I'm going to show you what's been marked as
14 State's Exhibit 1, 2, and 3. Can you identify those
15 please, look at all three of them please?

16 A Yes, I can Mr. McFadden.

17 Q And what is State's Exhibit 1, 2 and 3, please? Just
18 tell me what it is.

19 A It's a picture of Mr. McFadden with a medicine
20 bottle.

21 Q All right. And where did these pictures come from?

22 A They came after being downloaded from the equipment
23 on the informant of the purchase during the purchase of
24 crack cocaine.

25 Q Are these still photographs from the video that we

1 just watched?

2 A Yes.

3 Q Do they fairly and accurately portray what was on the
4 video?

5 A They do.

6 MR. JEPERTINGER: At this time, I would move to have
7 State's 1, 2 and 3 into evidence.

8 MR. FLOYD: Your Honor, I would object to the
9 photographs. I objected to the video, which the
10 photographs are a derivative of the video. And I would
11 object to the photographs on the same basis that I
12 objected to the video earlier. Thank you.

13 THE COURT: All right, sir. I'm going to
14 respectfully -- I'll note your objection, it's overruled.
15 State's -- what is it now?

16 MR. JEPERTINGER: One, two and three.

17 THE COURT: One, two and three are in evidence. I
18 overrule the objection.

19 MR. JEPERTINGER: May I publish these to the jury,
20 Your Honor?

21 THE COURT: Yes, sir.

22 (WHEREUPON, State's Exhibits Nos. 1, 2, and 3 are
23 admitted into evidence.)

24 BY MR. JEPERTINGER:

25 Q Officer, I noticed on the video when you were getting

1 back with the C.I. right at the end, you mention the name
2 of Vernon Jordan; is that correct?

3 A . Vernon McFadden.

4 Q Vernon Jordan was a political figure strike that.
5 It's Vernon McFadden?

6 A Yes, sir.

7 Q Okay. Now, you use the term target earlier when we
8 were discussing -- you working with a C.I.?

9 A Right.

10 Q Who is the target for that transaction that day?

11 A In this particular case, Vernon McFadden was the
12 target.

13 Q Is it safe to say that Darnell McFadden was not the
14 target?

15 A Be fair to say.

16 Q Okay. Did you have to further investigate to get the
17 name of Darnell McFadden?

18 A No, I was familiar with the names. Yes, I do some
19 further identification on him.

20 Q And did you compare the photograph to make sure you
21 were getting the right McFadden?

22 A I did.

23 Q All right. Now, was Darnell McFadden arrested that
24 very day or did you wait some period of time to arrest
25 him?

1 A It was maybe, I think, two days later on the fourth
2 he was located.

3 Q All right. And you didn't find any of the money that
4 you had given him; correct?

5 A No.

6 Q All right. But you would not have known that since
7 you didn't mark down the serial numbers; is that correct?

8 A Yes.

9 Q Apparently, this object this looks like a medicine
10 bottle on State's Exhibit 1. You didn't recover that on
11 the day he was arrested; correct?

12 A No.

13 Q All right. Okay. Now, let me ask you this in terms
14 of your dealing with the confidential informant in this
15 case, I believe her name is Miss Matthews; is that
16 correct?

17 A That's correct.

18 Q All right. Did you pay her any money to do this work
19 she was doing?

20 A I did not.

21 Q Okay. What was your understanding in terms of how
22 you would help Miss Matthews?

23 A I was contacted by a drug agent of the Florence
24 County sheriff's office and he had known Miss Matthews.

25 Q May I ask was that Glenn Kirby?

1 A That would be correct.

2 Q And then what happened?

3 A And he advised me to contact Miss Matthews in regards
4 to her helping us.

5 Q And did she have or does she have pending criminal
6 charges?

7 A She did.

8 Q Does she still?

9 A I believe so.

10 Q Okay. And what was your understanding that what you
11 would do for her if she aided you on doing these type
12 things?

13 A From what I gathered from Investigator Kirby, that
14 she was gone try to help herself with the charges in
15 return of her cooperation.

16 Q Either getting a reduction in charges or having the
17 charge dismissed or whatever?

18 A Correct.

19 Q All right.

20 MR. JEPERTINGER: Please answer any questions that
21 the defense attorney may have for you at this time.

22 THE COURT: Mr. Floyd.

23 CROSS-EXAMINATION

24 BY MR. FLOYD:

25 Q Officer Bazen, how are you this afternoon?

1 A Doing good and you.

2 Q I'm fine, thank you. Your confidential informant in
3 this case you said her name was Pearlena Matthews; is that
4 right?

5 A That's correct.

6 Q Okay. And you did say that she did in fact have
7 pending criminal charges; right?

8 A Right.

9 Q And you promise to help her with those if she helped
10 you?

11 A I didn't promise her anything.

12 Q You didn't?

13 A No.

14 Q Okay. But you told her you would help her or try to
15 help her?

16 A I worked her as Kirby wanted me to work her.

17 Q Okay. All right. So very often your confidential
18 informants have criminal histories?

19 A Sure.

20 Q The reason they do what they do is to help
21 themselves; right?

22 A Sometimes.

23 Q Or either they get paid?

24 A Right, financially.

25 Q Right, okay. So usually, they have a motivation

1 other than being good citizens, is that fair to say?

2 A There are a few of them out there.

3 Q Okay. All right. Now, did you know if Miss Matthews
4 was a drug user?

5 A I think she may have mention that back in her days
6 that she had tried a few things.

7 Q Okay. Well, she certainly appeared to know where to
8 buy drugs; didn't she?

9 A Yeah.

10 Q Okay. So wouldn't be a stretch to assume that maybe
11 she was a drug user, would it?

12 A I'm not sure.

13 Q Okay. Well, knowing that when the day that she
14 appeared to do this allege buy for you, did you observe
15 her, did she appear stoned or high?

16 A No.

17 Q Okay. Did you check her to see if you thought she
18 was?

19 A She appeared normal. I haven't any suspicions of any
20 -- her under the influence.

21 Q Now, all right. What was she wearing that day?

22 A I can't recall that. I want to say she had -- I
23 can't recall.

24 Q So you don't know if she had on blue jeans or a
25 dress?

1 A I really hate to say. I can't recall.

2 Q Okay. Well, you remember what kind of shoes she was
3 wearing?

4 A No.

5 Q Okay. All right. You said you searched her. How
6 did you search her?

7 A When dealing with a female, we have limitations when
8 searching a female. I do a reasonable search that I feel
9 reasonable on a female. The only way that I can do a body
10 search is to have a female search another female. No
11 female was present at the time, we couldn't get one
12 available. So we had to get the best -- do a reasonable
13 search of her person.

14 Q All right. So did you make her take her shoes off?

15 A Yeah.

16 Q You remember she was swearing stockings or socks?

17 A I can't remember.

18 Q As a female checked, would you have checked her bra,
19 the inside of her bra?

20 A I don't, that's me.

21 Q So you didn't do that; is that correct?

22 A I did not search the bra.

23 Q All right. And you don't remember if she had on
24 pants, so you don't know if she had pockets?

25 A I can't recall.

1 Q Okay. Now, you said her boyfriend was with her?

2 A Right.

3 Q Is that right?

4 A Right.

5 Q Okay. Was he driving or was he riding?

6 A He was driving.

7 Q He drove the whole time?

8 A Yes, sir.

9 Q So when we see that footage of all the driving, he's
10 the one driving the car?

11 A Yeah.

12 Q She's sitting in the passenger seat?

13 A Right.

14 Q Is that right? Or at least that's where they were
15 when they left you?

16 A Right.

17 Q Is that right. All right. Now, do you remember what
18 he was wearing?

19 A I couldn't tell you.

20 Q You did search him?

21 A I search everybody.

22 Q All right. How would you search a male?

23 A I search a lot more than the female the pants, groin
24 area, shoes, pockets, shirt pockets, pants pocket.

25 Q Okay. All right. Now, when you got the video done

1 or the video equipment on the informant and they left,
2 were you able to watch that in realtime. In other words,
3 as it was happening?

4 A No.

5 Q All right. Okay. So the images that you saw were
6 something that you actually saw later after you got the
7 equipment off of her; is that right?

8 A Right.

9 Q Okay. So the surveillance that you did would not
10 have been actually watching the camera as they were going
11 down the road?

12 A No.

13 Q Now, you said you were how far away?

14 A When they turned on -- we followed them, they made a
15 turn on Hickson Road and we observe them make the turn on
16 Hickson Road. And we could maintain a visual maybe 100
17 yards down Hickson Road and that's when we lost sight of
18 their vehicle. We were on Hickson and 341 maybe 300 yards
19 from the actual location.

20 Q Okay. So about 300 yards?

21 A Two to 300 yards give or take.

22 Q When they came back to you, she handed you you said
23 an off-white-rock-like substance; is that right?

24 A Yes.

25 Q Did you weigh that?

1 A I did.

2 Q Okay. How did you weigh it?

3 A I have a scale at the office.

4 Q You weighed it on the scale at your office?

5 A Digital scale.

6 Q And that's where you weighed it?

7 A Right.

8 Q What weight did you come up with?

9 A Refer to my notes?

10 Q Sure.

11 A .2 grams.

12 Q .2 grams. Okay. Did you hear the testimony of the
13 SLED person earlier as to what the grams she weighed was?

14 A Not exactly.

15 Q Okay. Well, if there was a discrepancy in that
16 weight, how would you account for the discrepancy?

17 A Well, a lot of times in particularly crack cocaine
18 over time dry. Moisture is what makes the weight in
19 crack. And from the time I received it and the time that
20 it was analyzed, fairly enough time for it to dry out.

21 Q Well, you sealed it in a plastic bag, didn't you?

22 A Yeah.

23 Q And you put it inside of a box, inside of a climate-
24 controlled building; is that correct?

25 A Right.

1 Q Okay. And it supposedly stayed sealed in that bag
2 until it was open by her in a climate-controlled building;
3 is that right?

4 A That's correct.

5 Q Okay. Did you hear her testify that it was .08 grams
6 is what she weighed?

7 A No, I didn't hear.

8 Q Do you deny that's what she said?

9 A No.

10 Q Okay. So you're telling me that the weight shrunk by
11 over half?

12 A Yeah.

13 Q Okay.

14 A Possible.

15 Q Now, you gave them is it \$60; is that right?

16 A Right.

17 Q And the money itself was that brought back to you
18 what wasn't spent?

19 A Yes, sir.

20 Q All right. Now, the money that she claims she gave
21 Mr. McFadden, did you obtain that money at any time?

22 A She made a \$20 purchase.

23 Q She used your \$20 bill?

24 A Right.

25 Q Okay. I'm asking you did you obtain a \$20 bill that

1 she said she used?

2 A No.

3 Q Okay. Well, you mark those reasons for a reason,
4 don't you?

5 A I didn't mark those bills.

6 Q You didn't?

7 A Uh-uh. Normally, we mark bills when we do a buy-bust
8 operation.

9 Q So you didn't mark the bills?

10 A Not in this particular situation.

11 Q All right. Now, you said Vernon McFadden was the
12 target?

13 A Correct.

14 Q And did I hear you on the video say that his name?

15 A Yes, sir.

16 Q What exactly did you say about Vernon McFadden?

17 A I think the purchase was made from Vernon McFadden's
18 brother a Donnell, Darnell. The name was given from the
19 informant, but I wasn't sure of that. Stated he would be
20 identified later.

21 Q So she -- the informant, I mean, Miss Matthews, she
22 indicated that she knew the name?

23 A She indicated it was Darnell McFadden.

24 Q Is that on the video?

25 A Yes.

1 Q What part of the video would that be on?

2 A I think it was at the end when I recovered the crack.

3 MR. FLOYD: Would you indulge me one second, Your
4 Honor.

5 THE COURT: Yes, sir.

6 (WHEREUPON, a pause in the proceedings.)

7 MR. FLOYD: Your Honor, that's all I have. Thank you
8 very much.

9 THE COURT: Thank you, sir.

10 Mr. Jepertinger.

11 REDIRECT EXAMINATION

12 BY MR. JEPERTINGER:

13 Q You used a term the jury may not be familiar with.
14 You said you marked bills during a buy bust. Can you tell
15 them what a buy bust is?

16 A Pretty much when we make a purchase as we did in this
17 case, the bad guy be arrested on the spot as soon as the
18 purchase is made with the arrest of the bad guy on the
19 spot right there, that's when we mark the bills just to
20 prove that the actual purchase took place.

21 Q So if the arrest is going to take place immediately,
22 then you mark the money?

23 A Correct.

24 Q Okay. And that wasn't the intent?

25 A No, sir.

1 Q On this occasion?

2 A Mr. McFadden was arrested two days later.

3 MR. JEPERTINGER: Thank you, that's all the
4 questions. I appreciate it, Judge.

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

6 MR. JEPERTINGER: And if this officer could step
7 down.

8 THE COURT: You can step down, sir.

9 (WHEREUPON, the witness leaves the witness stand.)

10 MR. JEPERTINGER: Call Rollings Rhodes to the stand.

11 THE COURT: All right. Come around to be sworn
12 please, sir.

13 THE CLERK: Place your left hand on the Bible and
14 raise your right hand. Do you swear the testimony you
15 give in this case to be the truth, the whole truth, and
16 nothing but the truth so help you God?

17 MR. RHODES: I do.

18 THE CLERK: Please be seated and state your full name
19 for the record.

20 MR. RHODES: Michael Rollings Rhodes.

21 WHEREUPON,

22 Michael Rollings Rhodes,
23 after first having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. JEPERTINGER:

1 Q Officer Rhodes, for who do you work?

2 A Florence County sheriff's office.

3 Q And how long have you been working for the sheriff's
4 office please?

5 A Almost seven years.

6 Q Okay. And what are your responsibilities at the
7 sheriff's office.

8 A Narcotics investigator.

9 Q How long have you been a narcotic's investigator with
10 Florence County sheriff's office?

11 A A little over a year.

12 Q Were you a narcotics officer April the 2nd 2008?

13 A Yes, sir.

14 Q And did you have occasion to be with Officer Bazen on
15 that day?

16 A Yes.

17 Q Okay. Can you tell the jury what you did in relation
18 to this case on that date?

19 A I searched the vehicle that the informant was riding
20 in.

21 Q All right. And what did you find there?

22 A Nothing. Well, no illegal contraband. We were
23 looking for guns, drugs, alcohol anything like that.

24 Q Was it a thorough search of the vehicle, sir?

25 A I feel like it was.

1 Q And were you present when either Miss Matthews or her
2 boyfriend were searched?

3 A I was at the same location, yes. As far as detail, I
4 couldn't tell you.

5 Q Did you observe Officer Bazen conduct a search of
6 them?

7 A Yes.

8 Q And at that point, what did you do after the
9 boyfriend and Miss McFadden went away in the vehicle to
10 Hickson Road? Did you follow them?

11 A Yeah, we actually followed them in my vehicle myself
12 and Investigator Bazen.

13 Q All right. And tell the jury what you observed, if
14 anything?

15 A Like Investigator Bazen said the last contact that we
16 had with the vehicle was in driving down Hickson Road
17 until we met back at the predetermine location.

18 Q All right. After you met at that predetermine
19 location -- let me ask you, was the predetermine location
20 pretty far from Hickson Road because the video went on for
21 about 20 minutes?

22 A It's really -- I thought so too, but it's really not
23 -- I mean, it's a couple miles maybe.

24 Q All right. And at that point, you were present when
25 Miss Matthews gave the drugs to Officer Bazen?

1 A Yes.

2 Q Did you see what Officer Bazen did with those drugs
3 in that case after he retrieved them from Miss Matthews?

4 A No, I remember him getting them from her. My
5 attention was to the vehicle that they were riding in.

6 Q All right. Now, during the cross-examination of
7 Officer Bazen, Mr. Floyd asked about drug weight at the
8 sheriff's department then subsequent drug weight maybe
9 being less at the SLED analysis?

10 A Right.

11 Q Have you found that to be a common occurrence?

12 A That can happen. If the drugs are wet when you say
13 wet, they're actually wet. And they have moisture in them
14 and it can weigh more with the moisture in it, than
15 without the moisture when it's dry. It can dry out from
16 the time that you buy the drugs from the time that it's
17 taken to Columbia to be analyze. There is that -- the
18 weight can be -- can drop.

19 Q Okay. I understand in this case this drug
20 transaction took place on April the 2nd; is that correct?

21 A Yes, sir.

22 Q I believe Officer Cockfield or former Officer
23 Cockfield testified that she took the drugs there on
24 June the 11th; is that right?

25 A If that's what she said.

1 Q And then I believe the analyst said she tested
2 sometime in July; is that correct?

3 A Yes.

4 Q Is that what you heard?

5 A Yeah.

6 Q All right. And have you seen that before?

7 A I have actually, yes.

8 Q Okay.

9 MR. JEPERTINGER: Thank you. Answer any questions
10 the defense may have for you.

11 CROSS-EXAMINATION

12 BY MR. FLOYD:

13 Q You said you searched the vehicle; is that right?

14 A The vehicle, yes, sir.

15 Q The confidential informant was riding in. Okay. All
16 right. Where particularly did you search, do you
17 remember?

18 A I search the passenger compartment of the vehicle.

19 Q The passenger compartment. What does that mean?

20 A The interior of the vehicle as far as seats, under
21 seats, glove boxes, consoles that kind of area, under the
22 seats.

23 Q The passenger side?

24 A Passenger compartment.

25 Q Okay. All right.

1 A The whole interior.

2 Q The whole front of the car?

3 A Right.

4 Q And what kind of vehicle was that?

5 A It was a little sports car. I don't recall the name
6 of it. A little two-door sports car. I think it was
7 Eclipse, maybe.

8 Q Do you normally pull the light fixtures -- the cover
9 for the light fixtures?

10 A If it's accessible. I don't think I did in this
11 case.

12 Q You didn't in this case. The place where you slid in
13 a cassette or anything like that do you check that?

14 A Yeah, usually. I usually check anything that's
15 accessible without taking the car a part. I'm not a
16 mechanic so I don't want to tear the car up.

17 Q So panels that you could pop off of the door you
18 don't do that?

19 A If -- like door panels, no.

20 Q That's what I am asking?

21 A No.

22 Q You don't go to that length?

23 A I don't go to that extent, no.

24 Q Okay. All right. And you didn't do that in this
25 case?

1 A No, I did not.

2 Q And you had nothing to do with searching her person?

3 A No, sir.

4 Q Or his person?

5 A No, sir.

6 Q Strictly the vehicle?

7 A Just the vehicle.

8 MR. FLOYD: All right. Thank you very much.

9 MR. JEPERTINGER: I have further nothing further of
10 this witness, Your Honor.

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

12 (WHEREUPON, the witness leaves the witness stand.)

13 MR. JEPERTINGER: May we approach, Your Honor.

14 THE COURT: Yes, sir.

15 (WHEREUPON, a bench conference was held in the
16 presence of the jury, but out of the hearing of the
17 jury.)

18 THE COURT: All right. Ladies and gentlemen, it's
19 almost 20 minutes to five and I don't want to get into
20 another witness that may take us past five o'clock, so I
21 think we're going to adjourn for the afternoon.

22 Now, comes the part that you got to be strong about
23 when you go home to your family because there's no
24 question that your family is going to want to know if you
25 got selected to be on a jury today. You can tell them

1 that you have been selected and that you're sitting on a
2 jury. They going to want to know what kind of case it is.
3 They want to know who does it involve and things like that
4 and that's where you need to ask them to be patient, that
5 you're not allowed to talk about it. And you'll tell them
6 all they want to know when the case is over, but that
7 you're not allowed to talk about it at this point. And
8 ask them if they would respect that and just go to another
9 subject. And the reason it's important and it's this, if
10 you tell them something as innocent as it's a drug case or
11 it's about -- it's a crack cocaine case, they may say
12 something in response to that that could possibly affect
13 your ability to be impartial. It's important that you
14 remain that impartial person. And so -- and as I said,
15 it's important that your verdict in this case is a
16 reflection of what you have heard in this trial, in this
17 courtroom, and not anything outside the courtroom. So
18 it's just very important that you have no conversation
19 with anybody about this case. So when you go home, you
20 can let them know that you are on a trial. You're not
21 allowed to talk about it, but you'll tell them all they
22 want to know when it's over.

23 And I can't predict anything, but I imagine that this
24 case will probably get to you for your decision sometime
25 tomorrow. So having said that if you can try to get a

1 good meal, rest tonight, try to get to bed early because
2 as you can tell from today jury service is not necessarily
3 physically taxing from a muscular standpoint, but it is
4 from a mental standpoint. And you're sitting there and
5 sometimes this room gets a little bit too warm.
6 Sometimes, it's a little too cool and you need to pay
7 attention and you been doing that and you need to continue
8 to be able to do that. So I would ask you if you can, if
9 it's possible get a good nights rest and come in ready to
10 go back to work tomorrow in the morning.

11 If anyone tries to have communication with you or
12 contact with you about the case, please let me know and
13 I'll make sure that that person or people don't do that
14 ever again. If you would please, be here back in your
15 jury room tomorrow morning at 9:30 and we will start right
16 at 9:30, so if will please be here at 9:30. Now, I want
17 everyone else to remain in the courtroom. And, members of
18 the jury, you are excuse to 9:30 in the morning.

19 (WHEREUPON, the jury is excuse for the day.)

20 THE COURT: Yes, sir.

21 MR. JEPERTINGER: I thought this would be a good
22 time, Judge, with the one witness I have who's got
23 somewhat of a record, to go over her record what's
24 allowable in terms of impeachment.

25 THE COURT: Sure. We'll do that, but let me do this.

1 Ladies and gentlemen, out in the audience, I'm going
2 to wait just a minute until -- have they made it to the
3 elevator?

4 OFFICER: Yes, sir.

5 THE COURT: Are they all gone?

6 OFFICER: Yes, sir.

7 THE COURT: Okay. You certainly welcome to stay if
8 you want to, but if you don't want to stay, if you're a
9 defendant, you need to be back tomorrow at 9:30.

10 Have you discussed -- have you and Mr. Floyd,
11 discussed talk about that, John?

12 MR. JEPERTINGER: We sure haven't.

13 MR. FLOYD: I have not. I will be glad ---

14 THE COURT: Y'all want to look it over and see if
15 there's anything we need to take up on the record or what
16 you can agree to?

17 MR. JEPERTINGER: I will go back to -- she got a
18 forgery in 2001. I think we can get into.

19 THE COURT: All right.

20 MR. JEPERTINGER: Counsel that -- it was 14 counts of
21 forgery.

22 THE COURT: Was it one time or just throughout?

23 MR. JEPERTINGER: Yes, sir, it was one time.

24 THE COURT: Well, I think you can go into the fact
25 that she was convicted of forgery. I don't know that you

1 can go through the 14 counts. I'm sure it was a plea.

2 MR. JEPERTINGER: It was a plea. It looks like she
3 was convicted five years suspended to one year with five
4 years probation and look like for three counts, so she --
5 it looks like she caught some time.

6 THE COURT: Okay.

7 MR. JEPERTINGER: I believe probably concurrent, Your
8 Honor.

9 THE COURT: Of course, that's not relevant for
10 purposes of what we're talking about. You can ask her if
11 she's been convicted of the forgery, but you can't get
12 into her record or what time she served.

13 MR. JEPERTINGER: All right. The next conviction
14 that I saw in 2002 she had a violation of A.B.C. law, I
15 don't think they can get into that.

16 THE COURT: No.

17 MR. JEPERTINGER: She was -- looks like she also had
18 an attempted robbery convicted two years and another
19 forgery excuse me -- and another forgery, so I think they
20 can get into those ---

21 MR. FLOYD: 2004.

22 MR. JEPERTINGER: 2004 for the attempted robbery and
23 forgeries I think they can get into that. And that's --
24 she had a fraudulent check under \$500 first offense, that
25 was in 2007. It is a crime of dishonesty. However, I

1 don't think that carries more than if I'm not mistaken, I
2 don't think that carries more than 30 days, Your Honor.

3 THE COURT: If it's a crime of dishonesty, it doesn't
4 have to carry more than a year.

5 MR. JEPERTINGER: Okay.

6 THE COURT: So I can think they can get into that.

7 MR. JEPERTINGER: And I think that's all the
8 convictions I see that go back.

9 THE COURT: You agree with that, Mr. Floyd?

10 MR. FLOYD: I do agree with that, yes, sir.

11 THE COURT: Well, those -- that record that we just
12 discussed would certainly be appropriate if you choose to
13 impeach her with that or to discuss that.

14 MR. FLOYD: Yes, sir.

15 MR. JEPERTINGER: Your Honor, in terms of his record,
16 I don't know if you want to go over that right now real
17 quickly.

18 THE COURT: Well, we don't need to do that right now
19 and I'll wait and see.

20 Mr. Floyd, and you'll talk with Mr. McFadden about
21 his rights regarding testifying and all that, right?

22 MR. FLOYD: Absolutely.

23 THE COURT: We'll take that up at the close of the
24 State's case?

25 MR. JEPERTINGER: Yes, sir.

1 THE COURT: Anything further?

2 MR. JEPERTINGER: Nothing further. I assume he's
3 still in custody, Your Honor?

4 THE COURT: Yes.

5 Mr. Floyd, do you have anything that we need to take
6 up at this time, sir?

7 MR. FLOYD: I do not, Your Honor. Thank you very
8 much.

9 THE COURT: We'll be in recess then until 9:30.

10 (WHEREUPON, the proceedings were concluded for the
11 day to be reconvened on April 15, 2009.)

12 THE COURT: Okay. Is there anything we need to take
13 up before we begin?

14 MR. JEPERTINGER: Not from the State, Your Honor.

15 THE COURT: Anything from the defense, Mr. Floyd?

16 MR. FLOYD: Nothing, Your Honor. Thank you.

17 THE COURT: All right. Sam, if you would ask, the
18 members of the jury to join us please.

19 (WHEREUPON, the jury return to the courtroom.)

20 THE COURT: Good morning, ladies and gentlemen, I
21 hope everyone had a good evening and you're ready to
22 resume working here this morning. If you recall when we
23 adjourn court yesterday, we were still on the State's
24 case. And so at this time, I would recognize
25 Mr. Jepertinger for your next witness, sir.

1 MR. JEPERTINGER: Yes, sir, please the Court,
2 counsel. Call Pearlene Matthews to the stand.

3 THE COURT: Ms. Matthews, if you please come around
4 to be sworn, ma'am.

5 THE CLERK: Please place your left hand on the Bible
6 and raise your right hand. Do you swear the testimony you
7 give in this case to be the truth, the whole truth, and
8 nothing but the truth so help you God?

9 MS. MATTHEWS: Yes, I do.

10 THE CLERK: Please be seated and state your full name
11 for the record.

12 MS. MATTHEWS: Pearlene Ard Matthews.

13 WHEREUPON,

14 Pearlene Ard Matthews,
15 after first having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. JEPERTINGER:

18 Q Miss Matthews, how hold are you?

19 A Thirty-eight.

20 Q Thirty-eight. Okay. Miss Matthews, I'm going to ask
21 you about some criminal record that you may have; is that,
22 okay?

23 A Fine.

24 Q Okay. You were convicted of a petty larceny in 2000;
25 is that correct?

1 A Correct.

2 Q And I believe you were convicted of forgeries in
3 2001; is that correct?

4 A Correct.

5 Q And I believe you had an attempted arm robbery and
6 some other forgeries in 2004?

7 A Correct.

8 Q And you also had a fraudulent check convictions in
9 2007; is that correct?

10 A Correct.

11 Q Now, have you done work as a confidential informant
12 for the Florence County sheriff's office?

13 A Yes, I have.

14 Q Okay. And did you do that work for Glenn Kirby
15 primarily?

16 A In the past.

17 Q Okay. And on April 2nd 2008, you were going to do
18 work for Mr. Bazen?

19 A Mr. Bazen.

20 Q Now, had you made control purchases of drugs
21 previously in your work with Mr. Kirby?

22 A Yes, I have.

23 Q Okay. When you made control purchases of drugs,
24 ma'am, what was the process, what would the police do in
25 terms of searching you, equipping you with audio-visual

1 equipment so on and so forth? Can you tell the ladies and
2 gentlemen of the jury basically what the procedure was,
3 ma'am?

4 A They would tell me where I had to meet them at. And
5 the time I would arrive, they would pat me down, search me
6 and the vehicle also. I wasn't allowed to have anything
7 in my pockets and nothing on me at all.

8 Q Okay. Now, had you ever worked for Officer Bazen
9 before this occasion?

10 A This occasion.

11 Q I mean, just on this occasion. You had never made
12 control buys for him before; correct?

13 A No, sir.

14 Q Okay. So did you anticipate being searched on this
15 occasion?

16 A I know I had to be searched previous helping.

17 Q Okay. And at that point, you didn't know if there
18 was going to be a female officer there to search you; is
19 that correct?

20 A I looked for one to be there because there was one
21 there years before when I helped.

22 Q And she searched every part of you?

23 A Yes, sir.

24 Q Okay. So you anticipated one being there on April
25 the 2nd; correct?

1 A Yes, sir.

2 Q Okay. And there was -- was there any there?

3 A No, sir.

4 Q Okay. When you met up with -- let me ask you, you
5 meet up both Bazen and Officer Rhodes at a predetermine
6 location?

7 A Yes, I did.

8 Q Okay. And did you go there with someone?

9 A Marion McGee.

10 Q Was he a boyfriend of yours at that time?

11 A Yes, he was.

12 Q All right. And did you go in your vehicle or his
13 vehicle?

14 A His vehicle.

15 Q And what type of vehicle was it, ma'am?

16 A Red Eclipse convertible.

17 Q All right. When you got there, how were you dress,
18 ma'am?

19 A I had on pink Levi's, a little pass the knee. I had
20 on a white shirt when I arrived there, but I wore one of
21 their shirts.

22 Q When you say you wore one of their shirts, what does
23 that mean, ma'am?

24 A They give me a button-up shirt to put on. It was
25 blue because the wire run up in it with the camera on it

1 and they put the box in my pocket.

2 Q All right. And did Officer Bazen search you?

3 A Yes, he did. He search Marion also and the other
4 officer search the vehicle.

5 Q All right. Now, at that point, ma'am, who was the
6 target, who were you suppose to catch that day?

7 A I was going to Vernon's.

8 Q Vernon McFadden?

9 A Yes, sir.

10 Q Okay. How did you know Vernon McFadden?

11 A My cousin introduce me to him.

12 Q All right. And did any of your kin go to school with
13 Vernon McFadden?

14 A Not with Vernon.

15 Q Okay. And had you ever purchase drugs before from
16 Vernon McFadden?

17 A Yes, I had.

18 Q Is that why you knew he would have drugs to sell to
19 you?

20 A Yes, sir.

21 Q All right. Did you provide that name to law
22 enforcement of being the target on April the 2nd, 2008,
23 that's who you wanted to get?

24 A Yes, sir.

25 Q Okay. Now, did you know where Vernon McFadden lived?

1 A Yes, I did.

2 Q Okay. And do you know what road it was on?

3 A No, I do not.

4 Q If I say Hickson Road would that be a...

5 A No, sir, I wouldn't know the road.

6 Q Okay. All right, very good. It was in Florence
7 County though; correct?

8 A Yes, it was.

9 Q Okay. Now, at that point, what did you all do after
10 you got searched and hooked up with the audio-visual
11 equipment, did you go over?

12 A I got back in the both of us. Me and Marion got back
13 in the vehicle. We went to Vernon's trailer. I ask for
14 Vernon who he was not there. His brother was there and I
15 ask for a \$60 piece.

16 Q Okay, let's stop right there. Who provided you with
17 the money to make any purchase for the drugs?

18 A Mr. Bazen.

19 Q All right. And did -- who did you meet there at the
20 scene at the place outside the trailer? Did you meet
21 Vernon there or did you meet someone else?

22 A I meet someone else, Vernon wasn't home.

23 Q Who did you meet?

24 A Over here Vernon brother I know him from Marlboro
25 (sic).

1 Q Okay. Did your brother go to school with him?

2 A Yes, sir.

3 Q Okay. And you identified the person that you met
4 there as the person sitting next to the lawyer?

5 A Yes, sir.

6 MR. JEPERTINGER: Let the record indicate, she's
7 identified Darnell McFadden as the person she met at the
8 scene.

9 THE COURT: So reflected.

10 BY MR. JEPERTINGER:

11 Q And I'm going to show you State's Exhibit 1, 2 and 3.
12 Was this the individual that you met?

13 A Yes, sir.

14 Q All right. Now, when you got there and he has that
15 medicine bottle in his hand, what were you purchasing?

16 A Crack cocaine.

17 Q All right. I'm going to show you State's Exhibit 5.
18 If you could basically identify that object in there?

19 A Crack cocaine.

20 Q Okay. The crack cocaine that he gave to you what did
21 you do with it?

22 A I took it back to Mr. Bazen.

23 Q And did you give it to him or...

24 A I -- when he put it in my hand, I never removed it
25 out of my hand. I held my hand like this all the way back

1 to Mr. Bazen and hand it to him.

2 Q Well, you drove back in the car; correct?

3 A Uh-huh.

4 Q All right. And how much was the purchase for?

5 A I ask for a 60, he only had a 20. And he ask me to
6 come back in five minutes and he would have the rest.

7 MR. JEPERTINGER: Now, at this time, Your Honor, I
8 would State's Exhibit 5 into evidence.

9 THE COURT: All right. Any objection?

10 MR. FLOYD: Your Honor, I would object to the
11 introduction. If I recall from Officer Bazen's testimony
12 yesterday, I could be wrong, Your Honor, but I don't
13 believe the chain of custody has been established
14 properly. I don't recall him testifying about what he did
15 with the drugs after he receive them from the confidential
16 informant, so I would object to the introduction of the
17 drugs.

18 MR. JEPERTINGER: Well, I thought he said he put it
19 in a best bag.

20 THE COURT: I recall his testimony was that he placed
21 them in the smaller bag that was in there.

22 MR. FLOYD: In the bag, Your Honor, but I don't
23 recall what he -- I really don't recall him saying what he
24 did with the bag after that is what my point is.

25 THE COURT: My recollection was that I believe that

1 the chain has been established sufficiently. I'm going to
2 overrule that objection. And what number is that five?

3 MR. JEPERTINGER: Yes, sir.

4 THE COURT: State's 5 is in over objection.

5 (WHEREUPON, State's Exhibit No. 5 are admitted into
6 evidence.).

7 BY MR. JEPERTINGER:

8 Q Now, let me ask you, ma'am. Was there anything other
9 than the crack cocaine that came out of that pill bottle?

10 A Like it was only one piece that came out of the
11 bottle.

12 Q All right. And I noticed that when you received the
13 object, it was in one pill form -- I mean, in one rock
14 form?

15 A One solid piece.

16 Q Okay. All right. Ma'am, now, let me ask you what --
17 why you doing this? Why are you doing this confidential
18 informant work? What was the reason for you, were you
19 getting paid?

20 A No, I was not.

21 Q Okay. Did you have pending criminal charges against
22 you, ma'am?

23 A Yes, I did.

24 Q Were you hoping to get maybe those charges either
25 dismiss or reduced?

1 A Reduced, I hoped or time to pay checks violations.

2 Q All right. Was that your only motivation, ma'am?

3 A Yes, it was.

4 Q Okay. Were you a user of drugs around this time,
5 ma'am?

6 A Yes, I was.

7 Q Okay. Have you done anything in terms of getting
8 help for drug addiction?

9 A Yes, I have.

10 Q All right. And can you tell the jury basically what
11 you done to help yourself?

12 A I done inpatient 28-day program and I'm still in the
13 program now. I work the 12-step program in alcohol
14 anonymous.

15 Q You brought your mentor to court with you today?

16 A Yes, I did.

17 Q All right.

18 MR. JEPERTINGER: Those are all the questions I have
19 for Miss Matthews. Turn over to Mr. Floyd.

20 THE COURT: Mr. Floyd.

21 MR. FLOYD: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. FLOYD:

24 Q Miss Matthews, how are you doing this morning?

25 A Fine. Are you?

1 Q I'm doing fine. Before you came here to testify this
2 morning, did you have a little meeting with the Solicitor
3 and Officer Bazen and those this morning?

4 A I was called and said they needed me in court and I
5 come up here this morning.

6 Q Did you meet with them this morning before you
7 testified?

8 A Yes, I did.

9 Q Okay. Did you talk about the search that he did this
10 morning before you came in here?

11 A Not the search, no, sir.

12 Q Okay. Didn't talk about that, okay. You talked
13 about what you wore?

14 A Yes, sir.

15 Q Okay. So you did discuss what kind of clothes you
16 had on this morning with them?

17 A Yes, sir.

18 Q Is that right? But you didn't talk about the search,
19 about being searched before you went out there?

20 A I was asked was I searched and I said, yes.

21 Q Okay. So y'all did have discussion about that before
22 you came up here on the stand this morning?

23 A Yes.

24 Q Now, let me ask you, you said you been searched
25 before by a female officer. Mr. Bazen didn't search you

1 like that female officer did, did he?

2 A No, he did not.

3 Q Okay. All right. Now, how long had y'all had this
4 arrangement, this buy before you went out there that
5 morning? How long had it been set up?

6 A Thirty minutes before that.

7 Q Thirty minutes time period. But y'all had discussed
8 it before that I assume?

9 A Yes.

10 Q Okay. All right. Now, and you said you were using
11 drugs at the time right?

12 A Yes, sir.

13 Q So you knew where to buy drugs?

14 A Yes, I did.

15 Q Okay. All right. Did you have any problem ever
16 getting drugs when you wanted them?

17 A No, I did not.

18 Q So you go basically buy them anytime, anywhere your
19 sources were right whenever you wanted them?

20 A Yes.

21 Q Now, you had someone with you; is that right?

22 A Yes, sir.

23 Q Someone that was escorting you that day?

24 A Correct.

25 Q And who was that?

1 A Marion McGee.

2 Q And that was your boyfriend?

3 A Yes, it was.

4 Q He did the driving?

5 A Yes, he did.

6 Q You were just a passenger in the car; is that right?

7 A Correct.

8 Q All right. Now, you said that you went out there to

9 that location and you bought that substance there; is that

10 right?

11 A Yes, I did.

12 Q You said it was placed in your hand; is that right?

13 A Poured out the bottle into my hand.

14 Q All right. Then you said you got in a car and you

15 kept it just like that and you rode in that car all the

16 way back to that location; is that right?

17 A Half a mile, yes.

18 Q Half a mile. How long were you in that car on the

19 ride back?

20 A Three minutes.

21 Q Was it three minutes?

22 A We pretty much get back there three to five minutes.

23 Q Was it more like ten minutes?

24 A No, I don't even think it was a half a mile. They

25 were right down the road. They were -- when I got off

1 that dirt road, they was on the paved road, that's not
2 even half a mile. I didn't look at the speedometer and
3 judge the distance.

4 Q Okay. So you're saying after you got back in that
5 car, you drove half a mile or thereabouts; is that right?

6 A Or less.

7 Q Okay. All right. Have you watched that video? Have
8 you watched it since it was done?

9 A Yes, I have.

10 Q Okay. Now, the fact of the matter is when that
11 bottle was tipped toward your hand, there was nothing that
12 came out of it, did it?

13 A A \$20 crack rock came out of it.

14 Q Nothing came out of it. And in fact, he ask you to
15 come back in five minutes; didn't he?

16 A He ask me to come back for the other 40 in five
17 minutes. Cause I ask for a \$60 piece, he said he only had
18 a \$20 piece, but if I give him five minutes and come back,
19 I could get the other 40.

20 Q He ask you to come back in five minutes and see his
21 brother; didn't he, that's what he said?

22 A He said I could come back in five minute to get the
23 other 40.

24 Q All right. Now, the -- I want to go over your
25 criminal history with you. You had a petty larceny in

1 2000; is that right?

2 A Correct.

3 Q You had a forgery in 2001?

4 A Correct.

5 Q Attempted arm robbery, forgery 2004?

6 A Correct.

7 Q Fraudulent check in 2007?

8 A Correct.

9 Q Okay. And now, you got pending forgery charge right
10 now that you're trying to get gone by being here today; is
11 that right?

12 A I do have a pending charge against me correct.

13 Q All right. So you have motivation to produce what
14 those officers want you to produce, right?

15 A True.

16 Q Yeah.

17 MR. FLOYD: That's all that I have.

18 THE COURT: Anything on redirect?

19 MR. JEPERTINGER: Nothing further.

20 THE COURT: Thank you, Miss Matthews. You may step
21 down, ma'am.

22 (WHEREUPON, the witness leaves the witness stand.)

23 THE COURT: Anything further?

24 MR. JEPERTINGER: I ask if Miss Matthews can be
25 excused?

1 MR. FLOYD: No objection, Your Honor.

2 THE COURT: Free to go, ma'am.

3 MR. JEPERTINGER: Your Honor, that would be the
4 State's case.

5 THE COURT: All right. Ladies and gentlemen, I have
6 some matters of law that I need to take up with the
7 attorneys at the close of the State's case. So I'm going
8 to ask you if you would step into the jury room for a
9 moment. Please have no conversation about the case, talk
10 about anything else you want, but don't talk about this
11 case. And I'll bring you back out shortly and we will
12 continue.

13 (WHEREUPON, the jury retire to the jury room.)

14 THE COURT: All right. At this time, I take up any
15 motions at the conclusion of the State's case.

16 MR. FLOYD: Your Honor, I would move for a directed
17 verdict on behalf of Mr. McFadden based on the fact that
18 there is -- has not been sufficient evidence produced that
19 there was an actual distribution of crack cocaine as
20 alleged in the indictment, Your Honor.

21 THE COURT: All right. I'm going to respectfully
22 deny that motion. I think -- there is evidence in the
23 record whereby a jury could find. And, of course, it's
24 the province of the jury to give weight to evidence not
25 the Court. And so the Court simply looking for existence

1 not necessarily the weight for it to be given. So I'm
2 going to respectfully deny that motion. Anything further,
3 sir?

4 MR. FLOYD: Nothing further, Your Honor.

5 THE COURT: All right. Mr. Floyd, have you discussed
6 with Mr. McFadden regarding his constitutional right to
7 testify or to not testify?

8 MR. FLOYD: I have, Your Honor.

9 THE COURT: All right. And what is that decision?

10 MR. FLOYD: Your Honor, my understanding is that
11 Mr. McFadden has decided not to testify.

12 THE COURT: All right. McFadden, if I could get you
13 to stand. It is my understanding and in talking with
14 Mr. Floyd that you have -- have you discussed with him
15 your right to testify and not testify?

16 DEFENDANT MCFADDEN: Yes, sir.

17 THE COURT: And is it correct that your decision is
18 not to testify?

19 DEFENDANT MCFADDEN: Yes, sir.

20 THE COURT: Let me go over with you, if I may, sir.
21 You understand that you have the right to testify if you
22 choose to and take the witness stand and testify in your
23 defense. However, if you do that, you need to understand
24 that, of course, Mr. Floyd would ask you questions while
25 you're on the stand. But then you would also be subject

1 to questions from Mr. Jepertinger and you would be
2 required to answer those questions as well. Do you
3 understand that?

4 DEFENDANT MCFADDEN: Yes, sir.

5 THE COURT: Now, it is my understanding that you have
6 some -- and I don't know the extent of it, but you have
7 some criminal history. You understand that it may be
8 depending on what those charges are, it may be that the
9 State could ask you about those past criminal charges. Do
10 you understand that?

11 DEFENDANT MCFADDEN: Yes, sir.

12 THE COURT: All right. Do you also understand that
13 by exercising your constitutional right to remain silent,
14 that I will tell the jury that they could not hold that
15 against you. I will instruct them when I give them the
16 charge on the law, that the fact that you have chosen to
17 exercise your constitutional right is a fact that they
18 could not even talk about in the jury room. I would
19 instruct them that you have no burden to prove anything.
20 The burden of proof rest on the State. You don't have to
21 do a thing, I would instruct them of that. You understand
22 that?

23 DEFENDANT MCFADDEN: Yes, sir.

24 THE COURT: All right. And is this decision to not
25 testify is this decision your decision, sir?

1 DEFENDANT MCFADDEN: Yes, sir.

2 THE COURT: And you've talked with your lawyer about
3 it?

4 DEFENDANT MCFADDEN: Yes, sir.

5 THE COURT: Okay. Sir, no one has threatened you or
6 coerced you in any way to make that decision?

7 DEFENDANT MCFADDEN: No, sir.

8 THE COURT: All right, sir, that decision has been
9 made of your own freewill?

10 DEFENDANT MCFADDEN: Yes, sir.

11 THE COURT: All right. Thank you, Mr. McFadden. You
12 may have a seat.

13 Mr. Floyd, are there any -- does the defense wish to
14 put up any case, sir?

15 MR. FLOYD: No, Your Honor.

16 THE COURT: All right. Now, what I would like to do
17 to avoid -- well, first of all, let me ask you this, I
18 have prepared a charge which I would like to give to you
19 and Mr. Jupertinger, Mr. Floyd, to review and look at. Is
20 there any other special request to charge or anything?
21 And I would say other than what I've got here, but you
22 haven't seen this yet. So I'm going to get this to you in
23 a matter of minutes. But is there any specific request to
24 charge from either the State or the defense?

25 MR. JEPERTINGER: Your Honor, just from the State's

1 perspective, I don't know if you charge the hesitate to
2 act language in terms of reasonable doubt or the firmly
3 convinced language is also another charge or a combination
4 of the two.

5 THE COURT: I charge them both.

6 MR. JEPERTINGER: Okay.

7 THE COURT: I do. I begin with what is a reasonable
8 doubt in the law. A reasonable doubt is a type of doubt
9 that -- kind of doubt that would cause a reasonable person
10 to hesitate to act. The State has the burden of proving
11 the defendant guilty beyond a reasonable doubt. And I go
12 into proof beyond a reasonable doubt is proof that leaves
13 you firmly convinced and go through the -- both of those.
14 But let me if I may get to this to y'all.

15 (WHEREUPON, a pause in the proceedings.)

16 THE COURT: Let me also while he's getting that, I'm
17 going to if there's no objection what I like to do is go
18 ahead while the jury is out and take up your motions at
19 the close of all the evidence. And so then when the jury
20 comes out, I will recognize you, Mr. Floyd, and then you
21 can announce that the defense has rested. And then at
22 that point, we can go right into closing arguments, rather
23 than bring them out, let the defense rest and send them
24 back out. So why don't we as Marshall is getting that for
25 you guys, why don't we go ahead and I'll take up -- at

1 this time, I'm going to take up any motions at the close
2 of all the evidence.

3 It is my understanding am I correct, Mr. Floyd, that
4 the defense is resting and is not putting up any evidence?

5 MR. FLOYD: That's correct.

6 THE COURT: All right. Be happy to hear from you
7 regarding your motions at the close of all the evidence,
8 sir.

9 MR. FLOYD: Yes, sir, Your Honor. Your Honor, I
10 would simply just renewed my motion that I just made a few
11 moments with you, Your Honor, on the same grounds.

12 THE COURT: All right. And I would respectfully deny
13 that motion for a directed verdict. As I indicated, I
14 believe the evidence -- there is evidence in existence and
15 whatever weight the jury chooses to give that evidence is
16 their decision to make. What we're going to do right now
17 is just -- we'll be at ease for about the next ten minutes
18 or 15 minutes or so and give y'all an opportunity.

19 Marshall will bring that and give it right to you. Please
20 look over it. If there is anything you want to add to,
21 take a way or any changes, if you'll let me know and we'll
22 talk about that. And then we'll get started.

23 (WHEREUPON, a break was taken.)

24 THE COURT: We have anything we need to take up with
25 the charge for the State?

1 DEFENDANT MCFADDEN: I got a witness want to say
2 something.

3 THE COURT: What?

4 MR. FLOYD: Your Honor, I can probably shed light on
5 this.

6 THE COURT: You don't need to. Let me tell y'all
7 something, I don't know what's going to happen with this
8 case at all. I have no idea, but you people back there
9 are giving this young man some horrible advice, horrible.
10 And I can't tell you to stop because that's your family
11 member. You can tell him whatever you want to tell him,
12 but you better start thinking about it because you know
13 what, if the jury let's him go, God bless him. If the
14 jury doesn't, none of y'all are having to do the time.
15 He's having to do it. Now, I suggest not one of you back
16 there has a law degree am I right? But you got a lawyer
17 sitting here that is not just got a law degree, he's one
18 of the better lawyers in this area and nobody wants to
19 listen to him cause you got all your street smarts out
20 there, but you don't know good advice when you hear it.

21 Now, Mr. McFadden, no disrespect to you, sir, but I'm
22 not going to hear from one person out there at this stage.
23 If the jury finds you not guilty, I'll listen to anything
24 anybody wants to say. If the jury finds you guilty, I'll
25 listen to anything anybody wants to say. But at this

1 point, Mr. Floyd, you are handling this case. It is my
2 understanding -- is anything changed regarding whether or
3 not the defense is going to put up a witness?

4 MR. FLOYD: No, Your Honor.

5 THE COURT: All right. Do we need to take up
6 anything further before we bring the jury back out from
7 the State?

8 MR. JEPERTINGER: No, sir, I had a chance to look at
9 the jury instructions and they were okay with the State,
10 Your Honor.

11 THE COURT: All right. Anything from the defense
12 before we proceed?

13 MR. FLOYD: Nothing further, Your Honor.

14 THE COURT: All right. Then what I'm going to do is
15 I'm going to bring the jury back out. And, Mr. Floyd, I
16 will recognize you, allow you to rest on the record before
17 the jury, and then we'll go into the closing arguments.
18 It is my recollection in looking over my notes that the
19 defense has not put up anything and so therefore, you
20 certainly would have final argument if you choose to do
21 that.

22 MR. FLOYD: Thank you, Your Honor.

23 THE COURT: All right. Sam, if you would ask the
24 jury to join us.

25 (WHEREUPON, the jury return to the jury room.)

1 THE COURT: All right. Thank you. Ladies and
2 gentlemen, taken up the matters of law that I need to take
3 up with the lawyers -- take up with the lawyers and we are
4 now ready to proceed. As you recall, the State rested
5 before you left and I will now recognize you, Mr. Floyd.

6 MR. FLOYD: Thank you, Your Honor. Your Honor, the
7 defense will rest at this time.

8 THE COURT: All right. Ladies and gentlemen, you
9 have heard the evidence that's in this case that's going
10 to be presented. Now, we're at the close of all the
11 evidence. The evidence has been from witnesses who
12 testified and these items that have been entered into
13 evidence. We have now reached the portion of this trial
14 where it's the lawyers opportunity to now present to you
15 what we call final summation or closing arguments. It is
16 their opportunity to talk to you about what they believe
17 the evidence has shown.

18 Just as I instructed you when we started this case,
19 that the opening statements of the lawyers is not
20 evidence. I would also instruct you that the closing
21 arguments of the lawyers is not evidence. The evidence is
22 in, it is over.

23 You have the testimony from the witnesses. You have
24 these items, these exhibits, that's the evidence in the
25 case. But the lawyers have an opportunity to give you

1 their opinions or what they believe the evidence has
2 shown. And then the closing of their -- and again, as I
3 told you, that's not evidence, but it's important that you
4 listen to them and give them your attention. At the
5 conclusion of their presentations to you, I will then come
6 down and give you the law which is applicable to this case
7 and that you are to apply in this case. So having said
8 that, if you would please give the lawyers your attention
9 as they present their final arguments.

10 Mr. Jepertinger.

11 MR. JEPERTINGER: Please the Court.

12 THE COURT: Yes, sir.

13 MR. JEPERTINGER: Counsel. I'm going to use this if
14 you don't mind.

15 THE COURT: Yes, sir.

16 MR. JEPERTINGER: Mr. Foreman, ladies and gentlemen
17 of the jury, I want to thank each and every one of you for
18 your -- taking part in this process. I know you didn't
19 volunteer for this, but you been tentative as times I
20 looked over to conduct examinations and I thank you for
21 that. I know I'm standing behind a pulpit, but I'm not
22 going to preach to you.

23 You know, in each and every case in this country and
24 I think the defense attorney alluded to it in his opening
25 statement that we are -- we live in a blessed democracy.

1 You know, it never ceases to amaze me when I'm trying
2 cases here or in Marion County that 12 citizens are called
3 into a courtroom and justice is done to the best way we
4 know that can be done. You travel to other places in the
5 world, you know, it's not done that way. I also walk into
6 this courtroom and I see that verse from the Book of Micah
7 and boy that -- I tell you that's something that we all
8 try, try to do here to do justly, to love mercy. Of
9 course, walk humbly with God if we can. And each and
10 every case in this country as his honor will tell you, the
11 burden is on the State, which I represent, to prove a
12 person's guilt beyond a reasonable doubt.

13 You often hear the statement and it is a true
14 statement that a person is presumed innocent, unless the
15 accused is proved guilty beyond a reasonable doubt. He
16 walks into the courtroom they say with a robe of
17 righteousness cloaked around his shoulders. But folks let
18 me tell you something about reasonable doubt, it is not
19 proof beyond a shadow of a doubt or proof beyond all
20 doubt. It's proof beyond a reasonable doubt.

21 And what is a reasonable doubt? A beyond a
22 reasonable doubt as his honor will tell you later during
23 his instructions, it's a doubt that would cause a
24 reasonable person to hesitate to act. Another way of
25 saying that is if you are firmly convinced that the

1 defendant is guilty, you must find him guilty. If you're
2 firmly convinced that he is not guilty, you must find him
3 not guilty. It's not beyond a shadow of a doubt. We can
4 have doubts about everything.

5 You know, there are people out there that believe we
6 did not land on the moon in 1969. You know, they think
7 that it all took place in Las Vegas, Nevada. People can
8 have doubts about anything. But we're talking about
9 factual doubt, proof beyond a reasonable doubt. And the
10 way you go about determining whether there is a reasonable
11 doubt, you must ask yourself has the State put enough
12 evidence based on the credibility of the witnesses and
13 what you've heard to say that this person did the crime.

14 Now, folks, often times, often times we do not have
15 audio and visual surveillance. We just have people come
16 in and raise their right hand, left hand on the Bible,
17 promise to tell the truth, the whole truth, and nothing
18 but the truth and tell you what happened. Here folks what
19 you have is visual testimony. You'll be able to see it on
20 the video, but I show you State's Exhibit 1, 2 and 3. Is
21 there any question that this is Darnell Damont McFadden?
22 No question whatsoever. You heard it from Pearlene
23 Matthews. She identified him in court as being the person
24 on these photos. These photos are where she went to and
25 he distributed crack cocaine to her. I think that's the

1 strongest evidence. If you're talking about proof beyond
2 a reasonable doubt, I think this does it, proof beyond a
3 reasonable doubt.

4 Now, I'm also going to ask you as I did during the
5 opening statement to use your common sense. I gave you
6 the example of me trying to put too big of a roast in a
7 small roasting pan and my children accusing me of not
8 using common sense. Well, I'm going to ask you to use
9 your common sense today. Does it make sense as the
10 defense suggested during cross-examination of Miss
11 Matthews that nothing came out of the bottle? Does it
12 make sense to pour something from a pill bottle when
13 somebody comes to your house?

14 Now, let me ask you this, if you had that pill bottle
15 and there was nothing in it, you do not see this natural
16 reaction like you normally do or anyone else normally does
17 when you pour something out and nothing is in there. He
18 didn't look in the bottle say oops, it's empty. Did not
19 do that. Look at it on the video yourself. He took 20
20 bucks. If you're making a sell, why take the money. He
21 told her to come back in five minutes, so he have more
22 stuff. If it wasn't crack that was in the bottle, say it
23 was a Hydrocodone pill or a Oxycodone pill or some other
24 type of drug, why don't you turn those into the police.

25 If you are a drug addict -- she said she was using

1 drugs at the time. The fact she had to go get drug
2 counseling treatment, inpatient treatment. If you got
3 that piece of crack and you took it to the scene, why
4 don't you say the guy gave me these pills and keep that
5 crack for yourself in case the police didn't find it,
6 maybe that stuff was hidden. Why didn't she just smoke it
7 later? Why set this guy up? It doesn't make sense. The
8 target of this whole process was his brother, Vernon
9 McFadden. Darnell came out and sold these drugs to her.
10 It doesn't make sense that she's got some personal
11 vendetta against Darnell McFadden, that doesn't make
12 sense. Then why risk anything if you know the whole
13 transaction is being recorded. She knew it. I mean, you
14 know, the fact of the matter is you say, well, ma'am, I
15 put one over on the police, but it is being recorded. And
16 later they're going to be able to download it on their
17 computer and provide it to the district attorney, the
18 Solicitor's office. We're all going to be able to watch
19 it. The jury is going to be able to see it and come to
20 this business that, well, you know, this thing really
21 didn't happen, that makes no sense using your common sense
22 that makes no sense.

23 I thought Pearlene Matthews was a credible witness.
24 She didn't come in here and try to fudge things. Yeah,
25 she's got a record. You know, when I was a little boy and

1 go fishing with my father, we go to the bait shop we get
2 minnows. And I said why we getting minnows, Dad, he goes
3 because sometimes to catch a bigger fish, you got to use a
4 little fish and that's exactly what we had to do here.
5 Could you imagine if they put somebody squeaky clean like
6 the judge's clerk to go up there and go up there, Hi, I
7 like to purchase some crack cocaine, here look into my
8 lapel pen. I mean, you know, the fact of the matter is
9 you do not sell drugs to that type person. You sell it to
10 a person that's got a little bit of a record, that's the
11 type of people on the fringe of society that they use, but
12 she came in here -- and the funny thing is, you know, she
13 could have come in here and said, look, I've done this out
14 of the goodness of my heart. I think you know these drugs
15 are just ruining our society or she could have said all
16 that, but, you know, the fact of the matter is she give me
17 an honest an answer. I'm looking for help, I got a
18 pending charge and I want help. I mean, he ask her was
19 that your motivation, sure was. Little fish to catch a
20 big fish.

21 You know, under Greek mythology, there was a -- terms
22 used in English there was a character by the name of
23 Cassandra. She was King Priam's daughter of Troy. She
24 was gifted with a gift of prophesy, being able to foretell
25 the truth, but faded by the God of Palam (sic) never to be

1 believed. Please don't make Pearlene Matthews a Cassandra
2 today. She's done the best she could with the evidence in
3 this case. She did what she was ask to do. She went over
4 there looking for Vernon McFadden. Darnell was there,
5 emptied the pill bottle. He wasn't arrested. It wasn't a
6 buy bust you heard that term. He was arrested a few days
7 later. Of course, the money wasn't there. The pill
8 bottle wasn't there, but the fact of the matter is you
9 could see what happened.

10 Now, the defense and Mr. Floyd's a good attorney will
11 come up and I suppose he's just going to say there's
12 reasonable doubt here. They didn't do a proper search of
13 the woman. They didn't check her brassiere. You know,
14 they didn't check any other areas, but, you know, the fact
15 of the matter is when she went up to work with Officer
16 Bazen, this was her first time, other times women had been
17 there and searched her. Tell you when she got to the
18 scene she did not know if a woman was going to be there to
19 search all of her. You know, that's a heck of a chance
20 you take to say I'm going to carry crack with a chance of
21 not being caught by the cops. She didn't know that.
22 Don't follow that red herring that Mr. Floyd is going to
23 give you.

24 Then I think he's going to start saying, well, look,
25 God bless Bazen. You know, Bazen coming in he's a nice

1 guy, but he's just not the sharpest guy in the world
2 because what he did was took two tenths of a gram, put in
3 a bag, that bag must have gone somewhere because when Beth
4 Hoover came in, it was only .80 where did that other .1200
5 of a gram go. But there was an explanation, they gave it
6 to you sometime it gets wet. There's moisture content and
7 it looses.

8 Remember, Beth Hoover said she didn't analyze it
9 until when July. The crime happened April the 2nd. She
10 didn't test it until the middle of July that would explain
11 that. Another explanation that I thought of how about if
12 his scale was wrong. Could that happen? Every time, I go
13 to the doctor I get on the scale and I always ask them
14 could I bring my bathroom scale from home because that one
15 says I weigh less than yours does. You know that happens.
16 But to say that he made some mistake, I think is just an
17 incredible argument and I ask you not to listen to it.
18 You saw him put the drugs in this little bag to begin
19 with. You can see that on the video. The drugs are going
20 in that little bag, little small one here. Then he said
21 he put it in a best pack. And then, you know, you heard
22 from Kim Cockfield. She received it from him, sent off to
23 SLED and analyzed.

24 Ladies and gentlemen, there are certain things we
25 have to show. We have to show that he had the drug, that

1 he distributed them. It happen in Florence County and
2 that the objects were crack cocaine. The object in this
3 case was crack cocaine. He had it. He sold it for \$20,
4 he got caught. It happen in Florence. Folks, I don't
5 know what else we could have done or should have done, but
6 the plain and hard simple truth is that this man
7 distributed drugs and these folks did the job that we pay
8 them to do. And Miss Matthews did what she was required
9 to do. I thank you. I ask that you return a verdict of
10 guilty in this case.

11 THE COURT: Thank you, sir.

12 Mr. Floyd.

13 MR. FLOYD: Thank you, Your Honor. May it please the
14 Court. Mr. Jepertinger. Good morning, ladies and
15 gentlemen, Mr. Jepertinger was absolutely right. I am
16 going to talk about reasonable doubt in this case. And
17 I'm going to go over each of the witnesses and also some
18 of the evidence. And I'm going to tell you why I think
19 there is reasonable doubt.

20 Now, of course, Officer Bazen testified yesterday.
21 He said on the stand about what he did and what he didn't
22 do. You know, the police have procedures in place when
23 they do a case like this and the reason they have them
24 is to remove doubt, okay. So when they come here in this
25 courtroom, there want be any doubt. And the fact of the

1 matter is he admitted on that stand yesterday he didn't
2 follow the same procedure with his female C.I. that he
3 would have with a male when he searched her that day
4 didn't happen. Certainly didn't search her bra, okay. He
5 didn't even remember what she was wearing and didn't know
6 if she was wearing a dress or pants or stockings or
7 anything else that day. And that's the whole purpose of
8 having those procedures in place. And, you know, if he
9 didn't remember, well, that's fine, I mean, you know. We
10 have wonderful technology like videos and everything, but,
11 you know, there's also the old invention of paper and a
12 pen. Well, you know, you can write it down what you did
13 with a witness, what she was wearing, how she was
14 searched. And look he knew he was dealing with a female
15 C.I., could have had a female officer present with her,
16 would have been very simple. Florence County sheriff's
17 office has plenty of female deputies. One was sitting on
18 the stand here yesterday talking to you. I mean, you
19 know, and just to excuse deviating from procedure because
20 it's a female is no excuse and that does create doubt
21 because the procedures were not followed. And those are
22 in place for everybody's protection for the sheriff's
23 office, for the defendant, and for all of us, okay. And
24 when those things aren't done correctly, it raises doubts
25 of people's minds and it just is not good.

1 Now, there was testimony yesterday from the police
2 officer that he received crack from that C.I. or what
3 appeared to him to be crack cocaine and he put it in a
4 bag. After, I guess, he put it in a bag there at the
5 scene and then he took it to his office and weighed it.
6 And it weighed .2 grams on his scale. And there's been
7 testimony in here about, well, it shrunk magically because
8 there was moisture in it, okay. Now, it's sealed up in a
9 plastic bag, okay. And then it sealed up in another
10 plastic bag and it's put in a dark box, a secure box in a
11 climate controlled place where it sits until somebody
12 comes and gets it out. And then they take it to SLED and
13 it's put in another box, but yet magically somehow they're
14 claiming that this water evaporates from the inside of two
15 plastic bags. Where does it go? I mean, we all had six
16 grade science. I mean, we all know how evaporation works.
17 I mean, that explanation of that lack of weight is just
18 incredible to me. It makes no sense.

19 Now, the other witness that they are relying on in
20 this case is the confidential informant who we heard this
21 morning Miss Matthews. Now, you know, the Solicitor
22 earlier was talking about, well, she could have come in
23 here and given you whitewashed answers about her
24 motivations, but she told you the truth. Well, the fact
25 matter is she didn't have a choice but to tell you the

1 truth because I had her criminal record. The State has to
2 give it to me, okay. They have to disclose to me what her
3 deal is, okay. They knew that I knew and therefore she
4 didn't have a choice to sit on that stand and tell the
5 truth. And do you think she would have told the truth if
6 she did have a choice.

7 Now, this is a woman that has been convicted of all
8 sorts of dishonesty in her life petty larceny, forgery,
9 attempted arm robbery, forgery again, fraudulent checks,
10 and also happens to have another forgery pending. Would
11 you trust that woman with your life or the lives of your
12 children? Okay. But yet they're asking you to trust her
13 with this man's life. She, you know, I hope has reformed
14 and I hope she's in drug rehab. And I hope she is doing
15 fine, but we're talking about now. We're talking about
16 then. And we're talking about her credibility when this
17 was going on. And she said, yeah, I had motivation to
18 produce what I was suppose to produce because I want those
19 charges to go a way.

20 Now, ladies and gentlemen, they're telling you, well,
21 look at that video. Why would she have possibly produce
22 crack, which she freely admitted she could have gotten
23 anywhere, anytime she wanted because she was a drug user
24 she could get it anywhere. So why would she produce
25 crack, okay, that didn't come from Mr. McFadden like she

1 said, okay. Why would she risk it? Well, it's on the
2 video. Well, is it on the video? I watch the video. Did
3 you see anything come out of the bottle on that video? I
4 don't think I did. They claim -- she claim that she gave
5 him \$20. And when they had a conversation about five
6 minutes or coming back in five minutes, she was gone give
7 him another \$40. I don't remember seeing an exchange of
8 \$20 on that video. Don't see it. Don't think it's there.
9 And no, I don't think she was telling the truth. I don't
10 think the truth is in that woman. And I think she has
11 plenty of motivation to lie and I think she had plenty of
12 motivation to make sure that she got crack back to those
13 officers. And, of course, you know, she came here this
14 morning prepared oddly enough to testify about herself
15 being searched, okay. After those questions were brought
16 up yesterday, oddly enough she's ready to jump on that
17 this morning. The fact of the matter is she was not
18 searched properly, correctly or within the procedures as
19 she was suppose to be. And you just can't believe what
20 she says.

21 And, ladies and gentlemen, that's what this whole
22 thing is about whether or not there's reasonable doubt in
23 this case. They're asking you to convict this man, okay.
24 And obviously, this should be and ought to be and the
25 judge is going to instruct you it's beyond a reasonable

1 doubt. And I just ask you to please consider the
2 testimony of these officers, what they didn't do that they
3 were suppose to, credibility of that confidential
4 informant that you heard this morning, consider that
5 video. Hey, they want to rely on that video, great,
6 consider it all. And when you do, please think about is
7 there reasonable doubt in this case. And we would ask you
8 to find Mr. McFadden not guilty. Thank you very much.

9 THE COURT: Thank you, Mr. Floyd.

10 Ladies and gentlemen, I come around here to give you
11 the charge on the law for a couple of reasons. First,
12 being that as I told you when we started this case, that
13 you are the judges of the facts of this case. And that
14 I'm not to have any influence over you with regards to
15 those facts. So it's appropriate that during the time
16 when the lawyers are doing their work, when they're
17 presenting the evidence to you, they are presenting the
18 facts to you, it's appropriate for me to be out of the way
19 and to allow that to happen. But we have reached the
20 portion of this trial where you and I are in this
21 together. You as judges of the facts and me as the judge
22 of the law. So I think it's appropriate that I come down
23 and be with you here to give you the law.

24 The other reason is not so simply legal, it's just
25 simply more friendly to talk to people face to face, then

1 to sit up there and do it. So I come down here to give
2 the instructions on the law. I will tell you that at the
3 end of these instructions, I will send this notebook back
4 into the jury room with you. You will have this with you
5 in the back when you are in your jury room to deliberate.
6 But please, if I could have your attention while I give
7 you the law that's applicable to this case.

8 Mr. Foreman and members of the jury, you have heard
9 the evidence and arguments of both parties. I will now
10 explain to you the law which applies to this action. The
11 indictment charges the defendant, Darnell Damont McFadden,
12 with the offense of distribution of cocaine base or what
13 is commonly referred to as crack cocaine. I remind you
14 that the fact that the defendant was arrested, charged,
15 and indicted in this case is not evidence in this case.
16 And it cannot be considered by you as evidence of guilt in
17 this case. Nor does it create any presumption or
18 inference of guilt. This document, the indictment is
19 simply the formal written instrument which contains the
20 charges made against the defendant. It is the formal
21 document by which this case is brought into court.

22 The defendant has pled not guilty to this indictment
23 and that plea puts the burden on the State to prove the
24 defendant guilty. A person charged with committing a
25 criminal offense in this country is never required to

1 prove him or herself innocent.

2 I charge you that it is an important rule of law that
3 the defendant in a criminal trial, no matter what the
4 seriousness of the charge may be, will always be presumed
5 to be innocent of that crime for which the indictment was
6 issued unless guilt had been proven by evidence satisfying
7 you of that guilt beyond a reasonable doubt.

8 This presumption of innocence does not end when you
9 begin your deliberations, but it accompanies the defendant
10 throughout the trial, until you reach a verdict of guilt
11 based on evidence satisfying you of that guilt beyond a
12 reasonable doubt. The presumption of innocence is not
13 mere legal theory. It is not just a legal phrase. It is
14 a substantial right to which every defendant is entitled,
15 unless you, the jury, are satisfied from the evidence of
16 the defendant's guilt beyond a reasonable doubt.

17 So what is a reasonable doubt in the law? A
18 reasonable doubt is the kind of doubt that would cause a
19 reasonable person to hesitate to act. The State has the
20 burden of proving the defendant guilty beyond a reasonable
21 doubt. Proof beyond a reasonable doubt is proof that
22 leaves you firmly convinced of the defendant's guilt.
23 There are very few things in this world that we know with
24 absolute certainty. And in criminal cases, the law does
25 not require proof that overcomes every possible doubt. If

1 based on your consideration of the evidence you are firmly
2 convinced that the defendant is guilty of the crime
3 charged, you must find the defendant guilty. If on the
4 other hand, you think there is a real possibility that the
5 defendant is not guilty, you must give the defendant the
6 benefit of the doubt and find him not guilty.

7 I remind you that the during this trial you and I
8 have certain duties that we must perform. As the trial
9 judge, it is my responsibility to preside over the trial
10 of this case. And I also have the duty to rule on the
11 admissibility of evidence offered during the course of the
12 trial. You are to consider only the competent evidence
13 that is before you. You are to consider only the
14 testimony which has been presented from the witness stand
15 and any exhibits which may have been made a part of the
16 record in this case and any stipulations of counsel. I
17 have the additional duty to charge you the law applicable
18 to this case.

19 As the presiding judge, I am the sole judge of the
20 law in this case. And it is your duty as jurors to accept
21 and to apply the law as I now state it to you. If you
22 already have any idea as to what the law is or what the
23 law ought to be and it does not agree with what I now tell
24 you the law is, you must abandon your idea because you are
25 sworn to accept the law and apply the law exactly as I

1 state it to you.

2 In every case tried in this court before a jury, the
3 jury becomes the sole and the exclusive judge of the facts
4 in a case. A trial judge cannot intimate, state, comment
5 on or make any statement to a trial jury about the facts
6 in a case. Sense you, the jury, are the sole judge of the
7 facts in this case, you are not to infer from what I have
8 said during the progress of this trial in ruling upon the
9 admissibility of evidence or otherwise anything that I say
10 now during the course of this instruction to you that I
11 have any opinion about the facts in this case. The law
12 does not allow me to have an opinion about the facts in
13 this case. This is a matter solely for you, the jury, to
14 determine.

15 As jurors, it is your duty to determine the effect,
16 the value, the weight and the truth of the evidence
17 presented during the trial. Now, under our constitution
18 and our code of laws only you, the jury, can make the
19 findings of facts in this case. To determine the facts in
20 this case, you will have to evaluate the credibility or
21 the believability of witnesses. Credibility simply means
22 believability. It becomes your duty as jurors to analyze
23 and to evaluate the evidence and determine which evidence
24 convinces you of its truth. As I've already discussed
25 with you at the beginning of the trial, some of the things

1 that you may consider as you decide whether to believe a
2 witness' testimony, you, the jury, can believe as much or
3 as little of each witness' testimony as you think is
4 proper. You may believe the testimony of a single witness
5 against that of many witnesses or just the opposite. You
6 may believe a part of a witness' testimony and disbelieve
7 the rest. The mere fact that a witness' testimony even in
8 expert witness' testimony is uncontradicted does not
9 render it undisputed. You, the jury, should assess the
10 credibility of each witness. You may consider whether any
11 witness has exhibited to you any interest, bias or
12 prejudice or other motive in this case. You may also
13 consider the appearance, the manner in which a witness
14 testifies while on the stand. You do not determine the
15 truth merely by counting the number of witnesses presented
16 by each side. Throughout this process, you have but one
17 objective and that is to seek the truth regardless of its
18 source.

19 Now, the rules of evidence ordinarily do not permit
20 witnesses to testify to opinions or to conclusions as an
21 exception to this rule that exist for witnesses that we
22 call expert witnesses. A witness who by education and
23 experience has become an expert in some art, science,
24 profession or calling may state an opinion as to relevant
25 and material matter in which the witness claims to be an

1 expert and they also state the reasons for that opinion.
2 You should consider any expert opinion received in
3 evidence in this case and like any other evidence give it
4 the weight that you think it deserves. If you decide that
5 the opinion of an expert witness is not based on
6 sufficient education and experience or if you conclude
7 that reasons given in support of the opinion are not sound
8 or that the opinion is outweighed by other evidence, you
9 may disregard the opinion in its entirety or if you find
10 that the testimony is credible and is supported, then you
11 may accept it entirely. It is solely up to you to decide
12 what the believability or credibility to give any
13 testimony. An expert witness' testimony is to be given no
14 greater weight than that of any other witness simply
15 because the witness is an expert. Further, you are not
16 required to accept an expert's opinion even though it's
17 not contradicted.

18 Now, I further instruct you and emphasize that the
19 fact that the defendant in this case did not testify is
20 not a factor to be considered by you in any way in your
21 deliberation and in your consideration on the question
22 guilt or innocence of the defendant. It must not be
23 considered by you in any manner whatsoever.

24 A defendant has the constitutional right to remain
25 silent and the assertion of this right must not be

1 considered by you in your deliberations. I repeat under
2 your oath you are to draw no conclusion whatsoever from
3 the fact that the defendant in this case did not testify.
4 The fact that this defendant did not testify should not
5 even be discussed in the jury room. The burden of proof
6 as I've stated to you is on the State. The defendant is
7 not required to prove his innocence. The burden of proof
8 remains on the State to prove guilt beyond a reasonable
9 doubt.

10 Now, the defendant is charge with distribution of
11 crack cocaine under South Carolina code 44-53-375 which
12 reads: A person who manufactures, distributes, dispenses,
13 delivers, purchases or otherwise aids, abets, attempts or
14 conspires to manufacture, distribute, dispense, deliver or
15 purchase or possess with intent to distribute dispense or
16 deliver cocaine base, which is also known as crack cocaine
17 is guilty of a felony. In this case, the State must prove
18 beyond a reasonable doubt that the defendant distributed
19 crack cocaine. The distribute means to deliver or to
20 actually, constructively or attempt to transfer a drug
21 other than administering or dispensing that drug. Deliver
22 means to actually, constructively or attempt to transfer a
23 drug. A transfer can involve an exchange for money, a
24 barter or a gift. It does not have to be anything given
25 in exchange for the drugs for a transfer to constitute a

1 distribution. Simply a giving of drugs from one person to
2 another, either with or without an exchange of
3 compensation would constitute a distribution.

4 Now, Mr. Foreman, and ladies and gentlemen of the
5 jury, as you retire to begin your deliberations, I wish to
6 express the hope that each of you will be mindful of the
7 importance of your responsibility. You are not called
8 upon to serve as jurors very often. And the proper
9 performance of the duty requires each of you to reach the
10 height of freeing your mind of all improper influences.
11 You and I acting for the community and that is why we must
12 see to it that this trial is fair and that the verdict is
13 just.

14 You observe that the presiding officer of this court
15 is always addressed as Your Honor. Well, the reason is
16 not because of the person wearing this robe, but that this
17 court is entrusted with the honor of this community, the
18 honor of this State, and the honor of this country in
19 seeking that every case that is tried here receives fair
20 and impartial justice. Now, you, the jury, take into your
21 care the preservation of the honor of this community, the
22 honor of this state, and the honor of this country. Do
23 not get the idea that I'm trying to intimate to you how I
24 might think you should decide this case cause I've already
25 told you under the laws of the State of South Carolina

1 you, the jury, are the sole judge of all questions of
2 fact. It would be highly improper for me to influence you
3 in the performance of that duty. But as a presiding
4 officer of this court, I am vitally concerned that
5 whatever your verdict that you find will be the result of
6 your going into the jury room, confining your
7 consideration to the evidence in this case to the law that
8 you have heard in this courtroom weighing it fairly and
9 impartially as I have every confidence that you will do.

10 Ladies and gentlemen, everyone is entitled to justice
11 in this case both the State and the defendant all are
12 entitled to justice nothing more nothing less. Your
13 verdict in this case cannot be based on sympathy,
14 compassion, prejudice or emotion or some other
15 consideration that is not found in the evidence. The
16 Court is of the confirmed opinion that whatever verdict
17 you reach will represent truth and justice for all the
18 parties involved. And remember, ladies and gentlemen,
19 your verdict in this case must be unanimous. All of you
20 must agree on the verdict.

21 Now, the verdict form is very simple. And,
22 Mr. Foreman, it will be in the front cover of this
23 notebook when I send it back, but it's very simple. It's
24 simply we, the jury, find the defendant, Damont McFadden,
25 either not guilty or guilty of the charge of distribution

1 of crack cocaine. So it's not a complex verdict form to
2 deal with. Also, I'm going to in a moment send back to
3 you the exhibits which have come into evidence during the
4 trial of this case. One of these exhibits, ladies and
5 gentlemen, as you know is this video. If you wish to see
6 that video again, that's fine. Mr. Foreman, if you just
7 send a note out to the Court to let the Court know that
8 the jury would like to see the video again, that's fine.
9 I'll bring you back out and we'll set it up and we'll show
10 it to you again, that's if you need to see it. But all of
11 this evidence will be back in the jury room with you.

12 Now, what I'm going to do at this time, I'm going to
13 ask you to go back into your jury room. Do not begin your
14 deliberations yet. I'm going to confer with the lawyers
15 to make sure I didn't miss anything in the charge or leave
16 anything out or if I needed to add anything. If the
17 charge is -- if there is something I need to add to it,
18 I'll bring you back out and I'll give you that
19 instruction. If it's good as is, I'll send these exhibits
20 and this notebook back to you. And, Mr. Malloy, when you
21 receive the evidence and this notebook, that will be your
22 cue to begin deliberations, okay. So if you please step
23 back into your jury room, but don't start quite yet.

24 (WHEREUPON, the jury retire to the jury room.)

25 THE COURT: Any objections or exception to the charge

1 from the State?

2 MR. JEPERTINGER: Your Honor, the only thing on page
3 12 you have the word plaintiff, I know you substitute
4 State during your -- just ask that you strike that for the
5 State.

6 THE COURT: Okay. Anything further?

7 MR. JEPERTINGER: No, sir.

8 THE COURT: Anything from the defense?

9 MR. FLOYD: Nothing, Your Honor. Thank you.

10 THE COURT: All right.

11 MR. JEPERTINGER: It's on the fifth line.

12 (WHEREUPON, a pause in the proceedings.)

13 THE COURT: All right, Sam, if you would -- have
14 y'all look through -- it's these three pictures, the drugs
15 and the video?

16 MR. JEPERTINGER: Yes, sir.

17 THE COURT: Okay. Just send them back there and tell
18 them to begin their deliberations.

19 MR. JEPERTINGER: Your Honor, we will need the
20 alternate out as well.

21 THE COURT: Sam, please ask the alternate to step
22 out.

23 (WHEREUPON, the jury began deliberations at 11:14
24 a.m.)

25 THE COURT: Okay. Ms. Gordon, ma'am, I certainly

1 want to thank you and I appreciate your participation. I
2 always relate this kind of to sports. You're kind of like
3 that player that has practiced all week with everybody and
4 now it's time to play the game and the coach want let you
5 play. It's a tough position to be in, but it's certainly
6 very important because if for any reason any of the other
7 jurors were not able to go forward, obviously you would
8 have to step in. And so it was important that you heard
9 everything they heard as well obviously. What I'm going
10 to do is excuse you at this time, ma'am, and ask you on
11 the number, the call back number, if you would please call
12 that number after six o'clock this evening. There will be
13 an instruction on there, okay. So if you would follow the
14 officer out and just call that number after six, please.

15 (WHEREUPON, the alternate was excused.)

16 THE COURT: All right. We will be at ease then while
17 the jury is deliberating.

18 (WHEREUPON, court at ease while awaiting a verdict.)

19 (WHEREUPON, Court's Exhibit No. 1 was marked for the
20 record.)

21 THE COURT: Let me go on the record real quick. I
22 was pass this note from the jury and it says we would like
23 to see the video again, but only the period of time from
24 the car stopping until the end of the video. Please have
25 the audio turned up high. So what I would suggest

1 gentleman is that forward that disk until they get right
2 as the car is getting ready to stop and then pause it at
3 that point. And then when the jury comes in, then, you
4 know, hit play and let it run to the end. And, Fitzlee, I
5 may get you to stay close by, but you already with the
6 remote to adjust the volume up or down or however. And
7 also ask that y'all roll that a little bit closer to the
8 jury box that might help with the sound.

9 All right, State ready?

10 MR. JEPERTINGER: The State ready and we're going to
11 have Mr. McEachin there.

12 THE COURT: Right.

13 Defense ready?

14 MR. FLOYD: Yes, Your Honor.

15 THE COURT: All right. Sam, ask the jury to join us.

16 (WHEREUPON, the jury return to the courtroom at 11:38
17 a.m to watch the DVD.)

18 THE COURT: All right. Ladies and gentlemen, I
19 received your note. We have -- I believe we've queued this
20 up where you wanted it. All of the prior driving, we've
21 gotten past that and we're right at where the car stops
22 and then we'll play on to the end.

23 MR. JEPERTINGER: May we approach one second?

24 THE COURT: All right.

25

1 (WHEREUPON, a bench conference was held in the
2 presence of the jury, but out of the hearing of the
3 jury.)

4 THE COURT: Ladies and gentlemen, Mr. McEachin, who
5 has the remote, I think does have the ability to stop it.
6 If at any time you -- in other words, I'm going to have
7 him operate this video to your liking. So if you need him
8 to stop it or need him to go back, you just let him know
9 what you need. But at this time, I'm going to have him go
10 ahead and roll the video.

11 (WHEREUPON, the DVD is played for the jury.)

12 THE COURT: All right. That's all you need on that,
13 I'll ask you to return then to your jury room and continue
14 your deliberations, please.

15 (WHEREUPON, the jury retire to the jury room to
16 continue deliberations at 11:53 a.m.)

17 THE COURT: Okay. Now, ladies and gentlemen, I'm
18 instructed that the jury has reached a verdict and I sit
19 here as all of you do. I have no idea what that verdict
20 is. But I do know this that whatever it is, the jury is
21 entitled to have their verdict received in a professional
22 manner. So basically what I'm saying is I'm not going to
23 tolerate any outburst so that -- regardless of what the
24 verdict is if you feel like you're not able to accept or
25 receive the verdict in a professional manner, then you

1 need to leave the courtroom at this time. Because as I
2 indicated, I'm not going to tolerate the jury not having
3 -- not being shown the respect they deserve.

4 Having said that is the State ready to receive the
5 jury verdict?

6 MR. JEPERTINGER: The State is ready, Your Honor.

7 THE COURT: Is the defense ready to receive the jury
8 verdict?

9 MR. FLOYD: Yes, Your Honor.

10 THE COURT: Sam, ask the jury to come in please.

11 (WHEREUPON, the jury return to the courtroom with a
12 verdict at 12:57 p.m.)

13 THE COURT: All right. Mr. Foreman, has the jury
14 reached an unanimous verdict sir?

15 MR. MALLOY: Yes, Your Honor.

16 THE COURT: All right. If you would please pass that
17 to madam clerk.

18 Madam clerk, if you would publish the verdict for the
19 jury, please.

20 THE CLERK: The State of South Carolina, County of
21 Florence, in the court of general sessions, Twelfth
22 Judicial Circuit, The State of South Carolina vs. Darnell
23 Damont McFadden, indictment number 2008-GS-21-1598. We,
24 the jury, find the defendant, Darnell Damont McFadden,
25 guilty of distribution cocaine base also known as crack

1 cocaine. Dated April 15, 2009, sign Terrence Malloy,
2 foreman.

3 Members of the jury, if this is your verdict, please
4 raise your right hand?

5 (WHEREUPON, all jurors' hands were raised.)

6 THE COURT: Thank you, ladies and gentlemen. Give me
7 one second. Is the solicitor still down here? Ladies and
8 gentlemen, I just wanted to check and the Solicitor's very
9 kind to inform me that he wanted me to thank you very much
10 for your services and I'm going to speak to you in just a
11 moment.

12 After this all over, your service for the week is
13 terminated. You're free to go for the balance of the
14 week. We do, I think, have the panel calling back after
15 six tonight because we may have some other matters, but
16 the 12 of you don't have to call back. You will be free
17 to go. I want to thank you on behalf of the Florence
18 community for your service this week. I realize that jury
19 service, as I said to you on Monday, is not convenient for
20 any of you, but it is a service to your community and I
21 want to thank you for honoring that service by your time
22 here this week with regards particularly to this trial. I
23 want to thank you for your attentiveness and for your
24 timeliness. I ask you to be here at certain times and you
25 were all here. And if there were any delays in this trial

1 at all, they were caused by me in matters that I had to
2 take up. So I want to thank you so much for your time
3 this week.

4 It is -- you have earned an exemption. You recall I
5 said earlier when I was qualifying you as a group, that
6 you're not required to serve on jury duty more than once
7 every three calender years, so you have earned an
8 exemption. So if you receive a notice for circuit court
9 again this year or 2010 or 2011, if you receive a summons,
10 you can respond back to that summons that you are claiming
11 that exemption, if you wish to not serve. But please
12 understand this, that's just an exemption. It doesn't
13 mean that you're not entitled to serve. You certainly may
14 serve as many times as you're summoned, if you want to do
15 that. So I would encourage you to continue to exercise
16 your service. I'm 53 years old and I have never been even
17 summoned for jury duty until just about a year ago and
18 then it was for a term of court that I was presiding over.

19 I tell you that because jury service is something
20 that may come around only once in your lifetime. I regret
21 that I've never had that opportunity to do it. And you
22 may be sitting there after this week going, you ought to
23 thank God you didn't have to do it. But anyway, it's a
24 very honorable service and you've performed it beyond the
25 call and I want to thank you for that.

1 I hate to tell you that your check's in the mail, but
2 that's kind of the way it is. Madam clerk, will mail you
3 your checks for this week and you'll like I said don't get
4 terribly excited. It's not very much money. Your service
5 is obviously more valuable than what we could afford to
6 pay you, but you will receive that. If anyone needs a
7 work excuse before you get your check in the mail, if you
8 need something to take to your work for example
9 tomorrow... If you need that work excuse before you
10 leave, you can see Nicole she'll get you that here today.
11 If you don't need that work excuse, then you're free to
12 go.

13 Now, I will tell you this and I tell all juries this.
14 You are certainly free to go. If you wish to stay around
15 for sentencing, you are welcome to do that. You've work
16 this case, you are entitled to know what happens with it.
17 But if you wish to leave, you certainly are free to go.
18 And as I said, you're excused for the balance of the week.
19 You don't have to come back this week. So thank you very
20 much, ladies and gentlemen.

21 If everyone else will remain seated, those members of
22 the jury that wish to leave are welcome to do so at this
23 time.

24 (WHEREUPON, the jury was dismissed.)

25 THE COURT: All right. At this time, I will be

1 willing and happy to hear from anyone regarding any
2 posttrial motions.

3 MR. JEPERTINGER: There's nothing from the State,
4 Your Honor.

5 THE COURT: All right. Thank you, sir.
6 Mr. Floyd.

7 MR. FLOYD: Your Honor, may it please the Court, the
8 defense will just move to renew the motions I previously
9 made, Your Honor. And also I would like to make a motion
10 on new trial specifically, Your Honor, on the Batson issue
11 that we raised at the beginning of the trial. I felt at
12 the time been appropriate to strike a new jury. Of
13 course, I think at this point motion for a new trial will
14 be appropriate on those grounds. And also, Your Honor,
15 make a motion for new trial based on my objections to the
16 introduction of the video and the drugs. My objections
17 are raised for the authentication of the video and the
18 chain of custody on the drugs, Your Honor. Thank you.

19 THE COURT: All right. Thank you, Mr. Floyd. I'm
20 going to respectfully deny those motions. I believe the
21 evidence that was sufficient for a jury whereby a jury
22 could find the verdict that they did in fact reach. I now
23 have -- would stand by my rulings regarding the Batson
24 issue that I made when we started this case earlier, that
25 the State's strikes were appropriately used. And then

1 with regards to the admissibility of those items, I
2 believe that the proper foundation was in fact laid.
3 These items were admissible under the law. I would
4 certainly note your exceptions to that ruling, Mr. Floyd.

5 MR. FLOYD: Thank you, Your Honor.

6 THE COURT: All right. State ready to proceed to
7 sentencing?

8 MR. JEPERTINGER: Yes, sir.

9 THE COURT: Defense, please come around.

10 MR. JEPERTINGER: Your Honor, here is the sentencing
11 sheet. Your Honor, we have the certified convictions.

12 THE COURT: Well, I have the one that we did earlier.

13 MR. JEPERTINGER: Well, that was on a plea, Your
14 Honor. This is on a conviction.

15 THE COURT: Well, this one wasn't marked, so I marked
16 it as a conviction.

17 MR. JEPERTINGER: All right.

18 THE COURT: Is that what you're talking about right
19 here?

20 MR. JEPERTINGER: Yes, sir.

21 THE COURT: Everything else is the same.

22 MR. JEPERTINGER: Everything else would be the same
23 serious as indicted. If it please the Court, Your Honor,
24 show this to the defense. These are certified convictions
25 of his predicate offenses for the enhancement, Your Honor.

1 Certified true copies that I show you, Your Honor. In
2 1995, under 95-GS-21-380 Darnell McFadden was sentence to
3 distribution of crack cocaine youthful offender sentence.
4 And under 99-GS-21-423 and 99-GS-21-02, Your Honor, he had
5 distribution of crack cocaine and possession of powder
6 crack cocaine and sentence on that looks like was
7 September 30th 1999, and I cannot read the judge's
8 signature, Your Honor.

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

10 MR. JEPERTINGER: He had some other records, Your
11 Honor, but based on those predicate offenses, that's all
12 the State will provide.

13 THE COURT: Okay, these were entered into at the same
14 time?

15 MR. JEPERTINGER: Yes, sir.

16 THE COURT: I got you, okay.

17 Mr. Floyd, be happy to hear from you, sir.

18 MR. FLOYD: Thank you, Your Honor. Your Honor,
19 Mr. McFadden he soon going to turn 33 I think at the end
20 of this month. He'll have his 33rd birthday; is that
21 right?

22 DEFENDANT MCFADDEN: By the time I get out ---

23 MR. FLOYD: No, I'm talking about you.

24 DEFENDANT MCFADDEN: I'll be 33 end of this month.

25 MR. FLOYD: He's been a residence of Lake City area

1 his whole life. He has a large family who are here with
2 him today, Your Honor. I note there were some issues in
3 the courtroom earlier, but I'm sure, you know, they were
4 speaking out of love and concern for him. You know,
5 that's why they were speaking regardless of whether I
6 agreed with the advice they were giving him. You know,
7 I'm sure it was all motivated out of love for their
8 brother.

9 Your Honor, obviously, he's been convicted by the
10 jury and it's up to you to do the sentencing. Darnell
11 apparently, you know, I been talking to his family and
12 he's apparently here in the last year or so he's started,
13 you know, dating a young lady who works over at the
14 hospital. He turned his life around. He's got a small
15 child, who is only two years old, saw him out in the
16 hallway cute little boy. Your Honor, we would just ask if
17 you could be as merciful as possible to Mr. McFadden under
18 the circumstances. Obviously, we're all aware that, you
19 know, there are minimum sentences in this case that you
20 have to hand out. And we would ask, Your Honor, to
21 consider, you know, a minimal sentence in this case.

22 THE COURT: All right. Thank you, Mr. Floyd.

23 Mr. McFadden, you have anything you want to tell the
24 Court, sir?

25 DEFENDANT MCFADDEN: Yes, sir, I'm sorry to the

1 court. I'm sorry what I did. And I got a two-year-old
2 son and another baby on the way.

3 THE COURT: All right.

4 DEFENDANT MCFADDEN: I want you to have leniency as
5 you can on me.

6 THE COURT: All right, sir.

7 If there's anyone that wishes to address the Court on
8 behalf of Mr. McFadden, I'm more than happy to hear from,
9 if there's anyone that wishes to address the Court.

10 Yes, sir, and if I could just get your name for the
11 record, sir, please?

12 MR. GAMBLE: Randy Gamble.

13 THE COURT: Yes, sir, Mr. Gamble.

14 MR. GAMBLE: I'm his next to oldest brother.

15 THE COURT: Yes, sir.

16 MR. GAMBLE: He was working with me doing roofing
17 contract working and stuff. And he was seem to be doing
18 good, you know, job working and stuff. I know he made a
19 mistake, so I just ask the Court to be as merciful to him
20 as you can.

21 THE COURT: All right. Thank you, sir. And I
22 appreciate you being here to support him.

23 Anyone else?

24 MR. MCFADDEN: I'm Roneil McFadden and I'm the third
25 oldest brother and I just ask that, you know, that, you

1 know, you just be lenient on him as you can.

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

3 MR. MCFADDEN: My name is Melvin McFadden. I'm
4 Darnell brother. And Darnell -- I hope he change his
5 life. He got a two-year-old baby just like he said and
6 got another one on the way anyway possible for you to have
7 mercy on him.

8 THE COURT: Thank you very much and I appreciate you
9 being here as well, sir.

10 Yes, ma'am, if I could get your name, please?

11 MISS HICKSON: Latonya Hickson.

12 THE COURT: Yes, Miss Hickson.

13 MISS HICKSON: I'm the mother of his two-year-old
14 child and I have a baby on the way, I'm four months. I'm
15 asking the Court to help him out and feel pity for him,
16 please.

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

18 Mr. McFadden, in 1995, you got convicted of this
19 charge, the same charge. You got a youthful offender
20 sentence, so you did sometime on that. And then in 1999
21 four years later, another distribution case and you got a
22 four year sentence on that. Why do you keep going back to
23 this?

24 DEFENDANT MCFADDEN: What happened with that charge
25 right there I was with somebody and they didn't own up to

1 it.

2 THE COURT: Well, I understand, but you went to
3 prison though.

4 DEFENDANT MCFADDEN: Yes, sir.

5 THE COURT: Whether it was something you did or
6 somebody else did, you went to prison for somebody selling
7 crack.

8 DEFENDANT MCFADDEN: Yes, sir.

9 THE COURT: Why would you go back to doing it?

10 DEFENDANT MCFADDEN: Your Honor, I ain't got no
11 father and my mama got ten boys and one girl. She had
12 three strokes. And she couldn't -- I couldn't do nothing.
13 I wasn't working at the time and so I got to provide for
14 her.

15 THE COURT: What really bothers me and it's what led
16 to me making those comments I made earlier is -- and I
17 don't how much of this is truthful or not. I know one
18 thing that's truthful and I'll point that out. You know,
19 the State made you an incredible offer to reduce this
20 charge down and do a five year sentence. And it's my
21 understanding that some members either members of your
22 family or members of a group of friends or somebody talked
23 you out of that, that you were willing to plead guilty and
24 take that five years and you got talked out of it. And
25 then you came before the Court after that was lifted off

1 the table and you came before the Court to plead guilty as
2 charged and you were looking at a sentence at that point
3 from 15 to 30, which is what you're looking at now. And I
4 know this to be true, one of the individuals in this
5 courtroom before -- right before you came up to do the
6 plea looked over at you and told you that they wouldn't do
7 it. They wouldn't take that plea. And so I got a young
8 man standing in front me of who I think through either
9 their family members or through friends ignored the advice
10 of your lawyer and choose to roll the dice. And those
11 people Mr. McFadden who are giving you that advice, it's
12 easy to give somebody advice when you don't have to do the
13 time. It's easy for somebody to convince you to do
14 something different when they don't have to do the time.
15 And it just -- it grieves me because I mean you've always
16 been very polite to the Court. You always been very
17 mannerable, seem like a nice young man.

18 DEFENDANT MCFADDEN: Yes, sir.

19 THE COURT: And you let some clowns -- I don't know
20 if they're family or friends, but somebody close to you
21 talked you into a 15 to 30 year sentence. And I'll tell
22 you this now, whoever that was didn't do you any favors,
23 sir. They did you a great great disservice. And now, if
24 I give you the very minimal, that's three times more than
25 what you were willing to plead to earlier this week, but

1 somebody talked you out of it.

2 DEFENDANT MCFADDEN: I'll plead on it today.

3 THE COURT: I don't have the choice. I mean, I hope
4 you understand that now. What -- where we're at now is 15
5 is the least I could do. It doesn't matter if I'm your
6 best friend and I like you and I want to help you out. By
7 the law, I can't go under 15 and I can go up to 30. And
8 it just -- I will tell you this, if I could give you 15
9 and give that other person 15, I'd do it. I send that
10 person to prison who talked you out of doing what you
11 initially were going to do.

12 DEFENDANT MCFADDEN: Yes, sir.

13 THE COURT: Sir, you can turn right round and have a
14 seat. That's probably one of them right there that talked
15 you out of it. Did you serve any time in jail on this
16 charge while you were in jail?

17 DEFENDANT MCFADDEN: Two days.

18 THE COURT: Well, you will get credit for any time
19 that you did serve. Mr. McFadden, I don't mind telling
20 you what has made this difficult for me is this, is I
21 think if you would have sat down with your lawyer -- I
22 mean, there's no question that's you on the videotape.
23 And I mean, you know that you sold this crack to that
24 lady, so there's no question that that's you. The jury
25 did the right thing. I don't question a jury, I just

1 don't know why it took so long to come up with that
2 verdict. It's clearly you on that videotape. But I
3 believe that you were going to do the thing, you were
4 going to plead. And I think if you'd gotten with
5 Mr. Floyd and you gotten your family to get away from you
6 and your friends to get away from you, I believe you'd
7 taken that five year sentence. You'd served a portion of
8 that. You'd been back home with your children.

9 Whether Mr. Floyd is right and that advice was given
10 to you out of love or whether it was given to you out of
11 stupidity, I don't know, but the bottom line is I'm
12 convinced that somebody talked you out of doing the right
13 thing. The legislature provides that on a charge like
14 this that if you receive a third conviction, that puts you
15 up into the 15 to 30 range. You have two prior
16 convictions, which is why you're here. And under normal
17 circumstances, I would just sentence you to 30 years.

18 DEFENDANT MCFADDEN: Please don't do that.

19 THE COURT: Well, I'm going to give some
20 consideration to that fact that I think that you were
21 influenced by family and or friends to do the wrong thing.
22 Now, that doesn't excuse you from making that decision
23 because you're a man. You're about to be 33 years old, so
24 you're a grown man. You ought to know better than to
25 listen to other people. You could tell other people to

1 take a hike.

2 DEFENDANT MCFADDEN: Yes, sir.

3 THE COURT: And focus on what your lawyer tried to
4 help you do.

5 DEFENDANT MCFADDEN: Yes, sir.

6 THE COURT: I'm going to tell you I don't know how he
7 did it, but he got the State to come off of that 15 to 30
8 and offer you five.

9 DEFENDANT MCFADDEN: Sir, is there anyway you can
10 break it down to 15?

11 THE COURT: I'm going to do what I think is
12 appropriate because I'm going to tell you what I -- this
13 is -- judge's have different ways of sentencing. I look
14 at people and I determine whether or not these people are
15 taking responsibility for what they done. They've
16 admitted their wrong and they taken responsibility for it
17 and I give them credit for that. On indictment
18 2008-GS-21-1598, sentence of the Court is that you be
19 committed to the state department of corrections for a
20 period of 22 years. Give you credit for any time that you
21 have served. Good luck to you, sir.

22 END OF REQUESTED TRANSCRIPT

23

24

25

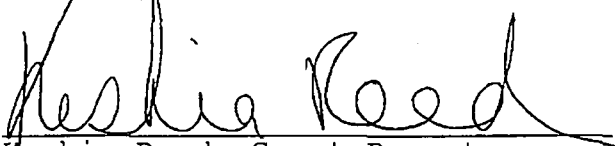
1 CERTIFICATE OF REPORTER

2 STATE OF SOUTH CAROLINA

3 COUNTY OF FLORENCE

4
5 I, Keshia Reed, Court Reporter and Notary Public
6 in and for the State of South Carolina At Large, do hereby
7 certify that the above-entitled cause was heard as
8 hereinafter set out; that I was authorized to and did
9 transcribe the said proceedings; and that the foregoing
10 and annexed pages, numbered 1 through 173, inclusive,
11 constitute a true and accurate transcription of my
12 stenographic report of the said cause taken during the
13 said hearing.

14 In witness whereof, I have hereunto affixed my
15 signature this 8th day of October, 2009.

16
17 
18 Keshia Reed, Court Reporter
My Commission Expires: 6-5-2010
19
20
21
22
23
24
25

FORM 5

2012 CP 21 178

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

County of FLORENCEDONWELL MC FADDEN #229635

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR
POST-CONVICTION RELIEFFILED
2012 JUL 10 PM 1:49
CONNIE REEL, CLERK
C.C.P. & G.S.
FLORENCE COUNTY, S.C.INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LEE CORRECTIONAL INST. 990 WISKEY Highway, Bishopville, S.C. 29010
2. Name and location of Court which imposed sentence FLORENCE COUNTY GENERAL SESSION COURT
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008 - GS - 21 - 01598
 - (b) 22 yrs DISTRIBUTION CRACK COCAINE BASE

Mailed 7/23/12
cc: MCFadden
TELETYPE UNIT FOR FILE

CERTIFIED: A TRUE COPY
Connie Reel Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) April 14-15, 2009 22 yrs
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty June Trial
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeal
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Unpublished Opinion No. 2012-UP-028
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. November 16, 2011
- ii. January 25, 2012
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Affirmed
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) INEFFECTIVE ASS. OF COUNSEL

(b) CHAIN OF CUSTODY RULE 6

(c) TAMPERING WITH EVIDENCE

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) STRICKLAND VS. WASHINGTON

(b) STATE VS. SWEET, 374 S.C.1, 6 (2007) STATE VS. CHISTEN

(c) MELANDEA - DINE VS. MASS. 129 S.C. 2587 (2012)

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NONE

(d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. FIRST POST CONVICTION RELIEF
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. SAME
- ii. " "
- iii. " "

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) SAME: Trial Counsel was not perjure nor did
 (b) he investigate the evidence of STATE CASE.
 (c) STATE CREATED Racial Discrimination; Racial Disparities

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? YES
 (b) your trial, if any? YES
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Unpublished opinion No. 2012-UP-028
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:

- i. Scott Floyd
Public Defender Office
 ii. _____
 iii. _____

- (b) the proceedings at which each such attorney represented you:

- i. Trial
 ii. "
 iii. "
 "

19. State clearly the relief you seek in filing this application:

HAVE SENTENCE VACATED AND REMOVE FROM RECORD

"

"

"

20. Are you now under sentence from any other court that you have not challenged?

NONE

STATE OF SOUTH CAROLINA)

VERIFICATION

County of FLORENCE)

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Daniel McEadden

SWORN to and subscribed before me this 9
day of July 2013.

Debra Sikes (L.S.)
Notary Public

My Commission Expires: 11-4-2015

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Donnell McLaughlin
Applicant

SWORN or affirmed to and subscribed before me this

9 day of July, 2012.

Debra Sines
Notary Public

My Commission Expires: 11-4-2015

STATE OF South Carolina
County of Florence

DARNELL McFadden
Defendant

vs.

STATE OF South Carolina

181
in The Court of Common Pleas

COVER SHEET
RETURN Application
AND ATTACHMENT
SHEET'S AFTER
CLOCK STAMP, DATE

DEAR

I AM REQUESTING upon the Clerk of Court receiving my PCR Application and Attachment sheet to be clock stamp, date and return to sender. Thank you for your assistance.

FILED
2012 JUL 10 PM 1:49
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

July 09, 2012

Bishopville, S.C.

Darnell McFadden
DARNELL D. McFADDEN #22963
SUMTER N. 1207
LEE CORRECTIONAL INST.
990 Wisacky Highway
Bishopville, S.C. 29012

CERTIFIED: A TRUE COPY

Connie Reel Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Defendant argued that his trial counsel was not ready to commence or aid him in this criminal trial, in which the trial court denied Defendant which left him handicapped.

STATEMENT OF FACTS

The record will show that counsel was ineffective as he failed to secure in the interest of justice by retaining in writing that Defendant will plead guilty to the offer of five year sentence as the state will draw its plea.

Defendant argued once he had inform the court that his counsel was not prepare as counsel allow his personal opinion affect his duty to give his client an adequate and accurate defense.

ISSUES

that counsel investigate concerning both C.I. informant to learn that the C.I. was arrest on criminal and in return with their help and testimony their criminal charges would be dismiss due to their cooperation.

state has failed to establish a complete chain of custody under S.C. Crim. Rule of law, Rule 6... as the link was broken when all's participant failed to submit a form B-C of Rule 6 chain of custody as the state explain by Police officer gave C.I. \$60.00 to by crack... but the C.I. spent only \$20.00 for her purchase... but upon the arrest the Police officer never recover the marked \$20.00 bill as it close the Police Department target the McFadden residence which created racial discrimination, racial disparate.

THE UNITED STATES FEDERAL GOVERNMENT HAS CREATED RACIAL DISCRIMINATION. RACIAL DISPARATE WHEN THE FEDERAL GOVERNMENT OPENLY ADMITTED THEY PROVIDE FEDERAL FUNDING TO LOCAL LAW ENFORCEMENT AGENCY'S USING EXCUSE WAR ON DRUG'S TARGETING AFRICA AMERICA, AND LATINO.

SECTION 601 OF TITLE VI, PROVIDING THAT NO PERSON SHALL BE SUBJECTED TO DISCRIMINATION UNDER ANY COVERED PROGRAM OR ACTIVITY ON BASIS OF RACE, COLOR, OR NATIONAL ORIGIN, PROHIBITS ONLY INTENTIONAL DISCRIMINATION. CIVIL RIGHT ACT OF 1964 § 601, 42 U.S.C.A. § 2000d. CITING Alexander vs. Sanders, 532 U.S. 275 (2001)

SOUTH CAROLINA RULES OF CRIMINAL PROCEDURE - COURT RULE 22 A
RULE 6. RULE FOR CHEMICAL ANALYSIS AND CHAIN OF CUSTODY.

STATE FAILED TO PROVE A SUFFICIENT CHAIN OF CUSTODY, AND THUS, THE CRACK COCAINE SHOULD NOT HAVE BEEN ADMITTED INTO EVIDENCE; ALTHOUGH STATE PRESENT THE TESTIMONY OF THE FIRST AND LAST LINKS IN THE CHAIN OF CUSTODY, THE STATE DID NOT PROVIDE TESTIMONY FROM EITHER OF THE INTERVENING LINKS IN THE CHAIN OF CUSTODY, AND STATE DID NOT SUBMIT THE TESTIMONY OF EACH'S INDIVIDUAL WHO HANDLED THE EVIDENCE NOR DID THE STATE COMPLY WITH RULE WHICH ALLOWS FOR THE ADMISSION OF SWORN STATEMENTS IN LIEU OF THE APPEARANCE OF CHAIN OF CUSTODY

WITNESSES. STATE VS. CHISOLM, 355 S.C. 175, 584 S.E. 2d 401 (2002)
CITING STATE VS. SWEET, 374 S.C. 1, 6 (2002)

CRIMINAL LAW 404.60, STATE FAILURE TO PRODUCE STATE CHEMIST WHO RETRIEVED MARIJUANA AND CRACK COCAINE, EVIDENCE FROM DEP BOX AND RETAINED IT FOR SIX MONTHS WHILE ANALYZING IT. AFTER DEFENDANT OBJECTED TO STATES USE OF CHEMIST'S REPORT AT

TRIAL, ~~REVEREND~~ STATE'S PROOF OF CHAIN OF CUSTODY FOR MARIJUANA AND CRACK FATALLY DEFICIENT, AND THEREFORE, ADMISSION OF SUCH EVIDENCE WAS REVERSIBLE ERROR IN PROSECUTION FOR POSSESSION OF CONTRABAND, THOUGH CHEMIST HAD MOVED TO ANOTHER STATE. STATE VS. JOSEPH, 328 S.C. 352, 491 S.E. 2d 275, REHEARING DENIED, CERTIORARI DENIED CRIMINAL LAW 404.60; CRIMINAL LAW 1169.1 (10).

TRIAL COURT'S DUTY UPON PROPER OBJECTION BY OPPOSING PARTY OR DEFENDANT TO REQUIRE PRESENCE OF CHEMIST, RATHER THAN CHEMIST'S REPORT, TO ESTABLISH THAT MATERIAL IS CONTAINS SUBSTANCE STATED IS MANDATORY, NOT PERMISSIVE, STATE VS. JOSEPH, S.C. RULE OF CRIMINAL PROC. 17-23-60 (1985) AND 17-23-100 RIGHT TO CONFRONT ACCUSER.

CITING MELFENDER-DIAZ VS. MASSACHUSETTS, 129 S.C.T. 2527 (2009)

SIXTH AMENDMENT GUARANTEES DEFENDANT'S RIGHT TO CONFRONT THOSE WHO BEAR TESTIMONY AGAINST HIM, WITNESS TESTIMONY AGAINST DEFENDANT IS INADMISSIBLE UNLESS WITNESS APPEARS AT TRIAL OR IF WITNESS IS UNAVAILABLE DEFENDANT'S HAD PRIOR OPPORTUNITY FOR CROSS-EXAMINATION. U.S.C.A. CONST. AMEND 6 CRIMINAL KEY 662.7, 662.9, CITING POINTER VS. TEXAS, 380 U.S. 400 403, 85 S.C.T. 1065, 13 L. ED. 2d 923 (1965) CONFRONT WITNESS CITING, 541 U.S. AT 51, 124 S.C.T. 1354. A WITNESS TESTIMONY AGAINST DEFENDANT IS THUS INADMISSIBLE UNLESS THE WITNESS THE WITNESS APPEAR AT TRIAL OR IF THE WITNESS IS UNAVAILABLE THE DEFENDANT HAD A PRIOR OPPORTUNITY FOR CROSS-EXAMINATION. AT 54, 124 S.C.T. 1354 EX PARTE IN-COURT-TESTIMONY.

FOR A CASE IN WHICH THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT ORDERED HABEAS CORPUS RELIEF BECAUSE OF INSUFFICIENT EVIDENCE OF CONSTRUCTIVE POSSESSION, SEE GOLDSMITH VS. WITKOWSKI, 981 F.2d 697 (4th CIR. 1992)

(CONVICTION PREVIOUSLY AFFIRMED) IN STATE VS. GOLDEN, 185 S.C. 463, 392 S.E.2d 787 (1990).

RECENT South Carolina Court of Appeal's decision on CONSTRUCTIVE possession include, STATE VS. MOLLISON, — S.C. —, 459 S.E.2d 88 (Ct. App. 1995) STATE VS. BROWNIE, — S.C. —, 455 S.E.2d 704 (Ct. App. 1995) AND STATE VS. BALLEW, — S.C. —, 454 S.E.2d 355 (Ct. App. 1995).

THE CONTRABAND DRUGS STATUTES AND CASES AFFORD A NUMBER OF EXAMPLES OF THE RELATIONSHIP BETWEEN INTENT AND KNOWLEDGE, SOME OF WHICH ARE CLEAR AND SOME OF WHICH ARE CONFUSING. SIMPLE KNOWING OR INTENTIONAL POSSESSION IS WITH THE INTENT TO DISTRIBUTE, S.C. CODE ANN. 44-53-370 (1985) AND SUPP. 1994) ONE COULD NOT BE CONVICTED OF POSSESSION OR POSSESSED THEM OR IF HE WAS UNAWARE OF THE NATURE OF WHAT HE POSSESSED. STATE VS. ATTARD, 263 S.C. 546, 211 S.E.2d 868, 869 (1975)

ONE WHO DID NOT ACTUALLY POSSESS THE DRUGS COULD NONE-THE-LESS BE CONVICTED ON A [THEORY] OR CONSTRUCTION POSSESSION, AND THIS IS WHERE THE RELATIONSHIP BETWEEN INTENT AND KNOWLEDGE MAY BECOME A BIT CONFUSING. ONE HAS CONSTRUCTIVE POSSESSION OF CONTRABAND IF HE HAS KNOWLEDGE OF THE PRESENCE OF THE DRUGS AND DOMINION AND CONTROL, OR THE RIGHT TO EXERCISE DOMINION AND CONTROL OVER THEM. STATE VS. ELLIS, 263 S.C. 12, 22, 207 S.E.2d 408, 413 (1974) ACCORD STATE VS. BROWN, 267 S.C. 311, 227 S.E.2d 647 (1976).

CITING STATE VS. HATCHER, 384 S.C. 372, 681 S.E.2d 925 (Ct. App. 2004). THE SOUTH CAROLINA SUPREME COURT REASONED THAT THE LOWER COURT'S EXERCISE OF DISCRETION MUST BE REVIEWED IN LIGHT OF THE NATURE OF THE ARTICLE, THE CIRCUMSTANCES

SURROUNDING THE PRESERVATION AND CUSTODY OF IT AND THE
 LIKELIHOOD OF INTERMEDIARIES TAMPERING WITH THE EVIDENCE.
 Id. AT 94-95, 708 S.E.2d AT 754-55. THE COURT NOTED
 THAT SUCH REVIEW IS HIGHLY DEPENDENT UPON UNIQUE FACT
 CIRCUMSTANCE OF EACH CASE. Id. THE COURT FURTHER
 REASONED: IF UPON THE CONSIDERATION OF SUCH FACTORS
 THE TRIAL JUDGE IS SATISFIED THAT IN REASONABLE PROB-
 ABILITY THE ARTICLE HAS NOT BEEN CHANGED IN ESSENTIAL
 RESPECTS, HE MAY PERMIT ITS INTRODUCTION IN EVIDENCE.
 Id. AT 95, 708 S.E.2d AT 755 (CITING GILLESPIE VS. UNITED STATES
 276 F.2D 914, 917 (9th Cir. 1960)).

ESSENTIALLY, THE SOUTH CAROLINA SUPREME COURT REVERTED
 BACK TO THE STANDARD SET FORTH IN STATE VS. CARTER,
 344 S.C. 419, 544 S.E.2d 836 (2001) AND HELD, THE ULTIMATE
 GOAL OF CHAIN OF CUSTODY REQUIREMENTS IS SIMPLY TO ENSURE
 THAT THE ITEM IS WHAT IT IS PURPORTED TO BE. "HATCHER,
 392 S.C. AT 95, 708 S.E.2d AT 755. APPELLANT SUBMITS THAT
 THIS COURT OVERLOOKED THE UNIQUE FACTUAL CIRCUMSTANCES
 OF THE INSTANT CASE, WHICH CLEARLY DEMONSTRATE THAT THE
 EVIDENCE - FROM TAKING TO EXAMINATION - WAS NOT WHAT IT
 WAS PURPORTED TO BE NOR WAS THE MANNER OF HANDLING
 PROPERLY ESTABLISHED THROUGH THE TESTIMONY OF THE STATE'S
 WITNESSES.

July 09, 2012

Bishopville, S.C.

CERTIFIED: A TRUE COPY
 Given & Del. In open
 COURT OF COURT C.P. & G.S.
 CLARENCE COUNTY, S.C.

Darrell D. McFarland
 DARRELL D. MCFARLAND #20962
 SUMTER N. 1207
 WEE CORRECTIONAL INST
 990 WISACKY HIGHWAY
 BISHOPVILLE, S.C. 29010

STATEMENT

OFFICER BAZEN OUTFIT RONAN MCFADDEN WITH A [REDACTED] AUDIO SURVEILLANCE TO DO A DRUG BUST AND \$40.00 DOLLAR TO HELP HIS BROTHER GET THE FIVE YEAR PLEA BACK. THIS INFORMATION WAS NEVER BROUGHT OUT IN THE COURT ROOM. SINCE THE JUDGE DENIED MR. RONAN MCFADDEN TO SPEAK ON THE SUBJECT AS COUNSEL AND THE STATE KNEW ABOUT THIS TRANSACTION AND AGREE TO RE-IN-STATE DARNELL MCFADDEN FIVE YEAR'S PLEA, IN WHICH THE TRIAL JUDGE SENTENCED MR. FADDEN TO 22 YEARS TO SERVED IN THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS.

FILED

2012 JUL 10 PM 1:49

GAMIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
Carmie Reel Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Donnell McFadden, 229635

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2012-CP-21-178

RETURN
AND MOTION TO DISMISSFILED
DEC 19 AM 10:38
CONNIE REEL-SHEARIN
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

Respondent, making its Return to the Application for post conviction relief (PCR) filed July 10, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the December 2011 term of the Florence County Grand Jury for unlawful drugs and possession of stolen vehicle (2011-GS-21-1996). Richard Strober, Esquire, represented Applicant.

On April 15, 2009, Applicant was tried and convicted before the Honorable Thomas A. Russo and a jury. Judge Russo sentenced Applicant to twenty-two years imprisonment. Applicant filed a timely notice of intent to appeal with the South Carolina Court of Appeals. Respondent believes this matter is still pending. Attached herewith and incorporated herein are the records of the Clerk of Court regarding the subject conviction, and Applicant's SCDC records, and if available,

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Connie Reel Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

the transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of counsel"
2. "Chain of custody, Rule 6"
3. "Tampering with Evidence"

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second,

counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. Respondent submits that Applicant cannot satisfy either requirement of the Strickland test.

IV.

Applicant filed a Notice of Intent to Appeal with the South Carolina Supreme Court. The matter is presently pending on appeal; therefore, jurisdiction is in the South Carolina Supreme Court. In accordance with Rule 227, SCACR, and S.C. Code Ann. § 17-27-20(b) (1985), at the present time PCR is not available to the Applicant because the direct appeal is pending in the South Carolina Supreme Court. Al-Shabazz v. State, Op. No. 24995 (S.C. Sup. Ct. filed August 23, 1999). Therefore, this Application for PCR must be summarily dismissed without prejudice until such time as the direct appeal is resolved. Under these circumstances, Applicant's one-year statute of limitations will begin to run when the appellate court issues its remittitur.

The State therefore requests that this Court summarily dismiss the case on the basis that an appeal is currently pending on the same matter.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that the Application be denied and the matter dismissed without prejudice, and with leave to re-file once the appeal is concluded.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

10-18, 2012.

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

DONNELL MCFADDEN, #229635

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2012-CP-21-178

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return And Motion To Dismiss in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Daryl J. Corbin, Esquire
 227 West Evans St.
 Florence, SC 29503

DATED this 18th day of December, 2012

Norma Bigbee
 Norma Bigbee, Legal Assistant
 For Respondent

2012 DEC 19 AM 10:38
 GONNIE REEL-SHEARIN
 C.C.P. & G.S.
 FLORENCE COUNTY, SC

FILED

CERTIFIED: A TRUE COPY
Gonnie Reel Shearin
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE

The State of South Carolina,)

vs.)

Donnell McFadden,

Defendant.)

IN THE COURT OF GENERAL SESSIONS
INDICTMENT NO.:

2008 MAY 15 PM 2: 56

WARRANT NO. (S) K330242

CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

CHEMICAL ANALYSIS

**TO: E. L. CLEMENTS, III, SOLICITOR FOR THE TWELFTH JUDICIAL
CIRCUIT:**

Pursuant to Rule 6, S.C. Rules of Criminal Procedure the following defendant objects to the introduction of chemist's analyst's reports.

Donnell McFadden

Uk Met

JACK W. LAWSON, JR.

MICHAEL S. BELL

KAREN E. PARROTT

VICK MEETZE

SCOTT SUGGS

***SCOTT P. FLOYD**

A. GRAYSON SMITH

ATTORNEYS FOR DEFENDANT(S)

Florence, South Carolina

May 14, 2008

CERTIFIED: A TRUE COPY
Connie Red. Spence
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE }

COURT OF COMMON PLEAS

DONNELL MCFADDEN)
229635
PETITIONER,)

TRANSCRIPT OF RECORD
12-CP-21-178

v.)

STATE OF SOUTH CAROLINA,)
RESPONDENT.)

October 10, 2013
Florence, South Carolina

BEFORE :

THE HONORABLE WILLIAM H. SEALS, JR., JUDGE

APPEARANCES:

DARYL J. CORBIN, ESQ.
Attorney for the Petitioner

JOSH THOMAS, ESQ.
Attorney for Respondent

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

I N D E X

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Bradley Bazen:

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Scott Floyd:

Direct examination 22

Cross-examination 33

(There were no exhibits submitted.)

1 MR. THOMAS: May it please the Court, the
2 first case this morning is Donnell McFadden v. State
3 of South Carolina. This is case number
4 2012-CP-21-178. Mr. McFadden was indicted October
5 of 2008 for distribution of cocaine base. He's
6 represented on that charge by Scott Floyd. He was
7 tried on April 14th, 15th, 2009. The jury found him
8 guilty as indicted. The Honorable Thomas Russo
9 sentenced him to 22 years as a third offense drug
10 offender. He filed a timely appeal. The Court of
11 Appeals affirmed his conviction in opinion number
12 2012-CP-28 on January 25th, 2012. He filed this PCR
13 July of 2012. He's represented today by Daryl
14 Corbin and the State's ready to proceed. Thank you,
15 Judge.

16 THE COURT: Swear the Applicant.

17 WHEREUPON,

18 **DONNELL MCFADDEN,**

19 having been duly sworn by the Clerk of Court,
20 testified as follows:

21 MR. CORBIN: If I might, could I please
22 call a different witness at this time. At this time
23 we call Florence County Sheriff's Office
24 Investigator Bradley Bazen to the witness stand
25 please.

1 THE COURT: And Mr. McFadden, just have a
2 seat right there next to your lawyer.

3 WHEREUPON,

4 **BRADLEY BAZEN,**

5 having been duly sworn by the Clerk of Court,
6 testified as follows:

7 THE CLERK OF COURT: If you'll have a seat
8 please.

9 **DIRECT EXAMINATION**

10 BY MR. CORBIN:

11 Q Deputy Bazen, tell the Court what your current
12 position is, what do you do in general?

13 A I'm currently a narcotics investigator for the
14 Florence County Sheriff's Office.

15 Q Yes, sir. How long have you held that particular
16 position?

17 A Going on seven years.

18 Q Confidential informants, they're important to the
19 prosecution process?

20 A Yes, sir.

21 Q And it's not uncommon that anybody arrested
22 specifically like for a drug charge that you'll work
23 with that particular person to see if they're
24 willing to cooperate, maybe do some confidential
25 informant work?

1 A Sure.

2 Q The reason people do CI work is because they want
3 to work a better deal to kind of help themselves,
4 correct?

5 A Sometimes.

6 Q Well, either -- they get paid, not doing it for
7 the benefit of the public?

8 A Right.

9 Q Right. Now this arrest, Mr. Donnell McFadden,
10 you were involved in investigating that particular
11 incident?

12 A I was.

13 Q Yes, sir. And Mr. McFadden was not the only one
14 arrested for this incident, was he? The arrest
15 warrant says Kevin Burgess, Donnell McFadden, James
16 Blair, and Vernon McFadden were arrested.

17 A Right.

18 Q Sound familiar? Now Mr. McFadden, Donnell
19 McFadden, he received a 22 year prison sentence,
20 correct?

21 A I'm pretty sure.

22 Q Kevin Burgess, also involved in this transaction,
23 he got 90 days and probation; didn't he?

24 A Not sure.

25 Q And James Blair, the other person involved in his

1 case was actually dismissed, he got nothing?

2 A I don't recall.

3 Q Okay. And Vernon McFadden, Mr. McFadden's
4 brother, he was there too. Mr. McFadden got 22
5 years. His brother got 90 days in jail and
6 probation, correct?

7 A I guess so, it's been a while.

8 Q And Vernon McFadden, he, he got less than 22
9 years because he did some CI work for you too;
10 didn't he?

11 A I think he did.

12 Q Yes, sir. And Mr. McFadden, Donnell McFadden is
13 the one who got the 22 year sentence, not probation.
14 He did CI work for you too; didn't he?

15 A Not that I recall.

16 Q If he were to testify that in fact he did do CI
17 work for you after the arrest, are you in a position
18 to say he's not telling the truth?

19 A I don't recall him.

20 Q Okay. And did you speak to the prosecuting
21 attorney Mr. Jepertinger at all about Mr. Donnell
22 McFadden doing CI work for Florence County Sheriff's
23 Department?

24 A Not that I recall.

25 Q And if that in fact were true, that he did do CI

1 work, it's common place where you would speak to the
2 prosecuting attorney, tell him about the
3 cooperation, and perhaps he would get 90 days of
4 probation like the other ones or have his case ---

5 MR. THOMAS: I'm going to object to
6 leading the witness.

7 THE COURT: Sustained.

8 BY MR. CORBIN:

9 Q Wouldn't that be correct? That it's common place
10 you would speak on behalf of your CIs to try to get
11 some leniency for them?

12 A We sometimes, they cooperate we let the
13 prosecuting attorney know we have.

14 Q Do you know any other reason Vernon McFadden, his
15 brother, didn't get 22 years, he got 90 days
16 probation, besides working as a CI?

17 A If I recall correctly all these guys you
18 mentioned, they're separate cases. Mr. McFadden,
19 Donnell, was charged with distribution. They did
20 numerous distribution arrests. None of them had
21 anything in common with Donnell. You have to treat
22 that separate.

23 Q And is that why his brother got 90 days in jail
24 and probation?

25 A Couldn't tell you.

1 Q Okay. Mr. Scott Floyd was the attorney for Mr.
2 McFadden at the trial?

3 A Sure.

4 Q Did you speak to him before the trial about any
5 CI? Did you speak to him about the CI work and Mr.
6 Donnell McFadden?

7 A No, sir.

8 Q Did Mr. Floyd ask you to speak to the prosecuting
9 attorney about Mr. Donnell McFadden's cooperation?

10 A There was no cooperation to speak of.

11 Q I believe that's all I have. Thank you.

12 THE COURT: All right. Mr. Thomas.

13 **CROSS-EXAMINATION**

14 BY MR. THOMAS:

15 Q Just briefly. So you have never used
16 Mr. McFadden as a CI?

17 A No.

18 Q And you never promised him any help for
19 cooperating with you in any investigations?

20 A No.

21 Q No further questions.

22 THE COURT: All right.

23 MR. CORBIN: That will be it with this
24 witness, Your Honor. Thank you. Judge, at this
25 time we call Mr. McFadden to the witness stand

1 please.

2 THE COURT: All right. If you will come
3 on around, have a seat, and be sworn in. Have you
4 already sworn him in?

5 THE CLERK OF COURT: Yes, sir.

6 MR. CORBIN: Yes, sir.

7 **DIRECT EXAMINATION**

8 BY MR. CORBIN:

9 Q Mr. McFadden, you're under oath. Tell this
10 Court, have you ever functioned as a confidential
11 informant for Florence County?

12 A Yes, sir, I did.

13 Q Did, in fact, you work as a CI after this arrest?

14 A I got arrested, I caught the charge April 2nd,
15 2008, and April 4th, 2008, and I did undercover work
16 in March.

17 Q Before the conviction?

18 A Before my conviction.

19 Q Why as a confidential informant, is that kind of
20 risky work to do?

21 A That's why I asked my attorney Scott Floyd to
22 bring it to the judge's attention because I wanted
23 him to clear the court out. I didn't want the
24 audience to know what was going on with the
25 confidential informant work.

1 Q And with whom at the Sheriff's Department did you
2 communicate about the CI workings? Who did you do
3 it for?

4 A Bradley Bazen, Michael Rhodes, Michael Ryan
5 Rhodes.

6 Q Officer Bazen?

7 A Yes, sir.

8 Q How many times did you function as a CI for
9 Officer Bazen and Officer Rhodes at the Sheriff's
10 Department?

11 A It was my first time. Me and my brother rode —
12 we went to 251, to the Texaco Station which we met
13 the individual there, bought drugs from him, and
14 brought the drugs right back to us.

15 Q You were actually wired up to do this?

16 A Yes, sir, we was wired.

17 Q You were wired up by the Sheriff's Department?

18 A Yes, sir, by Bradley Bazen.

19 Q Why would you do something like that? Why did
20 you —

21 A Because he said he would help me on my charge
22 when I go to court and —

23 Q Your brother Vernon McFadden, he was there with
24 you involving this incident with your arrest?

25 A Yes, we was arrested — they arrested me, Vernon

1 McFadden, Kevin Burgess and James Blair.

2 Q Mr. Blair's case, what happened to him?

3 A His case was dismissed. Vernon did some CI work,
4 the same thing that I did for them to get my charge
5 reduced down.

6 Q Okay. You ended up receiving 22 years, correct?

7 A Yes, sir.

8 Q Let's talk about any kind of plea bargain. In a
9 situation were you ever offered a plea bargain
10 before the trial?

11 A I was offered five year plea bargain.

12 Q And how did you know about the plea bargain offer
13 of five years?

14 A Plea bargain by my attorney Scott Floyd.

15 THE COURT: Mr. Floyd, was that before the
16 trial?

17 THE WITNESS: Before the trial.

18 BY MR. CORBIN:

19 Q When Mr. Floyd told you before the trial you have
20 a five year plea offer what did you tell him?

21 A I told him when I — Friday I said if you give me
22 time to get all my bills and everything situated I
23 will plead to it that Monday. He told me that
24 Friday, say everything still be on the table Monday
25 morning. So I called the roll that Sunday night.

1 So it -- I called, my name wasn't on the roll. I
2 still went down. My name wasn't on the roster so.

3 Q Actually went to check, physically check?

4 A Yeah.

5 Q And your name still, still wasn't on the roster?

6 A I went that Tuesday morning. I got off the
7 elevator. First my brother called me to tell me,
8 say that the jury waiting on you. I said ain't no
9 way, I supposed to be going to get five years
10 Tuesday morning. When I stepped off the elevator
11 that when the Sheriff's Office got me off and revoke
12 my bond.

13 Q Did you have communication with Mr. Floyd at that
14 time about your desire, you wanted that five year
15 plea?

16 A Yes, sir.

17 Q Tell the judge what happened please.

18 A When I went in the courtroom I asked Mr. Floyd
19 how was the -- 'cause the jury was already on the
20 11th floor, and I supposed to be taking a plea of
21 five years on the 10th floor. So since the jury
22 picked out of the 11th from the -- brought the jury
23 down to me and we was on 11th, told me five years.
24 When I took the jury trial, that's when they took my
25 plea off the table.

1 Q Who took the plea off the table?

2 A It had been the solicitor's office. I asked what
3 was the reason for the plea, five year plea off the
4 table. They never did told me what was the reason
5 they took the plea off the table.

6 Q You told Mr. Floyd on Friday before this Tuesday
7 you accepted the plea deal?

8 A Yes, sir.

9 Q Do you know whether or not Mr. Floyd communicated
10 that acceptance to the solicitor's office before
11 that Tuesday?

12 A I already sign the plea negotiation sheet that
13 Friday to make sure that it would have been still on
14 the table that Monday.

15 Q Okay. Then during the plea deal was taken off
16 the table you proceeded to trial. During the trial
17 were there additional discussions about another
18 potential plea offer?

19 A It was another plea came then more, at the 15, 30
20 during my trial.

21 Q When you learned about the plea deal had gone
22 from 5 years to 15, 20, 30 years, did you discuss
23 that with Mr. Floyd?

24 A Yes, sir.

25 Q Did you ask Mr. Floyd to do anything at that

1 point about your CI work?

2 A I was telling Mr. Floyd, I said, Mr. Floyd, I —
3 reason why for me the State offered me the five
4 years in order, why I'm doing CI work is to get
5 lesser sentence than the five years so how the State
6 take the five years back from me. This the
7 difference me doing confidential informant, if they
8 had me with the charges.

9 Q Did you get anything for your CI work?

10 A I didn't get nothing but 22 years for the CI
11 charges.

12 Q Did Mr. Floyd as far as you know when you told
13 him, Mr. Floyd about the CI work —

14 A Yes, sir. He sent me to the federal building to
15 get Bradley Bazen, have him call him.

16 Q You went to speak to Mr. Bazen and asked him to
17 call your attorney?

18 A Yes, sir.

19 Q That same person that was sitting there?

20 A Yes, sir.

21 Q To your knowledge did you hear Mr. Floyd ever
22 communicate anything to the prosecuting attorney
23 about your CI work?

24 A No, sir.

25 Q Do you know why Mr. Floyd wasn't mentioning that

1 to the prosecuting attorney?

2 A No, sir, he give me no reason why.

3 Q Okay. So then you were sentenced to 22 years in
4 prison?

5 A Yes, sir.

6 Q Other people got probation?

7 A Yes, sir.

8 Q You did the CI work?

9 A Yes, sir.

10 Q You risked your life to do that?

11 A Yes, sir.

12 Q And got nothing?

13 A Got nothing but 22 years.

14 Q You were willing to accept the plea offer on that
15 Friday before the term of court?

16 A Yes, sir.

17 Q You instructed your attorney to accept it?

18 A Yes, sir.

19 Q You got this withdrawn before you could accept
20 it?

21 A Yes, sir.

22 Q I believe that's all we have. Mr. McFadden, do
23 you have any other concerns about the representation
24 of Mr. Floyd at this point?

25 A Only thing I want to say that on that Friday when

1 I got in touch with him, when he told me that the
2 five years still been on the table, if the five
3 years wasn't going to still be on the table I'd went
4 ahead and let everything got behind and went ahead
5 and gone on with the five years that Friday. I
6 wasn't wait till that Monday.

7 Q You were taking care of your affairs on the
8 Friday because you knew you were going to accept the
9 five year deal next week. Any other issues that you
10 have with Mr. Floyd?

11 A No, sir.

12 Q Okay. At one point there was -- Mr. Floyd at one
13 point when the jury was being selected?

14 A Yes, sir.

15 Q And I'm not gonna ask you legal questions when
16 Mr. Floyd is here; but was there a question raised
17 come to call a Batson issue where certain minorities
18 were stricken from the jury? Did Mr. Floyd raise
19 that point?

20 A Yes, sir.

21 Q He raised that Batson and he argued that point to
22 the judge, correct?

23 A He did argue.

24 Q After the conviction did you -- did Mr. Floyd do
25 your appellate work for you?

1 A No, sir, I had a private attorney named Trishnan
2 Blanchard (ph) out of Columbia.

3 Q In that particular appeal, to your knowledge was
4 anything raised by Mr. Blanchard about the Batson
5 issue?

6 A The Batson issue never was raised in my appeal.

7 Q Not raised?

8 A No, sir.

9 Q Do you know why?

10 A No, sir, I don't.

11 Q Okay.

12 MR. CORBIN: That's all we have, Your
13 Honor.

14 THE COURT: All right, thank you.

15 Mr. Thomas.

16 **CROSS-EXAMINATION**

17 BY MR. THOMAS:

18 Q Mr. McFadden, how many times did you meet with
19 Mr. Floyd before your trial?

20 A Probably about -- before my trial?

21 Q Yes, sir.

22 A Probably about three times.

23 Q And during those meetings did you have a chance
24 to review discovery with him?

25 A What you mean by that?

1 Q Did you get a chance to look at the State's
2 evidence?

3 A Talking about the video tape?

4 Q Yes, sir.

5 A Yes, sir, I seen the videos. That's why I accept
6 going to —

7 Q You knew that was you on the video tape?

8 A Yeah, I — it was me on the video.

9 Q You knew that was you selling 20-dollar crack to
10 the CI?

11 A Yes, sir.

12 Q Did you ever discuss with Mr. Floyd your version
13 of the events or any defenses you might have?

14 A What you mean?

15 Q Did he ever tell you you might have a defense to
16 the charge?

17 A No, it wasn't about my defense.

18 Q Did — you did discuss with him your case,
19 correct?

20 A Yes, sir.

21 Q And he communicated that five year offer to you?

22 A Yes, sir.

23 Q When you say you were going to accept that five
24 year offer on Friday, was that Friday before the
25 trial began?

1 A Yes, sir.

2 Q Was that offer still on the table at that point?

3 A Yes, it was still on the table.

4 Q And you said you were going down there on Friday
5 to sign the paperwork?

6 A I was going to sign the plea, the five year plea
7 negotiation. That's the way that it would have
8 been.

9 Q All right. You —

10 A Only thing I had to do was turn myself in on
11 Monday.

12 Q Did you go down to the courthouse on Friday and
13 sign that paper?

14 A He tell me the five years deal will still have
15 been on the table for that Monday so when I called
16 the automatic voice system that Sunday my name
17 wasn't on there for Monday, but I still went down to
18 the courthouse that Monday to make sure.

19 Q Did you talk to Mr. Floyd on that Monday?

20 A No, sir.

21 Q Did you talk to him on that Friday?

22 A Yes, I talked to him on Friday.

23 Q And he told you on that Friday that that plea
24 offer was still good on Monday?

25 A Yes, sir.

1 Q Did he ever promise you a sentence under that
2 five years?

3 A No, sir, but what I was doing confidential
4 informant work for if the State already offered me
5 five years. So I'm trying to get a lesser sentence
6 right along with the rest of who got arrested, 90
7 day weekend time. That's why I did the confidential
8 informant work.

9 Q And you were given the opportunity to plead about
10 halfway through the State's case in chief; weren't
11 you?

12 A Not on 5 years. 15, 20, 30.

13 Q But they were willing to let you plead to
14 something less than the maximum 30 years though?

15 A Yes, sir.

16 Q And you stood up to actually qualify that plea;
17 didn't you?

18 A Yes, sir, I did.

19 Q Why didn't you go through with that?

20 A Because I had a brother in the back audience and
21 stand, ask the judge for a motion to get my brother
22 to speak, say something for me, confidential
23 informant work that we was doing because the
24 solicitor didn't know about the confidential
25 informant work that we was doing for Mr. Bazen.

1 Solicitor's Office didn't even know.

2 Q But Mr. Floyd was aware of it?

3 A Yeah, Mr. Floyd was aware of it.

4 Q And you say the judge told you he wouldn't hear
5 from your brother when he stood to plead me, told
6 you that earlier in the trial; didn't he?

7 A He told me, said that, that my brother will be
8 called for a witness 'cause Mr. Floyd had made a
9 motion for me to speak and when I stand in front of
10 the judge say that he been called for a witness.

11 Q That was when you moved to relieve Mr. Floyd of
12 his case as your attorney, right?

13 A Yes, sir, 'cause he didn't want to bring the
14 judge's attention to my confidential informant work.

15 Q Did you tell the judge that's why you wanted to
16 relieve him?

17 A He was asking me what was my reason. I want to
18 approach the Bench. I was asking Mr. Floyd let the
19 judge know for me to approach the Bench. I didn't
20 want the audience to know what was going on with the
21 confidential informant work.

22 Q But you were willing to let your brother stand up
23 and tell the audience what was going on about your
24 work, in fact, make a motion —

25 A For both of us to speak about the confidential

1 informant work. I didn't want to risk his life in
2 danger.

3 Q Mr. Floyd didn't tell you your brother couldn't,
4 the judge told you that?

5 A That's right.

6 Q And then later when you stood up to plead you
7 didn't ask the judge at that point to let your
8 brother speak, did you?

9 A That's what he told me. He will be called for a
10 witness.

11 MR. THOMAS: I have no further questions.

12 THE COURT: All right. Call your next
13 witness.

14 MR. CORBIN: No questions, Your Honor.

15 THE COURT: Any other witnesses?

16 MR. CORBIN: We call Mr. Scott Floyd to
17 the witness stand.

18 Mr. McFadden, you may come here please.

19 WHEREUPON,

20 **SCOTT FLOYD,**

21 having been duly sworn by the Clerk of Court,
22 testified as follows:

23 THE CLERK OF COURT: Have a seat please.

24 **DIRECT EXAMINATION**

25 BY MR. CORBIN:

1 Q Mr. Floyd, you've been an attorney for how many
2 years?

3 A 24, 25 years.

4 Q Quarter of a century?

5 A Exactly.

6 Q Handled many criminal cases during those years?

7 A Yes, sir.

8 Q Help many people who decided to become
9 comfortable informants to reach a better plea deal,
10 it's not unusual, is it?

11 A No, it's not unusual.

12 Q Yes, sir. And the other people arrested that we
13 talked about, for example Mr. McFadden's brother, 90
14 days on weekends and a little probation, correct,
15 didn't get 22 years?

16 A If that's what you say. I didn't represent his
17 brother. I didn't have anything to do with his case
18 or two ---

19 Q The other one got the same prison time deal, if
20 you know?

21 A I don't dispute that.

22 Q But we do know that Mr. McFadden sitting here,
23 one out of the four, for whatever reason he didn't
24 get probation. He didn't get weekend jail time for
25 90 days. He got 22 years at hard labor, didn't he,

1 hard time?

2 A He did.

3 Q Okay. The five year plea deal, did you have
4 discussions with Mr. McFadden before the trial about
5 the five year plea deal?

6 A I certainly did.

7 Q The prosecuting attorney was John Jepertinger?

8 A That is correct.

9 Q Did Mr. Jepertinger, the prosecuting attorney,
10 Jepertinger and you have any discussions at all
11 about any kind of confidential informant work of
12 Mr. McFadden?

13 A I don't recall that.

14 Q Okay. Mr. McFadden told you about it?

15 A I don't recall that. This morning is the first
16 time I ever remember hearing about that.

17 Q Can you think of any reason at all given your,
18 and me too, over quarter of a century of practice
19 why somebody would risk life to be a confidential
20 informant and testify, provide evidence, get wired
21 up by drug transactions, and then not even use that
22 for any reason, not tell the attorney, hey, I did
23 the CI work because they paid I could get a better
24 deal. Can you think of why Mr. McFadden wouldn't
25 tell you that?

1 A I don't know why.

2 Q And you're not denying he said it, just don't
3 recall, correct?

4 A I don't recall any discussion about that, no. I
5 mean, what he did, I mean, I have no idea what he
6 did but I don't remember him ever telling me about
7 it.

8 Q Are you saying he's not telling — he would be in
9 a better position to remember whether or not he did
10 the CI work and telling you risking his life;
11 wouldn't he?

12 A I have no knowledge of it so certainly he should
13 know what he did, but I don't.

14 Q Why in the world, if it — how did you negotiate
15 the five year plea offer deal?

16 A He was originally -- well, it was actually third
17 offense distribution and at the time that carried 15
18 to 30. It was a minimum 15, maximum 30, no parole.
19 Mr. Jupertinger agreed to let him plead to a second
20 offense for the minimum five years.

21 Q Yes, sir.

22 A Which was the mandatory minimum at the time for
23 that. At that time that could not be suspended; it
24 can now. So that five years was gonna have to be
25 actually served, and it was also subject to

1 85 percent rule, no parole.

2 Q So he'd be out three or four years, something

3 like that.

4 A Probably about four, yeah, I think so.

5 Q With that deal he'd be free now?

6 A I would imagine, close to it. You know, as far

7 as Mr. Jepertinger's motivations for making that

8 offer, you know.

9 Q You did an excellent job?

10 A I don't know.

11 Q No doubt you did an excellent job. Mr.

12 Jepertinger offered that five year deal?

13 A Right.

14 Q And you don't recall even telling Mr. Jepertinger

15 anything about the risky CI work?

16 A I don't remember that, no.

17 Q But whatever you told Mr. Jepertinger is good

18 enough to get a five year plea deal?

19 A Right.

20 Q Did he say if he doesn't accept this I'm gonna

21 jerk it away from him?

22 A Well, actually, the morning or the day -- I don't

23 remember if we started trial in the morning or not,

24 but I remember the day we started the trial I had

25 the plea sheet still in my hand. I mean, this was

1 before we went out there and actually picked the
2 jury and the five years was on it. And all he had
3 to do was sign it. If he had done that and gone
4 through a plea the jury never would have even been
5 selected. But he wouldn't do it.

6 Q He refused to sign the five year?

7 A That's correct.

8 Q During —

9 A And I believe the same brother that entered with
10 his plea actually on the record entered with that as
11 well. That was my recollection.

12 Q Yes, sir. The trial started and in the midst of
13 the trial was another plea offer given to you by the
14 prosecuting attorney Mr. Jupertinger?

15 A It was.

16 Q Was it more than five years this time?

17 A Yes, unfortunately it was. And I — I believe,
18 you know, I can't remember exactly what it was now
19 but I -- it was less. I think it was less than 20.

20 Q Yes, sir, it was 15 to 30.

21 A 15.

22 Q On record?

23 A I think, I think it was understood there was
24 gonna be a cap. I mean, but I can't remember
25 exactly. I don't have the transcript here in front

1 of me but...

2 Q Yes, sir, but the transcript, this indicates the
3 plea offer at that time was 15 to 30 years and no
4 mention of a cap?

5 A Okay.

6 Q Mr. McFadden, did he accept the 15, 20 year deal?

7 A He was in the middle of the plea, I mean, and it
8 didn't happen.

9 Q At that point in time when the offer had been
10 tripled or as much as second time, the original
11 offer of five years, can you think of any reason
12 Mr. McFadden wouldn't tell you, what's going on here
13 because I did the CI work I'm supposed to get some
14 relief here. Can you think of any reason, facing 15
15 to 30 years in prison?

16 A I don't know why, no, sir.

17 Q Mr. McFadden was convicted and ---

18 A He was.

19 Q Given a sentence of 22 years?

20 A He was.

21 Q In the record, in the transcript of the trial
22 during the jury selection process, you did -- you
23 were very zealous, very aggressive, and you raised
24 certain concerns about the way prosecutor
25 Jepertinger was selecting the jury. Please tell the

1 judge what your concerns were please.

2 A Well, my main concern was he exercised all his
3 strikes on black jurors if I recall.

4 Q Yes, sir.

5 A And I could not see from the information that I
6 had why he would have struck at least some of those
7 jurors other than their race, I mean.

8 Q And you preserved the record, made what is
9 commonly called a Batson motion?

10 A Yes, sir.

11 Q You raised the issue and you — the Court wanted
12 Mr. Jepertinger to explain some kind of racially
13 neutral reason why he was striking these African
14 American jurors, correct?

15 A Yes, sir, there — there was one lady I think
16 from Lake City and the record — and Your Honor has
17 the record. But the record indicates Mr.
18 Jepertinger's response to the court was, well, I
19 struck her because she's from Lake City.

20 Q That's not because she's black, that happened to
21 be black, but I struck her because she's from Lake
22 City.

23 A That's correct.

24 Q Did he strike other people from Lake City?

25 A He did.

1 Q What was your reaction when he said the only
2 reason I struck her is because she's from Lake City?

3 A Well, I don't know exactly what I said, but I
4 knew that he had placed a white juror from Lake City
5 in the jury before that I believe.

6 Q Quarter of a century criminal defense lawyer,
7 Batson issue raised, issue is a white juror from
8 Lake City, seated a black juror from Lake City,
9 stricken. The reasoning of the prosecuting attorney
10 was I struck the black lady because she was from
11 Lake City. Does that make sense to you?

12 A No, sir.

13 Q You preserved the record on that issue?

14 A Yes, sir.

15 Q You considered the Batson issue to be an issue
16 that's right for appeal?

17 A Yes, sir.

18 Q Supreme court doesn't like that kind of stuff,
19 does —

20 A No, sir.

21 Q Nobody likes that kind of stuff?

22 A No, they don't.

23 Q Striking people because they happen to be black?

24 A That's correct.

25 Q Did you know this black lady from Lake City?

1 A I did not know her.

2 Q Okay, so that wasn't a reason to strike her?

3 A No, sir.

4 Q Mr. McFadden [sic], after the conviction did you
5 do any preliminary or precatory work about the
6 appellate process and you were kind enough to speak
7 to me I know you did. Tell the Court what you did
8 please.

9 A When we file a notice of appeal we send our file
10 to the Office of Appellate Defense in Columbia, and
11 they actually handle the appeal before the appellate
12 court. I picked up the phone when I was given the
13 materials ready to send to the Office of Appellate
14 Defense, and I called -- I believe it was Bob Dudek,
15 and I alerted him that that appeal was on the way
16 and the issues that I thought needed to be zeroed in
17 on. This was the Batson issue.

18 Q Yes, sir. Given your experience of everything
19 that you're saying and it is true it's in the record
20 all that being true on appeal, do you have an
21 opinion as to what you believe a court would do in
22 that situation?

23 MR. THOMAS: Objection, Your Honor, I
24 think that's improper testimony.

25 THE COURT: Sustained.

1 BY MR. CORBIN:

2 Q Okay. You raised the issue with the South
3 Carolina Appellate Office and you focused on the hot
4 issue of a Batson issue?

5 A Yes, sir.

6 Q Did that particular office indeed appeal?

7 A Well, it was my understanding they ended up not
8 actually doing the appeal.

9 Q Mr. Blanchard did the appeal, a private attorney?

10 A Yes, sir.

11 Q And you got the appellate opinion back. It's
12 part of the record. Was there any reference by Mr.
13 Blanchard in the appeal raising this hot issue about
14 the Batson motion?

15 A I did not see it, no, sir.

16 Q Can you think of any that given your experience
17 as a criminal lawyer and that clear issue in your
18 mind?

19 A Yes, sir.

20 Q That you aggressively argued to the court and the
21 reasons given the lady from Lake City, doesn't
22 matter if she's black or white, can you think of any
23 reason why a competent attorney would not raise at
24 that point on appeal?

25 MR. THOMAS: Objection, Your Honor, calls

1 for speculation.

2 THE COURT: Sustained.

3 BY MR. CORBIN:

4 Q You would have done the appeal you certainly
5 would have raised that issue; wouldn't you?

6 A Yes, sir.

7 Q I believe that's all we have. Thank you, Mr.
8 Floyd.

9 THE COURT: All right, cross.

10 **CROSS-EXAMINATION**

11 BY MR. THOMAS:

12 Q Good morning, Mr. Floyd. Thanks for being back
13 with us again.

14 A Yes, sir.

15 Q Just some background questions. Were you
16 appointed or retained on this case?

17 A Appointed.

18 Q And did you file the standard Rule 5 discovery
19 motions?

20 A Yes, sir.

21 Q Did you have a chance to review State's response
22 with Mr. McFadden?

23 A Yes, sir.

24 Q Would you just briefly give us an overview of
25 what the State's discovery indicated he'd done?

1 A The discovery indicated a CI went to a certain
2 location to make a buy of crack cocaine. I think
3 the target was actually one of Mr. McFadden's
4 brothers but he was not at the location when the CI
5 arrived there. And then the discovery indicated
6 that the CI dealt with Mr. Donnell McFadden to
7 actually make the buy.

8 Q How many times did you get to meet with
9 Mr. McFadden before this trial?

10 A I believe it was, you know, four or five times I
11 believe.

12 Q And you said you had an opportunity to review
13 discovery with him during those meetings?

14 A Yes, sir.

15 Q And that he never gave you any indication that he
16 had a defense to his charges?

17 A No, sir.

18 Q And just briefly, again, I think I asked this,
19 after the transcript had a pause or after we had
20 paused in the proceedings and what was the State's
21 evidence against him?

22 A Well, there was actually a video recording. It
23 was video and audio of the drug transaction. The CI
24 also appeared and testified at this trial, as well
25 as Investigator Bazen testified earlier. And you

1 know, I can't remember who else was involved in the
2 transaction, who might have testified, but they have
3 basically eyewitnesses and video evidence.

4 Q Do you remember at trial you challenged the
5 admission of the video; didn't you?

6 A Yes, sir, I did.

7 Q And you challenged the admission of the drugs
8 based upon the chain of evidence?

9 A I did.

10 Q And the judge overruled both of those challenges?

11 A He did.

12 Q And he let that evidence in?

13 A He did.

14 Q What kind of plea negotiations did the State
15 give?

16 A They offered originally five years for a second
17 offense distribution of crack cocaine.

18 Q And how long is that offer good for?

19 A It was on the table till immediately before we
20 picked the jury.

21 Q Did Mr. McFadden ever indicate to you that he
22 wanted to take that deal?

23 A If I recall, when I — I think I did relay it to
24 him the week prior to the date that the trial was
25 set for. I believe, I recall I thought he was going

1 to accept it, yes. I mean, so I'm sure he told me
2 that he was going to accept it.

3 Q And on the day of trial that plea was still on
4 the table?

5 A Yes, sir.

6 Q And whose decision was it to decline the plea on
7 that day?

8 A I assume it was Mr. McFadden's.

9 Q But you made it clear to him that he could accept
10 a five year plea before the trial begin?

11 A Yes, sir. I mean, I have the plea sheet in my
12 hand with the five years written on it.

13 Q And so then you proceeded to trial. It was his
14 decision to go to trial?

15 A Yes, sir.

16 Q Was it also his decision to stop the trial after
17 Detective Bazen's testimony and to accept the plea
18 at that time?

19 A Yes, sir.

20 Q And was it his decision to change his mind and
21 not accept that plea?

22 A Yes, sir.

23 Q As far as his work as a CI goes he never
24 mentioned that to you, did he?

25 A I don't recall that, no, sir, I do not.

1 Q But that's something that you probably would
2 remember because it's very good mitigation evidence?

3 A I think so, yes, sir.

4 Q As far as the Batson challenge goes,
5 Mr. Jepertinger also struck one white male juror;
6 didn't he?

7 A He might have.

8 Q And you raised the issue of the reason that he
9 struck the juror because she was from Lake City.
10 You had raised the issue that was inadequate reason
11 in front of Judge Russo?

12 A Yes.

13 Q And Judge Russo -- I guess Mr. Jepertinger's
14 response was that he was, he had two strikes left
15 when he seated the white juror from Lake City?

16 A I -- that may be what he said.

17 Q And that was -- he was saving those two strikes
18 for the two individuals who had stood up during voir
19 dire and indicated they had, I guess, maybe a
20 relationship with you or knew you?

21 A They indicated that -- I think one of them
22 indicated that he went to the same church that I
23 did, and the other one indicated that he just knew
24 me from seeing me around Lake City.

25 Q And Judge Russo ruled that that was a racially

1 neutral reason and that the Batson, declined your
2 Batson challenge?

3 A He did.

4 Q And standard review on Batson challenge at
5 appellate court is clearly erroneous; isn't it?

6 A I believe so.

7 MR. THOMAS: That's all I have, Your
8 Honor.

9 MR. CORBIN: No questions, Your Honor.

10 THE COURT: Any other witnesses?

11 Thank you, Mr. Floyd.

12 MR. THOMAS: No, sir.

13 THE COURT: Any witnesses from you?

14 MR. THOMAS: Nothing from the State, Your
15 Honor.

16 THE COURT: I'll take it under advisement.

17

18 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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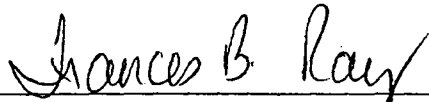
C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE }

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 12th day of February, 2014.



FRANCES BAKIS-RAY, RPR

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

Donnell McFadden, #229635,)

Case No. 2012-CP-21-1789

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

2013 DEC 11 PM 4:37
COMMON PLEAS
FLORENCE COUNTY
SOUTH CAROLINA

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed July 10, 2012. Respondent made its Return on or about December 18, 2012. The Court convened an evidentiary hearing into the matter on October 10, 2013, in Marion County. Applicant was present at the hearing and represented by Daryl J. Corbin, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the PCR hearing. Applicant also called Investigator Bazen of the Florence County Sheriff's Office to testify. Applicant's trial counsel, Scott P. Floyd, Esquire, also testified. The Court had before it a copy of the trial transcript, the records of the Florence County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application, and the return. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Florence County Clerk of Court. In October 2008, the Florence County Grand Jury indicted Applicant for distribution of cocaine base (2008-GS-21-1598). He was represented by Scott P. Floyd, Esquire ("trial counsel"). On April 14, 2009,

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Applicant proceeded to trial before the Honorable Thomas A. Russo and a jury. The jury found Applicant guilty as indicted on April 15, 2009. Judge Russo sentenced Applicant as a third drug offender to confinement for a period of twenty-two (22) years.

Applicant filed a timely notice of appeal, and the appeal was perfected by Tricia A. Blanchette, Esquire ("appellate counsel"). On January 25, 2012, the South Carolina Court of Appeals affirmed Applicant's conviction. State v. McFadden, 2012-UP-28 (S.C. Ct. App. filed Jan. 25, 2012).

II. ALLEGATIONS

In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective Ass. of Counsel"
 - a. "Strickland vs. Washington"
2. "Chain of Custody Rule 6"
 - a. "State vs. Sweet, 374 S.C. 1, 6 (2007) State vs. Chisolm"
3. "Tampering with Evidence"
 - a. "Melendza-Diaz vs. Mass. 129 S.Ct. 2527 (2012)"

On October 3, 2013, Applicant filed an amended application alleging ineffective assistance of appellate counsel for failing to argue the trial judge erred in denying Applicant's Batson challenge. At the PCR hearing, the Applicant proceeded on only the allegations of (1) ineffective assistance of trial counsel for failure to present evidence of Applicant's work as a confidential informant, (2) ineffective assistance of trial counsel for failing to allow Applicant to plea and receive a lesser sentence, and (3) ineffective assistance of appellate counsel for failure to raise the Batson issue on appeal.

III. SUMMARY OF TESTIMONY

Applicant's first witness was Investigator Bazen of the Florence County Sheriff's Office narcotics division. Investigator Bazen testified Applicant's brother worked as an informant for the narcotics department. However, he further testified Applicant never did any work for the department. On cross-examination, he reiterated he never employed Applicant as an informant and he never promised Applicant anything in return for any cooperation.

Applicant testified he worked as an informant in March 2009 by buying drugs for Investigator Bazen. He also testified he informed trial counsel of his work, but that trial counsel failed to give this information to the State or to the trial judge. Applicant also testified he wanted trial counsel relieved because trial counsel never mentioned the informant work to the State or to the trial judge. However, on cross-examination Applicant admitted he did not tell the trial judge about any informant work when given the opportunity to speak at sentencing.

Applicant further testified he received an offer to plea to a second offense in exchange for a five (5) year sentence. He stated he wanted to take this plea offer on the Friday before trial, but trial counsel told him the offer would still be valid on Monday. Applicant testified he went to court on Monday, but his name was not called during roll call. He instead went home, and was arrested on a bench warrant the next day. He testified he wanted to accept the five (5) year offer when he appeared for trial, but the State had withdrawn the offer.

On cross examination, Applicant admitted he met with trial counsel at least three times before trial. During these meetings, they reviewed the State's evidence and discussed the case. He also admitted he did not speak to trial counsel on the Monday he was supposed to appear to

plea. Applicant further admitted he did not speak to anyone about his plea on that Monday. He testified he went home instead of making any attempt to contact trial counsel.

Trial counsel testified he met with Applicant several times after being appointed. He recalled reviewing with Applicant the State's responses to trial counsel's Rule 5/Brady motions. According to trial counsel, the State's evidence consisted of a video of the drug transaction and the testimony of a confidential informant. Trial counsel also discussed Applicant's version of the facts and any possible defenses. However, trial counsel recalled the video evidence would have been difficult to counter at trial. Trial counsel further testified he never heard of Applicant's informant work until the day of the PCR hearing. He did not know why Applicant never discussed working as an informant with him, but he did not recall being informed Applicant was a confidential informant.

Trial counsel testified he was able to negotiate an offer of five (5) years for a plea to a second drug offense. He also testified the five (5) year plea was still on the table up to the moment jury selection began. Trial counsel recalled holding the sentencing sheet reflecting the negotiated five (5) years in his hand the day of trial, and Applicant refusing to sign the sheet. He further recalled the State again offering to allow Applicant to plead guilty to the third offense as trial was ongoing. Trial counsel testified Applicant backed out of that plea because Applicant's brother talked him out of it.

Regarding the Batson challenge, trial counsel recalled discussing it as an appellate issue with the Office of Appellate Defense. However, the appeal was ultimately perfected by appellate counsel, who is not employed by the Office of Appellate Defense. Trial counsel admitted the

trial judge made findings of fact that the State's strikes were race neutral, and that the standard of review on appeal gives great deference to the trial judge.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

A. Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The

applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to appellate counsel, the applicant must prove prejudice by showing "there is a reasonable probability he would have prevailed on appeal." Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003) (citations omitted)

1. Trial Counsel

The Court finds Applicant failed to meet his burden of proving trial counsel was ineffective. Applicant's allegation trial counsel failed to present evidence of his work as a confidential informant is wholly without merit. Regarding this allegation, the Court finds the testimony of trial counsel and Investigator Bazen to be very credible. Further, the Court finds Applicant's testimony to be neither credible nor believable. The record is clear trial counsel was under no obligation to disclose Applicant's work for two reasons. First, Applicant never did any informant work for Investigator Bazen. Second, even if Applicant did any informant work, he never disclosed it to trial counsel. Trial counsel cannot have been expected to discover facts that did not exist at the time of trial. Thornes v. State, 310 S.C. 306, 310, 426 S.E.2d 764, 765-66

(1993) (citations omitted). Therefore, trial counsel was not deficient in failing to present this information to the trial court.

Likewise, trial counsel was in no way deficient for failing to secure the five (5) year plea offer. The record is clear Applicant had every opportunity to plea to a second offense. The Court finds very credible trial counsel's testimony Applicant could have received the benefit of the negotiated plea up to the moment jury selection began. The Court finds not credible Applicant's testimony he wanted to plea to five (5) years instead of go to trial. Applicant freely and intelligently declined this offer, and decided to take the case to trial. Even after trial started, Applicant again declined an opportunity to plead guilty. Therefore, trial counsel did everything possible to secure the plea offer Applicant now complains he was not afforded.

Furthermore, plea counsel provided competent representation in light of the overwhelming evidence against Applicant. The State presented the eye-witness testimony of a confidential informant who purchased drugs from Applicant. The officers running the sting testified the only way the informant had possession of the drugs was by purchasing them from Applicant. The most damaging piece of evidence was a video which the trial judge stated clearly showed Applicant selling drugs. (Trial Tr. 171:2). Because the State presented overwhelming evidence of Applicant's guilt, he cannot show he was prejudiced by any of trial counsel's alleged errors. Harris v. State, 377 S.C. 66, 79, 659 S.E.2d 140, 147 (2008). Therefore, Applicant has not proven ineffective assistance of trial counsel.

2. Appellate Counsel

The Court finds Applicant has not met his burden of proving appellate counsel was ineffective for failing to argue the trial judge erred in denying Applicant's Batson¹ challenge. Specifically, the Court finds Applicant has not proven he would have been successful on appeal had this issue been briefed. A trial court's ruling on a Batson motion rests largely on credibility and is given great deference on appeal. State v. Ford, 334 S.C. 59, 65, 512 S.E.2d 500, 503 (1999). Here, the trial judge found the State offered race-neutral explanation² for striking each juror. (Trial Tr. 27:24-28:12). The State struck the first juror because she was reluctant to serve on a jury; the second juror because he possibly had a prior record; the third juror because she was from the same area as Applicant; and the fourth juror because she had pending criminal charges being handled by the same Solicitor's Office. Each of these reasons has been previously found to be racially neutral. See State v. Wright, 304 S.C. 529, 533, 405 S.E.2d 825, 827 (1991) (apparent disinterest in serving); State v. Martinez, 294 S.C. 72, 73, 362 S.E.2d 641, 642 (1987) (possible criminal record); Arthur v. Sexton Dental Clinic, 368 S.C. 326, 336, 628 S.E.2d 894, 900 (Ct. App. 2006) (area where juror lived); Sumpter v. State, 312 S.C. 221, 223, 439 S.E.2d 842, 844 (1994) (prior involvement with same Solicitor's Office). Therefore, the trial court did not err in finding each strike was racially neutral.

Thus, Applicant must show the trial court erred in finding there was no pretext to the strikes. Ford, 334 S.C. at 64, 512 S.E.2d at 503. Trial counsel essentially consented to the explanations given for the first, second, and fourth jurors. (Trial Tr. 23:4; 24:5; 27:15).

¹ Batson v. Kentucky, 476 U.S. 79 (1986).

² Ford, 334 S.C. at 64, 512 S.E.2d at 503 ("After a party objects to a jury strike, the proponent of the strike must offer a facially race-neutral explanation.").

Therefore, only the third challenged juror could have been reviewed on appeal. To show the strike was pretextual, trial counsel demonstrated the State later sat another juror who was also from the same area as Applicant. However, the State explained it was reserving its two remaining strikes for two potential jurors who indicated they had a prior relationship with trial counsel. This Court can find no error with the trial court's acceptance of that rationale as a racially neutral reason for striking the third juror.³ Furthermore, the Court notes the State sat a black juror before exercising any of the challenged strikes. See State v. Johnson, 302 S.C. 243, 246, 395 S.E.2d 167, 169 (1990) (citing U.S. v. Lane, 866 F.2d 103 (4th Cir.1989)); Ford, 334 S.C. at 66, 512 S.E.2d at 504 ("Although appellant exercised most of his strikes against white jurors, he did not strike every white juror."). Because the State's "explanations [were] not so fundamentally implausible as to constitute mere pretext[.]" the Court finds Applicant cannot show he would have been successful if appellate counsel had raised the Batson issue on appeal. Ford, 334 S.C. at 65, 512 S.E.2d at 504. Therefore, appellate counsel was not ineffective.

B. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, the Court finds Applicant failed to present sufficient evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

³ This case is distinguishable from State v. Hicks, 330 S.C. 207, 499 S.E.2d 209 (1998), and State v. Grandy, 306 S.C. 224, 411 S.E.2d 207 (1991), because the State's claim it was reserving strikes for later jurors was supported by a clear and reasonably specific explanation of which jurors it wished to avoid seating.

V. CONCLUSION

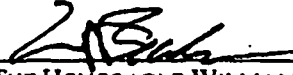
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes that Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on the applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 25 day of Nov., 2013.


 THE HONORABLE WILLIAM H. SEALS, JR.
 Presiding Judge

Maria, South Carolina

2013 DEC 11 PM 4:37
 COURT REPORT
 FLORENCE, SC

[Handwritten initials]

[Handwritten initials]

COUNTY OF FLORENCE
STATEINDICTMENT/CASE#: 08-08-21-1598

Darnell Darnant McFadden

AW#: K330242

AKA: _____

Date of Offense: 4/2/09Race: B Sex: M Age: 32S.C. Code §: 44-53-375 (B)(3)DOB: [REDACTED] SSN: [REDACTED]CDR Code #: 3039

Address: _____

City, State, Zip: Lake City, SC 29562

DL# _____ SID# _____

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Distribution of Cocaine Base 3rdIn violation of 44-53-375(B)(3) of the S.C. Code of Laws, bearing CDR Code # 3039☐ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-46
(CSC w/minor 1st or Lowd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor [Signature] SC Bar # 9826 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 22 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 with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

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

PTUP _____

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

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ set by SCDPPPS _____

Attend Voc. Rehab. or Job Corp. _____

Recipient: _____

May serve W/E beginning _____
Substance Abuse Counseling ☐

*Fine: _____

Random Drug/Alcohol Testing ☐

§14-1-208 (Assessments 107.5%) \$ _____

Fine may be pd. in equal, consecutive weekly/monthly

§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00pmts. of \$ 125

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

Beginning 7/5/09
paid to Public Defender Fund

§56-5-2985 (DUI Assessment) \$12 \$ _____

Other: _____

§56-1-289 (DUI Breath Test) \$500 \$ _____

\$25 \$ _____

§35.13 (Public Def/Prob) \$25 \$ _____

§73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00§33.7, 1B TP (Drug Court Surcharge) \$100 \$ 100.00

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

§56-5-2842(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 4.95§90.11 TP (SCCJA Surcharge) \$5 \$ 5.00TOTAL \$ 236.40PRESIDING JUDGE [Signature]Judge Code: 2141Sentence Date: 4/15/09

Court Reporter: _____

Clerk of Court/Deputy Clerk [Signature]

WITNESSES
LT. BRETT CAMP FCSO

Bazen

PROS: JCJ

D/O: 04-02-2008

ARREST WARRANT NO.
K330242 (1)

DOCKET NO. 2008 - GS - 21 - 01598
The State of South Carolina,

County of FLORENCE

JCJ

COURT OF GENERAL SESSIONS

OCTOBER TERM 2008

THE STATE
vs.

DARNELL DAMONT MCFADDEN

ACTION OF GRAND JURY

TRUE BILL

Foreman of Grand Jury

VERDICT

244

Foreman of Petit Jury

Date:

Indictment for
DISTRIBUTION OF COCAINE BASE

2008 OCT -2 PM 1:10
COMM REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
Clerk of Court
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

INDICTMENT FOR

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

DISTRIBUTION OF COCAINE BASE

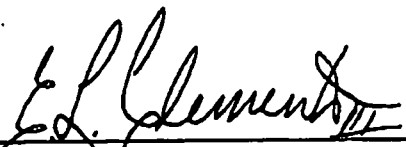
At a Court of General Sessions, convened on OCTOBER 02, 2008, the Grand Jurors of FLORENCE

County present upon their oath:

COUNT ONE - DISTRIBUTION OF COCAINE BASE

That DARNELL DAMONT MCFADDEN did in FLORENCE County on or about April 02, 2008, violate Section 44-53-0375(B)(3) of the Code of Laws of South Carolina (1976), as amended, in that he did distribute to a confidential informant of the Florence County Sheriff's Office, a quantity of Cocaine Base, a controlled substance; such distribution not having been authorized by law.

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



SOLICITOR

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF FLORENCE)

TWELFTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)

vs.)

INDICTMENT NO.

2008-GS-21-1598

DARNELL DAMONT)

McFADDEN,)

DEFENDANT.)

VERDICT FORM**DISTRIBUTION OF COCAINE BASE**
ALSO KNOWN AS CRACK COCAINEWe the Jury, find the Defendant, **DARNELL DAMONT McFADDEN**:**X** **GUILTY** of Distribution Cocaine Base also known as Crack Cocaine.**OR****_____ NOT GUILTY** of Distribution Cocaine Base also known as Crack Cocaine.April 15, 2009
DATE

TERRENCE MALLOY, FOREMAN

COUNTY OF DURHAM
STATE NC

INDICTMENT/CASE# 08 GS 21 1598

Darnell Darnant McFadden vs.

AM# K330242

AKA: _____
Race: B Sex: M Age: 32

Date of Offense: 4/2/09

DOB: _____ SSN: _____

S.C. Code §: 44-52-375 (a)(3)

Address: _____

CDR Code #: 3039

City, State, Zip: Lake City, SC 29561

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Distribution of Cocaine Base 3rd

In violation of § 44-52-375 (b)(2) of the S.C. Code of Laws, bearing CDR Code # 3039

☐ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lawd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, _____ (defendant initial)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: _____ 9826
Solicitor 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 22 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 with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:
☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____
days/hours Public Service Employment _____

Payment Terms: _____
Obtain GED ☐

☐ set by SCDPPPS _____
Attend Voc. Rehab. or Job Corp. _____

Recipient: _____
May serve W/E beginning _____
Substance Abuse Counseling ☐

*Fine: _____
Random Drug/Alcohol Testing ☐

§14-1-208 (Assessments 107.5%) \$ _____
§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
§56-5-2996 (DUI Assessment) \$12 \$ _____
§56-1-289 (DUI Breath Test) \$500 \$ _____
§35.13 (Public Def/Prob) \$25 \$ _____
§73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00
§33.7, 1B TP (Drug Court Surcharge) \$100 \$ 100.00
§50-21-114(BUI Breath Test Fee) \$50 \$ _____
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ 6.40
§90.11 TP (SCCJA Surcharge) \$5 \$ 5.00
TOTAL \$ 236.40

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 12.72 Beginning 7/0 PM
\$ _____ paid to Public Defender Fund

Other: _____ \$25 \$ _____

Appointed PD or appointed other counsel, §35.13 TP ☐
☐ Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE _____

Judge Code: 2141
Sentence Date: 4/15/09

Court Reporter: _____
Clerk of Court/Deputy Clerk _____

CERTIFIED: A TRUE COPY
Clerk of Court C.P. & G.S.
FLORENCE COUNTY, S.C.
Carmie Red Special

CMTI330D
OMCOMITA

SCDC OFFENDER MANAGEMENT SYSTEM
RELEASE DATE SCREEN

08/13/12
C051123

SCDC# > 229635

LOC: LEE

MCFADDEN, DONNELL -

SCDC CLASSIFICATION...: NON-VIOLENT

OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE

SEXUAL REGISTRY...: N

SEXUAL PREDATOR...: NOT APP

DNA STATUS...: COMPLETED

GPS REQUIREMENT...: N

PREA DECISION...:

CURRENT SENTENCE: 022-00-000

CONSECUTIVE SENTENCE...: N

022-00-000

CURRENT SENT START DATE: 04/14/2009

PROJECTED COMPLETION DATES

MAXOUT DATE...: 12/21/2027

CURRENT EWC...: 3 F 7

YOA SIX YEAR DATE: / /

CURRENT EEC...: B4

INITIAL PAROLE DATE: 00/00/0000

NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED...: 000000

LABOR CREW/WORK PROG DATE: 99/99/9999

TOTAL EARNED WORK CREDITS...: 000399

LABOR CREW DISQ REASON:

TOTAL EDUCATION CREDITS...: 000068

CATEGORY 4 OR 5 OFFENSE

TOTAL EXTRA EARNED CREDITS...: 000

SUPERVISED REENTRY DATE...: 00/00/00

TOTAL SERVICE TIME EARNED...: 001199

ISS.....

PFKEYS: 5: HISTORY OF DATE CHANGES

4-0

1 Sess-1

167.7.50.33

SCDC1232

3/11

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 08/13/12

C0511

MCFADDEN, DONNELL - FBI # 466287VA6 SID# SC00939869 SCDC # 229635

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ...: LEE CORR INST

SECURITY/CUST.: 3 MINIMUM IN

CURR INCARC SENT....: 22 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: NO

SOCIAL SECURITY #...: [REDACTED]

DORM.....: SUM1207B

RACE....: B SEX...: M

PROJ MAXOUT DATE: 12/21/2027

PROJ PAROLE DATE: 00/00/0000

EWC JOB...: FOOD SERVICE AIDE

EDUC PGM.: ADULT ED I

EWC LEVEL: 3F7 EEC LEVEL: B4

ASSIGNMENT...: CAFETERIA

CURRENT PROGRAM...: ALCOHOL ANONYMOUS GROUP

AGE...: 36 DATE OF BIRTH...: [REDACTED]

PREVIOUS NUMBERS:

00216661

Y00229635

CURRENT OFFENSES	SENTENCE YRS MOS DYS	COUNTY	SENTENCE START V/NV CATEGORY
MANU/DIST CRACK-3RD, SUB.	22 0 0	FLORENCE	4/14/20 9 N 3

PREVIOUS SCDC OFFENSES (COMPLETE)	SENTENCE YRS MOS DYS	COUNTY	SENTENCE START V/NV CATEGORY
COCAINE POSSESS	2 0 0	FLORENCE	9/30/1999 N 2
CRACK DISTRIBUTION	4 0 0	FLORENCE	9/30/1999 N 2
DRIVING UNDER SUSPENSION	0 0 60	FLORENCE	9/30/1999 N 1

PRIOR COMMITMENTS OVER 90 DAYS:

9/15/94	POSSESSION OF WEAPON	0 YRS 0 MOS 210 DYS
9/15/94	RESISTING OFFICER	0 YRS 0 MOS 210 DYS
9/15/94	MALIC INJUR/PERS PROPERTY	0 YRS 0 MOS 210 DYS
9/12/94	FIRING WEAPON	0 YRS 0 MOS 210 DYS
9/12/94	*ASSAULT ON A POLICE OFFIC	0 YRS 0 MOS 210 DYS

DETAINERS (HOLD, WANTED, NOTIFY):

NO DETAINEES

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

7/30/12	POSSESSION OF CONTRABAND	CONVICTED	ADMIN
9/13/11	POSS. OR/ATTEMPT TO POSS	DROPPED	MAJOR
8/28/11	POSS. OR/ATTEMPT TO POSS	CONVICTED	MAJOR
1/16/10	OUT OF PLACE	CONVICTED	MAJOR
1/16/10	REFUSING OR FAILING OBEY	CONVICTED	MAJOR
1/16/10	POSS. OR/ATTEMPT TO POSS	CONVICTED	MAJOR
11/ 8/ 9	REFUSING OR FAILING OBEY	CONVICTED	ADMIN
7/29/ 9	POSSESSION OF CONTRABAND	CONVICTED	ADMIN
6/25/ 0	OUT OF PLACE	DROPPED	CHARG
12/10/99	REFUSING TO ATTEND COMPU	CONVICTED	MINOR

HISTORY OF MOVEMENTS:

5/21/ 9	LEE	INCARCERATED	ADMINISTRATIVE
4/16/ 9	KIRKLAND	INCARCERATED	NEW ADMISSION
8/31/ 1	UNK	RELEASE	EXPIRATION OF SENTENCE
12/28/ 0	DARLINGTON PRN D	INCARCERATED	ADMINISTRATIVE
6/28/ 0	WATEREE RIVER	INCARCERATED	ADMINISTRATIVE
6/26/ 0	PALMER	INCARCERATED	LABOR CREW
11/ 4/99	WATEREE RIVER	INCARCERATED	ADMINISTRATIVE
10/25/99	KIRKLAND	INCARCERATED	YOA CONVERSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

250

JOB

START

END

TERMINATION

JOB

MCFADDEN, DONNELL - FBI # 466287VA6 SID# SC00939869 SCDC # 229635 (CONTINUED)

DESCRIPTION	DATE	DATE	REASON	LVL
FOOD SERVICE AIDE	07/09/12	0/ 0/ 0		3F7
FOOD SERVICE AIDE	04/24/12	7/ 8/12	LATERAL TRANSFER	3F5
SR TRAY LINE OPERATO	09/26/11	4/23/12	LATERAL TRANSFER	3F5
WASH RACK ATTENDANT	08/16/11	9/25/11	LATERAL TRANSFER	3F5
WASH RACK ATTENDANT	05/26/09	2/11/10	DISCIPLINARY/LOCK-UP	3F5
DESIGNATED FACILITY	01/02/01	8/31/ 1	RELEASED/PAROLED	2F7
LIVESTOCK CARETAKER	07/20/00	12/28/ 0	INSTIT TRANSFER	2F7
FOOD SERVICE AIDE	06/30/00	7/19/ 0	INMATE REQUEST	2F5
FARM WORKER	12/13/99	6/26/ 0	INSTIT TRANSFER	2F7
FARM WORKER	11/23/99	12/12/99	INMATE REQUEST	2F7
GENERAL WORKER	12/29/95	2/15/96	DISCIPLINARY/LOCK-UP	7P5
FOOD SERVICE AIDE	12/14/95	12/28/95	UNSAT JOB PERFORM	5P7

HISTORY OF EARNED EDUCATION CREDITS:

EEC	START	END	TERMINATION
DESCRIPTION	DATE	DATE	REASON
BONUS 4-7 HRS/WK	08/23/11	0/ 0/ 0	
BONUS 4-7 HRS/WK	07/05/00	8/16/ 0	INMATE REQUEST
BONUS 4-7 HRS/WK	12/08/99	6/26/ 0	INSTIT TRANSFER
LVL 2 - FULL TIME(NO EWC)	10/12/99	10/25/99	INSTIT TRANSFER
LVL 2 - FULL TIME(NO EWC)	08/10/99	9/21/99	COURT

***** END OF REPORT *****